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LAW LEXICON OF BRITISH INDIA

THE
LAW LEXICON
OF BRITISH INDIA

COMPILED AND EDITED

BY

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MADRAS
THE MADRAS LAW JOURNAL OFFICE
MYLAPORE
1940.

PRINTED BY R. NARAYANASWAMY IYER AT THE MADRAS LAW JOURNAL PRESS,
MUNDAKANNI AMMAN KOIL STREET, MYLAPORE, MADRAS

DEDICATED BY KIND PERMISSION

TO MY MASTER,

THE HONOURABLE SIR SRINIVASA VARADACHARIAR,

JUDGE, FEDERAL COURT OF INDIA.

FOREWORD

By the Hon'ble Mr. Justice SOMAYYA Judge, High, Court of Judicature, Madras.

This book is a welcome addition to the Indian Legal Literature. The need for a Law Dictionary specially adapted to the requirements of the Indian Lawyer has long been felt by the profession. The necessity for a Law Lexicon comprising in one Volume, all statutory definitions and Judicial expositions of words and phrases, short explanatory notes on all provincial terms and peculiar words relating to local customs, sectarian usages and the many personal laws of the people, as also terms peculiar to commerce, stock exchange, forensic medicine, mercantile, maritime and military law,—the necessity for a comprehensive work of this kind has been felt by the Bench and the Bar. In a vast country like India inhabited by different peoples, speaking different languages, having different traditions, in which Court proceedings are conducted in a language foreign to the vast majority of the people, the necessity would always exist for a glossary of terms and phrases in use in the various Provinces. We in Madras cannot be expected to know the meanings of terms commonly used in Bengal or in the Punjab. Lawyers and Judges, fresh from England cannot be expected to be familiar with many of the vernacular terms in use in our Courts.

The Law Lexicon of British India supplies a real and long-felt want, and is the first of its kind in India. A perusal of the book shows that the ten years' labour bestowed on it by the Editors has not been spent in vain. Every page exhibits evidence of the industry, learning and judgment with which the work has been compiled. There is instructive matter on every subject. It is far more than a book of word definitions. It ranges over a much wider field. It presents the pith of the law on several topics of absorbing interest. It contains varied and valuable matter both to the student of Laws as well as the practising lawyer. It enables the one to trace the doctrines of law to their early sources, and the other to investigate particular questions with special thoroughness.

The exhaustive selection of more than one thousand five hundred legal maxims and the nice distinctions drawn between words conveying more or less the same meaning are also sure to be of practical value.

The Publishers have to be congratulated on producing a really useful work, which, I trust, will occupy a prominent place in every lawyer's library. I hope it would receive the success which it richly deserves.

MADRAS,
11—2—1940

B. SOMAYYA.

PREFACE

THE ENCYCLOPAEDIC LAW LEXICON OF BRITISH INDIA

Necessity for an Anglo-Indian Law Lexicon —In no country in the world is there a greater necessity for a comprehensive dictionary of all legal terms and phrases as there is in India at the present day The proceedings of all our Courts, superior as well as inferior, are conducted in English—a language with which the vast majority of the people are unacquainted The books of law are all in English. The reports of judicial decisions are published in the English language, and the pleadings are drawn, proceedings conducted and arguments made in the same language. Added to this, there is a vast body of Vernacular words of peculiar import, pertaining mostly to the land-tenures and land-revenue administration of the several provinces with which the English Judge can scarcely be expected to be familiar There are special terms relating to peculiar customs—almost infinite in variety and number—prevailing in the various parts of this vast country There are also phrases and words peculiar to the Hindu Law, the Mahomedan Law, the Buddhist Law, Malabar Law, and other personal Laws of people All these words have found their way into the legal vocabulary of Anglo- Indian Jurisprudence.

It will be found from even a superficial glance of our legal text books and reports that in the pages of these volumes are to be found almost all the expressions, that may be found in purely English Statutes, decisions, or treatises, thousands of terms relating to the land-tenures of the various provinces, numerous words and phrases relating to the local, tribal, sectarian or caste customs of the people, and words peculiar to the personal laws of the different communities—with all of which it is impossible for any lawyer, however wide his knowledge, however vast his study, to be fairly conversant.

There is perhaps in the present circumstances another and even more important necessity for an Anglo-Indian Law Lexicon adapted to the special needs and requirements of our country—for, although the body of our legal literature is borrowed from or based on the English Common Law, Statutes and decisions, yet some differences do and must necessarily exist. Language is the expression of ideas, an identity of ideas depends materially upon a sameness of things or objects with which the people of the two countries are conversant. But in no two portions of the earth, remote from each other, can such identity be found Even physical conditions often make considerable difference. But there are other and more essential differences between the people of this country and England, arising from different traditions, different habits, different religions, different forms of Government, different laws, different institutions and customs. As a result of these differences a great number of words require to be defined in phraseology, specially accommodated to the conditions and circumstances of our people and the peculiar usage they have obtained in our law

Plan of the Work:—The value of every dictionary—legal or otherwise—lies in its comprehensiveness. Its value is impaired, if any word that may reasonably be sought for in it is not found in its proper place therein It has therefore been our aim in the compilation of this Lexicon to present the definition of every legal word or phrase which is requisite not only to the practical, but also to any probable need of the student or the practitioner.

Vocabulary complete and comprehensive:—The first duty of a comprehensive dictionary being collection, not selection, in case of doubt, it was thought better to err on the side of broad inclusiveness than of narrow exclusiveness. But comprehensiveness, however complete is not incompatible with a rigid exclusion of whatever is foreign to the purpose of a Law Lexicon. In the collection of words, special attention has been paid to select only those that belong, directly or remotely, to the domain of law as distinct from the domain of literature, science or art

English Law Terms and Phrases:—A considerable collection of the terms in other systems of law—especially English and American—have also been inserted. As most of our Codes are based, on English Statutes or decisions, and as recourse is often had to English Acts, decisions and Text Books, in the interpretation of terms, occurring in Indian Codes, explanatory definitions of such terms will be found to be helpful to the Indian practitioner.

Quasi Legal Terms relating to other branches, viz., Science, Art and Commerce:—In order to adapt the work to the advantage and convenience of all classes of users, many terms of political or public law are here defined, and also such as are employed in trade, banking and commerce. The principal phraseology of international, maritime, military and mercantile law and forensic medicine, has also been included.

Provincial and Vernacular Terms used in Revenue Records and Private documents:—There have also been included numerous words taken from the Vernaculars of the various provinces, which have acquired a quasi technical meaning in law, or which being frequently used in legal text books, revenue records or private documents, have often been referred to by our courts for construction But the main body of the work is given to the definition of the more strictly legal terms used in modern Anglo-Indian Jurisprudence.

Obsolete words not omitted:—There may be a difference of opinion as to the propriety of including in a modern dictionary terms and phrases no longer in current use. It would appear that a dictionary which does not include such terms fulfills but a small part of its essential purpose The law of the present day has its roots in the antiquities of the past, in the common law of the country and that, in its turn, is inextricably interwoven with an older law based on primeval customs. No question of law can be exhaustively investigated without bringing the searcher in contact with a multitude of legal terms and phrases which may now be regarded as obsolete. It is too much to assert that the modern tendency towards codification has progressed so far, and that the older laws have been so much discarded, that there is no longer a demand for the definitions and explanations which will enable the student to trace the doctrine of the law to their early sources, and the practitioner to investigate particular questions with special thoroughness

But a distinction has however been made, that while a mere general definition has been thought sufficient as to mere ancient and obsolete terms, not in current use, yet in respect of those legal terms which in themselves describe recognised and important topics of the law, which are in daily use in courts of law, and which are of present absorbing interest to the profession, a more detailed treatment than a bare definition has been adopted.

Nature of the definitions:—The value of a dictionary also consists in the nature of its definitions; in giving a clear, full and accurate exhibition of all the various shades of meaning which belong by legislative enactment, reported decision, or established usage, to the words of a language.

Legislative definitions:—In searching for the definitions suitable to be incorporated in the work, the editors have carefully examined all the Indian Codes and from these sources

much valuable matter has been obtained The definitions thus enacted by law are, for the most part, terse, practical, and of course, authoritative References to most, if not all, of such statutory interpretations of words and phrases will be found under their appropriate titles.

Judicial definitions:—Yet another feature of this Lexicon will be found to be the illustrative and explanatory quotations from the best judgments of Indian, English, as well as American Judges. Such quotations, as showing the real and exact meaning of the words and as indicating shades of differences between similar or synonymous expressions, are of the utmost value.

As a matter of fact, it will be found that a good portion of this work consists of extracts from the decisions and dicta of eminent judges The dicta of our judges are so numerous and often so good that a close and careful study of them will reveal a mine of most useful information Many excellent specimens of judicial definitions lie buried among a vast quantity of dull material scattered in numerous law reports, text books, and cyclopaedias, and an attempt on a large scale has been made to dig into the treasures they contain and, as far as possible, to bring them into prominence. One of the aims of the editors has been to examine this branch of legal literature and exhibit under proper headings and titles in a compendious and accessible form those sayings embodied in judicial decisions which cannot be traced without considerable research and difficulty.

Adjudged words and phrases.—What are generally termed "adjudged words and phrases" that is, a judicial interpretation of words having no distinctive legal bearing, but interpreted solely in the light of their context or use in particular connexions, have also been inserted in their appropriate places

Words defined in standard legal text books:—When convenient definitions are found in well known works of law, such as the works of Justice Story, Blackstone, Jarman, Williams and Russel,—such definitions have also been adopted under appropriate titles.

Synonyms discriminated.—Not only has each word been defined as to its exact meaning, but, wherever necessary the more important of the synonyms occurring in legal phraseology have also been carefully discriminated, and distinguished from allied words and expressions. In several cases delicate and even obscure distinctions have been noticed.

Legal Maxims:—Another special feature of this publication is the inclusion of legal maxims used in our law and necessary to be understood by the working lawyer as well as those important to the student of legal history or comparative jurisprudence.

In ancient times the great majority of questions respecting rights, and remedies of private individuals were determined by a reference to Maxims of Law, most of which are manifestly founded on reason, public convenience and social necessity The principles embodied in these maxims have found a place in the modern Codes of all civilised nations A knowledge of the first principles contained in these maxims would be very helpful in the application of modern rules of law to concrete circumstances.

The collection and explanation of the maxims has been made so full that we venture to hope that this work is one of the largest collections of such maxims in a single book. These maxims are not grouped in one body under the title "maxims" but are placed throughout the book in alphabetical order

Great pains have been taken to ensure that this Lexicon fulfills all the functions of a legal dictionary. It is intended to supply a key to the great works in Anglo-Indian Jurispru-

dence, and to serve as an aid to the use of those words themselves, defining and explaining the various meanings, which are or have been attached to them in our legal literature.

In the preparation of this book we have referred to works too numerous to mention. A full list is given in the table of works consulted. But special reference must however be made to the following works without a close and careful study of which it would not have been possible to compile this lexicon, and to the Authors and Publishers of which we wish to acknowledge our great indebtedness.—

Encyclopaedia of the Laws of England, American Cyclopaedia of Law and Procedure, American Ruling Case-law, Words and Phrases Judicially defined (American), Halsbury's Laws of England, English and Empire Digest, Mews' Digest, Bouvier's Law Dictionary, Stroud's Judicial Dictionary, Sweet's Law Dictionary, Cyclopaedic Law Dictionary, Mozley and Whiteley's Law Dictionary, Black's Law Dictionary, Ballantine's Law Dictionary, Stimson's Law Dictionary, Kinney's law Dictionary, Brown's Law Dictionary, Blount's Law Dictionary, Abbott's Law Dictionary, Anderson's Law Dictionary, Rapalji and Lawrence's Law Dictionary, Burrill's Law Dictionary, Osborne's Concise Law Dictionary, Wharton's Law Lexicon, the Older Dictionaries of Cowell, Spelman, Jacob and Tomlins, Wilson's Glossary of Indian Terms, Maclean's Manual, Whitworth's Anglo-Indian Dictionary, Baden Powell's Land Systems in British India, Fifth Report, Morley's Digest, Norton Kyshe's Dictionary of Judicial Quotations, Craies' Statute Law, Crabbe's Synonyms, Smith's Synonyms Discriminated, and other older works on English Synonyms as Taylor's, Graham's and Whatley's, Broom's Legal Maxims, Trainer's Maxims, Wharton's Legal Maxims, Wingate's Maxims, Cotterell's Latin Maxims and Phrases, Oxford Dictionary, Webster's Dictionary, Century Dictionary, Standard Dictionary, Moore's Malabar Law, Sundaram Iyer's Malabar Law, Logan's Malabar Manual, Ghose's Hindu Law, and MacNaughten's Mahamadan Law.

The Editors do not claim any originality in respect of the definitions of words Most of these definitions are the result of comparison and combination of explanatory matter contained in standard works on Law and Literature. A vast majority of the work consists of Judicial and Statutory interpretations of words Every definition is based on authority. The citations, except in some important cases, are omitted, as their mention in every case would swell the bulk of the book to an inconvenient size without any corresponding advantage

It is not without very great diffidence that the Editors are submitting this humble work to the indulgence of the Profession and the Public Though it is the result of over ten years' labour, the Editors are fully conscious of the great disparity between the work as it is and the work which it ought to be.

The Editors are conscious of some deficiencies There may be others of which the Editors are not aware

The Editors crave pardon for any errors or misprints which, in spite of the best care and attention, might have crept into a work of this magnitude, and they will be grateful for any useful suggestions from the Bench and the Bar which may help to rectify errors, supply defects, elucidate obscurities, and generally increase the utility of the publication, and they will be glad to acknowledge the same and give effect to them in the second edition, if, God

LIST OF IMPORTANT BOOKS CONSULTED.

Abbott's Law Dictionary
Ainsworth's Latin-English Dictionary
American and English Encyclopedia of Law
American Encyclopedic Dictionary
American Cyclopædia of Law and Procedure
American Ruling Case Law
(American) Words and Phrases, Judicially defined
Anderson's Law Dictionary
Arnold on Marine Insurance
Austin's Jurisprudence

Bacon's Abridgment
Bacon's Maxims of the Law
Ballantine's Law Dictionary
Bell's Commentaries on the Law of Scotland
Benjamin on Sales
Bishop on Criminal Law
Blackstone's Commentaries on the Laws of England
Black's Law Dictionary
Blount's Law Dictionary
Bouvier's Law Dictionary
Brooke's Abridgment
Broom's Legal Maxims
Broom's Commentaries on the Common Law
Browne's Judicial Interpretation of Common Words and Phrases
Browne's New Law Dictionary
Burge on Colonial and Foreign Law
Burns' Ecclesiastical Law
Burrill's Law Dictionary

Carver's Treatise on the Law relating to the Carriage of Goods by Sea
Century Dictionary
Century Dictionary and Encyclopedia
Chitty on Contracts
Chitty's Criminal Law
Coke's Institutes
Coke on Littleton
Cowell's Law Dictionary
Cunningham's Law Dictionary
Cyclopedia of Law and Procedure (American)

Daniell's Chancery Pleadings and Practice
Daniell's Chancery Practice
Dicey on Conflict of Laws
Domat's Civil Law

Encyclopaedia Britannica
Encyclopaedic Dictionary
Encyclopaedia of the Laws of England
English and American Encyclopaedia of Law
English and Empire Digest
Erskine's Principles of the Law of Scotland

Francis' Maxims Gazetteers. Imperial Provincial and District Gazetteers

Halkerston's Technical Terms of the Law
Halsbury's Laws of England
Heath's Maxims
Holthouse's Law Dictionary

Imperial Dictionary
Indian Digests List of
R N Iyer's Yearly Digests
,, Decennial Digest 1911—1920
,, Decennial Digest, 1920—1930
R N Iyer's and V V. Chitaley's Quinquennial Digest, 1921—1925
R N Iyer's Quinquennial Digest, 1931—1935 (Indian)
Sanjiva Rao's Current Index, 1905—1925
,, All India Digest, 1811—1911
,, Privy Council Digest
Srinivasa Iyer's (S) Digest of Indian Case Law, 1901—1910
Viswanatha Iyer's Privy Council Digest
V V Chitaley's Digest, 1909—1920
,, Civil Digest, 1911—1923
,, Current Digest, 1931—1933
Fifteen Year's Digest, 1916—1931 (Indian Cases Office)

Jacob's Law Dictionary
Jarman on Wills
Justinian—Institutes of Justinian

Kent's Commentaries
Kinney's Law Dictionary and Glossary

Latin for Lawyers
Law Latin Dictionary
Lawyer's Reports Annotated
Lawyer's Companion Series (Sanjiva Rao's)
Logan's Malabar Manual

Manwood's Forest Law
Montesquieu's Spirit of Laws
Mozley and Whitely's Law Dictionary

Porter's Law of Insurance
Pothier on Obligations

Rapalji and Lawrence Law Dictionary
Richardson's New Dictionary of the English Language

Rolle's Abridgment of the Common Law
Russell on Crimes and Misdemeanors
Sheppard's Touchstone
Shumaker & Longsdorf's Cyclopedic Dictionary
Skene's Law Dictionary
Smyth's Synonyms discriminated
Spelman's Glossary
Story's Equity Jurisprudence
Story on Contracts
Story on Bailment
Story on Sales
Story on Promissory Notes
Soule's Dictionary of English Synonyms
Stephen's Commentaries on the Laws of England
Stephen's Digest of the Criminal Law
Stevenson's Law Dictionary
Taylor's Medical Jurisprudence
Termes de la ley
Tomlin's Law Dictionary
Viner's Abridgment
Webster's Dictionary
Wharton's Law Lexicon
Whishaw's Law Dictionary
Williams on Executors
Worcester's Dictionary

List of Indian Law Reports

L. R. Indian Appeals
Indian Law Reports, Allahabad Series
" Bombay "
" Calcutta "
" Karachi "
" Lahore "
" Lucknow "
" Madras "
" Nagpur "
" Patna "
Rangoon Law Reports
Agra High Court Reports
Ajmer Merwara Law Journal
Allahabad Law Journal
Allahabad Criminal Cases
Allahabad Weekly Reporter
All-India Reporter
Bengal Law Reports
Bihar Reports
Bombay High Court Reports
Bombay Law Reporter
Bombay Printed Judgments of the Bombay High Court
Calcutta Law Journal
Calcutta Law Reports
Calcutta Weekly Notes
Criminal Law Journal
Federal Law Journal
Hay's Reports
Hyde's Reports
Income-tax Reports
Indian Cases
Indian Jurist
Indian Appeals
Indian Rulings
Knapp's Reports
Lahore Law Times
Lower Burma Printed Judgments
Lower Burma Selected Judgments
Madras Law Journal
Madras High Court Reports
Madras Law Weekly
Madras Law Times
Madras Weekly Notes
Marwar Law Reports
Marshall's Reports
Moore's Indian Appeals
Moore's Privy Council Cases
Mysore Law Journal
Nagpur Law Journal
Nagpur Law Reports
North-West Provinces High Court Reports
Oudh Appeals
Oudh Cases
Oudh Law Reports
Oudh Weekly Notes
Patna Law Times
Patna Weekly Notes
Punjab Record
Punjab Law Reporter
Punjab Weekly Reporter
Revenue Decisions (A & O)
Sind Law Reporter
Sutherland's Weekly Reporter
Upper Burma Rulings
Weir's Criminal Rulings

THE LAW LEXICON

A

A "A" is the first letter in the English alphabet, and it is also the first symbol of the alphabet in most other languages, and denotes the primary vowel sound This coincidence is probably only accidental The alphabets of Europe were of Semitic origin, and in all the Semitic alphabets except one, this same symbol (in modified forms) holds the first place. (*Encyc Brit.*)

The place that "A" occupies in the alphabet accounts for its being much employed as a mark or symbol

"A" was used as a mark on the ballots by which among the Romans, the people voted against a proposed law It was the initial letter of the word "*antiquo*," meaning 'I am for the old law' (*Black Law Dic*)

"A" sometimes means "THE" Thus, in construing a section of the Bankruptcy Act containing the words "with a view of giving such creditor a preference," it was held that the words "a view" meant "the view". (*Ex P Hill*, 23 Ch D 695)

"A" has sometimes the force of 'ONE' Thus, the phrase "a year's rent" was held to be equivalent to "one year's rent" (*Amer Cyc*) A licence to fish "with a rod and line" does not justify more than one rod and line (*Cambridge* v *Harrison*, 72 L.T. 592, 64 L J.M.C. 175)

"A" is often used as equivalent to "ANY" (*see*, In re, *Sanders*, 54 L J Q B 331)

In *Law Latin* "A" is used as meaning "BY" as in *A multo fortiori* by a much stronger reason (*Adams Gloss* *See also* 4 Kent. Comm 55),

"FROM", as in *A cancellendo*,—from cancelling (3 Black Comm 46)

A Cancellis curiae explodi,—to be expelled from the bar of the Court (*Adams Gloss.*)

A mensa et thoro,—from table and bed. (1 Bl. Comm 440)

A nativitate,—from birth (3 Bl. Comm 332.)

A patre, from the father. (2 Bl. Comm. 232.)

A vinculo matrimonii,—from the bond of marriage. (2 Kent. Comm. 95.)

"IN" (as) in *A retro*,—in arrear. (Adams Gloss.)

"OF" (as) in *A consiliis*, of counsel. (*Burrill L. Dict*);

"ON" (as) in *A latere*,—on the side. (*Adams Gloss.*)

In sanskrit *long* "A" is intensive particle. Achandrārkam (from *chandra*. moon, *arka*. sun). As long as the sun and moon endure.

A posteriori.

In Sanskrit, short *a* is used as a negative prefix, as in *Anaudy* (from *Adi*: beginning) Immemorial *Anyayam* (from *nyaya*· justice or rule) Injustice, Complaint of injustice, Plaint in a civil suit. *Avibhactam* (from *vibhaj* to divide) Undivided. *Avibhacta Kutumbam* is the well-known Indian undivided family.

A caelo usque ad centrum (Lat). From the heavens to the center of the earth.

A communi observantia non est recedendum· A maxim meaning "from common observance there should be no departure" (*Burrill, L.Dict*, 2 Coke, 74)

A digniori fieri debet denominatio et resolutio. A maxim meaning "The title and exposition of a thing ought to be derived from, or given or made with reference to, the more worthy degree, quality or species of it (*Wing Max.* 265.)

A fortiori By a stronger reason, much more, used to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, must also necessarily exist.

A gratia By way of grace or favour, as a matter of indulgence and not as of right

A latere From the side. In connection with the succession to property the term means "collateral". Bract. fol 20b

A mensa et thoro From bed and board. Judicial separation, Descriptive of a limited form of divorce.

A multo fortiori. By far the stronger reason, right or equity.

A nativitate From birth, or from infancy.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative: A maxim meaning, from the impossibility of a thing you may infer its non-existence, but not from the possibility of a thing, its existence

A piratis aut latronibus capti liberi permanent. Persons taken by pirates or robbers remain free, (Dig 49, 15, 19, 2, 1 Kent 108)

A piratis et latronibus capta dominium non mutant. Things taken or captured by pirates and robbers do not change their ownership. (1 Kent. Comm 108, 184.)

A posteriori. An argument founded on experiment or observation; a method of reasoning "from the consequence to the antecedent; a Baconian method of reasoning. (See also *A priori.*)

A prendre.

A prendre. A right to take something out of the soil of another is a profit *a prendre*. (1 Crabb. Real Prop, pp 125, 115.)

A priori. An argument founded on analogy, or abstract considerations.

A quo From which.

A rendre. That which is to be rendered or yielded. *Profits a rendre* comprehend rents and services (Ham. N P 192)

A retro. In arrear, behind

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium. From the highest remedy, there can be no recourse to an inferior action.

A tempore cujus contrarii memoria non existet. From time of which memory to the contrary does not exist

A verbis legis non est recedendum From the words of the law there must be no departure (5 Coke, 119)

A vinculo matrimonii Divorce which effects a complete dissolution of the marriage contract

A-1. A combination of characters applied to a vessel of the highest class in Lloyd's register of shipping.

The letter "A" denotes the first-class character of the hull for build and seaworthiness; the figure 1 that the vessel is well found in rigging, gear &c. When fittings and equipment are insufficient the 1 is omitted (*Imperial Dict.*)

A-1, A-2, A-3, etc, are also used as symbols to denote the relative rating of merchant vessels, "A-1" standing for the highest and A-3 for the lowest grade. The numbers $1\frac{1}{4}$, $1\frac{1}{2}$, 2 and $2\frac{1}{2}$ express intermediate degrees of seaworthiness. (*Cent Dict*)

Used figuratively as an adjective, A-1 is used to denote the highest mercantile credit or excellence generally, first-class, as an A-1 speaker It is an adjective of commendation, meaning first class, first rate

A and B Lists On the winding up of a limited company, all present members are liable for the liabilities of the company to the extent of the amount unpaid on their shares. They form the A list If their contributions are insufficient, then all persons who had been shareholders within one year before the date of the winding up order, will be liable to contribute to the amount of unpaid capital on their shares They form the B list. The liability of those included in the B list does not arise, indeed the list itself is not made, unless and until the liabilities of the company, are shown to exceed the contributions of the "A" list *Companies Consolidation Act*, 1908, S 123 and S 163 (1), *Indian Companies Act*, 1913, S 156 is to the same effect

"Aan Santhathi" The expression 'Aan Santhathi' means male issue and not male descendants *Mrs M. E. D'Cruz* v. *Nagiah Naidu*, 114 I C 837=1929 Mad 64=55 M L J 683. The term also includes an adopted son unless the context excludes him. 33 I.C. 552=(1916) 1 M.W.N 306

Aan Vazhi (*Mal.*) The Male line (*Moore's Malabar Law.*)

Abs (*H.*) Water.

Abad Kariya-O-Jotaia.

Abab. *Mar* A particular item in revenue accounts; the grain falling to the share of the Government after deducting the portions of the several shares (*Wils Gloss*)

Ab abusu ad usum non valet consequentia "From the abuse of a thing you can draw no conclusion as to its legitimate use (cited at 1 A & E 116) (*Byrne Broom, Max* 17)

Ab ante In advance

Ab antiquo Of old, of an ancient date

Ab assuetis non fit injuria From things to which one is accustomed no legal injury or wrong arises.

Ab extra From without

Ab inconvenienti An argument based upon the hardship of the case and the inconvenience to which a different course of reasoning would lead

Ab initio From the beginning

Ab initio mundi From the beginning of the world.

Ab intestato. From an intestate, in case of intestacy, used as the opposite of *ex testamento* (from, by, or under a will)

Ab invito By or from an unwilling party (as) transfer *ab invito* (i e) a compulsory transfer.

Ab judicatio A removal from Court

Abaideshi (*H*) First assessment of newly-settled or cultivated land (*Wil Gloss*)

Abadharita Jama The words *Abadharita Jama* have a significance of the fixity of rental and mean fixed rent *Kumud Nath Das Saha* v. *Kunjabala Dassya*, 62 C L J 67

Abad (*P*), inhabited, land under cultivation. *Ghair-abad*, abandoned land. (*Bad Pow*)

Abad means populous, cultivated as a village or tract of country A village or tract which is designated in revenue phrase as Abad is one from which revenue may be levied

Abad-kari (*H*) Right derived from first clearing away and occuping land (*Wil Gloss*)

As the second member of a compound "Abad" often denotes a city, as Akbarabad, the city of Akbar, Aurangabad, the city of Aurangazeb, Murshidabad, the city of Murshid Kuli Khan, Governor of Bengal, by whom it was enlarged and embellished, Shahjehanabad, the city of Shahjehan

Abad-karna Means, to introduce or extend cultivation or population, to settle, to people, whence may arise a claim to property through descent from the abedkar, the originator or founder

Abadi (inhabited) (North India), used to indicate the part of the village land set apart for the residences, shops, &c (*Bad Pow*) The part of the village lands on which the dwellings are erected. (*Wil Gloss*)

'Abad Kariya-O-Jotaia.' Where the terms of the lease are to the effect that the land is leased for the purpose of being brought into cultivation

Abad Kariya-o-jotaia, these words would not necessarily imply that the tenant was to bring the land under cultivation himself or by members of his own family or by his own servants. There is nothing

Abai

in these words to render it improbable that the intention was that the land should be brought under cultivation by establishing tenants thereon. *Midnapur Zemindary Co., Ltd* v *Sham Lal*, 6 I C. 362 (363)= 15 C.W.N 218

Abai. Patrimonial, descending from paternal ancestors.

Abandon (*See* Abandonment) "The word 'abandon' is one in ordinary and common use, and in its natural sense well understood, but there is not a word in the English language used in a more highly artificial and technical sense than the word 'abandon' (*Curie* v. *Bombay Insurance Co*, L R 3 P C 78, 79) To abandon is totally to withdraw ourselves from an object, to lay aside all care for it, (Crabb) To forsake, to renounce

Abandon (a child) "Abandon or expose" a child "includes a wilful omission to take charge of the child on the part of a person legally bound to do so, and any mode of dealing with it calculated to leave it exposed to risk without protection" (*Steph Cr Law* 196, citing *R* v *White*, L R I C C R 311=40 L J M C 134, *R* v *Falkingham*, 39 L J (Mc) 47=L R.I.C C.R, 222 *See* Penal Code, S. 317)

"The surrender of a child to an adopted parent as an act of prudence or necessity under the pressure of present inability to maintain it, and if done in the interests of the child, cannot be regarded as an *abandonment* or desertion, or even as unmindfulness of parental duty" (*Per* Fitz-Gibbon, L J, Re *O'Hara*, 1900, 2 Ir Rep 244)

Abandonee A person to whom a right or property is abandoned by another (*Burrill L. Dict.*)

Abandonment Abandonment means the giving up of a thing, the external act by which the intention is carried into effect. "Abandonment is the relinquishment of a right, the giving up of something to which one is entitled" *Per* Wheele, C J, in *Dikes* v *Miller*, 24 Tex 417.

DISTINGUISHED FROM SURRENDER "There is a difference between *abandon* and *surrender*, between abandoning a right or thing and the surrender of such right or thing to another, between giving it up because it is regarded as utterly useless or valueless, and surrendering, assigning, or transferring it to another as a valuable right or thing When one surrenders a right or thing to another by solemn agreement in writing, he does not abandon it in the sense in which all understand the word, 'abandon' *Per* Birt, J, in *Hagan* v. *Gaskill* 42 N J Eq 215.

DISTINGUISHED FROM RELINQUISHMENT OR SURRENDER —"Abandonment" denotes an unilataral act which does not necessarily imply that the act has been or has to be brought to the notice of any other person, whereas an act of "Relinquishment" or "Surrender" implies that the act is brought to the notice of the other party, for instance, the landlord See *Venkatesh Narayan Pai* v *Krishnaji Arjun*, 8 Bom 160 and *Balaji Sitaram Naik Salgavkar* v. *Bhikaji Soyare Prabhu Kanolekar*, 8 Bom 164, *Dinabhandu* v. *Lokanadhasami* 6 Mad. 322 (F B) and *Mazhar Ras* v *Ramagat Singh*, 18 All 290 cited in *Raja Venkata* v *Lakshmi Narayana*. 45 M. 39=42 M.L.J. 161 *per* Sadasiva Iyer, J.

Abandonment.

DISTINGUISHED FROM SALE AND GIFT —Abandonment must be made by the owner without being pressed by any duty, necessity, or utility to himself, but simply because he desires no longer to possess the thing, it must be made without any desire that any other person shall acquire the same For, if it were made for a consideration, it would be a sale or barter; and if without consideration or with an intention that some other person should become the possessor, it would be a gift *Richardson* v. *McNulty*, 24 Cali, 339

INTENTION IN ABANDONMENT. In determining whether one has abandoned his property the intention is the first and paramount object of inquiry. There can be no abandonment without the intention to abandon. Thus, property sunk in a steamboat and unclaimed for twenty-three years is derelict. *Creevy* v *Breed Love* 12 La Ann. 745 Manure which had accumulated in a frequented place in a public street was raked into heaps by plaintiff, in the evening and left in that condition to be carried away by him the next evening During the afternoon of the next day, the defendant, finding the manure in heaps, loaded it into his cart and carried it away In an action brought by the plaintiff for the value of the manure, it was held that it belonged originally to the owners of the animals that dropped it, but was to be regarded as abandoned by them, and, that, being abandoned property, plaintiff, the first occupant, who took it, had a right to appropriate it (*Haslem* v *Lockwool*, 9 Am Rep 350) Such an intention to abandon may be inferred from lapse of time or non-user though they are not conclusive The inference of an abandonment of a right from non-user is not applicable to the case of mines *Seaman* v *Vawdrey*, 16 Ves. 392=10 R.R. 207

"Abandonment" *as applied to absentee landlords* in Punjab means an "Intentional quitting of possession by the proprietor coupled with an intention not to resume it." *Sam Ditta* v *Bhulanan*, 85 P R. 1892 (F B). See also *Surya Jah* v *Azim*, 5 I C. 888= 17 P W R 1910=29 P R 1910

AS APPLIED TO A HOLDING —Among tenants mere long absence and settling abroad does not amount to "Abandonment" *Govind Sahai* v *Thakur Dass*, 12 I C 427=126 P W R. 1911.

BY RYOT —On a tenant transferring his non-transferable holding, he must be taken to have abandoned the holding, if he ceases to pay rent to the landlord and accepts a new tenancy from the transferee. *Kallinath Chakravarti* v *Upendra Chunder Chowdhry*. 24 C 212.

AS APPLIED TO EASEMENTS it is the voluntary and permanent relinquishment by the dominant owner of a right of easement *Sham Churn* v *Tairney Churn*, 1 Cal 422 (429)=25 W R 228

IN MARINE ASSURANCE, Abandonment, is "the surrendering of the ship or goods insured to the insurers, in the case of a constructive total loss of the thing insured There is, in such a case, an absolute total loss entitling the assured to recover the full amount of his insurance wherever the thing insured has ceased to exist to any useful purpose,—and in such a case abandonment is not required Where the thing assured continues to exist *in specie*

Abandonment.

yet is so damaged that there is no reasonable hope of repair, or it is not worth the expense of bringing it, or what remains of it, to its destination, the insured may treat the case as one of total loss (in this case called constructive total loss), and demand the full sum insured. But, as the contract of insurance is one of indemnity, the insured must, in such a case, make an express cession of all his right to the recovery of the subject insured to the underwriter by abandonment. The insured must intimate his intention to abandon, within a reasonable time after receiving correct information, as to the loss, any unnecessary delay being held as an indication of his intention not to abandon An abandonment when once accepted is irrevocable, but in no circumstance is the insured obliged to abandon. Even after abandonment, the captain and crew are still bound to do all in their power to save the property for the underwriter, without prejudice to the right of abandonment, for which they are entitled to wages and remuneration from the insurers, at least so far as what is saved will allow." See *Arnould, Marshall* and *Park*, on the Law of Insurance, and the judgment of Lord Abinger in *Rour* v *Salvador*, 3 Bing N C. 266, *Tudor's Leading Cases* 139.

IN PATENT LAW —As applied to inventions abandonment is the giving up of his rights by the inventor.

OF A TRADE-MARK —It can be inferred only from intention; intention to abandon must be shown mere evidence of non-user is insufficient (*Mouson & Co*, v. *Boehm*, 53 L J Ch. 392=26 Ch D 398.)

IN THE CUSTOMS LAW, abandonment is the giving up of an article by the importer to avoid payment of the duty.

IN OLD ECCLES LAW. ABANDONMENT TO THE SECULAR ARM, was the handing over of an offender by the Church to the civil authorities for punishment such as could not be administered by the Ecclesiastical tribunals.

IN THE CIVIL LAW. ABANDONMENT FOR WRONGS, was the relinquishment of a slave or an animal that had committed a trespass to the person injured, in discharge of the owner's liability for the trespass.

Abandonment and non-user.—The abandonment of an easement necessarily implies non-user But non-user by itself does not create abandonment how long it continues In order to constitute abandonment there must be non-user coupled with an intention of the owner of the easement to give it up.

Abandonment and Laches.—Abandonment, as distinguished from laches, requires an intent. It requires something more than mere passivity.

ABANDONMENT OF AN ACTION, is the act by which the pursuer abandons the cause. Abandonment of the action is equivalent to the English discontinuance, non-suit, or *nolle prosequi*

IN RAILROAD LAW. ABANDONMENT OF RAILWAYS, was the title of an English statute under which any scheme for making a railway may be abandoned and the company dissolved by the warrant of the Board of Trade and consent of three-fifths of the stockholders. (*Cent. Dict.*)

Abaratam (or Aparatham Tam. from Apardh) Fault, offence, in which sense it also occurs in most

Abatement.

dialects. Fine, amercement, forfeiture. The punishment for an offence by way of fine, penalty. This latter meaning is peculiar to the South of India. (*Wil. Gloss.* 2.)

Abarnare (*Old Eng*) To lay bare, discover, detect (*Wharton*), to discover and disclose to a magistrate any secret crime (*Jacob L Dict, Tomlin Law Dict*).

Ab Assuetis Non Fit Injuria. Maxim meaning "From things to which we are accustomed, no legal wrong results." (*Wharton*; *Ame Cyc, Broom.*).

Abate To diminish or take away. (*Co., Litt*, 277.)

Abatement Removal or destruction, (as) of a nuisance, failure, premature end, suspension or diminution, (as) of an action or of a legacy.

——OR REBATE *In commercial Law* an allowance of discount made for prompt payment,—also sometimes used to express the deduction that is occasionally made at the custom-house from the duties chargeable upon damaged goods, and for loss in warehouses

——OF FALSE LIGHTS By S 667 of the Merchant Shipping Act, 1894, if any owner or person is served by the lighthouse authority with a notice directing the extinction or screening of any light on the ground that it would be liable to be mistaken for a light proceeding from a lighthouse, and neglects to comply therewith for a period of seven days, the lighthouse authority is empowered to enter upon the place where the light may be and extinguish it, and charge the expenses of so doing to such owner or person, and such owner or person is also liable to a fine (*Encyc*)

——OF LEGACIES Under certain circumstances, legatees are obliged to part with the whole or portions of their legacies, although the subjects devised to them remained, and were not adeemed at the testator's death This obligation is termed "abatement" of legacies (*Roper on Legacies, 4th Ed.*, i, 356). An abatement of a legacy is a *pro rata* diminution of general legacies made necessary in order to pay debts and specific legacies

——OF AN ACTION OR SUIT In civil law an abatement of a suit is a complete termination of it (*State Bank* v *Bates*, 10 Ark. 631) Abatement of a matter or cause is caused by the same becoming defective on account of the death of the parties materially interested (See *Ency. of the Laws of England*, C. P.C., O. XXII)

A plea in abatment is, a plea put in by the defendant, in which he shows cause to the Court why he should not be impleaded or sued; or if impleaded, not in the manner and form he then is, therefore praying that the writ or plaint may abate, that is, that the suit of the plaintiff may for that time cease. *I Inst* 134 *b*, 277, F. N. B. 115, *Cowal, Gilb*; *H. C. R.* 186. *Termes dela Ley* 1. *Tomlins.*

The abatement of the main action abates proceedings ancillary or collateral to it.

IN CRIMINAL LAW. Abatement of proceedings connotes their termination without any decision on the merits and without the assent of the prosecutor. (*Ency. of the Laws of England.*)

Abatement

IN EQUITY: In equity an abatement means merely a state of suspended animation from which the suit may be revived. *Flyd* v. *Ritter*, 65 Ala. 501. *See* C. P.C. O. XXII.

IN REVENUE LAW. Abatement is a deduction from or refunding of duties on goods damaged during importation or in store.

Abatement of Nuisances Their removal. A self-remedy allowed in English Law to one injured by a nuisance The abatement must be done peaceably and without causing unnecessary damage The abatement of a nuisance is the removal or destruction of a nuisance and not its mere prevention "ABATE" and SUPPRESS" in respect of a nuisance are practically synonymous

Abatement of Purchase-Money In a contract of sale, where owing to misdiscription of the thing contracted to be sold strict performance of the contract is not possible, the Court may under certain circumstances compel the purchaser to accept the property, with an abatement of the purchase-money by way of compensation. (*Halsey* v *Grant*, (1806) 13 Ves 73=33 E R. 222.) *See* Sp R. Act I of 1877, S. 14.

Abatement of Rent—The essence of the order of abatement of Rent under Chap II of the N W P Rent Act, (XII of 1881), is that it diminishes, if not permanently, at all event for an indeterminate period, the rent of holding as defined in S 3 (2) of the Act The expression is used here in a technical sense *Beni Prasad Kuari* v. *Dukkhi Rai*, 23 A. 270=21 A W N 69

Abatement, Pleas in Under the old system of pleadings, used to express a class of dilatory pleas as distinct from pleas in bar, which raised a formal defence not affecting the merits as the non-joinder of some necessary party, or that either party was under some personal disability, or that another action was already pending for the same cause But now, under the modern system of procedure all pleas in abatement are abolished The proper procedure now in such cases is explained in *Kendall* v *Hamilton*, (1879), 4 App. Cas. 504, *Pilley* v. *Robinson*, (1887) 20 Q B D 155

Abatement of Suit and Bar of suit A plea in abatement to the jurisdiction of the court must point out another Court before which the matter is recognisable A plea in bar, if well founded, is sufficient, without pointing out the Court in which the suit ought to have been instituted. (*Spooner* v. *Juddow*, 4 M.I A 353 (375)=6 Moo. P. C. 257=1 Sar.P.C. 363.)

Abator or Abater. One who or that which abates. (*Cent. Dict*) One who abates a nuisance, or who enters into a house or land vacant by the death of the former possessor and not yet taken possession of by his heir or devisee. (*Wharton L. Lex*) An occupier without legal title.

Abbreviation· The act of abbreviating, shortening, reducing or contracting, the means used to abbreviate (*Johnson*).

Abbreviations are short conventional expressions, employed to refer to statutes, phrases, dates, and

Abdication.

the like, for the saving of space, etc. (*Abbot L. Dict*) Abbreviation is also defined as "a shortened form of a word, obtained by the omission of one or more letters or syllables from the middle or end of the word." ((*Bouvier*)

Abbreviations and Contractions: Abbreviations are shortened forms of words obtained by omitting one or more letters or syllables, or by using various signs, symbols and characters The abbreviations more commonly used in modern times consist of initial letters or syllables, the omissions of intermediate syllables, etc, usually being designated contractions (R.C.L)

Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis(A maxim). "In abbreviations that number and sense is to be taken by which the grant is not rendered void." (*Burrill, Shrewsbury's case*, 9 Coke 46-b, 48-a)

Abd A slave The word is much used in the composition of the Muhammadan names, as Abdullah, the slave of God

Abda *Ben* A term used in Eastern Bengal and Chittagong to denote the period during which a party who reclaims waste land is allowed to hold it rent-free The rent is remitted. The land so held (*Wil Gloss* 2.)

Abdar A servant whose office it is to prepare water for domestic use or for drinking.

Abdar Khana. The room where drinking water is kept in suitable earthen vessels

Abdication Abdicate is to renounce, discard, disclaim, or refuse anything Abdication is the renunciation or giving up of an office by a magistrate or person in office before the term of service has expired. (*Jacob L Dict., Tomlin. L. Dict*).

ABDICATION BY A SOVEREIGN. Voluntary renunciation by the King of his right of sovereignty. English constitutional history supplies no precedent of a voluntary abdication by the Sovereign Edward II was in effect deposed; Richard II was prevailed upon to resign, James II, flew from the realm But notwithstanding these instances, it would appear that at present the abdication of the Sovereign can be effected only by an Act of Parliament (*Encyclopaedia of Laws of England.*) Edward VIII abdicated in favour of the present King and Emperor.

"The word 'abdicate' doth naturally and properly signify entirely to renounce, throw off, disown, relinquish anything, so as to have nothing further to do with it, and that whether it be done by express words, or in writing, or by doing such acts as are inconsistent with the holding and retaining of the thing" (Speech of Lord Somers delivered in 1688 with reference to the abdication or vacating the throne by James II of England.)

DISTINGUISHED FROM 'RESIGNATION" While "abdication" is frequently confounded with "resignation" it differs from it in that an "abdication" is done purely and simply, while "resignation" is in favour of some person. (*Jacob L. Dict.*; *Tomlin. L. Dict.*)

The word "abdication" is used in the sense of "resignation". (See *People* v. *Board of Police*, 26 Barb.

Abduction.

(N.Y) 487). *Clerke, J.*, made use of the following language "I do not think that a formal notice of an intention to abdicate an office is necessary to constitute a legal resignation. But nevertheless, whatever may be the manner by which the incumbent of an office indicates his intention of resigning or abdicating it, whether by acts inconsistent with the retention of the office or by a formal renunciation of it, it is never consummated—he is never legally out of office —until his resignation is accepted either expressly or by the appointment of another in his place"

Abduction

"Abduction in general signifies the act of illegally taking or leading away, carrying off by force a child, ward, voter or wife. This may be by fraud, persuasion, or open violence *(Blackstone cited in Webster.)*. In a more restricted sense it is confined to the taking of females for the purpose of marriage, concubinage, or prostitution *(Bouvier, 4 Step. Comm 84)*

Whoever by force compels or by any deceitful means induces, any person to go from any place, is said to *abduct* that person I P C, Act XLV of 1860, S. 362

Abductor One who abducts.

Abearance. Carriage or behaviour, demeanour *(Wharton L. Lex)* "Recognizance for good abearance signifies a recognizance for good behaviour" (4, *Bl Comm.* 25 at p. 256, *Ame. Cyc*)

Abet, to aid, to encourage, countenance,—formerly used in a good, but now chiefly in a bad sense *(Webs)*.—The word "abet" is generally used with the word "aid," as in the phrase "to aid and to abet" *(Burrill L Dict)* (See Penal Code, Ss 107 to 114, Gen Cl. Act, 1897, S 3)

SYNONYMOUS WITH "AID"——The words "aid" and "abet", in legal phrase, are pretty nearly synonyms of each other They comprehend all assistance rendered by acts, words of encouragement or support, or by presence, actual or constructive, to render assistance, should it become necessary *Rasford* v *State*, 59 Ala. 106. "Aid" does not imply guilty knowledge "Abet" includes knowledge of wrongful purpose

"ABET" defined Act X of 1897, S 3 (1), Mad. Act I of 1891, S 3 (1), Ben. Act I of 1899, S 3 (1), Bom Act I of 1904, 3 S (1), Bur. Act I of 1898, S 2 (1); E B & A. Act I of 1909, S 5 (1), P. Act I of 1898, S 2 (1), U P Act I of 1904, S 4 (1).

"Abetment". Act XLV of 1860, S. 107.

"Abettor". Act XLV of 1860, S. 108.

"Abettor" One who promotes or procures the commission of a crime *(Bouvier 87)*

The words "ABETTOR", "ACCOMPLICE", "ACCESSORY" and "AIDER" are often used indiscriminately and interchangeably by courts and text-book writers on criminal law But an "ACCOMPLICE" may be one of the principal actors, or an aider and abettor, or an accessory before the fact. The word includes in its meaning all persons who participate in the commission of a crime, whether they so participate as principals, aiders and abettors, or accessories before the fact. It is commonly applied to a witness, and is not so often used in describing a person accused of crime. Usually when persons are spoken of by courts in connection with the commission of an

Abiding

offence, they are mentioned as principals, accessories, or aiders or abettors, but if in the course of the trial, either of these persons is put upon the witness-stand, and a question comes up as to the necessity of corroborating his testimony, he will be spoken of as an accomplice, although he may in fact be a joint principal, or an accessory, or an aider and abettor. *(Ame. Rul Case law)*

Abettor and Accessory. The distinction between abettors and accessories is the presence or absence at the commission of the crime (Cowell, *Feta* lib. 1, Cap 34) Presence and participation are necessary to constitute a person an abettor (4 *Bla. Comm* 33) *(Bouvier 87, see* Penal Code Ss 107-114)

Abeyance, or abbayance is what is in expectation, suspense, remembrance, and intendment of law By a principle of law, in every land there is a fee-simple in somebody, or it is in abeyance, that is, though for the present it be in no man, yet it is in expectancy, belonging to him that is next to enjoy the land (1 Inst. 342) (See *Plowd Rep 547, Tomlins Law Dic See also* 1 Ency 27.)

"Abeyance" means "in expectation", to "expect" for when a person dieth, we say that the freehold is in abeyance, because a successor is in expectation to take it *(Co Litt 342 B)* So it is a maxim, in law, that "of every land there is Fee Simple in some man, or else it lies in abeyance", *(Cowell; Termes de la Ley)*

Abeyance is applied to an estate in abeyance, *i e*, one which cannot vest in inheritance because there is no certain person who can take it for the present

Abhayed dindima A proclamation by beat of drum (dindima) of general security to all who submit in the case of a captured town or conquered country *(Wil Gloss 2)*

Abhaya-patra A written document in assurance of safety, a safe conduct. *(Wil Gloss 2)*

Abi (watered, P), any irrigated land (P.J) watered by channels from rivers, &c. or otherwise, than by well (chahi) or canal (nahri) (Ajmer) land cultivated in the bed of a tank when the water has run off *(Bad Pow ii 348, 50, 56)*

Abiana A water-rate, charge or cess on irrigation *(Bad Pow ii, 597.)*

Abide. To await, to acquiesce in, to conform to; to accept as valid, to take the consequences of, as in the phrase, "to abide by an award of an arbitrator", to perform, to execute, to conform to, as in the phrase "to abide by the judgment of a Court."

A stipulation that certain cases shall "abide" the event of another case both in the trial Court and in appeal means the final outcome and end of the litigation.

"Abide and follow the result"—Expressions "to abide the result" and "to abide and follow the result" distinguished. *Godavarthi Periah* v *Godavarthi Lashmidevamma*, 28 M.L.J. 441=1915 M.W.N. 330= 29 I C 203.

Abiding. "The word 'abiding' in the phrase "abiding conviction" has the signification of 'settled and fixed' conviction which may follow a careful

Ability.

examination and comparison of the whole evidence (1 *Cyc* 165) Same as "*abiding faith*"

The expression 'an abiding conviction" implies such a degree of certainty as would justify a verdict of guilty in a criminal case. Such certainty is not required in a civil case.

Ability In a broad sense "ability" means the state or condition of being able, power or capacity to do an act or competence in any occupation, capacity, skill, means, or other qualification for doing an act (*Cent Dict*) but sometimes used in statutes to mean rather "pecuniary ability".

ABILITY and CAPACITY come into comparison as applied to the higher intellectual powers, of which they suggest slightly different aspects Capacity implies primarily the receptive powers and frequently connotes native rather than acquired, potential as well as actual, aptitude and mental resources, as "She possesses a very good natural capacity" (Mad. D'Arblay).

Abjuration A forswearing or renouncing by oath (*Termes de La Lay*) A renunciation of allegiance upon oath.

In the old law it signified a sworn banishment, or an oath taken to forsake the realm for ever (*Staundfordes, Pl C*, 1, 2, *c* 40)

In its modern and now more usual signification, abjuration extends to the person as well as place, as for a man to abjure the Pretender by oath, is to bind himself not to own any regal authority in the person called the Pretender, nor ever to pay him any obedience, &c (*Tomlins Law Dic*)

Abkar (H) *Lit* a maker of (strong) waters A manufacturer or retailer of spirituous liquors (*Wil Gloss.*).

Abkari Taxes or duties on the manufacture and sale of spirituous liquors, and intoxicating drugs (*Fifth Rep*)

It is a Revenue term derived from duties levied on the manufacture and sale of inebriating liquors, as *tari* or *toddy*, pachwai, arrack, &c, and on intoxicating drugs, whether in substance, infusion, or extract, as opium, bhang, chiras, &c *See Namasivaya* v *Subramania*, 34 I C 927

Abkari Darogha. (H) The head native officer appointed to superintend distilleries, spirit-shops, and the like

Abkari Mahal (H) The department or office of Abkari, or the excise office

"Abkari Inspector" defined Mad Act, I of 1886, S. 3 (5); Bom. Act V of 1878, S 3 (2).

"Abkari-revenue" defined Bom. Act V of 1878, S. 3 (1), Mad. Act, I of 1886, S 3 (1).

Able-bodied Having a strong, sound body, with strength sufficient for physical work, robust The term does not imply an absolute freedom from all physical ailments, but imports an absence of those palpable and physical defects which evidently incapacitate a person from performing the ordinary duties pertaining to his avocation (as) an able bodied sailor, an able bodied

Abortion.

Abnormal. Not conforming to rule, contrary to any law or system. *Abnormal law* (See Webster citing T. E. Holland)

Abode. Place where a person dwells.

Abode, place of One's place of residence or habitation for the time being, a place of stay, or dwelling, a habitation. Used as synoymous with house, lodging, home; domicle, dwelling, or residence.

ABODE, HABITATION, PLACE OF RESIDENCE. A "man's residence, where he lives with his family and sleeps at night, is always his place of abode, in the full sense of that expression" (*Per* Lord Campbell, C. J., *R* v *Hammond*, 1852 17 Q B D 772; 21 L J Q B. 153) "There is no strict or definite rule for ascertaining what is inhabitance or residence The words have nearly the same meaning. Sleeping once or twice in a place would not constitute inhabitance There is no precise line to be drawn. It is always, if the inhabiting is *bona fide*, a question of more or less The question is whether there has been such a degree of inhabitance as to be in substance and in common sense, a residence When a person has a country and a town house, it is a mere question of fact whether he has two, or only one residence" (*Per* Blackburn, J, *R* v. *Mayor of Exeter*, *Wescomb's Case*, 1868, L R 4 Q B 110) "A person may inhabit a place without sleeping there, or he may sleep there without inhabiting it The fact that a person sleeps in a place is generally a very important ingredient in deciding whether he inhabits it, but it is not conclusive" (*Per* Blackburn J, *R*. v *Mayor of Exeter*, *Dipstale's Case*, 1868 L R. 4 Q B 114, *Ency of Laws of England*)

Abolish To annul or destroy, to make void, to terminate, or put an end to (as) to abolish laws; to abolish slavery *Abolish, Repeal, Abrogate, Revoke, Nullify, Annul* As to distinguishing these words, *see Webs Dict*

Abolition Act of abolishing, an annulling, abrogation (as) the abolition of laws or ordinances. (*Bouv.*)

Abolitionist A person who favours the abolition of any institution, especially slavery.

Aboriginal. The term "aboriginal" at least in Chota Nagpur denotes race only It is in fact so used in S. 46 (6) of the Chota Nagpur Tenancy Act It implies nothing as to religion On the other hand the term "Hindu" has in Chota Nagpur reference only to religion *Krittibash Mahton* v. *Budhan*, 89 I C 796=6 Pat.L.T 604=A I R 1925 Pat. 733.

Abortion Is the delivery or expulsion of the human foetus prematurely, (*i e*,) before it is yet capable of sustaining life. (*Abbot L. Dict*) *i e*., at any period of gestation short of the full term (*See* Penal Code, S 312, *Queen* v. *Arunja Bewa*, 19 W. R. (Cr.) 32)

The unlawful destruction, or the bringing forth prematurely, of the human foetus before the natural time of birth

To cause an abortion is unlawful, unless it is done in good faith for the purpose of saving the life of the mother. (As to the medical aspects of abortion, [*see* Luff. Forensic Medicine, (1895), Vol. II, pp. 173-187, Taylor, Medical Jurisp., 5th Ed. (1905)]

DISTINGUISHED FROM MISCARRIAGE. The word "miscarriage" is often used as synonymous with and

Abortive.

equivalent to "abortion" (*Abbott L Dict.*; it has been applied to the expulsion of the foetus at any time during the period of gestation (*State* v. *Howard*, 32 Vt. 380). "Miscarriage," signifies, in the strict medical sense, an expulsion of the foetus from the womb within the first six weeks after conception. (*Abbott L. Dict*)

Criminal abortion is premeditated or intentional abortion procured, at any period of pregnancy, by artificial means, and solely for the purpose of preventing the birth of a living child the same not being necessary to save the mother's life.

Abortive Fruitless, unsuccessful, miscarrying, failing in its effect (as) abortive attempt.

Abortive child. Child by an untimely birth is either born dead or is incapable of living

Abortive Trial The term is used to denote a trial where the case has gone off and no verdict has been pronounced without the fault, contrivance, or management of the parties.

Abortus. The fruit of an abortion, the Child born before its time, lifeless.

About. Almost or approximately, it imports that the actual quantity is a near approximation to that mentioned, and its effect is to provide against accidental variations, "nearly", "more or less"

In a charter party "about to sail" imports just ready to sail (*Bouvier*)

Above. Higher, superior As, Court above, (*Bouvier.*)

Above cited. Cited before.

Above mentioned Mentioned before in a preceding part of a book or writing

Above named Same as "above mentioned."

Above par. A price above nominal value

Above said. Stated or recited before

Abrasion (Med. Jur.) The breaking of the skin

Ab-pashi. Irrigating fields, watering fields, literally, water sprinkling

Abridge. To abridge is to curtail, to shorten, to make shorter in words, so as to retain the sense and substance. (*Tomlins Law Dic*)

Abridgment A large work contracted into a narrow compass. (*Tomlins*); an epitome of another and larger work (*Bouvier*); a condensation, as of a book; a reduction within a smaller space, a reproduction of anything in reduced or condensed form.

"A genuine abridgment is a reproduction of the matter or substance of a larger work in a condensed form, and in language which is not a mere transcript of that of the original" (*Drone on Copyright*, p. 158.) "To constitute a true abridgment the whole of the original work must be preserved in its sense" (*Newbery's case.* Lofft. 775=98 E.R. 913) [*Story* v. *Holcombe*, 4 McLean (U.S.) 306, 314. 23 Fed Cas. No. 13, 497]; yet it is original in its nature *D'Almane* v. *Boosey*, 1 Y. & C. (Ex.) 288, 301=160 E.R. 117; an intellectual labour and judgment must

Abridgment.

be bestowed thereon, so that it may with propriety be called a new book. (*Ame. Cyc*)

Lord Hardwicke in *Gyles* v *Wilcox*, (1740) 2 Atk. 141 said —"Where books are colorably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment But this must not be carried so far as to restrain persons from making a real and fair abridgment, for abridgment may, with great propriety, be called a new book, because not only the paper and print but the invention, learning and judgment of the author is shown in them and in many cases are extremely useful, though in some instances prejudicial by mistaking and curtailing the sense of the author". There is a clear distinction between an ABRIDGMENT and A COMPILATION. As an American Judge Leavitt, in *Story's Exrs.* 4 *Holcombe*, 4 McLean (Amer) 314, well observed "A compilation consists of selected extracts from different authors, an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work, the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge The former cannot adopt the arrangements of the works cited, the latter must adopt the arrangement of the work abridged. The former infringes the copyright, if matter prescribed, when published, shall impair the value of the original book, a fair abridgment, though it may injure the original is lawful (*Cited in Copinger on Copyright., p.* 139, *6th Edn.*)

FACILE USE OF SCISSORS NOT SUFFICIENT. In *Folson* v *Marsh*, 2 Story (U S) 100, 107, 9 Fed Cas No 4, 901, Story, J., said. "What constitutes a fair and *bona fide* abridgment, in the sense of the law, is one of the most difficult points, under particular circumstances, which can well arise for judicial discussion It is clear that a mere selection or different arrangement of parts of the original work so as to bring the work into a smaller compass, will not be held to be such an abridgment There must be real, substantial condensation of the materials, and intellectual labour and judgment bestowed thereon, and not merely the facile use of the scissors, or the extracts of the essential parts, constituting the chief value of the original work."

An abridgment is a meritorious work in that it renders the original less expensive and more convenient (*Newbery's Case*, Lofft 775) Abridgments are not to be considered as absolute authorities (*Far* v *Denn*, 1 Burr 362, 364, *Palmer's Case*, 5 Coke 24b, *Wyndham* v *Chetwynd* 1. W Bl 95, 101).

"ABRIDGMENT" and "DIGEST" are used as synonyms. (*D'Almaine* v *Boosey*, 1. Y. & C (Ex) 288, 301) The term "digest" has now supplanted that of "abridgment". (*Black, L. Dict.* citing *Sweet Dict*, *Ame Cyc.*).

Abridgment also means a Digest, or Epitome.—The title has been used by a number of eminent ancient writers to describe their digests of the laws of England, (as) Statham's Abridgment, Fitzherbert's Abridgment. Brooke's Grand Abridgment, Rolle's Abridgment of Cases and Resolutions of the Law, Viner's Abridgment, Bacon's New Abridgment, Nelson's Abridgments of the Common Law, Petersdroff's Abridgment of the Common Law, etc.

Abrogate.

ABRIDGMENT, COMPENDIUM, EPITOME, ABSTRACT, CONSPECTUS, SYNOPSIS, SUMMARY, SYLLABUS, BRIEF, DIGEST. An *Abridgment* is a work shortened by condensation of statement, or by omitting the less essential parts, (as) Abridgment of a dictionary. A *compendium* is a concise but comprehensive view of a subject, in general it does not imply, as *abridgment* does, the existence of a larger or previous work, (as) compendium of literature. An *epitome* contains only the most important points of a work or subject, expressed in the smallest compass, (as) an epitome of a political situation An *abstract* is a bare statement or outline of facts, heads, or leading features in a book, lecture, subject, etc, (as) an abstract of a Sermon *Synopsis* are, literally, condensed views—the substance of any matter so arranged as to be taken in at a glance *synopsis* implies orderly arrangement under heads and particulars, (as) the synopsis of a book A *summary* is a brief statement of the main points in a work or treatise, less methodical than an abstract or a *synopsis*, it may be a recapitulation, (as) the summary of the arguments in a debate. A *syllabus* is commonly a synopsis printed for the convenience of those hearing lectures *Brief* is generally confined to its technical legal meaning, (as) the brief in an appeal A *digest* is a methodical arrangement of the material of a subject, as under heads or titles, it may include the whole of the matter concerned (as) a *digest* of laws, or a digest of opinions on some moot point (*Cent. Dic*)

Abrogate, to put an end to, to set aside, revoke

Abrogation is the act of abrogating, the annulment or repeal of a law by authority of the legislative power (*Burrl L. Dict*) To abrogate is to disannul or take away anything To abrogate a law is to lay aside or repeal it. (*Tomlins Law Dict*) "Whose laws, like those of the Medes and Persians, they cannot alter or abrogate". (*Burke*)

A law is *abrogated* when it is totally annulled. it is *derogated* from when only a part is abrogated (*Bouvier.*)

Abrogation may be express or implied. *Express abrogation* is that literally pronounced by the new law either in general terms, *i.e.*, by a clause which repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws, or when the order of things for which the law has been made no longer exists, and hence the motives which have caused its enactment have ceased to operate.

Abscond: to hide, withdraw, to depart clandestinely. To go out of the jurisdiction of the Courts or to conceal oneself to avoid legal process (It is an Act of Insolvency if done with intent to defeat or delay creditors)

The term "abscond" has been considered as equivalent to the term "conceal". It is not synonymous with absent.

Absconding debtor. One who lives away from the jurisdiction of the Court, or who has intentionally concealed himself from his creditors or withdrawn himself from the reach of their suits, with intent to frustrate their just demands Absconding debtor is defined to be one who "departs for distant countries before the necessary proceedings can be taken to make him a bankrupt" (Preamble to 33 and 34 Vict, c. 76). One shut up from his creditors in his own house is an absconding debtor. One who has removed himself from his home to avoid process is an absent debtor.

Absconding Offender is a person against whom a warrant has been issued and who has absconded or is concealing himself so that such warrant cannot be executed (*See* sections 87 and 88, Criminal Procedure Code.)

Absence in Law means non-appearance, opposed to presence

Absence, in 20 and 21 Vict., c 85, S 23, with regard to a lawsuit, means non-appearance in the suit, and not absence without knowledge or notice of the suit. [*Phillips* v *Phillips*, (1866) L.R. 1 P & M. 169.]

The word "absence" under section 498, Indian Penal Code, means absence from the place and cannot be extended to include a case where the husband is present but is unable, owing to illness, to institute the prosecution himself [*Emperor* v *Tskiomal Bulomal*, 1 Ind Cas. 941 (942).] "'Absence' is opposed to 'appearance at a specified time'" (*Covart* v. *Haskins*, 39 Kan. 571)

Absence beyond seas. Absence "beyond the seas" meant absence out of the realm or power of the King [*Lane* v *Benanett*, (1836) 1 Mee and W. 70.]

Absent. "Absent" does not connote that the person referred to was ever previously present It denotes the act of not being in a particular place at the time referred to (*Ashbury* v. *Ellis*, 1893 A.C. 339.)

To "absent himself" from service, means, absent himself without lawful excuse (Re *Turner*, 9 Q.B. 80)

ABSENT *As a verb*, it means to be absent, keep away, *as an adjective* it means not in a certain place at a given time (*Cent Dict*); away, opposite of *present.*

Distinction between verb and adjective. In *Plaine* v. *Drew*, 44 N H. 306, 317, the Court said: "The word 'absent,' when used as a verb, as in the sentence 'to absent himself' implies prior presence. And the word 'absent,' when used as an adjective in common and ordinary use, simply means 'not present' and refers only to the condition or situation of the person or thing spoken of at the time of speaking, without any allusion or reference to any prior situation or condition of the same person or thing." (*Ame Cyc.*)

"Non-resident". In *Curd* v. *Letcher*, 3 J.J. Marsh (Ky) 443, 445. Underwood, J., distinguishing between an absent and non-resident defendant, said: "A man may be a citizen of the country, and yet a non-resident, and he may be a resident and yet an absent defendant."

Absent from British India. The words "absent from British India" in S. 13 of the Limitation Act should be construed broadly, and not limited in their

Absent without leave.

application only to such persons as have been present there, or would ordinarily be present, or may be expected to return [*Atul Kristo Bose* v *Lyon & Co.*, 14 C 457 *See also* 25 C 496=2 C W N 269 (F.B.).]

"**Absent without leave**" used in respect of a soldier is not the same thing as desertion.

Absentee is a person who has resided in the state and has departed without leaving any one to represent him (*Barlett* v *Wheeler*, 31 La Ann 540)

Mere temporary absence from the state may not constitute one an absentee

Absenting himself, in S 4 (1) (*d*) of the Bankruptcy Act, 1883 (46 and 47 Vict, c 52), does not necessarily involve actual physical absence from a particular place [Ex parte *Jackson*, (1895) 1 Q B 183]

Absoluta sententia expositore non indiget A maxim meaning "an absolute sentence or proposition needs not an expositor"

Absolute Complete, perfect, final, without any condition or limitation, *e g*, an absolute estate, an order of absolute discharge

Absolute has the general meaning of *loosened from*, or *unrestricted* (as) in absolute monarchy, absolute power (*Ency. Brit*) "The term 'absolute' has no fixed, unvarying meaning, but, it has various significations which it receives in popular use, as, certain, clear, complete (as an *absolute estate*, as distinguished from an estate in remainder), exclusive (an absolute title means an exclusive title), final, finished (as, in the term, absolute rule or order), independent, perfect, positive (as in the phrase absolute certainty), total (as in the phrase absolutely void), unconditional (an absolute interest in property as distinguished from conditional or contingent interest), uncontrolled (absolute property is property which is free and not controlled by others), unlimited (absolute right as opposed to limited or qualified right), unrelated"

"Absolute" in a Hindu will has been construed as being equivalent to "beneficial" and as indicating not the whole of the estate, but that the same was to be enjoyed free from legacy and annuity charges [*Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore*, 9 B.L R 377 (P.C J)=18 W.R 359=I A Sup 47]

Absolute Assignment An "Absolute Assignment" need not, necessarily, be an assignment equivalent to a sale out-and-out, it may be only an equitable assignment, and of only a part of the debt or fund. [*Bence* v *Shearman*, 47 W.R 350 (Eng.).]

Absolute conveyance "An absolute conveyance, an absolute right, an absolute estate, an absolute sale is that which cannot be defeated or changed by any condition restriction, or limitation." (*Falconer* v *Buffalo, etc., R.Co.*, 69 N.Y. 491, 498: *Ame Cyc.*)

Absolute conviction. Means conviction beyond a possibility of doubt

Absolute discretion. It was suggested that an absolute discretion was the equivalent of a right to

Abstract.

make a purely arbitrary demand. It is not so. A discretion, although absolute, is none the less a discretion to be exercised with reference to the true position and with perhaps even a greater sense of responsibility in that it is within limits final [*Diwan Chand Kirpa Ram & Co* v *Weld & Co.*, 88 I.C 54= 1925 P C 150 (154)=1925 M W N 459]

Absolute estate, means a full and complete estate.

Absolute occupancy-tenant, defined, Act XVIII of 1881, S 4 (16), Act IX of 1883, S 36, C P Act XI of 1898, S 39

Absolute owner, "means the owner or person capable of disposing, by disposition or otherwise, of the whole interest, of or in land, although the land, or his interest therein, is burdened, charged, or incumbered"

Absolute ownership signifies ownership without any condition or encumbrance

Absolute property, means property uncontrolled by any conditions, complete in all its parts, free form any limitations

Absolute title, means completetitle, a title which excludes all others not compatible with it

Absolutely Completely, wholly, positively, as, absolutely void, which means utterly void, absolutely necessary, is a term used to make the idea of necessity more emphatic (*Bouvier* 93)

In the expression "*absolutely void*" the word means "utterly" and is not used as contrasted with "relatively" (*Pearsoll* v *Chapin*, 44 Pa St 9, 14)

The word is sometimes used to give an intensive force to expressions As in the term "*Absolutely necessary*"

Absolution An absolving, forgiveness, setting free from guilt or sin In *Canon law*, a judgment of the clergy that the sins of the penitent are remitted, in *Civil law*, a decree delaring the innocence of the accused (*Brown L Dict*)

Absolution day (*Rom C Church*) Tuesday before Easter, in the early church, Good Friday

Absolutism. State or quality of being absolute. It means a sort of government, in which public power is vested in some person or persons, unchecked and uncontrolled by any law or institution, unconditional power or sovereignty vested in a monarch, autocrat or oligarchy

Absolve To release to set free from some debt, obligation or responsibility To absolve an offender means a remission of his punishment.

Absque Without (*Stimson L Gloss*) (as) in the phrase *damnum absque injuria* (damage without injury)—and *absque impetitione vasti* (without impeachment of waste).

Abstract *As a noun* the word "abstract" denotes a less quantity containing the virtue and force of a greater quantity, that which comprises in itself the essence of a larger thing or several things, an abridgment, compendium, epitome or synopsis. It ordinarily means a mere brief, and not a copy of

Abstract and Transcript.

that from which it is taken *Abstract of title* means an epitome or short statement of the evidence of ownership. *As a verb* the word "abstract" signifies to take or withdraw from (*U.S* v. *Harper*, 33 Fed. 471, 479, *Ame Cyc.*) Thus to *abstract* monies or funds from a bank is to take or withdraw funds therefrom

Abstract and Transcript. A transcript is generally defined as a copy and is more comprehensive than an abstract

Abstract of Indictment A short statement prepared by the Clerk of the Court or the prosecutor for the use of the Judge, being an abstract of every charge or complaint presented at any Court of criminal jurisdiction

Abstract of title, is a memorandum or concise statement of the conveyances and encumbrances which appear on the public records affecting the title to real property The object of an abstract of title is to enable the purchaser, or his counsel, to pass readily upon the validity of the title in question

ABSTRACT OF TITLE, is a concise statement of the instruments and events under and by means of which a person derives his title to property It is usually prepared by the owner's solicitor on the occasion of a sale or mortgage of land, and delivered to the purchaser's or mortgagee's solicitor, for the purpose of enabling him to judge whether the title is satisfactory

"An abstract of title is a summary of the most important parts of the deeds and other instruments composing the evidences of a title to real estate, arranged usually in chronological order .. It also contains a statement of all charges, encumbrances, liens and liabilities to which the property may be subjected, and of which it is in any way material for purchasers to be apprised"

The abstract of title is "intended to show the origin, course, and incidents of the title, without the necessity of referring to the deeds themselves" (*Burrill L. Dict*)

The abstract of title ought to set out every part of the document abstracted which may affect the judgment of the purchaser, and the purchaser is entitled to consider that no part of the documents which is not set out has any bearing upon the title (*Burnaby* v *Equitable Reversionary Interest*, 54 L J Ch. 466)

"That the making of a perfect abstract of the title to a piece of land with all the encumbrances which affect it, involves a great exercise of legal learning and careful research, I presume no lawyer will dispute. The person preparing such an abstract must understand fully all the laws on the subject of conveyances, descents and inheritances, uses and trusts, devises, and in fact every branch of the law that can affect real estate in its various mutations from owner to owner, sometimes by operation of law and again by act of the parties" (*Banker* v. *Caldwell*, 3 Minn. 94)

The abstract need not state the legal effect of any instrument noted therein. (*Wacek* v. *Frink*, 38 Am. St. Rep 502)

Absurdity, as applied to a statute means not only that which is physically impossible but also that which is morally so, that which is contrary to reason; that which cannot be attributed to a man in his right sense. (*Words and Phrases*)

Abundans cautela non nocet A maxim meaning "extreme caution does no harm." (*Abbott.*)

Abuse, that which is contrary to good order or established usage

ABUSE *As a noun* "abuse" in its largest sense signifies ill use or improper treatment of another, application to wrong purpose (as) "perversion of best things to worst abuses" (*Milton Paradise Lost*), abuse of civil rights, abuse of power or of liberty, a corrupt practice (as) abuses of Government, abuse of the poor law, *as a verb* it signifies to injure, diminish in value, or wear away, by using improperly, to violate, ravish (as, abuse of woman—*Webs.*)

The verb "abuse" is sometimes used as synonymous with "ravish", and as a noun "abuse" is defined as "violation", "rape" (*Webs*)

Brickell, C J, in *Dawkins* v *State*, 29 Am. Rep. 754, said "Its proper signification must be ascertained by reference to the subject-matter or the context and the meaning of the words with which it is associated"

The word "abuse" includes "misuse".

ABUSE AND MISUSE OF CORPORATE PRIVILEGES, is defined thus "Any positive act in violation of the charter, and in derogation of public right, wilfully done or caused to be done by those appointed to manage the general concerns of the corporation"

In *Erie, etc, R Co* v *Casey*, 26 Pa. St 287, 318, the Court said "To 'abuse' in strictness signifies to injure, diminish in value, or wear away, by using improperly Catiline abused the patience of the Roman senate A man abuses his constitution by excesses which impair its vigour A judge abuses his office not only by taking bribes, but by misconduct which detracts from its dignity and usefulness. To abuse the freedom of the press, or the right of debate, is a phrase from which we take a perfectly definite idea. We know very well what is meant when it is said that legislative authority or executive power has been abused Why then, are we expected not to know that a corporate privilege has been abused, when we see it used as a colour and a pretext for that which the law pronounces a wrong and injury to the public?"

"'ABUSE', applied to a woman, is never used except with reference to sexual intercourse In more than one Act of Parliament, the word 'abuse' has had that meaning applied to it, and, it always imports some offence of that nature". (*Per* Pollock, C.B., Re *Thompson*, 6 H & N 200) But, in the same case, Bramwell, B, differed and said. "To my mind, the word 'abused' conveys no definite meaning, it is not a word of art, in popular language, it means, calling names, abusing by words."

In a Statute punishing "any person who has carnal knowledge of any female under the age of ten years, or abuses such female," etc, the word "abuse" applies only to injuries to the genital organs in an unsuccessful attempt at rape, and does not include mere forcible or wrongful ill usage. (*Dawkins* v. *State*, 29 Am Rep 754 · *Ame. Cyc.*)

Abuse of distress.

Abuse of distress, is such use of distrained goods as makes the distrainer liable as for wrongful appropriation.

Abuse of discretion. An abuse of discretion is merely a discretion exercised to an end or purpose not justified by and clearly against reason and evidence.

In *Sharon* v *Sharon*, 75 Calif I, 48, it was said. "Abuse of discretion. . does not necessarily imply a wilful abuse or intentional wrong." In *People* v *New York Cent R Co*, 29 N Y 418, 431, Hogeboom, J, in a dissenting opinion, said: "The exercise of an honest judgment, however erroneous it may appear to be, is not an abuse of discretion. Abuse of discretion, and especially, gross and palpable abuse of discretion, which are the terms ordinarily employed to justify an interference with the exercise of discretionary power implies not merely error of judgment, but perversity with passion, prejudice, partiality, or moral delinquency"

"Abuse of female child", is synonymous with rape or ravish (*Words and Phrases*)

Abuse of process of Court, is the malicious and improper use of some regular legal proceedings to obtain an unfair advantage over an opponent

Nothing short of obvious fraud on the part of a debtor would render him liable to have his petition for insolvency dismissed on the ground of "Abuse of process of Court." (*Tin Va* v *Subya*, 6 L B,R. 146 F B.) The term is generally used in connection with action for using some process of the Court maliciously to the injury of another person (Per Abdur Rahim, J, in *Thathunaik* v *Condu Redds*, 1 I.C. 221=5 M L.T. 248)

Abut To reach. to touch (*Abbot L. Dict*), to touch at the end; be contiguous, join at a boundary. (*Webs*) "In a narrow and restricted sense the term is used in reference to that which touches a lot at the end as distinguished from that which adjoins it on the side. The term is not ordinarily used in such restricted sense, however, but refers to that which touches other premises whether at the ends or on the sides."

Abuttals The buttings and boundings of lands, east, west, north, or south, with respect to the places by which they are limited and bounded. (*Jacob L. Dict., Tomlin's L. Dic.*)

Abutter. One whose property abuts, is contiguous or joins at a border or boundary, as where no other land, road, or street intervenes. (*Bouv.*)

Abutment. A part of a bridge, consisting of that mass of stone or solid work at the end of the bridge by which the extreme arches or timbers are sustained. The word is sometimes used to designate that which unites one thing to another.

In *Bardwell* v. *Jamaica*, 15 Vt. 438, 442, it was said that "the abutment is such an immediate connection with the other parts of the bridge that in speaking of a bridge, in connection with the use for which bridges are erected, we can no more exclude the abutment from our minds than the flooring or the framework of the bridge."

Abwab.

Abutting. "Joined to or" adjoining.

Abutting Owner. Owner of land which abuts or adjoins.

Abwab Cesses or additions to the regular Land Revenue assessment (Ben.) *Bad Pow, i* 419

Heads or subjects of taxation, or the taxes which were imposed under the Mohammedan Governments in addition to the regular assessment on the land Miscellaneous cesses, imposts, and charges, levied by Zamindars and public officers. These cesses were either abolished or consolidated with the land revenue, and are no longer payable to the British Government, but such as existed before the perpetual settlement, and were not specially abrogated or not consolidated, are still claimed sometimes by the Zamindars (*Wil Gloss.*)

It has been from ancient times customary almost throughout India for the superior holder of the soil, whether he was a feudal "baron", or principal fiscal officer appointed by Government, to levy certain dues In Bengal, these dues or cesses were called *abwabs*, in the Central Provinces and the Bombay Presidency, *"huq"* an Arabic word meaning *"dues"* or "right" Akbar appears to have reduced the capricious levy of these "dues", and regulated the system. These dues were made part of the emolument attached to the office, and as the office became hereditary the representative of the family who took up the office took it with the obligation of using the perquisites for the maintenance of the family The old *zemindars* were placed in the same position [*Mahatabsingh* v. *Badansingh*, (1921) 48 I.A 446 (460-1)=48 C 997 (1013) (P.C.).]

A chowkidari tax payable by a putnidar is not abwab. 22 Cal 680

"Payments over and above rent and described as abwabs in the zemindari accounts, for which, as abwabs, the tenant was sued, were held to be rightly treated as abwabs and not as part of the rent Even though they had been paid from time immemorial and according to longstanding custom, they were held not to be recoverable from the tenant. [*Tilukhdari Singh* v *Culhan Mahton*, 17 C 131=16 I A 152 (P.C.). See also *Radha Prasad* v. *Bal Kowar*, 17 Cal. 726 (F.B.).]

The amounts claimed under the head of *sarak, neg* and *khurruch* are abwabs and are therefore not recoverable Any addition to the actual rent under the denomination of abwabs are illegal. An agreement to pay the same is void. [*Radha Prosad* v. *Bal Kowar*, 17 C 726 (F.B); (15 C. 828 dissented from).]

Per *Petheram, C. J.*—Abwab is an imposition under any name whatever from the tenant for or in respect of the occupation or tenure of the land, beyond the sum which has been fixed for rent whether that sum has been fixed by agreement or by judicial determination between the landlord and the tenant. [*Radha Prosad* v. *Bal Kowar*, 17 C. 726 (F.B.).]

Per *Ghose, J.*—If, in any given case, the Court finds that any particular sum specified in the lease or

Abwab Cossim Khan.

agreed to be paid is a lawful consideration for the use and occupation of any land, that is to say, if it is really part of the rent although not described as such, the Court would be justified in holding that it is not abwab and is recoverable by the landlord. [*Radha Prosad* v *Bal Kowar*, 17 C. 726 (F.B.).]

The *batta usual, Dastar Hozzatanamal, Chanda, Sonari, Salami* and percentage are abwabs. 7 C L.J. 251 (261)

Abwab Cossim Khan. Abwab or cesses introduced by Cossim Khan (*Fifth Report.*)

Abwab Jaffier Khan. Abwab or cesses introduced by Jaffier Khan (*Fifth Report.*)

Abwab Sujah Khan Abwab or cesses introduced by Nabob Sujah Khan (*Fifth Report.*)

Abwab Soubadary Abwab or cesses of the Soubadairy New and perpetual imposts levied by the authority of the Provincial Governors. (*Fifth Report.*)

Academy Institution for learning An association of experts in some particular branch of art, literature or science (*Bouvier*)

Accede To agree, assent, consent, to a proposition on terms proposed by another

Accede and Acquiesce Accede implies an yielding "The established tribunals pronounced the law of the Constitution and New England *acquiesced*" (*D. Wester*)

Acceleration. The shortening of the time for the vesting in possession of an expectant interest (*Wharton, Bouv* 95)

The falling into possession of an estate or interest in remainder or expectancy by reason of the particular estate or preceding interest being or becoming void.

Acceleration of an estate is the shortening of the time for the vesting in possession of an expectant interest in an estate (*Wharton*)

Acceptance The taking and accepting of anything in good part and as it were a tacit agreement to a preceding act, which might have been defeated and avoided were it not for such acceptance (*Tomlin*)

"Acceptance" is the receipt of a thing offered by another with an intention to retain it, as acceptance of a gift

As distinguished from ASSENT, acceptance would denote receipt of something in compliance with, and in satisfactory fulfilment, of, a contract to which assent had been previously given, and the word has been held to mean something more than receive (*Bouv.* 94.)

ACCEPTANCE *of Bills of Exchange* implies a promise to pay the bill in money when due. (4 East 72, *Byles*, Bills, 288), which may either be,—

absolute, that is, when there is a positive engagement to pay the bill according to its tenor, or

conditional, that is, when the undertaking to pay the bill, is made to depend on a contingency.

Access—Easement of.

ACCEPTANCE of bill of exchange may also be either *express* or *implied*. It is *express* when it is an undertaking in direct and express terms to pay the bill It is *implied*, when the undertaking to pay the bill is to be inferred from acts of a character which fairly warrant such an inference.

Acceptance Acceptation. Acceptance denotes the act of receiving (willingly or with consent); as the acceptance of a gift, an offer, an invitation Acceptation refers to the sense in which a word or expression is generally received.

Accepting The term as used in section 61 of the Stamp Act does not mean "receiving" but executing as "acceptor" *See Q* v. *Ghulam Hussain*, 7 M 71= 1 Weir 902, *Q* v. *Nihal Chand*, 20 A. 440=18 A.W.N. 108.

Acceptor defined. Act XXVI of 1881, S. 7.

ACCEPTOR is one who accepts a bill of exchange. (3 Kent 75) (*i.e*) the party who undertakes to pay a bill of exchange in the first instance, the drawee is in general the acceptor

Acceptor of Bill of exchange. After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor" Act XXVI of 1881 (Negotiable Instruments), S. 7.

Acceptor for honour When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour" Act XXVI of 1881 (Negotiable Instruments), S. 7

Acceptor supra protest. One who accepts a bill which has been protested for the honour of the drawer or any one of the endorsers.

Access literally means approach or the means or power of approaching.

In Matrimonial law, access is understood in the sense of sexual intercourse, or the opportunity of communicating together so that sexual intercourse may have taken place A man who can readily be in company with his wife is said to have access to her, and in that case her issue is presumed to be his issue But this presumption may be rebutted by positive evidence that no sexual intercourse took place (1 Turn & R. 141, Evidence Act, S. 112)

"Access" to children, in a deed of separation, does not include custody (*Evershed* v. *Evershed*, 30 W R 732, 46 L T. 690); nor does a covenant to give "Access" bind the covenantor to keep the children in a place where the covenantee can conveniently have access to them. (*Hunt* v. *Hunt*, 28 Ch D. 606.)

Access—Easement of Easement of access is the right which an abutting owner has of ingress and egress to and from his premises in addition to his right of way in the public street. (*Chicago, etc.* v. *Milwaukee, etc.*, 68 Am. St. Rep. 136.)

Accessary.

Accessary or Accessory One guilty of an offence, not principally but by participation, as by command, advice, or concealment and etc (*Tomlins Law Dict*)

BEFORE THE FACT. One who being absent at the time of the commission yet procures or counsels another to it. 1 Hale P C. 615

AFTER THE FACT. One who knowing a fellow has been committed receives, or assist the felon

DURING THE FACT One who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offence

Accessio (Lat) An increase or addition to a thing, that which arises or is produced from the principal thing It is a manner of acquiring property in a thing which becomes united with that which a person already possesses

It includes both accession and accretion, as of land by natural causes out of the sea or river

Accession is a mode of acquiring property as an addition to existing property by natural growth or by application of human labour (See *Cent Dict*) In its *broadest sense* it may be defined to be the means by which title to the increments to one's property movable or immovable, is acquired, whether by natural or artificial means (as) accession of a province to an Empire In the *restricted sense*, in which it is generally used in law, it applies to the acquisition of title to the increments to one's movable property, brought about by artificial means, such as labor or the addition of material other than the intermixture of goods or things of the same kind. (*Anderson L Dict, Bl. Comm* 404, *Black L Dict, Burrill*, 2 Kent Comm 360, etc)

Accession also means the coming into the possession of a right or station (as) accession to an estate, King's accession to the throne, the act of acceding or consenting, (as), accession to a demand or proposal.

"Accession" is also used in speaking of the commencement of the King's reign. (*Tomlins L Dic*)

In International Law, 'accession' is occasionally used as a technical expression denoting the absolute or conditional acceptance by one or several states, of a treaty already concluded between other sovereigns. (*Mert. Rep*)

Accession of Property. The Law of alluvion is a branch of the general law regarding accession to property The Law of accession may be stated as follows Where any corporeal substance, over which rights of property are exercised, receives an addition, increase or improvement, either in a natural way, as by the growth of fruits or the pregnancy of animals, or in an artificial way, as by the erection of houses on land, receding of a river or lake, such addition, increase or improvement falls primarily to the owner of the original substance. (*Encyc of the Laws of England*)

Accessorium non ducit sed sequitur suum principale. A maxim meaning "that which is the accessory or incident does not lead, but follows, its principal" The incident does not draw, but follows, its principal". (*Broom. Leg. Max.; Coke Litt. 125-a.*)

Accident

Accessorium non trahit principale. (Maxim) "The accessory does not draw the principal." (*Adam Gloss*) · *e g*, The release of a surety is not the release of his principal, although the release of the principal is a release of the surety also. (*Byrne*)

Accessorium sequitur naturam rei cui accedit. (Maxim) "The accessory follows the nature of the thing to which it relates (*Stimson L. Gloss*)

Accessorium sequiture principale. (Maxim.) "The accessory follows its principal" (*Adam Gloss*) Where there is no principal there can be no accessary

Accessorius sequitur naturam sui principalis (Maxim) "An accessory follows the nature of his principal (3 Coke Inst 13) An application of the maxim results in the proposition that an accessary cannot be guilty of a higher crime than his principal (*Broom Leg Max 497*)

Accessory, *as a noun* is one who is guilty of a crime, not by committing the offence in person as a principal, but by having in some way concerned therein (as) by advising "An accessory is one who participates in an offence too remotely to be deemed a principal" (*Bishop Cr Proc*)

ACCOMPLICES AND ABETTORS also come in some measure under the name of accessories An abettor is one who stirs up, incites, instigates, or encourages or who, commands counsels or procures another to commit a crime An accomplice is one of many equally concerned in a felony and is generally applied to those who are admitted to give evidence against their fellow criminals, for the furtherence of justice, which might otherwise be eluded (See *Leach's Hawk*, P C 1, 2 e. 37, 3, 7 and notes 4 Kent Comm. 329 *Tomlin's Law Dict*)

'ACCESSORY' *as an adjective* means "appurtenant", "belonging to", "incident" For example, the halter of a horse, the frame of a picture, the keys of a house, and the like, each belonging to the principal thing The sale of the materials of a newspaper establishment will carry with it, as an accessory, the subscription list [*McFarland* v *Stewart*, 2 Watts (Pa) 111, 26 Am Dec. 109]

Accessory obligation, is one incident to another or principal obligation, as the obligation of a surety. (*Burrill L. Dict, Pothier Oblig*)

Accessory to adultery A phrase used in the law of divorce to describe one who directly commands, advises or procures the commission of adultery. (*Wharton L Lex*)

The term is to be distinguished from 'connive', which imports one having knowledge of the adultery but abstaining from interference (*Ibid.*)

"Accessory license", Act V of 1882, S 55.

"Accessory right", Act V of 1882, S 24.

Accident: An undesigned, sudden or unexpected event, mishap, misfortune, disaster (*See* Work Com Act, 1923, Ss. 2 and 3)

The word "accident" is constantly used in ordinary English, and therefore in law, in two senses, one much wider than the other. Strictly an occurrence can only be said to be accidental when it

Accident

is due neither to design nor to negligence. For, if an act be intentional it is clearly no accident, if it be the result of culpable negligence, then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident In this narrower sense of the word, an accident must be "nobody's fault". 12 App Cas 526.

The word "accident" generally denotes an event that takes place without one's foresight or expectation, an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected, chance, casualty, contingency (*Webster Dict*), an event happening without the concurrence of the will of the person by whose agency it was caused It differs from mistake in that the latter always supposes the operation of the will of the agent in producing the event although that will is caused by an erroneous impression on the mind"

An exception in a Charter-Party against "Accident" does not include a snow-storm "An accident is not an ordinary occurrence, but something which happens out of the ordinary course of things. A snow-storm, however, is one of the ordinary operations of nature, and may be described rather as an incident than an accident" (*Per* Willes, J, *Fenwick* v *Sehmalz*, 37 L J C P 80)

ACCIDLNT AND CASUALTY agree in designating an unforeseen occurrence usually of an untoward or disastrous character Casualty is usually confined to mischances which involve, bodily injury or death, Accident is of more general application (as) the casualty ward in a hospital, an accident of a locomotive

IN BOILERS ACT "Accident" means an explosion of a boiler or steam-pipe or any damage to a boiler or steam pipe which is calculated to weaken the strength thereof so as to render it liable to explode,

Rule 27(*c*) under Motor Vehicles Act (1914), S 11, which provides that the driver of the motor vehicle shall promptly report all occurrences of accidents to the nearest police station is intended to apply only to accidents happening to the car which one is driving and which results in some injury, annoyance or danger to the public or of danger or injury to public property or obstruction to traffic (*Nagaraja Mooppanar* v *Emperor*, 51 Mad 504. 55 M L J 320)

Death by drowning (*Trew* v *Ry Insurance*, 30 L J Ex 317) though in shallow water whilst in a state of insensibility. (*Rehnolds* v *Accidental Insurance*, 22 L T 820), is an "Accident" within a life insurance policy (*Pugh* v. *L B S Ry*, 1896, 2 Q B 521)

Sun-stroke is not an accident within a policy (*Sinclair* v *Maritime Assurance*, 30 L J Q B 77)

Accident, in the Workmen's Compensation Act, 1897 (60 & 61 Vict. 37, S 1). See *Hensey* v *White*, (1900) 1 Q B 481 (C A), and cases in *Porter on Insurance* (3rd Ed, 481) *See also* Indian Workmen's Compensation Act, 1923, S. 3.

INEVITABLE ACCIDENTS All accidents which are inveitable, or absolutely unavoidable because effected or influenced by the uncontrollable operation of nature.

In *Brown* v.*Rendall*, 6 Cush. (Mass) 292, 296, Shaw, C.J., said: "To make an accident or casualty, an "in evitable accident', it must be such an accident as the defendant could not have avoided by the use of the kind and degree of care necessary to the exigency, and in the circumstances in which he was placed."

Misfortunes in business are not accidents. (*Langdo* v *Bowen*, 46 Vt 512, 516)

In *McCarty* v. *New York, etc*, *R C*. 30 Pa St 247, the Court said "If accident and negligence be not opposites, we cannot regard them as identical, without confounding cause and effect Accidents and its synonyms, casualty and misfortune, may proceed or result from negligence, or other cause known or unknown"

Accident insurance, is a contract to pay a fixed sum in case of death resulting from accident, either generally, or limited to accidents of a particular kind (*Rapalje & L L. Dict*, *Bowvier L Dic*, *Brown*)

Though accidents to property may be made the subject of insurance, the term has been more often applied to insurance against accidents resulting in bodily harm

By the general weight of authority accident insurance is considered as being akin to life insurance; and essentially the same principles underlie, and the same rules govern, both life and accident insurance

Accident, like life insurance, is not always a contract of indemnity. (See *Porter on Insurance*)

"An examination of the various schemes of accident and life insurance must convince any one that although there are differences, in the results sought, accomplishment in some particulars, there are many requirements and provisions in common to both, and that the only substantial difference between the two plans of insurance on life is that, in the accident contract, death must result from a more limited number of cases than is covered by the other and broader contract of insurance on life, called 'life-insurance' contracts" (*Curtum* in *Logan* v *Fidelity*, 47 S W 948, *Ame Cyc.*)

Accidental Happening by chance or unexpectedly taking place not according to the usual course of things, Unintentional something unforeseen and unexpected and casual

"An effect is said to be accidental when the act by which it is caused is not done with intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it." (*Steph Cr. Law 143*)

Accidentally A fire arising accidentally means "A fire produced by mere chance, or incapable of being traced to any cause", and does not mean a fire arising from negligence (*Filliter* v. *Phippard*, 17 L J Q B 89 11 Q B. 347)

Accipere quid ut justitiam facias, not est tam accipere quam extorquere. A maxim meaning "To accept anything as a reward for doing justice is extortion and not acceptance" (*Lofft*, 72)

Accommodation. The act of accommodating; in mercantile language is used for a loan of money, pecuniary aid in an emergency; money loan either directly or by standing surety for the repayment of sums advanced by another. It also signifies a friendly agreement or composition of differences. (*Abbott.*)

Accommodation Bill.

Accommodation Bill or note, or paper, is a bill of exchange or note, etc, drawn, accepted, or indorsed by one or more parties to enable another or others to obtain credit by or raise money on it, and not given like business paper in payment of a debt, but merely intended to accommodate the drawer. (*Cent. Dict*).

Accommodation indorser is a third person who endorses a note without any consideration merely for the benefit of the holder thereof.

Accommodation paper. Promissory notes or bills of exchange made, accepted, or endorsed without any consideration therefor.

Accommodation works Works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway, such as gates, culverts, etc (*Wharton.*)

ACCOMMODATION WORKS, in Railway Acts *See* Lands Clauses Consolidation Act, 1845, S. 68 [*G.W. R.* v. *Talbot*, (1902) 2 Ch 759 (C A).]

"TERMS TO BE ACCOMMODATING" The expression "terms to be accommodating," in a contract for sale of goods means that the purchase money, or some part of it, should be permitted to remain in the purchaser's hands, as if a loan, for his convenience (*Rice* v *McLarren*, 42 Me 157, 163, *Ame Cyc*)

Accommodatum. *In the law of Bailments*, a "loan for use without pay where the thing is to be returned *in specie*"

Accomplice *See* Accessary

ACCOMPLICE "One who is in some way concerned in the commission of a crime, though not as principal" (*Cross* v *People*, 47 Ill 152, 95 Am Dec. 474)

"One of many equally concerned in a crime, the term being generally applied to those who are admitted to give evidence against their fellow criminals for the furtherance of justice, which might otherwise be eluded" (*Cross* v. *People*, 47 Ill 152, 95 Am. Dec 474.)

Accord Is an agreement between two or more persons, where any one is injured by a trespass, or offence done, or on a contract, to satisfy him with some recompense, which accord, if executed and performed, shall be a good bar in law, if the other party after the accord performed bring an action for the same trespass, etc (*Termes de la ley*, *Tomlins Law Dic.*)

Accord and Satisfaction, "is an agreement between two at the least to satisfy an offence that the one hath made to the other, when a man hath done a trespass, or such like, unto another for which he hath agreed with him to satisfy and content him with some recompense, which, if it be executed and performed, than, because that this recompense is a full satisfaction for the offence, it shall be a good bar in law, if the other, after the accord performed, should sue again any action for the same trespass". (*Termes de la ley.*)

Accord and Satisfaction is an agreement to give and accept something in satisfaction of a right which one has against the other, which when performed is a bar to all actions upon this account.

Accordant.

"No matter what were the respective rights of the parties *inter se* they are abandoned in consideration of the acceptance by all of a new agreement by way of accord and satisfaction. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights, and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it" (*Lord Moulton.*) *Pavana Runa Saminathan* v. *Pana Lana Palaniappa*, 41 I A 142=18 C W N 617 (P C.).

DISTINGUISHED FROM PAYMENT OR PERFORMANCE. Payment implies the delivery of value and that it is the value called for by the engagement to be discharged (*Abbot L Dict*) Herein it differs from accord and satisfaction, for the latter transaction is a discharge of the obligation by the giving and acceptance of something else than that which the creditor or claimant is entitled to

Accord and satisfaction differ from performance in the same particulars The latter implies a discharge of the obligation by an exact fulfilment thereof (*Ame Cyc*)

While the distinction between *accord and satisfaction* and other methods of discharging liabilities is not always clear, yet it may generally be discovered by careful attention to the elements of the definition Accordingly, accord and satisfaction is distinguished from *novation* in that novation is a mode of extinguishing one obligation by another, that is, the acceptance of a new promise in satisfaction of a previously existing claim, while in the case of an accord and satisfaction it is not the new promise itself but the performance of the new promise that is accepted as a satisfaction. It is distinguished from *payment* in that by payment is generally understood a discharge by a compliance with the terms of the obligation, or its equivalent, while in an accord and satisfaction the discharge is effected by the performance of terms other than those originally agreed on *Compromise* is distinguished from accord and satisfaction by the fact that it must be based on a disputed claim, while an accord and satisfaction may be based on an undisputed or liquidated claim, An accord and satisfaction may be between a debtor and a single creditor, and in this respect it is distinguished from a *composition* with creditors, which is an agreement between two or more creditors and an embarrassed or insolvent debtor or on behalf of such debtor, where by in consideration of the application of a certain sum of money or property towards the *pro rata* payment of their claims they agree to accept the amount reduced in full satisfaction of their claims. The agreement in such a case carries within itself the new consideration requisite to an accord and satisfaction of liquidated claims, namely, the relinquishment or possible relinquishment by each creditor of a part of his claim, and requires that there be two or more creditors to the agreement. (*Ame. Rul. Case Law*)

Accordant Agreeing, concurring. The word is abbreviated 'Acc." and "Accord" Frequently used in the reports to denote the accordance or agreement between one adjudged case and another in establishing or confirming the same doctrine. And sometimes the accordance of opinion of judges in the same

Accordance with the form.

case, as in the expressions "Holt, C.J., accordant," "Powys, J., accord." *Clerk* v *Withers*, 6 Mod. 290, 298; (*Burill L. Dict.*)

Accordance with the form. In the Bills of Sales Act, 1882 (45 & 46 Vict., C 43), the expression does not mean *in* the form, *i e*, requires not verbal and literal following, but substantial following of the form *Thomas* v *Kelly*, (1888) 13 App. Cas. 506, 519, *Re Heseltine* (1891), 1 Ch 464, 472

According to Law To act according to law is to act in conformity with legal formalities A direction to a tax-collector that he should collect taxes "according to law" means "by legal process." An Administrator's bond which provides that he shall administer "according to law" means that he should fulfil the functions of an administrator and perform all the duties laid down on him by the provisions of law.

Account A detailed statement of the mutual demands in the nature of debit and credit between parties

A list or catalogue of items, whether of debits or credits, an exhibit of charges and credits growing out of mutual dealings, in such form as to facilitate the determination of the balance due by simple calculation (*Abbott L Dict*)

While it is said that the term has no very clearly defined legal meaning, the primary idea of account, is some matter of debit and credit, and it implies that one is responsible to another on the score either of contract or of some fiduciary relation of a public or private nature, created by law or otherwise

It is not necessarily restricted, however, to several distinct items, nor is it the less an account that all the items of charge are by one person against another instead of being a statement of mutual demands of debit and credit, provided the charges arise out of contract, express or implied, or from some duty imposed by law

Account and Balance A balance is but the conclusion or result of the debit and credit sides of the account (*Mc Williams* v *Allan*, 45 Mo 573)

Account, action for "An action for an account is not a series of actions for damages for breach of contract on which you get separate judgments The account is taken and you get judgment for the balance" (*Per* Lindley, M R, *Manners* v. *Pearson and Son*, 67 L J. Ch. 306. 1898 I Ch 581.)

Account book, is a book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. (*Greenleaf, Evidence*, 115-118.)

Account current, is an open or running account between two parties, and implies an expectation of further dealings

An account current is an open running account between two or more parties, or an account which contains items between the parties from which the balance due to one of them is or can be ascertained, from which it follows that such an account comes under the terms of an open account in so far as it is running, unsettled, or unclosed.

Account Settled.

Account for, in respect of moneys means "to render an account of" and "to be responsible for."

Account keeping. The maintaining of proper accounts.

"The habits of the Indian people with regard to the keeping of accounts are wellknown and have often been proved." (*Lord Atkinson*) [*Lal Kunwar* v. *Chiranji Lal*, 37 I.A. 1 (7)=32 A 104 (112)=20 M.L.J. 182 (P C) See also 1 M.I.A. 19 (46).

Account rendered, is one which is drawn up in form and delivered by the creditor to the debtor as an exhibition of the former's demand. (*Abbott L. Dict*)

Account stated is, "an agreement by both parties that all the items are true." (Per *Mansfield, C.J.*, in *Trumgn* v *Hurst*, 1 T R. 42.) *See also* 13 C.L J. 165.

Account stated is an agreed balance of account (*i e*) an account which has been examined and accepted by the parties *Willis* v *Jerneegaw* (1741) 2 Atk. 251.

ACCOUNT STATED, in the true sense of the term (and in the sense employed in the Limitation Acts) is, where several items of claim are brought into account on either side, and being set against one another, a balance is struck and the consideration for the payment of the balance is the discharge on each side, each party resigning his own rights on the sums he can claim in consideration of a similar abandonment on the other side and of an agreement to pay, and to receive in discharge the balance found due [*Nahanibai* v *Nathu Bhau*, (1883) 7 Bom.414] An account is said to be stated only when there have been cross demands between the parties and the balance struck then becomes the consideration for the discharge on either side Such an account stated amounts to a new contract and is a substantive cause of action. *Ishar Das* v *Harkrishan Das*, 35 Ind Cas 577=148 P.W.R 1916, *per* Justice Shadi Lal When an account is stated it ceases to be an account current

A bare acknowledgment under S 19 of the Limitation Act which does not imply a promise to pay, cannot amount to an 'account stated' [*Beohar Raghubir Singh* v *Udechand* (1897) 11 C P L R 65, *Jawahir Singh* v *Lachman Das*, 3 O C. 195]

The *khata* in which there is only one item on the debit side, with the mark by the debtor attached would be a mere *acknowledgment* and not an *account stated*. *Tribovan Gangaram* v *Amina*, 9 B. 516.

The striking of a balance in an account, the items of which are all on one side, does not amount to an "account stated" *Jamin* v. *Nand Lal*, (1892) 15 All 1=12 A W.N. 215.

Account Settled. A settled account is a statement of the accounts between two parties, which is agreed to and accepted by both as correct. It must be in writing, and it must be final, that is, it must show clearly what balance is due, or that no balance is due. An informal release of all demands may be settled account. The fact that it is stated with the qulification "errors excepted" will not prevent its being a good settled account. It is not enough for

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the accounting party merely to deliver his account, there must be some evidence that the other party accepted it as correct. But such acceptance need not be express [*Clark* v *Glenme* (1820) 3 Stark 10, *Irvine* v. *Young* (1823) 1 Sim. & St 333, 57 E.R. 134]

The word "settled" has been held to have an established legal meaning, implying the mutual adjustment of accounts between different parties, and an agreement upon the balance. (*Ame Cyc*)

BANK ACCOUNTS the statement of amounts deposited in and drawn out of a bank, which is kept in duplicate, one in the depositor's bank-book and the other in the books of the bank (*Bouvier*)

MERCHANT'S ACCOUNTS, accounts between merchant and merchant concerning the trade of merchants or items of merchandise.

MUTUAL ACCOUNTS are such as consist of a reciprocity of dealing between the parties and do not embrace those having items on one side only, though made up of debits and credits

OPEN ACCOUNT An open account is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise, consisting of a series of transactions; also one in which some item in the contract is left open and undetermined by the parties in which sense it may exist whether there be but one item or many, but if a single claim or contract is certain and fixed in all its terms it cannot be said to be an open account

"Accountant" Reg I of 1894, S. 10 (*j*).

Accountant is one whose vocation or function it is to keep or adjust accounts, also a person who renders an account in a particular case. (*Abbott*)

Accountants chartered Persons skilled in the keeping and examination of accounts, who are employed for the purpose of examining and certifying to the correctness of accounts of corporations and others.

Accountant-General A superior officer who has charge of the finances of the Goverument (12 Geo 1, C. 32 , *Tomlins Law Dic*)

Accounting. Accounting is the rendering or delivering a statement of one's dealings. Giving an account of receipts and expenses.

Accountable Being liable to account.

Accountable Receipts Receipt for money or goods in respect of which the giver of the receipt is subsequently accountable A pawn ticket is an example of such a receipt

Accounts. "Accounts" is sometimes widely interpreted, so as to include questions requiring scientific investigations. (*Rowcliffe* v *Leigh*, 3 Ch. D. 292)

Accredit. In international Law. To acknowledge, send "an envoy" with credentials.

Accretion, is the increase of land or estate by the addition of portions of soil, through the operation of natural causes, to that already in possession of the owner. (*Washburn Real Property 5th Ed., p 50*)

The principle of accretion is, that land formed gradually and imperceptibly by the action of water goes to the owner of the adjacent soil, such newly-formed land being said to become his property.

Accrue.

The word 'Accretion' is also applied to the state of circumstances which arises when a person having no right, or only an imperfect, right to property, makes a grant, and subsequently has his right perfected. (*Ency of the Laws of England*, See T P Act)

Quaere —Whether the English rule that land to be an accretion must be formed by gradual, slow and imperceptible degrees is applicable in India (*Lord Carson*) *Secretary of State for India* v *Raja of Vizianagaram* (1921) 49 I A 67=45 M 207 (212-3)= 26 C W N 348=67 I C 1=42 M L J 589 (P C) *See also Doe Dem* v *East India Co* 6 M.I.A 267=10 Moo P C. 140=1 Sar 540 "The recognition of title by alluvial accretion is largely governed by the fact that the accretion is due to the normal action of physical forces, and the conditions of Indian and English rivers differ so much that what would be abnormal and almost miraculous in the latter is normal and commonplace in the former" *Secretary of State for India* v *Raja of Vizianagaram* 49 I A 67 (P C)

This is a principle recognised in the English law, derived from the civil law, which is this—that where there is an acquisition of land from the sea or a river by gradual, slow, and imperceptible means, there, from the supposed necessity of the case, and the difficulty of having to determine, year by year, to whom an inch, or a foot, or a yard belongs, the accretion by alluvion is held to belong to the owner of the adjoining land *Lopes* v *Muddun Mohun Thakoor* (1870) 13 M I A 467=14 W R (P C) 11=5 B L R 521 (P C) See also *Sri Balusu* v *Collector of Godavari*, 26 I A 107=22 Mad 464, Ben Reg. XI of 1825

Accretion and adhesion There is an important distinction between mere physical *adhesion* and "*accretion*" or *incrementum latens* which, by reason of its gradual and imperceptible formation, is recognised by the law as belonging to the persons to whose land it is adjacent *Nogender Chunder Ghose* v. *Mahomed Esof*, (1872) 10 Beng L R. 406=18 W R 113 (P.C)

Accrual, clause of a clause in a deed of gift or will, providing that in the event of death of one, his share shall vest in the survivors

"Accrual of right to sue" Cause of action The expression "cause of action" and "accrual of right to sue" in Bengal Act III of 1899 are not used synonymously The expression 'accrual of the right to sue' in this Act means the arising of the cause of action plus the expiry of the notice provided for by the Act because the plaintiff has no right to commence a suit until the expiration of one month from the notice See *Corporation of Calcutta* v *Shyama Charan Pal*, 32 C. 277=9 C.W.N 217

Accrue means to arise (as) cause of action accruing, to grow, or to be added to (as) accruing rent, accruing debt, accruing dividend In the past tense the word "accrued" is used in the sense of due and payable, vested; and existed (as, rights accrued).

ACCRUE, in Income-Tax Acts, see *Herbert* v. *Mc Quade* (1902) 2 K. B. 631. (Income accruing).

Accrued due

ACCRUE, to become due: "Rent accrues when it becomes due, and at no other time If, however, there be no lease, and an action be brought merely for use and occupation, then the compensation due for such actual occupation 'accrues' like interest, *de die in diem*" (per *Patteson, J* in *Slake* v *Sharpe*, 8 A and E. 373.)

"A title 'accrues" when the instrument creating it, or the fact constituting it, first becomes operative (*Reid* v *Reid*, 55 L J Ch 294.)

"ACCRUE" AND "OCCUR". The word 'occur' means 'to happen' in its general and most popular sense, whilst the word 'accrue' is to be added or attached to something else, in its generally received sense (*Johnson* v *Humboldt Ins Co*, 33 Ame Rep 47, 1 Cyc 303)

Accrued due, in S 42 of the Bankruptcy Act, 1883 (46 & 47 Vict, C 52). *See* In re *Howell*. Ex parte *Mandleberg Co*, (1895) 1Q B 844

"ACCRUING" distinguished from "OWING" When the words "accruing or owing" are used to designate two classes of debts, they can receive each a distinct meaning only by taking one as denoting debts which are not yet payable and the other as denoting those which are (*Dresser* v *Johns*, 6 C B N S 429)

"Accruing Dividend," in a Public Co, is dividend in process of being earned, but not yet declared

'Accruing" interest, means running or accumulating interest as distinguished from accrued or matured interest

Accruing costs, are those which become due and are created after judgment, as the costs of an execution (See *Johnson* v *Ins Co*, 33 Am Rep 47, *Bouv L Dict*)

Acct Abbreviation for "account"

Accumulated surplus The fund which a corporation has in excess of its capital stock after payment of its debts

Accumulate Amass Accumulate and Amass agree in the idea of collecting, as it were by heaping up But 'amass' applies primarily to wealth or resources, and frequently implies more imposing results than 'accumulate', as to accumulate authorities, to amass a store of knowledge.

Accumulation, (of income) The putting by of dividends, rents, profits or other income and converting it into principal by investing it and again capitalizing the income arising from the new principal, and so on The capital and accrued interest is called the accumulations

ACCUMULATION of filth, in Acts relating to sanitation and public health implies some gradual accretion, a heaping of matter increasing from day to day, and 'DEPOSIT' means something that is put down in some place and left there Both these words involve the idea of a certain degree of permanancy, and cannot be held to touch the case of a loading and unloading manure from the company's waggons at a Railway Station, for the purpose of its delivery to farmers who come to take it. *G. N.ºRy.* v *Lurgan*, (1897) 2 Ir. Rep. 351.

Achandrarkam.

Accumulative. That accumulates or is heaped up.

Accumulative judgment. A second or additional judgment or sentence given against one who has already been convicted, to take effect after the expiration of the first. (*Wharton*)

Accumulative legacy. Additional legacy; a legacy given in addition to another given by the same instrument or by another instrument.

Accusare nemo se debet nisi coram Deo A maxim meaning "no one is bound to accuse himself except before God"

Accusation The charging of a person with a crime (*Jacob L Dict*)

Accusation is a charge made to a competent officer against one who has committed a crime with a view to bring him to justice and punishment.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit. A maxim meaning "An accuser ought not to be heard after the expiration of a reasonable time, unless he can account satisfactorily for his delay." (*Abbott L. Dict.*)

Accuse is to charge or impute to a person the commission of crime To "accuse", "or threaten to accuse" of a crime is not restricted to the narrow meaning of accuse by course of law, but means, to allege, or threaten to charge, before any thirdperson (*Per* Patteson, J. *R.* v. *Robinson*, 2 M & Rob. 14 at 16)

Accused, is one who is charged with a crime The term does not apply to a defendant in a civil action or one against whom security proceedings are taken under the Code of Criminal Procedure See *Queen-Empress* v *Mutsadi Lal*, (1898) 21 All 107, *Sheodin* v *King Emperor* 6 O C 262.

The term "accused," in Criminal Procedure Code, S 526, means a 'person over whom a Magistrate or other "criminal" court is exercising jurisdiction'. *Jaggu Ahir* v *Murli Shukul*, 10 A L J 27=34 A. 533.

"Accused person" See *Jhoja Singh*, 23 C 493; 16 B 661, 9 C W N 983=2 C L J 149, 6 C. W N 163, 2 L B R 80, *Queen-Empress* v *Mutsaddi Lal*, 21 A 107, *Sheodin* v. *King Emperor*, 6 O C 262 *See also* 33-4 V C 52, S 26

Accuser, one who makes an accusation or complaint, a complainant.

Ac etiam, ("and also") a clause giving the real cause of action and following a fictitious allegation which was introduced for the purpose of giving jurisdiction to the Court of King's Bench. (*Step. Com.*)"

Achan (*Mal*) father—lord The title of males in the royal family of Palghat, the minister of Calicut Rajah, known as *Mangat Achan*, the minister of the Cochin Rajah known as *Paliyat Achan* the minister of the 2nd Rajah of Calicut known as *Cheruli Achan* (*Moo Mal Law*, *Sund Mal Law*)

Achandrarkam, lit. A so long as; Chandra: Moon; Arkam · Sun As long as the sun and moon endure. A perpetual tenure.

Acharam

In Tanjore and Kanara the term is applied to any village of which the lands are permanently apportioned among the hereditary proprietors. The term slightly modified according to dialect, appears to be in common currency in the South of the peninsula to denote perpetuity. (*Wil. Gloss.*)

Acharam. (*Mal.*) Established custom and is opposed to anacharam

Acharya Bhogam. Endowment enjoyed by an Acharya (*Tam Lexicon, M U*)

Acharya Pursha. Guru among Sri Vaishnavas who is qualified to perform the Pancha Samskaras. (*Tamil Lexicon, M U*)

Acharya Purushas and Mutts The property of these Acharya Purushas, except in so far as it consisted of inams attached to temple offices, is ordinary private property, and not in any way similar to that attached to Mutts and other religious foundations (*Venkatachariar* v *Sadagopachariar*, 8 Ind Cas. 517, 519)

Acharya Prusham Grant of land to a priest for temple service. (*Tam Lex, M U.*)

Achchukattu (*Tel and Tam*) Land divided into beds to admit and retain the water let in for irrigation. Lands prepared for cultivation of rice.

Ache (*Tel.*) The principal harvest, the heavy crop (used in Vizagapatam).

Achita (*Karn, Mal.*) A weight of ten khandakas, or bharas (each being ten tulams), a cart load.

Achu-kavali (*Tel*) In the south of India grants of revenue and perquisites in grain formerly received by the Poligar for protecting the crops, and engaging to make good any depredations on the lands under protection.

Acknowledgment, is a proceeding whereby a person who has executed an instrument may, by declaring it to be his act and deed, entitle it to be received in evidence without further proof of execution, or both. (*Cent Dict.*)

Acknowledgment of debt or liability means an admission in writing that a debt is due or that some claim or liability is still in existence (*Byrne.*)

An Acknowledgment, in writing, of a Debt, so as to take such debt out of the Limitation Act, must admit that the debt is due.

Effect of acknowledgment as giving a fresh starting period of limitation See Ind Lim Act, 1908, S 19.

Acknowledgment of Signature. Acknowledgment by a testator of the signature to his will:—

(*a*) "The signature to be acknowledged may be made by the testator, or by another for him.

(*b*) "A testator, whether speechless or not, may acknowledge his signature by gestures

(*c*) "There is no sufficient acknowledgment unless the witness either saw, or might have seen, the signature.

(*d*) "When the witness either saw, or might have seen the signature, an express acknowledgment of the signature itself is not necessary, a mere statement that the paper is his Will, or a direction to them to put their names under his, or even the request by the testator, or by some person in his presence, to sign the paper is sufficient." (*Daintree* v. *Fasulo*, 57 L.J.P.D & A. 76, *Jarman on Wills* See S. 63, Cl (*c*) of the Ind Suc. Act (XXXIX of 1925).

Acquiescence.

A Communi, observantia non est recedendum. A maxim meaning, "there should be no departure from common observance" (*Kendrick Law Dict 1*) 2 Coke 74, Co Litt 186 (a) A maxim applied to the practice of the courts and to ancient and established usage, (*Wingate, Maxims* 752)

Acquainted Having personal knowledge of.

Acquiescence A resting satisfied with or submission to an exisiting state of things The term implies both knowledge and power to contract on the part of the person acquiescing

"They were compelled to *acquiesce* in a Government which they did not regard as just" (*De Quincey*)

Acquiescence may be defined as "quiescence under such circumstances as that assent may be reasonably inferred from it and is no more than an instance of the law of Estoppel by words or conduct" Per Thesiger, L J, *De Bussche* v. *Alt* 8 Ch D 314, 47 L J Ch 389)

"If a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act This as Lord Cottenham said in *Leeds* v *Amherst* (2 Phil 117=16 L J Ch 5=10 Jur 956), is the proper sense of the term 'Acquiescence' (Per Thesigar, L J, in *De Bussche* v *Alt*, 8 Ch. D. 314)

"'Acquiescence' imports full knowledge" (per Turner, L. J, in *Life Assn of Scotland* v *Siddal*, D.Ge & J 58, 74, *Redgrave* v *Hurd*, 20 Ch. D 1. 51 L J Ch 113)

In *Pence* v *Angdon*, 99 U S. 578, 581, it is said, "ACQUIESCENCE AND WAIVER are always questions of fact There can be neither without knowledge The terms import this foundation for such action One cannot waive or acquiesce in a wrong while ignorant that it has been committed There must be knowledge of facts which will enable the party to take effectual actual action Nothing short of this will do But he may not wilfully shut his eyes to what he might readily and ought to have known."

"Acquiescence, that is, assent—is tantamount to an agreement. It is an implied contract, and it requires for its validity power to contract." *Mathews* v. *Murchison*, 17 Fed. 760, 766

It does not however necessarily mean an active intelligent consent, but will be implied if a person is content not to oppose irregular acts which he knows are being done, (per Cairns, C, *Evans* v. *Smallcombe*, 37 L.J. Ch. 793=L.R. 3 H.L. 249.)

Acquiescence in the acts of an agent, or one who has assumed that character, will be equivalent to an express authority. (2 Kent 478; *Story Eq. Jur.* 255.)

Acquire.

Acquiescence is the common element in a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it is said, "slept upon his rights," and by his conduct at the time of a breach of them, or subsequently thereto, has, with full knowledge, both of his own rights and of the acts which infringe them, led that person responsible for the infringement to believe that he has waived or abandoned his rights. The terms *"laches"*, *"acquiescence,"* *"standing by,"* and *"delay"* are frequently associated together, and they do not appear to be capable of distinct definitions. (*Ency of the Laws of England*)

DISTINGUISHED FROM 'LACHES' "While the words 'laches' and 'acquiescence' are often used as similar in meaning, the distinction in their import is both great and important. Laches import a merely passive, while acquiescence implies active, assent."

Acquiescence is to be distinguished from avowed *consent*, on the one hand, and from open *discontent* or opposition, on the other. It amounts to a consent which is impliedly given by one or both parties to a proposition, a clause, a condition, or to any act whatever. (*Bouv*)

Acquiescence by Government and Private owners – Distinction. Government's abstinence for a considerable period from suing for possession of land built upon by the defendants, the suit being with in limitation, does not create an equity in his favour so as to deprive the Government of its strict rights. The position of Government differs from that of a private owner and a period of abstinence from suit, which would be excessive in a private owner, is not excessive in the case of Government. The Government in such a case has the option of making the defendant remove the materials of his buildings or paying compensation for the value of the buildings. *Rahmatullah Khan* v. *Secretary of State*. 63 P R 1913=113 P L.R. 1913=18 I C 799.

Acquire, in the law of Contracts and Descents, is to become the owner of property; to make property, one's own. See *Himatlal Motilal* v *Vasudev* (1912) 14 Bom L.R. 634=36 Bom 446=16 I C. 680 at p. 682 *See also* 26 M L.J. 99.

Acquisition. The act by which a person acquires the property in a thing. The word "acquisition" as used in S 23, Land Acquisition Act, includes the purpose for which the land is taken as well as the actual taking. (*Collector of Dinajpore* v. *Girja Nath Roy*, 25 C. 346.)

Acquisition of gain, as applied to a company or society, does not mean the acquisition of gain to the society itself, but gain to any member *Shaw* v. *Benson*, (1883) 11 Q B D 563, following *Padstow Total Loss Association*, (1881) 20 Ch. D 137.

"Acquittal," defined. Act X of 1882, S. 403. "The word 'Acquittal' is *verbum equivocum*, and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the court, that the prisoner is not guilty". (Per *Tindal*, C.J., *Burgess* v. *Boetefeur*, 13 L.J.M.C. 126: 135 E.R. 193.) It is generally said that a party is acquitted

Act.

by the jury, but, in fact, the acquittal is by the judgment of the court. (*Ibid.*)

DISTINGUISHED FROM "PARDON". "To the prisoner a pardon is not equal to an acquittal . His reputation and character are much more affected by the one than the other. A pardon discharges from punishment, and acquittal from guilt. Pardon may rescue him from the penitentiary or a halter, but it cannot redeem him from the infamy of conviction" (*Younger* v *State*, 98 Am Dec. 791.)

Acquitted. Set free or judicially discharged from an accusation, released from a debt, duty, obligation, charge, or suspicion of guilt (*Webster Dict.*) The word has reference to both civil and criminal prosecutions but must be understood in a technical sense as importing an acquittal on a trial before a jury.

" **'Acquittance'** is a discharge in writing of a debt or other duty which ought to be paid or done." (*Termes de la Ley*, *Jacob*)

ACQUITTANCE AND RECEIPT. "The word 'acquittance,' although perhaps not strictly speaking synonymous with 'receipt' includes it . It is not questioned but that a receipt in full is an acquittance Why, therefore, is not a receipt for a part of a demand or obligation an acquittance *pro tanto*? We are aware that lexicographers do not fully agree as to this, but, in legal proceedings a receipt is regarded as an acquittance" (*State* v. *Chelters*, 31 Am Rep 679.)

Acre A piece of land containing 4,840 square yards or 43,560 square feet This is the only acre known to the Law But the extent of the acre differs according to the customs of various countries.

In *Termes de la Ley*, it is defined that an "'Acre' containeth in length 40 perches and in breadth 4 perches," and adds, there were "divers Customs of several countries" varying this admeasurement (*Co. Litt.* 5 *b*)

Acre is also used to denote any field of arable or pasture land.

Acreable. Of an acre, per acre; as, the acreable produce.

Acreage Acres collectively, as, the acreage of a farm or a village

Across. The word "across" imports from side to side and, unless qualified by some prefix as "diagonally" or "obliquely," there is attached to the word in ordinary use but one meaning, and that is directly opposite to length. Right of way across a plot of land does not mean a right to enter at one side, go partly across, and come out at a place on the same side. [5 Pick. (Mass.) 163.]

Act. In a general sense, something done; the exercise of power, or an effect produced thereby. (*Abbott, L. Dict.*) It also means an instrument in writing to verify facts. (*Webster.*) In a more special sense the word is used to denote the result of a public deliberation, the decision of the Sovereign, of a legislative body, of a council, Court of justice, or magistrate. Also a decree, edict, law, judgment, resolve, award, determination. (*Bouvier*; *Burrill.*)

Act.

ACT IN LEGISLATION is a statute, or law made by a legislative body.

"ACT" when used in a statute is wide enough to cover a judicial or *quasi* judicial act (*viz.*) the passing of an order or decision of a Revenue Officer. 33 Bom L.R. 361=1931 Bom 432

ACT OR OMISSION, "The word 'act' denotes as well a series of acts as a single act, the word "omission" denotes as well a series of omissions as a single omission." (Indian Penal Code, S 33)

GENERAL OR PUBLIC ACTS are those which bind the whole community

PRIVATE OR SPECIAL ACTS are those which operate only upon particular persons and private concerns.

"ACT" DEFINED Act 45, 1860, S 33, Act 10, 1897, S 3 (2) Ben Act 1, 1899, S 3 (2), Bom Act 1, 1904, S 3 (2), Bur. Act 1, 1898, S 2 (2); E B & A Act 1, 1909, S 5 (2), P. Act 1, 1898, S 2 (2), U. P Act 1, 1904, S. 4 (2)

"Act" used with reference to an offence or a civil wrong shall include a series of acts, and words which refer to acts done extend also to illegal omissions (Act X of 1897 General Clauses S 3 (2), see also *Jagannath* v *Municipal Board of Allahabad*, A I R 1928 All. 136=25 A L J 1038)

ACT, if includes, omission (See *Jagannath* v *Municipal Board of Allahabad*, 25 A L J 1038=A I.R 1928 All 136)

ACT, in S 80, C P C includes tortious Acts, *Cecil Gray* v. *Cantonment Committee of Poona*, 12 Bom L R 615=34 Bom 582=7 Ind Cas 679)

"Acts", in S 37, Pro Ins Act V of 1920, is wide enough to include the receiver's act of avoidance under S 54. (*Jethanı Perajı* v *Krishnayya*, (1929) 57 M.L J. 116.)

The word "Act" in S 363 of the Ben Mun Act (1884) refers to tortious acts and not to any act arising upon a contractual or quasi contractual basis (*Ambika* v *Satish* 2 C.W.N. 689)

A legal practitioner shall not be deemed to "act" if he only pleads, or to agree to, "act" if he agrees only to plead. Act XXI of 1926 [Legal Practitioners (Fees) Act, S 2, Cl *b*]

ACT, BILL, LAW "A bill is a draft or form of an act presented to the legislature, but not enacted." The word 'law' is peculiarly inappropriate, for a portion of any Act may be law as well as the whole of the Act. (*Sedgwick County* v *Bailey*, 13 Kan 600, 608)

"LEGISLATIVE" DISTINGUISHED FROM "JUDICIAL" ACT "The distinction between a judicial and a legislative Act is well defined The one determines what the law is, and what the rights of parties are, with reference to transactions already had, the other prescribes what the law shall be in future cases arising under it. (1 *Cyc.* 632.)

Act of God. *Vis Major.* It may be defined to be any accident, due directly and exclusively to natural causes without human intervention, which by no amount of foresight, pains or care, reasonably to have been expected, could have been prevented. The general characteristics of such perils are very intelligible L. R 1 C P. D. 423.

The earliest use of the term 'Act of God' in English law is by Sir Edward Coke. He used the phrase, 'the act of God excuses,' as equivalent to an accident which is 'so inevitable that, by no providence or industry of him who is bound, it can be preventend' or, as in *Shelley's* case, I Coke 97-b, 'which no industry could avoid, nor policy prevent'.

But it does not necessarily mean an operation of natural forces, so violent and unexpected that no human foresight or skill could possibly have prevented its effects It is enough that the accident should be such as human foresight could not be reasonably expected to anticipate. (*Per curiam* in *Nichols* v. *Marsland*, 2 Ex D 1) In order that an extraordinary natural event, such as a very high tide, should be, in the legal sense of the words, an act of God, it is not necessary that such an event should never have happened before It is sufficient that its happening could not have been reasonably expected If such an event has happened once, but there is nothing to lead to the inference that it is likely to recur, it does not, if it happens a second time, cease to be an act of God *Nitro Phospate, etc., Co* v *London and St Katherine Docks Co*, 9 Ch D. 503 (C A)

"ACT OF GOD", means not a mere misfortune, but something overwhelming (*Per* Martin, B, *Oakley* v *Portsmouth Steam Packet Co*, 25 L J Ex. 101, 11 Ex 623)

"THE 'ACT OF GOD', is natural necessity, as wind and storms, which arise from natural causes, and is distinct from INEVITABLE ACCIDENT" (*Per* Mansfield in *Trent* v *Wood*, 4 Doug 290)

These storms, lightning, and tempests, are Acts of God as they could not happen by the intervention of man. (*Forward* v *Pittard*, 1 T R 33)

"ACT OF GOD", is defined as "irresistible superhuman cause" *New York Civil Code*, S 272.

Permanent Illness is an "Act of God," excusing the performance of a contract for personal services (*Boast* v. *Firth*, 38 L J C P 1.)

Act of grace A term sometimes applied to a general pardon or the granting or extension of some privilege, at the beginning of a new reign, the coming of age or the marriage of a sovereign, etc (*Cent. Dict*)

Act of Honour. An instrument drawn up by a notary public, after protest of a bill of exchange, when a third party is desirous of paying or accepting the bill for the honour of any or all of the parties to it (*Bouvier*)

Act of hostility. (International law) Any proceeding which may be considered an adequate cause of war

Act of Indemnity A statute by which persons subject to penalties by reason of having committed illegal acts are protected from the consequences thereof (*Rapalje*)

Act of Insolvency.

Act of Insolvency. *See* Prov. Ins. Act, 1920, S 6, Pres Towns Ins. Act, 1909, S 9 Act which subjects a persons to be proceeded against as an insolvent

Act of Law The operation of legal rules upon given facts (*Abbot-Law Dict*)

Act of law and Act of party. "The distinction between involuntary and voluntary investitive facts is expressed by the English law terms "act of law" and "act of party" (*T E Holland Jurisprudence*)

Act of Parliament Statutes or Acts of Parliament are made by the King's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled. (See *Black Com* 1, 85, *Prince's Case*, 8 Co Rep 20)

The term "Act of Parliament", includes both Private Acts as well as General Acts

Act of Providence Act of God. (Rare)

Act of Settlement Act (12 & 13 Will III, C 2, 1701), limiting the Crown to members of the House of Hanover, provided they be protestants

Act of State An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him (*Black L Dict*) Such an act cannot be questioned in any Court of law

Of the propriety or justice of an Act of State neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing, if they had formed, any opinion It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected These are considerations into which their Lordships cannot enter It is sufficient to say that, even if a wrong has been done, it is a wrong for which no Municipal Court of Justice can afford a remedy *Secretary of State in Council of India* v *Kamachee Boye Saheba* (1859) 7 M I A 476=13 Moo P C 22=4 W R 42 (P C).

Where a territory is acquired by a sovereign state for the first time that is an Act of State It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler In all cases the result is the same Any inhabitant of the territory can make good in the Municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised Such rights as he had under the rule of the predecessors avail him nothing *Vajesingji Joravasinghji* v *Secretary of State for India in Council* (1924) 51 I A 357 (360-1)=48 B. 613=47 M.L.J 574

In selling the property of rebels which it has confiscated, the Government does not perform an Act of State, but stands in the situation of an individual selling his property by auction, and a suit may therefore be properly brought against the Government by the purchaser if the Government refuses to give up possession, or transfers the possession to another.

"The meaning, as their Lordships understand it, of an Act of State is something which appertains to the functions of Government. Suppose, for instance,

Acting together.

any question had arisen with regard to the propriety of confiscating the rebel's property, that would have been an act of State Probably, the determination of the Government to sell that confiscated property might also be treated as an act of State, but in the sale the Government was exactly in the situation of an individual selling his property by auction, and when the auction was knocked down, the relation of vendor and vendee existed between the Government and the highest bidder A suit, therefore, would lie against the Government for specific performance on the sale" *Sheo Lal Bohra* v. *Sheikh Mahomed*. (1869) 13 W R. 4 (P C.).

Confiscation if and when amounts to Act of State. (1872) Sup I A 119 (125).

As between the Crown and its subjects there can be no such thing as an "Act of State'. 132 I C. 739= 1931 P C 248 (P C)

Act of Supremacy The Act (26, Hen. VIII, C 1), declaring the "only supreme head on earth of the Church of England" to be the Crown

"Act of trespass", defined, Act 15, 1882, S 46

Act of Uniformity Any of various Acts (as 2 & 3 Edward VI, 1548, 5 & 6 Edw V, 1531, 1 Eliz 1559, and esp 14 Car II, C 14, 1662, which was amended by 35 & 36 Vict C 35, 1872), prescribing the use of the "Book of Common Prayer" in public worship in the established church and enjoining uniformity in religous observances

Acta in uno judicio non probant in alio nisi inter easiem personas. A maxim meaning "things done in one action cannot be taken as evidence in another unless it be between the same parties."

Acting A term employed to designate one performing the duties of an office to which he does not himself claim title, (as) acting appointment The word is also sometimes used in the sense of "operating" (as) in a provision that one of two companies should be the "acting and controlling" company

Acted illegally or with material irregularity — This phrase occurring in Civil Procedure Code, S 115, is not limited to cases of procedure only, but include cases of decisions vitiated by an error so gross and palpable as to lead to grave and manifest injustice (*Dwarka Nath* v *Kisori Lal*, 6 Ind Cas 549 (551). *Raghunath Gujrati* v. *Raj Chatrapet Sing*, 1 C W N 633, 1 C W N 617, 27 M 504)

"Act inconsistent with the purpose for which the land was let" —An act to be inconsistent with the purpose for which the land was let, must be some such act as the making of a tank, or the altering of the character of the land, *e g*, by turning it from agricultural land into building land. [*Madho Lal* v *Sheo Prasad Misir*, 12 A 419=10 A W N 162 (F.B.).] *See also* 20 All 469

Act in pais, means literally an act in the country, *i e*, an ordinary conveyance as distinguished from an act done in court which is a matter of record. (*M & W.*)

Acting together. The expression "acting together" in S. 188, Bengal Tenancy Act (VIII of 1885), means that the persons referred to must take common action. It is not enough if one of the joint landlords sues as plaintiff and makes those who do not concur with them defendants. (*Roy Jatindr*

Acts of the Apostles.

Nath v. *Prasanna Kumar*. 38 Cal. 270=15 C.W.N. 74=21 M L J 92).

Acts of the Apostles (Biblical). The part of the New Testament which records the founding of the church under Peter and its spread under Paul

Action (Actio). Is the form of a suit given by law for recovery of that which is one's due; or it is a legal demand of a man's right. (*Co. Lit.* 285. *Tomlins Law Dic.* See to the same effect *Justinian Inst.* 4, 6.).

ACTION, generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown [*Bradlaugh* v *Clarke*, (1883) 52 L J Q B 508, 8 App. Cas. 354 p. 361]

"An action, according to the legal meaning of the term," is "a proceeding by which one party seeks in a Court of Justice to enforce some right against, or to restrain the commission of some wrong by, another party." "More concisely, it may be said to be the legal demand of a right . It implies the existence of parties, of an alleged right, of an alleged infringement thereof (either actual or threatened) and of a Court having power to enforce such right" [*Sir Dinshaw* v. *Sir Jamsetji*, 2 Ind. Cas. 701 (732)=11 Bom.LR. 85=33 B. 509 (Davar, J.)]

The vital idea of an action is a proceeding on the part of one person as actor against another, for the infringement of some right of the first, before a court of justice, in the manner prescribed by the court of the law Subordinate to this is now connected in a quite common use, the idea of the answer of the defendant or person proceeded against, the adducing evidence by each party to sustain his position, the adjudication of the court upon the right of the plaintiff, and the means taken to enforce the right or recompense the wrong done, in case the right is established and shown to have been injuriously affected (*Bouvier*)

Action, Suit, Remedy. A distinction has been drawn between the word "action" as importing the right or power to enforce an obligation, and the word "suit" meaning the proceeding in which the right is enforced The distinction is not however generally observed in common usage

The word "actions" may include both civil and criminal proceedings and the term "civil action" has been said to embrace from its natural import, every species of suit not of a criminal kind. It has been also said, however, that the term "action" is not as broad and inclusive as the term "remedy", and it is not ordinarily applicable to a writ of error. The term "suit" is a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues there that remedy which the law affords him The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit.

The word "action" has three distinctive meanings. It means sometimes the act of resorting to authority to vindicate one's rights or, in a metaphorical sense the right to such resort, or it may mean the form of such resort. [*Desousa* v. *Coles*, 3 M.H.C.R. 384 (407).

Action—cause of.

A counterclaim cannot be deemed an 'action' it not being commenced by writ of summons. [*Mc Gowan* v. *Middleton*, (1883) Q B D. 464.]

(All) Actions. "Where one releases to another all 'actions" not only action depending, but also causes of actions are released". (*Altham's Case*, 8 Rep. 153-a, 153-b.)

"Action—cause of". The term "cause of action" in law, is generally understood as meaning the whole cause of action, that is, every fact which it is necessary to establish in order to support the right to judicial relief. As otherwise defined, it consists of a right in the plaintiff, a correlative duty or obligation resting on the defendant, and some act or omission done by the latter in violation of the right *See* under "cause of action"

"SUBJECT OF ACTION" "Cause of action" in legal terminology is not the same as "subject of action"

"Subject of action" is a code term used in the stead of what was formerly known as "subject-matter of the action" and describes the physical facts, the things, real or personal the money, land, chattel, and the like, in relation to which the suit is prosecuted (1 *Cyc.* 643.)

"ACTION", "CAUSE" AND 'CASE' In any legal sense the words "cause" and "case", and like general expressions, are convertible terms with "action" and "suit", having the same use in law

"REAL ACTIONS", were those brought for the specific recovery of lands, tenements, and hereditaments. The essential and distinguishing feature of a real action was that it sought to recover specifically the land and its possession

"PERSONAL ACTIONS" *Actions in personam* were those brought for the specific recovery of goods, or for damages or other redress for breach of contract and other injuries of every description, excepting only the specific recovery of title or possession of lands, tenements, and hereditaments

"MIXED ACTIONS", were such as appertained in some degree to both the former classes, being brought both for the specific recovery of lands, tenements, and hereditaments and for damages for injury sustained in respect to such property.

" 'Mixed' is a blessed word The too impatient student who looks down upon mediaeval law from the sublime heights of 'general jurisprudence' will say that most of our English actions are mixed and many of them very mixed " (1 *Cyc.* 731.)

" CIVIL ACTION", is one which has for its object the recovery of private or civil rights, or of compensation for their infraction.

"CRIMINAL ACTION", is one instituted by, or in the name of, the Sovereign power of the State against one or more individuals for the purpose of punishing or preventing a criminal offence. (*Black L. Dict.*; *Bouvier L. Dict.*)

PENAL ACTION. A "penal action" is one brought either by the State or by an individual under permission of a statute to enforce a penalty imposed by law

Actionable.

for the commission of a prohibited act. (*Black L. Dict.*) Where a penal statute provides that on conviction the party guilty of violating the statute shall be fined or imprisoned, or both, at the discretion of the Court, it contemplates a criminal action only, but where the statute merely subjects the guilty party to liability in a penal sum, such sum may be recovered in a civil action. (1 *Cyc.* 732).

TO TAKE ACTION is to take steps in regard to anything, to institute legal proceedings

Actionable Subject to, or affording ground for, an action or suit at law, as, slander is actionable

"Actionable claim", defined. Act 4, 1882, S 3 (T. P Act)

"ACTIONABLE CLAIM" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent (T. P Act, S 3)

"Actionable claim" in S. 130 of the Transfer of Property Act refers only to claims capable of enforcement, at the time of assignment, by suit in the Civil Court It does not include a claim, in respect of which the cause of action had not arisen at the time of the transfer, but which, in future, will mature into a claim so as to be enforceable at once, in other words, a claim could not be treated as an actionable one unless, at the date of the transfer, an action could have been brought therein [*Shib Lal* v *Asmat Ulla*, 18 A. 265 (F B.), 16 A.W N. 80]

Under S 130 of the Transfer of Property Act, prior to its amendment by Act VI of 1900, a claim could have been regarded as 'actionable' only when it was a claim in respect of a cause of action which had already matured, and which, subject to procedure, might have been enforced by suit. 30 M 235= 17 M L J. 87.

Sale of immovable property by the owner out of possession, is not the sale of an actionable claim 3 O.C 215 (228) Ref to in *Ram* v *Ajudhia*, 16 All. 315 =14 A W N 100 (F.B). *See also* 18 Mad 454; 21 Cal. 568 (573), 16 All 313, 10 All. 327, 46 Cal 210 (212)

A debt secured by a charge on immovable property, if an actionable claim. *Subramaniam* v. *Perumal Reddi*, 18 M 454=5 M L J 92, 24 M 449, 15 I C. 853.

Actio non datur non damnificato. A maxim meaning "an action is not given to one who is not injured." (*Burrill.*).

Actionum genera maxime sunt servanda. A maxim meaning "the varieties of actions are especially to be preserved." (*Burrill L. Dict*) Every action must be in its proper form.

Actio personalis moritur cum persona. A maxim meaning "A personal action dies with the person." This maxim expresses the law in regard to the surviving of personal actions. The maxim does not apply in the case of civil death. (36 Bom 174).

Actual.

Actio poenalis in haeredem non datur nisi forte ex damno locupletior haeres factussit. A maxim meaning "a penal action is not given against an heir, unless, indeed, such heir is benefitted by the wrong" (*Wharton*)

Actio qualibet it sua via. "Every action follows its prescribed course"

Active Bonds. Interest bearing bonds. Bonds bearing a fixed rate of interest payable in full from the date of issue, and include most bonds negotiable on the Stock Exchange.

"Active service" defined – 44-5 V. c. 58, S. 189 (1). Act 5, 1869, Part I, cl. (*e*) (14). (Ins Act 12, 1894, S. 4.). Act 15, 1887, S. 3 (2) Act 5, 1892 S. 2. (2) Reg. 3, 1881, S 2 Reg 4, 1890, S. 3 (2).

"Active service" in the Burma Military Police Act means service at outposts or against hostile tribes or other persons in the field Bur Act XV of 1887, S.3, Cl 2.

"Active Trust" is sometimes used in the sense of "a Special Trust", where the Trustee is not a mere passive depository of the Estate, but is called upon to exert himself actively in the execution of the settlor's intention. (*Kelke's Equity, p.* 12.)

Actor (Lat) (1) A pleader or advocate, one who acts for another in a cause (as) *Actor ecclesiae* an advocate for a Church, one who protects the temporal interests of a Church (*Cowell, Spelmann*)

(2) A plaintiff contrasted with defendant

(3) The term is also used of a party who for the time being sustains the burden of proof or has the initiative in the suit or one who has to commence in the suit.

(4) A guardian or tutor, nearly synonymous with agent, or who transacts the business of his principal (*Black*)

(5) Manager (as) *Actor dominae*, manager of his master's farms or lands, *actor ecclesiae*, manager of Church property, *actores provinciarum*, tax Collectors or managers of the public debt (*Cyc. L Dic.*)

Actore incumbit onus probandi A maxim meaning "The burden of proof lies on the plaintiff or the complainant" (*Morgan Leg Max., Broom*).

Actori non probante absolvitur reus. A maxim meaning "the plaintiff not proving (his demand) the defendant is discharged or acquitted.'

Actor in rem suam. An agent in his own matter (*Kenney*)

Actor qui contra regulam quid abduxit, non est audiendus, A maxim meaning "a plaintiff or pleader who advances anything against an authority or a proposition against the rules of law is not to be heard". (*Rapalje and L L. Dict*)

Actor sequitur forum rei. A maxim meaning "the plaintiff follows the forum of the thing". The plaintiff follows the Court of the Defendant.

Actual. Real; existing in act as opposed to constructive or theoretical, or speculative, as in "actual possession' "actual seizure" "actual residence".

Actual Cost.

In legal phraseology "actual" is used as the opposite of "constructive" or "virtual" or "symbolic" as in "actual delivery".

Very often the use of the word, "Actual" does not, advance the meaning Thus the phrase "Actual seizure" means no more than "Seizure" (*Gladstone* v. *Padwick*, 40 L J Ex 154)

Actual Cost real price paid upon a genuine *bona fide* purchase It is said not to include interest, commission paid, incidental expenses or wasted expenditure. In the expression "actual costs and expenses" or "disbursements", profit or trade allowances will not be included (Re *United Merthyr Co*, L.R 15 Eq. 46.)

Actual damages Damages awarded for a loss or injury actually sustained as distinguished from damages implied by law or those awarded by way of penalty

Actual Entry "An actual entry upon land is made so soon as the person desiring to make an entry has any part of his body upon the land, and such entry is complete and effectual even though he should immediately afterwards be dragged off by force. If the person entitled be hindered from making an actual entry by fear of violence, he may make an entry in law by approaching as near as he safely may, and there making his claim which, under such circumstances, will take effect as an actual entry" (1 Ency of the Laws of Eng 156)

Actual Fraud The term 'actual' or "moral" as applied to Fraud was formerly used to distinguish from "legal" or "technical" fraud Such a distinction has been repeatedly condemned The term is however employed for the sake of emphasis, it means nothing more and nothing less than "fraud" pure and simple

"I understand the term 'actual fraud' to mean, fraud in the ordinary, popular, acceptation of the term, and not what has sometimes been called 'legal fraud,' or 'constructive fraud,' or 'fraud in the eye of a Court of Law or Equity" (Per Stirling, J, Re *Hobson*, 44 W R 615)

"**Actual inventor**" defined, Act 5, 1888, S 4 (5)

Actual Military Service (or *actual warfare* See Ind Suc Act XXXIX of 1925, S 65) is a term which is confined to those who are on an expedition, and does not extend to soldiers quartered in barracks at home or in the Colonies, but going into barracks under orders for foreign service with a view to being drafted to the seat of war is "actual military service" [*In the goods of Hiscock*, (1901) P. 78].

A soldier passing from one regiment to another, both regiments being in active service against the enemy (*Herbert* v. *Herbert*, D. & Sw 10, 4 W R 182), or joining a regiment with the view of marching against the enemy (Re *Thorne*, 34 L J P M & A. 131) is also deemed to be in actual military service So is one who has received a mortal wound on the battle-field. (Re *Farquhar*, 4 Notes of Ecc. Cases, 651.)

Actual Pecuniary Damage. The phrase "actual pecuniary damage" as used in Cl. 3, S. 6, Act XI of 1865, has reference to pecuniary loss to the plaintiff's property or estate Therefore a suit for damages on account of alleged personal injury solely, without reference to actual pecuniary loss, is not included in the term. (*B C. Chuckerbutty* v. *Mahendra Chandra Chuckerbutty*, 4 B.L.R App. 59 =13 W R. 118)

Actual Possession As soon as a person is entitled to possession, and enters in the assertion of that possession, or any other person enters by command of the lawful owner so entitled to possession, the law immediately vests the actual possession in the person who has so entered If there are two persons in a field, each asserting that the field is his, and each doing some act in the assertion of the rights of possession, and if the question is which of the two is in actual possession, the person who has the title is in actual possession, and the other person is a trespasser, the question which of the two really is in possession is determined by the fact of the possession following the title, that is, by the law which makes it follow the title [Per Maule, J, in *Jones* v. *Chapman*, (1847) 2 Ex Rep 821, *See also* S 145, Cr P Code]

Where two or more are in possession, the "actual possession" is that of the one who has the title, (*Litt* S 71)

A purchaser of equity of redemption does not take "actual possession" until he takes visible and tangible possession, or enjoys the rents and profits of the property, after redemption of the mortgage [*Jageshar Singh* v *Jawahir Singh*, 1 A 311 (F B) Per Stuart, C. J, approved in 24 All 17 (P.C)]

The term "actual possession" would apply to subjects of sale which admit of visible and tangible possession as well as to subjects of sale which do not admit of such possession In the latter case, the term means such possession as the nature of the property admits of. (*Ram Saran* v *Hirde*, 65 P R. 1883)

Actual Produce By the term "actual produce" in Beng Land Rev Assessment Reg is to be understood the net annual rent, or other net produce receivable by the proprietor, after deducting from the gross rent, or other gross produce, the actual expense of collection and other usual charges of management, inclusive of pulbandi or the expense of embankments, and similar incidental expenses, where such may be paid by the proprietor from his gross receipts, but exclusive of his malikana or proprietary income, and all other personal appropriations of the gross produce of his estate, as such can have no claim to consideration in determining the net produce for an equal division of landed property, or for the allotment of the public assessment thereto in conformity to the prescribed rule. Beng. Regulation I of 1801 (Land Revenue Assessment), S 8

"The 'actual produce' on which the assessment of revenue under S. 8 of Bengal Regulation I of 1801 is to be based is "the actual produce" at the time when proceedings were instituted for the separation of the talook. The Legislature could never have intended to lay down an ambulatory standard, which would vary according to the period or time when separation was being carried into effect." [*Rani Hemanta Kumari Debi* v. *Maharajah Jagadindra*

Actual Rent.

Nath Roy Bahadur, (1918) 23 C.W.N. 149=51 I C. 148]

"ACTUAL PROPRIETOR OF LAND" defined, *see* Ben. Reg 27, 1795, S. 10

Actual Rent The words "actual rent" in S 74, Ben Ten Act, cannot be taken to mean either "a fair and equitable rent" or rent at customary or pargana rates" *Chattra Kumari Devi* v *Broucke*, (1927) 54 I A 432=32 C W N 260=A I R. 1927 P.C 250=54 M L J 293 (P C.)]

Actual Seizure Where a warrant of attachment obtained by the decree-holder against the judgment-debtor is executed as sanctioned by the order of the Court by affixing the Court seal to the outer door of the warehouse where goods belonging to the judgment-debtor are stored, without breaking open the door and taking possession of the goods inside the warehouse, this, in effect, is "actual seizure" within the meaning of the Civ Pro Code (*Multan Chand Kanyalal* v *Bank of Madras*, 27 M 346)

Actual use or occupation, in the English Workmen's Compensation Act 1897 (60 & 61 Vict, C 37), S. 7 [*Merrill* v *Wilson*, (1901) 1 K B. 35.]

"Actually and voluntarily resides" In interpreting the phrase "actually and voluntarily resides", the words "actually" and 'voluntarily" must be taken together, the word "actually" means "in fact" A person cannot be said to be "voluntarily residing' in a place where he is confined in a jail (*Ram Labhaya* v *Bishan Das*, 77 P R 1909=124 P. L.R 1909=3 I C 607]

Actually employed defined *See* Act 15, 1881, S 10 (2)

Actually enjoyed The words "actually enjoyed," for 20 years, in S 3, of the English Prescription Act, or S 15, Ind Easements Act (peaceably and openly enjoyed) are satisfied where a house exists with ordinary windows through which light and air have in fact passed, although there has been no occupation in the sense of personal occupation (*Courtauld* v *Legh*, 38 L J. Ex 45) A similar rule applies as to what is an actual enjoyment of a right of way, etc (*Hollins* v *Verney*, 53 L J Q.B 430)

Actuary A person skilled in calculating the value of life interests, annuities and insurances, or an officer appointed to keep savings bank accounts, or the manager of an insurance company (1 *Ency. of the Laws of England* 157) "The manager of a joint-stock company, under a board of directors, particularly of an insurance company, combining with the duties of a secretary those of a scientific adviser to the board which gives him his office, in all matters involving calculation, a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, etc." (*Burrill L. Dict.* See also the English Friendly Societies Act, 1875, Act IV of 1912, S 2, 1)

In English Ecclesiastical law, the term means a clerk that registers the acts and constitutions of the House of Convocation, a registrar of an ecclesiastical court. (*Black*).

Actus Repugnum.

Actus curiae neminem gravabit. A maxim meaning "an act of the court shall prejudice no man "

Actus Dei nemini est damnosis A maxim meaning "the act of God is hurtful to no one", (2 Ins. 287) (*i e*, a person cannot be held responsible for an accident occurring without his fault and attributable to *vis major* or act of God) (*Black, Burrill.*)

Actus Dei nemini facit injuriam. A maxim meaning "the act of God does injury to no one".

Actus incaeptus cujus perfectio pendet ex voluntate partium revocari potest, si autem pendet ex voluntate tertie persanoe vel ex contingenti revocari non potest (*Bacons Max. Reg.* 20) A maxim meaning "an act already begun, the completion of which depends upon the will of the parties, may be revoked, but if it depend on the will of a third person, or on a contingency, it cannot be revoked" (*Burrill L Dict , Bacon's Max. Reg.* 20.)

The law, observes Lord Bacon, makes this difference, that, if the parties have put it in the power of a third person, or of a contingency, to give a perfection to their act, then they have put it out of their own reach and liberty to revoke it, but where the completion of their act or contract depends upon the mutual consent of the original parties only, it may be rescinded by express agreement So, in judicial acts, the rule of the civil law holds, *sententia interlocutoria revocari potest*, that is, an order may be revoked, but a judgment cannot

Actus judiciarius coram non judice irritus habetur de ministeriali autem a quocunque provenit ratum esto A maxim meaning "a judicial act done without authority is void, not so a ministerial act" (*Morgan Leg Max*) "When an act is done without or in excess of jurisdiction, the act will be invalid if it is a judicial act, but if it is a ministerial act, the question as to whether it is valid or invalid depends on circumstances" (*Byrne*)

Actus legis nemini est damnosus A maxim meaning "the act of the law is hurtful to no one, it shall prejudice no body "

Actus legis nemini facit injuriam. A maxim meaning the act of the law injures no one (5 Coke 116)

Actus legitimi non recipiunt modum (*Hob.* 153). A maxim meaning "legal actions do not admit a limitation" (*Morgan Leg Max*) (*i e*, acts required to be done by law do not admit of qualification or limitation)

Actus me invito factus non est meus actus A maxim meaning "an act done by me against my will is not my act."

Actus non facit reum, nisi mens sit rea. A maxim meaning "the act itself does not make a man guilty unless his intention were so". An act does not make one guilty unless the mind is also guilty.

Actus Repugnum Non Potest in esse produce A maxim meaning "a repugnant act cannot be brought into being (*i e.*) it cannot be made effectual" (*Plowden*).

Actus servi.

Actus servi in lis quibus opera ejus communitur adhibita actus domini habetur. A maxim meaning "the act of a servant in those things in which he is usually employed is considered the acts of his master."

A. D. An abbreviation of the words *Anno Domini*,—in the year of our Lord.

Ad (In Law Latin) a preposition meaning "at" "by", "for", "concerning", "near", "on account of" "to", and "until", "upon". (*Ame Cyc*).

Ad abundantio rem cautelam · for greater or more abundant caution

Ad alium diem. at another day

Ad audiendum to hear.

Ad certum diem at a certain day (*Rex* v. *Ward*, 2 Str 747)

Ad communem legem at the common law (*Drury* v *Drury*, 2 Eden 39, 54)

Ad curiam at a court

Ad damnum · to the damage

Ad defendendum to defend (1 Bl. Com 227.)

Ad diem at the day or at a day

Ad exitum At the end of the pleadings, at issue (*Steph*, Pl 24)

Ad fidem In allegiance 2 Kent Comm. 56 (subjects born in allegiance are said to be born *ad fidem*)

Ad filum aquae To the thread or middle of a stream (3 *Kent Com* 423 et seq, *Cowell*, *Blount*)

Ad idem With a common understanding

Ad infinitum. To infinity, endlessly, on and on without end, through an infinite series

Ad Instantiam At the instance (*Milward* v. *Ingram*, 2 Mod 43, 44)

Ad interim: In the interval (as) ad interim injunction.

Ad libitum At pleasure (3 Bl. Com. 292)

Ad litum For the suit. Every Court has the power to appoint a guardian ad litum. (2 Kent. Com. 229, *Bl. Com* 42)

Ad ostium ecclesiae: At the door of the Church. (4 Kent. Comm 36.)

Ad punctuam temposis At the point of time.

Ad tunc et ibidem. at the time and in the same place.

Ad valorem. according to the valuation. *Ad valorem* duties are always estimated at a certain per cent on the valuation of the property, as opposed to fixed or specific duties.

Ad vitam aut culpam. For life or until misbehaviour—words descriptive of a tenure of office.

Adaha ri A bullock not broken in for work (*Wil. Gloss.* 4)

Adapt.

Ada, or Adai Manam: A mortgage, a simple mortgage, in which the mortgagor retains possession of the property pledged, paying interest on the loan

Adaiyolai. The palm-leaves on which a mortgage deed, or lease or other engagement, is written. (*Wil. Gloss.* 4)

Adakam An enclosure. (*Wil. Gloss.* 4)

Adalat (Udalut, corruptly, Adawlut): Court of justice, justice, equity. Under the Mohammadan Government, the Adalats, or Courts of Justice, were four (1) *Nizamat Adalat*—The supreme Court of Criminal Justice, nominally presided over by the Nazim or Viceroy of the province. This was subdivided into the *Roz-a-adalat* or Court held on a Sunday by the Nazim for the trial of capital offenders, and the *Adalat ul Aaiyat* the High Court in which affrays, quarrels, and cases regarding personal property were tried this was usually presided over by the Nizam's Deputy, or Darogha (2) *Diwani Adalat*.—The Civil Court of the Diwan, the chief officer in charge of the revenue of the principality (3) *Faujdari Adalat*.—The Court of the Faujdar, or chief of the magistracy and police of a district, the Subordinate, or District Criminal Court (4) *Adalat ul Kazi*. The Court of the Kazi, the Chief Judge of a town or district in civil causes and questions regarding the Mohammadan religion Under him the *Muhtasib* held a Court for the adjudication of offences against morals—as drunkenness, gambling, etc. Under the British Government these Courts were continued, with some modifications, until 1793, when the judicial and revenue departments were separated, and Zila and Provincial Courts were established, subordinate to one Supreme Adalat at the Presidency, distinguished as the Sadar or Sudder Adalat, High Court of Justice, or Court of Final Decision, subdivided into *Sadr-diwani Adalat*, High Court of Civil Jurisdiction and *Sadar Nizamat or Faujdari Adalat*, High Court of Criminal Justice (*Bengal Reg.* III, IX, XII, XIII, 1793, II, 1795, II, 1801, VIII, 1803)

Adalat-al-kazi (*A.*) The Court of the Kazi, in which civil causes and questions regarding the Muhammadan religion were tried.

Adalat Akhir A superior Court of Justice, a Court of Appeal.

Adalat Asghar. An inferior or Subordinate Court of Justice (*Wil Gloss* 8)

Adangal: a field register (*Bad Pow.* see III, 92.)

An estimate or an appraisement, a valuation, the whole contents or whole quantity of anything, a contract; examining the cultivation of village lands (*Wil Gloss* 4.) The name given to a revenue register maintained in the villages in South India.

Adani (*Karn.*) Unrewarded or compulsory labour.

Adapt, To make suitable, to fit or suit; to adjust; to alter so as to fit for a new use, to change by adaptation—often followed by to, or for.

"Streets ill adapted for the residence of wealthy persons". (*Macaulay.*)

Adaptation.

Adaptation. Act or process of adapting, or state of being adapted. "Adaptation of the means to the end" (*Erskine.*)

The act of adapting or adjusting, the state of being adapted or fitted, adjustment to circumstances or relations.

"Government . in a just sense is, if one may say so, the science of *adaptations*—variable in its elements, dependent upon circumstances, and incapable of a rigid mathematical demonstration". (*Story, Misc Writings, p* 616)

"Must we not expect that, with a Government also, special *adaptation* to one end implies non-adaptation to other ends" (*H. Spencer, Social Statistics*, 303,)

That which is adapted the result of altering for a different use as, "this book is a free adaptation from a French author"

Adapter One who adapts or makes an adaptation

Adataya (*M*) An agent, broker.

Adatta In Hindu Law, illegal, or void (*Wil Gloss* 4)

Adavi or Adavi-kottuta (*Tel*) Clearing away jungle, and bringing the land into cultivation.

Adavu (*Mal*) Simple mortgage. (Kan.) (Sundaram Iyer's *Malabar Law*)

Adavu Chitu Adavu sathana, or Adavu-patram A mortgage deed or bond (*Wil Gloss* 4)

Adavu-kar. A mortgagee, one who holds a pledge or mortgage (*Wil Gloss.* 4)

Adawlut. (See *Adalat*) Justice, equity, a Court of Justice, denotes the Civil and the Criminal Courts of Justice (*Fifth report.*)

Add To unite, join, attach, annex or subjoin as an augmentation or accretion.

Add, Attach, Affix, Annex These words agree in denoting the increasing of a thing by something additional *Add* is the most general term, but it may denote an intimate union of the things combined, the formation of a whole in which the parts lose their individuality as, to add water to a decoction, to add one sum to another This idea is not expressed by any of the others *Attach* (as also *annex* and *affix*) denotes a more external combination It implies the possibility of detaching that which is attached, as to attach a locomotive to a train Hence we do not attach, but add, one fluid to another It generally retains its original notion of a strong connection physical, moral or other, as, to attach a condition to a gift. *Affix* may be used either of that which is essential to the value or completeness of the whole, or of something that is wholly extrinsic or unrelated as, to affix a signature or seal to an instrument, to *affix* a notice to a post. To *annex* sometimes brings the parts into vital relation as, to *annex* territory, a codicil to a will, or a penalty to a prohibition. (*Cent Dic*)

"In *affixing* his name, an attesting witness is regarded as certifying the capacity of the testator." (*Am. Cyc.*, XIV, 24.)

Address.

"Since the French Nation has been formed, men have proposed to *annex* this or that land on the ground that its people spoke the French tongue." (*E A Freeman—Race and Language, p* 111)

Adda (*Tel.*) A measure equal to two Manikas.

Adda Kaluve A subordinate channel, one cut from a main watercourse for irrigation

Adda kuttu or katte (*Karn*) A dam for the purpose of confining water

Addekkalu (*Karn.*) A new comer, a settler in a village.

Addika or Addiga, also Addakadar and Addakadava A village officer whose duty it is to keep the cultivators to their work and to prevent the clandestine removal of any part of the common crop. (*Wil Gloss* 5)

Addiseyuta (*Tel*) A contract, by which a cultivator pledges the whole or a portion of his crop to a banker as security for money borrowed

"Addition", defined, Act 3, 1877, S. 3 Ben Act 3, 1895, S 2 (1).

ADDITIONS TO A PERSON'S NAME. In the Registration Act, unless there is anything repugnant in the subject or context,—"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and in the case of a Native of India, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name, Act XVI of 1908 (Registration) S. 2, Cl (1).

ADDITION TO TRADEMARK. See *Faulder's Trade Mark*, (1902) 1 Ch 125 (C A.).

Additional evidence Evidence let in appeal after the trial has closed in the lower Court,—a privilege allowed only under special circumstances The legitimate occasion for the admission of additional evidence in appeal is where, on looking into the evidence as it stands, some inherent lacuna or defect becomes evident [31 Bom 381 (P C.), 11 C.W. N 721, 9 Bom.L R 671, 17 M L.J 347, 42 Cal. 675.]

Additio probat minoritatem. A maxim meaning "an addition (to a name) proves inferiority". (*Adams. Gloss* 4 *Inst.* 80; *Wing, Max.* 211.)

Address. A formal document embodying a request presented to the King or Governor of a State by the Legislative body desiring him to perform some executive act. (*Black.*)

A formal request addressed to the executive by one or both branches of a legislative body, requesting it to do a particular thing. "The constitution of England authorised the removal of an obnoxious Judge on a mere *address* of the legislature." (*H. Adams, John Randolph, p.* 132.)

A direction for guidance, as to a person's abode; hence the place at which a person resides, or the name and place of destination, with any other details, necessary for the direction of a letter or package, as, what is your present *address*? The *address* or superscription on a letter.

Addressee

Addressee. One who is addressed, specifically one to whom anything is addressed

"The postmaster shall also, at the time of its arrival, notify the *addressee* thereof that such a letter or package has been received" (*Postal Rules*)

Addresser. One who addresses or petitions

Adduce To bring forward, advance, cite, name or cite as authority or evidence for what one advances.

"Reasons good, I shall adduce in due time to my peers" (*Browning, Ring and Book*, I, 313)

ADDUCE, ALLEGE, ASSIGN, ADVANCE, OFFER These terms are all employed to express what is used in logical confirmation *Offer and assign* are the least forcible of these words To *offer* is simply to present for acceptance We may offer a plea, an apology, or an excuse, but it may not be accepted We may *assign* a reason, but it may not be the real or only reason which might be given by us We may *advance* an opinion and may *cite* authorities in support of it *Allege* is the most positive of all these words To *allege* is to make an unsupported statement regarding something To *adduce* on the other hand, is to bring forward proofs or evidence in support of some statement or proposition already made as, he *alleged* that he had been robbed by A B, but *adduced* no proof in support of his *allegation* (*Cent Dic, Smith's Synonyms*)

DISTINGUISHED FROM "OFFER" The word "adduced" is broader in its significance than the word "offered" [See *Beatty* v *O'Connor*, 106 Ind 81 (Am), *Black L. Dic*]

ADDUCING EVIDENCE Merely putting in papers through a witness for the prosecution in the course of ordinary cross-examination, is not "adducing any evidence" within the meaning of S 292, Cr P Code, and does not give the prosecution the right of reply [*Emperor* v. *Abdulah*, 1 Ind Cas 280 (284) Per Beaman, J]

Ad eaquae frequentius accidunt jura adaptantur. A maxim meaning "the laws are adapted to those cases which most frequently occur" (*Broom Max*)

Adeem. To revoke, as a legacy, grant etc, or to satisfy by some other gift

Ademptio. (Lat) A revocation of a legacy.

"ADEMPTIO" "Ademption" defined, Act 10, 1865, S. 139; Act 39, 1925, S 152.A taking away or revocation (applied to legacies) Recalling or cancellation of a legacy, where there is a specific legacy, and the subject-matter does not remain the property of the testator at his death, the legacy is said to be *adeemed*, *i.e*, the subject-matter being gone from the testator's estate, the gift also is gone, so, there is an ademption when the purpose for which the specific legacy was given has been otherwise provided for by the testator. (See *Tomlin Stroud*,) Ademption is complete or partial revocation of a benefit given by will, by a subsequent event in the testator's lifetime, not being a revocation by a testamentary instrument or in a manner authorised by law.

Ademption of legacy. "If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed, that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will" Act XXXIX of 1925 (Succession), S 152. See also *Williams on Executors*, part III, bk III.

Adhsali.

"**Aden**", defined Reg 2, 1891, S 2. In the Aden Civil and Criminal Justice Regulation, and in all enactments and rules heretofore passed and made by the Governor-General in Council or the Governor of Bombay in Council, the word "Aden" shall, unless there is something repugnant in the subject or context, or the word is used with reference to Her Majesty's Vice-Admiralty Court at Aden, be construed to mean the settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council Bom Act II of 1864. (Aden Civil & Criminal Justice), S 2.

Ad filum viae (Lat) To the middle of the way

Adha The word "adha" indicates the underground rights *Agabeg* v *Hargobind*, 118 I C 603= 1929 Pat 190

Adha and Urdha, indicate all below, on and above the surface "The words "*adha*" and '*urdha*" used in a grant indicate a clear intention to convey all below the surface as well as all on it or above it" [*Raja Maharaj Kumar Satyanranjan Chakravarti* v. *Ramlal Kaviraj*, 48 M I J 328=4 Pat 244=52 I A 109=29 C W N 725 (P C), foll in 1929 Pat 190]

Adharam (*Mal*) A prop or support, a canal, a dyke, a document, a voucher or title-deed, by which a right to property is established

(*Karn*) A canal or watercourse for irrigation It is used in Karnataka in composition, to denote various modes of irrigation

Adherence. The character of being fixed in attachment, fidelity, steady attachment as, an adherence to a party or opinions as, a rigid adherence to rules. "A tenacious adherence to the rights and liberties transmitted from a wise and virtuous ancestry." (Addison)

Adhesive Sticky, tenacious, as glutinous substances of the nature of adhesion as, adhesive stamps (*See* Ind Stamp Act, 1899, S 11)

Adhiar. (*Hindi.*) A cultivator who assists in cultivating land on condition of receiving half the crop (*Whiteworth Anglo-Indian Gloss*)

An *adhiar* may be a mere labourer or he may be a tenant, and the question whether he is a mere labourer or a tenant must or depend upon the facts of each case 85 I. C 939=26 Cr L J 651=1925 Cal, 1068

"**Adhsali**"—"**Adhsalidar**" meaning of 75 P. R. 1911=10 I C 147. (*Adhasali* implies partnership in payment of Revenue only Adhasalidar in the Kangra district is neither a joint owner nor a joint tenant, and so is not entitled to seek a partition of the holding).

Adi

Adi (*Tam*) A foot, also a measure of length, a short foot

Adi cheri Near the town, a village near a town, a suburb, that part of the village in which the hereditary proprietors reside

Adike-kriyavasi (*Karn*) A tax on betelnut tree groves in Mysore

Adiki-gonikar (*Karn*) A tax on the hire of the Gonikars, a low caste of Hindus employed to gather the areca-nut from the gardens of the Ryots in Mysore.

Adikol (*Tam*) A measuring rod.

Adil al Rahn. In Mohammadan law, a third party to whose keeping a pledge or security given by a borrower to a lender is entrusted (*Wil Gloss* 8)

Adima (*Mal*) Mortgage of land for a sum inferior to its value by a superior to a person of a low caste, hence sometimes applied to a grant of land by a superior to an inferior, either rent-free, or at a quit rent the land, in either case, reverting to the grantor on failure of heirs of the grantee

Adima-janm panam (*Mal*) Price or fee paid for receiving land by Adima tenure

Adima-paramba (*Mal*) A plantation or garden held by an Adima grant

Adimayavana right The use of the expression "adimayavana right" indicates some kind of permanency Two kinds of adimayavana rights have been recognized, the right in respect of the entire land itself subject to payment of certain rents to the jenmi, and also an adimayavana right limited in extent and confined to a certain rent charge. But both kinds of right have been recognized to be perpetual and permanent 110 I C 759=A I. R 1928 Mad 1094 *See also* 27 M. 202, 30 M 203

Adinakartar A proprietor, an owner, a landlord, an heir or inheritor.

Adinam. Government, property, management, control (*Wil Gloss*)

Adippukkuli (*Tam*) Wages for thrashing corn

Aditia or Aditiya A mercantile correspondent or agent as in the term *Pucca aditya agency*

Adjacent close, contiguous.

"Adjacent" and "Adjoining". Two or three plots of land may be said to be adjacent to the first, while only the second can be said to be adjoining (*Cyc Law Dict.*)

Adjective Law Law regulating Procedure (as) the law as to pleading, practice, evidence etc.

Adjourn To put off or defer; a formal intermission of business, to suspend a sitting meeting, or transaction till another day, or transfer it to another place, usually said of Courts, legislatures, or other formally organised bodies as, the legislature adjourned at four o'clock, the meeting adjourned to another place **Adjourn, is also used in its popular sense, i e, "deferring or postponing an inquiry to a future day"** [Per *Mellor, J.*, in *Fitzgerald's case*, (1869) L.R. 5 Q.B. 18.]

Adjudicate

ADJOURN, PROROGUE, DISSOLVE, are used to public bodies when they suspend business When a deliberative body *adjourns*, it merely, suspends (usually for a brief period) its deliberations which may be resumed where they ended at the next meeting, except for something to the contrary in its rules of procedure. When the Parliament is *prorogued* the session is ended, and all bills not enacted are quashed and can be taken up only *de novo* at its subsequent session, when a deliberative body is *dissolved*, it entirely ceases to exist, and it cannot have any further meeting or session as such (*Cent Dict, Webs. Dic*) "A prorogation is the continuance of parliament from one session to another" (*Blackstone*)

Adjournment A putting off until another time or transfering to a different place (*Tomlins*) Act of adjourning or state of being adjourned, also, the time or interval for which a body adjourns

ADJOURNMENT, RECESS, PROROGATION, DISSOLUTION, "*Adjournment* is the act by which an assembly suspends its session in virtue of authority inherent in itself, it may be also the time or interval of such suspension A *recess* is a customary suspension of business, as during the period of certain recognised or legal holidays as, the Easter recess. Recess is also popularly used for a brief suspension of business for any reason as, it was agreed that there be a recess of ten minutes This may be a short interval for the purpose of repose or refreshment A *prorogation* is the adjournment of the sittings of a legislative body at the instance of the authority which called it together, as the Sovereign, during a prorogation it can hold no sittings, but in order to resume business must be again summoned the close of a session of the British Parliament is called a prorogation *Dissolution* is the Act by which the body, as such, is broken up, and its members are finally discharged from their duties The dissolution of the British Parliament necessitates a new election." (*Cent Dict*)

Adjourn sine die (literally to adjourn without day). To adjourn without setting a time to reconvene or recommence business or sit again; specifically to adjourn without intending or expecting to sit again.

Adjudge To decide or pass upon or determine judicially, to settle, decree, to determine in the exercise of judicial power, to decide or determine judicially, to adjudicate, as, the case was adjudged Adjudge does not necessarily imply a final judgment, but is used as well of awards or decisions of arbitrators or other judicial officers, interlocutory orders or decrees of a Court The word, in the past tense, is also used in the sense of "*deemed*" In *State* v. *Price*, 11 N.L J. 241 (258) it is said "The word '*adjudged*' is here used by the legislature, perhaps not very aptly, as synonymous with 'deemed' They have so employed the word 'adjudged' in the Act regulating lotteries 'All lotteries shall be and are hereby *adjudged* to be common and public nuisances'". (See also *Bla ufus* v. *People*, 25 Ame. Rep 148)

The word also means, "To sentence, to condemn, "Without reprieve adjudged to death". (*Milton.*)

Adjudicate To hear or try and determine, as a court, to settle by judicial decree, to adjudge (as). The Court "*adjudicated*" upon the case

Adjudication.

Adjudication. The act of adjudicating, the process of trying and determining a case judicially, The application of the law to the facts and an authoritative declaration of the result (*Shumaker*, 30)

"An *adjudication* in favour of natural rights". (*Burke*) A solemn or deliberate determination by the judicial power, the act of giving judgment The term is principally used in bankruptcy proceedings, the adjudication being the order declaring the debtor to be bankrupt

ADJUDICATION, ARBITRATION Adjudication is used of the determination of matters in dispute by the decision of a competent Court, arbitration of the determination of such matters by the decision of arbitrators, whose decision may not be binding until confirmed by a higher Court or assented to by the parties

FORMER ADJUDICATION, is previous judicial decision between the same parties or those whom they succeed, available or sought to be made available, as a bar to subsequent litigation involving the same point (*Res judicata*)

Adjuration The act of adjuring, a solemn charging on oath, hence an earnest appeal, or "To the *adjuration* of the High Priest' Art thou the Christ, the son of the blessed God" Our Saviour replies in St Mathew, "Thou hast said" (*Blackwell, Sacred Classics*, II, 163) "What an accusation could not effect, an *adjuration* shall' (*Bp Hall*)

Adjure To charge, entreat solemnly, bind or command earnestly, often with an appeal to God or the invocation of a curse in case of disobedience, hence, to entreat or request earnestly as, "I adjure Thee by the living God" Mat xxvi 63

Adjust. To put in order, to fit, to make exact, to regulate or reduce to a system, to bring to a proper state or position as, to adjust a scheme, to adjust affairs, to settle satisfactorily so that parties may be agreed about the result (as) the differences between contending parties have been *adjusted*, to *adjust* accounts

Adjustment. That which serves to adjust or adapt one thing to another or to a particular service as, the adjustments of constitutional Government "The nicest of all the *adjustments* involved in the working of the British Government is that which determines, without formally defining, the internal relations of the cabinet" (*Gladstone*)

Where matters in dispute are referred by the parties to arbitration without the intervention of the Court and subsequently the award is accepted by them, such acceptance is an "adjustment" within the meaning of rule 3, O 23 of the C P. Code (*Shanmugam Chetty* v *Annamalay Chetty*, 15 I C. 929=5 Bur. L T. 125=6 L.B.R. 55)

"Adjustment" defined. Act XV of 1887, S. 3 (5).

IN THE LAW OF MARINE INSURANCE the adjustment is ascertaining and settling the amount which the assured, after allowances and deductions are made, is entitled to receive under the policy, and the fixing of the proportion which each underwriter is liable to pay. (*Arnold*).

Adjustment of suit. (*Hukum Chand* v. *Radha Kisan*. 29 I.C 858.) *See also* 15 I.C. 959.

Administer

Adjutant. A regimental staff-officer, with the rank of the first lieutenant, appointed to assist the Commanding Officer of a regiment in the discharge of the details of his regimental or garrison duty.

"Adjutant" means a person appointed by the Local Government to be an Adjutant of Military Police, and in Lower Burma includes a District Superintendent of Police and an Assistant District Superintendent of Police in charge of the police of a district or of a sub-division." Bur. Act XV of 1897 (Military Police), S. 3, Cl 5.

Adjutant-General A staff-officer, the chief assistant of a commanding general in the execution of his military duties, a principal staff officer of the army

Adjutant's call The call at which, upon parade, battalions are formed in line and presented by the adjutants to the battalion commanders

Adjuvari quippe nos, non decipi, beneficio oportet A maxim meaning "we ought to be favoured, not injured, by that which is intended for our benefit" The species of bailment called "loan" must be to the advantage of the borrower, not to his detriment (*Story, Bailment* S. 275, *Blackmore* v *Bristol and Exetor Railway Co*, 120 E R 391=8 El. & Bl 1051.)

Adlegation A deputing, a sending away with a commission, sending of an ambassador (*Ency-Brit*)

Admeasurement The process of measuring, the ascertainment of the dimensions of a thing or of the numerical amount of any quantity The numerical amount or measure of anything, whether a number, dimensions of a solid, bulk of a fluid, mass, duration, or degree In law, ascertainment and assignment of the due proportion as, admeasurement of damages, or of dower in an estate, admeasurement of the right of an individual in a common pasture (*Blackstone*.) Act or process of ad-measuring, as, the admeasurement of a ship or of a cask, the adjustment of proportion

Ad medium filum viae Where the boundary between two properties is a non-navigable river, a road or a ditch, the respective proprietors are presumed to have control up to an imaginary line or thread (*filum*), drawn through the centre of such river, road, or ditch The same rule applied whether the properties on both the sides be private property of individuals or corporations or of villages, or municipalities. (*Coulson and Forbes, Water Rights.*)

Adminicle That on which a thing is supported, any writing tending to establish the existence or terms of a document, as a lost deed, an imperfect proof. (*Bouvier*).

Adminicular. Supplying help; auxiliary, corroborative, as, adminicular evidence.

Administer. To direct or manage; to furnish, to give, to dispense; to tender (as) persons having authority to *administer* an oath, to fulfil the functions of or perform the duties of an administrator. "The word 'minister' is said to be derived from the same root as the latin word *manus*, the hand. Etymologically, therefore, the word 'administer' would

Administration.

seem applicable to anything that could be done by the hand, to or for another". (*Blackburn* v *State*, 23 Ohio St 146, 162)

To "*administer*" *a deceased's estate*, as that phrase is used in an administration bond, includes the duty of keeping the estate intact, after it has been collected and got in, until it is duly administered [*Dobbs* v *Brain*, (1892), 2 Q.B 207] The term is also applied to the management of public affairs (as) to administer the government

In *criminal law*, 'to administer' means to cause or procure a person to take some drug or other substance into his or her system, to direct and cause a medicine, poison, or drug to be taken into the system

To "*administer*" *a Poison or a Drug*, embraces every mode of giving it, or causing it to be taken (*La Beau* v *People*, 34 N Y 233) "If I call in a physician and he writes his prescription, and I take the medicine, is that not an *administering* by him" (*Per* Park, J., in *R* v *Harley*, 172 E. R 744)

Administration A term applied broadly to denote the management of an estate by a person appointed by authority of law to take charge thereof in place of the legal owner (*Bouvier*) The management and disposal of the estate of an intestate, or of a testator, having no executor, also, in the largest sense, management, etc, by an executor, the right of management, conferred by what are called letters of administration (*Kendrick*) Government of public affairs The executive part of Government. "The administration has been opposed in Parliament" (*Johnson*) Dispensation (as) Administration of Justice

Administration Action Suit to compel due administration of the estate of deceased persons, gradual growth, and founded rather on the necessity of supplying the defects of the Courts of common law and the ecclesiastical Courts, than on execution of trusts cognisable in equity alone

Administration bond The bond which must be given (with or without) sureties by any person to whom the letters of administration are granted

Administration (Foreign) An administration under the sanction and jurisdiction of a different state or nation (*Shumaker* 32)

Administration of Government The management of the executive department of the government

Administration, Letters of The instrument or authority by which an administrator is authorised by court, to have the charge and administration of the goods of an intestate

Administration ad colligendum That which is granted for collecting and preserving goods about to perish

Administratio, ancillary That which is subordinate to the principal administration, for collecting the assets of foreigners, taken out in the country where the assets are locally situate (*Kent, Com* 43 *et seq*; *Williams, Exors*)

Administratio cum testamento annexo. That which is granted where no executor is named in the will, or where the one named dies, or is incompetent or unwilling to act, Administration with the will annexed.

Admiral.

Administratio de bonis non: That which is granted when the first administrator dies before having fully administered. (*Rolle, Abr.* 907).

Administratio de bonis non cum testamento annexo. That which is granted when an executor dies leaving a part of the estate unadministered. (*Comyn. Dig*)

Administratio durante absentia That which subsists during the absence of the executor, and until he has proved the will It is generally granted when the next of kin is beyond sea, lest the goods perish, or the debts be lost. [In re *Cassidy*, (1832) 4 Hagg. Ecc 360=162 E R 1477 *Taynton* v. *Hannay*, 127 E R 16]

Administratio Durante Minori aetate That which is granted when the executor is a minor It continues until the minor attains his lawful age to act (*Piggot's Case* 5 Coke, 29-a=77 E R. 95)

Administratio pendente lite That which is granted pending the controversy respecting an alleged will or the right of appointment An officer of the court is appointed to take care of the estate only till the suit terminates. (*Walker* v. *Woollaston*, (1731) 2 P Wms 576 at 589=24 E.R 868 2 Atk. 285 at 286=26 E. R 575)

Administration suit A suit brought by any one interested, for administration of a decedent's estate when there is doubt as to its solvency.

Administrative Of, or pertaining to administration, administering, executive, as, administrative law, an administrative body

Administrative county The area for which a county council is elected

Administrative Law. That branch of public, law which deals with the various organs of the Sovereign power considered as in motion, and "prescribes in detail the manner of their activity, being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization, sanitary, measures, poor laws, public safety and morals" See *Holland Jurisprudence* 305-307

Administrator. One who administers, a manager or conductor of affairs, especially of another (*Kendrick* 25) The person to whom Letters of Administration are granted, "He that hath the goods of a man dying intestate committed to his charge by the court for which he is accountable when thereunto required" (*Tomlins*)

"ADMINISTRATOR" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor Act XXXIX of 1925 (Succession), S. 2

"Administrator General" defined. See Act 2, 1874, s. 68 (4)

Administratorship The office of an administrator.

Administratrix A woman who administers the estate of an intestate, a woman to whom letters of administration have been granted.

Admiral. A naval officer of the highest rank, the Commander-in-chief of the navy (Johnson), an admiral is an officer of the Crown, exercising its jurisdiction by sea.

Admiralitas jurisdictionem non habet super.

Admiralitas jurisdictionem non habet super is quae communisege dirimuntur. A maxim meaning "A Court of Admiralty has no jurisdiction over those things which are determined by common law." (*Morgan. Leg Max*)

"Admiralty" defined 52-3 V C. 63, s. 12 (4).

ADMIRALTY is that branch or department of law which relates to maritime property, affairs, and transactions, whether civil or criminal. In a more limited sense it is the tribunal exercising jurisdiction over maritime causes and administering the maritime law by a procedure peculiar to itself and to some extent, and in respects, distinct from that followed by other courts *Williams and Bruce.* Admiralty Practice

Admiralty action. Every action which is maintainable in the Admiralty Division of the High Court See *Williams and Bruce*, Admiralty Practice, *Roscoe*, Admiralty Practice.

Admiralty cause, Admiralty action. An action against a Pilot for Collision Damage caused by a vessel under his charge, is not an "Admiralty Cause' or action (*Flower* v *Bradelay*, 44 L J. Ex 1)

"Admiralty or Vice-admiralty cause" defined, Act 16, 1891, s 3,

"Admiralty Court" defined. See Act, 16, 1891, S 3

Admiralty Division Division of the High Court consisting of the specified number of Judges which exercises jurisdiction in admiralty actions [Judicature Acts, (1873), Ss 16, 22, 31, 36, and (1875) S 11. *See also* Letters Patent of the various High Courts, *Williams and Bruce*, Admiralty Practice, *Roscoe*, Admiralty Practice]

Admissible Proper to be received, capable and worthy of being admitted As applied to evidence, the term means that it is of such a character that the court or judge is bound to receive it, that is, allow it to be introduced in evidence (*Black*, 39)

"Admission" defined See Evidence Act I of 1872 S. 17. The term "admission" in S 70, Evidence Act, relates only to the admission of a party in the course of the trial of a suit, and not to the attestation of a document by the admission of the party executing it. *Abdul Karim* v *Salimun, 27* C 190 See also *Girindranath* v *Bejoy Gopal*, 26 C 646; *Nurul Hossein* v. *Sheo Sahae*, 19 I A 221=20 C. 93 (P.C.)

Admission in criminal cases An admission in a criminal case, commonly called a confession, is any statement made by an accused person of his guilt, or of any fact or circumstance tending to prove it.

Admission of claim. The claim or part thereof which a defendant may admit, under Order IX, rule 8, Civil Procedure Code, must be the claim as laid down in the plaint and for the amount stated therein and not simply of the cause of action The words *"admits the claim or part thereof"* in the said rule apply to a case where, on examining the plaint and the defendant's admission in the written statement, it can be considered that he, there and then, agreed to pay the money or to submit to the relief claimed in the plaint. (*Muniswami Goudu* v. *Junjadu*, 35 Ind. Cas. 65).

Ad officium Justificariorum Spectat Unicuique.

Admission to bail. Order of court or magistrate that an accused person be discharged from custody upon the taking of bail.

Admittable. (*Rare*) capable of being admitted or allowed.

Admitted "Admitted" as a member of a company is equivalent to being "elected" as such (when election is the mode prescribed for admission of a new member) [*R* v *Saddlers Co*, 32 L J Q B 337.] All allegations in the pleadings which are not specifically denied are taken to have been "admitted" (R S C. O. XIX, R 13, (C P. Code, 1908, O 8, R 5.) but the terms debts *"admitted" or "established,"* in S. 26 of the Indian Insolvency Act, mean admitted in the Schedule or established on proof, and not that it has been alleged and not denied (*In the matter of Bucktwar Chand*, 1 C W.N 328)

Admitted Debt See (*In the matter of Baktwar Chand*) 1 C W N. 328)

"Admitted in evidence" The expression "admitted in evidence" in S 36 of the Stamp Act means the act of letting the document in as part of the evidence, as a result of the judicial determination of the question whether the document is admissible or not for want of stamp In other words, the Court admitting it must have applied its mind consciously to the question whether the document is admissible or not Where a document which is not admissible for want of stamp is allowed by the Court to go in, the question of stamp escaping its notice as well as the attention of the parties, the admission is a judicial determination of the question, because the Court let in the document on its view that there was nothing against its admission (*Chunilal* v. *Mulabai*, 12 Bom L R 466=6 Ind. Cas 903)

Admitted set-off, in the English County Courts Act, 1888 means set-off admitted by *both* parties [*Hubbard* v *Goodley* (1890), 25 Q B D 156.]

"Admitted to occupation" defined Act VIII, 1885 s. 47

Admix To mingle with something else

Admixture The act of mixing, the compound formed by the mixture of different substances. Improper admixture of foodstuffs would be an offence against laws relating to prevention of adulteration of food and drink

Admonish To counsel against wrong practice, to warn mildly, to give a gentle caution or advise.

Admonition. Gentle or friendly reproof or warning, counselling against a fault or error, expression of authoritative advice or warning, used commonly of an ecclesiastical censure. (*Syn.* warning, caution, reproof, rebuke, reprehension)

Admonitioner One who admonishes, a person who dispenses admonitions (*Hales*)

Adna-malik (P.) Inferior proprietor, [Bad. 1 200 (*cf* ala-malik)].

Ad officium Justificariorum Spectat Unicuique Coram eis placitanti Justitiam exhibere A maxim meaning, "It is the duty of justices to administer justice to every one pleading before them (*Coke. Inst*, 451).

Adolescence. That age which follows puberty & precedes the age of majority. (*Wharton*; *Bouvier*).

Adolescency.

State or process of growing up from childhood to manhood or womanhood, youth, generally considered to be in the male sex from fourteen to twenty-five years of age, and in the female sex from twelve to twenty-one. (*Dunglison* cited in *Webs* See *Work Com. Act*, 1923, S 2)

Adolescency Quality or state of being adolescent, youthfulness, advancing from childhood to manhood

Adolescent, defined, Act 25, 1934, S 2.

Adoni jenmum; Adoni Janm In Malabar, kind of leasehold tenure, where artificers, and the like, hold small spots of ground from Rajahs and greatmen (*Fifth report*)

Adopt To take and receive as one's own that which is not naturally so, to take into one's family as son and heir to the adopting person

Adopt also means to select and take (as) to adopt the opinions of another Distinguished from *"enact"* To enact implies the creating a new law which did not exist before, but 'adopt' no doubt implies the making that their own which was created by another."

ADOPT, EMBRACE, ESPOUSE, come into comparison with reference to opinions, policies or practices. *Adopt* stresses the idea of making voluntarily one's own what (it is usually implied) one owes in some fashion to another, as, to adopt the Fabian policy, to adopt the tenets of a party, the methods of a school *Embrace* adds to adopt the implication of eager or joyful acceptance, as, to embrace Christianity "We must embrace this gentle offer of the perilous times." (*Shakespeare*) *Espouse* adds the further implication of close attachment to the cause adopted, and participation in its fortunes, as, to espouse a friend's quarrel "I never espoused any party with violence" (*Spectator*)

Adopted. Taken by adoption, as, an adopted son or citizen

Adopter. One who adopts.

Adoption Act by which relations of paternity and affiliation are recognized, as legally existing between persons not so related by nature, the act of adopting "The legal act whereby an adult person takes a minor into the relation of child, and thereby acquires the rights and incurs the responsibilities of a parent in respect to such minor." (*Abbott-L Dict.*) An act by which a person appoints as his heirs the child of another" (*Rapalje-Law Dict*)

"Adoption appears to have been a necessary concomitant of the type of archaic society when the family constituted the unit of the community, and was an important factor in developing society into the broader community called the State Mr Maine, in his work on Ancient Law, says 'We must look on the family as constantly enlarged by the absorption of strangers within its circle, and we must try to regard the fiction of adoption as so closely simulating the reality of kinship that neither law nor opinion makes the slightest difference between the real and adoptive connection". (*Morrison* v. *Sessmons*, 14 Am St. Rep. 500.)

Adoption was known among the Hindus, the Assyrians, Egyptians the ancient Jews, Greeks and Romans.

Adoption in Hindu Law.

While the adoption of children is a practice of the greatest antiquity, which was recognized by the civil law from its earliest date, and obtains among the continental nations of Europe whose jurisprudence follows the civil law it was unknown to the common law of England and exists in the United States of America solely by virtue of statute (1 *Ame Cyc.* 917) But now even in England under the Adoption of Children Act 1926 (16 and 17 Geo 5, C. 29), S 8, there is statutory recognition of the position of adopted children

Adoption in Hindu Law "Adoption has been spoken of as "new birth" in many cases, a term sanctioned by the theory of Hindu Law Nor is the expression a mere figure of speech The theory itself involves the principle of a complete severance of the child adopted from the family in which he is born . and complete substitution into the adoptive family, as if he were born in it" "The fundamental idea is that the boy given in adoption gives up the natural family and everything connected with the family." The expressions "Civilly dead or as if he had never been born in the family" are not for all purposes correct or logically applicable, but they are complimentary to the term "new birth"

Consideration of the intimate connection, which primitive Hindu Laws established between the funeral offerings and ceremonies on behalf of the dead and the right of succession to his property, will show that ceremonially the adopted son only becomes new-born in the family of his adoptive father, so as to be qualified to provide efficaciously the offerings of which the dead have need, by first dying in the family of his birth, out of which he is given by his natural to his adoptive parent, and in which his offerings will be no longer efficacious or desired [*Tewari Raghuraj Chandra* v *Rani Subhdra Kunwar*, (1928) 55 I A. 139=3 Luck. 76=32 C W N. 1009=A I R (1928) P C, 87=55 M.L. J. 778 (784-5). Per *Viscount Sumner*]

The adopted son has in his new family precisely the same rights as a natural born son, save only when the question is one that raises a competition between the natural and the adopted son. [*Krishnamurthi Ayyar* v *Krishnamurthi Ayyar*, (1927) 54 I A, 248=50 M 508=31 C W N. 910=(1927) P.C. 139 53 M L J 57 (P.C.)]

An adopted son is a lineal descendant within the meaning of the Agra Tenancy Act, *Lala* v *Nahar Singh*, 34 All 658=10 A L.J 299=16 I C 181.

ADOPTION—DVYAMUSHYAYANA FORM. To constitute a dvyamushyayana there must be a special agreement between the two fathers to that effect. The consequences of a dvyamushyayana adoption are different from those of an ordinary adoption inasmuch as the children of the adopted sons would revert to their natural family Hence the adoptive father fails by such an adoption to perpetuate his own line of male succession [*Srimati Uma Devi* v. *Gokoolanund Das*, 5 I A 40=3 C. 587 (598-9) (P.C.).]

ADOPTION—KRITRIMA FORM The son adopted in the Kritrima form retains his rights of inheritance in his original and natural family [*Srimati Uma Devi* v *Gokoolanund Das*, 5 I.A. 40=3 C 587 (599-600).]

ADOPTION OF ILLATOM SON-IN-LAW. Decision of the High Court that a member of the Kamma caste, a Sudra sub-caste, although a member of a joint family and having a natural-born son, can adopt an

Adoptive Acts.

illatom son-in-law, affirmed upon evidence of custom among the Kammas given in the present case and in a previous unreported case. [*Nallurı Kristanamma* v. *Kamepallı Venkatasubbayya*, (1919) 46 I A 168= 42 M 805=23 C.W.N 1010=37 M L J 1 (P C).]

ADOPTION—SIMULTANEOUS ADOPTION. Under the Hindu law, a simultaneous adoption is invalid. [*Surendrakeshav Roy* v *Doorgasundarı Dassee*, (1892) 19 I A 108=19 C 513 (530)]

SUCCESSIVE ADOPTIONS "It is not necessary to consider in what way successive adoptions may operate. It is sufficient to say that the law has established that they may take place.' [*Rajah Vellankı Venkata Krishna Rao* v *Venkata Rama Lakshmı Narasayya*, (1876) 4 I A 1=1 M 174 (187) (P.C.)]

FABRICATED ADOPTIONS, SECURITIES AGAINST "The Romans and other nations which incorporated the Civil with their municipal laws have wisely provided securities against fabricated adoptions By the Civil Law the sanction of the Magistrates was essential to the validity of the adoption of an infant, these Magistrates regarding the circumstances of the person proposing to adopt, and those of the child that he was desirous of adopting, being authorised to decide whether the adoption would be to the advantage of the latter By the Code Napoleon, adoptions must be registered in the Court of first instance, and in the Imperial Court, and in the latter an opportunity is afforded to the relations of the person proposing to adopt a child, of showing that the adoption proposed ought not to be allowed, the Court having authority either to confirm or to annul any adoption

"The law of adoption owes its origin to the timorous superstition of the inhabitants of India These people, vainly imagining that, by leaving male children in this world, they secure themselves against the torments of the next, seem to have been so anxious to obtain natural or adopted sons, that they have established but imperfect securities against fabricated adoptions." [*Sutroogun Sutputty* v *Sabitra Dye*, (1835) 5 W R (P C.) 109=1 Suth. 36 (36)]

ADOPTION—REVOCATION OF Once a person makes an adoption, he has no power subsequently to revoke the adoption [*Dewakar* v. *Chandanalal Rao* (1916) 44 C 201=21 C W N 314=12 N L.R. 164=32 M L.J 636 (P.C.)]

ADOPTION OF GIRLS *Adoption of girls* is not known to the general law of Hindus. A local, tribal or family custom of adoption of girls must be proved by those who allege it [*Ghasıtı and Nanhı Jan* v. *Umrao Jan*, (1893) 20 I.A. 193=21 C. 149=52 P.R 1893 (P C.)]

ADOPTION—MAHANT AND CHELA *Adoption* in Cl. 5 of S. 32 of the Ind Evidence Act is not to be interpreted in a restricted sense The *relationship between a mohunt and his chela* is a relationship by "adoption" within the meaning of that clause. (*Achyutananda Dass* v. *Jagannath Das*. 21 C.L J. 96)

Adoptive Acts—*See* 56 and 57 Vict. c. 73, S 7 (1) and 62 and 63 Vict c. 14, s 34 'Adoptive Act', means an Act of Parliament depending on the vote. of some public body or on that of a particular number of voters.

Ad-promisor. (Lat.), a surety, guarantor, one who binds himself for another; one who adds his own promise to the promise given by the principal debtor. (*Black*)

Ad proximum antecedens fiat relatio nisi impediatur sententia. A maxim meaning "relative words refer to the next antecedent unless by such a construction the meaning of the sentence would be impaired" (*Broom-Leg. Max*)

Ad quaestiones facti non respondent judices; ad quaestiones legis non respondent juratores. A maxim meaning "as regards cases tried by a Judge and jury, the Judge does not decide questions of fact and the jury do not decide questions of Law" (*Byrne*) In other words "it is the office of the Judge to instruct the jury in points of law— of the jury to decide on matters of fact" (*Broom*)

Adrift. Floating at randum.

"ADRIFT" (with reference to timber) defined. *See* Bur Act 4, 1902, S 40 (2).

Adrogation A species of adoption in ancient Rome by which a person capable of choosing for himself is admitted into the relation of a son

Adscript One who is held to service as attached to some object or place (as) when a slave is made an *adscript* of the soil (*Bancroft*)

Ad tristam partem strenua est suspicio A maxim meaning "suspicion strongly rests on the unfortunate side" (*Taylor-Gloss*)

Adukkuvathoo (Mal), renewal fees calculated at a certain percentage of the kanom. (*Sundarm Iyer-Malabar Law*)

Adult One who has attained the full age of majority "The expression 'adult', means a person who, in the opinion of the Court before whom he is brought, is of the age of majority." *See also* Act 8 of 1923, S 2, Act 25 of 1934, S 2

"ADULT" in S 31 of the Bengal Public Demands Recovery Act does not mean a person who has attained majority within the meaning of the Majority Act, but a person of such an age as to be capable and responsible for the due communication of the notice to the member of the family for whom it is intended (*Harı Charan Singh* v *Chandra Kumar Roy*, 34 C 787 =11 C.W N 745.)

Adulterant A person or thing that adulterates

Adulterate Articles are adulterated to increase their weight or bulk or to improve or change their appearance or flavour in imitation of an article of higher grade or different kind. Various statutes regulating the sale of food, drugs and liquors have provided that articles shall be deemed to be adulterated under various conditions not involving the addition of any spurious article which the word strictly implies, as in case of the abstraction of any valuable or necessary ingredient, such as the cream in case of milk, the sale of one commodity under the name of another, presence of disease, infection, or taint in the substance or its source; artificial concealment of defect; or treatment to simulate a better article (*Cent. Dic.*)

"Adulteration" means the infusion of some foreign substance" (*Per* Cockburn, C.J., *Francis* v. *Mass*, 47 L.J.M.C. 84). 'Adulteration' has been defined as

Adulterer

the act of corrupting or debasing. The term is generally applied to the act of mixing up with food or drink intended to be sold other matters of an inferior quality and usually of a more or less deleterious character. What shall or what shall not constitute an adulteration within the meaning of particular statutes must, of course, depend upon the terms of the statutes, especially where such terms have been defined by the Legislatures or construed by the Court (See *Bell, Scrivener and Lloyd's Sale of Foods and Drugs Acts*, 4th Ed 1903)

Adulteration is the mixing with any substance intended for sale any ingredient which is injurious to health, or which makes the nature or quality of such substance other than that for which it is to be sold or passed (See *Bell, Scrivener and Lloyd's Sale of Foods and Drugs Acts*, 4th Ed, 1903) An article of food is "adulterated" when any substance, other than which the article purports to be, is mixed with, or added to, or placed upon it, either to increase the bulk or weight or apparent size of the article, or to give it a deceptive appearance (*Fitzpatricke* v *Kelly*, 42 L J.M C 32, L R 8 Q B 337) (as) "The shameless adulteration of the coin" (*Prescott.*)

Adulterer One, esp a man who commits adultery.

Adulteress. A woman who commits adultery.

Adulterine Proceeding from adulterous intercourse Hence Spurious, without the support of law, illegal, A child issuing from an adulterous connection (*Bouvier*)

Adultery "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery" (Penal Code, S. 494.) *See also* Reg V of 1872, S 7. Adultery is the wilful violation of the marriage bed Adultery is the offence of incontinence by married persons

Other definitions Adultery is the voluntary sexual intercourse of a married person with a person other the offender's husband or wife (*Anderson L Dict*) The Civil Law defines adultery to be the "carnal knowledge of another man's wife" By the civil law adultery could be committed only by the unlawful sexual intercourse of a man with a married woman.

It is "the sin of incontinence between two married persons or if but one of the persons be married, it is nevertheless adultery, but in this last case it is called single adultery, to distinguish it from the other, which is double." (*Tomlins L D.* See also *Black*, 41)

"Adultery, living in". *See* 30 M. 332=17 M L.J 279=5 Cr L.J. 359.

Advance As a noun means something that precedes, something paid in advance; such as a payment of money made before it is due (*Shumaker*, 35.)

"ADVANCE" does not mean an advance in money only, an advance may be in money or goods. (*M'Kune* v. *Joynson*, 5 C.B N S. 218; *Stroude*, 45.)

An act of approach, anything done to bring about accord or any relation with another or others (Milit) The order or signal to advance. as, the advance was sounded.

Advancement

He who or that which is at the head; especially the leading body of an army.

"I got back on the 5th with the advance, the remainder following as rapidly as the steamers could carry them" (U S Grant, Pers. Mem 1, 290.)

"ADVANCE" "*Advancing*" and '*lending*' money may each have a different signification. Money may be 'advanced' without being 'lent' (Per *Bacon, V C London Financial Assn* v *Kalk*, 53 L.J Ch 1037)

Advance guard (in Mil. law) A body of troops or other force marching or stationed in front of the main body of the army to clear the way, to guard against surprise attack by the enemy, etc

Advance post, a position occupied by a force of defenders in advance of the main line of battle, an auxiliary fortification, constructed within accurate rifle range, in advance of a ditch of a fortification.

Advance-sheets (Print) Unbound sheets of a book furnished before publication, as for review or reproduction.

Advance signal (Rail-Road Law) In the block system, a signal to which a train may proceed beyond the beginning of a block, although the whole block is not cleared

Advance tracks Certain tracks in a rail-road "Where the traffic is so heavy that the distribution of cars must be carried on uninterruptedly, a third division, known as the "advance" or "departure" tracks is made to receive the trains as soon as they are made up on the distribution tracks and hold them while they await orders to proceed" (*W.M Camp.*)

IN ADVANCE, In front, before Beforehand, before receiving an equivalent. In the state of having advanced money on account, as, *A* is in advance to *B* fifty dollars (*Cent Dict*)

Advances Moneys paid before or in advance of the proper time of payment, money or commodities furnished on credit, money advanced to be repaid conditionally (*Black* 42)

The term applies to payments made on account of moneys to become due It is applied to a number of specific transactions, as payments made to the owner of goods by a factor or agent, who has or is to have possession of the goods for the purpose of selling them, payments by a guardian to the ward out of the latter's funds, etc (*Shumaker* 35). "The account was made up with intent to show what *advances* had been made" (*Kent*).

Advancement. An advancement is an irrevocable gift *in praesenti* of money or property, real or personal, to a child by a parent to enable the donee to anticipate his inheritance to the extent of the gift. It is, frequently, a payment to persons before they become absolutely entitled to, but who are presumably entitled to, or have a vested or contingent interest in, an estate or legacy (per *Cotton*, L J., *Abram* v. *Aldridge*, 55 L.T. 556). To constitute an advancement the gift must have been made by the intestate and the payment or transfer must be obsolete in the sense that the donor must part with all control over it. It must be an irrevocable gift *in praesenti*. There must ordinarily be an actual delivery or change of possession of the property.

Advancement and Ademption.

"In England, where the person in whose name a purchase is made is one for whom the party making the purchase was under an obligation to provide, the presumption is advancement; and it is said that that ought to be deemed the law of India also not, because it is the law of England but because it is, founded on reason and the fitness of things, or natural justice, that on such grounds it ought to be considered the law of India. Their Lordships are not satisfied that this view of the rule is accurate, and that it is not merely *proprii juris* Various reasons may be urged against the abstract propriety of the English rule It is merely one of positive law and not required by any rule of natural justice to be incorporated in any system of laws, recognising a purchase by one man in the name of another, to be for the benefit of the real purchaser. Their Lordships, therefore, are not prepared to act against the general rule, even in the absence of peculiar circumstances; but in India there is what would make it particularly objectionable, namely, the impropriety or immorality of making an unequal division of property among children". *Gopeekrist Gosain* v *Gungapersaud Gosain*. (1854) 6 M I A 53

The exception in the English law by way of advancement in favour of wife or child does not apply in India *Bilas Kunwar* v *Deoraj Ranjit Singh* (1915) 42 I.A. 202=37 A 557 (565)=29 M.L J. 3 (P C) See also 26 I C 102

The words *"Advancement," "Preferment," or "Establishment in the world,"* seem very nearly synonymous (*Luard* v *Pease*, 22 L J Ch 1069 See also *Louther* v. *Bentick*, L R. 19 Eq 166)

Advancement and Ademption, distinguished An advancement, unlike an ademption has to do with intestate estates only

Advancement and Debt distinguished An advancement differs from a debt in that there is no liability on the part of the child to repay during the lifetime of the donor, nor after his death except (sometimes) by way of suffering a deduction from his portion of the estate.

Advancement and Gift distinguished An advancement differs from a gift in that it is charged against the child.

Advancement and Loan distinguished. An advancement is not the equivalent of a loan, as one making an advancement cannot require its return (*Shumaker* 35)

Advancement of Trial. In order that a cause may be brought to a more speedy trial than if taken according to its position in the list or paper some good reason for urgency must be shown Where the Crown is a party, however, the Court on the application of the law officers, will generally take their cases in the order they suggest In commercial cases and in other urgent cases either party may apply to the Judge for the earliest possible day. See *Daniell's Chancery Practice*, 7th Ed. Vol. 1 p. 528

Advantage, in the Official Secrets Act, 1889 (52 & 53 Vict. c 69), s 7, includes (1) "any office or dignity and any forbearance to demand any money or money's worth, or valuable thing," (2) "any aid vote, consent, or influence; or pretended aid, vote, consent, or influence" and (3) "any promise or procurement of an agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, reward, or advantage as above defined."

Advantages, *"Commodities, Emoluments, Profits and Advantages"* are four words of one sense and nature, implying things gainful" (*London* v. *Southwell, Hob* 304)

ADVANTAGE. Usury, interest; increase "Methought you said, you neither lend nor borrow upon advantage." *Shaks. Mer of Venice*, I, 3.

Advent, "A time containing about a month preceding the feast of the nativity (the advent or arrival of our Saviour) It begins from the Sunday that falls either upon St Andrew's day being the 30th November or next to it, and continues to the feast of Christ's nativity,commonly called Christmas. Our ancestors shewed great reverence and devotion to this time, in regard to the approach of the solemn festival (*Tomlins Law Dic* See also *Wharton*)

Adventism The doctrine that the second coming of Christ and the end of the world are near at hand, preached by William Miller from 1831 on, and by his followers

Adventist. A believer in the doctrine of adventism, a member of a religious body holding to this doctrine,—also called *Second Adventist*

Adventitious That which comes incidentally, or out of the regular course, accidental, casual

Adventure. A mercantile or speculative enterprise of hazard, a venture, a shipment of goods by a merchant on his own account, Sending goods abroad under charge of a supercargo or other agent, which are to be disposed of to the best advantage for the benefit of the owners, the goods themselves so sent *In Marine Insurance* The risk or peril insured against See 14 Fed 233

In Maritime law, " 'Adventure' means, either one of the risks or perils insured against, as in the clause in a policy commencing "Touching the adventures and perils', or the liability or risk undertaken by the insurers, as in the clause in a policy commencing 'Beginning the adventure upon the said goods and merchandizes', or the speculation or undertaking to protect which the assured effected the insurance (*Fenwick* v *Robinson*, 3 C & P 324, *Jenkins* v. *Power*, 6 M & S 289); or a subject of insurance which has been exposed to the risks insured against (*Inglis* v. *Stock*, 10 App. Cas 269, *Stroude-Law Dic.*; 14 Fed 233; *Cyc Law Dic.* 35; *Shumaker.*)

Adventurer One who seeks preferment or position to which he is not entitled, by playing on the credulity or prejudces of others or by similar devious means (*Webster*) An imputation that a person is an "Adventurer," if supported by a proved innuendo, is libellous (*Wakley* v. *Healey*, 18 L.J.C P. 241)

Adversary. One turned against another or others with a design to oppose or resist them, a member of an opposing or hostile party; an opponent, an antogonist, an enemy; foe. "Agree with thine adversary quickly" Math. v. 25. Having an opposing party; not unopposed; as, an adversary suit.

Adverse. Having opposing interests; having interests for the preservation of which opposition is

Adverse Enjoyment

essential. The words "adverse party" (as to competency of witnesses) . . are not limited to adversary positions of plaintiff and defendant, but affect any party, whether plaintiff or defendant, whose interests are actually adverse to those of another party to the action. (8 *Kansas App.* 841)

Adverse Enjoyment The possession or exercise of an easement or right or privilege under a claim of right against the owner, (*2 Washb. R P.* 42; See *Easements Act S* 15)

The enjoyment of land, or estate under such circumstances as indicate that such enjoyment has been commenced or continued under an assertion or colour of right on the part of the possessor 3 *East.* 394 There must be actual possession. But what constitutes such possession varies with the nature and situation of the premises.

Adverse Possession May be defined as "holding possession under a claim of title inconsistent with that of the true owner" (*Ency of the Laws of England*), *See* also Possession may be adverse *ab initio* or may become adverse subsequently. 24 C.W N. 659 =68 I.C 745)

Other definitions. "Adverse Possession" designates a possession in opposition to the true title and real owner, and implies that it commenced in wrong and is maintained against right (*Alexander* v *Polk*, 39 *Miss* 755) Adverse possession, generally speaking, is a possession of another's land which, when accompanied by certain acts and circumstances, will vest title in the possessor (*Black L Dict., Bouvier L. Dict*) Decisions and text-books are unanimous in declaring that the possession must be actual, visible, exclusive, hostile, and continued, during the time necessary to create a bar under a statute of limitations

For the purpose of acquiring title by adverse possession, the nature of the *animus possidendi* is material, whether the *animus* is based on real, false or pretended title The title acquired cannot be higher than what it would be if the pretence or falsehood were true *Muthale Veetil Raman* v. *Puthulal Ambu* 24 I C 95. Possession in order to be adverse must be adequate in continuity, in publicity and extent The mere act of tethering cattle and throwing cow dung on the land of another without the assertion of any adverse right does not by itself constitute adverse possession *Mahabir Misser* v *Nanda Kishore Misser.* 27 I.C. 640. Storing straw ricks upon a land, a part of the Gramanatham which is the property of Government will not by itself give a person any title as against Government by adverse possession.

A person cannot acquire a title by prescription to a land which remains covered with the flood-water of a river for a few months every year, as he must be deemed to have been dis-possessed by *vis major* during the time of the flood and possession during such period remains in the person who has the title to the land. *Baldeo Thakurain* v. *Ugra Nath Misra.* 29 I.C. 278

Adverse witness. Is a witness whose mind discloses a bias hostile to the party examining him. (*Brown L. Dict.*)

An adverse witness may, with the leave of the court, be cross-examined by the counsel calling him.

Advice

Adversus. (Lat) Against.

Adversus periculum naturalis ratio permittit se defendere A maxim meaning "natural reason allows one to defend himself against danger" (*Morgan Leg. Max.*)

Advertise To give public notice of, to announce publicly, especially by a printed notice; as, to advertise goods for sale, for a lost article, the sailing day of a vessel, a public meeting.

"**Advertisement**" Notice given in a manner designed to attract public attention, information communicated to the public, or to an individual concerned, by means of hand bills or the newspaper. The meaning of the word is not however confined to notices printed in newspapers (*Com* v. *Hooper.* 5 *Pick Mass* 42)

"**Advertisements, (Indecent)**" Includes any picture or printed or written matter of an obscene, nature, or indecent advertisement, exhibited to public view or placed so as to be visible to persons passing along a public highway or using an urinal, or is given away or offered to such persons, or is delivered to any one for the purpose of being so exhibited *Indecent Advertisement Act*, 1889, 52 & 53, *Vict.* c. 18 S 3

Advice Counsel given or an opinion expressed as to the wisdom of future conduct, (*Abbott L Dict.*) *In mercantile usage*, direction given by a correspondent (*Burrill L Dict*), information given by letter by one merchant or banker to another in regard to some business transaction which concerns him (*Cyc Law Dic.*) It is also known as Letter of advice.

Advice-Counsel. Advice implies real or pretended knowledge, often professional or technical on the part of the one who gives it, and may apply to any of the affairs of life, as, advice regarding the choice of books, the conduct of a business, legal or medical advice. Counsel is rather the fruit of wisdom or deliberation, and usually presupposes weightier occasions than advice, as, to seek counsel in an emergency, in affairs of state, in matters of litigation. "Counsel of perfection" (*Cent Dic.*)

To take advice To consult with others; specifically to consult one who has a special knowledge of a subject, take the opinion of a professional or skilled person, as a physician, lawyer or the like.

Advice of Court. By O. LV, R. 3 of the R.S.C., trustees, executors and administrators, and any person claiming to be interested as creditor, devisee, legatee, next of kin, or heir at law of a deceased person, or as *cestui-que trust*, under any deed or instrument (either directly or by assignment) may apply by originating summons for the determination of any question arising in the administration of the estate or trust. (*See also* Indian Trust Act)

Advice on Evidence It is customary in all actions in the High Court in England after the pleadings have been closed, to lay the papers in the case before counsel, in order that he may advise upon the evidence necessary to support his client's case, and the steps necessary in order to prepare for the trial. Although the rules of evidence, and the practice

Ad vim majorem

according to which evidence is adduced have in modern times been considerably simplified, this step in litigation is still of great importance in English practice. (1 *Ency of the Laws of England*)

Ad vim majorem vel ad casus fortuitos non tenetur quis, nisi sua culpa intervenerit. A maxim meaning "no one is held to answer for the effects of a superior force, or of accidents unless his own fault has contributed to it".

Advise (Verb) This term is not synonymous with "direct" or "instruct" Where a statute authorizes the trial court to advise the jury to acquit, the court has no power to instruct the jury to acquit The court can only counsel, and the jury are not bound by the advice (*Black* 43)

Advisedly In 13 Eliz. c. 12, s 2 means "deliberately", *i e.* 'after consideration" or "not inadvertently", but not merely "intentionally" *Heath* v *Burder*. (1862), 15 *Moore P C*. 147

"Advisory Committee". Defined *See* Territorial Force Act (XLVIII of 1920), S. 2

Ad vitam aut culpam For life or till misconduct usually applied to the tenure of office.

Advocacy The act of pleading for, supporting or recommending, acting espousal "His advocacy or denunciation of a measure is to affect for evil or good the condition of millions". (*Whipple Ess. and Rev.* 1 193.)

Advocate (From *advocare*, to summon to one's assistance) one who pleads the cause of another in a Court of law, or other judicial tribunal. His duty is twofold—to advise his client before going into Court, and to act for him when in Court He is a person learned in the law and duly admitted to practice, who assists his client with advice and pleads for him in open court.

"ADVOCATE". In the Bar Council's Act means an advocate entered in the roll of advocates of a High Court under the provisions of that Act, Act XXXVIII of 1926 (Bar Councils) S. 2, Cl (a)

Faculty of Advocates in Scotland, a society consisting of the whole body of lawyers who practise in the highest Courts and who are admitted members after following a certain course of study undergoing the prescribed examinations and paying the requisite fees

God's Advocate. The procurator of the cause in the canonization, regularly one of the same order or country as the person to be canonized.

King's Advocate. Colloquial term applied to His Majesty's Advocate-General, a member of the college of advocates appointed by Letters Patent whose office is to advise and act as counsel for the Crown in questions of civil, canon and international law. (*Wharton L Lex.*)

Lord Advocate. The Lord Advocate is the chief law officer of the Crown in Scotland, and one of the great officers of State in Scotland. He is appointed by the Crown, and it is his duty to act as public prosecutor, and to plead in all cases in which the Crown is interested

Queen's Advocate: Same as King's advocate.

Aequior est dispositio legis

'Advocate-General'. The adviser of the Crown. He is the principal law officer of the Crown.

"Advocate-General" includes, where there is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate, such officer as the Local Government may declare to be the Advocate-General for the purposes of this Act, Act XXXVIII of 1926 (Bar Councils) s 2, cl (b), Act II of 1911, S 2 (1), Criminal Procedure Code, 1898, S 4

"ADVOCATE-GENERAL", defined, Act 17, 1864, S. 34 (*v*), Act 2, 1874, S 68 (*v*) Act, 5, 1898, S 4 (*a*), 52 V c. 10, s 11.

"Advocate of a High Court" Defined, Act 15, 1882, S 7.

Advocates, College of An association (in England) dating from the 16th century It was incorporated in 1768 by Royal Charter and consisted of the President (always the Dean of the Arches) and the Fellows, The college was abolished in 1857 in pursuance of the Court of Probate Act, Ss. 116, 117

Advocates, Faculty of "This is the body which has the exclusive right of appointing advocates or members of the Scottish Bar. It corresponds to the Four Inns of Court in England and to King's Inns in Ireland" (*Byrne*)

Advocatus (Lat). A pleader, a narrator (*Bracton*, fols 372 b, 412 a)

Advowson An advowson is the right of presentation to a church or ecclesiastical benefice, a right known in the common law as the *jus patronatus* (*Tomlins*) When the Christian religion was first established in England, kings began to build cathedral churches, and to appoint bishops and after wards, in imitation of them, several lords of manors founded particular churches on some part of their own lands, and endowed them with glebe reserving to themselves and their heirs a right to present a fit person to the bishopric, when the same should become void (See 2 *Comm* 21-3, and tit *Nomination Tomlins Law Dic*)

Advowson of Religious Houses Where any persons founded any house of religion, they had thereby the advowson or patronage thereof, like unto those who built and endowed parish churches And sometimes these patrons had the sole nomination of the abbot, or prior (*Tomlins*)

Aedificare in tuo proprio solo non licet quod alteri noceat A maxim meaning "it is not lawful to build on one's own land what may injure another." *Burrill. L Dict*, *Broom Leg Max*, *Coke* 3rd inst.)

Aedificatum solo, solo cedit. A maxim meaning "what is built upon the land goes with the land" (*Abbott. L. Dict*, *Coke Litt.* 4-a, *Broom Leg. Max stIn. 2*, 1, *29*)

Aedificia solo cedunt A maxim meaning "buildings go with the land". (*Black L. Dict*, *Ency. Law. Dic*, *Fleta*, *Lib. 3*, *Ch 2*, *S.* 12.)

Aequior est dispositio legis quam hominis A maxim meaning "the disposition of the law is more equitable or impartial than that of man". (*Black L. Dict*, 8 *Coke*. 152, *Bracton*, fol. 3-*a*).

Aequitas.

Aequitas. Equity.

Aequitas agit in personam. A maxim meaning, equity acts in person. 4 *Bouv. Inst.* Note 3733, *Cyc. Law Dic.*

Aequitas casibus medetur. A maxim meaning "equity relieves against accidents." (*Lofft Max.* 499)

Aequitas curiae cancellarie, quasi filia conscientiae, obtemperat secundum regulas curiae A maxim, meaning "the equity of the court of chancery, as if it were the daughter of conscience, conforms to the rules of Court" (*Adams Gloss*)

Aequitas defectus supplet A maxim meaning "equity supplies defects" (*Morgan Leg Max*)

Aequitas erroribus medetur. A maxim meaning "equality rectifies errors" (*Adams Gloss*)

Aequitas est aequalitas, A maxim meaning "equity is equality" (*Morgan Leg Max*)

Aequitas est correctio legis generaliter latae qua parte deficit Equity is the correction of that wherein the law, by reason of its generality, is deficient (*Plowd* 375, *Black L. Dict*)

Aequitas est correctio quaedam legi adhibita, quia ab ea abest aliquid propter generalem sine exceptione comprehensionem A maxim meaning Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it. (*Plowd.* 467.)

Aequitas est perfecta quaedam ratio quaa jus scriptum interpretatur et emendat, nulla scriptura comprehensa sed sola ratione consistens. A maxim meaning "equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone" (*Co. Litt* 24 *b*, *Black Law Dict*)

Aequitas est quasi aequalitas Equity is as it were equality, equity is a species of equality or equalization (*Co Litt* 24)

Aequitas est verborum legis sufficiens directo, quae una res sollummodo cavetur verbis, ut omnis alia in aequali genere iisdem cavetur verbis. A maxim meaning "Equity is the proper and efficient application of the words of the law, so that, although only one thing is guarded against by the words of the law, yet everything else, being of the same nature is also guarded against by the same words." (*Morgan Leg Max*)

Aequitas est virtus voluntatis, correctrix ejus in quo lex propter universa litatem deficit. A maxim meaning "Equity is a virtue of the will, the corrector of that wherein the law, by reason of its universality, is deficient." (*Adams Gloss*)

Aequitas ex lege generliter lata aliquid excipit. A maxim meaning "Equity generally excepts something from a widespread or diffuse law" (*Lofft Max* 362.)

Aequitas factum habet quod fieri oportuit. A maxim meaning "Equity considers that as done which ought to have been done. (*U. P. Mitra's Leg. Max*)

Aequitas ignorantiae opitulatur, oscitantiae non item. A maxim meaning "Equity assists ignorance, but not carelessnes" (*Ame. Cyc.*)

Aequitas sequitur legem.

Aequitas in eum qui vult summo jure agere summum jus intendit A maxim meaning "Equity directs the rigour of the law to him who wishes to act according to the rigour of the law" (*Adams Gloss.*)

Aequitas in paribus causis paria jure desiderat. A maxim meaning "Equity in like cases requires like laws" (*Morgan Leg Max*; *Plowden* 385)

Aequitas jurisdictiones non confundit. A maxim meaning "Equity does not confound jurisdiction" (*Lofft Max*)

Aequitas liberantioni et seizinae favet A maxim meaning "Equity favours deliverance and seizin" (*Morgan Leg Max*)

Aequitas naturam rei non mutat A maxim meaning "Equity does not change the nature of a thing" (*Adams Gloss*)

Aequitas neminem juvat cum injuria alterius. A maxim meaning "Equity aids no man to the injury of another" (*Adams Gloss*)

Aequitas non facit jus sed juri auxilatur A maxim meaning "Equity does not make law, but assists law" (*Black Law Dict*)

Aequitas non medetur defectu eorum quae jure positivo requisita alium Maxim meaning "Equity does not supply the deficiency of those things which are required by positive law" (*Morgan Leg Max.*)

Aequitas non sinit cum qui jus verum tenuit extremum jus persequi A maxim meaning "Equity does not allow him who hath obtained a true right, to prosecute it to the utmost extremity" (*Adams Gloss.*)

Aequitas non sinit ut eandem rem duplici via simul quis persequatur A maxim meaning "Equity will not suffer a double satisfaction to be taken" (*Morgan Leg Max*)

Aequitas non supplet ea quae in manu orantis esse possunt A maxim meaning "Equity does not supply those things which may be in the hand of an applicant" (*Lofft Max* 391.)

Aequitas non vaga atque incert est sed terminos habet atque limites praefinitas. A maxim meaning "Equity is not vague and uncertain, but has certain determined boundaries and definite limits" (*Adams Gloss*)

Aequitas nunquam contravenit legis. A maxim meaning "Equity never counteracts the law." (*Rapalje Law Dict*)

Aequitas nunquam liti ancillatur ubi remedium potest dare. A maxim meaning "Equity is never the hand-maid to strife, where she can give a remedy. (*Lofft Max* 501.)

Aequitas rei oppignoratae redemptionibus favet A maxim meaning "Equity favours the redemption of a thing given in pawn" (*Morgan Leg. Max*)

Aequitas rem ipsam intuetur de forma et circumstantiis minus anxia A maxim meaning "Equity does not regard the form and substance of the act." (*Morgan Leg Max*)

Aequitas sequitur legem. A maxim meaning "Equity follows the law". (*Burrill Law Dic.*)

Aequitas supervacua odit

Aequitas supervacua odit A maxim meaning "Equity abhors superfluous things" (*Black L Dict*)

Aequitas uxoribus, liberis, creditoribus maxime favet A maxim meaning "Equity favours wives and children, creditors most of all" (*Stimson L Gloss*)

Aequitas vult omnibus modis ad veritatem pervenire A maxim meaning "Equity wishes by every possible means to arrive at the truth" (*Adams Gloss*)

Aequitas vult spoliatos, vel deceptos, vel lapsos ante omnia restitui. A maxim meaning "Equity desires the plundered, the deceived, and the ruined, above all things, to have restitution" (*Lofft. Max* 374)

Aequum et bonum est lex legum A maxim meaning "What is equitable and good is the law of laws" (*Burrill L Dict*, 1 *Ame Cyc* 1157-1158)

Aerial Belonging or pertaining to the air or atmosphere inhabiting or frequenting the air, existing or happening in the air (as, *Aerial Railway*)

"Aerial line" defined . Act 9, 1910, S 2 (*a*)

Aerial navigation The sailing or floating in the air by means of balloons or airships, particularly, the principles, problems, and practice involved in the attempt to pass from place to place through the air by means of balloons or flying machines capable of being propelled and steered. (*Cent Dict*)

Aerial railway a proposed system of wires for guiding balloons, a name sometimes applied to systems of transportation by cars suspended from a rail or rope above them

Aerial Ropeway or **Aerial Tramway** or **Aerial Railway.** A system of transportation upon, or by means of, an elevated cable, rope, rail or the like; specifically it refers to such a system forming a way along which a trolley may travel for conveying passengers or light luggage or other small load suspended from the trolley (*Webster's Dict.*), 'A ropeway is a line or double line of suspended ropes, usually wire, along which articles of moderate weight may be transported on slings either by gravity or power—much used in mining districts for transportation to watercourses or a street Railway line'. (*Standard Dict*) Defined in S 2 Bengal Act VII of 1923. S. 2 Punjab Act V of 1926

Aesthetics The theory or philosophy of taste, science of the beautiful in nature and art, esp. that treating of the expression and appreciation of beauty.

Aestimatio praeteriti delicti ex postremo facto nunquam crescit A maxim meaning "The weight of a past offence is never increased by a subsequent fact." (*Wharton L Lex*, *Bacon's Max*)

A facto ad jus non datur consequentia. A maxim meaning "The inference from the fact to the law is not allowed." (*Halkerston Max No.* 3, *Adams Gloss.*)

Affair. Business of any kind, commercial, professional or public; something to be transacted, matter, concern.

Affairs. Used to mean public affairs or the administration of the State (as) "At the head of affairs" (*Junius*). "A talent for affairs". (*Prescott.*)

Affidavit

The "Conduct and Affairs" of a bankrupt which, under the Bankruptcy Act would have to be considered on his application for discharge, cover a wide area of matters, especially under the word "affairs," which embraces even such things as the expectation that the bankrupt will, probably, soon be a substantial beneficiary "under the Will of his father, or uncle, or some other wealthy relative" (Re *Barker*, 25 Q B D 285).

Affairs Matters of interest or concern, particular doings or interests, specifically pecuniary interests or relations. as, to meddle with a neighbour's affairs, his affairs are in an embarrassed state

Affect. To have an effect upon, to influence, but often used in the sense of acting injuriously upon persons and things and sometimes in the sense of vary (*Bouv*, *Ame Cyc*, *Davis* v *Symonds*, 1 Cox Eq Cas 402 (407), *Tyler* v *Wells*, 2 Moo App 526, 538)

To render liable to a charge of, show to be chargeable with "By the civil law, if a dowry with a wife be promised and not paid, the husband is not obliged to allow her alimony But if her parents shall become insolvent by some misfortune, she shall have alimony, unless you can *affect* them with fraud" (*Ayliffe*, *Parergon*, 1726, p 59, *Cent. Dict*)

Affect or Alter [*Dropadi* v *Hira Lal*, 10 A.L J. 3=34 A 496=16 Ind. Cas 149 (152)]

Affect and effect are sometimes confused To affect is to influence, concern, to effect is to accomplish or bring about. (*Cent Dic.*)

Affectio tua nomen imponit operi tuo A maxim meaning "The affection of a person gives a name to his work" (*Wharton, L Lex*) (*i e*) ones intention gives character to his act" (*Burrill L Dict*)

Affects punitur licet non sequitur effectus A maxmim meaning "The intention is punished although the consequence does not follow" (*Wharton*, 9 *Coke* 55 *b*. 57*a*)

Affiance (from the Latin affidare, *i e*, fidem dare.) The plighting of troth or a promise between a man and a woman, upon agreement of marriage. (*Lit Sect* 39, *Tomlins L D*; *Wharton*, *Terms De la ley* 27, *Litt.* S. 39, *Jacobi Law Dict*)

Affiant is one who makes an affidavit. (*Cent. Dict.*; *Ame Cyc.*, *Imp. Dic.*, *Webs.*)

DISTINGUISHED FROM "DEPONENT". In strictness "affiant" is the author or subscriber of an affidavit, "deponent" of a deposition. (*Abbott, L. D.*)

Affidavit defined [*See also* OATH, SWEAR.] 52-3 V.c. 63, S. 6, Act 30, 1852, S 13, Act 10,1897, S. 3(3), Ben. Act 1,1899, S. 3 (3); Bom. Act 1,1904, S 3 (3), Bur. Act 1,1898, S. 2 (3); E.B.&A. Act 1,1909, S. 5 (3); Mad. Act 1,1891, S. 3 (20); P Act 1,1898, S. 2 (3); U.P Act, 1, 1904, S. 4 (3)].

It is a declaration on oath, reduced to writing, affirmed or sworn to by an affiant before some person who has authority to administer oaths. (*Bouvier, L Dict*; *Wharton*; *Burrill.*)

OTHER DEFINITIONS. "An affidavit is an oath in writing signed by the party deposing, sworn before

Affidavit.

and attested by him who hath authority to administer the same". (1 *Bacon's Abridgment*, 124.)

AFFIDAVIT is an oath in writing, and to make affidavit of a thing, is to testify it upon oath An affidavit generally speaking, is an oath in writing, sworn before some person who hath authority to administer such oath, and the true place of habitation, and true addition of every person who shall make an affidavit is to be inserted in his affidavit Affidavits ought to set forth the matter of fact only, which the party intends to prove by his affidavit; and not to declare the merits, of the cause, of which the Court is to judge. 21 Car 1 B R (*Tomlins L. Dict*)

MUST BE IN WRITING There can be no such thing as an unwritten affidavit. An affidavit is defined to be "a written declaration under oath, made without notice to the adverse party".

Affidavit Deposition, Complaint Affidavit is always made *ex parte* and without cross examination and in this it differs from a *deposition*(*Webster*) "Deposition is a generic expression, embracing all written evidence verified by oath, and thus includes affidavits, but, in legal language, a distinction is maintained, in the courts of law and chancery, between *depositions and affidavits* A deposition is evidence given by a witness under interrogatories, oral or written and usually written down by an official person, while an affidavit is the mere voluntary act of the party making the oath, and may be, and generally is taken without the cognizance of the one against whom it is to be used" (*Stimpson* v *Brooks*, 23 Fed Case No 13, 454) A *complaint* in a criminal prosecution is not necessarily equivalent to an affidavit, although, on oath since it need not necessarily be certified by the magistrate and may be merely formal and made by one having little, if any, knowledge of the facts, while an affidavit is understood to be a sworn statement of facts or a deposition in writing, including a jurat or certificate of the magistrate showing that it was sworn to before him

Affidavit by several Several persons may swear to and sign the same statement of facts in a single affidavit

Affidavit by insane persons—Before the affidavit of an insane person can be received there must first be an inquiry into his mental capacity to make such affidavit (*Spittle* v. *Walton*, L.R. 11 Eq. 420, 40 L J.Ch. 368)

Affiliation. The act of affiliating (*Wharton*); adoption, association in the same family or society (*Cent Dict*) The assignment of a child to a parent, by legal authority (*Burrill.*) The assignment of a child, as a bastard, to its father, and the fixing upon him of the obligation to maintain it (*Imp. Dict.*; *Stroude*) The legal process whereby the father of a bastard child, upon the paternity being proved against him, may be ordered to make contributions towards its maintenance and education. (*Ency. of the Laws of England*, Vol. I. 241.)

"There are a number of *affiliations* which were of at least equal antiquity with adoption, and which served its object even more completely in very ancient times." (*Maine's Early Law & Custom*, 98.)

Affirms the decision.

ORDER OF AFFILIATION is an Order of the Court adjudging a man to be the putative father of a bastard child. 35 & 36 V.C. 65

'Affiliaton' of college to university means such a connection between an existing university and a college as shall be entered into by their mutual consent, under the conditions approved by the University Commissioners or other proper authorities

Affinis mei, affinis non est mihi affinis. A maxim meaning "A person related by affinity to one who is related to me by affinity is not related to me by affinity." (*Shelf Marriage and Divorce*, 174)

Affinity Relationship by marriage as distinguished from consanguinity, or relationship by blood (*Wharton*, *Burrill*, *Webster*); The tie which arises from the marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. (2 *Steph Com* 259)

An artificial relationship between persons of different blood, regarded as analogous to consanguinity, the relation between families or individuals created by intermarriage.

AFFINITY is the tie arising from marriage betwixt the husband and the blood relations of the wife, and betwixt the wife and the blood relations of the husband Thus the relations of the husband stand in the same degeee of affinity to the wife in which they are related to the husband by consanguinity, but there is no affinity betwixt the kinsmen themselves, thus the husband's brother and the wife's sister have no affinity (See *Tomlins L D*)

Affinity is of three kinds.—

(1) Direct, (*i e*) that subsisting between the husband and his wife's relations by blood, or between the wife and her husband's relations by blood,

(2) Secondary, (*i e.*) that which subsists between the husband and his wife's relations by marriage, and

(3) Collateral, (*i e*) that which subsists between the husband and the relations of his wife's relations (*Wharton*, *Black Law Dict.*)

Affirm To make firm, confirm, establish, ratify (as) a higher court affirming the judgment of the Lower Court To assert or declare, (*Burrill L. Dict*, *Abbott L Dict.*) "To ratify or confirm a former law or judgment" (*Cowell*, *Wharton*). To make affirmation, or solemn promise before an authorized magistrate or officer is to tell the truth under pain of penalties, to testify under affirmation. (*Webs citing Burrill and Bouvier*, *Tomlins L. Dict.*)

To declare solemnly before a court or magistrate, but without oath (a practice allowed where the affirmant has scruples against taking an oath.)

"Affirms the decision" High Court dismissing an appeal for want of prosecution is not an "affirming" of the decision of the Court immediately below within the meaning of section 110 C P. Code. (*Chowdhuri Abdul Majid* v *Jawahir Lal.*) 18 C.W.N, 963 (P.C) But see also In re *Ashgor Raza*, (1889) 16 Cal. 287; *Thomson* v. *Calcutta Tramway Co.* (1894) 21 Cal. 523.

Affirmance.

Affirmance. Confirmation, ratification, the confirmation of a voidable act (as) Affirmance of Judgment, Decree, or Order, or a statute in affirmance of the common law or an older custom. "All sentences are liable to the King's *affirmance* or reversal" (*Brougham.*)

Affirmant. One who affirms & asserts, A person who solemnly affirms in place of making an oath. (*Burril*).

Affirmanti non neganti incumbit probatio. A maxim meaning "The burden of proof rests upon him who affirms, not upon him who denies" (*Abott L Dict, Wharton, Broom*)

Affirmation Confirmation, ratification, establishment of something of prior origin "Our statutes sometimes are only the affirmation or ratification of that which by common law was held before" (*Hooker.*) Affirmation is a solemn declaration without taking oath, an indulgence granted by law to Quakers and other persons who had conscientious objections to taking an oath, and who were allowed to make a solemn affirmation that what they say is true False evidence on solemn affirmation is as much an offence as false evidence given on oath (*Wharton, Ency. of the Laws of England, Tomlins L Dict.*)

Affirmative. A word expressing affirmation or assent; (as) an *affirmative* decree or judgment of a superior Court in appeal, an *affirmative* answer to a request Asserting as true, positive (*Anderson L Dict*), (as) affirmative allegations in pleading

Affirmative Act or Statute. A statute in affirmative language, a statute directing some act to be done or declaring what shall be done. (*Burrill*).

Affirmative acts of parliament are those "wherein justice is directed to be done according to the law of the land." (I *Bl Comm.* 142).

Affirmativum negativum implicat A maxim meaning "An affirmative implies a negative" (*Morgan Leg. Max, Wharton*).

Affix, To fix, fasten, join or attach, conjoin, add. "Archbishop Whitgift was the first to *affix* his name to the death warrant" *Bancroft, Hist U S I. 226.*

Afforce, To add force to, to increase the strength of (*Abbott Law Dict*); to make stronger, to strengthen or reinforce by adding other members, as to juries or other deliberative assemblies (*Cent. Dict*) as "afforcement of the assize" (*Blount, Wharton*) "afforcing or amending of the council" (*Stubbs, Const. Hist of England* S. 695).

"The remedy for insufficient "government" was sought . . . in admitting the houses of Parliament to a greater share of influence in executive matters, in the *afforcing* or amending of the council, and in the passing of reforming statutes" (*Stubbs Const. Hist.* 695).

Afforcement. "As it became difficult to find juries personally informed as to the points at issue, jurors . . . summoned were allowed first to add to their number persons who possessed the requisite knowledge, under the title of *afforcement.*" (*Stubbs, Const. Hist.* 164).

Aforethought.

Afforciare To add, to increase, to strengthen, or make stronger (*Brac.* lib. 4 c 19 *Tomlins L. Dict, Stimson*).

Afforest To turn a ground into a forest (*Chart. de. Forest* c 1) When forest ground is turned from forest to other uses, it is called *disafforested.* (*Tomlins L Dict, Termes de la ley*).

Afforestation "The act of turning ground into a forest or woodland, or subjecting it to forest law; the territory afforested

"Richard I, and Henry II . . had made new afforestations, and much extended the rigour of the forest laws" (*Sir M Hale, Hist Com. Law of Eng*)

Afforestment "Land, once afforested became subject to a peculiar system of laws, which, as well as the formalities required to constitute a valid *afforestment*, have been carefully ascertained by the Anglo-Norman lawyers" (*Encyc Brit*, IX, 409)

"**Affray**" defined. Act 45, 1860, "When two or more persons, by fighting in a public place disturb the public peace, they are said to commit an affray." (*Penal Code*, S 159)

AFFRAY Signifies a skirmish or fighting between two or more, and there must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray An affray is a public offence to the terror of the king's subjects, and so called, because it maketh men afraid (*Tomlins L. Dict*, 3 *Inst.* 158) "An Affray is the fighting of two or more persons in a public place to the terror of Her Majesty's subjects" (*Steph.* Cr 48) *Arch* Cr 1052) "If the fighting be in private, it is not an affray, but an Assault" (*Rose Cr.* 241, *Termes de la Ley, Jacob L Dict*)

Distinguished from riot Affray is distinguished from riot or rioting in that the latter offence must be committed by a number of persons and is of a somewhat more public nature

Affreight. To hire or charter a ship for transportation of goods

'**Affreightment**' is the freight or lading of a ship (*Cowell*), the contract by which a vessel, or the use of it, is let out to hire (*Bouvier, Tomlins L Dict*) The contract may be made by a charter party or by a bill of Lading

"Affreightment," is a contract by which a shipowner undertakes to carry goods in his ship for reward The person for whom the goods are carried is called the *Freighter*, and the sum which he pays for their carriage is called the *Freight*" (1 *Encyc* 184, 192, *Stroude*)

Aforesaid. Before mentioned, already said, before indicated, previously mentioned, (*Plowden* 67), recited, or said (*Burrill,*) mentioned in a previous part of the same writing, document or discourse. *Imp. Dict, Webs, Cent. Dict.*

"Aforesaid", naturally refers to its immediate antecedent (*per Denman*, C. J., *Peake* v. *Screech* 7 Q B 610) Although the word "aforesaid' generally means "next before," yet a different signification will be given to it if required by the context and facts of the case, (*Simpson* v. *Robert*, 35 Ga. 180; *Black*; 2 *Cyc.* 50)

Aforethought. (In criminal law) Deliberate; planned; premeditated; (as, malice aforethought).

A fortiori.

A fortiori An argument which concludes that something does take place, because causes much weaker than those which operate to bring it about are effective in another case An argument of the latter kind is the following "If God so clothe the grass of the field, which to-day is and to-morrow is cast into the oven, shall he not much more clothe you, O ye of little faith?" *Matt VI* 30

Afridi A large Pathan tribe occupying the extensive hill region extending from the Cabul river round the spurs of the Safed Koh as far as Kohat.

After Later in point of time Where an act has to be done within so many days "after" a given event, the day of such event is not to be reckoned and the party to do the act has the whole of the last day of the prescribed time in which to do it (*Stroude* 54) A devise "after" or "from and after," a previous interest is not, by such words, postponed in vesting (*Jarman* I-806, 816).

After-acquired Acquired after a particular date or event (*Black*), (as) the after-acquired property of an insolvent debtor

After-born children A bequest to "after-born children" would generally mean a bequest to those born after the date of the will and before the death of the testator (*Bhagbati Barmanya* v *Kali Charan Singh* 38 Cal 468=38 I A 54=15 C W.N 393=13 Bom.L R 375 (P.C).

Afterguard (*Milit.*) In men of war, that division of the crew which is stationed on the quarter-deck to work the after-sails, etc, generally composed of ordinary seamen and landsmen who are not required to go aloft, hence, a drudge, one occupying an inferior position

"After the passing of the Code" The expression "after the passing of the Code" in S 230, C P C, 1877, means the date the Code was passed, that is to say, the date the bill became law and received the assent of the Governor-General and not the date the Act came into force (*Jugal Kishore* v *Zamania Begam* A.W N (1881), 58 See also A.W N. (1881) 74, A W N (1881) 113)

Afternoon This word has two senses It may mean the whole time from noon to midnight, or it may mean the earlier part of that time, as distinguished from the evening When used in a statute its meaning must be determined by the context and the circumstances of the subject matter. (*Reg* v. *Knapp*, 2 El & Bl 451) In 9 Geo 4, c 61, sch C., the expression *"afternoon divine service"* means "the earlier part of the time from noon to midnight as distinguished from the evening" Per Erle, J., in *R* v. *Knapp*.

"After sight" defined, Act 26, 1881, S 21.

"After the date of the decree" The words "after the date of the decree" in R. 35 of the rules and regulations made in pursuance of 2 Will. IV, C. 51, do not mean after the date when the decree is drawn up in writing, but after the date on which the decree or sentence is pronounced by the Vice-Admiralty or Admiralty Court, as the case may be. The words which are constantly used in Acts which refer

Agarwal.

to decrees in the Admiralty Court are "the pronouncing of the sentence or decree" Their Lordships, therefore, think that the date of the decree in Rule 35 did not mean the date on which the decree was reduced to writing, and signed by the Court, but the date on which the High Court delivered their judgment and expressed what the decree was (*The Brenhilda* v. *British India Steam Navigation Co.*, (1881) 8 I A 159=7 C 547 (551) (P.C)

Afterthought. A later or second thought Reflection after an act, some consideration that occurs to one's mind too late, or after the performance of the act to which it refers.

Afterthought is the opposite of forethought "Christianity is not an afterthought of God, but a forethought" (*Bushnell, Nat. and the Supernat*, p 31.)

Agachha, means useless or valueless for fruit-bearing or timber purposes Trees such as bear useful fruit or are utilisable as timber fall within the class over which the proprietor has rights *Nathuni Rai* v. *Sir Rameshwar Singh Bahadur* 73 I C 629= A I R 1924 Pat 147.

Against In opposition to, contrary to, adverse to, or hostile to, without the consent of (as) against the terms of a statute

The word "against" is sometimes used in the sense of "without" as in the expression "to marry against one's consent" (*Long* v *Ricketts* 2 Sim & St 179, 183, *Creagh* v *Wilson*, 2 Vern 572, 2 *Cyc.* 51).

To assert a thing "against" another means in contradiction of him, but the context or circumstances may show that it also connotes a criminatory charge (*Hughes* v *Rees*, 7 L J Ex 268) In the Prevention of Crime (Ir) Act, 1882, 45 & 46 V c 25, "Aggravated Act of Violence *against* the person," means, an assault which either causes actual bodily harm, or grievous bodily harm, or is committed with intent to cause grievous bodily harm" (S 35).

"Aga Khan."—His Highness Aga Khan, Mehelati is the spiritual head of the Khojas He is the hereditary chief and unrevealed Imam of the Ismailis, the present or living holder of the Musnud of the Imamate, claiming descent in direct line from Ali, the Vicar of God, through the seventh and (according to the Ismaili creed) the last of the revealed imams, Ismail, the son of Jaffer Sadak *Hajt Bibi* v. *Aga Khan.* 2 Ind. Cas. 873 (886)

Agam (*Tam*). The earth or grain.

Agambadiars. 23 I.C. 124.

Agamudaiyan (*Tam.*). A landholder.

Agaram A Tamil contraction of Agrahara.

Agariya, Agureeya Descendants of the original Thugs, who, after being expelled from Delhi, settled for a time at Agra (*Wil Gloss.*)

Agarwal, Ugurwal, or Agarwala. An important sub-division of the mercantile caste, comprising many of the wealthiest traders and bankers in Hindustan. According to Mr Elliot they derive their name from Agroha in Hariana, whence they originally migrated to other provinces Common tradition refers their name and origin to Agra. The Agarwal is one of the

Agau

Gachhas, or families of the Jains, and most of its members profess the Jain religion. (*Wil. Gloss.*).

Agau (*Tel*) An advance of money. In the Northern Circars the same as Takavi or money-advanced to the cultivators, also collection of revenue before it is due.

Agavilai. (*Tam*) Market-price of grain

Agayadi (*Karn*) Small spots of land on which rice is sown for transplanting, and which the ryots claim free of rent

Age. The length of time during which a person has lived, (*Jacob-Law Dict*), or a thing has existed (as) the age of a tree or plant, the age of the moon, the time at which one attains full personal rights and capacities, (*Abbott-Law Dict*) (as) age of majority, the time at which a person is enabled to do certain acts which before, through want of years and judgment, he was prohibited from doing (*Jacob Law Dict*) (as) age of consent to marriage, age of discretion. In common acceptation age signifies a man's life from his birth to any certain time, or the day of his death, it also hath relation to that part of time wherein men live But in law it is particularly used for those special times which enable persons of both sexes to do certain acts, which before, through want of years of judgment, they are prohibited to do, as power to enter into contracts, or enter into matrimony, etc (*Tomlins-Law Dict*)

"**Agent**" defined Act 9, 1872, Ss 182, 191, Act 9, 1874, S 32, Act 6, 1901, S 2 (1) (*a*), Act 8, 1901, S 3 (*a*), Ben. Act I, 1896, S 2 (c), Bom. Act 2, 1887, S 2 (3), U P Act 3, 1892, S 23 (2).

Agent. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons The person for whom such act is done, or who is so represented, is called the "principal" Act IX of 1872 (Contract) S 182.

"No word is more commonly and constantly abused than 'agent'" (Lord Herschell, in *Kennedy* v. *DeTrafford*, 66 L.J Ch 417, 1897, A C 180) The use of the word "agent" in itself really means very little Lord Selborne in *ex parte White*, which is reported on appeal to the house of Lords as *Towle* v *Thie* says "The use of the word 'Agent' about a person with whom one has transaction in a general way and without specially showing for what purpose there was an agent goes a very little way towards a solution.." "The facts must speak for themselves and if those facts show a state of things different to a simple arrangement between principal and agent, then the effect of these facts will not be altered simply because the language of agency has been used in a loose manner" (*Surya Prakasaraya Mudaliar* v *Matheson's Coffee-works* 21 Ind Cas. 322 (327) per White, C. J.)

Agentes et consentientes pari poena plectentur A maxim meaning "Acting and consenting parties are liable to the same punishment." (*Morgan Leg Max.*)

Aggravate. Literally, to add weight to or upon, "In order to lighten the Crown still further, they aggravated the responsibility on ministers of state." *Burke, Rev. in France*, p. 39 (N.E.D.).

To make more grave or heavy, increase the weight or pressure of; intensify, as anything evil, disorderly or troublesome; as "to aggravate guilt or crime."

Aggrieved

Aggregatio mentium. Literally "the meeting of the minds". The moment when a contract is complete. (*Black*).

Aggregation The act of collecting or the state of being collected into an unorganized whole "Wanting any great and acknowledged centre of national life and thought, our expansion has hitherto been rather *aggregation* than *growth*." (*Lowell, Study Windows*, p 83)

A combined whole, an aggregate.

"In the United States of America a century hence we shall therefore doubtless have a political *aggregation* immeasurably surpassing in power and in dimensions any empire that has as yet existed." *J. Fiske, Amer. Pol Ideas*, p 139

Aggression The act of proceeding to hostilities or invasion, a breach of the peace or right of another or others, an assault, inroad, or encroachment; hence, any offensive action or procedure, as, an aggression upon a country, or upon vested rights or liberties

"We have undertaken to resent a supreme insult, and have had to bear new insults and *aggressions*, even to the direct menace of our national capital" (*O W Holmes, Old Vol of Life, p* 103)

Aggrieved—A term of very ancient origin, appearing on the Statute Roll of 1363 "*et outre le dit Roy voet que si nul se sent greves, mette avant sa petition en ce Parlement et il en avera convenable respons*". (*vide* 1 Cliff 272) For purposes of ascertaining rights of appeal, any person who is in any sense a party to a legal proceeding is "aggrieved" by a wrong decision with regard to the proceeding *Re Reed & Co* (1887), 19 Q B D 174 And see *Powell* v *Birmingham Brewery Co* (1894), App. Cas 8, *Johnson* v *Edge* (1892), 2 Ch 1, C A, *Re Colchester Grammar School* (1898), App Cas 477, 483, *Re Apollinaris Co's Trade Mark* (1891), 2 Ch 186, C A, *Re Trade Mark of La Societe Anonyme des Verreries de l' Etoile*, (1894), 2 Ch 26, C A, *R* v *Lewisham Guardians*, (1897), 1 Q B 498 Under statutes granting the right of appeal to the party aggrieved by an order or judgment, the party aggrieved is one whose pecuniary interest is directly affected by the adjudication, one whose right of property may be established or divested thereby (*Black*)

A person who has consented, expressly or impliedly, to a thing cannot be said to be "aggrieved" by it (*Harrop* v *Bayley*, 25 L J M C 107).

In Trade mark law person aggrieved means a person injured or damaged in a legal sense (*Re Riviere*, 53 L J Ch 455, 578)

A "person aggrieved" by the registration of a Trade Mark, is one who would be prevented by its registration from doing that which he otherwise lawfully could do, *e g.*, one in the same trade, whether he intends to compete in respect of that particular article or not (*Re Trade Mark, Normal*, 35 Ch. D. 231).

In Copy-right law.—In *Ex p Poulton*, (53 L.J.Q. B. 320) it was held that a person who himself has made a wrongful entry, is entitled under section 14 of Copy-right Act 1842, to apply for its rectification as one "aggrieved" thereby.

Aggrieved person.

In Bankruptcy law.—A Creditor is a "person aggrieved" by an Order of Discharge, or Scheme of Arrangement, (*Re Payne*, 56 L J Q B. 625) So also the *Official Receiver*, or the *Board of Trade*, may be a "person aggrieved" (*Re Read & Co.*, 19 Q B.D 182). So is a *purchaser of the insolvent's properties* when his document is the alleged act of bankruptcy (*Re Ellis*, 45 L.J. Bank. 64, 159)

"AGGRIEVED" in S. 22, Prov. Ins Act III of 1907. "In Exp *Sidebotham* 14 Ch D 458, 465, Jones L. J held that a person 'aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something" In *Exp. O Rr* In Re *Read, Bowan & Co* 19 Q B D 174, Lord Esher M.R interpreted it as including "a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand...Aggrieved is a somewhat wider term than 'injured'..and a person is aggrieved if a decision has been pronounced which has wrongfully refused him something which he had a right to demand" (Per Phillips J in *Alagappa Chetti* v *Nagaratna Mudali*, 33 M L J 612 *See also* 18 C W N 366).

An aggrieved person is a person who has suffered a legal grievance—a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something (*Lalji Sahay Singh* v *Abdul Gani*, 7 Ind. Cas 765 (766) Per Mookerjee and Sharfuddin, JJ)

Aggrieved person (in criminal law) Where a libellous statement in a newspaper is true as regards the complainant though untrue as regards others, the complainant is not an "aggrieved person" within the meaning of section 198 of the Code of Criminal Procedure (*Subroya Aiyar* v *Abdul Kadar*, 26 M L J 315=23 I C 725 Per Wallis and Ayling, JJ)

Agio A commercial term used to distinguish the value of bank-notes and other paper currency from that of the coin of the country (*Rapalje & Law Dict*), a term used to express the difference in value between the metallic and paper currency, or between different sorts of metallic currency (*McCull Com Dict*, *Wharton*, *2 Cyc* 52).

Agist-agister-agistment. An agister is a bailee for reward. A person who takes in and feeds or depastures horses, cattle or similar animals upon his land for reward. He is only obliged to observe reasonable care. He does not insure and is not answerable for the wantonness or mischief of others In each case, it is a question of fact if he has taken reasonable care of animals entrusted to him and the doctrine of scienter is not applicable to agisters At Common Law, he has no lien on the animals in the absence of an express agreement to that effect

Agitate. To engage in agitation; arouse or attempt to arouse public interest as in some political or social question. as, he set out to *agitate* in the country.

"The Tories agitated for short parliaments and for the restriction of the corrupt influence of the Crown". (*Lecky, Eng. in 18th Cent.* i.)

Agree.

Agitator. One who or that which agitates, one who engages, in some kind of political agitation; one who stirs up hatred or excites disaffection with the view of strengthening his own cause or party.

Agnates or agnati Relatives whose relationship can be traced exclusively through males. (*Abbott L. Dict*,) Relations on the father's side as distinguished from cognates, (*i e*,) relations on the mother's side (*Smith Dict. of Antiq-Tst Cognates*, see also *Maine's Anc Law* 142, *Tomlins Law Dic.*)

All persons are agnatically connected together who are under the same *patria potestas*, or who have been under it, or who might have been under it if their lineal ancestor had lived long enough to exercise his empire. (*Maine, Anc Law* 442; *Had. Rom Law* 131)

Agnatic Derived from or through males. (*2 Bl Comm.* 236)

Agnation Kinship by the father's side (*Black.*)

Agnosticism The doctrine of the agnostics, the doctrine that the ultimate cause and the essential nature of things are unknowable, or, at least, unknown

"By Agnosticism, I understand a theory of things which abstains from either affirming or denying the existence of God It thus represents, with regard to Theism, a state of suspended judgment and all it undertakes to affirm is that, upon existing evidence, the being of God is unknown But the term Agnosticism is frequently used in a widely different sense as implying belief that the being of God is not merely not unknown, but always remain unknowable" (*G J Romanes, Contemparory Rev L.* 59)

"Agra" defined U. P Act, 1 1904, s. 4 (4).

Agrahara Land granted to Brahmans, either rent free or at a low rate Also, in Tamil, a street, or quarter occupied by Brahmans. *See* 24 M L J. 656

The precise nature of of Agrahara tenure is usually denoted by a term prefixed, Sarva-agraharam —free from all tax, Bilmakta Agraharam—a village at a stipulated rent, Kattubadi Agraharam—a village held at a rent which fluctuates with the produce (from Telugu—Kattubadi—a favourable or quit rent) The same is termed as in Karnata a Jodi Agraharam"

Agraharams were proprietary grants given to a community of Brahmans who might be of different sects (*Wilson Gloss*)

Agraharavadai (*Tam*) Agrahara Vadike. (*Karn*) One of the former divisions of the villages in the Dravida countries, those exempt from revenue, usually occupied by Brahmans, but sometimes by other classes. (*Fifth Rep*)

Agrarian Relating to land or to a distribution or division of land (*Burrill*; *Black*) or agrarian laws, agrarian outrage *i e*, outrage resulting from some dispute relating to land or occupancy of land. (*Imp. Dic.*)

Agree. To concur; to come to a mutual assent, to come into harmony, to promise; to contract; to assent; to unite in mental action; to acquiesce in. In *Thornton* v. *Kelley*, II R. I. 498, 499, it is said that

Agreed case.

the word "agree" is sometimes used to signify an offer merely, but properly speaking it embraces concurrence or assent (*Ame. Cyc.*)

Agreed case. In numerous jurisdictions the parties to a question in difference which might be the subject of an action, being of full age, may agree upon a case containing a statement of the facts upon which the controversy depends, and may present a written submission thereof to a court of record which would have jurisdiction of an action brought for the same cause This proceeding, while not always given the same designation, is perhaps best known by the name of "agreed case"

Agreed order The only difference between an agreed order and one which is made in due course of legal proceedings is that in the one case it is agreed to, and in the other it is made as authorized by law (*Black*)

Agreed statement of facts A statement of facts agreed to by the parties as true and correct, to be submitted to the court for a ruling on the law of the case.

"**Agreement**" Defined Act 9, 1872, s 2 (*e*). Act 16, 1887, s. 112 A coming together of parties in opinion or final determination, the union of two or more minds in a thing done or to be done, a mutual assent to do a thing (*Com Dig "Agreement."*) The joining together of two or more minds in respect of the same matter.

"Agreementum, is a word compounded of two words, *viz*, of aggregatio and mentium And so by the contraction of the two words, and by the short pronunciation of them, they are made one word, *viz*, agreementum, which is no other than a union, collection, copulation, and conjunction of two or more minds in anything done or to be done" (*Ramgar* v *Fogossa*, Plowd 17-*a Com Dig "Agreement"*, per Ellenborough, C J, *Wain* v *Walters*, 5 East 16.)

AGREEMENT CONTRACT PROMISE The term "agreement" is often used as synonymous with "contract" Properly speaking however it is a wider term than "contract" (*Anson. Cont* 4) An agreement might not be a contract, because not fulfilling some requirement of the law of the place in which it is made The distinction between agreements and contracts is apparent from S 2 of the Contract Act, by cl. (*e*) every promise and every set of promises forming the consideration for each other is an agreement, and by cl (*h*) an agreement enforceable by law is a contract (*Harnath Kuar* v. *Inder Bahadur Singh*, 50 I A 69 (75)=45 A 179 (184)=44 M L J. 489) "Agreement" is seldom applied to specialities, "contract" is generally confined to simple contracts; and "promise" refers to the engagement of a party without reference to the reasons or considerations for it, or the duties of other parties (*Pars. Cont.* 6.) "Agreement" is not synonymous with "promise" or "undertaking", but, in its more proper and correct sense, signifies a mutual contract between two or more parties, and implies a consideration. (*Black*) The word "agreement" as used in the contract Act refers both to a promise and a set of promises forming the consideration for each other. (*Abaji Sitaram* v. *Trimbak Municipality*, 28 Bom. 66, 5 Bom. L.R. 689).

Agricultural purposes.

Agricultural Pertaining to, connected with or engaged in agriculture (*Cent. Dict*)

Agricultural cattle The term "agricultural cattle" means and includes animals employed in agriculture and in purposes subservient to agriculture, including the domestic requirements of the tenant, but not animals kept as stock of a dairy farm or for sale or other commercial purposes (NANHU *v* NARBADA PRASAD, 12 N L R. 83=34 I C 695).

Agricultural holding An "Agricultural' holding, refers only to land cultivated for profit in some way and not to natural grass land". (*Stroude* 62) A "pastoral" holding refers to grass land (*per* Stephen, J, *Orley* v *Jones*, 32 S J 630)

"**Agricultural income** See Act XI of 1922, (Income tax) s 2, cl 1

"**Agricultural land**" Defined Punjab Act 2, 1905, s. 3 (1) Agricultural land, in the Agricultural Rates Act 1896 (59 & 60 Vict, c. 16), does not include glass-houses, or in a market-garden if they are buildings (*Smith* v *Richmond*, (1898), App Cas 448.)

"**Agricultural product**", Does not include beef cattle (*Davis* v *Macon*, 37 Am Rep 60)

"'**Agricultural property**' means, agricultural land, pasture, and wood land, and also includes such cottages, farm buildings, farm-houses, (together with the lands occupied therewith) as are of a character appropriate to the property" (*Stroude.*)

Agricultural purposes The words "Agricultural purposes" refer to tilling and cultivation for purposes of raising crops In their widest sense, the words may include grazing but it is impossible to hold that all land held for grazing purposes is land held for "agricultural purposes" *Ali Mohib* v. *Surat Singh*, 15 I C 743

The expression ought to be construed liberally. A reclamation grant expressly for the purpose that the jungle might be removed and the land brought under cultivation, is a lease for "agricultural purposes" (*Jogendra Chandra Sanyal* v, *Lal Mohan Podder*, 13 C L J 318)

A village tank over which the landlord gives a right to fish and and grow water nuts (*singhara*) is not land let or occupied for agricultual purposes or for purposes subservient to agriculture within the meaning of that phrase as used in S 2 (5) of Central Prov Ten Act. *Hari* v *Wanu*, 11 N L.R 122=31 I.C 294.

The words "agricultural purposes" in S 4 (2) of the *Agra Ten Act*, must be constructed in their ordinary sense; they refer to tilling and cultivation for purposes of raising crops. In their widest sense, the words may include grazing but it is impossible to hold that all land *held* for grazing purposes is land *held* for agricutural purposes *Mohib Ali* v *Surat Singh*, 15 I.C. 743.

"AGRICULTURAL PURPOSE" construed. See 12 M. L. J. 393=25 Mad. 627.

Agricultural rent.

"Agricultural rent". "Agricultural rent" in Burma is used in the strictly accurate sense unlike in other provinces. It is money payable under a lease, that is to say, it is money payable under a contract. Rent and the right to collect rent are not things which spring out of the soil, as is the case in the province, where the so-called tenants are in the ordinary way, persons with rights of occupancy, good even as against the zamindar who is the owner of the soil, so far as any one can be the owner as against Government, which has an overriding right to revenue from the product of the land *Raman Chettyar* v. *U Ba Thit* 1933 Rang 357

"Agricultural year" defined ... Act 18, 1881, s 4 (5), Act 8,1885, s. 3 (11), Act 16,1887, s 4 (17), Act 17,1887, s 3 (14) Act 11, 1898, s 2 (1), Ben Act 6, 1908, s. 4 (i), U P Act 2,1901, s 4 (10); Reg. 2, 1877, s 2 (a), Reg 1,1886, s 3 (j)

The "agricultural year" as defined in the N W P Land Revenue Act is not synonymous with the "Fasli year" (*Chatarbhuj* v *Dwarka Prasad* 18 All 388=16 A W N 123) "Agricultural year" means the year commencing on the sixteenth day of June, or on such other date as the Local Government may by notification appoint for any local area Pun Act XVII of 1887 (Land Revenue) s 3, cl. 14 In the definition given in S 3 of U P Act XIX 1873, cl 8 the term "agricultural year" means a year commencing on the 1st day of July and ending on the 30th day of June (*Chatar Bhuj* v *Dwarka Prasad* 18 A 388=16 A W N 123)

"Agriculture" defined Mad Act, 1908, s 3 (1)

Agriculture Meaning of the term discussed 54 Mad 900=1931 Mad. 659=61 M L J 648 Agriculture connotes the raising of useful or valuable products which derive nutriment from the soil with the aid of human labour and skill 43 M L J 191 The term "agriculture" has a much wider import than the term "cultivation" Consequently, a purpose may be connected with the agriculture, such as, grazing on the lands of the holding but not necessarily ancillary to cultivation *Agriculture*, in the Board of Agriculture Act, 1889 (52 & 53 Vic c 30), s 12, includes horticulture

The term "agriculture" in the Mad Estate Lands Act does not include pasturage of cattle (*Rajah of Venkatagiri* v *Jayampu Ayappa Reddy*) 21 I.C. 532 =25 M.L J, 578=38 Mad 738 at 741

The ordinary meaning of "agriculture" is the raising of annual or periodical grain crops through the operation of ploughing, sowing etc (*Ibid.*)

The term "*agriculture*" is of wider import than the term "cultivation" As is pointed out in the Oxford Dictionary, "agriculture" means the science or art of cultivating the soil including the allied pursuits of gathering in the crops and rearing live stock, tillage, husbandry, farming (in the widest sense) "*Cultivation*", on the other hand, is defined in the Oxford Dictionary as meaning the tilling of land, tillage, husbandry. It is obvious therefore, that "agriculture" has a much wider import than "cultivation". (*Hedayet* v *Kalanand Singh*, 17 C.L J. 411=20 Ind. Cas. 332 (334), per *Mookerjee and Beachcroft, JJ*)

Ahir.

"Agriculture" has been defined to be the "art or science of cultivating the ground, especially in fields including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding, and management of live stock; tillage; husbandry and farming."

"The variety of products of the earth, of agricultural implements, and of domestic animals, invited and put on exhibition at agricultural fairs, attests the comprehensiveness of the term 'agriculture'. It refers to the field, or farm, with all its wants, appointments, and products, as horticulture refers to the garden with its less important, though varied products" (*Ame Cyc*)

Product of agriculture —The product of agriculture is that which is the direct result of husbandry and culture of the soil. It embraces the product in its natural, and manufactured condition, *Getty* v. *C R Barnes Milling Co*, 40 Kan 281, 19 Pac. 617. "Agriculture" and 'cultivation' include Horticulture, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of Live Stock, Poultry, or Bees, and the growth of Fruits, Vegetables, and the like" (*Stroud.*)

"Agriculturist" defined. Act 7,1879, s. 2, See also Mad Agriculturists' Relief Act, 1938, S 3

AGRICULTURIST in Dekkhan Agriculturists' Act (XVII of 1879) S 2—means a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture, or who ordinarily engages personally in agricultural labour within those limits *Sawantarawa* v. *Giriappa*, 21 I C 4 at p 5 (per *Scott, C J*), *Purshotam* v. *Bhavanji*, 4 Bom 360, *Dwarkojiray* v *Balachandra*, 19 Bom 255, *Damodar* v. *Manubai*, 34 Bom 65; *Chunilal* v *Vinayak*, 33 Bom 376, *Bijhumal* v. *Khiomal*, 6 I C 855

AGRICULTURIST A student of the science of agriculture, or one who engages himself in the occupation of agriculture See 11 B 469, 4 B. 624; 11 C P L R 30

Agya (*H*) An order, an edict, award, decree. (*Wil. Gloss*, 11)

A H An abbreviation of the Latin *anno hejiroe*, in the year of the hejira, or flight of Mahomed from Mecca, A D 622

Ahar, Ahur, (*H*) The name of a tribe or caste extensively spread through Rohilkand and other districts in the North-West Provinces following pastoral occupations, and claiming to be descended from the Yadu-race of Rajaputs, but not so recognised by other castes The tracts they occupy are known collectively as the Aharat (*Wil Gloss*, 12)

Ahban Thakurs in Oudh. It seems that the tribe known in Oudh as Ahban Thakurs came originally from Gujarat and settled in Oudh many centuries ago. The migration of the Ahban Thakurs took place before the Mayukha was written (*Chandika Bakhsh* v. *Muna Kuar*) 29 I.A 70 (74, 5)=24 A. 273 (280).

Ahir. A caste of Hindus following the occupation of shepherds, originally a pastoral tribe in the west of India, but now spread universally, and especially, numerous in the North-West Provinces. (*Wil. Gloss*, 12.)

Ahom

Ahom the ruling race of old Assam (*Bad Pow.* iii 399)

Ahri One of the gods of the Himalayan tribes. He is conceived as a mighty hunter armed with bows and arrows of steel and is considered to preside over ordeals

Ahu (Assam), rice cultivated broadcast. (*Bad Pow* iii 417 note)

Ahuk, (by mistake Ahux and Akhuc) Lime. One of the soubahadarry abwab or taxes established by Alli Verdi Khan for defraying the expense of purchasing lime at Sylhet for the use of government (*Fifth Report*)

Aid To support, help or assist

Distinguished from *encourage*, "*Aid*" connotes active support and asistance, which the term "encourage" does not

Distinguished from *Abet*, Abet imports a necessary criminality in the act abetted, "Aid" by itself has no such significance (Black) "Aid or assistance is the doing of some act whereby the party is enabled, or it is made easier for him, to do the principal act, or effect some primary purpose

Aid and Abet [See Abetment] That kind of connection with the commission of a crime which at common law, rendered the person guilty as a principal in the second degree It consisted in being present at the time and place and doing some act to render aid to the actual perpetrator of the crime though without taking a direct share in its commission (See 4 *Bl Comm* 34)

"To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals Encouragement does not, of necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted words or gestures, or by his silence or non-interference, or he may encourage intentionally by expressions, gestures, or actions intended to signify approval In the latter case he aids and abets In the former he does not It is no criminal offence to stand by as a mere passive spectator of a crime, even of a murder Non-interference to prevent a crime is not itself a crime But the fact that a person was voluntarily and purposely present witnessing the commission of a crime and offered no opposition to it, though he might reasonably be expected to prevent it, and had the power so to do or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged, and so aided and abetted But it would be purely a question for the jury whether he did so or not" (Per *Hawkins, J., R* v *Coney*, (1882) 8 Q B. D 534 (557)

Mere voluntary presence of persons at a prize-fight does not as a matter of law necessarily make them guilty of aiding or abetting an assault (*Queen* v. *Coney*, 8 Q B D 534.)

"Aid the doing of acts" defined. (Penal Code) Act 45, 1860, S. 107, Expln 2.

Ain Mokasa.

Aids Grants of money to the sovereign in support of his person and government. (*Brown L Dict*), Extraordinary grants to the crown by the House of Commons, and which were the origin of the modern system of taxation (*Wharton*)

Aila or ila, (A) A vow, in Mohamedan law especially a vow to abstain from carnal knowledge of a wife for four months, the fulfilment of which is equivalent to a divorce (*Wil Gloss*)

Aima Land granted by the Moghul Government, either rent free or subject to a small quit rent, to learned and religious persons of the Mahomedan faith, or for religious and charitable uses in relation to Mahomedans Such tenures were recognised by the British Government as hereditary and transferable (*Wil Gloss*)

Aimah (A) Learned or religious men Allowances to religious and other persons of the Mahomedan persuasion Land given as a reward or favour by the King at a very low rent Charity lands (*Macn Mah Law*)

Aima Bazi Zamin Land held rent free, or at a quit rent, under an Aima grant

Aima-Baz Yaft Lapsed Aima grants or such grants subsequently assessed

Aimahdar (*P*) A learned or religious person who holds or enjoys charitable donations (*Macn Mah Law*) Holder of land granted for religious or charitable uses, or to religious or learned Mahomedans

Aima-mauza A village given as a charitable endowment to learned or religious persons

Ain The thing itself The original traditional assessment in the Dekhan, on the basis of which the Marathas made up their "Kamil" or full assessment (*Bad Pow* i 273, ii 377, 8, *Wil Gloss*)

As adopted in Maratha finance, Ain implies either the original fixed or standard assessment of the revenue of the lands bearing such assessment It occurs also in various combinations in the revenue language of the Maratha provinces and so e other parts of India, chiefly in the South, in the sense of actual, original or originally fixed or standard (*Wil Gloss* 13)

Ain (*Per*) Secular as distinguished from sacred laws, regulations, as the Ain-Akbari the regulations of Akbar

Ain-Akbari Regulations of Akbar

Ainberij Actual or standard assessment

Ainjama (*Tam*) The regular or standard collections or revenue, fixed exclusive of extra cesses, the same as the Asal jama of Bengal

Ain-Mokasa (*Mar*) The original amount of assignment of lands or of a portion of the Government claim of the fourth of the revenue to the Maratha Sirdars, on condition of their keeping up troops, etc, for the service of the State, also the fixed share of the Government in the property of a village, and the revenue derived from it, or the village originally paying part revenue to the State (*Wil. Gloss.* 14.)

Aın-taram

Aın-taram (*Tam*) The original classification of lands in the Madras provinces at the time of the survey according to their kinds or qualities, also the assessment thus fixed exclusive of sums imposed on account of subsequent improvement (*Wıl Gloss*)

Aınthugaı account Among the Nattukottaı Chetties an *Aınthugaı* account is an account of the properties in the possession of a person and it may include properties held by him on trust (*Ramanathanchetty* v *Murugappa Chetty*, 3 L W. 210=33 I C 969.)

Aır-way A passage for the admission of air into a mine (*Black*)

"Aıvaj" The term "aıvaj," although capable of meaning property generally, may from the context, mean moneys or sums (*Hanmant Ramchandra Deshpande* v *Babaji Abaji Deshpande* 16 B 172)

"Aıyaka" May mean generally either a mortgage or charge [*A Subharamiah* v *K. Subba Reddi*, (1912) 4 I C 213]

Ajata-putra (*S*) A man to whom no son has been born (and who has therefore power to adopt one)

Ajaman (*Tel*) Householder, manager, master It properly means the householder at whose expense, and on whose behalf a religious ceremony is performed

Ajıvad-vibhaga (*S*) Partition after a father's decease (*Wıl Gloss* 547)

Akala (*S*) A class of armed devotees among the Sikhs, worshippers of "Him who is without time, eternal"

Akar (less correctly Akur, *Mar*) The assessed rent or revenue of a village or district Estimate in general (*Wıl Gloss*)

Akalı (*Punjab*) Eternal or immortal, worshippers of Him who is without time and eternal The name of a body of Sikh devotees, who claimed for themselves a direct institution by Govind Singh, the last Guru They professed to have sacrificed every thing for the faith, and followed only the profession of arms

Akama (*Mal*) Customary perquisites payable by the tenant to the Antharjenam or the chief lady of the Nambudiri jenmi (*Sund Iyer Mal Law*)

Akamnamah Written also Ahamnamah, written orders Assessment of Tippoo Sultan (*Fifth report*)

Akarband (Berar-*Mar*) one of the land records (*Bad Pow* III 355) A statement prepared at the time of the annual settlement showing the highest amount of revenue derivable from a village, the quantity of land paying rent or rent free, the sum assessed, and land cultivated during preceding years, the balances due, and instalments by which they are to be discharged, the sums payable to the village officers, and the shares in which the assessment is to be distributed among the occupants of the lands.

Akar Patra or Patrak. (*Mar.*) Account of rules of assessment and amount of revenue kept by the Kulkarni. (*Wıl. Gloss* 15)

Alattu nılam

Akbar-ur-rai, (*A*) Convincing Strong presumption. (*Mac Mah Law.*)

Akila (*A*), One who is subject to pay Diyat or the fine of blood. (*Mac Mah Law*)

Akdana (*H*) Marriage fee paid to the Kazi

Akhir (*H*) (*A*) *Akher* (*Mar*) Final, last, end. In the Dekhan the last assessment, the rate at which the revenue was last fixed

Akhiri, (*A*) Last, final

Akr (*A*) In Mahomedan law, a marriage portion or dower, also one to be settled on the female slave termed Mukatiba, with whom the owner has cohabited, also price paid for the violation of a maiden

Akshaya (*S*) The sixtieth year of the cycle of sixty years (*Wıl Gloss*)

Akhun. (*Per*) Akhun is the title of the ruler of Swat He is a very powerful personage—saint and king combined—who entirely controls the actions of all tribes between the Indus and Cabul, from the confines of Kashmir to those of Sindh and who is extremely hostile to all infidels, especially Europeans

Akkasari-gramamue, (*Tel*) A neighbouring village

Akubat (*A*) Punishment Chastisement (*Mac. Mah Law.*)

Alaga bhumi. (*Tel*) Waste land, land set apart for pasture

Alaga pullari, (*Tel.*) Grazing tax or fine levied on stray cattle

Alakkiravan or Alavukaran (*Tam*) A measurer.
Ala-lambardar (*Pj*) Chief headmen over the several headmen of village sections (*Bad. Pow* II 740)

Ala-malik, superior owner over a village (*Pj.*) (*Bad Pow* I, 200, II, 641, 655, 657)

Al-Amanji (*Tam*) Compulsory service which the villages in the Dravida Provinces were formerly compelled to render to Government Officers or persons travelling on public duty.

Alamgiri (*World embracing*) (*P.A.*), a general rainfall (Ajmer) (*Bad Pow* II, 349.)

Alam, Ulum (*Tam*) A salt pan, a place where salt is made (*Wıl Gloss*)

Alanlad Offspring of any kind, and includes all descendants, male or female, whether through the male line or female line 14 I C 523=11 P.W.R 1912=162 P.L R. 1912

Alanubhavom (*Mal*) Anubhavom for life of the grantee (*Sund Iyer Mal Law*)

Alata or Alata-Gara (*Karn*) A person employed in Mysore to measure corn or land, sometimes included among the village officers

Alattu-nilam. Land impregnated with salt, and therefore unfit for cultivation.

Al-Aulad.

Al-Aulad. The words "al aulad" mean offspring of any kind and include all descendants, male or female, whether through the male line or through the female line (*Chandi* v *Thulla Singh*) 14 I C 523 Though the words "al aulad" etymologically signify "offspring" or "progeny" (*i e*, include female as well as male descendants) yet, they must be interpreted to mean "lenial male descendants" having regard to the custom prevalent in the place (*Perksh* v *Rameshwar Nath.* 31 C 561)

Alavi (*Karn*) A lease or agreement given to the ryot in writing, one stipulating a progressive assessment, also termed Alavi Geni

Alavi-sair Sea-customs Extra revenue let on lease or in farm

Alavu or Alavai (*Tam*) Measure or measurement, especially of grain Portion of produce set apart as payment for the measurement of the crop

Alavu-paimaish Survey or measurement of fields, especially the name of a particular survey and valuation of the lands in Malabar made for the purpose of assessing the revenue in 1805-8, also known as Jenma Paimash. (*Sund Iyer Mal Law, Wil Gloss., Moore Mal Law*)

Alavu-karan (*Tam*) A measurer, the village officer who measures the thrashed grain and regulates the proportionate distribution of water for irrigation.

Alcohol A liquid formed by the fermentation of aqueous sugar-solutions or by the destructive distillation of organic bodies, as wood

Alcohol is a powerful stimulant and antiseptic, and in some dilute form is used as an intoxicating beverage among all races and conditions of people.

In popular usage, any liquor containing this spirit.

Alcoholism (*Medical jurisprudence*) The pathological effect (as distinguished from physiological effect) of excessive indulgence in intoxicating liquors Delirium tremens and alcoholic homicidal mania are examples of this form

Alderman Those are called aldermen who are associates to the civil magistrates of a city or town corporate. See *Spelman's Gloss* 25. *Tomlins Law Dict.* A member of the corporation or common council of a city or corporate town, elected by and representing the inhabitants of a ward, and having authority to act as a civil magistrate, and sometimes as a judge (*Burrill*)

Aldhola (*Karn.*) A field in one's own possession

Aleatory contract. Hazardous contract; a wagering contract, a mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event. (*Wharton citing Civil Law.*)

Ale House. A place where ale is sold to be drunk on the premises. An "Alehouse" is a licenced place where excisable liquors are sold, by retail, to be consumed on the premises The word is, probably, synonymous with "Public-house" and "Tavern"

Alien.

(*London and Suburban Land Co.* v. *Field*, 50 L. J. Ch 549; 16 Ch D. 645.)

Alfet. The caldron containing the boiling water in which the accused dipped his arm up to the elbow and there held it for some time in the ordeal by boiling water. (*Jacob L. Dict., Whaton.*)

Alias Literally, "otherwise called" or "otherwise", A term used to denote a second or further description of a person who has gone by two or more names (*Burill L Dict*), at another time, in another place, in other circumstances, otherwise. It is used chiefly in judicial proceedings to connect the different names assumed by a person who attempts to conceal his true name and pass under a fictitious one thus, Simpson *alias* Smith means a person calling himself at one time or one place Smith, and at another Simpson

An assumed name, another name Outcasts . forced to assume every week new aliases and new disguises (*Macaulay Hist Eng XXI*) "Most (Moselm) women when travelling adopt an alias" R. F Burton, *El-Medinah*, p. 420.

Alibi, Elsewhere This term is used to express that defence in a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was in a different place at the time (*Tomlins Law Dict*)

"The prisoner had little to say in his defence, he endeavoured to prove himself *alibi*" (*Arbuthnot, Hist John Bull, II*)

Alien. Generally speaking, one born in a foreign country, out of the allegiance of the king "one who does not, either by nativity or voluntary adoption, owe allegiance to the government within whose territory he dwells"

The word 'alien' which is synonymous with 'foreigner' is said to be "a person belonging to a foreign country, or without the country or jurisdiction under consideration" *Matter of Guilford*, 67 Cal. 380, 382; 7 Pac 763

"Natural-born subjects are such as are born within the dominions of the Crown of England; that is, within the liegeance, or, as it is generally called, the allegiance of the king, and aliens, such as are born out of it" (See also *Jacob L Dict, Rapalje L. Dict.*)

With respect to any country, an alien is a person (which term also includes a corporation) who is not a citizen or subject of the country, (*Anderson L. Dict.*), or who does not owe it allegiance. Aliens are generally classified as resident aliens and non-resident aliens, and as alien friends and as alien enemies

RESIDENT ALIEN is one who resides in a country to which he is a foreigner; but the term does not include an alien who has become a naturalized citizen or subject. *Luhrs* v. *Elmer*, 80 N.Y. 171.

Alien friends.

NON-RESIDENT ALIEN is one residing out of the country or state, the context showing the territorial limits with reference to which the term "resident" is used *Gill* v —79*Iowa* 296.

Alien friends of a country are those foreigners whose country is at peace with it (*Abbott L. Dict* , 1 Bl Comm 372, *Black L Dict.*)

Lord Bacon defined an alien friend to be "such a one as is born under the obeisance of such a King or state as is confederate with the King of the country or, at least, not in war with him' *Rapalje L Dict* (citing Coke Litt, 129b, *Calvin's case*, 7 Coke 17, *Wharton L Lex*).

Alien enemies of a country are those foreigners whose country is at war with it (*Abbot. L Dict*)

Lord Bacon defined an alien enemy to be "such a one as is born under the obeisance of such a king or state as is in hostility with the King of the realm" (Coke Litt 239b, *Rapalje & L. L Dict* , *Warton L. Lex.*) , Otherwise defined as "a person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy" *Burrill Law Dict* (citing 1 *Kent Comm* 74, 2 *Kent Comm* 63)

BIRTH, DOMICILE, OR RESIDENCE The mere circumstance of birth, however, is not now held to be of itself sufficient to give the character of an alien enemy Domicile or residence more frequently has this effect. (*Burril Law Dict* , 2 *Kent Comm* 63)

Alien (*Verb*) To transfer or make over to another ,to convey or transfer the property of a thing from one person to another, to alienate, Usually applied to the transfer of lands and tenements (Coke Litt 118, *Cowell*)

Alienate is to transfer property from one person to another The word "alienate" in C P C, Sch III, para II is used *ejusdem generis* with the words preceding it, namely, mortgage, charge and lease, and manifestly contemplates a transfer which would have a present effect and not a devise which can only have operation after the death of the testator (*Muhammad Sayeed* v *Muhammad Ismail*) 33 All 233=7 A L J 1176=8 I C 834. The word "alienate" would include a devise by will *Narain* v *Krishnaji* 32 Bom L.R 1249=A I R. 1930 Bom 534.

Alienate defined. Bom Act 5 of 1879, S 3, Bom Act 4, 1881 S 6 expln *See also* 12 I C 369, 13 Bom L R 883, 16 B 455 7 N.L R. 100.

"Alienation" defined Bom Act VI of 1888, S 2 (*d*), Mad. Act 2, 1904, S 2

Alienation is transferring property to another (Co. Litt.) The act whereby one man transfers the property and possession of lands, tenements, or other things, to another person (*Terms de la Ley*), generally applied to absolute conveyances of immovable property (*Black*)

"Alienation", is as much to say, as to make a thing another man's or to alter or put the possession of lands, or other things, from one man to another" (*Terms de la Ley*). "Alienation" imports an actual transfer of title.

"ALIENATION" means a transfer of ownership, and "*alienee*" means a person to whom ownership is transferred, Bom Act VI of 1888 (Guzarat Taluqdars) S 2 Cl (*d*).

The word 'alienation' as used in S 3 of the Bhagdari Act, includes a transfer by testamentary devise. *Javer* v *Hadibhai*. 17 Bom.L R 1131

ALIENATION in the Succession Duty Act, 1853 (16 & 17 Vict, c 51) See *Lord Wolverton* v *Att-Gen.* (1898) App Cas 535

Alienation and attachment The word "alienation", means transfer of ownership, an attachment being rather a prohibition of transfer, effects no transfer and is not an "alienation" 1 Bom L R 154 (*Shivlal* v. *Thakoor*)

"'Alienation' differs from 'descent' in this, that 'alienation' is effected by the voluntary act of the owner of the property, while, 'descent' is the legal consequence of the decease of the owner, and is not changed by any previous act of volition of the owner" *Burbank* v *Rockingham Mut F Ins Co.*, 57 Am Dec 300

Alienation and Partition The word 'alienation' is distinct and different from 'partition.' The latter is not included in the former. *Khimanmal* v. *Sher Mahomed Khan* 25 S.L.R. 430=132 I C. 471=A.I.R. 1931 Sind 118

Alienation of land A sale of equity of redemption is not an alienation of land within the meaning of Art 125 of the Limitation Act (*Musamat Ralli* v. *Sunder Singh* 17 I C 864=108 P.R 1912).

Alienatio licet prohibeatur consensu tamen omnium in quorum favorem prohibita est potest fieri (Co. Litt 98) A maxim meaning "although alienation be prohibited, yet it may take place with the consent of all the persons in whose interests it is prohibited".

Alienatio licet prohibeatur, consensu tamen omnium in quorum favorem prohibita est, potest fieri, et quilibet potest renunciare juri pro se introducto A maxim meaning although alienation be prohibited, yet, by the consent of all in whose favour it is prohibited, it may take place, for it is in the power of any man to renounce a law made in his own favor." (Co. Litt 98) (*Black*).

Alienatio Rei Praefertur Juri Accrescendi. A maxim meaning "Alienation is favoured by the law rather than accumulation." (*Broom Leg. Max*; Co. Litt. 185, 2 *Cyc* 80).

Alienee. One to whom an alienation, conveyance, or transfer of property is made (*Anderson Law Dict.*).

"Alienee" defined. Bom Act VI 1888, S. 2 (1) (*d*).

Alien Enemy. See "alien'

Alieni juris. Under the mastership of another.

Alienism.

Alienism Alienage, the state of being an alien "The law was very gentle in the construction of the disability of *alienism* (Kent. Com)

Alienor. He who makes an alienation, grant, transfer or conveyance

The terms "*alienor*" *and* '*alienee*" in Mad Act I of 1876 are reciprocal and necessarily imply only those parties between whom reciprocal relation exists 30 Mad 106=16 M L J 468=1 M L T 421

Alignment (in Mit law) the line on which troops are formed in battle order.

Ali-Illahi The name of a heterodox school of Mahomadans

Alike In the same manner, equally, A gift by will to two or more "alike," or "to be enjoyed alike," is synonymous with its being given equally and creates a tenancy in common (per *Mansfield, C J*, *Loveacres* v *Blight*, Cowp, 357).

Ali-Kuli-Kanam *Alivu* (expense), *Kuli* (pit) (*Mal*) The expenses of the tenant in improving land which are paid to him on determination of the lease (*Moore Mal Law*, *Sun Iyer Mal Law*)

Alim (*A*) A wise man, a doctor of the law

Aliment A fund for maintenance Parents and children are reciprocally bound to aliment each other, in like manner, life renters are bound to aliment the heirs, and creditors their imprisoned debtors, where they are unable to support themselves (*Scotch Dict.*, *Tomlins Law Dict*).

Alimony. (Nourishment or maintenance) In a legal sense, it is taken for that allowance which a married woman sues for and is entitled to, upon separation from her husband (*Terms de la Ley*, 38. *Tomlins Law Dict*), the allowance made to the wife out of her husband's estate for her support, either during a matrimonial suit, or at its termination, when she proves herself entitled to a separate maintenance.

A l'impossible nul est tenu A maxim meaning "No man is bound to perform the impossible" *Adams Gloss*); "There should not be any obligation to do the impossible" (*Wharton*)

Alipadam From (Dravidian) adi (the ocean, the deep) and (Sanskrit) Padam, Alam means (as in Tamil) depth, lowness, and padam, field The word applies to the lowest rice-lands (*Log Mal Man*).

Aliquid conceditur ne injuria remanerit impunita quod alias non concederetur. (Co Litt. 197). A maxim meaning "something is conceded, which would not otherwise be conceded, lest an injury should be left unpunished."

Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars A maxim meaning "A person ought not to be a judge in his own cause, because he cannot act as judge and party both." (*Broom Leg. Max*; *Black*, Co. Litt 141, 3 Bl. Comm. 59). "No man can be at once judge and suitor" The maxim is illustrated by the decision in *Dimes* v *Grand Jn Canal Co*, 3 H L C 759 Where the H L held that the decrees of Lord Cottenham L C in favour of the Canal Co were voidable and must be reversed on the ground that when he made the decrees he was a shareholder of the company, and this fact was unknown to the other parties to the suit"

Alia intuitu With a motive other than the ostensible and proper one.

Ali silavu. (*Mal*) The expense of preparing garden lands for cultivation (*Moore Mal Man*)

Ali, properly alu or aluku (Dravidian), means the high wall round an orchard Silavu, properly chelavu (Dravidian), means expense The expense of preparing gardens It bears the proportion of 20 per cent to the established valuation of trees, which is settled in making the Kulikkanam (*Log Mal Man*)

Aliter Otherwise. (*Burrill*), a term often used in the Law reports (*Black*)

Aliud est celare—aliud tacere A maxim meaning 'silence is not equivalent to concealment" The maxim applies to the sale of goods, with regard to which there is no warranty either express or implied The seller in such cases, is entitled to be silent as to the defects, but not to conceal the defects for purposes of the sale

Aliud est distinctio, aliud separatio A maxim meaning 'distinction is one thing, separation is another" (*Black*), "It is one thing to make things distinct, and another thing to make them separable"

Aliud est possidere—aliud esse in possessione (*Hob* 163) A maxim meaning "it is one thing to possess, it is another to be in possession" (*Wharton*, *Broom Leg Max*)

Aliud est vendere, aliud vendenti consentire. To sell is one thing, to consent to sell is another. (*Burrill*, *Black*, *Dig* 50, 17, 160)

Aliunde From elsewhere, from another source or quarter, (*Burrill*), from outside (as) Evidence *aliunde* (*i e* from without or outside of the will or other document) may be admitted to explain ambiguity in a will *Greenleaf Evi* S 291)

Aliya-Santanam Inheritance in the female line The Canarese equivalent of Marumakkathayam (*Moore Mal Law*) Inheritance in the line of nephews (*Sundaram Iyer's Mal Law*)

Aliya-Santanada Kattu Kattale A treatise on the customs of South Canara. This book is alleged to be the work of Bhutala Pandiya, but is a recent forgery (*Moore's Mal Law*)

Alkoran This is the word 'Koran' with the article prefixed

All The whole quantity of a thing With reference to substance, extent, amount or degree

"ALL" is equivalent to "each and every" Ld Fitzgerald' in (*Burnett* v. *G N of Scotland Ry*, 54 L J. Q.B 539), but by context, it may mean "any" (1 Jarm. 504 *Jarman* v. *Vye*, 35 L J. Ch. 821)

All costs of process

"No one will contend that *all* legislative power belongs to Congress, all executive power to the President, or all judicial power to the Courts of the United States" *D. Webster, Speech, Senate, May* 17, 1834

All costs of process The words "all costs of process" are wide enough to include costs of execution, such, for instance, as the fees necessary for the issue of an attachment or a sale proclamation, (*Kripa Sindhu Ray* v *Bancha Nidhi Mahanti* 10 Ind Cas. 899)

All his estate "The words 'all his estate' in a will will pass everything a man has" (per *Mansfield, C J., Hogan* v. *Jackson*, 1 Cowp 306)

"All offences under any other law" The words "all offences under any other law" in S 5 of the Code of Criminal Procedure, 1882, cannot be intended to include a contempt of the High Court by a libel published out of Court when the Court is not sitting for which offence no provision is made by the Code *Surendranath Banerjee* v *Chief Justice and Judges of the High Court of Bengal* (1883) 10 I A 171=10 C 109 (132)=4 Sar 474

"All other cases", The words "all other cases" in cl. 12 of the Letters Patent (1865) are not to be understood as including cases of suits for immovable plus movable property but refer only to cases in which no immovable property whatever is involved *Jairam Narayan Raje* v *Atmaram Narayan Raje*, 4 B. 482

All-Pound price, over head price, a price that covers all charges usually treated as trade extras

All previous parties The words "all previous parties" appearing in S 83 of the Negotiable Instruments Act XXVI of 1881 should be construed as including the drawer *Khan Chand* v *Golab Ram*, 10 I C 133 (136)=39 P R 1911 (per *Kensington, C J*)

"All rights of various kinds" in a lease includes minerals 33 C 511=3 C L J 306=10 C W N 738

All rights reserved, a printed intimation in a literary work, notifying that the owner of the copyright has legal protection of his rights against infringement

"All the questions" referred to in O, I, R 10 (2) C P Code, must be questions between the plaintiff and the defendant, and not questions which may arise between co-defendants or between co-plaintiffs *inter se* Questions having to be decided incidentally during an appeal, such as who the legal representative of a deceased party, was, are not among those contemplated by the section *Har Narain Singh* v *Kharag Singh*, 9 A 447=7 A W N 89.

Allah. (*A.*). The highest of the hundred Moslem names of God.

Allanai, (*Tam*). A dam or bridge of stone (*Wil Gloss* 26.)

Allay. To put down, humble, overthrow.

"Instead of allaying the animosity of the two populations, he inflamed it to a height before unknown" *Macaulay, Hist. Eng. vi.*

Alledukiravan (*Tam.*) The measurer who is paid by a handful from each quantity measured.

Allegiance

Allegans contraria non est audiendus A maxim meaning "he is not to be heard who alleges things contrary to each other" (*Broom Leg Max*) "One alleging contradictory things (*i e.*) (whose statements contradict each other) is not to be heard," applied to statements of witnesses (4 Inst 279) The doctrine of estoppel is mainly based on this maxim .

Allegans suam turpitudinem non est audiendus. A maxim meaning "He is not to be heard who alleges his own infamy" (*Black*, 4 Inst 279, *Broom Leg Max*, *Wharton*). "A person boasting of his own wrong is not to be heard" (*Max*)

Allegari non debuit quod probatum non relevat A maxim meaning "that ought not to be alleged which, if proved, is not relevant" (*Burrill*, 1 Ch, Cas 45, *Broom Leg Max*)

Allegata et probata (*Latin*) Allegations and proof (*Burrill*), Things alleged and proved, a term expressing the allegations made by a party to a suit and the proof adduced in their support A phrase frequently used to express the rule that the evidence and allegations in the pleadings must correspond, as in the sentence "The allegata and probata must agree, the latter must support the former"

Allegatio Contra factum non est admittenda. A maxim meaning, "where a man has entered into a solemn engagement under his hand and seal as to certain facts he shall not be permitted to deny any matter which he has so asserted" This is the basis of the doctrine of estoppel by deed

Allegation Assertion, declaration, an asserted fact or statement of a party to an action, made in a pleading, setting out what he expects or undertakes to prove (*Black*)

Allege To pronounce with positiveness, declare. affirm, assert, as, to allege a fact. "In many alleged cases, indeed, of haunted houses and the like a detailed revelation of names and places might expose the narrator to legal action" (*H. L Oxenham, Short Studies*, p 73)

Alleged and denied These words are conjunctive 6 All 358=4 A,W N 115 But *see* 25 Bom 189 (196).

Allegiance The natural and lawful and faithful obedience which every subject owes to his prince It is either perpetual, where one is a subject born, or where one hath the right of a subject by naturalization, &c , or it is temporary by reason of residence in the king's dominions To subjects born, it is an incident inseparable, and, as soon as born, they owe by right obedience to their sovereign, and it cannot be confined to any kingdom but follows the subject wheresoever he goeth (*Tomlins Law Dic*)

OTHER DEFINITIONS "Allegiance" is such natural or legal obedience which every subject owes to his Prince" ("*Termes de la Ley*"), "The obligation of fidelity which the individual owes to the government or to the sovereign under which he lives in return for the protection he receives"

"The tie or ligamen which binds the subject (or citizen) to the king (or government) in return for that protection which the king (or government) affords the subject (or citizen), I Bl Comm. 366 It consists in "a true and faithful obedience of the subject due to his sovereign." 7 Coke 4b.

All-fours

NOT DEPENDENT UPON OWNERSHIP OF LAND "As to allegiance, it is indeed due from every citizen to the state, but it is a political obligation, and is as binding on him who enjoys the protection of the state, without owning a foot of soil, as on him who counts his acres by hundreds or thousands The truth is, that this obligation, which is reciprocal to the right of protection, results out of the political relations between the government and the citizen, and bears no relation whatever to his land-titles any more than to his personal property" *Wallace* v. *Harmstead*, 44 Pa. St 492, 501.

Allegiance, Loyalty, Fealty.—Terms distinguished Allegiance is the most formal and official of these words, it is a matter of principle and applies especially to conduct, the oath of allegiance covers conduct only Loyalty is a matter of both principle and sentiment, conduct and feeling, It implies enthusiasm and devotion, and hence is most frequently chosen for figurative uses as, a loyalty to a lover, husband, family, clan, friends, old traditions, religion Neither allegiance nor loyalty is confined to its original meaning of the obligation due from a subject to a Prince Fealty has escaped less completely from this earliest sense, but has permissible use in the sense of fidelity under obligation of various kinds (*Cent Dict*)

All-fours A metaphorical expression used to describe cases which are alike in all the circumstances which affect their determination, and which are said to be, or run, upon all-fours (*Abbott, L Dict*); A case agreeing in all its circumstances with another case is sometimes said to be on "all fours" with it (*Ame Cyc*)

Alliance. (From Lat *alligo* to tie or unite together) the state of connection or union with another, the union or connection of two persons or families by marriage (*Bouvier L Dict*) (as) alliance by marriage.

In INTER-NATIONAL LAW, a union between two or more nations, contracted by compact, treaty, or bague (*Burrill.*)

If the alliance is formed for the purpose of mutual aid in the prosecution of war against a common enemy it is called an "*offensive*" *alliance* If it contemplates only the rendition of aid and protection in resisting the assault of a hostile power, it is called a "*defensive*" *alliance* If it combines both these features, it is denominated an alliance "*offensive and defensive.*" (Black)

Allision The running of one vessel into or against another. (*Burrill, Wharton, 2 Cyc* 133); as distinguished from "*collision*" (*i e*) the running of two vessels against each other.

Allocation An allowance made upon accounts in the English exchequer (*Wharton*), or placing or adding to a thing (*Ency Lond , Cowell.*) The Act of allocating, allotting or assigning; Allotment, assignment, apportionment (as) the allocation of shares in a public company

Allocatur, Literally, "it is allowed" The certificate of the allowance of costs by the Master on taxation. (*Jacobs*) A term used to express the allowance of a thing or proceeding by a Court, Judge, or judicial officer, and applied to the certificate given by the master, on taxing a bill of costs, showing the amount taxed or allowed. (*Burill L. Dict, Tomlins Law Dict.*)

Allocutus Allocution The formal address of the judge to a prisoner asking him why the Court should not proceed to judgment against him, or why sentence should not be pronounced (*Arch Cr Pleadings*, 173)

Allodial. Or "Allodian" Lands, "are free lands" (*Cowell*)

Allodial lands are free lands, which a man enjoys without paying any fine, rent, or service to any other (*Tomlins Law Dic*)

Allodium Freehold estate, land which is the absolute property of the owner, real estate held in absolute independence without being subject to any rent, service or acknowledgment to a superior

"To *allod* in some form or other is probably as old as the institution of individual landed property and we may regard it as equivalent to or directly descended from the share which each man took in the appropriated portion of the domain of the group to which he belonged—tribe, joint family, village community, or nascent city" (*Maine, Early law and Custom, p* 339)

Allonge is a slip of paper annexed to a title of exchange for endorsements where there is no room for them on the bill (See s 32 (1), Bill of Exchange Act, 1882)

Allopathy (In medicine) a therapeutic method characterised by the use of agents producing effects different from the symptoms of the disease treated

Allot. To divide or distribute, as by lot, to apportion or distribute or parcel out, (as), to allot shares in a public company, to grant, assign, set apart, appropriate, (as), to allot a sum of money for some specific purpose

To allot is to indicate that a portion of property held by a number of joint owners is in future to belong exclusively to a specific person called the "allottee"

Allotment The act of allotting or distribution by lot That which is allotted, a share, or portion granted or distributed, the thing or portion which is assigned by lot

Allotment Note is a document signed by the seaman, authorising payment by his employers of a portion of his wages (not exceeding one-half) for a certain voyage to a relative or bank specified

Allotment and regret A letter of allotment and regret is a letter sent to each subscriber in cases of over subscription for a stock issue, notifying him of the shares alloted to him and expressing regret that the full subscription cannot be allotted.

Allotment system. "The practice of dividing land into small portions for cultivation by agricultural labourers and other cottagers at their leisure, and after they have performed their ordinary day's work." (*Black*; *Wharton.*)

Allow.

Allow, to grant, permit or approve (as) to allow an account; to allow an appeal. "Allow" is equivalent to 'fix' in a statute relating to the rate of interest allowed. *Hinds* v. *Marmolejo*, 60 Cali 229, 231 (*Ame*) To allow is to abate or deduct, take into account, set apart as, to allow so much for loss, to allow a sum for tare or leakage, to grant permission to, permit, as, to allow a servant to be absent. "No person was *allowed* to open a trade or to commence a manufacture. . . . unless he had first served his apprenticeship" (*Froude, Sketches p.* 170)

Allowance Something given as a compensation, abatement, or deduction, a portion or a gift or gratuity to a child or other dependent, the sanction or approbation of the Court to certain acts, settlement, to put upon allowance, to restrain or limit to a certain quantity of provision or drink (*2 Cyc* 134.) Used in such terms (as) allowance of a specified amount as alimony *pendente lite*, special allowance for costs in taxation, allowance for the maintenance of one's wife and children, allowance to insolvent-debtors etc In *Burgess* v. *Clark*, 14 Q B.D 735, 738, *Brett, M R* defined "allowance" as "a payment beyond the agreed salary of the officer, for additional services rendered by him"

The expenses and the charges to which the trustee may be entitled outside of the ordinary fee-bill are designated as his allowances *Downing* v *Marshall*, 37 N Y 380, 390.

The word Allowance imports a voluntary act and implies a discretion. "Whether we consider the ordinary and popular signification of the word, or the more accurate and technical meaning attached to it by lexicographers, it is entirely inappropriate to express the idea of fixed compensation adopted for the payment of services rendered by one person to another. The word 'allowance' imports the voluntary act of one party in doing something which is in his discretion to perform or withhold,at pleasure. To allow implies the right to determine and is the act of a superior toward a dependent, granting a privilege which he has authority to confer or deny. It does not express the relations existing between co-contractors, vendor and vendee, or employer and employee, where there is a right secured by contract on one side, and no power of voluntary action on the other Allowances are made by husband to wife, parents to children, the head of a family to its members, superannuated dependents and servants, from the benevolent to the poor, and, in cases where the act is discretionary with the donor, as a reward for the benefits conferred, or services voluntarily rendered by one to another." *Mangam* v. *Brooklyn*, 50 Am. Rep. 705

Allu (*Tam.*) A handful of grain given to the village servant by whom a quantity has been measured.

Alluvial land. In the sense of land gradually gained from the river, which has no other owner, and which belongs by way of accretion to the lands of the adjoining proprietor *Mussumat Imam Bandi* v. *Hurgovind Ghose.* 4 M I. A. 403.

Alluvion. Alluvion is an imperceptible increase; land is said to be acquired by alluvion when it is acquired so gradually that one cannot say how much

Alongside

is added at any particular moment of time *Narendra Bahadur Singh* v. *Achhaibar Shukul.* 28 A. 647=3 A L.J. 453.

Alluvion and accretion. The term alluvion is applied to the deposit itself, while accretion rather denotes the act (See *Accretion.*)

Ally A person associated with another by kinship, treaty or league, a confederate, more particularly, a sovereign or state connected with another by treaty, offensive and defensive, or a subject or citizen of such sovereign or state.

Almanac A publication, in which is recounted the days of the week, month, and year indicating the fasts, feasts, terms, and other important days by proper marks pointing out also the several changes of the moon, tides, eclipses, etc

"Almanac, is part of the law of the land, of which the Courts must take notice" (*Tomlins Law Dic.*).

NAUTICAL ALMANAC is an almanac for the use of navigators and astronomers.

Alms Charitable donations, relief bestowed upon poor and destitute people, anything given for relief of the poor, gratuitously, as food, clothing, money etc, by way of charity (*Webs, Imp Dic.*)

DISTINGUISHED FROM CHARITY "In many instances where the words 'alms' and 'charity' are both used, we are to consider it as mere tautology" (*Bedford's Case, 2 Dougl El Cas* 69, 106) In *Taunton's Case' I Dougl El Cas* 367, 370, the Court said "Alms, means parochial collection, or parish relief 'Charity' signifies sums arising from the revenue of certain specific funds which have been established or bequeathed for the purpose of assisting the poor"

Alms-folk Are persons supported by alms or charity

Alms-house A poor house, A house appropriated for the poor,—especially for those who are supported by the public or by a revenue derived from private endowment. (*Imp Dec* 2 Cyc, 135)

Aloft (*Nautical*) In or into the top at the masthead, or on the higher yards or rigging, hence, on the upper part as of a building.

Along By, by the length of, on, adjoining, beside, by the side of (as) vessel lying along side of the wharf, alongshore

"Along a line" does not signify that an object must be on the line, but rather the reverse, 'along' in this sense, is used as the equivalent of 'up to', 'extending to' 'reaching to'," *Benton* v. *Horseley*, 71 Ga 619, 626), nor do the words necessarily import that the object must at all points touch or be parallel to the line (*Com* v *Franklin*, 133 Mass. 569, 570, construing a statutory provision authorising a person adjoining a highway to construct a sidewalk along the lines of his land). 2 Cyc. 135—6.

Alongside. A provision that cargo "shall be brought alongside" for shipment, in a Charter party means that the charterer is to bring the cargo as near to the ship as practicable. (*Holman* v. *Dsmeres*, 2 Times Rep. 480, 607).

Alotti.

Alotti (*Tam*) An overseer one who superintends and urges on labourers

Already Does not mean at some time previously, but, means at the time stated and immediately preceding thereto. (*Apothecaries Co* v *Roby*, 5 B & Ald 949).

Already, in Sect. 9 of the Burials Act, 1855, held to mean "at the commencement of the Act" *Godden* v. *Hythe Burial Board*, (1906) 2 Ch 270

'Altamgha' A stamp on impression Literally "the seal" A grant of land under the royal seal conveying property to a man and his heirs in perpetuity

Altamgha or Altumgha or Ultumgha, (*H*) A royal grant under the seal of some of the former native princes of Hindustan, and recognised by the British Government as conferring a title to rent-free land in perpetuity, hereditary and transferable Although probably originally bearing a red or purple stamp, the colour of the imperial seal or signature became in Indian practice indifferent (*Wil Glos*, 19, *Bad Pow*, *Mac Mahamadan Law*) *See also* 6 W.R 3=2 M I A, 390 (P C.)

Altamghadar A holder of an Altamgha (*Mac Mah Law*)

Altamgha Inam, (*H*) A royal grant in perpetuity of land free of rent (*Mac Mah Law*)

Altar. (*Eccl*) An elevated place or structure, or block of stone, or other object of appropriate form on which sacrifices are offered or incense is burned to a deity

Alter (*verb*) To make a change in, to modify, to vary in some degree *See also* 8 Bom 200

The power to "*alter, modify, or extend*," a plaintiff's claim by his statement of claim, does not authorize a totally different case from that first set up (*Kerr* v *Williams*, 30 S J 238, *Cave* v *Crew*, 41 W R 359, 62 L J Ch. 530)

Alter, Change, Amend "This term (alter)is to be distinguished from its synonyms "change" and "amend." To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject matter which continues objectively the same while modified in some particular If a cheque is raised, in respect to its amount, it is altered, if a new cheque is put in its place, it is changed To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration An amendment always involves an alteration, but an alteration does not always amend." (*Black*).

Alteration. (*Changing*); A change or substitution of one thing for another.

Alteration (*of an instrument*) is an act done upon an instrument by which its meaning or language is changed. If what is written upon, or erased from, an instrument has no tendency to produce this result, or to mislead any person, it is not an alteration.

Altumgaha.

"Technically, it is a change in an instrument by a party, thereto, or one entitled thereunder, or one in privity with such person, after the instrument has been signed or fully executed, without the consent of the other party to it, by an erasure, interlineation, or substitution of material matter affecting the identity of the instrument or contract, or the rights and obligations of the parties thereunder The writing of words calculated to change the legal effect of the instrument is, to all intents as fully an alteration as an erasure and substitution" (*Ame Cyc*)

An alteration of an instrument is something by which its meaning or language is changed, either in a material or an immaterial particular.

Alteration of Instruments—*material and immaterial* In the ordinary acceptation of the word an "alteration" is a change of a thing from one form or state to another, that is, making a thing different from what it was, but without destroying its identity As applied to written instruments, the meaning is restricted to that particular kind of a change in the sense or language which is effected by an act done on an instrument by the party entitled to it An alteration of an instrument may be either *material or immaterial*, according to the character of the change which has been made. A material alteration is one which changes the legal effect of the instrument, while an immaterial alteration has no such effect Where, however, a stranger to the instrument makes a change therein without the knowledge or consent of the parties in interest, the change, according to the decided weight of modern authority, is not to be treated as an *alteration but as a spoliation*, which does not avoid the instrument or change the rights or liabilities of the parties in interest, so long as the original writing remains legible, (*Ame Rul Case Law*)

Alteration of "flood works", *See* (1906) 2 K B 72

"Altering composition of coin" defined Act 45, 1860, S 246, Expln

Alterius circumventio alii non praebet actionem (D 50, 17, 49) "No action can be based upon a successful fraud"

Alternativa petitio non est audienda A maxim meaning "An alternative petition is not to be heard' (*Wharton*, *Co Litt.* 40.)

Alternative The one or the other of two things, A privilege of choosing one of two things or courses, either of two objects offered to one's choice (Abbott L Dict) (as) alternative contract, alternative obligation, alternative remedy, alternative turns, alternative courts,

Alternative and cumulative remedy Where a new remedy is created in addition to an existing one, it is called alternative if only one can be enforced; if both can be enforced it is called cumulative' (*Wharton*)

Altumgaha (*See* Altamgha.) A royal grant in perpetuity, perpetual tenure. An heritable Jaghire in perpetuity. (*See* Fifth Rep.)

Altumgah Inam

Altumgah inam Means a grant in perpetuity, not resumable by the Zemindar *Unde Rajaha Raje Bommarauze Bahadur* v *Pemmasamy Venkatadry Naidoo.* (1858) 7 M I.A 128

Altum mare The high sea (Adams Gloss , Co. Litt , 260 *b* , the deep sea (*Hob* 212 *b* , *Black.*)

Alugu. (*Tel*) A channel, a sluice to carry off the overflowing water of a reservoir or tank

Alumnus A pupil, one educated at a school, college or university, specifically a graduate of such institution

Alusanka (*Karn*) A tax levied on cultivators in Mysore, who employ labourers at so much per head

Alute, corruptly, Ulootay, Allotie, Allooty, Alowtay, (*Mar*) Possibly a mere alliterative term derived from Balute (as Balute-alute) The collective designation of the persons whom it is customary in some of the provinces of the Dekhan, to retain as village servants, in addition to the Balute or regular village servants, such as superannuated members of the Balute or their widows, religious mendicants, and the helpless and lazy in general (*Wil Gloss,* 19)

Always In all cases, perpetually, continually, through all time.

The word 'always' should not be taken as equivalent to 'for ever'" (*Wendenbaugh* v *Reid,* 20 W Va 588, 596, 2 Cyc 258.

The word 'hamesh' (always or for ever) used in a will, award, or order of Court or other document, does not *per se* extend the interest given thereby beyond the life of the person who is named The word is not inconsistent with limiting the interest given, but the circumstances under which the instrument is made or the subsequent conduct of the parties, may show the intention with sufficient certainty to enable the Court to presume that the grant was perpetual (*Aziz un-Nissa* v *Tassaduq Hussain Khan,* 23 A 324=11 M L J 160=28 I A 65 (P C) *See also* 26 Mad 202 (209) (P C)]

Words such as "always" and "for ever", used in an instrument disposing of property, do not in themselves denote an extension of interest beyond the life of the person named as taking, their meaning being satisfied by the interest being for life [*Muhammad Abdul Majid* v *Fatima Bibi,* 8 A 39=12 I.A 159 (P C)]

Amal, Amul (*Hindi*) Being in charge or possession of. (*Wils. Gloss*)

Amal, Umul (*H* used in most dialects) means business affairs, an office, collection of revenue, administration of justice, management of any land or business on behalf of another. In Maratha finance an item or head of collection, the share or portion of the revenue after the expenses and extra charges have been defrayed In the Tamil countries commonly, confiscation, seizure. (*Wil. Gloss* 20)

Amaldar (*H.*) A manager, an agent, a governor of a district, a collector of revenue. An officer appointed to collect the revenue of an estate which has been attached by Government. In the South it was

Amalgamate.

applied especially to the native revenue collector acting under the authority of the European collector. Any person holding a post or office The title was also given to the native head of the police in a district, usually also the head revenue officer, whose duties are defined by Bombay Regulations XII of 1827 and IV of 1830 and Act XX of 1835 Under the Maratha Government, Amaldars or Audildars were of three kinds, those holding office of collector on a lease from the government, those who were appointed by the Sarsubadhars, and Bankers or Sahukars who, having advanced money to the Government or its revenue officers were appointed to collect the revenue of a district until they had paid themselves (*Wil Gloss* 20)

Amal-Dari (*H*) Management, administration, collection of revenue The office of Amaldar (*Wil Gloss* 20)

Amal-dastak, Umul-dustuk (*H*) Deed of conveyance, any document giving possession of property; Warrant or authority to collect the rents of an estate, a written order from the proper authority to enable the purchaser of an estate at a public sale to obtain possession of it (*Wil Gloss.* 20)

An *amaldastak* is not a lease It does not ordinarily create any tenancy right It is an order or *hukoomnama* to go and take possession An *amaldastak* does not prevail over subsequent settlement by the landlord with other tenants *Hargobind Ray* v. *Keshwa Prasad,* 84 I C 386=6 P L T 465=A I R. 1925 Pat 168

Amal Farmash (*Mar P*) Order An item in the deductions from the net revenue fees paid to revenue officers (*Wil Gloss*)

Amalfi, Laws of *See* "Amalphitan Code"

Amal-Guzar (*H*) A collector of revenue (*Wil. Gloss* 21)

Amal-nama (*H*) Authority to manage or administer property, an order for possession, a warrant from a competent public functionary to an individual, authorising his taking possession and management of landed or other property, an order from a Zemindar to his cultivators to give possession to a renter

Amal-patta A deed appointing an agent or manager, a warrant authorising a person to collect the rents of an estate (*Wil Gloss.* 21)

Amal sanad A deed or warrant empowering a person to collect rents or manage an estate. (*Wil Gloss* 21)

Amali, Amli, Umulee or Umlee. Payment of the revenue by a division of the crop, or in kind, applied also to a village where the revenue is paid in kind, anything related to, or connected with, management, collections, and the like. The title of the revenue year in Bengal and Orissa, the same as Fasli (*Wil. Gloss.*)

Amalgamate. In *Wall* v. *London & Northern Assets Corpn* (1898, 2 Ch 469), Lindley, L J., said — "There is no very precise meaning to be given to

"amalgamate" When "amalgamating" a company with another company or persons or firms is spoken of, I am not prepared to put a sharp definition upon it. I do not think it necessarily involves the formation of a new company to carry on the business of an old company, though I have no doubt it includes that. I do not see how a company, as a business transaction, can practically 'amalgamate' with persons or companies carrying on business unless the company does, in some way or other, sell its assets as a whole."

A power to a company to "amalgamate" with any other company does not enable the directors to compel a share-holder to become a member of any such other company (Re *Empire Assros*, L R 4 Eq. 341)

Amalgamation This takes place where two incorporated Companies or Societies become united by one of them being merged in the other

"Amalgamation" of companies, signifies the transfer of all or some part of the assets and liabilities of one, or more than one, existing company to another existing company—or of two or more existing companies to a new company,—of which transferee company all the members of the transferor company or companies become, or have the right of becoming members, and, generally, such amalgamation is accomplished by a voluntary winding-up of the transferor company or companies. (1 Palm Co. Prec. 1155, adopted in *Hooper* v *Western Countries & S. W. Telephone Co*, 41 W R 84)

Amalphitan Code A collection of sea laws, compiled about the end of the 11th century by the people of Amalphi, consisting of the laws on maritime subjects which were or had been in force in countries bordering on the Mediterranean and which for a long time was received as authority in those countries (*Wharton*)

Amanat, Umanut Deposit, charge, anything held in trust, money deposited in court Among the Marathas, profit derived from deposits and temporary sequestration of estates (*Wil Gloss*)

The use of the word 'amanat' in a deed by which the vendor kept certain moneys with the purchaser for payment of debts does not necessarily imply that a trust in favour of creditors was constituted. (134 I C. 100=32 P.L R 876)

Amanat Dufter An office for deposits, or, perhaps, for recording the reports of Aumeens (Fifth report.) An office under the Mohammadan Government for deposits, or for a register of trusts. The superintendent was invested sometimes with judicial powers in civil suits. (Reg XXII 1795, preamble, *Wil Gloss.* 21.)

The *amanat dufter* was an office for the deposit of revenue records during the Mahomedan rule [*Bengal Government* v *Nawab Jafur Hossein.* (1854) 5 M.I.A. 467=1 Sar. 472.]

Amanatdar The holder of a deposit, or charge, a trustee, a guardian. (*Wil. Gloss*)

Amanatdari. Guardianship, agency, trust. (*Wil. Gloss.* 21.)

Amanat-Jari. (*H.*) Assignments of revenue resumed or held temporarily in charge of a Government officer. (*Wil. Gloss.* 21)

Ambalappadi.

Amanat-nama, Amanat Nameh (*H P.*) A deed of trust or deposit, a document conveying anything in trust. (*Wil Gloss.* 21, Mac Mah Law.)

Amanat-nashta (*Karn.*) A tax on ground first cultivated for the piper-betel, and afterwards for rice, in which the difference of the revenue from dry and wet lands is charged to the ryots

Amani (or Umani). A system of land revenue under which the Government share of the produce is taken in kind The term is also applied to the direct management of a village by Government officers without the intervention of a Zamindar. (*Bad Pow*)

Amani-talao (*Karn*) In Mysore, an unrented tank or reservoir of water, not belonging exclusively to any one village under the superintendence of the officers of the Government

Amanji or Aminji Compulsory service without payment, the gratuitous employment of the villagers in the transport of baggage for public officers, also the general levy of men inhabiting irrigable villages for the purpose of clearing out the channels or tanks and for repairing breaches or constructing dams, (*Wil Gloss*)

Amaram grant Land or revenue granted in ancient times by a chief to his retainers for military service Tamil Lexicon) In the absence of all evidence to the contrary, *amaram* grants are resumble at the pleasure of the Zemindar [*Umde Rajaha Raje Bommarauze Bahadur* v *Pemmasamy Venkatadry Naidoo.* (1858) 7 M I A 128=4 W R 121=1 Suth 300=1 Sar 637, Bad. Pow Vol III, 81 See also *Umde* v *Pemmasamy*, 7 M I A 128=4 W.R 121=1 Suth. 300 =1 Sar 637 (P C)] Bad Pow Vol III, 81.

Amateur One who has a special love for any art, study, or pursuit but does not practise it Most commonly one who cultivates any study or art from taste or attachment, without pursuing it professionally or with a view to gain also used of one who pursues a study or an art in a desultory, unskilful, or non-professional way

Amazai A Pathan tribe settled on the mountains on the west of the Indus

Amazon A warlike or masculine woman, a quarrelsome woman; a virago.

Ambala A place or shed where public affairs are discussed

Ambalagar The head of a village, a nattanmaikara.

Ambala-karan or **Ambalagar.** (*Tam*) The head of a village, particularly of villages inhabited by Sudras, also the name of caste among Sudras.

Ambala-manyam. A portion of land held free of revenue by the headman of a village, as a perquisite of office

Ambalappadi (*Mal.*) From Dravidian *ambalam* (place devoted for public use or assemblies, a temple) and Dravidian *padi* (a step, bench), (*Log. Mal. Man.*)

Ambalappadi is the seat of honor, a certain step or degree in a temple to which only particular persons are entitled. The claim to it is derived from ancestry

Ambalam.

but the dignity is saleable It is however, understood that it cannot be disposed of except to a person of the proper caste and necessary respectability It is, strictly speaking confined to Brahmans, but there have been interlopers of the Samunta caste.

Ambalam (*Mal*) is a temple of the first order, called Maha Kshetram, dedicated to the Hindu Gods There were 108 such principal temples constructed by Parasurama between Gokarnam and Kannya Kumari (Cape Comorin), (*Log Man*)

Ambalavasi (*Mal*) temple servant class, (*Sundaram Iyer's Mal Law*) a name applied to the many sub-divisions of the Nayar caste the members of which are temple servants (*Moore's Mal Law*)

Ambarai guttige (*Karn*) Rent or revenue from mango groves or orchards.

Ambarakkadai (*Tam*) A store, a granary, a place where anything is stored

Ambara-khana (*Karn*) A magazine of grain, a granary

Ambaram (*Tel, Karn, Tam*) A heap, a pile, a stack of corn, grain on the threshing-floor, Sometimes used for Government share of the crop

Ambara-rasi (*Karn*) The Government share of the crop collected in a heap

Ambar khana (*P*), (*Sindh*), a State granary, *Bad Pow* iii 342 *note*

Ambar-sari. A tax on houses, except those of Brahmin Village-officers, (*Rev Sel iv* 166, *Wilt Gloss*)

Ambassadors An ambassador is a public minister or officer of the highest rank, clothed with high diplomatic powers sent abroad by a Sovereign State or Prince, with a legal commission, and authority to transact business on behalf of his country with the Government or Court of the country to which he is sent (*Bacon Abr Com Dig, Wharton, 2 Cyc, Black*) A person sent by one Sovereign (power) to another with authority, by letters of credence, to treat on Affairs of State (4 Inst 153) And ambassadors are either *ordinary* or *extraordinary* the *ordinary ambassadors* are those who reside in the place whither sent, and the time of their return being indefinite, so is their business uncertain, arising from emergent occasions, and commonly the protection and affairs of the merchants is their greatest care the *extraordinary ambassadors* are made *pro tempore*, and employed upon some particular great affairs (*Tomlins Law Dic.*)

Ambassador, Agent, Consul, Minister An agent represents the affairs only of his master, but an ambassador ought to represent the greatness of his master, and his affairs By the laws of nations, none under the quality of a Sovereign Prince can send any ambassador a King that is deprived of his kingdom and royalty, hath lost his right of legation No subject though ever so great, can send or receive an ambassador and if a Viceroy does it, he will be guilty of high treason. It is said there can be no ambassador without letters of credence from his Sovereign, to another that hath Sovereign authority: and if a

Ambiguity

person be sent from a King or absolute potentate, though in his letters of credence he is termed an agent, yet he is an ambassador, he being for the Public (4 *Inst* 153, *Tomlins L. Dict*)

'AMBASSADOR', includes a minister, consul and a *Charg'd Affair* (*Stroude.*)

A consul is a commercial agent appointed by a government to reside in a foreign country, and permitted by the government of the latter country so to do, to watch over the commercial rights and privileges of the nation deputing him, and to protect the interests of its subjects (*Abbott L Dict and Bouvier.*)

A consul is also to be distinguished from a minister or other diplomatic agent.

In the Anne, 3 Wheat (U S) 435 4 Led. 428, it is said "A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes"

Vice-consuls or vice commercial agents, when in charge, are acting consuls or commercial agents for the time being, and are principal consular officers In re *Herres*, 33 *Fel* 165.

Ambidexter One who can use the left hand as well as the right (*Burrill*), one who plays on both sides (as) a juror who takes bribes from both parties to influence his verdict (*Termes de la Ley* 38, *Wharton, Cowell, Black, Tomlins Law Dic*)

"It is slander, without special damage, to say of a solicitor that he is an "ambidexter", for that imputes that he takes a fee from both sides and betrays his client's secrets (*Annison* v *Blofield*, Carter 214, 1 Rol Ab 55).

Ambigua responsio contra proferentem est accipienda (10 *Rep* 58) A maxim meaning "An ambiguous answer is to be interpreted against the party who delivers it" (*Burrill, Black*, 10 *Coke* 59, *Broom Leg Max*)

Ambiguis casibus semper praesumitur pro rege (*L* 248) A maxim meaning "In doubtful cases the presumption is always in favour of the Crown." (*Morgan L. Max, Broom Leg Max, Lofft. Append.* 248, *Black*) The maxim is of limited application.

Ambiguitas verborum latens verificatione suppletur nam quod ex facto oritur ambiguum verificatione facti tollitur A maxim meaning a latent ambiguity may be removed by parol evidence, for an ambiguity which arises from an extrinsic fact may be removed by proof of such fact (*Brooms Leg. Max, Bacon's Max U P. Mitra's Leg. Max*; *Cyc. Law Dic*)

Ambiguitas verborum patens nulla verificatione excluditur (*L* 249) A maxim meaning "A patent ambiguity cannot be cleared up by extrinsic evidence" (*Lofft.* 249.)

Ambiguity. Doubtfulness; double meaning; the quality or state of being ambiguous; uncertainty, particularly of signification.

Ambiguities are of two kinds, patent and latent A patent ambiguity,—*ambiguitas patens*—is one which appears on the face of the instrument, that ambiguity which occurs when the expression of an instrument

Ambiguous

is so defective that a court of law which is obliged to put a construction on it, placing itself, in the situation of the parties, cannot ascertain therefrom the parties' intention. A *latent ambiguity*, is one which arises from some collateral circumstance, or extrinsic matter, in cases where the instrument is itself sufficiently certain and intelligible

OTHER DEFINITIONS "Duplicity, indistinctness, or uncertainty of the meaning of an expression used in a written contract" (*Bouvier*)

DISTINGUISHED FROM "INDISTINCTNESS," "OBSCURITY" AND "UNCERTAINTY"—"Ambiguity or duplicity are predicable only of language as to which it is needful to make a choice of meaning, while indistinctness, obscurity, and uncertainty include these and also cases of language devoid of sense, or which does not present any meaning with clearness or precision" (*Abbott L Dict*)

Ambiguous Doubtful or uncertain, particularly in respect of signification, equivocal, indeterminate, indefinite, unsettled, indistinct

Ambiguum placitum interpretari debet contra proferentem A maxim meaning "an ambiguous pleading ought to be construed against the party offering or delivering it" (*Broom Leg Max*, *Wharton*, *Co. Litt* 303 *b*)

Ambulatoria est voluntas defuncti usque ad vita supremum exitum A maxim meaning "the will of a deceased person is ambulatory until the last moment of life" (*Burrill L Dict*, *Broom*)

Ambulatory Revocable, subject to change, movable (as) ambulatory Court (3 *Bl Comm* 38-41) That which may be altered or changed, changeable (*Abbott L Dict*) A will is said to be ambulatory until the death of the testator

Amdani. Products of the earth, articles of merchandise, generally arriving at market in their fit season, also that particular season (*Wal Gloss* 22)

Amend. A word derived from the French word signifying 'to make better', 'to change for the better'

Amend, Emend, Correct, Rectify, Reform All these words convey the idea of making a thing better or bringing things into a more perfect state We *correct* when we conform things to some standard or rule, as to *correct* proof sheets We amend by removing faults or errors as to amend a decree or a law Emend is another form of *amend* and is mostly applied to editions of books To *reform* is to put into a new and better form, as, to reform one's life *Rectify* is to make right, as, to rectify a mistake, to rectify an abuse.

Amendment. The correction of an error *In practice* the correction of any error in any process, pleading, or proceeding at law, either by consent of the parties, or upon motion to the court in which the proceeding is pending (*Burrill*; 3 *Bl Camm.* 407, 448, 1 *Tidd Pr* 696), any writing made or proposed as an improvement of some principal writing (*Black*)

In legislation A modification or alteration to be made in a bill, on its passage or in an enacted law, modification or change in an existing Act or statute

Amicus curiae

Amends Compensation for a loss or injury, recompense, satisfaction, equivalent

A Mensa Et Thoro (From table and bed, from bed and board A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage, and what is called judicial separation in Indian Law (*Bouv*)

Amerciament (*amerciamentum*) (from the Fr. merci) Signifies the pecuniary punishment of an offender against the king or other lord in his court, that is found to have offended, and to stand the mercy of the king or lord *Cowell* The author of Terms de Ley saith, that amerciament is properly a penalty assessed by the peers or equals of the party amerced, for the offence done, for which he putteth himself at the mercy of the lord (*Terms de Ley*) And by the statute of Magna Charta c 14 a freeman is not to be amerced for a small fault, but proportionable to the offence and that by his peers. (9 H 3 c 4) Amerciaments are a more merciful penalty than a fine (*Tomlins Law Dic*)

The difference between *amerciaments and fines*, is this, fines are said to be punishments certain, and grow expressly from some statute, but amerciaments are such as are arbitrarily imposed (*Kitch* 78) Also fines are imposed and assessed by the court, and amerciaments by the country (*Tomlins Law Dic*)

"There is a manifest diversity between a *Ransom* and an *Amerciament*, for ransom is ever when it inflicteth a corporal punishment by imprisonment (and so is also a fine), but otherwise it is of an amerciament" (*Co Litt* 127 *a*)

Ami (in old French amy) a friend *See* Alien Ami

Amicable, Friendly, mutually forbearing, agreed or assented to by parties having conflicting interests (opposed to, hostile or adversary)

Amicable action An action between friendly parties An action brought and carried on by the mutual consent and arrangement of the parties, in order to obtain the judgment of the court on a doubtful question of law, the facts being usually settled by agreement (*Lord* v *Veazie*, *S How* 251, 12 L Ed 1067).

Amicable suit The words "arbitration" and "amicable lawsuit" used in an obligation or agreement between parties are not convertible terms The former carries with it the idea of settlement by disinterested third parties, and the latter by a friendly submission of the points in dispute to a judicial tribunal to be determined in accordance with the forms of law (*Thompson* v *Moulton*, 20 *La Ann* 535, *Black*)

Amicus curiae (a friend of the Court) is one, who voluntarily or on invitation of the Court, instructs the Court on a matter of law concerning which the latter is doubtful or mistaken, or informs him of facts, a knowledge of which is necessary to a proper disposition of the case. (2 *Co Litt* 178) One who not being retained in a cause volunteers to express his views or make suggestions for the information of the Court (*Bouv*, *Webster*) Counsel in Court frequently act in this capacity when hey happen to be

Amidships

in possession of a case or authority which the judge has not seen or does not at the moment remember (46 Ame St Rep 45, *Black*) *Abbott Law Dic Bouv Viner. Abr* 475

If a judge is doubtful or mistaken in matter of law, a standerby may inform the Court, as *amicus curiae* (*2 Co Inst* 178, *Tomlins Law Dic*)

An *Amicus curiae* is heard only by the leave and for the assistance of the Court, and upon a case, already before it An *amicus curiae* may instruct, inform, or move the Court on any matter of which the Court may take judicial cognizance (*Bouvier* citing 8 *Coke* 15)

"Amidships" defined 57-8 V c 60, s 437 (4), Act, 1880, s 4 (ad. Act 17 1891, s 3)

"Amil The 'district' (=pargana) Land Revenue officer of Mughal times (Bad-Pow i 256)

Amil or Aamil, corruptly *Aumil H*, but used in most dialects, sometimes slightly modified, and frequently confounded with Amal An officer of Government in the financial department, especially a collector of revenue on the part of the Government, or of the farmer of the revenue,also himself a farmer of, or contractor for, the revenue under the native system, and invested with supreme authority, both civil and military, in the districts which he farmed, as is still the case in several native states, especially Oudh and Hyderabad In the early settlement of Benares by the Government of Bengal the Amil was intrusted with the joint power of Hakim or Magistrate, and Tahsildar or Collector, and was responsible for the realization of a fixed amount of revenue, being precluded from levying any excess on the Government demand Reg II, 1795 (*Wil Gloss* 23)

Amil-dar (*H*) *A* collector of, or contracter for, the revenue, used as synoymous with Amil, an inaccuracy for Amal-dar (*Wil Gloss* 23)

Amildari corruptly, *Aumil-darei*, (*H*) The district or estate for the revenue of which the Amil was responsible (*Wil Gloss* 23)

Amil-daul (*H*) The estimated amount of revenue to be realised by the native collector or contractor (*Wil Gloss* 23)

Amil-nama, (*Aumil-namah*) (*H*) A written order or warrant to an Amil, a commission to take possession of land in the name of the Government, preferably, Amal-nama (*Wil. Gloss* 23)

Amili, Aumily (*H*) The harvest year, more correctly, Amali, also the same as Fasli (*Wil Gloss* 23)

Amin, a revenue surveyor, land measurer, etc (Bad-Pow i 256 604, An officer of a Civil Court entrusted with the execution of a warrant or order

"Amin" defined. Ben Act 8, 1876, s. 4 (*1*).

Amin, Umeen, corruptly, Aumin, Aumeen (*H.*) but occurring, slightly modified sometimes, in most of the dialects A confidential agent, a trustee, a

Amla-i-nawara

commissioner applied in Upper India especially to a native officer of Government employed either in the revenue department to take charge of an estate and collect the revenues on account of Government, or to investigate and report their amount, or in the judicial department, as a judge and arbitrator in civil causes In the Presidency of Bengal, in particular, two classes of native judicial functionaries were so named, *ie*, Sadar Amin and the Sadar Amin Aali or principal Sadar Amin, to whom lies an appeal from the decisions of the Amin Beng Reg iv, xlv 1793, vii 1822, xxiii 1884, iv 1827, v 1831, Act ix 1844 (*Wil Gloss 23*)

Amin-daftar (*H*) An office in which the accounts of the Amins were audited, the recorded or registered accounts (*Wil Gloss 23*)

Amin-faujdar, a revenue assessor of a pargana under the Mughal Empire Bad. Pow i 256

Amin patel (*Guz*) Superintendant over the village patels of a district, appointed to adjust boundary disputes, and furnish local information for the assessment of the revenue to the Collector. This officer has come, in some instances, to supersede the Desai, or former chief district officer in some places the office is hereditary (*Wil Gloss* 23)

Amir, corruptly Emir, (*H*) A nobleman, Mohammedan of high rank (*Wil Gloss* 23)

Amir-ul-Umra (*H*) A chief of the nobles, a title conferred by the Sovereign at his pleasure, sometimes designating the commander-in-chief (*Wil Gloss 23*)

Amisham (Mal) a (modern) official division forming a group of lands for land Revenue administration purposes (Bad-Pow) iii 179 An estimate especially of the value or yield of a standing crop (*Wil Gloss* 24)

Amisham dappu or Adangal-amisham (*Tam*) Estimate of a produce of a piece of land for a whole year (*Wil Gloss* 24)

Amity Friendship, harmony, good understanding, especially between nations, political friendship, as, a treaty of amity and commerce 'Great Britain was in league and amity with all the world" (*Sir J. Davies, Ireland*)

Amla, Umla Amlah Corruptly, *Omlah,* (*H*) Agents, officers of Government collectively, head native officer of a judicial or revenue court under the European Judge or Collector in the early days of the British administration of India (*Wil Gloss.* 23)

The word "amla" (in a Kabuliat) means the building erected on a site 6 I C 399 (*Ram dass* v *Jamaluddin Ahmad*) See also *Ram* v *Imami* 1935 A.L.J 772=A I.R 1935 All. 586

Amla i ahsham, (*H*) The collective officers of the irregular militia under the native Government. In Bengal a Jagir was assigned for their support (*Wil. Gloss* 23).

Amla-i-nawara. *H* Under the Mohammedan Governments the collective officers of the fleet of

Amlguzar.

boats maintained for the defence of the sea-coast; the assignments of revenue for their maintenance and that of the flotilla (*Wil Gloss.* 23.).

'Amlguzar'. Same as *Amil* (*Bad-Pow*)

Amma. In all the languages of Southern India except Tuluva, Mother, and affixed, as a respectful term of address to females in general, to their names as Sitamma, Vangamma. It forms, also, a designation of various popular goddesses unknown to the general system, as, Mariyamma, and Agathamma, one of the tutelary goddesses of Madras In Tuluva the word means father (*Wil. Gloss.* 24.)

Ammunition. Military stores, provision for attack or defence Includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun wads, percussion caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre Arms Act, (1878) S 4.

Amnesty (from a Greek word meaning non-remembrance). An act of oblivion or forgetfulness, a general pardon of the offences of subjects against the government, or the proclamation of such pardon, an act of pardon by which crimes against the Government in time of war up to a certain date are so obliterated that they can never be brought into charge. All acts of amnesty originate with the Crown. (*Wharton*), An act of pardon or oblivion, such as was granted at the restoration by King Charles II. (*Tomlins Law Dic*)

"The word 'amnesty' does not belong to the common law, and has no technical meaning in it, and can be used in it only in the meaning of its synonym in our language, and that is 'oblivion' For the derivative and literal meaning of amnesty is 'removed from memory', and in the English law, 'oblivion' is the synonym of 'pardon', and is so used in it" (*Knote* v *U S* 95 *U S* 149, 24 L ed 442)

"The word 'amnesty' properly belongs to international law, and is applied to treaties of peace following a state of war, and signifies there the burial in oblivion of the particular cause of the strife, so that that shall not be again a cause for war between the parties And so amnesty is applied to rebellions which by their magnitude are brought within the rules of international law, and in which multitudes of men are the subjects of the clemency of the government (*Knote* v. *U. S*, 149, 24 L. ed 442.)

DISTINGUISHED FROM "PARDON"—'Pardon' and 'amnesty' are not precisely the same A pardon is granted to one who is certainly guilty, sometimes before, but usually after, conviction And the court takes no notice of it, unless pleaded, or in some way claimed by the person pardoned, and it is usually granted by the Crown or by the Executive. But amnesty is to those who may be guilty, and is usually granted by the Parliament, or the Legislature, and to whole classes, before trial. Amnesty is the abolition or oblivion of the offence; pardon is its forgiveness." (*State* v. *Blalock*, 61 N. C. 242, 247.)

Amount secured.

Among A gift to two or more "among," or amongst," them creates a tenancy in common (2 Jarm 257 Hawk. 112)

Amortisation Means the alienation of lands in mortmain and in modern usage it means the paying off the bonds, stock etc of a state or corporation (*Byrne*)

Amount. The substance, or result of a thing, the total or aggregate sum.

Amount claimed, The expression "amount claimed", in a decree which states that "the amount claimed with costs be decreed" should be construed as applying to the principal and interest claimed in the plaint and is not applicable to a general and unascertained sum of future interest *Beni Dayal* v *Kumar Chundhri*, 9 A W N 114

The expression "*amount claimed in the suit*" in S 153 (*a*) of the B T Act does not include costs and interest *pendente lite* [(8 M I A 262, 8 M I A 166, 24 A 174 Rel) *Sarat Chandra Chodhuri* v *Keshab Chandra*, 16 I C 422]

"Amount covered" (*In insurance*) The amount that is insured and for which underwriters are liable for loss under the policy of insurance

Amount in controversy The extent of damages claimed or relief demanded, the sum sued for

"Amount of loss" (*In insurance*) The diminution or destruction of the value of the insured subject by the direct consequence of the operation of the risk insured against, according to its value in the policy, so far as its value is covered by the policy of insurance (*Black*)

Amount of rent annually payable The question relating to instalments in which rent is payable though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable", within the meaning of S 153, Bengal Tenancy Act VIII of 1885 (*Rai Charan* v *Kumud Mohun Dutt*, 25 C 571=2 C.W N 297) The words "amount of rent annually payable by a tenant", occurring in S 153 (*a*) of the Bengal Tenancy Act, 1885 include the case of rent payable by a tenant to one of the co-sharer landlords, who collects his rent separately *Naram* v *Manoft*, 17 C 489, 24 Cal 54, 7 C W. N 908

Amount or value of the subject-matter of the suit," Mentioned in cl 13 of S. 3 of the Bengal and N W P and Assam Civil Courts Act I of 1887, means the amount, *i e*, the amount in money, which the plaintiff claims to recover in his suit, and not the amount which the Court may give him a decree for. [*Mahabir Singh* v. *Behari Lal*, 13 A. 320=11 A W N. 107 (10 A. 524, 8 B 31, Ref.).]

Amount Realised, in the English Bankruptcy Act, 1890, S, 15 (1) [See *Re Christie*, (1900) 1 Q. B. 5]

"Amount secured," in a document is not confined to principal money, but includes all moneys secured, whether for principal, interest, or otherwise, and also all instalments secured though not presently payable. (*Per* Chitty, J., Re Neath By Socy, 59 L.J. Ch. 3.)

Amra or Umra

Amra, or Umra Corruptly, *Omrah*, (*H.*) The nobles of a native Mohammadan court collectively (*Wil. Gloss*, 23)

JAGIR-I-AMIR-UL-UMRA (*H*) are assignments of land or their revenue to the commander-in-chief for his personal remuneration

Amr-Ba-Yad(*A*) In Mohammedan law, a form of divorce If a man says to his wife, 'Your business is in your own hands' (Amruki-ba-yadiki), and the woman assents, an irreversible divorce takes place (*Hed*, *Wil Gloss*)

Amsam or Amshom (*Mal*) (Share, Shire) Part of a taluk Village. (*Moore's Mal Law*,) *Sun Mal. Law*).

Amsapatram (*Mal.*) A deed of division of hereditary property among relations. (*Moore's Mal Law*, Log Man, *Sun Mal Law*)

Amusement Entertainment, Diversion, pastime, Sport, [*Vide* Entertainment tax]

Amy (amicus) (*See also* Ami) In law *prochein amy* is the next friend to be trusted for an infant Infants are to sue by *prochein amy* (*i e*) next friend and defend by guardian.

ALIEN AMY is a foreigner within the country subject to some prince in friendship with the king (*Tomlins Law Dic*)

An In statutes and other legal documents, it is equivalent to "one" or "any" and is seldom used to denote plurality

"**An**" is sometimes read in the most absolute sense as meaning "any, whatsoever" (*Stroud*)

AN ACCOUNT The words "an account" in Act VI of 1889, S 98, Probate and Administration Act mean one account, and not a series of accounts *Mohesh Chandra Bhuttacharjee* v *Biswanath Bhuttacharjee*. 25 C 250

"AN INTERFST" In Probate and Administration Act (V of 1881), S. 69 do not cover the possibility of a future interest but an interest which has arisen and is represented and not an interest which has not arisen and may never arise [*Sharkey* v *Jerry Allard*, 13 Ind Cas 433 (434) *per* Justice Chevis]

Ana (*H*) The sixteenth part of a rupee, commonly but incorrectly written Anna; it is used either singly or in its multiples to denote proportional fractions of any article thus, one ana of anything, of land or chattels is one sixteenth, four anas, a quarter, eight anas a half, etc In Central Hindustan it is also applied to land measure. (*Wil, Gloss*)

Anacharam. (Opposite of *acharam*) Irregularity established by custom, applied to certain practices observed by Nambudris and eschewed by other Brahmans (*Moore's Mal Law*).

Anad-Bunger or Anod-Bunger. Waste land without a master or owner Undivided waste or common. (*Fifth report*).

Anadibhumi (*H.*) (used in Mysore) Land transferred by mortgage (*Wil Gloss.* 24.).

Anarchy.

Anadi bidu (*Tel. Tam*) A piece of ground that has never been cultivated, also similar terms as Anadi-karambu, Anadi-tarisu.

Anaikal An embankment of stone.

Ana-kara or kura Corruptly, Annah-khurah, (*H*) A fee of one ana on each rupee of revenue levied by the headmen in Assam to cover all local charges. (*Wil Gloss* 24).

Anakkomban (*Mal*) A species of fine paddy grown in the Palghat, Malabar District in low rice-lands, which is ten months in coming to maturity. (*Log. Mal. Man*)

Anal (*Tam*) has the force of "but". "That clause begins with the Tamil word (Anal) The expression (Anal) clearly indicates that what follows is or should be regarded as a detraction or subtraction from the absoluteness of the sale previously in the document stated to have been made and effected" [*Padmanabha Iyer* v *Sitarama*, 26 L.W 586 (589)]

Analogous Having analogy, bearing some resemblance or proportion to something else—(Analogous law, analogous name) *Ejusdem generis*

Bearing same, corresponding with, similar in certain circumstances or relations, *Cf* with *ejusdem generis* "of the same kind" (*Chambers* 20th *Cent. Dic*) The phrase '*ejusdem generis*' is more restricted than the word "analogous" Per *Maung Ba, J*, in (1928) Rang 31

Analogy A term in logic meaning identity or similarity of proportion (*Wharton* cited in 2 Cyc 285). Where there is no judicial precedent in point on the same subject, lawyers have recourse to cases on a different subject-matter, but governed by the same general principles This is called reasoning by analogy or analogical extension of the principle of a decision (*See* Parke, J, in *Murehouse* v *Rennell*, 8 Bing. 515 See also *Wharton*)

Ananias To write of a person that he is an "Ananias" is libellous but to do the same of a newspaper may or may not be libellous. [*Australian Newspaper Co* v. *Bennett*, (1894) A C 284]

Anandaravakasom. (*Mal*) *Lit* Next heirship. (*Sun Mal Law*)

Anandravan Next relation, successor, heir, generally applied to the junior member in a tarwad, (*Moores' Mal Law, Sun. Mal Law*)

Ana Patti, (*Mar.*) An extra cess at the rate of one ana on each rupee of the assessment, or a like charge per plough or per head (*Wil Gloss* 24)

Anarchism Confusion in affairs of State, disorder, anarchy

Anarchist Properly, one who advocates anarchy or the absence of Government as a political ideal, also used of a believer in an anarchic theory of society

Anarchy (from a Greek word meaning absence of Government). The absence or destruction of government, lawlessness, a state of society where

Anathee.

there is no law or supreme power, by an extension of the term, confusion in government, that state of political commotion which arises when a government has lost its power

"A polity without a head would not be a polity, but anarchy" (*H. Moore*)

Anarchy is a social theory which regards the union of order with the absence of all direct Government of man by man as the political ideal, absolute individual liberty. The most noted expounder of this theory was Pierre Joseph Proudhon (1809—1865) whose views have been adopted, with various modifications, by many agitators

Proudhon . . . said that "the true form of the state is anarchy" . . . . meaning by anarchy, of course, not positive disorder, but the absence of any supreme ruler, whether king or convention (*Rae, Contem Socialism*, p. 141)

"It seemed but too likely that England would fall under the most odious and degrading of all kinds of Government . . , uniting all the evils of despotism to all the evils of anarchy." (*Macaulay*)

Anathee (*S.* anathi, having no lord, master, or owner from *natha* a lord or master) Old waste land lands not cultivated within the memory of man (*Anathee Karambu.*)

Anathema A curse or denunciation pronounced with religious solemnity by ecclesiastical authority, involving excommunication, a person or thing held to be accursed or devoted to damnation or destruction.

Anavantu polam. (*Tel*) Land of which the ownership is disputed

Anavrushti (*S* and *Tel*) Drought, want of rain.

Ancestor One who has gone before in a family (*Co Litt 78b*). One who has preceded another in a direct line of descent, a lineal ascendant, A former possessor; the person last seised (*Termes de la Ley*, 2 Bl Comm 201; *Tomlins L Dic*) A deceased person from whom another has inherited land, a former possessor, in this sense a child may be the "ancestor" of another.

"The word 'ancestor' does not mean, either etymologically or technically, a lineal ancestor only "Ancestor" sometimes means, the person who really preceded in the estate, although that person may not be the progenitor, of the successor. (Per *Lord Hatherley* in *Zetland* v. *Ld Advocate*, 3 App Ca 520)

The term "*ancestor*" differs from "*predecessor*", in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation and those who have held offices before those who now fill them (*Co. Litt* 78b; *Wharton*) Ancestor is one that has gone before in a family but the law makes a difference between what we commonly call an ancestor and a predecessor; the one being applied to a natural person and his ancestors, and the other to a body politic and their predecessors. (*Co. Litt* 78b. *Tomlin L D.*)

Ancestral Property.

IN HINDU LAW, the word "ancestor" is not used in the wide sense in which it is used in English law as merely equivalent to the propositus and as the correlative of heir. In Hindu Law, it is used only as signifying a direct ascendant in the paternal or maternal line, and more technically as signifying the paternal grandfather and his ascendants in the male line. (*Karuppai Nachiar* v. *Sankaranarayanan Chetty*, 27 M 300 (F B))

Ancestral What relates to or hath been done by one's ancestors as homage ancestral, etc (*Tomlin L D*), Derived from ancestors *Ancestral estates* are such as are transmitted by descent, and not by purchase (4 Kent, Comm 404)

Ancestral property If property came to a son as gift from his father, it cannot be regarded as his ancestral property Ancestral property in the ordinary sense must mean property of the father which is inherited (*Khalil Ullah Shah* v *Ewaz Ali*, 74 I C 390=26 O C 128=A I R 1923 O 214, "Ancestral property", does not, necessarily, mean property which has been a long time in a family, it rather means, property derived from the proprietor's father (*Gossain* v *Gossain*, 8 W.R 196, 198)

IN HINDU LAW. "Ancestral property" in Hindu law is to be limited to property which has come from certain male lineal ancestor as enumerated in the text books [24 I C 928=92 P R, 1914 (*Karam Chand* v *Jai Ram*] In Hindu Law, accretions made by the investment of the profits of ancestral property form part of the ancestral estate. [*Umrithnath Chowdhry* v *Goureenath Chowdhry*, (1870) 13 M.I A 542=15 W.R (P C.) 10=6 B L R 232]

In a *Ruffanamah*, or deed of compromise, of a suit between three sons, members of a Hindu family, respecting the distribution of their father's estate, it was stipulated, that all "ancestral" property should be equally divided into four shares It was held, that the sense in which the word "ancestral" was employed was not confined to such property as the father had derived from his ancestors, but included "paternal" property, or such as had been acquired by the father by whatever title, and was possessed by him at the time of his decease "Ancestral", as here used, is not confined to such property, if any, as the father had derived from his father, or from any ancestor The word "ancestral" is here employed in the sense of "paternal," that is, as meaning property of the father, in whatsoever manner, or by whatsoever title, the father had acquired it Therefore "ancestral" property here means property derived from the father, at least immovable property [*Rajmohun Gossain* v. *Gourmohun Gossain* (1859) 8 M.I A. 91=4 W.R. (P C.) 46]

All property which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is *ancestral property*, and is at once held by himself, in coparcenary with his own issue. But where he has inherited from a collateral relation, as for instance from a brother, nephew, cousin or uncle, it is not ancestral property; consequently his own descendants are not coparceners in it with him" *Gurumurthi Reddi.* v *Gurammal and another*, 1 I.C. 750=32 Mad. 88=5 M L.T. 74 See also *Mahabir* v.

Ancestry.

Basdeo, 6 All 234=4 A W,N 47] Land acquired by right of pre-emption, the purchase-money of which is raised by mortgaging a portion of the ancestral land, is not by itself an "ancestral property," 5 I C 232=2 P R 1910, (*Nabia* v *Musammat Fatto*)

"ANCESTRAL PROPERTY" defined, Act 18, 1876, s. 20 *Expln*

Ancestry A series or line of ancestors or progenitors, those who compose a preceding line of natural descent, high birth, descent from a line of honourable ancestors 'Title and *ancestry* render a good man more illustrious, but a bad man more conspicuous,' (*Addison*)

Anchana-dar or darudu (*Tel*) An officer employed to survey the standing crops and estimate their probable value, an estimator or appraiser

Anchana-jabita (*Tel*) Estimate of each ryot's share of the value of the crop An account of the estimated crop kept by the village accountant.

Anchorage Anchoring ground, place where ships anchor, customary place for anchoring, a duty imposed on ships for anchoring in a harbour, anchorage dues

"This corporation, otherwise a poor one, holds also the anchorage in the harbour" (*R Carew, Survey of Cornwall*)

Anchorage toll A duty or toll taken of ships for the use of the haven where they cast anchor, and sometimes exacted though there may be no anchor (*Hale, de Jure Mar*, Pt. 2, c 6. *Wharton*, *Black*, 2 *Cyc.* 285)

Anchumna or Anchumma The name of an order to the villageAccountants in the Northern Circars to ascertain the quantity of land in tillage and of seed sown, or to value the crops of the cultivators

Ancient. Old (as) ancient rents, that which existed in former times, that which has existed from an indefinitely early period

"Ancient is a correlative term, and has for its correlate, as standing in the opposition, the term, 'modern'."

Ancient Demesne In the English Law, "Those lands which were in the possession of Edward the Confessor were called Ancient Demesne, . and the tenants who held any of those lands were called, Tenants in Ancient Demesne" (*Termes De la Ley*, *Tomlin. L. D*, *Kitch.* 98)

Ancient Document In English Law, it is probably, impossible to define what is an "Ancient Document" to which the doctrine of *Contemporanea Expositio* may be applied It should be, at least, "one or two centuries" old(Per *Ld. Watson, in Clyde Nav.* v. *Laird*, 8 App. Ca 678. See also *Evidence Act* S. 90.)

Ancient Grant. Should the general words of an ancient grant be uncertain, they may be fairly explained by subsequent usage [*Secretary of State for India* v. *Raja Jyoti Prasad Singh Deo Bahadur.*

And also.

(1926) 53 I.A 100=53 C. 533=30 C.W.N. 745=24 A. L.J 761 P C..]

Ancient Light. An ancient light is a defined aperture in a building, through which there has been actually enjoyed, peaceably and as of right, an access and use of light "for the full statutory prescriptive period without interruption" *Gale*, Part 3, Ch 2, *Goddard on Easements*, 5th Ed, 49—57, *Easements Act*, S 15.)

"Ancient monument" defined, Act VII of 1904, S 2.

Ancient writings (See *Ancient documents*, Documents upward of thirty years old (*Wharton* See *Evidence Act*, S. 90)

Ancillary Aiding, Auxiliary, Subordinate, attendant upon, that which aids or promotes a proceeding regarded as the principal (*Abbott L.D*) (as) ancillary administration, ancillary attachment, ancillary action. (*Ency Lond*)

A work is said to be "ancillary or incidental" to a thing, trade, or business when it is not necessary thereto or a primary part thereof

And (*Abbr &*) A particle joining words and sentences, and expressing the relation of connection or addition, as well as, this word is frequently expressed by the abbreviation "&" "This style of abbreviation has come down to us sanctioned by age, and good use for perhaps centuries, and is used even at this day in written instruments, in daily transactions, with such frequency that it may be said to be a part of our language when it is written" (Per cur. in *Brown* v *State*, 16 Tex App 245, 247,2 Cyc 287.)

The word "And" has generally a cumulative sense requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of 'or'. Sometimes, however, even in such a connection, it is, by force of a context, read as "or" See 33 Cal 1290 =10 C W N 1044, 4 C W N 342, *Chandra* v *Nabadwip* 131 I C, 702=35 C.W N 9=A I R 1931 Cal. 476.

'AND' as used in a turnpike Act of 42 Geo. 3, held not to be taken conjunctively, but disjunctively or distributively, that is, as equivalent to "or" *Waterhouse* v. *Keen* (1825), 4 B & C 200, 35 C.W.N. 9. And is read distributively in a by-law [*Stamland Industrial, etc, Society* v. *Stamland U D.C*, (1906) 1 K B 233 See also *Townsend* v *Read*, (1861), 10 C B N S 317, but as to "and" in a will, see *Re Sutton* (1885), 28 Ch D 464] The word 'and' in the first part of S. 596, C P Code 1882 (S 110, C P Code, Act V of 1908) means 'and,' and not 'or' [*Motichand* v *Ganga Prasad Singh*, 24 A 174 6 C.W.N. 362 29 I A 40 (P.C.), *Gudivada Mangamma* v *Maddi Mahalakshmamma*, 58 M L.J 184=53 M. 167=57 I A. 56 (P.C).]

AND/OR Where statements or stipulations are coupled by "and/or" they are "to be read, either disjunctively or conjunctively." (Per *Cairns, C*, *Stanton* v *Richardson*, 45 L J C. P. 78 (82)=33 L. T. 193)

"And also." A general description of property introduced by "And also" or the like, and following

And.

a particular description, will usually receive an *ejusdem generis* interpretation (*Elph* 173 *et seq.*).

"And in any case" Held to mean "in every case" *Pershad Singh* v *Ram Pertab*, 22 Cal 77

Andoo. Andu, In Malabar, a cycle of sixty years (*Fifth report*)

Andu or Kollam andu (*Mal*) This term is applied to an era which began in September 824 A D To the south of Cranganore, the year begins with the 1st day of the month of Chingam (about the 15th August) This is followed generally in the Cochin and Travancore territories To the north of Cranganore, *i e*, in British Malabar and a portion of South Canara, the year begins with the 1st day of the month of Kanni (*i e*, about the 15th day of September), (*Moore Mal Law*, *Sun Mal Law*)

Ane (*Tam*, *Karn*, *Mal*) A dam, dyke, a bank, a bridge 'Kallane (*Tam.*, *Karn*) A dam or embankment of stone

Anekattu Anekatte corruptly, *Anicut* A dam, a dyke, an embankment, a channel to direct water into different streams for purposes of irrigation (*Wil Gloss*)

Anesthesia In medical jurisprudence (1) Loss of sensation, or insensibility to pain, caused by the administration of certain drugs, such as either nitrous oxide gas, or cocaine (2) More or less complete insensibility to pain, existing in various parts of the body as a result of certain diseases of the nervous system (*Black.*)

Angliae jura in omni casu libertati dant favorem A maxim meaning "The laws of England are favourable in every case to liberty" (*Halk. Max.* 12, *Broom*, *Cyc Law Dict*)

Anglican (*Eccl*) Pertaining to or connected with the Church of England "ANGLICAN" defined, Act 15, 1872, s 3

Anglis (corruption of English) An invalidated soldier, or lands granted to him under Bengal Regulation xliii, 1793. 1-1804. (*Wil Gloss* 26)

Anglo. An element in many compound words, meaning Angles or English, connected with England as Anglo-Indian

Anglo-American One connected with both England and America, Englishman born and resident in America

Anglo-Indian. Connected with both England and India, combining English and Indian characteristics, as, Anglo-Indian trader, Anglo Indian words, Anglo Indian Nationality; also applied to one of the English born resident of India, an Englishman domiciled in the Indian territory under the British Crown.

A person of mixed European and Indian descent professing Christian faith and domiciled in India is an Anglo-Indian [*Sargon* v. *Sargon.* 146 I.C. 1034 =A.I.R. 1933 Nag. 337]

Anglo-Irish. English people born or resident in Ireland. Descendants of parents English on one side and Irish on the other.

Animus.

Angoja Santan The words "Angoja Santan', occurring in a deed of gift which contains also the words *putra poutradi* ought to be construed literally, and should limit the gift to issue male of the donee *Bugola Moyee* v *Bhowanee Churn Paul*, 5 W.R. 118.

Anicut (anaikatta see *Anekattu*) (*M*) A weir for irrigation from a river, etc *Bad Pow* in 62 *See* Anekattu

Animals 'Animals' in law includes any animate being, which is not human, endowed with the power of voluntary motion (*Bouvier*) It includes all living creatures not human.

"The common law divides animals having the power of locomotion exclusive of man, into three classes, namely such as are tame animals, such as are wild animals, and such as, whether wild or tame, are of so base a nature as not to be the subject of larceny This latter class is composed out of the two former" (2 Bl Comm. 390 *et seq*, 4 Bl Comm 236, 3 Inst 109, 1 Hale P.C 511, 512, *Black*)

"ANIMAL" defined, Act 45, 1860, s 47, Act 11, 1890, s 2 (1), Act 20, 1891, s 100 (4), Ben Act 1, 1869, s 1, Mad Act 2, 1866, s 2, Ben Act 3, 1899, s 458, P Act 1, 1903, s 2, U.P Act, 1, 1900, s 117.

ANIMALS, PREVENTION OF CRUELTY TO So long as an animal is *ferae naturae* and it is not brought under subjugation and control of man it stands upon a wholly different ground, but when it is captured or domesticated the law protects it from cruelty if such cruelty is practised at a place or in the manner laid down in the Act A crab is an animal within the meaning of Act XI of 1890 It may fairly be assumed in the absence of proof to the contrary that to pull the legs off a living crab and to crush its shell are acts which must necessarily cause pain to the animal. (In the matter of *Tulsi Bewa or Soshi Bewa* 1 C W.N 642=24 Cal 881)

Animalia fera, si facta sint mansueta et ex consuetudine cunt et redeunt, volant et revolant, utcervi, cygni, etc, eo usque notsra sunt, et ita intelliguntur quamdiu habuerunt animum revertendi —A maxim meaning "Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, etc, are considered to belong to us so long as they have the intention of returning to us" (7 *Coke* 16)

Animalia ferae naturae. Animals of a wild and untameable disposition.

"Animal-lymph" defined; Bom Act 1, 1877, s. 2 (6), Bom. Act 4, 1879, s 2 (6), Bom. Act 1, 1892, s 4 (f).

Animo. With the intention, animo furandi. with intent to steal.

Animus Mind, design; will, Intention, disposition (*Burrill L. D.*)

This word "Animus" is used in various combinations. (as).

Animus adimendi The intention of adeeming. (*Adams Gloss.*)

Animus cancellandi. The intention of destroying or cancelling. (*Burrill*; *Wharton*; applied to *Wills.*)

Animus

Animus capiendi. The intention of taking. (*Bouvier L Dict*)

Animus dedicandi. The intention of dedicating. (*Adams. Gloss*)

Animus defamandi The intention of defaming. (*Black*)

Animus dereliquendi The intention of abandoning (*Adams Gloss*, 84 *Ame Dec* 631.)

Animus donandi. The intention of giving. (*Burrill L. Dict*)

Animus et factus Intention and act, Will and deed (*Black*; *Wharton*)

Animus furandi The intention of stealing (*Bouvier*, *Wharton*)

Animus hominis est anima scripti (3 *Bulstr* 67) A maxim meaning "The intent of a man is the soul of his writing" (*Morgan Leg Max*, *Black*, 3 *Bulstr* 67.) In order to give life or effect to an instrument, it is necessary to look to the intention of the individual who executed the same.

Animus lucrandi The intention of gaining (*Burrill L Dict*)

Animus manendi or **morandi** The intention of remaining (4 *Kent Comm.* 76, *Wharton*)

Animus possidendi The intention of possessing (*Black*)

Animus quo The intention with which (48 *Am. St. Rep.* 706)

Animus recipiendi The intention of receiving (*Burrill*, *Wharton*)

Animus recuperandi The intention of recovering (*Black*)

Animus republicandi. The intention to republish. (*Black*)

Animus restituendi. The intention of restoring (*Bouvier*)

Animus revertendi The intention of returning. (*Adams Gloss*) (A man retains his domicile if he leaves his country *animus revertendi*)

Animus revocandi The intention of revoking (as) a will. (*Wharton*)

Animus testandi The intention of making a will. (*Burrill*)

Anjali. A respectful mode of salutation. As much grain as can be held by the two hands put together. A handful of corn given from the threshing floor.

Anjaman. (*Per.*). An assembly, a society, as the Anjaman-i-Panjab, the name of a Society in the Panjab for the revival of Oriental Learning.

Ank bandi, or bundee. (*H.*). An adjustment of the rents to be paid by the individual collector through the person held liable for the realisation of the Government dues. (*Wil. Gloss.* 27.)

Anno Hejirae.

Ankhen-Wala. (*H*) A term used in Mysore to denote a class of police employed by Hyder Ali, a spy, an inspector (*Wil Gloss.* 27)

Anna The 16th part of a rupee. (Fifth Report) (See *Ana*)

Annex is to attach at the end, subjoin, affix, as to annex a codicil to a will. In law it implies physical connection which, however, is often dispensed with when not reasonably practicable To unite, as a smaller thing to a greater, join; make an integral part of as, to annex a conquered province to a kingdom

"It is an invariable maxim, that every acquisition of foreign territory is at the absolute disposal of the king, and unless he annex it to the realm, it is no part of it" (*A Hamilton Works*, II, 65)

ANNEX —To attach as an attribute, a condition or a consequence as,to annex a penalty to a prohibition

Annexation is the act of annexing or uniting one thing with another; the act of adding as a smaller thing to a greater, the act of connecting, conjunction, addition as the annexation of Texas to the United States, of Berar to British India (*Tomlins Law Dict*)

ANNEXATION means that which is annexed or added

"Pre-eminent among them (Roman conquests) stand the *annexations* of Pompeius in Syria of the elder Ceaser in Gaul of the younger Ceaser in Egypt" (*E.A Freeman, Amer Lects* p 329)

The attachment of chattels to a freehold, in such a manner as to give them the character of fixtures is also termed "annexation" (*Cent Dict*)

"Annexed to the land," connotes fastening to the land Mere juxtaposition to, or the lying of a thing on, the land, does not amount to annexation (*Stroud.*) *See* T. P. Act S 40 "annexed to the ownership of property"

Annihilate To destroy the form or peculiar distinctive properties of, so that the specific thing no longer exists as,to annihilate a forest by cutting and carrying away the trees, to annihilate an army, to annihilate a house by demolishing the structure

Annihilation Destruction of the form of a thing or the combination of parts which constitute it, or the state of being destroyed as, the annihilation of a Corporation, annihilation of an army.

Anno Domini. The year of the Lord The computation of time from the incarnation of Christ which is generally inserted in the dates of all public writings, with an addition of the year of the king's reign, etc The Romans began their era of time from the building of Rome, the Grecians computed by Olympials, and the Christians reckon from the birth of Jesus Christ. (*Tomlins Law Dic.*) In India we have different views for different provinces.

Anno hejirae In the year of the hejira, or flight, of Mahomed from Mecca (A D. 622) from which the Mahomedans reckon their time. Commonly abbreviated A.H.

Annotate.

Annotate, to write notes on; to comment upon, as, to annotate the works of Milton

Annotation. A note, remark, or commentary on some book or passage of a book, intended to illustrate its meaning (*Webster*), The act of annotating or of making notes

Annotator. Writer of annotations, a commentator.

Annoyance In law it includes any hurt done to a place, public or private, by placing anything thereon that may breed infection, or by encroachment or such like means. (12 *Cyc.* 457, citing *Wharton L. Lex*) It means much the same thing as nuisance (*22 Hen* VIII, Ch. 5)

DISTINGUISHED FROM 'NUISANCE'. In *Ted Heatly* v. *Benham*, 40 Ch.D. 80, 84, Kekewich, J, said "I think it would be against the sound canons of construction to give the same meaning to two words standing side by side and I rather follow the suggestion that annoyance is a popular word for nuisance, 'nuisance' being the legal technical word, while annoyance means something which, though frequently called a nuisance, is not a nuisance legally and technically, and therefore is popularly, but not technically, a nuisance"

A covenant against doing anything which may be a "Nuisance or Annoyance" to a neighbourhood, is broken by a sanatorium for the reception of six boys affected with infectious disease (*Watson* v *Leamington College*, 25 S J. 30) In that case, Jessel, M R, said it might perhaps be difficult to appreciate the difference between 'Nuisance" and "Annoyance", but as both were used, "annoyance", evidently, meant something less than 'nuisance"

Annual, pertaining or relating to a year, yearly, as the annual growth of a tree, annual profits, annual rent, relating to the events or transactions of a year, as, an annual report.

"Annual letting value", in the Bombay District Municipalities Act, shall mean the annual rent for which any building or land, exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year. Bom. Act III of 1901 (*Dist Muni*) S 3, Cl 11.

Annual net profits in the Bengal Cess, Road and Public Works Act (IX of 1890), Ss. 6, 72, 76, 80, 81 includes the royalty a lessor receives from the coal-mines. (*Manindra Chandra Nandi* v *Secretary of State for India in Council* 9 Ind Cas 311 (Per *Mr Amir Ali.*) (*see also* 5 C.L.J. 148=34 C. 257.)

"Annual net profits of mines" The "annual net profits" from a mine is a quantity which is independent of the circumstance whether the mine is worked by the owner himself or by lessees or adventurers holding the property under him, the difference between the gross earnings and the working expenses, which constitutes the net receipts, is the net annual profits from the mine. (*Manindra Chandra Nandi* v. *Secretary of State for India*. 34 C. 257=5 C.L J. 148. (*Mookerjee*, J.)

Annual pay, in the English Police Act, 1890. See *Upperton* v. *Ridley*, (1903) App. Cas. 281.

Annuity.

"Annual profits" defined. *See* U P. Act I of 1903 (Encumbered Estates.), S. 20. Explanation.

"Annual rental valuation" defined. U. P. Act I of 1891, S 2 (*h*).

Annual rents and profits The words "annual rents and profits" in a mortgage decree mean annual rents and profits which are directly available for the payment of interest, *i e*, rents and profits so available after the revenue, cesses, costs of preservation, management and collection have been paid (*Ganga Bahu* v. *Apurba Krishna Roy*, 17 C.W.N. 25=18 Ind. Cas. 535 (536) (P C).

Annual value The phrase 'annual value' whether in Income-tax Acts, or wherever else it appears in connection with rating or taxation means the same thing, *i e*, the sum at which the property may reasonably be expected to let from year to year *Chhunna Mal Salig Ram* v *Commissioner of Income-tax Punjab* 32 P L.R 517=131 I C 193=A I R. 1931 Lah 320 (2) (F B). *See also* 11 Cal 275

"ANNUAL VALUE" defined, Act XX of 1883, S 3, Act XVII of 1887, S. 29, Act XX of 1891, S 42 (2); Ben Act IX of 1880, S 4 Law, Reg 3, 1879, S 2 (5), Reg 5, 1886, S 41 (2); Reg 6, 1886, S 2 (2); Ben Act IV of 1910 S 2, U P Act I of 1900, S 3, U P Act III of 1904, S 2, U P Act II of 1906-S 2, Reg Act V of 1910 s 8 (2), Pun Act XX of 1883, S. 3 (4).

ANNUAL VALUE, in the English Grand Junction Waterworks Acts, 1826, s 27, and 1852 (15 & 16 Vict. c clvii), s 46, means "net annual value" as defined in the Parochial Assessments Act, 1836 (6 & 7 Will, 4, c. 96), s 1 *Dobbs* v *Grand Junction Waterworks Co.* (1883), 9 App. Cas, 49, *cf* Public Health (London) Act, 1891 (54 & 55 Vict c, 76), s (141, and Valuation (Metropolis) Act, 1869 (32 & 33 Vict c. 67), s. 2, in the Reform Act, 1832 (2 & 3 Will 4, c 45), s 27, means the fair annual rent without deduction for landlord's repairs, *Colvill* v *Wood* (1846), 2 C B. 210; in the House Tax Acts and Income-tax Acts, means the gross annual value, and not the net value *Walker* v *Brisley*, (1900) 2 Q B. 735 See *Re Surrey County Cricket Club*, (1902) 2 K B. 400, and 32 & 33 Vict c 67, ss. 4, 45

Annual value of the land The profits derived from a fair do not fall within the description of "annual value of the land" as defined in S. 4 of the Road Cess Act —*Secretary of State for India* v. *Karuna Kanta Chowdhury*—35 C 82=11 C W.N. 1053=6 C L J 342 (F B.). Per *Brett*, *Woodroffe and Mookerjee*, *JJ.*

Annually "Profits and gains received annually," in Income-tax law means received for the current year; *Ryhope Co.* v. *Foyer*, 7 Q B D. 485.

Annuanec debitum judex non separat ipse A judge (or court) does not divide annuities nor debt. (8 *Coke*, 52, *I Salk*, 36, 65.) Debt and annuity cannot be divided or apportioned by a court

Annuity, in its strict sense, is a yearly payment of a certain sum of money, granted to another for life, or for years, and chargeable only on the person of the grantor. (2 *Cyc.* 459; *Co. Litt.* 144a; Black

Annuity

It is a periodical payment of money bequeathed as a gift or secured by the personal covenant or bond of the payer. (*Terms de Ley* 44 *Reg Orig.* 158, *Co Litt.* 144b, *Tomlins Law Dic.*)

An annuity is a bequest of certain specified sums periodically. The gift of an "annuity" generally means an annual sum during the life of the annuitant (Re *Taber*, 51 L J Ch 721), "and nothing more" (per *Fry, J Blight* v. *Hartnoll*, 51 L J. Ch. 163) An annuity may be *perpetual, or for life, or for a period of years,* or subject to such specific limitations as to its duration as the grantor or donor may impose

Annuity, in the English Income-Tax Act, 1842 and English Succession Duty Act, 1853, meaning of, See *Secretary of State for India in Council* v. *Scoble.* (1903) A C. 299

Annuity distinguished from income of fund There is a distinction between the income of a fund and an annuity The former embraces only the net profits, after deducting all necessary expenses The latter is a fixed amount directed to be paid absolutely, without contingency "There is no substantial difference between the gift of an annuity for life and of the interest or income of a fund for life" 2 Cyc. 459

Annuity, Rent, Rent Charge There are several differences between a rent and an annuity *viz* every rent is issuing out of land, but an annuity chargeth the person only, as the grantor and his heirs, who have assets by descent (*Tomlins Law Dic.*) An annuity is different from a rent-charge in that a rent-charge is a burden imposed upon and issuing out of lands, whereas an annuity is chargeable only upon the person of the grantor (*De Haven* v *Sherman*, 6 L.R.A. 745)

Annul, to make void, to destroy, to cancel (as to annul a judgment, nullify, abrogate, abolish, do away with, used especially of laws, decrees, edicts, decisions of Courts, or other established rules, usages and the like "Do they mean to invalidate, annul, or call into question. that great body of our Statute Law? . to annul laws of inestimable value to our liberties' (*Burke Revolution in France.*)

"Annulling" in bankruptcy generally includes "superseding"

Annulment. The act of annulling, the act of making void retrospectively as well as prospectively: (as) annulment of adjudication order in insolvency.

Ann Vazhi. Male line. (*Sund. Mal. Law.*)

Anomalous Deviating from the general rule, irregular, exceptional, unusual, not conforming to rule, method, or type.

A non posse ad non esse sequitur argumentum necessarie negative licet non affirmative. (*Hob.* 336.) A maxim meaning "From impossibility to non-existence, the inference follows necessarily in the negative, though not in the affirmative." (*Adams Gloss*) "From the fact that a thing cannot be done, you necessarily draw the conclusion that it is not done, but from the fact that a thing has not been done, you are not justified in concluding that it cannot be done." (*Byrne.*)

Antecedent debt.

Anonymous Nameless. Without names,' A term applied to the reported cases in which the names of the parties are not given, or which are without the usual title. (*Burill L. Dict*) Often abbreviated as "anon" "An," or "A" (Wharton.) An anonymous publication is a publication withholding the name of the author.

Ansapatra (*S*) A deed setting forth the shares or portions of a property A deed of partition between the members of a Hindu family (*Wil. Gloss.* 27.) See *Amsapatra and Amshapattra.*

Ansari (*H*). A tribe of Sheikhs in the North-West Provinces who pretend to be descended from the original Ansar, or auxiliaries of Mohammad, who adopted his faith at Medina (*Wil Gloss.* 28.)

Answer *As a noun* A pleading setting forth matters of fact by way of defence, a counter-statement of facts in a course of pleading, a confutation of what the other party has alleged, a reply to interrogatories (as) an affidavit in answer to interrogotaries, a statement of fact by a witness under examination after a question has been put to him.

As a verb, it denotes an assumption of liability (as) a surety's liability to answer for the debt or default of the principal debtor. To reply to a charge or an accusation, to make a statement or reply in defence or justification of one's self with regard to a charge or an accusation "I will . . Send him to answer thee, or any man,
For anything he shall be charge'd withal. (*Shak:* 1 *Hen. IV*, *ii.* 4.)

A statutory obligation that a person shall "answer" questions put by the Court means that he shall "truly answer" (*R* v. *Hulme*, 39 L.J.Q B 149.) In that case *Lush*, J., said —"Wherever the legislature speaks of 'answering' questions, it means that which is intended by the words 'true answer',—'answer' in the sense in which the word is ordinarily and popularly used"

Answerable. Capable of being answered, admitting of a satisfactory reply, Liable, "Unanswerable is a boastful word. His best reasons are answerable; his worst are not worthy of being answered." (*Jeremy Collier*, Moral Subjects) Liable to give an account or to be called to account, responsible; amenable, as, an agent is answerable to his principal. ''answerable" is merely an equivalent for liable' *River Wear Commissioners* v. *Wear Adamson* 2 *App. Cas.* 743 at 775.)

Antarjanam (*Mal.*) A term applied to Nambudri women who live in seclusion) (*Moore's Mal. Law*)

Ante. Before, when used in a report or legal text book it refers the reader to a previous part of the book.

Antecedent debt. (*In Hindu Law.*) The expression "antecedent debt" (5 C 855) means with

Anteceptic.

regard to a mortgage, debt "antecedent to the transaction," and, in the case of a proceeding by suit, 'debt antecedent to the institution of the suit." *Khah Rahman* v. *Gobind Pershad.* 20 C 328. See also 72 P R 1898. An "antecedent debt," to support a sale or mortgage for such debt, is a debt which is not for the first time incurred at the time of a sale or mortgage, that is, presently incurred, but a debt which existed prior to, and independently of such sale or mortgage *Chandra Deo Singh* v. *Mata Prasad.* 3 I A 176 See *Mayne's Hindu Law.*

Anteceptic, (*Med Jur*) Anything which destroys the micro-organism of disease, putrefaction, or fermentation, or which restricts their growth and multiplication

Antedate. To date before the true time, to give an earlier date than the real one, thus, to antedate a deed or bond is to give to it a date anterior to the true time of its execution

Antediluvion Belonging to very ancient times, antiquated, primitive, (figuratively) rude, simple, as, antediluvion ideas.

Ante-ezara tenant. The claim to hold as ante-ezara tenant means that the landlord has no right to enhance the rent *Bhwaji* v *Tukaram* 39 I C 15= 13 N L R 11

Ante litem motam. Before litigation was in contemplation

Ante-natus A child born before the marriage of its parents.

Ante-natal Happening before birth, pertaining or relating to terms, occurrence or conditions previous to birth.

Ante-nuptial Occurring before marriage, existing, or done before marriage, preceding marriage, as, an ante-nuptial agreement, ante-nuptial children. (*Wharton*)

Anti-nuptial settlements; settlements of property on the wife or upon the wife and children made before or in contemplation of marriage.

Ante exhibitionem billae. Before the exhibition of the bill (*Burrill*).

Antharjanam (*Mal*) Nambudiri ladies (*Sun Mal law*)

Anthropometry (In criminal law and medical jurisprudence) The measurement of the human body, a system of measuring the dimensions of the human body both absolutely and in their proportion to each other, the facial, cranial, and other angles, the shape and size of the skull, etc., for purposes of comparison with corresponding measurements of other individuals, and serving for the identification of the subject in cases of doubtful or disputed identity. (*Henry Finger Prints*).

Anticipation, (in conveyancing) means the act of assigning, charging or otherwise dealing with income before it becomes due. A restraint on *"Anticipation'* is equivalent to a restraint on Alienation (Re *Currey* 55 L.J. Ch. 906).

Any.

Antinomy. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions (*Black*)

Antiqua statuta The ancient collective name of all statutes, including the statutes of uncertain date, passed before the reign of Edward III, also termed vetera statuta.

"Antiquities, defined—Act VII of 1904, S 2 (2).

Anubhavam (*or Anubhogam*) (*Mal*) Enjoyment, a grant of hereditary land in Malabar, either rent-free or at a pepper-corn rent, in reward of service, a deed of gift of land as a reward for services performed The right is hereditary (*Moore Mal. Law*; *Sun Mal Law*)

The term "anubhavam" imports *prima facie*, an irredeemable tenure, or it may be used with reference to a specified money or grain rent charged on land, and in that case it will not imply any tenure in favour of the grantee *Vythilingam Pillai* v *Kuthiravattah Nair*, 29 M 501=16 M.L.J 358=1 M L T 290

Anubhavam Tenure. Alienation by an anubhavam tenant to a stranger puts an end to the tenure, and the land reverts to the grantor, even without an express clause in the grant providing for a re-entry. (*Sadasiva Iyer and Hannay* JJ) in 27 I C 10 (1914)

Anubhogam (*Mal*) Enjoyment, usufruct; a grant of land, the same as *Anubhavam.*

Anulomaja (*S*) The offspring of two persons of different classes, of whom the father is one of the superior class in the regular succession, as of a Brahman father and Kshatriya mother If the woman were of the Brahaman and the man of the Kshatriya class, the order is inverted, and the progeny is termed *Pratiomaja* (*Wil Goss* 28)

Anupurvaja Offspring born of parents in the regular sequence of the castes (*Wil Gloss.* 28.)

Anvadeya, (one of the several kinds of *stridhanam* among Hindus) Whatever is to be presented to a woman after marriage by her husband's family. (*Wil Gloss*)

Anvali. The male line. (*Moore's Mal law*)

Anwadheya, or Dheyika *S* (*See Anvadeya*). A class of woman's property or *stridhanam* what has been given to her by her husband or relations after marriage (*Wils. Gloss.* 29).

Anwadidar. A re-mortgagee as distinguished from the bogirnudar, who holds from the proprietor

Anwanda (South Punj.)='not wrought for,' the landlord's extra fee when he lets land already cleared: *see Bad-Pow* II. 659, 660

Any. The word "any" may have one of several meanings, according to the circumstances, it may mean "all"; "each"; "every"; "some"; "or one or more out of several." (*Am. Cyc.*)

Any Court.

"ANY," is not confined to a plural sense (*Eaton* v. *Lyon*, 3 Ves, 694). "Any" is a word which excludes limitation or qualification (per *Fry*, *L J.*, *Duck* v. *Bates*, 53 L J.Q.B 344; 12 Q B D. 79), "as wide as possible" (per *Chitty*, *J.*, *Beckett* v *Sutton*, 51 L.J Ch 433).

When 'any' is preceded by a negative, expressed or implied, the two are together equivalent to an emphatic negative, 'none at all', 'not even one', as there has never been any doubt about that "Neither knoweth any man the father, save the son" *Mat xi 27.*

ANY is used in the sense of any body, any person.

Any Court In O 21, R 2, C P Code, the words "any Court" have been construed to mean only "any Civil Court" 11 B 599 (602) *See also* (10 B 288)

"Any damage he may sustain" The expression "any damage he may sustain," is intended to ensure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage only as he may, by his own other arrangements, have contrived to reduce it to *The Municipal Commissioner for the City of Bombay* v. *Patel Haji Mahomed Ahmed Janu*, 14 B. 292

Any dispute or matter. 1 L.W. 414=23 I C. 524.

"Any interest" The interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is to say, there should be no dispute whatever as to the title of the deceased to his estate, the person who wishes to come in as a caveator must show some interest in that estate derived from the deceased by inheritance or otherwise 34 Bom 459 (*Piraj Shah Bikhaji* v *Pestonji Merwanji*)

Any law The words "any law" as mentioned in S 23 of the Contract Act refer to some substantive law and not an adjective law such as the Procedure Code is. 16 Cal 504 (*Hukum Chand Oswal* v *Tahraun Nessa Bibi*)

"Any Matter" (in S. 11 C P Code) See *Tarachand* v *Bai Hansh.* 6 Bom L R. 594

"Any nuisance" in Ben. Mun Act, mean any nuisance as defined in S 3 (29) thereof. 38 Cal 296 (*Khagendra Nath Mitter* v. *Bhupendra Nath Dutt*)

"Any other act of bad faith." See *Gopal Das* v. *Bihari Lal*, 17 All 218 (F.B), *see also* 26 All 517= 1 A.L.J. 259.

"Any other law at the time being in force" in S. 10, Bom Land Rev Code. *See* 36 Bom. 123=12 I. C. 709.

"Any other party" The words "any other party" in S 131, C P Code, (1882) does not refer only to the defendant as contrasted with the plaintiff, or *vice versa*, but to any two parties, whether plaintiffs or defendants, between whom it is necessary to adjust rights. *Anandrao Vithal Varadi* v. *Budra Malla.* 17 B. 384.

"Any other person" in the Guardian and Wards Act (VIII of 1890), S 30. The words "any other person" would not include creditors who might be injuriously affected by a transfer of property. *Lalji Das* v. *Chet Ram*, 22 I C 829 (830) per *Rattigan and Scott-Smith, JJ.*

When a section of an Act of Parliament after enumerating several office-holders proceeds to add the words 'any other person or persons whatever,' the doctrine of '*ejusdem generis*' applies Any 'other person' means any one who holds an office in the Government of a similar kind to those enumerated. *In the matter of Sir Stuart Samuel*, 17 C.W N 735= 19 I C 765. *See* 19 All 191 (193)

"Any other person interested in the property" in S 90 (4), Probate and Administration Act (1881), must mean any person interested in the property independently of the executor whose alienation he seeks to avoid *Jagobandhu Dey* v *Dwarika Nath*, 23 C 446 *See also* 22 I C 925

"Any other public right whatever" Perhaps it would be too strict a construction to say that the words "any other public right whatever" in Cl. (2) of S 2 of Bengal Reg II of 1805 shall be construed precisely to be *ejusdem generis* with those matters which are mentioned before *Government of Bengal* v *Mussumat Shuruffutoonnissa*, (1860) 8 M.I A 225 =3 W R 31

"Any other question arising" The words, "any other question arising, etc," in S. 244, C P Code (1882), should be read as "any other question directly arising", otherwise the most remote inquiries would be possible in the execution department. *Ram Ghulam* v *Dwarka Rai* 7 A 160=4 A W.N 319 (F B)

"Any other reasonable cause" The words "any other reasonable cause," in section 13 Clause (*f*) of the Legal Practitioners Act, XVIII of 1879, are not confined to misconduct of which a practitioner is guilty in his professional capacity, but embrace all causes which in the opinion of the Court, may afford reasonable ground for his suspension or dismissal. *Emperor* v *Kochattkar*, 8 Ind Cas 282 (285) (per *Batten, O J C and Stanyon, A J C*) *See also* 29 Cal 890=6 C W N 556 (F B), 27 Cal. 1023, (5 C. W N 48, Overruled), 17 I A 199, 7 B L R 179, *In the matter of Two Second Grade Pleaders*, 6 Ind. Cas 313 (318)

The words *"any other substantial cause"* in O. 41, R 27, C P Code are not to be understood in a wide and unrestricted sense, but as referring to the same class of cases as the one specifically named. 12 Ind. Cas 673 (675), *see also* 31 B 381 (P C), 36 M 477; 38 M. 414, 28 M L J. 334, 43 M L.J. 332

"Any other sufficient reason" The words *"any, other sufficient reason,"* in C P Code O. 47 R. 1, mean a reason sufficient on grounds at least analogous to those specified immediately previously. *Chhajju Ram* v *Neki*, (1922) 49 I A 144=3 L. 127 (135)= 43 M L.J. 332 (P C). *See also* 13 I.C. 318

"Any other written grant" *See* 6 Bom.L.R 648. =29 Bom. 19.

"Any part" A power of Sale of "any part" of the estate would, authorize the sale of the whole of

Any person

it (*Rendlesham* v. *Meux*, 14 Sim 249), and a power to appoint, or a bequest of "any part" of a testator's estate, enables the donee to take or appoint it all (1 Jarm 361, 362, *citing Cooke* v *Farrand*)

"Any person" The words "any person" in section 495 of the Code of Crim Pro (Act V of 1898) would not include an absolute stranger who had no connection in the remotest degree with the prosecution and whose desire to help the prosecution was based on a personal grudge only *Darshan* v *Atma Ram*, 11 A L J 313=14 Cr L J 389=20 Ind Cas 213, (per *Rafique J*) *See* 8 Cal 367=10 C L R. 441

"Any person" in the last part of the sub-section of section 31 of Guardians and Wards Act, does not mean a friend or relative only, but is wide enough to cover an application by persons other than relatives or friends of the minor *Raja Venugopal Bahadur* v *Thirumala Kandama*, 11 Ind Cas 946 (947)=(1911) 2 M.W N 165=21 M.L J 885

"Any person" in section 29 of the Beng Revenue Sale Law, Act XI of 1859 *Darsan Singh* v *Bhawani Koer*, 17 C W.N. 984=19 Ind Cas 974 (975)

The expression "ANY PERSON SUPPOSED TO HAVE BEEN DIRECTLY OR INDIRECTLY CONCERNED IN OR PRIVY TO THE OFFENCE UNDER INQUIRY" in Criminal Procedure Code (Act V of 1898), S 337 (1) is a very wide one and includes others besides an accused who has been sent up for trial by the police *Emperor* v *Andal*, 13 Ind Cas. 273 (274) per *Pratt J C and Crouch, A J C*

"Any place of public entertainment and resort" (in U.P. Act I of 1900, S 128) include places both of public entertainment and public resort The words 'public entertainment and resort' cannot be read distributively The word 'entertainment' so far as Mr Murray's Dictionary is any guide, could not properly be applied to a street or a patri adjoining a street *Imami* v *Emperor*, 10 A L J 426=13 Cr L J 685=16 Ind Cas. 333 (334), per *Knox and Banerji, JJ*

"Any provisional order" *The Ahmadabad Municipality* v *Ramji Kuber*, 12 I C 551

"Any public street place or thoroughfare" *See* Colm Dig Cr 1 of 1871

Any ship, in sects 260, 261, of the Merchant Shipping Act, 1894 applies to foreign as well as British ships. *R.* v *Stewart*, (1899) 1 Q B. 964

Anyonya-vibhaga (*S*) Mutual partition made by the sharers without the presence of any other persons. (*Wil Gloss* 547)

Anyakudi. (*Tam*) A cultivator who does not live in the village in which his land is.

Aparalu. (*Tel*) All kinds of pulse or grain in pods.

Apararka (*An authority in the Benares School of Hindu law*) Apararka is a scholiast of Yajnyavalkya, who flourished about a century later than Vijnaneswara. That Apararka's authority is acknowledged by the expositors of the Benares school is clear from the fact, to which Mr Mandlik refers,

Appasam.

that Visvesvara Bhatta, the author of the Subodhini, a commentary on the Mithakshara, has used Apararka's work among others for the compilation of his Madanaparijata. *Buddha Singh* v. *Lattu Singh*. 42 I.A 208=37 A 604 (617-8)=29 M L.J 434

Apex juris The summit of the law, an extreme point or subtlety of law, (*Burrill Law Dic*) a close technicality; a nice or cunning point of law, a rule of law carried to an extreme point of refinement

Aphalam (*Mal*) A tree past bearing, Unfruitful (*Log Mal Man*)

Apices juris non sunt jura A maxim meaning "mere niceties of law are not law" (*Burrill L Dict*) "The extremes of Law make bad Law" (*Byrne*)

Apices litigandi Subtleties of litigation (*Burrill L Dict*) Extremely fine point in litigation, something like "sharp practice" in legal proceedings "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff around and make him pay costs when his demand is just" Per *Lord Mansfield* in 3 Burr. 1243.

A piratis et latronibus capta dominium non mutant A maxim meaning "Things taken or captured by pirates and robbers do not change their ownership." (*Adams. Gloss*)

Apologize, to excuse oneself, to make an apology or excuse, acknowledge or express regret for a fault

Apostacy The total renunciation of one's religion, by embracing another religion or no religion at all (*Burrill*, 4 Bl Comm 43, 4 steph Comm. 231, *Ame Cyc.*)

Apothecary, "is a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medcines" (per *Cresswell, J, Apothecaries Co.* v. *Lotinga*, 2 Moo & R. 499.)

Apparent That which is obvious, evident, or manifest, what appears on the surface, what has been made manifest.

Apparent Easement Apparent Easements are "not only those which must necessarily be seen, but those which may be seen and known on a careful inspection by a person ordinarily conversant with the subject." (*Gale*, 21, 139, adopted, *Pyer* v *Carter* 66 L.J Ex 261.)

"Apparent easement" defined Act 5, 1882, S. 5 (Easements Act, S. 5)

Apparent Heir. An apparent heir is the person to whom the succession has actually opened. (*Tomlins Law Dic*)

Appanam (*or Uppanam*). Literally tax or revenue, but applied especially to lands assessed beyond their value, but which the holder cannot resign without also resigning other lightly assessed land, heavily taxed. (*Wil Gloss.*)

Appasam (*Tel.*) (In the Northern Circars) A cut or channel for water.

Appeal.

Appeal. "Is the right of entering a superior Court and invoking its aid and interposition to redress the error of the court below." (per *Westbury, C., A G v Sillem*, 10 H L.C 704=33 L J Ex. 209 *See also* 22 Bom. 500, 30 Cal. 790)

"APPEAL" is defined in the Oxford Dictionary, Volume I, page 398, as the transference of a case from an inferior to a higher Court or tribunal in the hope of reversing or modifying the decision of the former In the Law Dictionary by Sweet, the term "appeal"is defined as a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court or Court of appeal, and it is added that the term, therefore, includes, in addition to the proceedings specifically so called, the cases stated for the opinion of the Queen's Bench Division and the Court of Crown Cases reserved, and proceedings in error In the Law Dictionary by Bouvier an appeal is defined as the removal of a case from a Court of inferior to one of superior jurisdiction for the purpose of obtaining a review and re-trial, and it is explained that in its technical sense it differs from a writ of error in this, that it subjects both the law and the facts to a review and retrial, while the latter is a Common Law process which involves matter of law only for re-examination, it is added, however, that the term "appeal" is used in a comprehensive sense so as to include both what is described technically as an appeal and also the common law writ of error, as put by *Lord Westbury* in *Attorney-General v Sillem* 10 H.L C 704, the right of appeal is the right of entering a superior Court and invoking its aid and interposition to redress the error of the Court below As Mr. Justice *Subramania Ayyar* observes in *Chappan v Moidin*, 22 Mad 68 at p 80 the two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power, on the part of the former, to review decisions of the latter

In the Commentary on American Jurisprudence by Andrews, Volume II, page 1510, it is pointed out that appellate procedure embraces two distinct modes of its exercise, namely, first, the record of the inferior tribunal may be brought to the superior tribunal and the decision reviewed, affirmed, reversed or modified; or, secondly, the superior tribunal may check the exercise or usurpation of power in inferior tribunals exercising judicial or quasi judicial power, or direct the mode in which they shall proceed without controlling the manner of doing that which is the result of judicial deliberation Story in his work on the Constitution (Volume II, sections 1760 to 1776), points out the distinction between the original and the appellate jurisdiction of a Court, and observes that the characteristics of an appeal is the revision of a judicial proceeding of an inferior Court, so that the mode in which that power is exercised is wholly immaterial *Secretary of State v British India Navigation Co*, 9 Ind. Cas 183 (185) (Per *Mookerjee and Cox, JJ.*)

The expression "appeal" in S. 5, Limitation Act XV of 1877, does not include an application for leave to appeal *in forma pauperis* (2 M. 230; 12 A. 179, Ref)—*Sarat Chandra Dey v. Brojeshwari Dass*—30 C. 790 (2 M. 230, 12 A 179 Ref.)

In section 115, Civil Procedure Code (Act V of 1908), and in sections 15 and 39 of the Letters Patent

Appearance.

the word "appeal" was used in a comprehensive sense so as to include both what is described technically as an appeal as also the common law writs of error. But the word 'appeal' seems to be used in its narrower sense in the Limitation Act. *Subramanya Pillai v. Seethai Ammal* 12 Ind. Cas. 38 (per *Ayling* and *Spencer, JJ*)

"Appeal" defined 53-4 V c 27, s 15 8 Edw 7, C. 51, S 2 See also *Nagendra v Suresh Chandra*, 59 I A. 283=36 C W N 803=A I R 1932 P C. 165=63 M.L J 329 (P C.)

Appeal distinguished from Exceptions—An exception is an objection taken to a decision of the court on a matter of law The office of an exception is to call the attention of the court to some specific matter as to which error is claimed

Appeal Distinguished from Spersedeas or Stay of Proceedings A supersedeas is designed to supersede the enforcement of the judgment of the court below, brought up for review Originally it was a writ directed to an officer, commanding him to desist from enforcing the execution of another writ which he was about to execute, or which might come into his hands In modern times the term is often used synonymously with a stay of proceedings, and is employed to designate the effect of an act or proceeding which of itself suspends the enforcement of a judgment 2 Cyc 714, 885.

"Appealed against" *See* 4 Ben.L.R. (A C J) 65= 12 W R 385

"Appealed from" in Civil Procedure Code, O 45, Rr 13 (2) (*c*) No decree can be treated as a decree "appealed from" so long as there is before the Court nothing more than an application by a party to be declared entitled to appeal *Bibi Sona v. Mir Abdul Husein Khan*, 6 S L R 86=16 Ind Cas. 845 (846) per Crouch, A J C

"Appeal allowed by law" See *Rancho d v. Secretary of State for India*, 22 B 583.

Appeal, Appellate Court "Appeal" in Art 167 of the Limitation Act of 1871 includes an appeal to the Privy Council, and "Appellate Court," includes the Judicial Committee of the Privy Council. *Gopal Sahu Deo v Joyram Tewary*, 7 C 620=9 C L R 402, *see also* I L R. 2 All 763.

Appealable. Liable to be appealed against, capable of being appealed, admitting of appeal, removable to a higher tribunal for decision

"Pressure on the bench to make as many decisions as possible in a given time tends to engender appealable decisions and prolong litigation." *The Century XXX.* 330.

Appear To enter or make appearance, to stand in presence, as parties or advocates before a Court, "We must appear before the judgment seat of Christ" (2 *Cor* v. 10.)

A party cannot be held to have appeared under C.P Code O 9, R. 13, merely because he is alleged to have been seen within the premises of the Court on the day of the trial. 13 Bom.L R. 1222=12 I.C. 903.

Appearance. The coming into a Court as a party in a suit or other proceeding, whether as plaintiff or

Appearance.

defendant; ordinarily, the word is used particularly to signify the act by which a person against whom suit has been commenced submits himself to the jurisdiction of the court.

"When used to designate the act of any person with reference to an action pending, the word 'appear' means to come into court as a party to the suit. (*Bouvier L Dict*) 'submission to the jurisdiction of the court, in obedience, or in answer to process." *3 Cyc* 502

Appearance, in C P Code, O 41, Rr 17, 19, means effective appearance Appearance is defined in Woodroffe and Amir Ali s commentary under O 9, R 1 as the actual attendance in the court house of the party in person or by pleader or recognised agent who must be duly appointed to act on his behalf If appearance is made by pleader, the pleader must be duly authorised and able to answer all material questions" Per Spencer J. in 22 M L J 284 at p 307 *See also* 110 I C 377.

APPEARANCE' (C P. Code, O 3, R 1) "The real question at issue is whether the 'appearance' mentioned in O 3, R 1 is merely a physical appearance or whether it must be an appearance with the intention of pleading in a suit . It is clearly intended that the appearance must be not as a man but as a party and with the intention of acting as such party in that suit If this is correct, then the mere fact that the party was present in court when his pleader reported no instructions would not amount to an appearance.' Per *Phillips* J, in 51 M L J. 290

The phrase *"to file an appearance"* is used without implying that the party so filing an appearance has been physically present in Court. The mere bodily presence of a party, who has no legal assistance and is perhaps too terrified to put himself forward and endeavour to represent his own case, does not satisfy all the required connotation of the word "appearance", within the meaning of O. 9, R 13 *Manilal* v *Virchand* 13 Bom L.R 1222=12 Ind Cas. 903

A party cannot be held to have appeared within the meaning of O IX, R 13, C P Code, merely because he is alleged to have been seen within the precincts of the Court on the day of the trial *Manilal* v *Virchand* 13 Bom L R 1222, 12 Ind Cas 903. *See also* 22 C L J 72.

Appearance in a proceeding may be either in person or by pleader, attorney or recognized agent, or by next friend or by guardian *ad litem* or committee in lunacy

Appearance—Compulsory, Voluntary, or Optional. An appearance is compulsory, voluntary, or optional, according as it is compelled by plaintiff's action, entered freely, or made by one not obliged to appear, but who applies to do so to save a right or watch a proceeding (*Anderson L Dict*)

Appeal or defend The words "Appeal or defend" in S. 704 of the Ceylon Ordinance (II of 1889), are the equivalent of "appear and defend," and clearly refer to appearance for the purpose of defending the action in accordance with the leave granted, and do not imply that the appearance for the purpose of obtaining leave is not to be deemed an appearance in the action at all. *Sheik Atham Sahib* v. *David Sahib*, 32 M. 469=3 Ind Cas 190=19 M L.J. 457.

Appertaining.

Appellant Is one who appeals against a decision, or removes a cause from a lower to a higher tribunal.

Appellate. Pertaining to appeals, having cognizance of appeals as an appellate Court, appellate jurisdiction

Appellate stands in contradistinction to original jurisdiction; and as the former implies that the appeal must be to a superior Court, so the latter implies that the case must commence in an inferior Court, not having final jurisdiction, and, therefore, liable to be carried up to a higher, for final decision (See *Calhoun, Works, I,* 321)

"Appellate judgment of acquittal" *See* 24 W R. Cr 41

Appellate jurisdiction Is the cognisance which a superior court takes of a case removed to it, by appeal or otherwise from the decision of an inferior court

"It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted " *Auditor* v *Atchinson, etc R Co*, 7 Am Rep 575

"Appellate jurisdiction *Exvi termini* implies a resort from an inferior tribunal of justice to a superior, for the purpose of revising the judgments of the inferior tribunal"

"Appellate jurisdiction, strictly speaking, is exercised by revising the action of the inferior court, or remanding the cause for the rendition of the proper judgment" (*3 Ame Cyc* 536.)

The words "appellate jurisdiction" as used in section 8, Legal Practitioner's Act, denote the ordinary as distinguished from the extraordinary appellate jurisdiction of the Court In the matter of the *Petition of Padma Das Joshi*, 24 A 348=22 A W N. 86 (F B).

Appendages and Appurtenances The words "all the appendages and appurtenances" in a deed of conveyance of a ship, includes her chronometer (1 Maude & P 53, citing, *Langton* v *Horton*, 11 L J Ch 299)

In the expression *"ship and her appurtenances,"* the word "appurtenances" must be construed to extend to anything belonging to the owners which is on board a ship for accomplishment of the object of the voyage and adventure on which she is engaged, but the cargo itself is not such, it not being the object and purpose of the adventure, and not something provided as a means for the attainment of the object" (*Per* Langdale, M. R, *Langton* v. *Horton*, 11 L J Ch. 238, 5 Bea 9)

Appendant is a thing of inheritance, belonging to another inheritance that is more worthy.

A way may be *quasi appendant* to a house, etc. and as such pass by grant thereof. (*Cro. Jac.* 190, *Tomlins Law Dic*)

Appendix Something added; an adjunct, concomitant, appendage, or accessory.

Appertaining. Belonging to, to have relation to; Usually occupied with, or lying to; peculiar to. (*Burrill L. Dic.*)

Applicable.

Appertaining distinguished from "adjoining". In *Miller* v *Mann*, 55 Vermont Rep 475, 479, the court said "The words 'adjoining' and 'appertaining' are not synonymous. As a descriptive word in a deed 'adjoining' usually imports contiguity, 'appertaining' imports use on occupancy One thing may appertain to another without adjoining or touching it Proof that pieces of land adjoin would not be proof that one appertained to the other Neither in literal meaning nor as used in deeds are they equivalent" (3 *Cyc* 536)

Jurisdiction given to probate courts, of 'business appertaining to minors' means 'business peculiar to minors'

Applicable When a statute declares that the common law is in force in a particular state so far as it is *"applicable"*, it is meant that it must be applicable to the habits and conditions of the community, as well as in harmony with the genius, the spirit, and the objects of their institutions (Black citing *Wagner* v *Bissell*, 3 Lowa, 402)

Applicant One who makes an application to court "Applicant" in the Limitation Act includes any person from or through whom an applicant derives his right to apply [Act IX of 1908 (Limitation), S 2 (1)]

"APPLICANT" defined Act 5, 1888, s 4 (3) & (5), Act 9, 1908, S 2, Ben Act 5 of 1897, S 3

Applicatio est vita regulae (2 Bulstr 79) A maxim meaning "Application is the life of a rule" (*Burrill*)

Application A petition to court, a request to a judicial officer, the act of making or preferring a request [(*Burrill* The use or disposition made of a thing) *Bouvier*, *Black*]

"Application in accordance with law" The expression "Applying in accordance with law" in Art 182 of the Limitation Act, means applying to the Court to do something which, by law, the Court is competent to do It does not mean applying to the Court to do something which either to the decree-holder's direct knowledge of facts, or his presumed knowledge of law, it is incompetent to do (*Purna Chandra Mandal* v *Radha Nath Dass* 33 C 867=4 C L J 141 (*See* Mitra's Limitation Act, Notes under Art 182)

If a person other than one entitled applies for execution, or if the person entitled applies for execution in a mode and for a relief outside the decree, the application is "not in accordance with law [*Bando Krishna* v *Narsinha*, 14 Bom L R 861=37 B 42=17 Ind Cas 210 (212). per *Chandavarkar, J.*]

Appoint [*See* Appointment] A power to "appoint" to such persons as the donee may think fit enables him to appoint himself or wife. (*Sug Pow* 25)

The regular employment of a person in a particular function, is equivalent to his being "appointed" to it, unless some special mode of appointment is prescribed (*Frost* v. *Bolland*, 5 B & C 611, *Stroud*)

Appointed daughter. Under the Hindu Law a daughter cannot be an appointed daughter, if she has brothers when she is married (*Yachereddy Chinna Bassavappa* v *Yachereddy Gowdappa* (1835) 5 W. R 114 P.C. See also *Thakoor* v *Court of Wards*, 2 I A. 163 Looking at the text, it seems not only that the act of appointment must proceed from the father himself, but apparently should be made by himself A special form of stipulation is given. It is stated that it must be expressed, and Manu also speaks of an express appointment proceeding in the same way from the father himself upon the marriage of the daughter (1875) 2 I.A 163(167-8)

Appointed day" defined, 49-50 V c 48, S 27 Act 47 of 1920 S 2 See *Jones* v *Hughes*, (1905) 1 Ch 180 (C A)

Appointee One who benefits by the execution of a power of appointment.

Appointor The person who appoints or one who has a power of appointment (*Burrill L Dict*), one who is authorized by the donor to execute a power of appointment (*Black*), and appointee is the person to whom or in whose favour or for whose benefit an appointment is made 1 *Steph Comm* 506, 507 4 *Kent Comm.* 316, *Wharton*, *Black*)

Appointment (Power of appointment) The designation of a person to discharge the duties of an office or trust by the person or persons having authority therefor, the exercise of the right to designate the person who is to take the use of realty (2 *Washburn Real Prop* 302, *Sugd Pow*, *Farwell on Powers*)

Appointment and Election The term "appointment" is to be distinguished from "election". The former is an executive act, whereby a person is named as the incumbent of an office and invested therewith, by one or more individuals who have the sole power and right to select and constitute the officer Election means that the person is chosen by a principle of selection in the nature of a vote, participated in by the public generally or by the entire class of persons qualified to express their choice in this manner See *McPherson* v *Blacker*, 146 U. S. 1, 13 Sup Ct Rep 3, 36 L Ed. 869.

Apportion To divide or partition or assign in just proportion (*Coke Litt.* 147*b*), to distribute; to allot

Apportionment The act of apportioning, dividing or making into parts (*Burrill*); the dividing into just proportions or shares (See 1 *Swanst* 37*n*; *Story Eq. Juris.* 475*a*, *Coke Litt.* 147*b*)

'APPORTIONMENT,' frequently denotes, not division, but distribution, and, in its ordinary technical sense, the distribution of one subject in proportion to another previously distributed" (1 *Swanst* 338*n*) Apportionment, is a dividing of a rent, etc, into parts, according as the land out of which it issues is divided among two or more. (*Tomlins Law Dic*, *See also* 16 B 525)

Appraise. To estimate, to value in current money, to set a price upon; used especially of the action of a person or persons appointed for the pur-

Appraiser

pose under direction of law or by agreement of parties interested as, to appraise the goods and estate of a deceased person; or to appraise the value of a jewel offered as pledge.

Appraiser To appraise is to set a price or fix a value upon a thing, and an appraiser is one, who appraises. A person appointed by competent authority to ascertain and state the true value of property submitted to his inspection, and who is usually sworn to perform such duty conscientiously and to the best of his ability. (*Burrill*)

"He is a person who shall value or appraise any estate or property, real or personal, or any interest in possession or reversion, remainder or contingency, in any estate or property, real or personal,—or any goods, merchandize, or effects of whatsoever kind or description the same may be,—for or in expectation of any hire, gain, fee, or reward, or valuable consideration to be therefor paid him" (S 4, 46 G 3), c. 43)

Under the Ancient English Law "Appraisers of goods were to be sworn to make true appraisement, and, valuing the goods too high, would be obliged to take them at the price appraised" (*Tomlins Law Dic*)

Apprehend To seize under process of law, to take into custody, make prisoner, arrest by legal warrant or authority "The robber . was apprehended selling his plunder" (*Goldsmith, The Bee, No* 1)

Apprehension (of a person), The seizing or taking hold of a man, the act of arresting or seizing under process of law, arrest, (as) the apprehension of criminals "Apprehension," may include detention. (*R* v. *Weil*, 53 L J M C 74, 9 Q B D 701)

Apprehension and arrest. The term "apprehension" seems to be more peculiarly appropriate to seizure on criminal process, while "arrest" may apply to either a civil or criminal action, but is perhaps better confined to the former (*Montgomery County* v. *Robinson*, 85 Ill. 176, *Black.*)

Apprendre. (*Fr.*) A fee or profit apprendre, is fee or profit to be taken or received (Stat 2 & 3 ed 6 Cap. 8 *Tomlins Law Dic.* See also *A prendre*)

"Apprentice". A learner; one who is taken to learn a trade; a person, usually a minor, bound, in form of law, under a contract of apprenticeship, to a master to learn from him his art, trade, or business, and to serve him during his timeof the apprenticeship (1 *Bl Comm* 426, 2 *Kent Comm* 211, *Rex* v. *Rainham* 1 East 531; *Tomlins Law Dic*)

The service, state or condition of an apprentice.

OTHER DEFINITIONS ARE:—"A young person bound by indenture to a tradesman or an artificer who, upon certain covenants, is to teach him his mystery or trade."

"A person bound to work for a party ...with a view of learning and becoming acquainted with the business thereof." (3 *Cyc.* 542.)

"A person bound to another for the purpose of learning his trade, of calling, the contract being

Approbate.

of that nature that the master teaches and the other serves the master with the intention of learning" (Per *Cockburn, C J., Clapham* v. *St Pancras*, 29 L J M C. 143, 144.)

"LABOURER, APPRENTICE, SERVANT "Labourer or apprentice" are words of limited meaning, and refer to a particular class of persons employed for a defined and low grade of service, performed without responsibility for the acts of others, themselves directed to the accomplishment of an appointed task under the supervision of another" (*Wakefield* v. *Eargo*, 90 Ny 213, 219)

Apprentices and servants are characters perfectly distinct the one receives instructions, and the other a stipulated price for his labour (*Hopewell* v *Amwell* 3 N J L 16; 3 *Cyc* 542.

AS A VERB *Apprentice* means to be bound or put under the care and control of a master, in an art, trade, profession or calling (*Imp Dic*)

Apprentice en la ley An ancient name for students at Law, and afterwards applied to counsellors, *apprentici ad barras*, from which comes the more modern word "barrister" (*Black*)

Apprentice at law. A student at law learning practice under a qualified legal practitioner

Apprentici ad legem Apprentices to the Law, a term used to describe those who had been called to the Bar but who were not Sarjeants at Law They were, after 1455, known as "utter Barristers"

Apprenticeship The service or legal condition of an apprentice, the method or process of gaining knowledge of some trade, art, or profession from the instruction of a master, the term during which one is an apprentice

Approach To come near, to go near, to advance nearer, to make advances (As a noun) passage or avenue by which buildings are approached

APPROACH. (In international law) The right of a ship of war, upon the high sea, to visit another vessel for the purpose of ascertaining the nationality of the latter (1 *Kent Comm*, 153, note)

Approbate and Reprobate. To approve and reject, to take advantage of one part, and reject the rest. Equity suffers no person to approbate and reprobate the same deed. (1 Kames, Eq 317; I *Bell Comm.* 146)

The principle that a party shall not at the same time affirm and disaffirm the same transaction—affirm it as far as it is for his benefit, and disaffirm it as far as it is to his prejudice—is not peculiar to English Law, but common to all law which is based on the rules of justice [*Rungamma* v *Atchama*, (1846) 4 M I A. 1=7 W R 57 (P C.)=1 Suth. 197=1 Sar. 313]

A man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary This principle, so just and reasonable in itself, and often expressed in the terms, that you cannot both approbate and reprobate the same transaction, has been applied by their Lordships in this

Approbation.

Committee to the consideration of Indian Appeals, as one applicable also in the Courts of that country, which are to administer justice according to equity and good conscience. The maxim is founded, not so much on any positive law, as on the broad and universally applicable principles of justice (Per *Lord Chelmsford*) in *Shah Mukhun Lall* v *Baboo Sree Kishen Singh*, 12 M. I. A. 157=11 W R.P.C. 19

The respondent cannot both repudiate the obligations of the lease and claim the benefit of it [*Forbes* v *Ameeroonissa Begum*. (1865) 10 M.I.A. 340=5 W.R. 47.

The doctrine of approbate and reprobate assumes election, and is inapplicable to cases in which the person sought to be affected by it has no election [*Krishnamurthi Ayyar* v *Krishnamurthi Ayyar*(1927) 54 I A 248=50 M. 508=53 M L J. 57.]

Approbation The act of approving, the assenting to the propriety of a thing

Approbation and approval are becoming separate in meaning, approbation being used more for the inward feeling, and approval more for the formal act, approbation is a state and approval is an act

Appropriate. To make a thing one's own, to set apart for, or assign for a particular use to the exclusion of all other uses, to claim or use as by an exclusive right, to make peculiar, as to appropriate words to ideas, to take from another to one's self, with or without violence, necessary and proper (as) "appropriate words and expressions" "Appropriate" is said to be "to allot", assign, set apart, or apply anything to the use of a particular person or thing, or for a particular purpose" (3 *Cyc.* 565)

"The assembly appropriated more money than was needed", "to appropriate a spot of ground for a garden"

Appropriation. The act of setting apart, or assigning a thing or substance to a particular use or person to the exclusion of others, application to a special use or purpose, an authority from the legislature, given at the proper time and in legal form, to the proper officers, to apply sums of money in the public treasury, in a given year, to specified objects or demands against the state

In *Whitehead* v *Gibbons*, 10 N J Eq. 230, 235, the court said "The word "appropriations" is significant It evinces the intention of the testator to designate and set it apart from his other property for a specific object"

IN ECCLESIASTICAL LAW, " 'Appropriation' is the annexing of an Ecclesiastical Benefice to the proper and perpetual use of a spiritual corporation or college" (*Elph* 561; *Termes de la Ley*, *Cowel*, *Phil. Ecc Law* 219, 220.)

"Appropriation" of goods in a contract of sale:— The word 'appropriation' may be understood in different senses. It may mean a selection on the part of the vendor where he has the right to choose the article which he has to supply in performance of the contract, and the contract will show when the word is used in that sense. Or, the word may mean that both parties have agreed that certain articles shall

Approved plan.

be delivered in pursuance of the contract, and yet the property may not pass in either case 'Appropriation' may also be used in another sense, *viz*, where both parties agree upon the specific article in which the property is to pass, and nothing remains to be done in order to pass it" (Per *Parke, B*, *Wait* v *Baker*, 2 Ex 8, 9, 17 L J Ex 310, 311)

Appropriation of payments is the application by a creditor to one of several debts owing to him of money paid by the debtor without indicating to which debt it is to be applied (*See* Ind Contract Act, Benjamin on *Sales*, Dart's *Vendor's and Purchasers*).

"Where the purchaser owes more than one debt to the vendor, and makes a payment, it is his right to apply (or in technical language 'appropriate') the payment to whichever debt he pleases' (*Benj* 726); *Clayton's Case*, 1 Mer 608)

Approval (*of a bond*) The act of a judge or magistrate in sanctioning and accepting as satisfactory a bond, security, or other instrument which is required by law to receive his approbation before it bocomes operative

"Approval' and 'permission' Ordinarily the difference between the approval and permission is, that in the first the act holds goods until disapproved, while in the other case it does not become effective until permission is obtained But permission subsequently obtained may all the same validate the previous Act *Shakir Husain* v *Chandoo Lal* 134 I. C 836=1931 A L J 865=A I R 931 All 567 (F.B.).

APPROVAL OF A PERSON, means that, and only that, which he has, with full knowledge, approved [*Davis* v *Leicester*, 1892, 2 Ch 208]

Approve To accept as good or sufficient for the purpose intended. (*Black*, *Burrill*, *Anderson Law Dic*) To pronounce good, admit the propriety or excellence of, be pleased with, commend. as on trial the goods were approved, to approve the policy of administration, to turn to one's own profit, augment the value or profits of, as of waste land, by inclosing and cultivating, improve.

"As long ago as the thirteenth century the statute of Merton had authorised the Lords of manors to *approve*, that is, inclose for their own profit, as much of the waste land as would leave enough unenclosed for the use of the commoners" (F. Pollock, *Land Laws*, *p* 173.)

Approved When one of the parties to a bargain writes "approved" at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyancers (*Brogden* v. *Metrop Ry*, 2 App. Cas. 666, *Stroud Jud Dic.* 107)

Approved Bill "means a Bill to which no reasonable objection could be made, and which ought to be approved" (Per Ellenborough, C J, *Hodgson* v. *Davies*, 2 Camp 531, *Benj.*, 721)

Approved bill or note (in commerce). A bill or note drawn by a solvent, trustworthy party.

Approved plan (in 10 & 11 Vict c. cxxix S. 35), held to mean a plan lawfully approved by a local authority, and not merely one which had been in fact approved. [*Yabbicom* v. *King*, (1899) 1 Q B. 444; *cf.*

Approved Securities.

M'Intosh v *Pontypridd Improvements Co*, (1892) 61 L J Q B 164, *Baxter* v *Bedford Corporation* (1885), 1 T.L.R 424.]

Approved Securities "A power to lend on 'approved securities,' though it will justify an investment on an ordinary mortgage, may not, unless specially authorised, extend to Railway securities (Re *Simson*, 1 J & H. 89, *See* Indian Trusts Act, S 20)

"**Approved service**", in S 1 of the English Police Act, 1890 (53 & 54 Vict c 45 [See *Garbutt* v *Durham Joint Committee*, (1906) A C 291]

Approver. (*See* Accomplice) One that, confessing felony committed by himself accused others to be guilty of the same crime (*Tomlins Law Dic*) "'Approver' is he who hath committed some felony which he confesseth, and now approveth, that is to say, accuseth others who were co adjutors or helpers with him in doing the same or other felonies, which thing he will approve" (*Termes de la Ley*, *Cowell*, *Jacob*)

Appurtenances (*See* Appendages) Signify things, both corporeal and incorporeal, appertaining to another thing as principal, as hamlets to a chief manor, and common of pasture, piscary, etc, (*Tomlins Law Dic*) 6 Bom L R 995

Appurtenance or Appurtenant Belonging to another thing as principal (as) hamlet to another village, gardens to a home, that which passes as incident to the principal thing, a thing used with, and related to, or dependent upon, another thing more worthy, and agreeing in its nature and quality with the thing whereunto it is appendant or appurtenant, that which belongs to something else, an adjunct, an appendage (*Abbott L Dic*) It is sometimes used in the non-technical sense of "adjoining"

Appurtenant Appertaining or belonging to, accessory, pertaining, incident or relating to, as a legal right, interest, or property subsidiary to one more valuable or important. (*See* 2 *Steph Com* 30 *Note*)

"Right of way. appurtenant to land" (*Blackstone*, *Commentaries* II, 3)

A prendre Rightfully taken from the soil, used in the phrase *profit a prendre* which differs from easement which confers no interest in the land itself (2 *Washb R P* 25)

A priori. From the cause to the effect, from what goes before—deductive reasoning—"an argument derived from considerations of an abstract character or which have but a remote and possibly indirect (though none the less real) bearing upon the point under discussion, is called an argument *a priori*, whereas an argument derived from actual observation, or other direct consideration is called an argument *a posteriori* (*Morley and Whiteby*)

Apt words Such words as are proper to produce the desired legal effect, sound technical phrases, appropriate language

Aputra. (*S*) Without son, (*in Hindu Law*) a man who has no son, who has never had, or who has lost an only son, and may therefore adopt one (*Wil Gloss.* 30.)

Aputrasya. The word "Aputrasya" in the original Mitakshara Law, Benares School, literally means "sonless," but it is settled law that in this particular

Arbab.

context the word means "one who has left no son, grandson or great-grandson in the male line" [*Har Nandan* v *Rachpal*, 16 O C 122=20 Ind. Cas 32 (33), per *Piggott, J C. and Lindsay A.J.C.*]

Aqua cedit solo A maxim meaning Aqua *i.e.* water passes with the soil (*Abbott Law Dic.*)

Aqua currit et debet currere, ut currere solebat. A maxim meaning "water flows or runs and ought to run as it has used to run" (*Burrill*)

A R An abbreviation of the words *anno regni* in the year of the reign (*Anderson L Dic*, *Wharton*)

Aquatic Rights Rights which individuals have to the use of water, of the sea and rivers, for the purpose of fishing and navigation and also to the soil in the sea and rivers (*Black*)

Ara or Arai-nir (*Tam*) Water for irrigation which may be drawn freely from the public reservoir during a certain period of the year

Aradiyantharam or Aravakasom (*Mal*) Customary perquisites payable to Brahmin jenmi on occasions of the six important ceremonies (*Sundaram Iyer's Mal Law.*)

Arain The name of a tribe peculiar to the Punjab, they are market-gardeners, and a few are general cultivators, nearly all are Muhammadans

Araka (*Tel*) A plough, with oxen and implements of husbandry complete

Arakala-jabita (*Tel*, *Per*) An account shewing the number of ploughs belonging to each ryot (Northern Circars)

Arakattaraka (*Tel*) A plough with a pair of bullocks

Arakzai A Pathan tribe occupying the eastern and southern off-shoots of the Safed Koh Their country adjoins the Afridi country near Kohat They are not subject to the Cabul Government

Aralu (*Tel*) Half-a-day's labour

Aramba-gar (*Karn*) A farmer, a cultivator

Arasinage-Inam (*Karn*) Land granted in dower, or as pin-money, literally for turmeric, which enters largely into the materials of a Hindu lady's toilet in the south of India, being applied to stain her forehead, hands, soles of her feet, etc.

Ara-vari (*Tam*) Half revenue, applied to a village or lands assessed at half the usual rate.

Arazi Arazi means plots of land which, though included within the area of mauzas and mahals, are held on a distinct tenure from, and convey no title to, rights, or interests in other parts of the mauzas of mahals and as such arazidari lands do not constitute a separate revenue unit by themselves *Ram Rachha Tewari* v *Girja Dat Pande*, 107 I C 692=A I R. 1928 A 50 *See also* A.I.R. 1923 All. 129.

'Arazidar. (N.W P) A landholder regarded as proprietor of his own holding, but having no share in the general profits of the estate: (*Bad. Pow*, II, 14)

Arbab. This term is applied to persons employed by the Punjab Frontier officials as middle-men in their dealings with the tribes across the border.

Arbiter. An arbitrator, a private extra judicial Judge, a referee (*Wharton*, 3 Cyc. 567.)

Arbiter is person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at his own discretion, so that it be according to the judgment of a sound man *Cowell.*

According to Mr Abbott, the distinction is as follows 'Arbitrator" is a technical name of a person selected with reference to an established system for friendly determination of controversies, which, though not judicial, is yet regulated by law, so that the powers and duties of the arbitrator when once he is chosen are prescribed by law, and his doings may be judicially revised if he has exceeded his authority.

"ARBITER" is an untechnical designation of a person to whom a controversy is referred, irrespective of any law to govern the decision, and is the proper word to signify a referee of a question outside of or above municipal law.

The distinction between arbiters and arbitrators is not observed in modern law (*Russ Arb* 112, *Black*)

Arbitrament Determination, or decision of arbitrators upon a claim or matter of dispute which has been submitted to them, an award (*Burrill, Termes de la ley*), the act of deciding, a dispute as an arbiter or arbitrator, the absolute and authoritative settlement of any matter

"This tax was regulated by a law made on purpose and not left to the *arbitrament* of partial or interested persons" *J Adams, Works, V* 73

Arbitramentum aequum tribuit cuique suum (*Noy, Max* 248) A maxim meaning "an award is the equal delivery to each one of his own" (*Morgan Leg Max*)

Arbitrarily In an arbitrary manner, according to one's pleasure or caprice, capriciously, without fair, solid, and substantial cause and without reason given Judicial discretion ought not to be used arbitrarily

Arbitration "An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties" (per *Romily, M R, Collins* v *Collins*, 28 L J Ch 186, *Termes de la Ley*) The submitting of a disputed matter to the judgment of one or more persons called arbitrators (*Wharton*) "In its broadest sense, arbitration is a substitution, by consent of parties, of another tribunal for the tribunals provided by the ordinary processes of law, a domestic tribunal as—contra-distinguished from a regularly organised court proceeding according to the course of law—depending upon the voluntary act of the parties disputant in the selection of judges of their own choice Its object is the final disposition, in a speedy and inexpensive way, of the matters involved, so that they may not become the subject of future litigation between the parties"

It is not a suit or judicial proceeding in a technical sense, between parties, begun by judicial process 3 *Cyc* 581

Where a cause or matter in difference is referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final Judge of all questions both of law and of fact. The only exceptions to that rule, are, cases where the award is the result of corruption or fraud, and cases where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award *Champsey Bhara and Co.* v *Jivraj Balloo Spinning and Weaving Co.* (1923) 50 I A 324 (330-1)=47 B 578=28 C.W.N 397=73 I C. 436=44 M.L J 706 (P C)

Though a judge of a court be selected by the parties to determine matters in controversy between them, the parties cannot, by such an agreement, confer upon the judge jurisdiction to hear, as a court, matters outside of his statutory jurisdiction If the determination of the judge has any validity, it is as an ordinary award of an arbitrator (3 *Ame. Cyc* 581)

Arbitration clause A clause inserted in a contract providing for compulsory arbitration in case of dispute as to the rights or liabilities arising under it.

"SUBMISSION TO ARBITRATION", is a contract between two or more parties, whereby they agree to refer the subject in dispute to others, and to be bound by the award of the latter

"Arbitrator" The arbitrator is the person to whose attention the matters in dispute are submitted —a judge of the parties' own choosing, whose functions are judicial and whose duties are not those of a mere partisan agent, but of an impartial judge, to dispense equal justice to all the parties, and to decide the law and facts involved in the matters submitted, with a view to determining and finally ending the controversy

Arbitrator and umpire *An umpire*, in the common signification of the word, denotes one who is to decide the controversy in case the original arbitrators cannot agree

Special arbitrator and umpire A special arbitrator is one who is called in to act only after a disagreement between other arbitrators, not alone, however, but only in conjunction with the others so as to enable a majority of them to render an award Likewise, an umpire is one who is called in to act only after a disagreement; but the nature of his authority differs from that of a special arbitrator in the fact that he acts, not with the other arbitrators, for the making of a majority award, but alone, and that his sole award determines the matters submitted to him (3 *Ame Cyc* 655)

Arbitrium est judicium boni viri, secundum aequum et bonum A maxim meaning "An award is the judgment of a good man, according to justice

Archaka. The officiating priest of a pagoda or temple.

Archaka Maniam. Land given to the Archaka in lieu of his services in the temple

Archbishop The chief of the clergy in any province. (*Tomlins Law Dic.*)

Archdeacon. One that hath ecclesiastical dignity, and jurisdiction over the clergy and laity, next after the bishop, throughout the diocese, or in some part of it only. (*Tomlins Law Dic*)

Archery

An Archdeacon holds a dignity (*Phil. Ecc. Law*, 128) in the Church of England, ranking next to a Bishop

"In general, the Archdeacon's jurisdiction is founded in Immemorial Custom, in subordination to the Bishop's, and he is to be regulated as to his dignity, Office, and Power according to the law, usage, and custom of his own church". (*Phil Ecc. Law*, 200)

Archery (*In old Feudal law*) a service of keeping a bow, for the use of the lord to defend his castle. (*Co. Lit. Sect* 157, *Tomlins Law Dict*)

Arches, Dean of. The ancient Judge of the Court of Arches who exercised what was known as the peculiar jurisdiction of the Archbishop of Canterbury *i e*, jurisdiction over "peculiar" districts which were exempt from the jurisdiction of the bishop in whose diocese they are situated The only remnant of this jurisdiction is the metropolitan jurisdiction exercised by the "Official Principal"

"Architectural work of art", in the Copyright Act means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction, Copyright Act 1 and 2 Geo. V Ch. 46 S. 35.

Archives The Rolls, or any place where ancient records, charters, and evidences belonging to the crown and kingdom are kept And it hath been sometimes used for repositories in libraries—It is used in common speech for the records themselves (*Tomlins Law Dic*)

Ardas. Any portion of the Sikh Granth.

Ardha-maniyam (See Manyam). (*Tam*) Land partly, or half-rent free, being assessed at half the usual rate, also a grant of the Government share of the rent to one who does not enjoy the share of the hereditary proprietor

Area 'Area', applied to a building, means the superficies of a horizontal section thereof made at the point of its greatest surface, inclusive of the external walls, and of such portions of the party walls as belong to the building" (*Stroude*)

"AREA" defined Ben. Act III of 1883, s 2.

"Area of supply" defined, Act IX of 1910, S 2 (*b*)

A rescriptis valet argumentum. A maxim meaning "An argument drawn from original writs in the register is good (*Adams Gloss.*)

Argentum. Silver· Money.

Argentum Album Silver coin, or pieces of bullion that anciently passed for money, uncoined Silver. (*Tomlin Law Dic*)

Argentum Dei, God's money. God's penny; money given as earnest in making a bargain. (*Cowell*)

Arguendo. (*Lat*) In arguing; in the course of the argument. A statement or observation made by a judge as a matter of argument or illustration, but not directly bearing upon the case at the bar, or only incidentally involved in it, is said (in the reports) to be made arguendo, or in the abbreviated form, arg. (*Black*)

Argument. An inference drawn from premises, the truth of which is indisputable, or at least highly probable, a statement of fact tending to produce belief concerning a matter in doubt, a premise or premises set forth in order to prove an assumption or conclusion

Argument and Argumentation Argument is the bare proof advanced by a person to prove the truth of his assertion, "argumentation is the whole reasoning itself, of what form so ever it be, comprehending both the question and also the proof thereof" (*Blundeville*, 1619)

Argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida. A maxim meaning "Arguments bring things hidden and obscure to the light of reason and render them clear" (*Adams Gloss*)

Argumentation The setting forth of reasons together with the conclusion drawn from them, also the premises and conclusion so set forth

Argumentum a simili valet in lege. An argument from a like or analogous case is good in law (*Co Litt* 191)

Argumentum ab auctoritate est fortissimum in lege (*Co Litt* 254) A maxim meaning "An argument from authority is the strongest in law" (*Burrill L Dict*)

Argumentum ab impossibili plurimum valet in lege (*Co Litt* 92) A maxim meaning "An argument from an impossibility is of weight in law" (*Abott L Dict Coke Litt* 92a, *Broom*)

Argumentum ab inconvenienti est validum in lege, quia lex non permittit aliquod inconveniens An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience (*Co Litt* 66 a 258)

Argumentum ab inconvenienti plurimum valet in lege A maxim meaning "An argument drawn from inconvenience forcible in law" *Broom Leg. Max*, *Coke Litt* 66a, 97a, 152a, 258b, See for an application of the maxim *Glyn* v *E. & W India Dock Co* 7 Ap. Ca 591

Argumentum a communiter accidentibus in jure frequens est A maxim meaning "An argument drawn from common understanding of a thing is common in law" (*Morgan, Leg Max*)

Argumentum a divisione est fortissimum in jure. (6 *Rep* 60) A maxim meaning "An argument from division is of the greatest force in law" (*Burrill Co Litt.* 213b, 6 *Coke* 60.)

Argumentum a majori ad minus negative non valet—valet e converso. (*Jenk. Cent.* 281.). A maxim mea ing "An argument from the greater to the less is of no force negatively; affirmatively it is." (*Morgan Leg. Max.*)

"You cannot argue in the negative from the greater to the less, but you can argue in the negative from the less to the greater". (*Byrne*)

Argumentum a simili valet in lege. (*Co. Litt.* 191) A maxim meaning "An argument from analogy is good in law." (*Burrill Law. Dict.*).

Arh.

Arh. The words *'arh'* and *'mustaghraq'* used in a bond mean a hypothecation or simple mortgage and imply a power of bringing the property to sale *Kishan Lal* v *Ganga Ram*, 13 A 28=10 A.W.N 216, but *see* 11 A L J 570=19 I C. 658

Arh—Rehen—Mustagharaq. The three words are themselves sufficient to convey power of sale. *Gauhar Khan* v. *Ajudhia Singh* 20 I C 870.

Aridala-billai (*Tam.*) An estimate of the produce of a field from the appearance of the stubble.

Aridaluku or **Ariyedupu** (*Tam*) A handful of corn or as much as can be held by both hands put together, as the perquisite or fee of certain village servants

Ari Janmam or **Ari Jenm.** (*Mal.*) A form of perpetual grant for services in a temple by which the tenant binds himself to take a fixed quantity of rice to the temple daily which is cooked by the priest and offered to the deity and afterwards returned to the tenant (*Vide* S A. No 778 of 1882, H. C.; *Moore's Mal. Law*, *Sundaram Iyer's Mal Law.*)

Arikattu (*Tam.*) A sheaf of corn.

Arina-patti or patte (*Karn*) An account of the number of ploughs belonging to each cultivator in a village.

Arising or accruing Profits "arising or accruing" in the Kingdom, mean profits coming to the person's hands or received by him in the said Kingdom (*Colquohoun* v *Brooks*, 59 L J Q.B. 53)

"Arising out of land" The right to use the water of a perennial stream for irrigation purposes is a benefit "arising out of land" because it comes out of the land and is therefore immovable property within the meaning of S 2, sub S 5 of the General Clauses Act, 1868. *Alam Sher* v. *Ram Chand*, 11 P R. 1898.

Aristocracy Government by the best men in the state, a governing body composed of the best men in the state. "Between the aristocracy and the working people had sprung up a middle class, agricultural and commercial" (*Macaulay*)

Aristocracy and Oligarchy. Aristocracy is a form of Government in which the supreme power is exercised by those members of the state who are distinguished by their rank, wealth and opulence When the ruling power is exercised by a very few of this class to the exclusion of all others, the Government becomes an oligarchy.

Aristocrat. A member of the aristocracy or a man of rank in a community; hence a person having the traits supposed to be characteristic of an aristocracy; as, "a born aristocrat." (*Mrs Browning*) One who favours an aristocracy; one who is an advocate of an aristocratic form of Government.

Ariyat (*H*). A Loan of anything which is itself to be returned. Land or orchards of which the owner allows others to have the use, under certain stipulations. (*Wils. Gloss*, 32).

Arju (*Tel*) The measurement of a heap of grain from the bottom to the top, as opposed to Tula, a measurement of the circumference.

Armed.

Arm. Any thing which a man takes in his hand in anger to strike or assault another, or to do physical harm to another.

A weapon primarily intended for domestic and agricultural purposes, even if it can be used for purposes of offence and defence, is not 'arm' within the meaning of the Arms Act It is the intention of the manufacturer, and not of the possessor of a weapon as to the use to which it is to be put, which determines whether a weapon is an arm or not Therefore, a *dashe-upyat* of the usual type is not an arm within the meaning of the Arms Act *Emperor* v. *Hamyat*. 3 Bur L T. 91=5 L.B.R 207=8 I C 972=11 Cr L.J. 744.

Arm, Arms. A weapon, in this sense most commonly used in the plural and when used in the singular for the most part referring rather to a particular kind of weapon than to an individual piece. [*See* Arms Act, XI of 1878, S 4] *See* 27 Cal 692, 26 I C. 133, 29 I C 544.

Arm, Weapon Arm is especially applied to those things which are designed for fighting and recognised as such, it includes means of defence as well as of offence. Weapon applies to any means of offence made for the purpose or (as a scythe, chisel, or hammer) used for the nonce

Arms Anything that a man wears for his defence, or takes in his hands or uses for attack to cast at or strike at another (*Co Litt* 161 b, 162 a, *State* v *Buzard*, 4 Ark. 18).

"ARMS" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms (Arms Act, 1878, S 4) See also Act IX of 1910, S. 2.

In the Peace Preservation (Ir) Act, 1881, 44 & 45 V. c S. 5 'Arms', includes any Cannon, Gun, Revolver, Pistol, and any description of Fire Arms, also any Sword, Cutlass, Pike, and Bayonet, also any part of any Arms so defined" (S 6). *See* also 7 Mad 70=1 Weir 658, L B R. (1893-1900), 416.

Arms, or coat of arms, signifies insignia of honor, such as were formerly assumed by soldiers of fortune and painted on their shields to distinguish them, or nearly the same as armorial bearings.

TO BE IN ARMS, to be in a state of hostility, or of readiness of war.

TO TAKE ARMS, to arm for attack or defence, (used literally as well as figuratively)

Arma in armatos sumere jura sinunt A maxim meaning. "The laws permit us to take up arms against the armed". (*Adams Gloss*) 2 Inst. 574).

Armada. A fleet of war-ships, a squadron.

Armament. A body of forces equipped for war: used of a land as well as a naval force; Munition of war; especially the number and weight of all the guns which a ship of war carries.

ARMAMENT. In the English Naval Defence Act, 1889, S. 8 means "reserves as well as outfit."

Armed. Supported by arms, carried on or maintained by force or readiness for military action: as, an armed force; an armed inroad; armed peace; or neutrality.

Armed and equipped.

"Armed" and "equipped". A vessel is "armed" when she is fitted with a full armament for fighting purposes She may be equipped for warlike purposes, without being "armed". By "armed" it is ordinarily meant that she has cannon, but if she has a fighting crew, muskets, pistols, powder, shot, cutlasses, and boarding appliances, she might well be said to be equipped for warlike purposes, though not armed, (2 Hurl & C. 537, *Murray* v *The Charming Betsy, 2 Cramch* 121 (*U.S.*), 2 *L Ed* 208. *Black.*)

Armed at all points Completely equipped with offensive and defensive arms according to the fashion of the times or the necessities of the case.

Armed neutrality, the maintenance by a nation of an armed force held ready to repel any aggression on the part of belligerent nations between which it is neutral.

Armed peace. The condition of a country which in time of peace maintains its military establishment on a war footing so as to be ready for war at any moment.

Armed ship A merchant ship taken into the service of a Government for a particular occasion, and armed, as far as possible, like a ship of war

Armed to the teeth Very fully or completely armed.

GOING ARMED, means only carrying arms with the intention of using such arms should occasion arise, and does not include taking arms for the purpose of repair, 1891 A W N. 208

Armistice. Truce, a suspending or cessation of hostilities between belligerent nations or forces for a considerable time, a temporary suspension of hostilities by convention or agreement of opposing forces.

Armistice and peace. "While an armistice is an interval in war and supposes a return to it, a peace is a return to a state of amity and intercourse, implying no intention to recommence hostilities An armistice again leaves the questions of the war unsettled, but a peace implies in its terms that redress of wrongs has been obtained, or that the intention is renounced of seeking to obtain it (*Woolsey,* Intro to Inter Law, S 150).

Armless Without arms, destitute of weapons, defenceless.

Armorial Bearings A device depicted on the shield of the nobility in England, the criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry Same as coat of arms

Armorum appellatione, non solum scuta et gladii et galeoe sed et fustes et lapides continentur Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones (*Co Litt* 162).

Armour A defensive arm, covering worn to protect the person against offensive weapons

Army.—The national armed forces intended for military service on land "The term 'army' or 'armies' has never been used so as to include the navy or marines"

Arolat In the Dekhan, land held at a quit-rent by the Mehr, who acts as the village watchman and messenger, in compensation of his services. (*Wils. Gloss.* 32.)

Arrears.

Arpen, Arpent. A measure of land of uncertain quantity mentioned in *Domesday* and other old books. (*Spelman, Cowell, Blount*)

Arpentator—A measurer or surveyor of land. (*Cowell, Spelman*)

Arrack (*H*) A fermented liquor made from the juice of the palm, or from rice, an excisable article.

Arraign. "Arraine," is to put a thing in order, or in its proper place, (*Termes de la Ley*). to call a man to answer in form of law A prisoner is arraigned, when he is indicted and brought to trial (*Co. Litt* 262, *Tomlins Law Dic.*) to call to or set at the bar of a court, in order to plead guilty or not guilty to the matter charged in an indictment or information "Clerk of the arraigns" (*Blackstone*) "No man is said to be arraigned, but merely at the suit of the King, upon an indictment found against him, or other record wherewith he is charged" and there the arraignment of the prisoner is to take order that he appear, and to plead a sufficient plea to the indictment or other record, whereupon they which follow for the King may orderly proceed" (*Co Litt* 263)

Arraigns, Clerk of (In Old English law). An assistant to the clerk of assize.

Arraigner. One who arraigns or accuses another person.

Arraignment The act of arraigning, the act of calling and setting a prisoner before a Court to answer to an accusation.

Arrangement A testamentary power enabling Trustees to wind-up testator's affairs "and in so doing to make any Sales and Arrangements they shall judge expedient," authorizes them to give a mortgage on the property (*Re Jones, Dutton* v. *Brookfield,* 59 L J Ch 31).

Array The body of persons summoned to serve upon a jury, the act of impanelling a jury, the act of setting a jury in order for the trial of a cause, or calling it man by man The Jury impanelled.

"Challenges are of two kinds, first, to the *array,* when exception is taken to the whole number impanelled and secondly, to the polls, when individual jurymen are obliged to" (*A Fonblanque, Jr*, How we are governed, xvii)

Array (Milit). To place or dispose in order, as troops for battle, marshal, draw up in hostile order; often used figuratively. An orderly collection or assemblage, especially a body of men in order of battle or prepared for battle, hence, military force, soldiery troops

"Array of the jury" Jurors' names are ranked in the pannel one under another: which order or ranking the juries is called the array, and the verb, to array the jury, and so we say in common speech, Battle array for the order of the battle" (*Co. Litt.* 156, *Termes de la Ley*)

Arrear, arrears. "Arrear" Defined, Act 11, 1898, S 2 (2).

Arrears. Money not paid on the due date or proper time for payment (as) arrears of rent (Connell) That which is behind in payment, or which remains unpaid though due.

The definition of "arrears" involves the idea not merely of money unpaid, but of money unpaid at

Arrear of Land revenue.

the due time. The term "arrears" involves the existence of some default on the part of the debtor *Kripa Sindhu Mukerjee* v *Ananda Sundari Debi*, 35 C. 34=11 C.W N 983=6 C.L J. 273 (F.B.).

The bequest of *"arrears" of a debt*, will only pass the interest in arrear, and not the principal (*Wms. Exs.* 1064, citing *Hamilton* v. *Lloyd*, 2 Ves. 416.)

The terms 'arrears' and 'arrear of rent' in the Ben Ten Act shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68 of the Act. [Ben Act VIII of 1885 (*Tenancy*), S 161 (*c*)]

"Arrear of Land-revenue" Defined Act 19, 1873, S. 148, Act 18, 1881, S. 91, Act 17, 1887, S 3 (7); Bom Act 5, 1879, S 147 Reg 2, 1877, S 74 *See also Nil Kantha* v *Suraj*, 130 I C 65=7 O W N 1089= 1931 Oudh 32.

"ARREAR OF LAND-REVENUE" in the Punjab Land Rev Act means land-revenue which remains unpaid after the date on which it becomes payable Pun Act XVII of 1887 (*Land Revenue*), S. 3, Cl 7

"Arrear of rent" defined. Act 10, 1859, S. 20, Act 9, 1883, S. 3 (6), Act 8, 1885, S 54 (3), Act 16, 1887 S. 4 (4), Mad Act 1, 1908, S. 60. U P Act 2, 1901, S 101

ARREARS OF RENT continue to be arrears though suits have been instituted and decrees passed in respect of those arrears (*Ananda Mohan Roy* v. *Promothanath Ganguli*, 57 I C 874 (C)

Arrear of revenue" defined. Act 1, 1845, S 2, Act 11, 1859, S 2, Act 2, 1876, S 44, Mad Act 2, 1864, S 4, Reg 3, 1889, S 38 (3) See *Nil Kantha* v *Suraj Prasad*, 130 I C 65=7 O W N. 1089=1931 Oudh 32

Arrest A restraint of a man's person, obliging him to be obedient to the law, and it is defined to be the execution of the command of some court of record or officer of justice An arrest is the beginning of imprisonment, where a man is first taken and restrained of his liberty by power or colour of lawful warrant (2 Shep Abr. 299, *Tomlins Law Dic*)

"ARREST," is when one is taken and restrained from his liberty" (*Termes da la Ley*) [*See* Apprehension.]

An arrest of a person, by a duly authorised officer, is accomplished if the officer lawfully touch him, the power of affecting actual capture is not essential [*Sandon* v. *Jarvis*, 6 W R. 690. *See also* Crim. Pro Code (V of 1898), S. 46]

An arrest *in a civil cause* is defined to be the apprehending or restraining one's person by process in execution of the command of some court, or officers of justice *Wood's Inst* 575. *Tomlins Law Dic See also* Civil Pro Code V of 1908, S. 55 and Order XXI, Rr. 37-40.

As applied to criminal proceedings the word "arrest" signifies the apprehension or detention of the person or stopping, seizing or apprehending him and restraining his liberty in order to bring him to answer for an alleged or suspected crime, or to prevent the commission of criminal offence. (*Black L. Dict.*; 3 *Cy.* 873.)

NECESSITY OF ASSUMING CONTROL OF PERSON To constitute an arrest it is necessary that the officers

Arrest and commit.

should assume custody and control over the party, either by force or with his consent, and it has been held that neither the utterance of words indicating an intention to arrest on the part of the person uttering them, nor the reading of the warrant is of itself sufficient.

IN ADMIRALTY LAW Arrest is the taking of a ship into custody by virtue of a warrant from a Court

IN SCOTS LAW, the word is used in the sense of attachment, seizure of property, funds etc, by legal process, as for debt or the satisfaction of a claim.

OTHER DEFINITIONS OF ARREST "To take, seize or apprehend a person by virtue of legal process issued for that purpose."

"The taking of a person into custody, that he may be held for a public offence"

'The taking into custody of a person, or person and goods, under some lawful command or authority" (1 *Bishop* New Crim Proc S 156)

An arrest under civil process is the apprehension of a person, by virtue of a lawful authority, to answer the demand against him in a civil action. (*Black L. Dict*, *Bouvier L Dict.*)

"The taking, seizing or detaining the person of another, touching or putting hands upon him in the execution of process, or any act indicating an intention to arrest."

"The term 'arrest' has a technical meaning, applicable in legal proceedings It implies that a person is thereby restrained of his liberty by some officer or agent of the law, armed with lawful process, authorising and requiring the arrest to be made It is intended to serve, and does serve, the end of bringing the person arrested personally within the custody and control of the law, for the purpose specified in or contemplated by, the process"

It is an auxiliary remedy designed to keep defendant within the reach of the court's final process (3 *Ame Cyc* 899)

MODES OF ARREST. In old English law, an arrest may be made in four ways (4 *Bl Com* 289) either by a warrant, by an officer without a warrant, by a private person without a warrant, or by hue and cry.

Arrest and apprehension. *"Apprehension"* is more properly used in criminal cases, *"arrest"* in civil cases. (3 *Ame Cyc.* 873)

Arrest and attachment. "As ordinarily used, the terms arrest' and 'attachment' coincide in meaning to some extent; though in strictness, as a distinction, an arrest may be said to be the act resulting from the service of an attachment And in the more extended sense which is sometimes given to 'attachment' including the act of taking it would seem to differ from 'arrest' in that it is more peculiarly applicable to a taking of property, while 'arrest' is more commonly used in speaking of persons The terms are, however, often interchanged when speaking of the taking of a man by virtue of legal authority. 'Arrest' is also applied in some instances to a seizure and detention of personal chattels, especially of ships and vessels, but the use of the term is not common in modern law." (*Bouvier*, cited in 3 *Cyc.* 899)

Arrest and commit. By arrest is to be understood to take the party into custody. *To commit* is the separate and distinct act of carrying the party to

Arrest of judgment.

prison, after having taken him into custody by force of the execution.

MALICIOUS ARREST Arrest made wilfully and without probable cause, but in the course of a regular proceeding

PAROL ARREST Arrest ordered by a judge or magistrate without written complaint or other proceedings, of a person who is present before him, and executed on the spot, as in case of breach of the peace in open court. (*Black.*)

WARRANT OF ARREST A written order signed by a magistrate directed to a proper officer and commanding him to arrest the body of a person named in it, who is accused of an offence.

Arrest of Judgment. To move in arrest of judgment, is to show cause why judgment should be stayed, notwithstanding verdict given. Judgment may be arrested for good cause in criminal cases, as well as civil, if the indictment be insufficient etc (3 *Inst.* 210) Arrests of judgment arise from intrinsic causes appearing upon the face of the record, for a judgment can never be arrested but for that which appears on the face of the record itself *Ld Raym*, 232 Motions in arrest of judgment may be made at any time before judgment signed. (*Dougl* 747. *Str* 845 *Tomlins Law Dic*)

"Arresting authority" defined. 54-5 V. c. 31, S. 9.

Arrestment. The act of arresting or stopping, obstruction, stoppage.

Arrival (*In marine insurance.*) The arrival of a vessel means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes [*Cronstadt* v *Witthoff* (*D G*) 15 Fed 265(U S), *Dalgleish* v *Brooke*, 15 East. 295]

ARRIVAL. "A vessel arrives at a port of discharge when she comes, or is brought to a place where it is intended to discharge her, and where is the usual and customary place of discharge When a vessel is insured to one or two ports, and sails for one the risk terminates on her arrival there If a vessel is insured to a particular port of discharge, and is destined to discharge cargo successively at two different wharves, docks, or places, within that port, each being a distinct place for the delivery of cargo, the risk ends when she has been moored twenty-four hours in safety at the first place. But if she is destined to one or more places for the delivery of cargo, and delivery or discharge of a portion of her cargo is necessary not by reason of her having reached any destined place of delivery, she cannot properly be considered as having arrived at the usual and customary place of discharge when she is at anchor for the purpose only of using such means as will better enable her to reach it If she cannot get to the destined and usual place of discharge in the port because she is too deep and must be lightered to get there, and to aid in prosecuting the voyage, cargo is thrown overboard or put into lighters such discharge does not make that the place of arrival it is only a stopping place in the voyage When the vessel is insured, to a particular port of discharge arrival within the limits of the harbour does not terminate the risk if the place is not one where vessels are discharged and voyages completed. The policy covers the vessel through the port navigation, as well as on the open sea, until she reaches the destined place." (*Simpson* v. *Insurance Co., Holmes*, 137 Fed Cas. No. 12, 886)

Article.

Arrive. To reach or come to a particular place of destination by travelling towards it. (*Thompson* v. *United States*, Fed Cas. No. 407.)

The word *"arrive"* and *"enter"* are not always synonymous, there certainly may be an arrival without an actual entry or attempt to enter. (*United States* v *Open Boat*, Fed Cas No 15, 967.) (*Black*)

Arret Judgment, decree of Court in sovereign.

Arretted Accused imputed.

Arrukal (*Mal*) A channel from a river.

Arsenal A repository or magazine of arms and military stores of all kinds, whether for land or naval service.

Arsenic "Arsenic" includes "Arsenious Acid and the Arsenistas, Arsenic Acid and the Arsenistas, and all other colourless, poisonous, preparations of Arsenic" (English Arsenic Act, S 6.)

Arson, (from latin *arsom*, to burn) at common law, is usually defined as "the wilful and malicious, burning of the house or the outhouse of another." House burning, the wilful setting fire to anything maliciously. (3 *Just* 66)

OTHER DEFINITIONS. "The malicious burning of another's house" "The malicious and voluntary burning the house of another by night or by day" (*I East P C.* 1015; 1 *Hale* P C 566)

The burning must be wilful and malicious, and not accidental, otherwise, it is not crime and, ordinarily, there must be an intent to destroy the property fired.

Art A principle put in practice and applied to some art, machine, manufacture, or composition of matter. (*Earle* v. *Sawyer*, (1 Fed. Co, 4,247.)

In the law of patents and designs it means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. (*Smith* v *Downing*, 22 Fed Cas 511)

Art, Science The essential difference between an art and a science is in aim "Science and Art may be said to be investigations of truth, but science inquires for the sake of knowledge, art for the sake of production." (*Karslake.*) Hence, they differ somewhat in that with which they are concerned. "An art directly and immediately concerns itself with a faculty. . . . . It fastens upon that, and keeps it ever in its view as it teaches how that may be developed, trained and gained A science, on the other hand, regards rather the product of faculty, and, keeping its view directly upon that, proceeds to unfold its nature and proper characteristics." (*H. N. Day, Art of Discourse*, 1)

Art, words of Words used in a technical sense; words scientifically fit to carry the sense assigned to them.

Artha mulgeni (*Mal*) Mulgeni for a premium. (*Sundaram Iyer Mal. Law.*)

Article. (from *articulas*, a joint or division) One thing of many; divisions or paragraphs of a document or agreement; one item of several;

Articled clerk.

distinct portion or part. The word is also sometimes construed as meaning "a joint or part or member" or clause or item (as) articles of an agreement or articles of association of a company, a point of faith, doctrine or duty (as) "articles of faith", "each article of human duty" (*Parley*); a complete, independent or partly independent portion of a literary publication especially in a periodical, magazine, review, or magazine (as) contributing articles to the London Times a particular substance or commodity (as) articles of merchandise

"It is a word of separation to individualize and distinguish some particular thing from the general thing or whole of which it forms a part, as an article in an agreement, an article of faith, an article of a newspaper, or an article of merchandise" (3 *Cyc.* 1012)

"ARTICLE" means in the Patents and Designs Act (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural Act, II of 1911 (*Patents and Designs*), S 2, Cl 2.

In the Companies Act, unless there is anything repugnant in the subject or context,—

(1) "ARTICLES" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the prescribed regulations Act VII of 1913, Companies Act, S 2, Cl 1

Articled clerk A pupil of an attorney or solicitor, who undertakes, by articles of clerkship containing covenants mutually binding, to instruct him in the principles and practice of the profession (*Wharton-Law. Lex*) Whose articles of service, registration, enrolment, service, admission, examination etc, are governed by prescribed statutes and Rules

Articles of Association, or Articles of Incorporation, the certificate filed, in conformity with law by persons who desire to become a corporation and setting forth the rules and conditions upon which the association or corporation is founded.

Articles of faith. The main or essential points of religious belief, specifically, an authoritative and binding statement of such points as held by a particular sect, church or denomination, a doctrinal creed

Articles of impeachment The formal statement of the charges against a public officer, put forward as the basis of proceedings to remove him (*Abbott*) The accusations in writing which form the basis of an impeachment trial They take the place of the indictment in ordinary criminal trials.

Articles of partnership. A written agreement by which the parties enter into a partnership upon the conditions therein mentioned. (*Bouvier.*)

Articles of the peace An obligation to keep the peace for a certain time, under a penalty, and with or without sureties, imposed upon an individual against whom some one has preferred a complaint that there is just cause to fear that the party complained of will commit some crime or do him some bodily harm, or procure a third person to do it. (See *Crim. Pro. Code-Chapter on Security to keep the Peace.*)

Artificial force.

"Articles of sculpture" defined . . . . 7-8 V. c. 12, s. 20.

Articles of the navy. A system of rules prescribed by Law for the government of the navy

Articles of war. A code of regulation or Rules for the Government and discipline of the army and navy.

Artificer. "An 'Artificer' is a skilled workman" (per *Brett*, L. J, *Morgan* v *Lond Gen. Omnibus Co*, 53 L. J. Q B 352, 13 Q B. D 832). One who is a master in his art and whose employment consists chiefly in Manual labour. (*Cunningham.*) One who makes something as distinguished from one who only does something, *e.g*, a Hairdresser is not an artificer, because he only does something. (*Stroude Jud. Dic*)

A designer of patterns for a calico-printer would be an "artificer". In Ex *p Ormerod*, 13 L J M C. 73, Williams, J said, "I cannot conceive that the word 'artificer' only applies to persons engaged in such occupations as require merely Manual Labour. The party who makes this application to the court, himself states that he is a 'pattern designer,' a person in fact who makes the drawing of the pattern, which is then engraved on the printing rollers, and subsequently, transferred in colours to the f bric itself. He is therefore the party who sets all in motion He contributes in the most material degree to the printing of Calico, and may therefore, I think be properly included under the term "artificer"

A compositor is an artificer, if not a workman within the meaning of Act XIII of 1859 (41 Mad. 182, Dist) 60 I C 52=44 Mad. 53=22 Cr. L. J. 196 A mahout or elephant driver is a workman or labourer (8 C L R. 254, Diss.) 27 Bom L R 1415= 27 Cr L J. 160=91 I.C 896=A I R 1926 Bom. 80

Artificer (*In the Workmen's Breach of Contract Act*) It is not necessary for a prosecution under this Act that an artificer should work with his own hands Section 1 of the Act covers the case of a head-artificer or workman who undertakes to get certain work done by other artificers, workmen or labourers under his own supervision and direction. *Sein Yin* v. *Ah Moon Shoke*, 23 Ind Cas. 187. (Per *Twomey*, J)

Artificer, in the Lords Day Act (29 Chan. 2, C. 7) S. 1 [See *Palmer* v.*Snow*, (1900) 1 Q B. 725.]

Artificer, Artisan, Artist. An *artist* is one who is skilled in one or other of the fine arts, an *artisan* one who exercises a mechanical employment. The occupation of the former requires a fine taste and delicate manipulation, that of the latter demands only an ordinary decree of contrivance and imitative power. The word *artificer* neither suggests the idea of vulgarity which attaches to the term, artisan, nor the idea of refinement which belongs to the term "artist."

Artificial. (Opposed to *natural*). Created by art, or by law; existing only by force of or in contemplation of law.

Artificial force. (*In patent law.*) A natural force so transformed in character or energies by human power as to possess new capabilities of action, this transformation of a natural force into

Artificial persons.

a force practically new involves a true inventive act *Wall* v. *Leck.* 66 Fed. 555.

Artificial persons. Such as are created and devised by human laws, for the purposes of society and government, which are called corporations or bodies pplitic. (1 *Bl Com*) Corporations, companies, or other bodies of men (*Wharton.*) "The plain and broad distinction between a *natural and an artificial person* is, that whilst the former may do any act which is not prohibited by law from doing, the latter can do none which the charter giving its existence does not expressly, or by fair inference, to enable it to perform its functions, authorize it to do." *Smith* v *Alabama*, L Ins etc, Co 4 Ala 558, 568; 3 Cyc 1013)

Artificial presumptions (Or "legal presumptions") Those which derive their force and effect from the law, rather than their natural tendency to produce belief (3 *Starkie, Ev* 1235)

Artificially Technically, scientifically, A will or contract is described as "artificially" drawn if it is couched in technical phrases using terms of art, and exhibits a scientific arrangement (*Black*)

Artillery (*Milit. Law*) Implements of war The particular troups employed in the service of fire arms.

FIELD-ARTILLERY Same as light-artillery, but often used specifically for foot-artillery.

FLYING-ARTILLERY. Artillery designed for very rapid evolutions

FOOT-ARTILLERY Field-artillery which is served by artillerymen on foot as distinguished from horse-artillery

HEAVY-ARTILLERY. All artillery not formed into batteries or equipped for field evolutions, it is divided into siege and sea coast artillery.

HORSE ARTILLERY. Light field or machine guns, of which the cannoneers in manoeuvering or marching are mounted on horseback.

LIGHT ARTILLERY. Artillery for service in the field.

MOUNTAIN ARTILLERY. Light artillery of small calibre, used in mountain warfare, and mounted either on light carriages or on pack-animals for transportation

ROYAL REGIMENT OF ARTILLERY, a collective name for the whole of artillery belonging to the British army

SEA-COAST ARTILLERY. Artillery consisting of guns of the heaviest calibre, used for the armament of permanent works, chiefly on the sea coast

SIEGE-ARTILLERY. Artillery used in attacking fortified places, and when it accompanies armies in their operations in war, mounted on carriages for transportation.

TRAIN OF ARTILLERY. A number of pieces of ordinance, mounted on carriages with all their furniture, and ready for marching. (*Cent Dict.*)

Artisan. Artificer, one skilled in some kind of mechanical craft on art. A skilled mechanic. (*Black*; *Stroude.*)

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and

As against.

architectural works of art and engravings and photographs, Copyright Act, S. 35

Aru or Arukaru (*Karn.*) A plough with oxen and implements of husbandry complete.

Aru bhatta (*Karn*) A tax on grain at so much per plough, afterwards commuted to a fixed money rate.

Arudi-karai (*Tam*) A tenure under which each occupant has a defined portion of the village lands, which he may dispose of as he wills, used of the old mirasi village when held in severalty, *Bad-Pow.* III. 118

A rubro ad nigrum "From the red to the black" Statutes were formerly written in black, their titles in red, and to argue a rubro ad nigrum was to deduce the meaning of a statute from the title. (*Byrne.*)

Arudi-kraya (*Tam*) A final or permanent sale; sale of a share held under the Arudi-karai tenure

Arudi pangu (*Tam*) Final settlement or allotment What is given in full quit of all demands. (*Wils Gloss* 33)

Arukalcha (*Mal*) Same as Aradiyantaram (*Sun Mal Man*)

Arulu (*Karn*) Mud, clay or miry soil

Arumbu (*Tam.*) Scarcity, dearth. (Cf. **Arumbu-kalam**, time of scarcity)

Aruppu-chittu (*Tam.*) An order or permission to cut the standing crop

Aruppu-kalam (*Tam*) Season of harvest

Aruppu-kooli (*Tam*) Wages of reaping.

Arz. Petition, representation In Mahomedan law personal property except money

Arz begi An officer who, under the Moghul Government, was appointed to receive and present petition.

Arzi (*H*) A petition, an address, a memorial, a respectful statement or representation, whether oral or written

Arzi dawa A petition of complaint, the plaint, the first pleading in a suit.

Arzi-dasht (*H*) A written petition or memorial (*Wils. Gloss* 34)

Arz Irsal A memorandum given by the patwari to the village headman showing the distribution under the proper heads of the money he takes to the tahsil

Arz-i marammat (*H*) A petition to amend or amplify a preceding petition or complaint (*Wils. Gloss* 34.)

Arz-i-mukarrar (*H*) A petition or memorial representing the circumstances of a case, a representation to the Royal authority of the proceedings taken in respect of a grant of revenue or a Zamindari, (*Har, Anal* III. 407 *Wils Gloss.* 34)

Asabardar (*H.*) A mace-bearer.

As against; *as between*: Words used to contrast the relative position of two persons, with a tacit re-

As and when

reference to a different relationship between one of them and a third person, (as) "the temporary bailee of an article is entitled to it *as between* himself and a stranger, or *as against* a stranger", reference being made by this form of words to the rights of the bailor. (*Wharton, Black.*)

As and when. "'When and as' means 'as soon as,'" (per *Monroe, J, Re Creagh*, 25 L R Ir 142), "as and when" the estate falls into possession

"As alleged" means the whole allegation in the statement of claim A pleading denying terms of agreement "as alleged" is evasive (*Throp* v *Holdsworth*, 3 Ch D 637)

As heir. 26 M L.J 616=24 I C 796

"As if they were arrears of land revenue" The words "as if they were arrears of land revenue" in S 28, Abkari Act (Madras), (I of 1886), have the same meaning as the words "in like manner as for the recovery of arrears of land revenue" *Ibrahim Khan* v *Rangasami Naicken*, 28 M 420

"As it stands". A contract to take, *e g*, a cargo or goods, "as it stands" (though it specify a quantity), means that the cargo is "to be taken by the purchaser for better or for worse, for less or for more" (per *Campbell, C J.*, *Covas* v *Bingham*, 23 L J Q B. 29)

'As of right' The expression "as of right" in S 26, Limitation Act XV of 1877 does not and cannot mean a user enjoyed from time to time at the will and pleasure of the owner of the property over which the user is sought *Kyman* v *Set Lan* 8 Ind Cas 1196=3 Bur L T 100 (per *Justice Twomey*) *See also* S 15, Easements Act

"As solicitor" An undertaking in this form,—"We, as solicitors to *A*, undertake to pay" etc, binds the signatory personally, for many persons will deal with Solicitors who will not deal with the Client, and besides Solicitors have no power, as Solicitors, to pledge the credit of their Clients, and the term "as Solicitors" is merely descriptive of the character they fill (*Burrell* v. *Jones*, 3 B & Ald 47)

"As Unadulterated". The offence of selling Food or Drink "as unadulterated," does not need an express representation for its completion To supply on sale an article, *e g*,, Butter which ought to be unadulterated, is to sell it "as unadulterated" (*Fitzpatrick* v. *Kelly*, 42 L J M C 132).

Asamiwar-gutta. (*Tel*) The rent or revenue to be levied from each cultivator A Ryotwar settlement

Asamiwar-hisab (*H*) An account kept in the Madras Province, shewing the particulars of each ryot's produce, assessments, payments and balance as it stands at the end of the year

Asamiwari (*Tel.*) Individually, according to name. A settlement or assessment made on each

Asbah, (*A*) Kindred relations, Agnate relatives. (*Macn. Mhn Law*)

Ascend. To go up, to pass up or upwards, to go or pass in the ascending line (4 *Kent Comm.* 393, 397.) "The succession of ascendants of the deceased, of his male paternal ancestors, if any survived him." (Maine, *Early Law and Custom*, p. 111).

Aspect.

Ascendants (From ascend. to go up to; to climb up to). The progenitors of a family, in its broad sense "persons related or connected in the ascending line, by consanguinity or affinity," in a more restricted sense, "only those related by consanguinity." Those from whom a person is descended or from whom he derives his birth, in however remote a degree. (*Cyc Law Dic*)

Ascent Line of ascent, in genealogy, ancestry. The transmission of an estate from the ancestor to the heir in the ascending line. (*Burrill*) "They (ancient Hindu law teachers) say hardly anything of inheritance as now understood, save in the direct line of descent or ascent" (Maine, *Early Law & Custom*, p 112)

Ascertain Ascertained—These words have two meanings, (1) "known," (2) "made certain" (*Sidebottom* v *Sidebottom*, L R 2 P & D 365, to free from obscurity, doubt or chance, to fix, to settle or determine (*Cent Dict*)

Where money to be paid, or service to be rendered, has "to be ascertained" in a certain way, "the words 'to be ascertained' are very strong words, and they look very like a Condition Precedent" (per *Crompton, J, Braunstein* v *Accidental Insrce*, 31 L. J Q B, 24)

As-har, Relations by marriage within the degrees on which marriage is prohibited (*Wils Gloss.* 36.)

Ashrabat, (*A*) Drinks, but in law applied especially to wines or spirituous liquors produced from the fermentation of grapes, raisins, or dates, the drinking of which is prohibited (*Wils Gloss.* 36.)

Ashraf (*A* pl of Sharif), 'the gentry' (N.W.P) landlord class as distinguished from the ploughs driving tenantry *Bad Pow* II. 188

Ashtarani A small Pathan tribe occupying the Suleman range from a little south of the Takht to the Korah Pass

'Asl (*A*, the root) (1) The original or principal thing, 'Asl jama' - the Land Revenue as distinct from the extras, cesses, etc, (2) anything real or genuine *Bad Pow* I 614

Asli, Uslee, or Asali, Usulee, (*H*) Primary, original, applied to a registered village under the Mohammedan system, in opposition to the Dakhili; one subsequently occupied. (*Wils Gloss* 34)

Asmani-Farmani, *H* A term used formerly in deeds and leases, providing for any incidents or injuries arising from calamitous seasons or unjust exactions of the Government, which, if affecting the Zemindar, the Ryots engaged to make good In Garwhal estimated fines and forfeitures, as part of the revenue. (*Wils Gloss.* 36)

Asmani Sultani. The phrase as used in documents is meant to refer to some act such as that of God or of the King's enemies which is in the nature of a calamity over which no person can exercise any control 14 Bom.L.R. 581=16 I.C 440.

Aspect. View, object, implies the existence of alternative. (As) a "contingency with a double aspect".

Asphyxia.

Asphyxia (In medical jurisprudence.) A morbid condition of swooning, suffocation, or suspended animation, resulting in death if not relieved, produced by any serious interference with normal respiration (as the obstruction of the air passages, inhalation of poisonous cases or too rarified air, choking or drowning, with a consequent deficiency of oxygen in the blood (*Black*)

A spoliatus debet ante omnia restitui (*Broom Leg Max*) A maxim meaning "a person who is wrongfully deprived of his property is entitled to the restitution of his property before all others".

Asa-namas, (*H*) The afternoon prayer of the Mahomedans to be repeated at any time from half past four until sunset. (*Wms. Gloss* 36)

"**Assam**" defined. E.B. & A Act, 1, 1909, s. 5 (4).

'**Assam Act**' shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Act, 1861 to 1909 or the Government of India Act, 1915, Act X of 1897 (General Clauses), S 3(3-a.)

"**Assam Regulation**" defined E. B & Assam Act, I of 1909, S 5 (5)

Assassin. A murderer One who undertakes, for reward to put another person to death secretly or by surprise, one who kills or attempts to kill, by treacherous means or stealth.

Assassination. Is the murdering of a person for hire, without provocation or cause of resentment given to the murderer, and so detestable is the crime, that the Scotch law, following the rule of the Canon law, punished with death even the attempt to assassinate (*Scotch Dict., Tomlins Law Dic.*) *Ersk Inst* 4, 4, 45

Assault An attempt with force and violence, to do corporal hurt to another as by striking at him, with or without a weapon But no words whatsoever, be they ever so provoking, can amount to an assault, notwithstanding the many ancient opinions to the contrary (1 Hawk. P C. c 62, 1. *Tomlins Law Dic*)

"An Assault is (*a*) an attempt unlawfully to apply any the least actual force to the person of another directly or indirectly, (*b*) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid, (*c*) the act of depriving another of his liberty in either case, without the consent of the person assaulted, or with such consent if it is obtained by fraud." (*Steph Cr* 177.)

"Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault *Explanation*—Mere words do not amount to an assault But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault." (Penal Code, S. 351.)

Assembly and Asssmblage.

"ASSAULT" defined. Act 45, 1860, s. 351; Act 15, 1887, s. 3 (6); Act 5, 1892, s. 2 (6); Reg. 3,1881, s 2, Reg. 2,1888, s. 2 (4); Reg 4, 1890, s. 3 (5)

Assault and Battery. "A *Battery* is an assault whereby any the least actual force is actually applied to the person of another, or to the dress worn by him, directly or indirectly" "Battery is the unlawful beating of another" "Every battery includes an assault" (*Ame Cyc*) But not *vice versa*.

Assay. The proof or trial, by chemical experiments, of the purity or fineness of metals—especially of the precious metals, as gold or silver.

Assay Office. A laboratory or office where ores or metals are assayed. The staff of officers or persons by whom the process of assaying gold and silver required by Government, incidental to maintaining the coinage of the realm is conducted.

Assay-master An assayer, a chief officer appointed to try the weight and fineness of the precious metals

Assay of weights and measures Is the examination of weights and measures by clerks of markets etc (*Reg Orig* 279, *Tomlins Law Dic*)

Assayer, one whose business it is to make assays of the precious metals.

Assayer of the King. An officer of the king's mint for the trial of silver; he is indifferently appointed between the master of the mint and the merchants that bring silver thither for exchange" (*Tomlins Law Dic, Termes De la Ley*)

Assemble To bring together, to collect in one place or as one body, to convene; to congregate The offence of knowingly suffering prostitutes or persons of bad character "to assemble and meet together," in an Inn or Beerhouse, means allowing them to be there as prostitutes or in their other evil character, but does not include a case of allowing them to be there merely to get refreshments and for no longer time than reasonably necessary for such refreshments to be consumed (*Greig* v *Bendeno*, 27 L J M C 294).

Assembled Met as a body, came together, "The Parliament assembled in November" (*W Massey*) A power to do anything by a majority of persons "assembled," must be exercised by a majority of those actually present, whether all vote or not (*R* v. *Christ Church*, 7 E & B 409).

Assembly. A company of persons assembled together in one place usually for a common purpose—generally, for deliberation, legislation, worship or social entertainment.

An "Assembly" of persons would seem to mean three or more, (*Stroude*); the concourse or meeting together of a considerable number of persons at the same place; also the persons so gathered (*Black.*)

Assembly and Assemblage An assembly consists only of persons, an assemblage may be of persons or things. Nor can it be said that every assemblage of persons is an assembly. An assembly denotes a body of persons who have met to act in concert for a common end (as) a Legislative assembly. The word assemblage, by itself, conveys no such idea.

Assent

Assent. The act of the mind in admitting or agreeing to the truth of a proposition proposed for acceptance; consent, agreeing to, to admit, yield, or concede: to express an agreement of the mind to what is alleged or proposed, (as) Royal assent or Viceroy's assent to an enactment passed in the Legislative Assembly, Executor's assent to a legacy, assent of a corporation to bye-laws.

MUTUAL ASSENT is the meeting of the minds of both or all the parties to a contract.

Assent, consent, concurrence, acquiescence, acceptance, adherence "*Assent* is primarily an act of the understanding, *consent* is distinctly the act of the will as, I assent to that proposition I consent to his going Baxter speaks of justifying faith as the assenting trust of the understanding and the consenting trust of the will Assent is not yet altogether excluded from the field of the will, but tends to express a feebler action of the will than it formerly did, or than consent does [Compare Luke xxiii 24 (margin),] "Pilate *assented* that it should be as they required," with the formal *consent* in the royal *assent* to a bill *Concurrence* is a running of minds in the same channel, an agreement in opinion or decision *Acquiescence* is a state or act of quiet submission to a decision; an act, or the prevalence of an opinion, because it is near enough to one's wishes, or not worth resisting, or impossible to resist, but not because it is entirely acceptable" (*Cent Dict*)

"The necessity, under which the jury is placed, to agree unanimously in order to find a verdict, acts as the predisposing cause of *concurrence* in some common opinion" (*Calquhoun Works, I. 66*)

ROYAL ASSENT, in England, the approbation given by the Sovereign in Parliament to a bill which has passed both houses, after which it becomes law This assent may be given in two ways (*a*) in person, when the Sovereign comes to the House of Peers, the Commons are sent for, and the titles of all the bills which have passed are read The Royal assent is declared in Norman-French by the Clerk of the Parliament (*b*) By letters patent, under the great seal signed by the Sovereign, and notified in his or her absence.

Assert. To vindicate, maintain or defend with words (as) to assert our rights and liberties.

ASSERT DEFEND, MAINTAIN, VINDICATE "*Assert* supports a cause or claim aggressively; its meaning is well brought out in the expression, assert yourself, that is, make your influence felt To *defend* is primarily to drive back assaults. To *maintain* is to hold up to the full amount, defending from diminution. as, to maintain the ancient customs, liberties, rights To *vindicate* is to rescue, as from diminution, dishonor or censure. as, to "vindicate the ways of God to man". (Pope, *Essay on Man, i.* 16; *Cent. Dict.*)

Assess. To rate or ascertain, to apportion or fix the amount of a tax to be paid or contributed, to make a valuation or official estimate of property for the purpose of taxation; to adjust or apportion; to fix or settle a sum to be levied or paid (as) assessed taxes; or revenue assessed on land.

Assets.

Assessed—"'Assessed,' means, 'reckoned on the value'". [per *Rigby, L J, Floyd* v *Lyons*, 66 L.J. Ch. 353, (1897), 1 Ch 633)]

"**Assessee**" in Income-tax Act means a person by whom income-tax is payable, [Act XI of 1922 (Income-tax), S 2, Cl. 2]

Assessment—Determining the value of man's property or occupation for the purpose of levying a tax, determining share of a tax to be paid by each individual (*Bouvier Law Dict.*) levying a tax (as) Land Revenue assessment Assessment is popularly used as a synonym for taxation in the general,—the authoritative imposition of a rate or duty to be paid.

Assessment and tax are not synonymous. "An assessment is doubtless a tax, but the term implies something more, it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalent, whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed Taxes must be levied, without discrimination, equally upon all the subjects of property, whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits, to repay which the assessment is levied." (*Black L Dic*)

TAXES are impositions for purposes of general revenue, while *assessments* are special and local impositions upon property in the immediate vicinity of an improvement, for the public welfare, which are necessary to pay for the improvement made with reference to the special benefit which such property derives from the expenditure

Assessment of damages Fixing the amount of damages to which the successful party in a suit is entitled after an interlocutory judgment has been taken.

"Assessments," in a lessee's covenant to pay "Taxes, rates and assessments," means, assessments of a nature similar to that of taxes and rates, and does not comprise an exceptional burden imposed by a local authority and ordinarily to be borne by the landlord (*Tidswell* v. *Whitworth*, 26 L. J C P 103)

Assessors. Literally, those who sit by the side of another Persons associated with Judges of courts to advise and direct the decisions of such Judges [(as) assessors in a sessions trial], a legal adviser; "whence to his son, The *assessor* of his throne, he thus began." (*Milton*) Persons charged by law with the duty of ascertaining and determining the value of property, as a foundation of a public tax; one who makes an assessment or imposes a tax (*Jacob Law Dict.*) An officer chosen or appointed to appraise value, or assess property.

Assets (from the French *asses*, sufficient). The property in the hands of an heir, an executor, administrator, or trustee which is legally or equitably chargeable with the obligations which such heir, executor, administrator or trustee is, as such, required to discharge Everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not; property in

Assets.

general; all that one owns, considered as applicable to the payment of his debts as, his assets are much greater than his liabilities

The word "assets" means, a man's property, of whatever kind, which may be used to satisfy debts or demands existing against him (*Velchand Chhaganlal* v. *Musson*, 14 Bom.L.R. 633=16 I.C 640)

The word "assets" though more generally used to denote everything which comes to the representatives of a deceased person yet is by no means confined to that use, but has come to signify everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not Hence we speak of the assets of a bank or other moneyed corporation,the assets of an individual or private partnership, and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts (*Black*)

"ASSETS" defined Act 2, 1874, S. 3, Act 6, 1882, Ss 139, 178, Ben Act 5,1897, S, 3 (*xv*), (*xvi*).

Assets are real, or personal, where a man hath lands and dies seized thereof, the lands which come to his heir are assets real, and where he dies possessed of any personal estate, the goods which come to the executors are assets personal. (*Tomlins Law Dic*)

Assets (in insolvency law) Realisable property possessed by insolvent at the material moment is "assets" which however does not include future earnings as they cannot be sold [*Debi Prasad* v *Allen Grant*, 39 I C 916 (All).]

The word *"assets" in S 73 C P. Code*, means the proceeds of the sale of the property which is sold in execution of a decree (*Ramanathan* v *Subramania Sastrial*, 26 M 179) "All a man's property, of whatever kind, which may be used to satisfy debts or demands existing against him" (*Velchand Chhaganlal* v. *Murson*, 14 Bom L R. 633=16 I C 640) The "assets" referred to in S. 73, C P Code, should be assets held in process of execution, and do not include money paid into Court under O XXI, R 55. (*Sorabji* v. *Kala Raghunath*, 13 Bom L.R 1193=12 I. C 911=36 B. 156. *But see* 47 C 515, 41 M 616)

"ASSETS"in the Administrator-Generals Act means all the property, movable and immovable, of a deceased person, which is chargeable with, and applicable to, the payment of his debts and legacies, or available for distribution among his heirs and next-of-kin Act III of 1913 (Administrator-General's) S 4, Cl 1

"Assets" of Partnership, "is an expression to denote the aggregate of the several items of property belonging to the partnership" (per *Stirling, J, Jennings* v. *Jennings*, 1898, 1 Ch 378)

Assets realised, [*in S. 34, Provincial Insolvency Act (III of* 1907)] Where the Insolvency proceedings were going on, the decree-holder took an opportunity to continue executing his decree, attached certain immovable property of his judgment-debtor and got it put up to sale and the sale-proceeds were deposited in Court before the order of adjudication was passed. The money so deposited came within the definition of the 'assets realized in the course of execution' within the meaning of S 34 of Provincial Insolvency Act III of 1907 [*Sri Chand* v *Murari Lal* 10 A.L.J. 252=34 A. 628=16 I C. 183 (184). *See also* 26 C. 772 (776)].

Assignee.

Asseverate To affirm or aver positively, or with solemnity.

Asseveration A positive assertion, a solemn declaration, an affirmation (*Black*) "Vehement *asseveration* upon slight and trivial occasions" (*Ray*)

Assign (*Verb*) To grant, to convey, to make an assignment, to point out (*Bouvier*), to transfer or make over to another the right one has in any object, as in an estate, chose in action, or reversion especially in trust for the security of creditors rarely applied to testamentary transfers To show or set forth with particularity as, to assign error in a writ, to point out or substantiate a, a charge as, perjury cannot be assigned on an oath taken without the jurisdiction of the officer administering it

Meaning of the word 'assign' in T. P Act (1882), S 111 (*g*), 54 C 948

TO ASSIGN DOWER is to allot or portion out to a widow the part of land forming her dower therein, to fix the boundaries of the widow's share in an estate

TO ASSIGN IN BANKRUPTCY to transfer property to and vest it in assignees for the benefit of the creditors.

A *covenant not to "assign"* is not broken by a license to use the premises for a temporary purpose, *e g*, a Travelling Show (*Mashiter* v *Smith*, 3 Times Rep 673)

"A covenant not to assign or otherwise part with the premises, or any part thereof, for the whole or any part of the term, is broken by a sub-lease" (*Deo d Holland* v *Worsley*, 1 Camp. 20.)

" 'Assign' (as noun) does not mean 'Heir', it means a person substituted for another by an act of some kind or other" (Per *Parke B*, *Deo d Lewis* v. *Lewis*, 9 M. & W 664)

"Assign" defined 5-6 V, c. 45, S 2 Act 5, 1888, S 4 (4)

Assignable That may be assigned or transferred; transferable, negotiable, as a bill of exchange (*Story, Bills*, 17)

Assigned The word "assigned" in S 1 of Bengal Act VI of 1870 means lands "assigned" by Government or appropriated under its authority or with its permission *Secretary of State for India* v *Kirtibas Bhupati Harichandar Mahapatra*, (1914) 42 I A 30= 42 C 710 (728-9)=28 M.L J 457

Assignatus utitur jure auctoris A maxim meaning "An assignee is clothed with the rights of his principal" (*Broom Leg Max*)

Assignee One to whom an assignment has been made; one to whom rights have been transmitted, by particular title, such as conveyance, gift, legacy or other transfer

"When a statute speaks of an 'Assignee,' it is to be intended of such complete assignee as has all the ceremonies and incidents requisite by the law to such character, not taking away any form or circumstance which the law requires. (Dwar. 683, citing *Malory's Case*, 5 Rep. 112,) *See also* 26 Cal. 750=4 C.W.N. 446, 6 C.W.N. 91, (1884) 7 Q.B.D, 518.

Assignment

Assignment. Transferring the interest a man hath in any thing to another (*Tomlins Law Dic.*) The term assignment, as ordinarily used, signifies the transfer, between living parties, of all kinds of property, real, personal, and mixed, whether in possession or action, and whether made by delivery, indorsement, transfer in writing, or by parol, and includes as well the instruments by which the transfer is made as the transfer itself.

"Assignment for the benefit of creditors" is a transfer" by a debtor of some or all of his property to an assignee in trust, to apply the same, or the proceeds thereof, to the payment of some or all of his debts, and to return the surplus, if any, to the debtor.

"Assignment, creation or devolution of an interest." See *Radha Prasad Singh* v. *Rajendra Kishore Singh*, 5 A. 209

Assignor, one who assigns or transfers property to another Those who are assigned, deputed or appointed by the act of the party, or the operation of law, to do any act, or enjoy any benefit on their own accounts and risks—an *assignee* being one that possesses a thing in his own right, but a *deputy*, he that acts in right of another (*Perkins*, *Tomlins Law Dic*)

Assigns. All those who take, either immediately or remotely, from or under the assignor, whether by conveyance, devise, descent, or act of law, those to whom rights have been transferred, by particular title, such as sale, gift, transfer, or cession, a person to whom any property or right is transferred by a deceased person in his life time "Assignee cometh of the verb *assigno*, and there may be assigns in deed, and assigns in law" (*Co Litt* 8 b)

Assignee "In the old Law of Bankruptcy the assignee filled a place similar to that now occupied by Trustees The estate of the bankrupt, was administered by persons chosen by the creditors and to whom the bankrupt's property was assigned by the commissioners for that purpose they were hence usually called 'assignees' or "creditors' assignees" They have been superseded by the Trustees in Bankruptcy. (*Byrne*)

Assigns of Copyright. 'Assigns' shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested —whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise" Copyright Act, S, 2)

Assise [See *Assize*] anciently signified a Legislative Enactment *e g* The Assise of Clarendon, The Assise of the Forest, The Assise of Arms An assise passed in the reign of Henry II provided for the trial of questions of seisin and title to land by an enquiry of the men sworn to speak the truth, hence the proceedings and the jurors themselves became know as the assises. So it is defined to be an assembly of knights, and other substantial men, with the justice, in a certain place, and at a certain time appointed. (*Custum Normand* cap 24) This word is properly derived from the Latin verb *asside*, to sit together; and is also taken for the court, place, or time when and where the writs and processes of assise are handled or taken. (*Tomlins Law Dic.*)

Association and partnership.

Assist To aid; succour; help, lend encouragement to

Assistance The act of assisting, help; aid; succour, support.

Assistant. acting as an officer or official subordinate to another whom he assists, officer of a' grade below the highest

"**Assistant Collector**" defined Bom Act 2, 1890, S 3 (*b*). U P Act 1, 1904, S 4 (5)

"**Assistant Commandant**" in the Military Police Act means a person appointed by the Local Government to be an Assistant Commandant or an Assistant Adjutant of Military Police, and includes an Assistant District Superintendent of Police not in charge of the police of a district or of a sub-division. Bur. Act XV of 1887 (Military Police) S 3, Cl 6

"**Assistant Commissioner**" defined Act XVIII, 1881, S 4 Act XII, 1882, S, 3 Act I, 1883, S 2 Reg. 1, 1895, S 2 (5) C P Act I of 1883, S 2 Act XII of 1922, S 2 (3)

Assistant Inspector" defined. Act VI, 1901, S 2 (1) (*b*)

"**Assistant Resident**" defined Act II, 1864, S, 1

"**Assistant Superintendent**" defined. Bom Act IV, 1890, S, 3 (*a*) Reg 5, 1896, S 2 (2) Bur Code. 1910, p 659.

"**Assistant Superintendent of Police**" defined. Bom Act VIII, 1867, S 1

Assize (See *Assise*) Assembly of judges, a legislative assembly, decree, edict, ordinance (as) assize of arms. *See* Int Act, 1889 (c. 63), S 13 (5), (*In Scots law*), a jury trial, also the jury

"**Association**" defined, Act1 4, 1908, S 15 (1) An association may be defined to be a body of persons acting together, upon the methods and forms used by incorporated bodies, for the prosecution of some common enterprise

Association distinguished from "corporation," See *Davison* v *Holden*, 3 Am St Rep 40, 4 *Cyc.* 301

Association and company The term "association" is often used as synonymous with "company".

Association and partnership An association in which the conditions of membership are the payment of an entry-fee and of *pro rata* assessments, but which does no business involving profits or loss, is not a partnership (4 *Ame Cyc* 301)

USE IN CORPORATE NAMES The term "association" also enters into the names bestowed by the legislature upon many corporations In this connection, it is used without any uniform descrimination as to its precise meaning, but seems to be, on the whole, preferred for bodies which are not vested with full and perfect corporate rights and powers; also for organizations formed to promote the improvement, welfare, or advantage of the public as distinguished from those whose object is the improvement of members, for which "*Society*" is preferred, or the making of profits, for which "*company*' is the better term. (*Abbott*)

Assume

Assume. To take upon one's self; to undertake, (as to assume responsibility) to engage, to promise, to pretend to possess, to take in appearance, to arrogate, to usurp, to affect, to presume (1 Ld Raym. 122, 4 Coke 92, 88 Ame St Rep 155)

Assumpsit Is taken for a voluntary promise, by which a man assumes or takes upon him to perform or pay anything to another, it comprehends any verbal promise, made upon consideration (*Termes De la Ley.*) An action upon the case on assumpsit (or as it is also expressed, on promises) is an action the law gives the party injured by the breach or non-performance of a contract legally entered into it is founded on a contract either express or implied by law; and gives the party damages in proportion to the loss he has sustained by the violation of the contract (92 Moor. 667 (U S) *Tomlins Law Dic.*)

Assumpsit is an undertaking, either express or implied to perform an oral or written agreement.

The action of assumpsit is founded upon what the law terms an implied promise, on the part of defendant, to pay what, in good conscience, he is bound to pay to plaintiff In general, the action of assumpsit is an action for the recovery of damages for the non-performance of a simple contract, either express or implied

Assumpsit in the law of contracts, is a promise or undertaking, either express or implied, made either orally or in writing not under seal (*Rapalje L Dict*)

EXPRESS ASSUMPSIT is an undertaking made orally, by writing, or by matter of record, to perform an act or to pay a sum of money to another

IMPLIED ASSUMPSIT is an undertaking presumed in law to have been made by a party from his conduct, though he has not made an express promise

SPECIAL ASSUMPSIT Special assumpsit is an action of assumpsit brought upon an express contract of promise

GENERAL ASSUMPSIT is an action of assumpsit brought upon the promise or contract implied by law in certain cases. (*Bouvier*)

DISTINGUISHED FROM "COVENANT." Assumpsit (in English law) differs from covenant since it does not require a contract under seal to support it. (*Bouvier*)

DISTINGUISHED FROM DEBT Assumpsit differs from debt in that the amount claimed need not be liquidated. Assumpsit is founded upon a promise, debt upon a contract In the former the word "promised" is used; in the latter the word "agreed". They are concurrent remedies in cases of simple contract, either express or implied, for the payment of money. (4 *Cyc* 320)

DISTINGUISHED FROM "REPLEVIN" Assumpsit differs from replevin, which seeks the recovery of specific property, if attainable, rather than of damages

DISTINGUISHED FROM "TRESPASS" OR "TROVER". Assumpsit differs from trespass and trover, which are founded on a tort, and not upon a contract (*Black L. Dict.*)

Assumption. The act of assuming or taking upon one's self; the undertaking or adopting of a debt or obligation resting upon another. (*Black.*) "The assumption of authority." (*Whewell.*) Act of taking for granted; supposition. "The unwarrantable *assumption* that the soul sleeps from the period of death to the resurrection of the body" (*Thody.*)

ASSUMPTION (in Eccles, law), the day of the death of a saint so called. (*Tomlins Law Dic.*)

Assumption of risk A term or condition in a contract of employment, either express or implied from the circumstances of the employment, by which the employee agrees that dangers ordinarily or obviously incident to the discharge of his duty in the particular employment shall be at his own risk. (*Narramore* v. *Railway Coy* 96 Fed 301) [The old doctrine of assumption of risk has been abolished by the Modern Workmen's Compensation Acts]

Assurance A deed or instrument of conveyance, the legal evidences of transfer of property (2 *Bl Com* 294) "An assurance is something which operates as a transfer of property" (per *Kay, L.J.*, Re *Ray*, 65 L. J Ch 320).

Assurance in contracts means "making secure," "insure" It means the act of assuring, a declaration tending to inspire full confidence.

The word "assurance" in the Inheritance Act shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity [Act 30 of 1839 (Inheritance). S 1]

"*Assurance*" defined, Act 30, 1839, S 1.

Assurance and Insurance There is a tendency to use "Assurance" for contracts of life insurance companies and "Insurance" for risks upon property. (*Black*)

"Recent writers have sought to establish distinctions of a novel character between them (assurance and insurance) One of these is that a person insures his life, his house or his ships and the office assures to him in each of these cases a sum of money payable in certain contingencies Another is that assurance represents the principle and insurance the practice" (*Ency Brit* XIII 169)

"**Assurance Company**" defined (*See* 7 & 8 V, C. 110 S 3, 30 and 31 V C 144 S 7) A friendly society is not an "Assurance Company." (*Coppinger* v. *Gubbins*, 3 J & La. T 397)

Assure To make sure or certain, convince or make confident, as by a promise, declaration or other evidence

Assured A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance; a person in whose favour an insurance policy stands

The person for whose benefit the policy is issued and to whom the loss is payable, not necessarily the person on whose life or property the policy is written. Thus where a wife insures her husband's life for her own benefit and he has no interest in the policy, she is the "assured" and he the "insured." [*Hogle* v. *Insurance Co*, 6 Rob. (N.Y.) 570.]

Assurer. An insurer against certain perils and dangers, an underwriter; an indemnifier.

'Astabhogam'. *See* 26 I.C. 117.

Asterisk. The figure of a (*), used in printing and writing (*a*) as a reference to a passage or note in

the margin; (*b*) to distinguish words or phrases as conjectural, theoretical, unverified, obscure, or as having some other specified character; (*c*) to mark the omission of words or letters, and (*d*) arbitrarily, as a mark of classification Something in the shape of or resembling an asterisk

Asthan Asthan is mainly an institution of ascetics and sanyasins having no worldly connections of wealth or family and the mohunt is presumed to have no property other than that of the institution and the offerings made to him But he may hold private property, the character of which he must prove as such In absence of such proof an alienation by a mohunt is *ultra vires*. The fact of many alienations by successive mohunts means so many breaches of trust (*Ram Pat* v. *Durga Bharti* 7 O L J. 547=60 I C 440=23 O C. 303.

Aswami-babat (*H*) A term used in Kattiawar to signify extra and unauthorized charges levied by the revenue officers for their own emoluments not the demand of the Swami, the lord, or Government. (*Wils. Gloss* 37)

"Asylum" means primarily a place in which there is safety from pursuit and is defined as "a sanctuary or place of refuge and protection where criminals and debtors found shelter, and from which they could not be taken without sacrilege", an institution for the protection and relief of unfortunates (*Ame Cyc*)

"'Asylum" according to its original derivation and in its widest meaning, simply signifies a refuge,—a place of retreat and security In its English acceptation, the word is most commonly used to denote an establishment for the detention and cure of persons suffering from mental disease,—(Lunatic asylum)—and also a place for the reception and up-bringing of destitute Orphans, (orphan asylum) The fact that some of its inmates are to be Orphans, will not impart to the Institution generally the character of an Orphan Asylum." (per *Ld Watson, Dilworth* v *Commrs of Stamps*, 1899, A C 107, 108)

"Asylum" means an asylum or mental hospital for lunatics established or licensed by Government, Lunacy Act (IV of 1912), S 3.

OTHER DEFINITIONS "Place of retreat or shelter" "A refuge, sanctuary, a charitable institution" Any institution is to be classified as an asylum which is so used, even though not so denominated *Reg* v *Bisop*, 5 Q B D. 259, 14 Cox C.C. 404

Asylums may be either *public or private*, but mere incidental profit, from an asylum founded, under a statute, by certain parishes, arising from the board of outsiders or from the labor of inmates and employees, does not make the institution any the less a public asylum. *Reg.* v *Fulbourn*, 6 B. & S 451. 11 Jur. N. S 620.

A Criminal seeking an "Asylum", means going to a place where the matter may not be tried (per *Crompton, J., Re. Tivnan* 5 B & S 683.)

In extradition treaties, "asylum" means a place where the matter may not be tried. (*4 Cyc.* 362)

"At" and "In". "With the names of cities and towns the use of "at" or "in" depends not chiefly upon the size of the place, but upon the point of view,

when we think merely of the local or geographical point, we use *at*, When we think of the inclusive space, we employ "*in*", as, we arrived "at" Liverpool; there are a few rich men 'in' this village" *Standard Dict* (quoted in *Rogers* v. *Galloway Female College*, 64 Ark 627, 632, 44 S W. 454, 39 L.R A. 636), *Century Dict*)

When "at" is used in a Will or Deed as descriptive of the situation or locality of property, its meaning is synonymous with 'in.' But in such a phrase as "*at or within*," the word "at" is rather used in the sense of "near to", or "adjacent to" (*Homer* v, *Homer*, 47 L J Ch 635)

"At", "after", "from" Where there is a bequest to several in common for life with a gift over "at," or "after," or "from," their decease to their children or other issue,—the gift over is to be read distributively and as a gift of the share of each to his children or other issue respectively (*Arrow* v *Melish*, I D G & S 355)

"At", "on", "upon". A legacy given "at," "on," or "upon," a particular age or time, confers a contingent interest, such word, in such a context, being equivalent to "if" the event shall happen (*Parker* v. *Hodgson*, 30 L J. Ch. 590)

"At". Expresses the relation of presence or contract in space or time or of direction towards.

"At", more generally means "within" than "without" in consequence of its idea of nearness, although it is sometimes used to denote exclusion rather than inclusion

When "at" is used as denoting a Place, it refers to some fixed and definite place, (*Difiori* v. *Adams*, 53 L J Q B 437)

At any stage The words "at any stage" of the case presupposes that proceedings are actually pending, See *Mg Wa Tha* v *Abdul Gani Osman*, 5 Bur. L T 294=18 Ind Cas 518, per *Twomey, J*

"At any time" Though it is open to a Court, under S 153 of the C P Code, 1908, to amend a judgment, decree or order at any time, it is manifest that the judgment, decree or order when it is amended must be in full operation, and must not have become merged in or cancelled by the decree of a superior Court of Appeal [11 A 267 (F B), 24 C 759; 22 M 293 and 30 A 290, foll] *Abbas Khan* v *Niharam Dassi*. 11 C L J 159=5 I C 261.

At Arm's Length Beyond the reach of personal influence or control, parties are said to deal "at arm's length" when each stands upon the strict letter of his rights, and conducts the business 'in a formal manner, without trusting to the other's fairness or integrity and without being subject to the other's control or overmastering influence. (*Black*)

At Bar. Before the court "The case at bar", etc. (*Dyer*, 31)

At large Not limited to any particular place, district, person, matter, or question. Free; unrestrained. (*Black.*)

At Law According to law; by law; in law (*Burrill*) particularly in distinction from that done in accordance with equity. (*Black*)

It has however, been said that the words at law signify not "merely a legal tribunal, as distinguished

At Least.

from an equitable jurisdiction, but generally, our system of jurisprudence, whether legal or equitable". (*Flemmg* v. *Burgin*, 37 N.C 584, 590, *Ame. Cyc*)

At Least. Where time is to be computed as so many days "at least," that means so many clear days (*R* v. *Salop*, 7 L J M C. 56)

In re *Ry., Sleepers Co*, (54 L.J Ch 722). Chitty, J, said, "I do not see any distinction between '14 days' and 'at least 14 days'"

At once At one and the same time, promptly, forthwith, immediately, within a reasonable time.

A Commercial Traveller whose duty is to remit the moneys he receives "at once," should remit each sum received "by the next post" (per *Huddleston, B., R.* v. *Rogers*, 47 L J.M. C 14)

At Sea. Out of the limits of any port or harbour, on the sea coast, on the open sea. The *Harriet*, 1 Story, 251, Fed Cas No 6,099

"At shipper's risk". Meaning of *Br India Steam Navigation Co* v *Jiawoola*, 30 I.C 939

At Sight A term applies to bills or notes that are payable on demand without allowing days of grace

At sight—"After sight" In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand The expression "after sight" means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance, or noting for non-acceptance or protest for non-acceptance Act XXVI of 1881 (Negotiable Instruments), S 21.

"A Note payable at Sight, by the terms of the contract, must be shown before action brought" *Holmes* v *Kerrison*, 2 Taunt 323 (per *Parke, B, Norton* v *Ellam*, 6 L J Ex 121)

At the King's Pleasure When a punishment is to be imposed "at the King's pleasure", this is to be done in his Courts and by his Justices. (1 Hale, 375.)

At the time of Per *Ashworth, A J C*—In many deeds where it is provided that a deed of further charge shall be paid up along with or *at the time of* an earlier deed, the meaning is nothing more than that it shall not be paid up before *Sarsuti Prasad* v *Ehtisham Ali* 26 O C 349=77 I C 310=A I R 1923 Oudh 123.

"At the time of presenting his application". See *Somabhai* v. *Wadilal*. 9 Bom L R. 883

"At the time when the Collector takes possession of lands" *Collector of Dinagepore* v *Girja Nath*, 25 C 346

At the trial In 38 & 39 Vict c 50, S 6 (County Courts now 51 & 52 Vict c 43, S 120), means during or immediately at the end of the trial, and *not* after a lapse of an hour and a half after judgment given *Pierpoint* v *Cartwright*, (1880), 5 C. P. D. 139, *Smith* v *Baker*, (1891), App. Cas 325

At their Death. Bequest to two or more, and "at their death" to their children would be, read as "at their respective deaths". (*Wills* v *Wills*, L R. 20 Eq. 342).

Attached to the Earth.

At (Land Revenue term) at (Sambalpur, C.P.), dry or unirrigated cultivation *Bad-Pow* 11 379.

Ata (Arabic), an appointed allowance or gratuity to soldiers and ministers of law or religion (*Wils. Gloss.* 37)

Atak or Atakat (*A*) Manumission of slaves—in Mohammedan law (*Wils Gloss.* 37).

Atamanam (*Tamil*) Adamanam, a mortgage, a security (*Wils Gloss* 37)

Atarpal Uturpal (*H*) Land which has been formerly cultivated but has been subsequently abandoned, the word is current in the central and lower Doab (*Elliot*)

Atash Behrams, Agiaries, and Dare Mehers (in Parsi Religion) are places of religious worship of the Parsis *Sir Dinshaw* v *Sir Jamestji* 2 I C 701 (735)=11 Bom.L R 85=5 M L T 301=33 B 509 (*Davar J*)

Atatayi (*S*) In Hindu law, one guilty of a heinous offence. (*Wils Gloss.* 38)

Atchkutt. Rice fields Lands prepared for the culture of rice

A tempore cujus contrarii memoria non-existet From a time where there is no memory to the contrary" (*Byrne*)

Atheist One who does not believe in the existence of God as the rewarder of truth and the avenger of falsehood, one who owns no religion

Attach "'Attach,' is a taking, seizing or apprehending property by order of Court" (*Termes de la Ley*),

Attach is to take or apprehend by commandment of a writ or precept commonly called an attachment, to take or touch, to tie or fasten, to bind, to connect with (*Ame Cyc, Tomlins Law Dic*)

Attach and arrest. *See* "ARREST"

Attached (Attached to premises). In referring to the statement that whatever is "attached" to premises has to be estimated for the purpose of ascertaining its rating value, Esher, M R, said —"Now does the word 'attached' there, mean attached by some physical fastening such as screws or bolts? If it does, a thing weighing tons, which cannot be and never was intended to be lifted, would not be taken into account if not fastened to some part of the building, whereas if it were fastened it would That, as it seems to my mind, would be a monstrous consequence I do not think the word 'attached' does there mean 'physically fastened,' so as to determine whether the thing is to be taken into account or not" (*Tyne Boiler Works Co* v. *Longbenton*, 56 L J M C 12) Hence heavy machinery kept in a fixed position by its own weight has to be taken into account in assessing the rateable value of the premises

Shop or outhouse or warehouse *"attached" to a Dwelling-house*, does not mean, mere contact of some part of the two structures, but means attached for use with the Dwelling-house (per *Ld Brampton, Grant* v *Langston*, cited *in Stroude* 143)

"Attached to the earth" (in the Transfer of Property Act) means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

Attachment

(*b*) imbedded in the earth, as in the case of walls or buildings, or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, Act IV of 1882 (Transfer of property), S. 3

Attachment The word *attachment* has been defined as "taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it, a writ issued at the institution or during the progress of an action, commanding the sheriff or other proper officer to attach the property, rights, credits, or effects of the defendant to satisfy the demands of the plaintiff"

In general, attachments may be used for two purposes —(1) To compel the appearance of a defendant (2) to seize and hold his property for the payment of the debt

"EXECUTION OR ATTACHMENT" "Does not 'attachment' virtually include a Distress? It is a holding of the goods in Pledge" (Said *Tindal*, C J, *Lackington* v *Elliott*, 7 M & G 541)

Attachment for debt, in the Sheriffs Act, 1887, S 14 (1), does not include arrest on an order of commitment under the English Debtors Act, 1869, S 5, *Mitchell* v *Simpson* (1890), 25 Q B D 183

Attachment of the debt does not constitute a "wrongful seizure of movable property under legal process" within the meaning of the Art 29, Sch I of the Indian Limitation Act *Yellammal* v *Ayyappa Naick*, 22 I C 870 (872) Per *White* C J

Attache A person attached to a foreign legation, (*Burrill*)

Attack To assault, fall upon with force or violence, assail, to begin hostilities against There is a clear difference between an "*attack*" on and an "*engagement*" with Pirates "I take an attack to be, the use of, or the attempt to use, force or violence It is not necessary to constitute an attack that there should be any resistance or any actual combat or any blood spilt 'Engagement' is a different word, and seems, necessarily, to imply that there was something of a combat or fight" (per *Dr Lushington*, *The Magellan Pirates*, 1 *Spink*, 81).

Attainder "The stain or corruption of the blood of a criminal capitally condemned, the immediate inseparable consequence by the common law, on the pronouncing the sentence of death He is then called *attaint*, stained or blackened. He is no longer of any credit or reputation, he cannot be a witness in any court, neither is he capable of performing the functions of another man for by an anticipation of punishment, he is already dead in law". (3 *Inst* 213. *Tomlins Law Dic*)

Attaint—*see* attainder

Attaint writ of—A writ that lieth to enquire whether a jury of twelve men gave a false verdict, (Finch. 484), so that the judgment following thereupon, may be reversed, (*Tomlins Law Dic*)

Attadakkam (*Mal*) Term applied when, on a person dying without heirs, the Rajah or reigning Sovereign takes possession of his property (*Moore's Mal law*), Remote heir in the absence of the tarwad (*Sun. Mal. law*). Right of succession, by virtue of

Attest.

distant relationship, to a divided branch of a tarwad when that branch becomes extinct

Attambar (*Karn*) The whole heap or the shares of the Government and cultivator before the crop is divided

Atta-tarisu (*Tam.*) Land which has laid waste for a long time

Attempt To make an effort to effect some object, to make a trial or experiment; to endeavour, to use exertion for some purpose, to make an effort or endeavour, or an attack, a trial or physical effort to do a particular thing; an effort or endeavour to effect the accomplishment of an act, an intention to do a thing combined with an act which falls short of the thing intended (*Ame. Cyc*)

"Attempt"—defined, §. 511, I P Code.

"An attempt to commit a Crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted" "The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case" "An act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime" "The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself" (*Steph Cr.* 37, 38; See Penal Code, S 511)

There may be an attempt at theft by trying to pick an empty pocket (*R* v *Ring*, 61 L J M C 115)

Attendant Circumstances. Attendant circumstances in S 81 of the Indian Trusts Act (II of 1882) means "circumstances in existence at the date of execution of the will, and means the same as surrounding circumstances" *Richard Taylor* v *Rajah of Parlakimedi*, 32 M 443=2 I C 4 (per *Sir Arnold White*, *C J*)

'Attend', 'appear'. 22 M L J. 284=14 I C 823.

"Attendants on public conveyances" defined. Bom Act, VI of 1863, S 36

"Attended to" Replying to a letter requesting payment of a debt, the debtor wrote,—"I will see that is attended to", held, a sufficient acknowledgment to take the debt out of the Limitation Act, (*Barley* v. *Lees, Times*, 19 Feb 1895, *See also* Indian Limitation Act, S 19) But the expression "your Bill shall have attention," is ambiguous and does not amount to an Acceptance of the Bill (*Rees* v *Warwick*, 2 B. & Ald. 113)

Attermine (*in old English Law*) To allow time for the payment of a debt (*Cowell*, *Blount*).

"Attest" defined. Act, I of 1869, S. 2 (Ins. U P. Act III of 1910, S 2)

ATTEST To bear witness to, to certify; to affirm to be true or genuine, to make a solemn declaration in words or writing to support a fact, to certify to the verity of a copy of a public document. (*Abbot Law Dict*)

Where an instrument is required to be "attested," the meaning is, that a witness shall be present at its execution and shall testify on it that it has been executed by the proper person (*Freshfield* v. *Reed*, 11 L.J. Ex 193).

Attestation.

"To ATTEST" means only to witness the execution of a deed, and there is nothing to preclude the signatures of the witnesses from coming under the heading of attestation. *Sasi Bhusan Pal* v *Chandra Peshkar*, 33 C. 861=4 C.L J. 41 per *Rampini*, J.

"To attest" is to bear witness to a fact, and it is not necessary that the witness attesting a document should sign his name personally. *Sasi Bhusan Pal* v. *Chandra* 33 C. 861=4 C L J. 41, per *Mookerjee*, J

A deed required by law to be attested is properly executed when the signatures of the witnesses are affixed for them to the deed by another person, with their consent, they being illiterate and not able to write It is not necessary that the witnesses should put their mark on the deed themselves, any such mark on the deed not being implied in the word 'attest" *Sasi Bhusan Pal* v *Chandra*, 33 C 861=4 C L J 41, per *Rampini*, J.

ATTEST, in the English Wills Act, 1837 (7 Will 4 and 1 Vict C 26), S 9, means "be present and see what passes, and, when required, bear witness to the fact" Per Dr Lushington in *Bryan* v *White* (1850), 2 Robertson 317, followed in *Sharpe* v *Birch* (1881), 8 Q.B D 113, as to the meaning of the word as used in 41 and 42 Vict c 31, S 6, see also *Ford* v *Kettle*, (1882), 9 Q.B D 143.

'Attestation'. See T. P. Act (1882), S 3

ATTESTATION The act of witnessing the signature of an instrument and subscribing the name of the witness in testimony of such fact, the certification by the keeper of a record of the verity of a copy (*Ame Cye*).

Attestation means that what is said to be attested happened in the presence of the attesting witness *Dinamoyee Debi* v *Bon Beh ari Kapur*, 7 C W N. 160 (9 L.R.Q B D. 139 F.).

"'Attestation' and 'acknowledgment' are different acts 'Attestation' is the act of witnessing the actual execution of a paper and subscribing one's name as a witness to that fact 'Acknowledgment' is the act of a grantor in going before some competent officer and declaring the paper to be his deed." (4 *Cyc.* 888)

Attestation Distinguished from "Subscribe" "To 'attest' the publication of a paper as a last will, and to 'subscribe' to that paper the names of the witnesses, are very different things, and are required for obviously distinct and different ends. Attestation is the act of the senses, subscription is the act of hand; the one is mental, the other mechanical, and to 'attest" a will is to know that it was published as such, and to certify the facts required to constitute an actual and legal publication, but to 'subscribe' a paper published as a will is only to write on the same paper the names of the witnesses, for the sole purposes of identification" *In the matter of Downie*, 42 Wis 66, 76 cited in 4 *Cyc* 888.

Attestation Clause That clause in which the witnesses certify that the instrument has been executed before them, and the manner of its execution. (*Black*; 4 *Cyc.* 888).

Attestation of a deed does not by itself estop the person attesting from denying that he knew of its contents or that he consented to the transaction which it effects. *Pandurang Krishnaji* v *Markandeya Tukaram*, 49 C. 334 (P.C).

Attippettola

"Attested" "The word 'attested' when used with reference to judicial writings, or copies thereof, as copies of records or judicial process, means an authentication by the clerk of the court so as to make them receivable in evidence"

"ATTESTED," in the Transfer of Property Act in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary," Act IV of 1882 (Transfer of Property), S 3.

Attesting witness One who signs his name to an instrument, at the request of the party or parties, for the purpose of proving or identifying it

Atti Kempoorum The name of a contract in Malabar executed when a hereditary tenant has occasion to borrow an additional sum on a mortgage

Atti Kully Kanum The name of a contract, or mortgage deed, nearly synonymous with *Atti*

Attiper or Nir Attiper (*Mal*) Absolute transfer, Acquisition by contract with water, *i e*, complete acquisition, a gift or transfer by pouring out water having been in former times in India regarded as complete or irrevocable, the idea being that the interest of the donor in the property passed away as completely and irrevocably as the water sank into the ground to appear no more (Note by the late Arthur Thompson, I C S , *Moore's Mal Law*)

Attiper (*Mal*) Absolute transfer (*Sundaram Iyer's Mal Law*)

Attipettola (*Mal*) Sale deed (*Sundaram Iyer's Mal Law*)

Attippettola or Attipperu (*Mal*) *Peru* in Malayalam corresponds with the Sanskrit word Janmam, which means, born, created, acquired, and more generally property *Atti* means to join, mix. These two words united give but an imperfect meaning, and the word nir is generally prefixed *Nir-attiper* thus means the Janmam combined with water which is given up The janmi reserves no *purapad* (balance of rent after deducting mortgage interest) or anything to himself He cannot after the execution of this deed, redeem the mortgage, and the relinquishment of the proprietary right is absolute under it. At the time of executing and delivering the deed the following persons must be present A *sava-jati*, a person of the same caste, *Bandhu*, a relative, *Putran*, literally the son, but in Malabar construed to mean the heir whether a nephew or son; *Narapati*, the Raja, the writer of the deed; *Tatra Sambundi* a resident round the spot. In practice the attendance of the Raja, or the execution of the deed before the Raja, is dispensed with. It is only necessary that he should be apprized of the transaction. The mortgagee gives two fanams which is placed in a small vessel of water, the mortgagor, holding the deed in his hand,

Attorn.

pours the water over it, which the mortgagor receives as it falls, and either swallows it, or puts it upon his head, or upon his feet or upon the ground, according to the relative caste of the two parties The deed is then delivered to the mortgagee This deed mentions generally that the full value of the property disposed of has been received, and states the boundaries of it, but it does not specify the amount received (*Log Mal Man*)

Attorn To transfer or turn over to another, to consent to a transfer to make attornment (*Burrill*)

Attorney "An ancient English word, and signifieth one that is set in the turn, stead, or place of another (*Co Litt* 51*b*) In its broadest sense, an attorney is one put in place of another, one acting for another: an agent, but, when not coupled with any qualifying expression, the word is usually construed as meaning attorney at law "Attorney, is one that is appointed by another man to do anything in his absence An attorney is either public in the courts and made by warrant from his client, or private, upon occasion for any particular business, who is commonly made by letter of attorney or power of attorney"

Attorney at Law An officer in a Court of justice who is employed by a party in a cause to manage the same for him (*Bouvier*), such persons as take upon them the business in Court of other men, by whom they are retained (*Tomlins Law Dic*)

Attorney General. The first ministerial Law Officer of the state, "is a great officer of the king, made by Letters Patent It is his place to exhibit informations, and prosecute for the Crown, in matters criminal and to file bills for any thing concerning the king in inheritance or profits (*Tomlins Law Dic.*)

ATTORNEY-GENERAL, in Imperial Acts, or Acts relating to the British Islands or the whole of the United Kingdom is used as a compendious expression for the law officers of the Crown in each part of the United Kingdom or Empire affected by the enactment—*e g*, 1889, c 52, s 7 (2), Official Secrets, c 69 s 4 (2), Public Bodies Corrupt Practices

Attornment. "'Attornment' Signifies the Tenant's acknowledgment of a new Lord" (Cowell) "'Attornment' is an agreement of the tenant to the grant of a rent, or to a grant of a revision or remainder made to another" (*Co Litt* 309-a)

Attu (*Karn*) A shelf, a platform in cornfields on which persons are stationed to watch the crop

Attu or Addhu (*Tam*) A boundary, a limit

Attu-kal (*Tam*) A rivulet, a channel for conducting water from a river for the purpose of irrigation

Attukal-eri (*Tam*) A pond or tank filled from a river by a water-course

Attumari-kuli (*Tam*) The hire paid to the owner of a flock of sheep or goats for their detention in a field for the purpose of manuring it.

Attu-pachal or paychal (*Tam*) In South India, river irrigation, lands watered from a river.

Attuveppu (*Mal*) Plantations bordering the seashore, rivers and backwaters This is one of the classes into which cocoanut gradens are divided. As

Audit

matter of fact, such gardens do not always border on the shore or river. (*Sun Mal Law, Log Mal. Man*)

Auak (*H*) Insurance, in Western India an advance of money to a merchant upon the goods or merchandise in a ship before sailing, under the condition, that if the voyage be profitable the loan is to be repaid with an extra rate of interest or percentage. (*Wils Gloss* 40)

Auction. A public sale of land or goods by public outcry to the highest bidder Auction is very generally defined as a sale to the highest bidder, and this is the usual meaning There may, however be a sale to the lowest bidder, as where land is sold for non-payment of taxes to whomsoever will take it for the shortest term, or where a contract is offered to the one who will perform it at the lowest price And these appear fairly included in the term "auction" (*Abbott*, 5 M I A 109)

PUBLIC AUCTION A sale of property at auction, where any and all persons who choose are permitted to attend and offer bids Though this phrase is frequently used, it is doubtful whether the word "public" adds anything to the force of the expression since "auction" itself imports publicity If there can be such a thing as a private auction it must be one where the property is sold to the highest bidder, but only certain persons, or a certain class of persons, are permitted to be present or to offer bids (*Black*) as in the case of an auction sale of property under the Partition Act, where the right to bid is confined to the co-sharers

Auctionariae. Catalogues of goods offered for auction sale

Auctioneer A person authorized by law or engaged to sell lands or goods of other persons at public auction, one who sells at auction In the English Sale of Land by Auction Act, 1867, 30 & 31 V c 48, Auctioneer means any person selling by Public Auction any Land, whether in lots or otherwise (Sec 3)

Auctioneers differ from brokers, in that the latter may both buy and sell, whereas auctioneers can only sell, brokers may sell by private contract only, and auctioneers by public auction only Auctioneers can only sell goods for ready money, but *factors* may sell upon credit (*Wilkes* v *Ellis*, 2 H Bl 557, *Steward* v *Winters* 4 Sandf Ch (N Y) 590. *Black L Dic*)

Aucupia verborum sunt Judice indigna. A maxim meaning "Quibbles are beneath the dignity of a Judge" "Catching at words is unworthy of a judge" (*Hob* 343)

Audi alteram partem "Hear the other side; "Hear both sides" an injunction which means that no man should be condemned unheard" (*Byrne*)

Audience In international law A hearing, interview with the sovereign The king grants an audience to a foreign minister who comes to him duly accredited.

Audit *As a verb*, to draw up or present an account, to make an official investigation and examination of accounts and vouchers.

As a noun; an examination of accounts in general, a formal or official examination and authentication

Auditor.

of accounts, setting of accounts, the process of auditing accounts, the hearing and investigation had before an auditor

Audit, in the Public Health Act, 1875 (38 & 39 Vict c 55, S 246) See *Thomas* v *Devonport Corporation*, (1900) 1 Q B. 16.

Auditor. A person appointed and authorized to audit accounts—usually employed for the official examination of public accounts as well as those of large corporations, banks, societies, etc

"AUDITOR" defined Act XI, 1876, S. 3.

Augusta legibus soluta non est "The wife of the Emperor is subject to the Laws" Even the queen is not exempted from subjection to the laws of the country. (1 *Bl Com* 219, *Dig*, 1,3,31)

Aul or Aol, (*A*) Increase In Mohammedan law, the distribution of a fractional proportion of inherited property more than the amount of the legal shares of the respective heirs (*Wils Gloss* 39 See also *Macnaughten Mhn Law*, *Wilson*, *Mulla's Mhn Law*)

Aulad, *H* children, progeny, descendants (*Wils Gloss* 39) This word "Aulad" *prima facie* means legitimate issue *Sher Bahadur* v *Ganga Bakhsh Singh* 36 A 101=41 I A 1=22 I C 293 (301) (P,C) Illegitimate descendants are not contemplated by these words *Sher Bahadur* v *Ganga Baksh Singh*, 36 All 101=41 I A 1=26 M L J 291 (P C) In places where the right of females to succeed is widely recognized the word "aulad" should be construed as including both male and female issue 9 Lah 333=A I R 1928 Lah 40 *See also* 95 I C 786=A I R 1926 Oudh 467, 69 I C 177=A I R 1922 Lah 215, 19 P R 1906 Where the words in the compromise were "*uski aulad jo hogi wo sab mahk kogi*" the word *aulad* is used in its generic sense and includes male and female children *Saidan* v *Fasal* 69 I C 177=A I R 1922 Lah 215 *See also* 14 Lah 315=A I R 1933 Lah 197 The word "aulad" ordinarily includes both male and female issue, but is a well-known fact that frequently in deeds and other documents the word "aulad" is confined to male issue In each instance it is a question of interpretation Where, in one portion of the will, the testator uses "aulad narina" to mean male issue then the word "aulad" used in subsequent part of the will should be taken to mean "male and female" both *Bhaiya Ajudhiya Bakhsh Singh* v *Mt Muna Kuar*, 13 O L J 199=95 I C 786=A I R 1926 Oudh 467

In a document like a will, the word "aulad" must be construed in its popular sense, *viz*, as comprising both female and male issue 114 P R (1900)=P L R (1900) 144, referring to 20 Bom 571 *See also* 1922 Lah 215, 1926 Oudh 467, 1928 Lah. 40, 1926 Oudh 260, 36 I C 222

The use of the word "aulad" in a lease extends the lease from being a life lease to a lease enjoyable by the aulad, but the meaning given to aulad should not be extended to mean collaterals [12 Cal 117 (P C) and 31 Cal 561, Dist] *Sitla Bakhsh Singh* v *Gulab Singh*, 93 I C 927=3 O W N 213=13 O L J 565=A I R 1926 Oudh 260 *See also* A I R 1924 Bom 281

Auladdar Aulad The term "Auladdar Aulad" includes descendants whether male or female except

Aurat

descendants through females (10 B H C.R 7, Foll) *Mira Sahab* v *Bai Chhoti Begam*, 73 I C 427=A I R. 1924 Bom. 281

"Aulad wa ahfad" in grant See 13 I C. 155

Aula Regis The King's Court or Curia Regis

Aulia, (*A*) In law the nearest of kin, and therefore entitled to demand the fine of blood, or commutation for murder In ordinary use, holy men, reputed prophets (*Wils Gloss* 39)

Aumany, Aumani or Aumanie Trust, charge. Land in charge of an Ameen, or trustee to collect its revenue on the part of Government *N B*—In the southern part of the Peninsula the term is particularly applied to a settlement under which the Government receives its share of the produce of the lands from each cultivator in kind, instead of stipulating for a pecuniary commutation, or farming them out to individuals by villages, or larger portions of territory (*Fifth Rep*)

Amildar Agent, the holder of an office An intendant and collector of the revenue,—uniting civil military and financial powers under the Muhammadan Government (*Fifth report*)

Amil Namah, or, as sometimes written Omulnama —A written order or commission to an Amil or a Amildar, also a commission to take possession of any land in the name of Government (*Fifth report*)

"Aunsanthathi" (*See* Annsanthathi) unless excluded by force of the context an adopted son is included in the expression "aunsanthathi" (male descendant) *Bala Subramania Pillai* v *Pitchai Pillai*, (1916) 1 M W N 306=33 I C 552

Aunt The sister of one's father or mother, correlative to niece or nephew, also applied to an uncle's wife.

Auras putra poutradi The words "auras putra poutradi" in sanads for babuana grants are words of limitation meaning sons born of the loins and are not words of general inheritance which would include female as well as male heirs

The decision in L R 8 I A 46 to the effect that in Bengal in a gift to a man the vernacular words "*putra poutradi krama*" would be read as words of general inheritance, and would include female as well as male heirs where by law the estate would descend to such heirs is inapplicable to babuana grants. Such grants could not be made under the ordinary Hindu law, but they are authorised by the custom which excludes females from the succession Their Lordships must regard the words "auras putra poutradi" as used in these sanads as words of limitation consistent with the custom, and not as words of general inheritance. *Ekradeshwar Singh* v. *Janeshwari Bahwasin* (1914) 41 I A 275=42 C 582 (602-3)=27 M L J 373

Aurasa (*S but adopted in most dialects*) Uterine, as a son by a wife A maternal brother, or a son of the same mother. (*Wils Gloss 39*)

Aurat or Aurat Bad Khula Custom (Punjab). "Aurat Badkhula" literally means a woman brought

Aut.

in the household, and the expression is used in common parlance to describe a "concubine" or a kept mistress in contradistinction to a wife, married according to strict religious ritual or by chadar andazi or other recognized form of marriage 101 I C 850=8 Lah 366=A I R 1927 Lah 441

Aut, Aoot, *Mar* An implement, a tool especially used in agriculture, as a plough As much land as may be ploughed by a pair of bullocks, usually considered equal to 80 bighas (*Wils Gloss 39*)

Autbandi (Sindh), an assessment roughly calculated at a rate per plough (aut) in backward parts of Nagar-Parkar dist Cf. utbandi or otbandi (*Bad Pow.* iii. 340) Engagement to pay a fixed charge for the use of a plough and pair of bullocks (*Wils Gloss* 39)

Auter droit Another (in another's) right thus, one who acts not on his own behalf, but as trustee or representative of another, is said to act in auter droit

Auterfoits A term introduced into the plea of formal trial as a bar to a second prosecution for the same offence *See* Autrefois

Auter vie Tenant *pur auter vie* is one who holds an estate by the life of another

Authentic Real, of genuine origin, being what it purports to be, opposed to pretended or imaginary fictitious, counterfeit, apocryphal, or unauthorised as, authentic documents Executed with all due formalities, executed by the proper person and legally attested before the proper authorities, as, an authentic deed

Authenticity. The quality of being authentic, or entitled to acceptance as authoritative, genuine, true or correct as, the authenticity of scriptures or of a document, the authenticity of a portrait the authenticity of a statement

Author One who composes or writes a book, as distinguished from an editor, translator or compiler, One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself (See 49 & 50 Vic c 33 S 11) The original composer of a book or writing of any kind, as distinguished from a compiler, translator, editor, or copyist

AUTHOR AND TRANSLATOR "An author has the choice of his own thoughts, which a translator has not" (*Dryden*).

THE ADAPTOR OF A FOREIGN WORK who introduces into his version material alterations, is an "author" (*Tree* v *Bowkett*, 74 L T. 77).

Author of a photograph (within 25 & 26 Vict c 68, Ss 1, 4), means the person who took the negative *Nottage* v *Jackson* (1883), 11 Q B D 630 And see *Kenrick* v *Lawrence* (1890), 25 Q B.D 99, *Melville* v *Mirror of Life Co* (1895), 2 Ch 531

Author of a report of a public speech in Parliament, see *Walter* v *Lane* (1900), App Cas 539

JOINT AUTHOR "To constitute a person a joint author he must co-operate in the production of the work itself, and merely touching it up so as to make it more attractive does not constitute a joint authorship" (*Levy* v. *Ruley*, 40 L.J.C P. 244)

Autocrat.

"For the purposes of this Act, "a work of Joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors" Copyright Act, S 16

"**Author of the trust**" The person who reposes or declares the confidence of trust is called the author of the trust (*See* Trusts Act, II of 1882, S 3).

Authorship The state of being an author, the occupation of writing books or contributing articles to newspapers or journals

Authorised agent includes a recognised agent or pleader. 80 P L R. 1915

"**Authorised distribution**" The 'authorized distribution' spoken of in S 70 (4), Canals Act, 1873, refers only to such distribution as has been expressly made by the Canal authorities *Basan* v *Emperor*, 217 P I R 1913=19 P R 1913 Cr =14 Cr L J 281=19 I C 713

Authority A person or persons, or a body, exercising power of command, generally in the plural. as, the civil and military authorities Power or admitted right to command or to act, whether original or delegated as, the authority of a prince over subjects and of parents over children, the authority of an agent to act for his principal An authority is *general* when it extends to all acts, or all connected with a particular employment, and *special* when confined to a single act

"AUTHORITY, is nothing but a power to do something, it is sometimes given by word, and sometimes by writing also it is by writ, warrant, commission, letter of attorney, &c and sometimes by law The authority that is given must be to do a thing lawful; for if it be for the doing anything against law as to beat a man, take away his goods, or disseise him of his lands this will not be a good authority to justify him that doth it" (*Dyer* 102, *Tomlins Law Dic*).

AUTHORITY (*In contracts*) the lawful delegation of power by one person to another

Authority (*In administrative law*) is a body having jurisdiction in certain matters of a public nature.

"Authority" Person or officer having authority as Cantonment-authority, Chief controlling revenue-authority, Chief customs authority, Chief revenue-authority, Local Authority, Municipal authority, Police authority, Road authority, Telegraph authority Express authority, Implied authority.

Authorities Statutes, rules, precedents, judicial decisions, official declarations or opinions, and recognized text-books cited in arguments on questions of law or in the trial of causes before a court, in support of the legal positions contended for.

Autocracy Absolute supremacy, the uncontrolled authority of an autocrat, the name of an unlimited monarchical government A government at the will of one man, (called an "autocrat,") unchecked by constitutional restrictions, conventions or limitations.

Autocrat. An absolute prince or sovereign, a ruler or monarch who holds and exercises the powers of government as by inherent right, not subject to restrictions as, the autocrat of all the

Autocratic.

Russias" a title assumed by the former Emperors of Russia One who is invested with or assumes unlimited authority in any relation

Autocratic, Pertaining to or of the nature of autocracy, absolute, uncontrolled, holding independent and unlimited powers of government.

Auto dafe. The public declaration of the judgment passed on accused persons who had been tried before the Courts of the Spanish Inquisition, and by extension, the infliction of such penalties as had been prescribed in the sentence The term has been figuratively applied to the destruction of a thing by fire, especially on religious or conscientious grounds "To hold an *auto dafe* of parchments" (*Prescott.*)

Autograph The handwriting of a person, that which is written with one's own hand, a person's own signature or handwriting

"Autographs of famous names were to be seen in faded ink on some of their fly leaves" (*Hawthorne, Old Manse, I*)

Automatism State or quality of being automatic, an automatic habit of acting *In medical jurisprudence*, this term is applied to actions or conduct of an individual apparently occurring without will, purpose, or reasoned intention on his part, a condition in which one who is not actually insane, suffers from an obscuration of the mental faculties, loss of volition or of memory, or kindred affections

"AMBULATORY AUTOMATISM" describes the pathological impulse to purposeless and irresponsible wanderings from place to place often characteristic of patients suffering from loss of memory with dissociation of personality (*Black*)

Autonomy The quality or state of being autonomous, the power or right of self government, the political independence of a nation

Autopsy (*In Med Jur*) The dissection of a dead body for the purpose of inquiring into or ascertaining the cause of death, a post-mortem examination

Autre Droit [*See* Auter droit] An expression used where persons sue or are sued in another's right; as executors, administrators, etc

Autrefois acquit, Autre fois attaint, Autre fois convict

AUTRE FOIS ACQUIT ("Formerly acquitted")

AUTRE FOIS ATTAINT. ("Formerly attainted".)

AUTRE FOIS CONVICT ("Formerly convicted) are all pleas in bar to a prosecution

AUTRE FOIS ACQUIT, 'is a plea by a criminal, that he was heretofore acquitted of the same offence, for one shall not be brought into danger of his life or liberty for the same offence more than once. (*3 Inst. 213, Tomlins Law Dic*)

The name of a plea in bar to a criminal action, stating that the defendant has been once already indicted and tried for the same alleged offence and has been acquitted There is also a plea of *auterfois convict*, and *auterfoits attaint*, that he was heretofore convicted, or attainted, of the same felony Where a person is attainted, it is to no purpose that he should be attainted a second time And previous conviction will bar any subsequent prosecution for the same offence, (*2 Hawk. P.C.* c. 35, 36. *Tomlins Law Dic*)

Aut-patti, Aoot-puttee, (*Mar*) The tax on ploughs, also any extra cess, whether authorised or unauthorised, upon each owner of a plough, (*Wils. Gloss* 39)

Auxiliary One that aids or helps, an assistant; a confederate.

"'Auxiliary Forces,' In English Army Act, means the Militia, the Yeomanry, and the Volunteers" (42 and 43 V. c 33 s 181)

Avadhi-aravar, (*Krn*) In Canara, a kind of mortgage, in which the land is held for a term in lieu of interest See Aravar (*Wils. Gloss* 39)

Avadi kraya, or Avadirana-kraye, *Tam.* In Southern India, a conditional sale, to become absolute if the purchase money be not repaid within a stipulated time (*Wils Gloss* 39)

"Available act of insolvency" Defined Act III of 1907, s 2 (a).

"Available Capital of the Co" is not a true, but is a deceptive, description of capital which may be raised under Borrowing Powers (*Venezuela Ry* v. *Kisch*, 36 L J Ch 849) "*Profits available for Dividend*" in a Co's memorandum of association mean those which are reasonably applicable for dividend (*Fisher* v *Black & White Co*, 17 *Times Rep*, 146)

Avakasam, (*Mal*) Right, title, privilege, Inheritance. (*Wils Gloss*. 40, *Sun Mal. Man*)

Avakasam-muri, (*Mal*) A deed of partition, a deed declaring the several rights and privileges of persons having a joint interest in property (*Wils. Gloss* 40)

Avakasi, (*Mal*) An heir, a rightful owner. (*Wils Gloss* 40)

Avaruddha—Avaruddha Stri (*San*) The word 'Avaruddha" in the Hindu law is ordinarily and accurately rendered by "concubine" in English. "Avaruddha" Stri means woman who is the protected slave of another *Bai Nagubai* v *Bai Monghibai* (1926) 53 I A 153=50 B 604=24 A L J 729=31 C W N 128=A.I R. 1926 P C 73=51 M L J 577 P C Means a continuously kept concubine Meaning of the term discussed (*Ibid*) Per *Shah, Ag* C J—Women who are prohibited by their master from intercourse with other men with an injunction to stay at home with the object of avoiding any lapse of service, are known as 'Avarudha' or protected slaves. Texts on the point discussed Per *Crump*, J—The word "Avaruddha' appears to mean a woman kept under a man's immediate control as a member of his family. *Bai Monghi Bai* v *Bai Nagubai* 69 I.C. 291=24 Bom L R 1009=47 Bom. 401=A I R. 1923 Bom. 130.

"Avasyamayi Chodikambole". (*Mal*) See 26 Mad 727 (F B)

Avatara, *S* (a descent) The descent or incarnation of a deity, his appearance or birth upon earth for some important purpose. The principal Avatars of Vishnu are ten 1. The Matsya, or fish 2. Kurma or tortoise; 3 Varaha, boar; 4. Nrisinha, or man lion 5. Vamana, Dwarf; 6 Parasurama; 7. Sri

Avatara

Aventure.

Ramachandra, or Sri Rama, 8. Sri Krishna, 9 Buddha, and 10 (yet to come), Kalki. Krishna is usually considered not as a mere Avatar, but as Vishnu himself A number of descents or incarnations, both of Vishnu and Siva, are specified in the Puranas and scriptures. (*Wils Gloss* 40)

Aventure or Adventure A mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony (*Co Litt* 391.) Death by accident pure and simple

Aver To declare or assert, to avouch or verify, to offer to verify, to set out distinctly and formally, to allege as a fact To assert or prove the truth of, to confirm, verify, to assert, to affirm with confidence, declare in a positive or peremptory manner

Average, loss or damage accidentally happening to a vessel or its cargo during a voyage. *In marine-insurance*, the term means an adjustment and apportionment of such loss between the owner, the freight and the cargo in proportion to their respective interests and losses

"The word 'average' is applied in various senses in policies of Insurance, which in this, above all other particulars, are indistinct and confused It is used as well for a contribution to a general loss as for a particular partial loss" (*Tomlins Law Dic*)

"The Doctrine of 'Average,' as applied to shipping business is derived from the Maritime Law of Rhodes" (per *Halsbury, C*, *Ruabon S S Co.* v *London Assrce*, 1900, A C 10) It was derived from the Roman Maxim "Jactus factus levandae navis gratia" The bare text of that law is confined in terms solely to the case of Jettison

"The word 'Average' means the "Contribution which Merchants and others pay proportionably towards their losses that have their goods cast out in a tempest for the saving of the Ship, or of the Goods or Lives of them that are therein". (*Termes de la Ley*)

"The word 'Average', far from being a Term of Art or a word with a rigid or unchanging signification, necessarily including expenses in the defence or safeguard of the subject-matter insured, is a word used in a great variety of phrases, as applicable to different subject-matters, and not with any fixed or settled application" (per *Willes,J*, *Kidston* v. *Empire Mar. Insrce*, 35 L.J. C P 256,)

Average See *Stuart* v. *Nixon*, (1901) A C 79.

GENERAL AVERAGE. consists of expense purposely incurred, sacrifice made, or damage sustained for the common safety of the vessel, freight, and cargo, or the two of them, at risk, and is to be contributed for by the several interests in the proportion of their respective values exposed to the common danger (2 *Phil Ins.* 1269 *et seq.* 2 *Steph Comm.* 179)

"GENERAL AVERAGE LOSS. All loss "arising out of extraordinary sacrifices made, or expenses incurred, for the preservation of ship and cargo" comes within the term "general Average loss" Per *Lawrence*, J in *Birkley* v *Presgrave* 1 East 220 adopted in *Swensden* v. *Wallace*. 13 Q B. D. 74

"GENERAL AVERAGE LOSS" defined, S. 66 (1) of the Marine Insurance Act, 1906.

"PARTICULAR AVERAGE LOSS" defined; S. 64 (1) of the M. I. Act. 1906.

Avoid.

"GENERAL AVERAGE ACT" Defined, S. 66 (2) of M. I Act, 1906

GENERAL AVERAGE CONTRIBUTION." Defined; S. 66 (3).

GENERAL AVERAGE SACRIFICE If a ship and cargo are exposed to a common danger of damage or destruction and if, in order to avert it, some part of the cargo or of the ship or her appurtenances is intentionally abandoned or destroyed or damaged, either directly or by exposure to extraordinary risk, that is G. A. Sacrifice (*Arnould Marine Insurance.*)

A GROSS AVERAGE Is a contribution made by the owners of a ship, its cargo and the freight towards the loss sustained by the voluntary and necessary sacrifice of property for the common safety, in proportion to their respective interests. (3 *Kent Comm.* 232, 2 *Steph Comm* 179.)

PARTICULAR AVERAGE is a loss happening to the ship, freight or cargo which is not to be shared by contribution among all those interested, but must be borne by the owner of the subject to which it occurs.

PETTY AVERAGE A term used to denote such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage (*Park Ins* 100, *Abb Ship* 404)

"Average Weekly Earnings," mentioned in the Workman's Compensation Act have to be calculated on the basis of the weekly earnings during the one period of continuous employment immediately preceding the injury *Jones* v *Ocean Coal Company.* 1899, 2 Q B 124 (See also *Indian Work. Com Act.* 1923)

Average Bond, a bond given by the consignee of cargo to the owner or captain of a ship which has sustained a general average loss, agreeing to pay the consignees' proportion of average when ascertained.

Average Clause, the clause in a marine insurance policy excluding certain articles from average unless general, and declaring others free from average if under a specified percentage.

Average Value 1 L W 245=24 I C 785

A Verbis legis non est recedendum. A maxim meaning "you must not vary the words of a Statute" (*Byrne*)

Averment. (*In pleadings*) Act of averring, that which is averred, affirmation; positive assertion, a positive statement of facts, in opposition to argument or inference (1 *Chit Pl.* 320)

Avibhajya S Indivisible, as property. (*Wils Gloss.* 40)

Avibhakta S Undivided, as property held in common, or as joint property One who is unseparated from his family, co-parcener. (*Wils. Gloss* 40)

A vinculo matrimonii From the bond of matrimony

Avind Ravindagan Sadh Sangat. Itinerant members of a certain body of Sadhus. *See* 142 I. C. 606=13 Lah. 6=33 P.L R. 395=A.I R. 1932 Lah 268

Avoid. To annul, to make void; to refute; cancel, to destroy the efficacy of anything.

Bab-war.

Bab-war, (*H*). Arranged, classified, as fields or items of accounts, whence Bab-Wari, classification (*Wils Gloss*)

Babatwari Zamin, (*H*). Lands registered in the statement of a village or Zamindari (*Wils Gloss* 42.)

Babbaliya, Babbuliya, (*Beng*) A hanger on about courts of law, ready to give false testimony, or to bring false and malicious charges against a person for hire. (*Wils Gloss*)

Babti (*Bo*), extra cesses = abwab, (*Bad Pow* i. 273, iii 283)

Babu A Hindu title of address, equivalent to Sir or Mr, given to gentlemen, clerks etc formerly applied in some parts of Hindustan to certain persons of distinction.

Babu, Baboo A general title of respect attached to natives in Bengal In Gorakhpur it is applied to any man of family or influence In Benares it was formerly assigned to younger brothers or near relatives of a Raja In Beng Reg VIII of 1795 Baboos are defined 'persons of the blood and family of the Raja of Benares. Babu, in karan is a synonym of 'father' (*Wils Gloss*)

Babuana Grant *See* 18 C W N. 42=22 I C 873, 19 C L J 19.

Immoveable properties acquired from the income and profits of the babuana properties are to be considered as accretions to the babuana properties (1914) 41 I A 275=42 C 582 (606)=(1914) M W N 307=16 M L T 382=1 L W 863=18 C W N 1249=12 A L J 1217=17 Bom L R 18=21 C L J 9=25 I C 417=27 M L J 373

Baby act Baby act, a colloquial name for the legal defence of infancy. Hence To plead the baby act is to plead that a contract is void because made during one's minority.

Bach, (*H*) An inferior tribe of Rajputs in the district of *Johnpur*. (*Wils. Gloss*)

Bach or Bachh Distribution of Revenue over holdings The proportionate rate or division either of lands or liabilities attached to them The apportionment of a village or estate or of the produce in separate portions among associated or co-parcenary occupants especially in the case of mixed pattidari tenures, where part is held in common and part in severalty, the Government rent and village expenses are paid from the land held in common, and any overplus is distributed or any deficit made good, by a bach's, or rate levied on the several holdings The rate is sometimes levied according to the number of ploughs employed by the cultivators

Bacchal Bachhul. A tribe of Rajputs who claim a descent from the Lunar race, formerly Zamindars of Farida, and Shah-jegan-pur

Bachelor In the universities there are bachelors of arts, of law, in divinity, in medicine &c which is the first degree taken by students, before they come to greater dignity. (*Tomlins Law Dic*) A man who has never been married, also a woman who has not been married

Bachh, the process of distributing the revenue-demand among the co-sharers, under the joint-village system (N.W.P) (*Bad. Pow. ii* 71, 145, 150. (Pj.). *ii*. 601. (C.P.). *ii*. 437.)

Back-Freight.

Bachh-barar, (*H*) A tenure in common in Bundelkhand, in which the shares of the revenue payable by the joint proprietors of a village are liable to occasional re-adjustment and alteration, also, Bhejbarar (*Wils. Gloss*)

Bachhonta Distribution of an aggregate sum among several individuals.

Bachh Robkar. Proceeding showing how the bachh has been made

Back The hinder or rear part of a thing, the part opposite to the front.

BACK, BACKWARD, BEHIND Back denotes the situation of being, and the direction of going, *backward* simply the manner of going a person stands back, who does not wish to be in the way, he goes *backward* when he does not wish to turn his *back* to an object *Back* marks simply the situation of a place, *behind* the situation of one object with regard to another a person stands *back* who stands in the back part of any place, he stands *behind*, who has any one in the front of him the *back* is opposed to the front, *behind* to before (*Crabb*)

Back (*in Com Law*) To indorse, to sign on the back, to sign generally by way of acceptance or approval

Where a warrant issued in one country is presented to a magistrate of another country and he signs it for the purpose of making it executory in his country, he is said to "back" it (4 *Bl Comm* 291).

An indorser of a note or bill is also colloquially said to "back" it

TO BACK A BILL The act of accepting a bill of exchange by writing across its face the usual form of acceptance and signing it The term is usually applied to the accepting of accommodation bills

TO BACK A WARRANT —To sign or indorse a warrant issued in another country, to apprehend an offender

TO BACK UP To lend support, aid or assistance to, stand by, give countenance to, as, to back up one's friends

BACK-UP SIGNAL (*in Railway*) There is a difference between a "back-up-signal" and a "kick signal" A back-up signal means that the engineer shall back-up the train A kick signal means that the speed shall be sufficiently increased to throw the cut-off car into the side track by the force of the increased momentum, without following the car into the switch with the rest of the train.

TO BACK OUT —To retreat from a difficulty or withdraw from an engagement, to back out of a contract

Backadation or Backwardation A consideration given to keep back the delivery of stock when the price is lower for the time than for ready money. (*Wharton.*).

Backbiter One who slanders, or speaks ill of an absent person, a secret calumniator

"Satirists describe the age, and *backbiters* assign their descriptions to private men" (*Steele, Tatler.*)

Back-biting. The act of slandering absent persons, secret calumny.

Back-Bond. A bond of indemnification given to a surety.

Back-Freight: is the freight payable by the owner of goods to the ship owner for the carriage of

Backed Note.

goods from the port to which the goods had been shipped to some other suitable port, when the goods cannot be delivered at the destined port for reasons for which the shipowner is not responsible.

Backed Note, a receiving note, endorsed by a shipbroker authorising goods to be transferred from bargers to shipboards

Backing Endorsement.

Backslide To side back in a figurative sense, apostasize, turn from the faith, depart from or abandon one's religious principles or practices

Backslider One who backslides, an apostate, one who falls from the faith and practice of religion, one who neglects his religious vows and falls into habits of sin

Backsliding A falling back in principle or practice of religion, a lapse in or abandonment of religious obligation, apostacy

Backwardation (in stock exchange) is the condition existing when stock can be bought cheaper as a matter of account

Back-water Water held back Water flowing in from behind, Water in a stream or reservoir which, in consequence of some dam or obstruction below, is detained or checked in its course, or flows back (*Hodges* v *Raymond*, 9 Mass 316) An artificial accumulation of water obtained at high tide and reserved in reservoirs, to be discharged at low tide for clearing off deposits in channel-beds and tideways A creek or arm of the sea which runs parallel to the coast having only a narrow slip of land between it and the sea, and communicating with the latter by barred entrances

Backing a Warrant (*See* Back) Where a warrant issued in one country is presented to a Magistrate of another country and he signs it for the purpose of making it executory in his country he is said to "back" it (4 *Bl Comm* 291,)

Backwoodsman An inhabitant of the backwoods, a dweller in the forest

Bad, (*H*) Remission of revenue on account of deficient crops (*Wils, Gloss*)

BAD Substantially defective, inapt, not good, (as) a bad law, bad title The technical word for unsoundness in pleading

GOOD AND 'BAD" are terms of comparison, the same article may be called, not inaccurately, good when compared with one of the same kind of a much inferior quality, and it may with equal correctness be characterised as bad when spoken of with reference to the most perfect article of the kind

BAD, WICKED, EVIL Bad respects moral and physical qualities in general; *wicked* only moral qualities *Evil* signifies that which is the prime cause of pain, *evil* therefore in its full extent, comprehends both *badness* and *wickedness*. Whatever offends the taste and sentiments of a rational being is *bad* food is *bad* when it disagrees with the constitution, the air is *bad* which has anything in it disagreeable to the senses or hurtful to the body, books are *bad* which only inflame the imagination or the passions Whatever is *wicked* offends the moral principles of a rational agent. any violation of the law is *wicked*, as law is the support of human society; an act of injustice or cruelty is *wicked*, as it opposes the will of God and the feelings of humanity *Evil* is either moral or natural, and may be applied to every object that is contrary to good, but the term is employed only for that which is in the highest degree *bad* or *wicked* A *bad* man is one who is generally wanting in the performance of his duty; a *wicked* man is one who is chargeable with actual violations of the law, human or divine, such as one having an *evil* mind. A *bad* character is the consequence of immoral conduct, but no man has the character of being *wicked* who has not been guilty of some known and flagrant vices, the inclinations of the best are *evil* at certain times

Bad behaviour "Bad behaviour", in a general sense, is such conduct as the law punishes (22 *Fed. Cas* 921)

Bad debt Debt which cannot reasonably be collected

Bad faith The opposite of "good faith" Generally implying or involving actual or constructive fraud, or design to mislead or deceive another, or a neglect or refusal to fulfil some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive

"Bad faith" and "fraud" are synonymous.

Bad title One which conveys no property to the purchaser of the estate, one which is so radically defective that it is not marketable

"When you say a title is bad, the expression is ambiguous, and must be contrasted with what is called a good title I understand a Good Title to be one which an unwilling purchaser can be compelled to take Contrasted with that, any Title which an unwilling purchaser cannot be forced to take is a Bad one But there are Bad Titles and Bad Titles, Bad Titles which are good holding titles, although they may be open to objections which are not serious, are bad titles in a conveyancer's point of view but good in a Business man's point of view I do not know of any case in which a Court of Equity has decreed Specific Performance and compelled the purchaser to pay his money for nothing at all, when he shows the Court that the title he is asked to have forced on him is bad, in that sense that he can be turned out of possession to-morrow" (per Lindley, L J, *Scott* v *Alvarez*, cited, in Stroude)

Badagi A carpenter One of the village artisans.

Badar-Nawisi, (*H*) Writing off items of an account which are objectionable or excessive. Audit of an account (*Wils Gloss*)

Badastur pata rahega The words 'badastur pata rahega' in a *wajib ul-arz* merely connote that the existing conditions of things will be maintained *Ali Abbas* v *Sher Bahadur Singh* 75 I C 267=A I R 1925 Oudh 264.

Badava-hrita, (*S*) One of the fifteen kinds of slaves In Hindu law, a man who becomes a slave that he may marry a female slave in the family (*Wils Gloss*)

Badge A distinctive mark of Office or service, (as) the badge of a policeman. "Tax-gatherers, recognized by their official badges". (*Prescott*)

Badi

Badi. More correctly, Vadi, (S) but adopted in most dialects A plaintiff, a complainant, a suitor, an advocate, (*Wils Gloss*)

BADI, (*Mal*) Gift made on marriage occasion to the bridegroom, no reversionary right being reserved to the donor (see 6 M 319) (*Sundaram Iyer's Mal. law*)

Badiga. (*Tel*) **Badige** (*Karn*) Rent, hire, quit-rent, or a low rent on lands granted in Inam.

Badi-varadi (*Tel*) Classification of land as of first, second and third class, etc Collections of contributions for extra expenses of the village rated on each *kati* of the village lands

Badni, (*Punjab*) When applied to a contract or transaction it means a wagering contract or transaction 79 P R 1908 (F B)

Badrakah (*Arabic*). Safe conduct under armed protection, a guide, an escort.

Badshahi, Badshahee Royal As applied to tenures, it denotes land, &c, held under a royal grant, or in the language of the regulations, a Badshahee grant extended to all grants made by the ruling authority for the time being

"**Badshahi grant**" defined. Ben. Reg 12, 1805, S 26

Badshahee Sanad A royal grant, a written document conveying lands or titles from the ruling power

Badu (*Tel*) Fees in grain paid to the village servants before the division of the crop

Ba farzand, (*Mai Farzand*) As pointed out by Wilson in his Glossary, the term *ba farzand*, which is equivalent to the expression *mai farsand*, means "with offspring," "with children", it is a term inserted in a grant which is made to the grantee and his posterity, it is in fact equivalent to the expression *bawalad*, and it has always been held that this expression applies to heirs and descendants generally, although according to the derivative meaning it denotes only the children of the grantee or his heirs in direct line of descent 21 I C. 93 (94)

Ba farzandan, (*Pers*) A grant to a person of lands to descend to his children (*Mac. Naughten*)

Bagayat-Jasti birad, (*karn*) An extra cess charged on garden cultivation in Mysore (*Wil Gloss* 45)

Bagayat-kacheri, (*Karn*) Department or office in Mysore for the superintendence of the revenue levied on garden cultivation in the time of the Mohammedan government. (*Wil Gloss*)

Baggage. Such articles of necessity, or personal convenience, as are usually carried by passengers for their personal use (*Boman* v *Maxwell*, 9 *Humph* 624) and is the American equivalent of the English term "personal luggage" See "Luggage".

The term includes whatever the passenger takes with him for his personal use or convenience according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or ultimate purpose of the journey. *Macrow* v. *Railway Co.*, L R. 6 Q B. 612.

Ba-ikhtiar malika

Bagh, (*Pers*) A garden, an orchard, a plantation, more particularly a pleasure garden with a summer house or palace, or baradari, in it

Baghayati, (*H*) Fit for, or relating to, garden cultivation, Land having much garden ground, Raised on garden ground (*Wils. Gloss*)

Baghat (*Oudh*), sub-tenure of a grove or orchard. (*Bad Pow* II 242, 3)

Baghayat (*Bo*) garden land, any fields (as a class) cultivated with sugar-cane vegetables, &c, always irrigated and manured (*Bad Pow* III 223)

Baghichadar (*C P*), owner of a grove, &c, allowed to be plotor sub-proprietor of it (cf Baghat in Oudh) (*Bad Pow* II 480)

Bahachina, (*Uriya*) A fee or cess levied by a Zemindar on his tenants on occasion of a marriage. (*Wil Gloss*)

Bahadur (*Per*) A hero, a warrior, a title of honour given to nobles under the Muhammadan Government, and now to distinguished native officials generally

"**Bahamah wajah**" The words "Bahamah wajah" mean "with all rights", *Ram Chandra Sarup* v. *Kirpa Devi* 1923 All 216 A gift followed by these words creates an absolute estate *Abhey Singh* v *Himta* 65 I C 653=A I R 1923 All 234

Baher-batta, (*Mar*) Difference of value added, in opposition to *Antabatta*, difference of value deducted, in exchanging various currencies. (*Wil. Gloss*)

Bahi-khata, any shopkeeper's ledger, in revenue language (N India) specially of the patwari's ledger, showing demands and payments of the landholder (*Bad Pow* II 279)

Bahir (*H*) A camp-follower, also the baggage and incumbrances of an army

Bahrr-ul-Rayek "The Bahrr ul-Rayik is a work by Zain-al-Aabidin Ben Nujaim-al Misri, who died in A H 970 (A D 1562) It is an authority on Mahomedan Law He left his work incomplete at his death, but it was finished by his brother, Siraj-ad-Din Umar, who also wrote another and inferior commentary on the same work, entitled the Nanr-al-Faik '– (Introduction to Morley's Digest of Indian Cases, Vol I, p cclxx)

Bahuta, (*Punj*) An amulet to be worn on the arm

'Bai' The word 'bai' used in the pre-emptive clause of a wajib-ul arz is wide enough to, and does, include a transfer by way of exchange *Bhagwan Singh* v *Kharag Singh* 4 A L J 756=(1907) A W.N 280 (7 A 626, P C), 1905 A W N 214

Bai bi wafa, (*H*) In Mohammedan law, conditional sale, sale depending for its completion on the consent of the seller Also the nominal sale of an article, in lieu of a debt, to be returned when the debt is paid, or upon condition that the debt shall be paid by a given term, in default of which, the article becomes definitely the property of the purchaser. A contract of pawn or of usufruct. (*Wil Gloss*)

Ba-ikhtiar malika The expression "ba-ikhtiar-malika" was held to include the right of making transfer. *Moshu Ali* v. *Harunissa.* 114 I.C 113= A.I R. 1929 Oudh 204.

Bail

Bail To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail"

"Is used in our common law for the freeing or setting at liberty of one arrested or imprisoned upon any action, either civil or criminal, or surety taken for his appearance at a day and place certain The reason why it is called bail, is because by this means, the party restrained is delivered into the hands of those that bind themselves for his forthcoming, in order to a safe keeping or protection from prison, and the end of bail is to satisfy the condemnation and costs, or render the defendant to prison" (*Tomlins Law Dic*)

Is when a man is taken or arrested for a crime, suspicion of crime, indicted of a crime or any such case, so that he is restrained of his liberty, and being by Law bailable, offereth surety to those who have authority to bail him, which sureties are bound for him to the King's use in a certain sum of money, that he shall appear before the Justices at the next Sessions or appointed day Then upon the Bonds of these Sureties, as is aforesaid, he is bailed, that is to say, set at liberty until the day appointed for his appearance (*Termes de la Ley*)

The word bail is used both as a verb and as a noun *As a verb* it means to deliver an arrested person to his sureties upon their giving security for his appearance, at the time and place designated, to submit to the jurisdiction and judgment of the Court *In its substantive sense* it may be defined as the sureties into whose custody the arrested person is delivered, and who are considered as having control of his person

Blackstone defines bail as "a delivery or bailment, of a person to his sureties, upon their giving (together with himself) sufficient security for his appearance he being supposed to continue in their friendly custody, instead of going to gaol"

While the giving of bail, as a general rule, restores a person to his freedom, yet technically he is considered as being delivered into the custody of his sureties, they being jailors of his own choosing who have control and dominion over him

Bail and mainprize are often used promiscuously in our law books, as signifying one and the same thing, and agree in this notion, that they save a man from imprisonment in the common gaol, his friends undertaking for him, before certain persons for that purpose authorized, that he shall appear at a certain day, and answer whatever shall be objected to him in a legal way. 2 *Hawk* P C c 15 29 4 Inst 18 The chief difference is, that when persons are said to mainprize they are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed and therefore may take him upon a Sunday, and confine until the next day, and then render him 6 Mod 231 Ld Raym 706, 12 Mod 275 (*Tomlins Law Dic*).

Bail (*Kan*) Low lying land yielding 2 or 3 crops (*Sundaram Iyer's Mal Law*)

STRAW BAIL Persons who make a business of furnishing bail on payment of a fee and who often frequent law courts for that purpose. Formerly such persons wore straws in their shoes as a sign of their occupation; hence the term straw bail, used to designate fictitious or irresponsible professional bail

Bailiff

"The bail must be real substantial bondsmen." (*Blackstone*).

"The attorney whispered to Mr Pickwick that he was only a bail "A bail?" "Yes, my dear sir, half a dozen of 'em here Bail you to any amount and only charge half-a-crown" (*Dickens, Pickwick Papers*).

Bailable capable of being bailed, capable of being set free on giving a proper bail bond, admitting of bail, authorizing or requiring bail

Bailable action is one in which the defendant cannot be released from arrest except on furnishing bail.

Bailable offence is one for which the prisoner may be admitted to bail

"BAILABLE OFFENCE" defined Crim Pro Code (V of 1898), S 4

Bailable process is such as requires the officer to take bail after arresting the defendant

Bail-bond The bond or obligation entered into by the surety or sureties (*Anderson L Dict*; *Rapalje & L L Dict*), A bond given by a prisoner, and his surety to insure the appearance of the former in Court on a day fixed

Bailee Defined in IX of 1872, S 148 (*In the Law of Contracts*). The party to whom personal property is delivered under a contract of bailment, He has a temporary possession of them and a qualified property in them for such purpose only. (*Blackstone*) See Contract Act, 9 of 1872, S 148

Bailee's Lien The distinction between the general lien of a bailee (whether he be a banker or not) and the right of a creditor who advances money to accommodate his customers to buy goods and deposit them with him on what is called the "godown system" is important The former merely confers on the lien-holder the right to retain the goods until payment and does not carry with it the right of sale to secure the debt or indemnity, but the latter conveys with it the implication that the security shall, if necessary, be made effectual to discharge the obligation In one case a mere right of detention or retainer is given, and in the other a special property in the chattel bailed is created in favour of the pledgee 8 Lah 373=101 I C 725=A I R 1927 Lah. 408

Bailer or Bailor one who delivers goods to another on bailment

Bailiff In a general sense, a person to whom some authority, care guardianship, or jurisdiction is delivered, committed, or intrusted one who is deputed or appointed to take charge of another's affairs, an overseer or superintendent (*Spel-man*). A Sheriff's officer or deputy (1 *Bl Comm.* 344) An officer concerned in the administration of justice of a certain province, an under deputy sheriff; a keeper or protector, a servant who has the administration and charge of lands, goods, and chattels, to make the best benefit for the owner.

"'Baylife,' is an Officer that belongeth to a Manor. to order the husbandrie, and hath authority to pay Quit Rents issuing out of the Manor, fell trees, repair houses, make pales, hedges, distrain beasts doing hurt upon the ground, and divers such like. This Officer is he whom the ancient Saxons called a Reeve" (*Termes de La Ley*; *See also* 6o Litt, 61, h).

Bailment

Bailment. A *"Bailment"* is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them The person delivering the goods is called the *'bailor'* The person to whom they are delivered is called the *"bailee"* Act IX of 1872 (*Contract*), S 148

It is "a delivery of goods in trust, upon a contract expressed or implied that the trust shall be faithfully executed on the part of the bailee" (the person to whom they are delivered) *2 Comm* 451, to which Sir W Jones adds, "and the goods re-delivered as soon as the time or use, for which they are bailed, shall have elapsed or be performed" (*Law of Bailments, p.* 117, *Tomlins Law Dic*)

"'BAILMENT,' is a Delivery of things, whether it be of goods, or other stuff to another, sometimes to be delivered back to the bailor, *i e* to him that so delivered it, sometimes to the use of the bailee, *i e* of him to whom it is delivered, and sometimes also it is delivered to a third person" (*Termes de la Ley*)

The term *"Bailment,"* according to its ordinary legal sense, "relates to something which is in the hands of a person who is to return it in specie," (per *Cockburn C J, R* v *Hassall*, 30 L J M C 175)

'A delivery of goods in trust, upon a contract, express or implied, that the trust shall be executed, and the goods returned by the bailee, as soon as the purpose of the bailment shall be answered" (*2 Kent Comm* 559)

"A delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust" (*Story Bailments* 2)

"A bailment takes place where an article of personal property is put into the hands of one for a special purpose, and it is to be returned by the bailee to the bailor or delivered to some third person when the object of the trust is accomplished See also *Bishop Stat Crimes*, 423 (Note This definition is more accurate in one respect than most other definitions which make delivery to the bailee essential Yet in the case of a finder of lost property, undoubtedly a bailee in law, there can be no delivery, save by the nearest fiction of Law) Bailments have been classified in several ways, (1) as gratuitous bailment and bailments supported by consideration (2) bailments for the benefit of bailor alone, bailments for the benefit of bailee alone and bailments for mutual benefit They are mainly of five kinds the first 3 being gratuitous and the others for consideration; Depositum or a deposit (*a*) mandatum or commission, of mere custody without reward a contract by which the bailee undertakes for accommodation to transport a chattel or to do something with or about it gratuitously (*iii*) commodatum or loan for use (*Gratuitous*) (*iv*) Pignics or vadium, pledge (*v*) Locatum or Hiring Hiring has been subdivided by Story into 4 kinds (*a*) Locatio rei *i e* Letting (*b*) Locatio operis faciendi (to work upon) (*c*) Locatio custodiae (to keep) (*d*) Locatio operis mercum vehendarum (to carry) The classification is important owing to the difference in the degree of care and in the liability of the bailee in each case

Bailment for hire A contract in which the bailor agrees to pay an adequate recompense for the safe-keeping of the thing intrusted to the custody of the bailee, and the bailee agrees to keep it and restore it on the request of the bailor, in the same condition.

Gratuitous Bailment Another name for a naked bailment, which is made only for the benefit of the bailor and is not a source of profit to the bailee.

Bailor Defined in IX of 1872, S 148 The party who bails or delivers goods to another under a contract of bailment (*Contract Act, 9 of* 1872, *S* 4)

Bailu (*Karn*) A plain, an open field, especially such a field as is best fitted for rice cultivation lying low and having abundance of water

Bai mukasa, also Bai mukayaza, (*A*) Sale or exchange of one article for another, sale of goods for goods, barter Sale or transfer of property by a husband in liquidation of dower due to the wife. (*Wil Gloss* 47)

Bai nama, (*H*) A deed of sale (*Wil. Gloss*)

Bai qita'at (*A* ='*purchase of portions*'), a subtenure in Oudh (*Bad Pow ii* 240)

Bairagi Another form of Vairagi, one who has renounced all earthly possessions

Bairagi, one who has withdrawn from worldly affairs A I R 1923 Pat 309

The mere fact that a Brahman becomes a *Bairagi* does not connote a renunciation involving loss of caste as a Brahman 86 I C 208=A I R 1925 All. 253 (*1*)

There are married and unmarried *Bairagis* and Bairagis can hold property in their own right There is no prohibition in the Shastras against the marriage of a Bairagi 157 I C 993=A I.R 1935 Lah 545.

BAIRAGIS, status of *See* 16 Bom L R 757.

Bairn. A child, a son or daughter

Bairns (*In Scotch law,*) the term is used to denote one's whole issue (*Burrill*)

Baitakkhana Baitakkhana means a house or part of a house used for sitting or as reception-room, where entertainments are usually given and business transacted The ladies of the family do not commonly enter these rooms which, when in the same house with the Zenana, are usually the outer rooms, *Ganendra Mohan Tagore* v *Raja Juttindra Mohan Tagore Bahadur* 22 W R 377 (P C), 14 B L R 60, 1 I A 387

Baiting animals To provoke or harass animals, procuring them to be worried by dogs, as, to *bait* a bear with dogs

Coursing rabbits with dogs in an inclosure from which they cannot escape, is not "Baiting" (*Pitts* v. *Millar*, 43 L J M C 96) In that case, Cockburn, C J, said, "the word has usually been understood to apply to the case of an animal which is tied to a stake or peg, or so confined as not to be able to get away."

Baits and Pujaris. *See* 62 I C. 510=25 C W N. 201

Bait ul-Mal. (*A.*) The royal treasury, the public Treasury or exchequer (*Macnaughton, Wils Gloss*),

"Bajami haquq dakhili wa kharji." External and internal rights in the actual area sold.

Bajar-batta

Bajar-batta, (*Mar.*) Rate at which various coins are current in the bazar with reference to a standard currency (*Wil Gloss* 68)

'Bakasht' The word 'Bakasht" is the invention of survey authorities and is used by them to denote the actual cultivating possession either of the proprietor or tenure holders as the case may be It is deliberately invented to avoid the responsibility of deciding the character of the possession *Durga Prasad Thakur* v *Basavan Pandey* 106 I C. 272=9 P.L.T. 317=A I R. 1928 P 209.

In Bihar the revenue officers invented a new designation for lands in regard to which it was difficult to ascertain whether they were Sir or Zerait, or whether they were raiyati lands temporarily in the possession of the Zemindar They called such land "bakasht" The word "bakasht" literally means "in the cultivation of," and it conveys to all intents and purposes the same meaning as khudkasht, which is admittedly the same as Sir or Zerait It might, however, imply raiyati lands that had temporarily come into the possession of the landlord and were temporarily under his cultivation [(1926) 53 I A 176=5 Pat 735 =7 P L T 483=97 I C 217=A I R 1926 P C 60]

Bakashat Malik or Ticcadar, means "in cultivating possession of the malik or ticcadar" and applies to those lands which are held directly by the malik or tenure-holder which are not zirait land *Hira Lal Singh* v *Matukdhari Singh* 7 P 275=9 P L T. 589=A I R 1928 P 316. *See also* 16 P L T 484.

"Bake-house" defined Factory and Workshop Act, 1901, Sch 6, Pt 2 (23), Madras Act I, 1884, S 3 (*ee*), Madras Act IV, 1884, S 3 (*xxiii.*)

Bakhsha (*P =gifted or excused*), (Cachar). Revenue free grants for pious uses. (*Bad Pow iii.* 440)

Bakhshi (*Per*) A paymaster. Under the Moghul Government, a general, a commander-in-chief

Bakhshiat (*H*) A pargana in the Jonpur Sirkar mentioned in Beng Reg II, 1795 The term appears to have been originally restricted to villages assigned to provide funds for the Bakhshi the paymaster or commandant of the province It is now merged in later subdivisions (*Wil Gloss* 50)

Bakhshish. (*Per.*). A gift, a present. This is the common word for miscellaneous gratuities

"BAKASHT", "KHUDKASHT", "SIR" AND "ZERAIT" Meaning of See 31 C W.N 341 (P.C).

The term *"bakasht"* invented by the revenue officers to meet a cetain contingency conveys to all intents and purposes the same meaning as 'khudkasht" which is admittedly the same as "Sir" or "zerait". It might however imply raiyati lands that had temporarily come into the possession of the landlord and were temporarily under his cultivation. 5 Pat 735=53 I A. 176=A I R. 1926 P.C. 60 (P C.)

Baki jai A revenue term in Assam. (*See Bad. Pow iii.* 461)

Bakra (or Bakhra) (*Pj. frontier*) A share in village lands (*Bad Pow. ii* 647)

Baksht lands. Baksht lands are primarily raiyati lands but are held by the proprietor for the time being on account of surrender or abandonment or purchase in execution of decrees or by such other

Balance order.

means Such lands retain the character of raiyati lands and occupancy right is acquired as soon as such lands are settled with settled raiyats of the village. *Bhairo Nath Roy* v *Shanke Pahan.* 6 P 129=8 P L. T. 31=A I R 1926 P 605

Bakul aswari (*Karn*) A tax levied upon each house in a village for the expense of peons sent to expedite the collection of the revenue by the Government of Mysore, consolidated by Tipu with the general collections

Bala, and Balaka, (*S*) A child In law, a minor, who is distinguished as, 1. *Kumara,* a boy under five years of age, 2 *Sisu,* under eight, 3 *Poganda,* a boy from the 5th to the end of the 9th year; or when the next distinction is omitted, till the 16th year, 4 *Kisora,* a boy from the 10th to the 16th year, to the end of it is apparently the most correct limit, but some make it the commencement (Each of these terms is used also in the general sense of a child, a boy, a youth) After the close of his minority the youth is termed *Vya vahari,* or *Jata,* or *prapta vyavahara,* one by whom affairs (vyavahara) may be conducted Some authorities maintain that these epithets do not apply to him, and that he is not to be trusted with the management of his own interests till the end of his 20th year, although minority expires at the close of the 16th The British Government has extended the completion of minority to the end of the 18th year Beng Reg. XXVI, 1793. (*Wil Gloss*, 51, Guard and Wards Act, Indian Majority Act)

Balam-Bhatta Commentator of Benares school of Hindu Law [12 M I A 397 (432-3)=10 W R P C. 17=1 B L R P C 1=2 Suth 135=2 Sar 361] One of best known commentators of Mitakshara [(1915) 42 I A 208 (216)=37 A 604 (613)=20 C W N 1=22 C.L J 481=13 A L J 1007=17 Bom L R 1022=(1915) M W N 772=2 L W. 897=18 M L T. 409=30 I C 529=29 M L J 434]

Balance The conclusion or result of the debit and credit sides of an account; the difference between the debits and credits of an account, the amount remaining due from one person to another on a settlement of the accounts involving mutual dealings

Balanced An ambiguous word sometimes used to denote an ascertained state of accounts, but more often, in the sense of all being cleared off and adjusted between the parties.

Balance due. The words "balance due" written by the debtor in the creditor's account, do not form a promise required by S 25, Cl 3, Contract Act (IX of 1872), which is a promise to pay despite the consciousness that the debt is barred *Ramaswami Pillai* v *Kuppuswami Pilai.* 7 I C. 901=20 M.L.J. 656.

Balance of Trade. A computation of the value of all commodities which we buy from foreigners, and on the other side the value of our own native products, which we export into neighbouring kingdoms and the difference or excess between the one side and the other of such account or computation is called the balance of trade. (*Tomlins Law Dic*)

Balance order. The order made by the Court for enforcing payment of calls in the winding up, whether voluntary, or compulsory of a company. See

Balance-sheet

Ss 166 and 193 of the English Companies (Consolidation) Act, 1908, and R 87, Company (winding-up) Rules, 1909 *See also* S 187 (1) of the Indian Companies Act (VII of 1913)

Balance-sheet A statement which should exhibit all the balances of debits and credits, the value of merchandise, and the result of the whole made by merchants and others to show the true state of a particular business Credit and debit entries of mercantile dealings exhibited together on a single page, and so grouped and arranged as to close into each other and be summed up in one general result, constitute the "balance-sheet" It is a statement designed to show the assets and liabilities and the profits and losses of a company (*Marsh, Bank Book-keeping*)

"Many banks publish balance sheets professing to show the reserve of ready money" (*Jevons, Money and Mech of Exchange, p* 320)

Balance to credit Defined in XI of 1922, S 58-A

Balconies Small platforms or projections from the external walls of a house or building, small galleries of wood or stone on the outside of houses

Bale. A pack or certain quantity of goods or merchandise wrapped or packed up in cloth and corded round very tightly for carriage or transportation

"BALE," "is an ambiguous word which may mean many things, and therefore it is for a jury to say what it means in a Mercantile Contract" (*Per* Cresswell, J., *Gorrissen* v *Perrin, 27* L J C.P 32).

Bale of cotton is a certain quantity of that commodity compressed into a cubical form, so as to occupy less room than when in bags (*As a verb*), Bale means to make up in a bale

"In the Cotton Trade at Alexandria, Surat, and Calcutta, a Bale means, a compressed bale" (Wood, 369, citing *Taylor* v *Briggs,* 2 C & P 525) "In the cotton trade at Charlestown a '*Round Bale*' of cotton means, an uncompressed bale, and a '*Square Bale*' a compressed one" (*Wood,* 372, citing *Benson* v *Schneider, 7 Taunt* 271)

Balichata (*Tel*) An allowance of grain made to the persons who are employed to measure the crop

Balla, Bulla, (*Karn*) A measure of capacity containing 48 double-handfuls, or two seers A large land-measure in Coimbatore equal to 3 83 acres

Ballala or Vallala (*Karan*) The title of an officer under the Government of Bidnur who engaged to collect and pay the revenue of a village or district for certain fees or perquisites, and exercised the civil and criminal jurisdiction

Ballast Weight carried by a ship or boat for the purpose of insuring the proper stability, both to avoid risk of capsizing and to secure the greatest effectiveness of the propelling power

Ballast and dunnage There is considerable analogy between ballast and dunnage. The former is used for trimming the ship, and bringing it down to a draft of water proper and safe for sailing Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other.

Ballastage A toll paid for the privilege of taking up ballast from the bottom of a port or harbour

Ballot (*In the law of elections*) A slip of paper bearing the names of the offices to be filled at the particular election and the names of the candidates for whom the elector desires to vote. A ballot ticket is folded in such a manner that nothing written or printed thereon can be seen. A casting of ballots, a vote by ballot, also, the whole number of votes cast or recorded

Ballot is a method of secret voting by means of small balls, or of printed or written ballots, which are deposited in an urn or a box called a ballot box. In the former case, each person who is entitled to vote, having the choice of two balls, one white and one black, places a white ball in the box if he is in favour of the resolution proposed, as the admission of a person to membership in a club, or a blackball if he is opposed to it Hence to blackball a person is to vote against his election In the latter case, the ballots or voting-papers are so folded as to prevent the voter's preference from being disclosed, and are usually put in the ballot box or handed to an authorised officer to be deposited in the box in the voter's presence The ballot is now employed in all popular elections in every country—United States, the United Kingdom, the British Colonies, India and in the national or parliamentary election in Germany, France, Belgium, Italy and most other countries of Continental Europe

Ballot-box A case or box made of wood for receiving ballots

Baluta, Buloota (*Mar*), or as the persons so named are usually spoken of collectively, Bara-Balute The twelve Balutas, from their being twelve in number, or according to some, from the amount set apart for them being divided into twelve parts (*Wilson Gloss*)

Baluta signifies a village officer or servant The popular enumeration is twelve, but the whole number, by including three who may be regarded as the heads of the village, and the twelve inferior classes, or Alute, extends to twenty-seven The actual number, however, varies in different parts of India, as do the respective appellations there is less variety, although some, in the duties

Baluttar (*Karn*) Payments made by way of gift to temples, etc, for certain purposes (*Sundaram Iyer's Mal Law*)

Baluttaram (*Karn*) Land in Kanara with which temples were endowed, but remaining in the hands of the original proprietors

Ba nami [*See* Benami] (P *ba=in, nam=the name*) Transactions in sale of land, etc, designed to conceal the real owner, wherein one person's name appears in deed, but secretly in trust for another Often incorrectly written benami, which might be mistaken for be (*without* a name), and destroying the meaning (*Bad Pow. t* 640 *note*)

Ban, Bans (*In old English law*) A proclamation; a public notice; the announcement of an intended marriage. (*Cowell.*) The previous proclamation in

Ban or bans

church necessary to the validity of a marriage not authorised by license. (*Tomlins Law Dic*) An ex-communication, a curse, publicly pronounced.

Ban or bans is a proclamation or public notice any public summons, or edict, whereby a thing is commanded or forbidden The word bans, in its common acceptation, is used for the publishing of matrimonial contracts, which is done in the church before marriage, to the end that if any man can speak against the intention of the parties, either in respect of kindred, or for other just cause, they may take their exception in time, before the marriage is consummated (*Tomlin's Law Dic*)

Banc or Banco Sitting in The sittings held at Westminster before the Judicature Acts came into force, by the Judges of the King's or Queen's Bench, the Common Pleas and the Exchequer for determining questions of law, were known as sittings in banc or in banco When sitting at Nisi Prius, or on circuit, they dealt with questions of fact The business of the Courts in banc was transferred by S 41 of the Judicature Act, 1873 to the Divisional Courts and most of it again transferred to the single judge by S 17 of the Appellate Jurisdiction Act, 1876 (*Byrne*)

Band A company of persons united in a common design—especially a body of armed men

BAND, COMPANY, CREW, GANG All these terms denote a small association for a particular object a *band* is an association where men are bound together by some strong obligation, whether taken in a good or bad sense, as a *band* of soldiers, a *band* of robbers A *company* marks an association for convenience without any particular obligation as a *company* of travellers, a *company* of strolling players *Crew* marks an association collected together by some external power, or by coincidence of plan and motive in the former case it is used for a ship's *crew*, in the latter and bad sense of the word it is employed for any number of evil-minded persons met together from different quarters, and co-operating for some bad purpose. *Gang* is used in a bad sense for an association of thieves, murderers, and depredators in general, or in a technical sense for those who work together

Band or Bund behari (*H*) Statement of the amount of each share of the money instalment of the revenue assessed on a village (*Wil Gloss* 57.)

Banda (*H*) A bondman, a slave, an hereditary bondman descended from a female slave

BANDA, a hamlet, outlying parts of a village (Pj. frontier) (*Bad Pow. ii* 648)

Bandhara (Bo) A dam for irrigation purposes (*Bad Pow iii* 241)

Bandhava (*S.*) A kinsman in general. A cognate kinsman (*Wil. Gloss* 59)

Bandhiya (*H.*) (*C P*), An embankment (*Bad. Pow ii.* 371)

Bandhuvallus. The word 'Bandhuvallus' used in documents, in its popular signification applies as well to connections of the wife as of the husband. 17 M. L.J. 186=2 M.L T 340.

Bandit. An outlaw, a man banned, or put under a ban; a lawless or desperate fellow; a brigand; a robber, especially, one of an organised band of lawless marauders.

Bangi.

Banditti A band or company of bandits.

Band-o-bast, Bund-o-bust, or sometimes inverted as *Bast-o-band* (*H* Beng Mar.) Agreement, settlement, bargain, adjustment, arrangement Settlement of revenue to be paid by the Zamindar, renter, or farmer to the Government, or by the tenant to the Zamindar

Band-o-bast dawami (*H*) (from A Perpetuity) perpetual or permanent settlement

Band-o-bast miadi (*H*) Temporary settlement, one for a prescribed time (*Wil Gloss*)

Band-o-bast-i-mulk (*H.*) The sum total of the revenue of a kingdom or province as settled and engaged for

Band-o-bast-i-parwana (*H*) Patent or deed of settlement A warrant given by the Government to the person with whom a revenue settlement had been agreed upon, empowering him to make the collections from the cultivators or landholders.

Band-o-bast-i-sanad (*H.*) Warrant or patent of settlement

Band-o-bast sarsari. (*H*) Summary and temporary settlement

Band-o-bast-i-Sarrishtadar (*P*) A revenue officer attached to some of the Government offices in Bengal to assist in making and revising revenue settlements, and to keep and record all documents relating to them (*Wil Gloss*)

Bandhu (*S*) A relation, a kinsman in general. In law, a cognate kinsman in a remote degree 54 All, 698=1932 A L J 533=1932 All, 417 (F.B).

The term "bandhu" is defined in the Mitakshara (Ch II, S 5, Verse 3) as a "binna gotra sapinda," *i e.* one sprung from a different family and connected by common corporeal particles, or by consanguinity. 22 C. 339

Among bandhus, *pitribandhus* are entitled to preference in matter of inheritance over *matribandhus* Among pitribandhus a male bandhu is entitled to preference over a female bandhu even though the latter is nearer in degree 47 M L J 401=48 Bom. 569=51 I A 368=1924 P C 209 (P C).

Bandudatta (*S*) means what is given by the father, mother, or their relations and the like.

Bane (*Coorg*) Holdings of woodland attached to rice-fields, as an appurtenance to supply grass, woodland branches to yield ash-manure. (*Bad Pow. iii.* 470)

Bangali (Pangali) (*Tam*) A shareholder of village lands under a tenure in Tinnevelly by the terms of which the fields are divided by lot every six years.

Bangar Guadim. Land which has remained unsown for eight successive harvests. (Land Revenue Assessment Rules.) [*See* Banjar.]

Bangi (*Tam*) A species of village tenure in Tinnevelly by which the fields are divided once in every six years among the villagers by lot.

Bangsa

Bangsa. The word '*Bangsa*' as used in a Hindu will means family and not merely lineal descendants. 37 C.W N 181=60 C 538=144 I.C. 894=1933 C 519

Banian *See* "Baniya".

Banik. Bunik. (*H*) A merchant, a trader In Bengal it most commonly denotes a money-changer, or banker. (*Wil. Gloss*)

Banishment A punishment inflicted upon criminals, by compelling them to quit the country for a specified period of time, or for life, transportation or exile by way of punishment for crime expulsion or deportation by the political authority on the ground of expediency The act of banishing or compelling a citizen to leave his country or place of residence by political or judicial authority

Banishment and Exilement are synonyms, and import a compulsory loss of one's country (*Co Litt 133a*)

To BANISH, EXILE, EXPEL. The idea of exclusion, or of a coercive removal from a place, is common to these terms · *banishment* includes the removal from any place, or the prohibition of access to any place, where one has been or whither one is in the habit of going, *exile* signifies the removal from one's home to *exile*, therefore, is to *banish*, but to *banish* is not always to *exile* the Tarquins were banished from Rome, Coriolanus was exiled, *Banishment* follows from a decree of justice, *exile* either by the necessity of circumstances or an order of authority *banishment* is a disgraceful punishment inflicted by tribunals upon delinquents, *exile* is a disgrace incurred without dishonour *exile* removes us from our country, *banishment* drives us from it ignominiously. it is the custom in Russia to *banish* offenders to Siberia; Ovid was *exiled* by an order of Augustus *Banishment* is an action, a compulsory exercise of power over another, which must be submitted to, *exile* is a state into which we may go voluntarily many Romans chose to go into *exile* rather than await the judgment of the people, by whom they might have been *banished*. *Banishment* and *expulsion* both mark disgraceful and coercive exclusion, but *banishment* is authoritative, it is a public act of government *expulsion* is simply coercive, it is the act of a private individual or a small community *Banishment* always supposes a removal to a distant spot, to another land; *expulsion* never reaches beyond a particular house or society, *expulsion* from the university, or any public school, is the necessary consequence of discovering a refractory temper, or a propensity to insubordination.

Baniya. The name of a class of people in the Punjab, a money-lender on usurious terms.

Banjar or Bunjar. Waste or fallow land

Banjar is a generic term which means village waste land and includes both *pahad* as well as *sudpi* jungle. Land may be either occupied or unoccupied Unoccupied land may or may not be *banjar* Though unoccupied land covers waste-land, all unoccupied land is not waste land The unoccupied land is divided into 7 sub-heads of which only 4 constitute *banjar* or village waste Occupied land is land belonging to definite persons in the sense that it is or has been in their actual physical occupation. The rest of the area is the village area which does not

Bank

belong to specific persons, though owned by the malguzars Of this area certain portions form the village waste, and that is, what comprises the *banjar*. *Banjar*, however, does not include land, which, having been under cultivation, has been allowed to lie fallow either for a period under or over three years 19 N L. J. 112

Banjara (*H*) The name of a class of traders who travel over the country with numerous pack-bullocks carrying grain, salt, etc, from market to market Some are Hindus and some are Musalmans.

Banjar Jadid Land again brought into cultivation after lying fallow for some years (*Settlement Manual, 267*) Land which has remained uncultivated from successive harvests (*Land Revenue Assessment Rules, 1929*)

Banjar-kandayam (*Karn*) Tax in Mysore levied on waste lands.

Banjar kadim or Banjar quadim Land left fallow from a remote period Culturable waste (See *Settlement Manual, Paragraph, 267*)

Banjar kami, Abatement of revenue on account of land left uncultivated (*South of India*)

Banjar-kharij-i-jama. (*H*) Waste lands excluded from the rental In Cuttack, lands which, being waste, and therefore not yielding revenue, were sold by the District and village officers clandestinely as rent-free lands They were subsequently subjected to a light quit-rent (*Wil Gloss 60*)

Bank. An elevation or mound of earth, usually applied in this sense to the raised earth bordering the sides of a water-course (as) the bank of a river or stream.

The bank of a canal belonging to the Government whether or not accessible to the public is not a public place (3 Lah L J 53)

Bank (in commercial law) signifies a place where a great sum of money is deposited, returned by exchange, or otherwise disposed of to profit (*Tomlin's Law Dic.*)

Bank is an association or corporation whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, called 'bank-notes' *Rapalje & L L Dict*

The term is also applied to the house or place where such business is carried on. Kinds of Banks Banks are of three kinds· *Banks of deposit*, which include *savings-banks*, and all others which receive money on deposit; *banks of discount*, being those which loan money on collateral or by means of discounts of commercial paper, and *banks of circulation*, which issue bank-notes payable to bearer But the same bank generally performs all these several operations. (*Ame. Cyc*)

Bank defined, 50, V c. 11, S. 9, Act 11, 1876, S. 3; Act 18, 1891, S. 2 (2), Act 2, 1934, S. 2.

BANK (*verb.*) To have an account with a banker, deposit money in a bank; transact business with a bank or as a bank; exercise the trade or profession of a banker

"I *bank* with one of my sons' fathers-in-law and the other banks with me." (*Thackeray.*)

Bank-Account.

Bank-Account A sum of money or fund placed with a bank or banker, on deposit, by a merchant, trader or other customer, and subject to be drawn out on the latter's check.

Bank-Bill A promissory note issued by a bank, payable to the bearer on demand, and designed to circulate as money. It is usually negotiable

Bank-Book A book kept by a customer of a bank, showing the state of his account, therewith.

Bank Charges means charges made by a bank in respect of bills and notes presented to it This phrase, in an action on a Bill of exchange would include "Expenses of Noting" (*Dando* v *Boden*, 1893, 1 Q B. 318)

Bank Credit A credit by which, on proper security given to a bank, a person is allowed to draw amounts from the bank to a certain extent agreed upon

Bank holiday. A secular day on which the law exempts the parties to negotiable paper from the obligation of presentment, payment, etc, and consequently allows banks to be closed *See* Neg Ins Act, S 25.) Its effect on such paper differs from that of Sunday in the fact that the laws establishing such holidays usually, if not always, provide that paper falling due on such day is payable on the next following secular day while paper entitled by commercial usage to days of grace, and falling due on Sunday, is often made payable on Saturday

Bank-Note A promissory note issued by a bank or authorised banker, payable to bearer on demand, and intended to circulate as money

CHEQUE DISTINGUISHED. A cheque differs materially from a bank note The latter is issued as currency under legal restrictions which give to it the character of money The cheque is not currency, though it may pass current from hand to hand (*Dike* v *Drexel*, 11 *App. Dm*, 77)

Bank-note paper Paper used for bank-notes and Government bonds It is made in such a way that it is very difficult to imitate it

Bank of Bombay, Defined in XLVII of 1920, S. 2

Bank of Bengal. Defined in XLVII of 1920, S 2

Bank of Madras. Defined in Act XLVII of 1920, S. 2.

Bank note press. A machine for pressing bank-notes and arranging them in packages.

Bank of the sea. "The Bank of the sea, is the utmost border of a dry land" *i.e.*, it begins where the land side of the shore ceases

A Sea Wall differs from a bank, in that it is artificial only, and also as to its ownership, for "the ownership and property of a Wall doth appertain to him who is bound to repair the same, though his ground lie not next thereto, but of a Bank, the property and ownership is his whose grounds adjoin thereto." (*Callis* 74)

Bank rate, the rate at which the bank grants loans or discounts bills, and declared at each weekly meeting of the directors, mainly influenced by demand.

Bank Stock. A bequest of "all My Bank Stock," would pass the consols of the testator, he having

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nothing else that would answer the description. *Drake* v. *Martin*, 26 L J Ch 786

Bank of deposit, a bank receiving money at a specified rate of interest, deposits being only withdrawable after a prescribed previous notice has been given The bank, being thus guarded against emergency calls, is able to invest the moneys more favourably than ordinary banks, and to pay the higher interest.

Bank of issue, a bank authorised to issue its own notes payable to bearer on demand

Bankable Receivable at a Bank, receivable as the equivalent of cash at the bank, receivable for discount by a bank Such commercial paper as notes, cheques, bank-bills, drafts, etc as is considered worthy of discount by the bank to which it is offered is termed "bankable"

Banker: Bank "Bank", and "banker" in the Banker's Book Evidence Act mean—

any company carrying on the business of bankers;

any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

any post office savings bank or money order office

Act XVIII of 1891 (Bankers' Book Evidence), S. 2 See also Act I of 1879, S 3

"Banker" in the Neg Ins Act includes also person or a corporation or company acting as bankers.

[Act XXVI of 1881 (Negotiable Instruments), S. 3

BANKERS now are those private persons in whose hands money is deposited and lodged for safety, to be drawn out again as the owners have occasion for it (*Tomlins Law Dic*)

A Nattukottai Chetty is a 'banker' and is therefore entitled to banker's lien on goods bailed to him. (43 Mad 747=59 I C 475=39 M L J. 135)

Banker and Moneybroker *Banker* includes business of a money-broker Without considering the question as to how far a banker and a money-broker are the same in the common parlance and business usages there is at least no doubt that the term "banker" includes all the business of a money-changer" *Hinkley* v *Belleville*, 43 Ill 183.

Banker's Books, include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank Act 16 of 1891 (Bankers Books Evidence), S. 2, Cl. 3.

Bankers' Cheques, a cheque drawn by one bank on another

Banker's note A promissory note given by a private banker or banking institution, not incorporated, but in all other respects resembling a Bank Note.

Banki. A Government estate in Orissa. (*Bad.. Pow. i.* 474 *note*; 648 *note*)

Banking. Banking is defined as "the business or employment of a banker, the business of establishing a common fund for lending money, discounting notes, issuing bills, receiving deposits, collecting the money or notes deposited, negotiating bills of exchange" Pertaining to or conducted by a bank; as banking operations.

Banking business.

The expression "Banking" is wide enough to embrace every transaction coming within the legitimate business of a banker, *e.g*, lending money on security of goods or documents (*Tennant* v. *Union Bank of Canada*, 1894, A C 31)

Banking business "The business of banking, as defined by law and custom, consists in the issue of notes intended to circulate as money where the banks are banks of issue, in receiving deposits payable on demand, in discounting commercial paper, making loans of money on collateral security, buying and selling bills of exchange, negotiating loans, and dealing in negotiable securities issued by the Government, State and national, municipal and other corporations" (Cyc)

Banking Company. Defined in VII of 1913, S. 277-F.

Banking Hours Banking hours are those hours in the day when the bank is open to do its ordinary business over the counter It does not include the time after the bank closes to public custom or business, but which is devoted by the employees or officials to settling up the affairs of the day, etc (*Marshall* v *American Exp Co*, 73 Am Dec. 381.)

Bankrupt A person who has committed an act of bankruptcy A trader, who secretes himself, or does certain other acts, tending to defraud his creditors (2 Comm 285, 471) (*Cowel, Tomlins Law Dic*) An insolvent person whose property is administered for, and distributed among his creditors in accordance with the provisions of a system of laws called bankrupt, bankruptcy or insolvent laws

"'Bankrupt,' includes any person whose estate is vested in a trustee or Assignee under the law for the time being in force relating to Bankruptcy"

A "*bankrupt*" includes a person against whom an involuntary petition in Bankruptcy, or an application to set a composition aside, or to revoke a discharge, has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt

Bankrupt and Insolvent The leading distinction between a bankrupt law and an insolvent law, in the proper technical sense of the words, consists in the character of the persons upon whom it is designed to operate, the former contemplating as its objects, traders of a certain description, the latter insolvents in general, or persons unable to pay their debts

Bankrupt Debtor, distinguished A "bankrupt" is a debtor and something more He is a debtor who has committed an act of bankruptcy declared to be such by the bankruptcy law A debtor may or may not be a bankrupt (*United States* v *Pusy* (*U S*), 27 Fed Cas. 631, 632.)

Bankrupt Law. A law relating to bankrupts and the procedure against them in the courts. A law providing a remedy for the creditors of a bankrupt and for the relief and restitution of the bankrupt himself.

Bankruptcy The commission of an Act of Bankruptcy followed by an adjudication order. (*Ex P. Attwater*, 5 Ch D 30), see also 57-8 Vic c. 60 S. 742.) The state or condition of one who is a bankrupt; amenability to the bankrupt laws.

The problem of insolvency is one which has presented itself in all countries and all ages. "In early

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communities the strict law of debtor and creditor is left to take its course, and harsh as that solution is, it had at least the merit of maintaining a high standard of integrity. The possibility of getting rid of debts by bankruptcy, or a composition without paying them in full, undoubtedly relaxes a debtor's moral fibre Hence, at the time of the French Revolution, the National Convention passed a resolution that any man who contracted a debt should never be free from liability to pay it, a resolution commendable as a counsel of perfection, but as legislation for the France of the eighteenth century, an anachronism The principle which the resolution of the French convention embodied has been, however, the principle of most, if not all primitive communities a man had to pay his debts to the uttermost farthing, and if he could not pay with his property, he had to pay with his person, which, in societies where slavery prevailed, was an asset of some value Nothing, as Sir Henry Maine observes, strikes the scholar and jurist more than this severity of ancient systems of law towards the debtor, and the extravagant powers which they lodge in the creditor It brought many early States to the brink of ruin In Athens a revolution was only averted by Solon's Seisactheia and the abolition of enslavement for debt At Rome, after long internecine struggles, the law at last permitted a citizen to save his liberty by pledging his oath that he was solvent, but for the insolvent debtor there was still no mercy—such was the sanctity of contract in Roman eyes It was not until the time of Julius Caesar that a debtor was entitled to his discharge on formally giving up everything to his creditors-*cessio bonorum* This *cessio bonorum* marks the commencement of the true principle of bankruptcy

The early Teutonic codes exhibit the same Draconian severity as those of Greece and Rome The insolvent debtor falls under the power of his creditor, and is subject to personal fetters and chastisement, and later on, among the Germans, the *wtepeow* might often be seen working out by his labours a debt that was due to his master It is not a little remarkable, as Sir Frederick Pollock and Professor Maitland observe, apropos of the above (History of English Law), that our common law knew no process whereby a man could pledge his body or liberty for payment of a debt It may be interesting to observe how in England imprisonment for debt came about. No right of arrest on a judgment in debt is given by the express words of any statute, but the law gave in certain cases a right to arrest a delinquent or defaulter for the purpose of securing his appearance at trial, where, for instance, he was flying the realm, and it came to be held, by some strange mediaeval logic, that wherever the law gave this right of arrest on mesne process a *capacias ad satisfaciendum* would lie upon the judgment itself (1795) 3 Salk 286 Thus began the long and dreary annals of bailiffs, sponging houses, the Marshalsea, and the Fleet

The ordinary law of debtor and creditor, though it may suffice for a primitive state of society, soon shows itself inadequate either to meet fraud or to secure the equitable distribution of an insolvent debtor's assets It would, if uncontrolled, result in such assets being scrambled for by creditors, under writes of execution. Accordingly some system of

Bankruptcy and Insolvency.

administration becomes, at a certain stage in the history of all civilized States, a necessity for traders in the first instance, afterwards for debtors generally, and, in obedience to this necessity, we find in our own country, running side by side with the ordinary law of debtor and creditor, a long series of bankruptcy enactments There have been a very large number of Bankruptcy Acts in England during the last three centuries, each Act adding its stone to the building of the finished fabric The first rude foundation of bankruptcy law is laid by the Statute 34 and 35 Hen viii, c 4, "Against such as do make Bankrupt" (*Ency of the Laws of England*)

Bankruptcy and Insolvency. As to the distinction between bankruptcy and insolvency it may be said that insolvent laws operate at the instance of an imprisoned debtor, bankrupt laws, at the instance of a creditor But the line of partition between bankrupt and insolvent laws is not so distinctly marked as to define what belongs exclusively to the one and not to the other class of laws

Bankruptcy Courts Courts for the administration of the bankrupt laws or having jurisdiction in Insolvency matters

Bankruptcy laws The statutory provisions under which the property of an insolvent may be distributed among his creditors

Bankruptcy proceedings. The term includes all proceedings in court having jurisdiction in bankruptcy, founded on a petition in bankruptcy

Bankruptcy, Voluntary and Involuntary. Involuntary bankruptcy is bankruptcy adjudged on the petition of creditors, showing cause why the bankrupt should not be allowed to continue in possession of his assets —Voluntary bankruptcy is bankruptcy adjudged on the petition of the debtor, indicating his desire to surrender his assets and be discharged

N B—For the terms used in connection with Bankruptcy, *See*

"adjudication"
"annulment order"
"creditor", secured and unsecured
"Fraudulent preference"
Receiver—Interim, official
"Receiving order"
"Relation back"
"Reputed ownership"

ACTS OF BANKRUPTCY.—The legislature had, in the Bankruptcy Acts defined fully and precisely what acts or defaults by a debtor, amenable, to the bankruptcy laws will render him liable to be made a bankrupt, that is, to have his property taken into the possession of the Court, and equitably distributed *pro rata* among his just creditors These acts and defaults which embody, the results of a long experience, are defined by the Insolvency Act, and are commonly known as "acts of bankruptcy". They are not confined to acts or defaults which are *indicia* of insolvency, they embrace acts and defaults which evince (for instance) an intention on the part of the debtor to deprive his creditors of their remedy against his person, as, by departing out of the realm or evince an intention on the part of the debtor to deprive his creditors of their remedy against his

Bap-ki-jaidad

estate, as by making a fraudulent conveyance of his property Any of these, if unexplained, evidences a condition of things which, in the opinion of the legislature entitled a creditor, with a sufficient interest, to apply to the Court for protection These statutory acts of bankruptcy—and these only, for the category is exhaustive—are the basis of all proceedings in bankruptcy (*See* Prov Ins Act; Pres Towns Ins Act, *Ency of the Laws of England*)

ADJUDICATION IN BANKRUPTCY —The judgment or decree of a court having jurisdiction, that a person against whom a petition in bankruptcy has been filed, or who has filed his voluntary petition be ordered and adjudged to be a bankrupt

SMALL BANKRUPTCIES —One salutary feature of the modern Bankruptcy Act is that of summary administration in the case of small bankruptcies The object in such a case is to save expense and simplify procedure, but there is no relaxation of the disciplinary jurisdiction of the Court. (*See* Prov Ins Act V of 1920, S 74, Pres Towns Ins Act, S 106, Eng. Bankruptcy Act, S 121)

Banner The piece of cloth, attached to the upper part of a pole or staff, which in former times served as the standard of a sovereign, lord or knight, after which he and his followers marched to war, and which served as a rallying point in battle

Banns. The proclamation of intended marriage in order that those who know of any impediment thereto may state it to the proper authorities (See *Banns of Matrimony*)

BANNS (TO FORBID THE BANNS) To make formal objection to an intended marriage

Banns of Matrimony. A public announcement of an intended marriage, required to be made in a church or chapel The object is to afford an opportunity for any person to interpose an objection if he knows of any impediment or other just cause why the marriage should not take place

Bansa. The word '*bansa*' as used in a trust deed means family and not lineal descendants (*Prosad Das Pal* v. *Jagannath Pal*, 37 C W N 181)

Ban-Salami (*H*) A fee formerly exacted by the Zemindar from the ryot for permission to gather the juice of the date tree for the purpose of making a fermented liquor (*Wil Gloss* 57)

Banya, Baniya, corruptly, Banian, Banyan, (*H.*) A Hindu trader, shopkeeper, or money-changer. In Bengal it is commonly applied to the native cashier or man of business in the service of Europeans. In the West of India it ordinarily denotes Hindu merchants settled either as agents or principals at the chief places of traffic in the Persian Gulf or Red Sea. (*Wil Gloss* 61) At Madras the same description of person is called Dubash, a corruption of Dwibashi, one who can speak two languages an interpreter (*Fifth Report*)

Bap-ki-jaidad The ordinary meaning of the words "*bap-ki-jaidad*" is property both personal and ancestral in the hands of the father; for ancestral property is *qua* the son "*bap-ki-jaidad*" because he inherits through the father though not necessarily from him. 112 I.C. 668=29 P.L.R 472.

Baptism.

Baptism. A sacrament or ordinance of the Christian church, consisting in the immersion of the person in water, or in the application of water on the person by sprinkling, by an authorized administrator, "In the name of the Father, and of the Son, and of the Holy Ghost." (*Century Dic*)

Baptist. One who administers baptism.

Baptistry. A building or a portion of a building in which baptism is administered.

Bar. A partition or railing running across a court-room intended to separate the general public from the space occupied by the judges, counsel, jury, and others concerned in the trial of a cause The term also designates a particular part of the court-room, for example the place where prisoners stand at their trial, whence the expression "prisoner at the bar." It further denotes the presence actual or constructive of the court The "case at bar" is the case now before the court and under its consideration, the case being tried or argued. "At the bar of the court" means "in open court". The practising members of the legal profession in a given community, all those who have the right to plead in a court are called the bar. The whole body of attorneys and counsellors or the members of the legal profession, collectively, are figuratively called the "bar" from the place which they usually occupy in court They are thus distinguished from the "bench," which term denotes the whole body of judges

"Some at the *bar* with subtlety defend,

Or on the *Bench* the knotty laws untie" (*Dryden*)

It further means that which defeats annuls, cuts off, or puts an end to. Thus, a provision 'in bar of dower" is one which has the effect of defeating or cutting off the dower-rights *In pleading*, it denoted a special plea, constituting a sufficient answer to an action at law, special "plea in bar."

Originally the bar or rail (often in local Courts in old times a mere pole) which in Superior Courts of Record separated the members and officers of the Court from the criminals brought before it, and from the suitors, their advocates, and the general public Such "bars" to this day exist in the House of Parliament, and are there still used for similar purposes to the above The bar in the House of Commons yet remains literally a bar, although concealed from view when not in use. Bars, in a somewhat modified form, will be found, on close examination, in all the Superior Courts of Justice, where there is a distinct division of each Court into two parts, the judges, the King's Counsel, those holding patents of precedence, and the officers of the Court (amongst them solicitors) sitting upon the innerside of this division, while the public remain outside it as in ancient times It has long been the practice to allow such parties in civil suits as appear in person, to stand on the floor within the bar

Advocates, as representing the suitor or criminal whose case the Court is trying, used always to stand at the bar, by the client's side, and there plead his cause. From this last fact the phrase "the bar" has obtained a secondary signification, and is used to describe those who practise the profession of advocacy From the same fact, too, we get the word "barrister" (*Ency. of the Laws of England.*)

Barat Burat

Bar (*Figuratively*). Any tribunal as, the bar of public opinion.

Bar (*in Excise law.*) That portion of a tavern, inn, coffee-house or the like, where liquors etc. are set out, the counter over which articles are served in such an establishment

Bar (*as meaning a barrier*) At the entrance to a city, or between the city proper and its suburbs; hence, the gate at which the barrier was placed in former times, as Temple Bar in London, now removed.

Bar (*Punjab*) Desert or forest land, especially the central table land of the Chaj Jet doab.

The land of highest level (usually occupied by dry jungle and *prairie*, in the centre of a 'doab' or tract between two rivers) (*Bad Pow*)

Bar Associations Associations of lawyers united for the purpose of furthering the interests of their profession (*Anderson L Dict*)

Bar, Plea in Under the old common-law system of pleading, pleas were divided into two main classes (1) *Dilatory pleas*, including pleas in abatement, and pleas as to the jurisdiction (Arch Cr Pl 23rd. ed, 162, Chit Prec Pl 7th ed, 1868, pp 280-287, see also (1893) App. Cas 603) and (2) *Pleas in bar* or peremptory pleas, averring facts which, if supported by evidence, bar the remedy, and not merely defeat, suspend or delay the particular proceeding in which it is claimed (Arch. Cr Pl 23rd Ed, 168)

Bar Room. A room in a public house with a bar where liquors or refreshments are served

Bara (*Karn*) Famine

Bara-balute (or bulauti?), the 'twelve' village servants and officials (Central and W. India), see (*Bad Pow* i 150, iii 88).

Barabar The word 'Barabar' means "all along" or "always" [*Kartik Chandra Sarkar* v *Kartik Chandra Dey*, 3 B L R (A C) 166=11 W.R 522.]

Baragala (*Karn.*) A season of famine.

Barai Khur-o-Posh (*P.*) Maintenance. Allowance for food and clothing. (*Macnaughten Mah. Law*)

Barakzai The name of the Afghan tribe to which the family of Shir Ali, the former ruler of Afghanistan, belonged.

Baramahal (now the Salem Dt.) the 'twelve revenue-estates', acquired by Madras. (See *Bad. Pow. iii.* 4)

Barani (*H.*) A term applied to land which is watered by rain, not by irrigation (See *Land Revenue Assessment Rules*, 1929.)

Barar, Burar (*H*) Tax in general, as, Hal-barar, a tax on ploughs. Land-tax or rent. Apportionment of revenue payments according to agreement with the village community. (*Wil. Gloss.*)

Barat, Burat, corruptly, Beraut, (*H.*) A record, a register, a diploma, a warrant, a commission, an assignment or order on the revenue. In the latter it also implies a peremptory demand, or dunning for payment. (*Wil. Gloss.* 63.)

Baratriam.

Baratriam committit qui propter pecuniam justitiam baractat He is guilty of barratry who for money sells justice (*Bell*)

Barawarda (*H.*) An estimate, a calculation. What is summed up. In the West of India, a monthly statement sent to the Government of the revenue and village establishments of the sums payable to each person, and the increase or decrease as compared with preceding months A statement of district disbursement (*Wil Gloss*)

Barbarian. A man in his rude or savage state, and uncivilized person (figuratively) a cruel or brutal person devoid of pity, a savage

"**Barbarous**". "Cruel and barbarous treatment, and indignities to the person endangering life or health," within the meaning of the divorce law, must consist of wilful and malicious acts or they would not come within the description of the terms "Cruel" and "barbarous" are words implying a merciless and savage disposition, taking pleasure in suffering, and without pity, while "indignities" involves an insulting and contemptuous purpose. The evil and malicious will must be present to constitute an act cruel or barbarous, and an insulting intent to make it an indignity.

Barbasti. (*Oudh.*) A small quit-rent levied on certain (otherwise free) tenures. (*Bad Pow. ii* 238 *note*)

Barbed wire. *Use of in fencing.*—An occupier of land may use barbed wire fencing on his own land and he will not be liable to any one who is injured thereby unless certain conditions obtain with respect to adjoining lands Clearly he is not liable to a mere trespasser when the fence is entirely on his own, land His liability to an adjoining occupier depends mainly in his liability for fencing, and if in discharge of such obligation he puts up a dangerous fence, he will be liable for all the consequences (even though the fence is on his own land) [Cf *Bennett* v. *Blackmore*, (1892) 90 L T. Newsp. 395.]

A barbed wire fence adjoining a public foot-path or other highway may be so dangerous as to a public nuisance. Any member of the public who sustains particular damage without negligence has a right of action [as to evidence of negligence when the nuisance is proved, see *Fenna* v. *Clare*, (1895) 1 Q.B 199, Ency of the Laws of England.]

Bardasht. (*H.*) Stores, supplies, also the furnishing of porters and provisions to troops or travellers.

Bare, naked A *bare* sufficiency is that which scarcely suffices, the *naked* truth is that which has nothing about it to intercept the view of it from the mind.

"**Bare trustee**" means, "a trustee without any beneficial interest". A "Bare Trustee" is a trustee who has no duty to perform, and who, on request, would be compellable to convey or transfer to his beneficiary. [*Christie* v. *Ovington*, 1 Ch. D. 279. See also *Morgan* v. *Sevansea*, (1878) 9 Ch. D. 582.]

Barga, (*Beng.*) An agreement by which the cultivator engages to pay the landlord half the produce, the latter providing half the seed, and paying the whole revenue. (*Wil. Gloss.*)

Bargir.

Bargain Mutual agreement, an agreement between persons concerning the loan, exchange or sale of property; a contract or agreement between two parties, the one to sell goods or lands, and the other to buy them. "A 'Bargain' is only another name for a 'Contract'" (*per* Hawkins, J, in delivering judgment of the court in *Crossman* v. *The Queen*, 56 L.J. Q B 245) The term is also used to denote the act of discussing the terms of a proposed agreement; bargaining

> "I'll give thrice so much land
> To any well-deserving friend;
> But in the way of *bargain*, mark ye me,
> I'll cavil on the ninth part of a hair".
> —(*Shak* 1 *Henry* IV., iii. 1.)

The outcome of an agreement as regards one of the parties, that which is acquired by bargaining; the thing purchased or stipulated for; as, look at my bargain, a bad bargain, "a losing bargain" (*Junius, Letters*)

CATCHING BARGAIN. A bargain by which money is loaned, at an extortionate or extravagant rate, to an heir or any one who has an estate in reversion or expectancy, to be repaid on the vesting of his interest, or a similar unconscionable bargain with such person for the purchase outright of his expectancy.

DUTCH OR WET BARGAIN A bargain sealed by the parties drinking over it.

IN THE BARGAIN. Over and above what is stipulated, moreover, besides.

TO BEAT A BARGAIN, is to bargain, haggle.

TO BUY AT A BARGAIN, is to buy cheaply.

TO BUY THE BARGAIN DEAR is to pay dearly for a thing.

TO MAKE THE BEST OF A BAD BARGAIN is to do the best one can in untoward circumstances.

"I am sorry for thy misfortune, however we must make the best of a bad bargain" (*Arbuthnot, Hist. of John Bull*)

TO STRIKE A BARGAIN is to complete or ratify a bargain or an agreement This was originally done by striking or shaking of hands.

Bargain and sale The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. (*Shep. Touch. by Preston* 221)

"Bargain and sale, is when a recompense is given by both the parties to the bargain: as if one bargain and sell his land to another for money, here the land is a recompense to him for the money, and the money is a recompense to the other for the land". (*Blackstone* b 124.)

Bargainee The grantee in a deed of bargain and sale

Bargainer. One who bargains or stipulates; the party who stipulates to sell and convey property to another by bargain and sale.

Bargait (*Ben Bihar*), A sub-tenant paying rent in kind (*Bad Pow. ii.* 605.)

Bargir. (*Persian*) A trooper whose horse is not his own but the State's.

Barha.

Barha The zone or belt of land furthest away from the village centre, and less accessible to manure (N W.P.). (*Bad. Pow* II. 57)

Barhi, Barhee (*H*) Interest in kind upon seed grain. (*Wil Gloss* 64)

Bari. (*Assam*) Land on each holding, used for house-site and garden (*Bad Pow* III. 400, 416.)

Bari-gandi (*Beng*) An extra cess formerly levied on the ryots in Bengal, abolished by the British Government (perhaps for irrigation)· (*Wil Gloss*)

Barike (*Coorg*) Grazing-ground. (See *Bad Pow* iii 471)

Bari wafat (*H.*) The fast of the prophet's death, observed by Sunnis on the 12th, and by Shiahs on the 28th Rabi-al-awal.

Bariz RENT A term used in Dindigul (and in South India generally) equivalent to Jumma (*Fifth report*) Account of the assessment of the land revenue on any estate. (*Wil. Gloss*)

Barjai is said to mean a grant of land rent-free by a zamindar to one of his retainers,and an enhancement of the rents of the other ryots so as to cover the loss arising from the grant (*Gladwin, Revenue Terms*), *Wil Gloss* 65)

Barkandaz (*H*) A match-lock man, an armed guard, a constable

Barkeeper One who has charge of the bar of inn or other place of public entertainment, a bar tender

Barmhotar, more correctly, Brahmottar (*H*) A grant of rent-free land to Brahmans for charitable or religious purposes (*Wil Gloss*)

Barn A barn is a covered building for securing productions of the earth It is defined by Webster to be "a covered building for securing grain, hay, flax, and other products of the earth"

Barnis. (*Marathi*) A clerk whose duty it is to enter the contents of a document in a register and notify his having done so by writing the word 'bar' (the origin of which is unknown) on the original

Bar-nisi. (*Mar.*) The making or registering of copies of public documents, and marking upon them the word 'Bar' (*Wil. Gloss* 65)

Baron A lord or nobleman; the most general title of nobility in England (1 *Bl Comm* 398, 399) In ancient records, the word baron includes all the nobility of England, because regularly, all noblemen were barons, though they had a higher dignity (*Tomlins Law Dic*) Also a title of the Judges or officers of the English Courts of Exchequer hence called Barons of the Exchequer, the president of the Court being called Chief Baron A husband as baron and feme, husband and wife.

Baron and Feme is the old legal term for husband and wife. (*Tomlins Law Dic.*)

Baronage. The whole body of British barons, formerly the nobility or peerage in general.

Baroness. The wife of a baron or (in a few cases in England) a lady holding a baronial title as a peeress in her own right.

Barratry.

Baronet An English name or title of dignity. It is created by letters patent, and descends to the male heir (*Spelman*)

Baronet is a hereditary dignity entitling the owner to the prefix "Sir" before his Christian name, created by patent, and giving to its holder precedence after the younger sons of barons The wife of a baronet is styled Lady, or in more formal document Dame The order of the baronetage was established by King James the First in 1611, under the following circumstances Money being needed for the support of an army in Ulster the king offered the title of baronet to all persons of good repute, being knights or esquires possessed of land worth £ 1,000 a year, provided that they were willing to pay the Exchequer £1,080 in three annual payments Baronets were created in Ulster by the same king in 1619 The order was introduced into Scotland in 1625 by King Charles the First, and was in its origin connected with a scheme for the colonisation of Nova Scotia, the earlier members of that order receiving charters of baronies in that country as one of the conditions of receiving their title (see *Green's Encylopaedia of Scotch Law, article "Baronet," Vol. II*, p. 33)

All baronets in England now created are baronets of the United Kingdom Some time ago a Home Office committee was appointed by the Crown to consider the position of the baronetage and its privileges Much dissatisfaction was felt by its members at the large number of open pretenders to the dignity, there being, it was said, nearly two hundred people who wrongfully styled themselves "Baronets" (See *Ency of the Laws of England*)

Barony The rank or dignity of a baron, the domain of a baron, the territory or lordship of a baron.

Barony, (baronia) is that honour and territory which give title to a baron, comprehending not only the fees and lands of temporal barons, but of bishops also who have two estates, one as they are spiritual persons, by reason of their spiritual revenues, the other grew from the bounty of our English kings, whereby they have baronies and lands added to their spiritual livings and preferments. (*Tomlins Law Dic*)

Barrator (and Barretor, Lat barrattator, Fr barrateur) A common mover of suits and quarrels, either in courts, or elsewhere in the country, that is himself never quiet, but at variance with one or other (*Tomlins Law Dic.*)

A common *barretor* is said to be the most dangerous oppressor in the law, for he oppresseth the innocent by colour of law, which was made to protect them from oppression (8 Rep 37, *Tomlins Law Dic*)

Barratrous. Fraudulent.

Barratry. The fraud or offence committed by a barrator (*See* Barrator) A vexatious and persistent inciting of others to law suits and litigation, a stirring up and maintaining of controversies and litigation This is a criminal offence at common law.

As a term of Law, it has four distinct meanings (1) In Ecclesiastical and Scots law, simony, (2) in civil and Scots Law, judicial corrup-

Barred.

tion (*see* 8 Co. Rep. 37); (3) at common law, or in pais "the offence of exciting or stirring up quarrels and suits" In connection with this sense the word barrator is used, (4) in the law merchant, certain forms of fraud and misconduct by masters and mariners [see *Austen* v *Castelyn*,(1541) 6 Seld Secy Publications 106] which come near to piracy (Ency of the Laws of England Pollock and Maitland, Hist Eng Law, Co Litt 368, Vin Abr 1748 s v Barratry, Hawk, P.C bk 1 v. 81, 2 Wms Saund 308, Stephen, dig Crim Law, 6th ed, art 156, and App iii., 3 Stephen, Hist Crim Law, 234, 240, 1 Russ on Crimes, 6th ed, p 489)

BARRATRY (In maritime law) An act committed by the master or mariners of a vessel, for some unlawful or fraudulent purpose, contrary to their duty to the owners, whereby the latter sustain injury

Barred Subject to hindrance or obstruction by a bar or barrier which if interposed, will prevent legal redress or recovery, as, when it is said that a claim or cause of action is "barred by the statute of limitations"

" 'BARRED' is a word which signifies legally a destruction for ever, or taking away for a time of the action of him that right hath" (Co Litt 372)

BARRED BY LIMITATION "Barred" is the word in general use to characterize the effect of the statute of limitations An action or a cause of action is commonly said to be "barred" by a statute

Barrel A measure of capacity, equal to thirty-six gallons.

Barrenness Sterility, incapacity, to propagate or bear children

Distinguished from "impotency" ' *'Barrenness'* is in no sense the synonym of 'impotency' " (Anonymous 89 Ala 291, 292, 7 So 100)

Barretor A barretor is a common mover and exciter, or maintainer of suits, quarrels or parts, either in courts or elsewhere in the country" (Co Litt 368) Jacob [See *Barrator*]

Barretry The offence of frequently exciting and stirring up suits and quarrels, either at law or otherwise (4 Bl Comm. 134, 4 Steph Comm 262)

Barrier (In mining law) is a wall of coal left between two mines

BARRISTER A person entitled to practise as an advocate or counsel in the Law Courts (*Sweet L Dict*) An advocate, one who has been called to the bar A counsellor learned in the law who pleads at the bar of the courts, and who is engaged in conducting the trial or argument of causes A counsellor or an advocate learned in the law, admitted to plead at the bar in protection and defence of clients called in full a barrister-at law In the English courts, there is a distinction between barristers and solicitors. (19 Am L Rev 677.)

Under the Indian High Courts Act, 1861, 24 and 25 V., c. 104, " 'Barrister,' includes, Barristers of England or Ireland, or members of the Faculty or Advocates in Scotland".

"BARRISTER" defined. Act X, 1897, s. 3 (4), Mad Act I, 1891, s. 3 (2)

Barrister and vakil Difference between as to receiving instructions and representing clients. (*See* 3 S.L.R 208=6 I.C. 851)

Base-fee

Bar-room. A room in a public house, hotel, restaurant, or other place of resort, containing a bar or counter, where liquors or other refreshments are served A room with a bar where liquors and refreshments are served, a place for the sale of intoxicating liquors by retail for consumption at the place of sale, a tavern, a drinking shop

Bar-shartı-zarurat The words *Bar-shartı-zarurat* as used in a Hindu will do not limit the legatee's power of alienation to cases of technical legal necessity Their ordinary meaning would be that the legatee could alienate, if she thought it necessary to do so (*Ram Saran* v *Ganga Devi* 9 Lah.L J 32= 109 I C 830=A I R 1927 Lah 888, 1 Lah. 415)

Bartan. A right of user

Barter To exchange one commodity for another (*Tomlins Law Dic*) Barter is exchange of wares for wares (*Termes de la Ley, Cowell*) Also the thing given in exchange

BARTER DIFFERS FROM SALE, in this—that in the latter transaction goods or property are always exchanged for money.

Barterer One who barters or traffics by exchanging commodities

Barwaik. (*Hindi*) A class of hereditary chaukidars

Base Fraudulently debased in value, spurious, false as base coin " They were compelled to accept base money in exchange for those commodities they were forced to sell" (*Goldsmith His Eng* v.)

Of illegitimate birth, born out of wedlock "Why bastard? wherefore base?" (*Shak Lear*, 2)

In old English law, not held or holding by honourable tenure as, a base estate, that is an estate held by services not honourable, or by villeinage Such a tenure is called *base tenure* and the tenant a *base tenant.*

BASE (*In Military law*) A tract of country protected by fortifications, strong by natural advantages, or for any other reason comparatively secure, from which, the operations of an army proceed, or from which supplies are obtained, called distinctively the *base of operations* or the *base of supply* Base, in military operations, is simply a secure starting point, or rather tract of country behind in which an army is in comparative safety, and in which the stores and reserves of men for the force is situated.

Base-born. Of base or low birth, born out of wedlock, of low or mean parentage or origin, spurious.

"The base-born child, the babe of shame" (*Gay*)

Base bullion Base or crude silver bullion is silver in bars mixed to a greater or less extent with alloys or base materials

Base-court A secondary or inferior court or yard generally at the back of a house, opposed to chief court, or main quadrangle, a farm-yard In old English Law, an inferior court of justice, but a court of record as a court baron, court-leet, etc

Base-fee A base fee is a grant in terms general, its limitation in point of duration being due only to the fact that the grantor was possessed of no estate enabling him to extend the grant, however general

Bashara.

its terms, for any period subsequent to the extinction of his own issue. [(1925) 52 I.A 294=52 C 971= A I R. 1925 P C. 184=50 M L J 136 (141) (P C)]

Bashara The word signifies 'according to the law' and is applied to those classes of *fakirs* who observe the Koran as distinguished from the *beshara*, without the law, who deem themselves of such sanctity as to be above the necessity of observing the law.

Ba-shart-i-Zarurat The words '*Ba-shart-i-Zarurat*' were not intended to limit the legatee's power of alienation, to exercise only when technical legal necessity arose Their ordinary meaning would be that the legatee could alienate if she thought it necessary to do so 9 L L J 32=109 I C. 830=A I R 1927 Lah 888, 1925 L 122

Basin A basin is a part of the sea inclosed in rocks 26 Fed. Cas 1310, 1313

Bastard. One whose father and mother were not lawfully married to each other, previous to his birth, or "one born out of lawful wedlock." (*Tomlins Law Dic.*) A "Bastard" is a person "that be borne out of lawful marriage". (*Co Litt* 244-*a Termes de la Ley. Cowel Jacob* Bl Com. 247) *Bastard* is: (1) A person not born in lawful wedlock, or "within a competent time after its determination" (2 Black. Com. 247) (2) A person who, though so born, has been found by legal process to be illegitimate.

The law deems every child born in wedlock, or within "a competent time" after wedlock has ceased, to be legitimate, and this presumption is just as strong in favour of the legitimacy of children begotten before the marriage as of those begotten after [*Anon* v. *Anon*, (1856) 22 Beav 481, 52 E R 1194, and 23 Beav. 273, 53 E R. 106) The presumption of legitimacy is "not lightly to be repelled It is not to be broken in upon or shaken by a mere balance of probability; the evidence for the purpose of repelling it must be strong, distinct, satisfactory, and conclusive" [Per Lord Lyndhurst, *Morris* v *Davies*, (1837) 5 Cl. & Fin. 265, 7 E.R. 404, 47 R R 50] But the presumption may be rebutted by evidence, the result of the decided cases is that proof of "non-access" of the husband may always be given in spite of presumption [*Bosvile* v. *A G*, 1887, 12 P.D 177] If a man marries a woman grossly big with child by another, and within three days after, she is delivered, the issue is no bastard (1 Danv Abr 729) If a child is born within a day after marriage between parties of full age, if there be no apparent impossibility that the husband should be the father of it, the child is no bastard, but supposed to be the child of the husband. 1 Rol. Abr. 358. *Tomlins Law Dic* See also Indian Evidence Act, S. 112. All the children born before matrimony are bastards; so are all children born so long after the death of the husband that by the usual course of gestation they could not be begotten by him But this being a matter of some uncertainty, the law is not exact as to a few days (Cro. Ja. 451, *See* 1 Inst. 123 b. in note 1 and 2) Where the time of gestation as connected with this question, is enquired into at great length, and with exquisite nicety and accuracy. (*Tomlins Law Dic*)

ISSUE OF VOID MARRIAGE In the absence of a statute declaring the issue of marriages void in law legitimate, such issue are illegitimate.

Batta-vartti.

ISSUE OF VOIDABLE MARRIAGE. The issue of marriages which are merely voidable, and have not been declared a nullity, are legitimate (*Ame. Cyc.*)

Bastardize To declare, to prove to be a bastard, stigmatize as a bastard

"The law is so indulgent as not to bastardize the child if born, though not begotten, in lawful wedlock" (*Blackstone, Comm* 1, *xvi.*)

Bastardus non potest habere haeredem nisi de corpore suo legitime procreatum A maxim meaning "A bastard can have no heir unless it be one lawfully begotten of his own body".

Bastardy The state or condition of a bastard.

Basti, Bustee, sometimes written, *Basati, Busutee,* (*H*) A village, a town, any inhabited place In the south of India also a Jain temple. (*Wil. Gloss* 66, *Sun Mal law*)

'**Basti land**" defined Ben. Act II, 1888, S 3, Ben Act I, 1893, S 3 (1).

Bat A partition, a division, a share.

Batai Division of the crop between the cultivator and the landlord or the Government in that capacity Rent taken by division of produce.

Batai contract Where under the agreement the tenant of the field, that is the owner of the field was to cultivate the land himself and pay his debt to the plaintiff in the form of produce, and the plaintiff was to take no part whatever in the cultivation and was to contribute neither seed grain nor labor, *held,* that it was not a batai contract (*Tatia* v *Sawama* 6 N L J 21=A I R 1923 Nag 135=71 I.C 477

Batai-dar A cultivator who shares the crop with the proprietor.

Batani The name of an Afghan tribe within the British Indian border near Dera Ismail Khan.

Batawani. (*Mar. from H*) A rough account of a tradesman framed from the day-book. (*Wil Gloss.* 67.)

Batenth Proprietor or holder of a share

Batin (*H*) Private, domestic In law, property of domestic nature (*Wil Gloss* 67.)

Batotadar (Jhansi, N.W.P.), a holder of revenue free land, being a descendant of a Thakur or local chief. (Bad Pow) Vol. ii, 156.

Batta, Butta (*H.*) *Mar.* (*Tam.* Vattam). Difference or rate of exchange In revenue matters it applies to the amount added to, or deducted from, any payment according to the currency in which it is paid as compared with a fixed standard coin. Discount on uncurrent or short weight rupees. A cess or charge imposed to make up for any probable deficiency in the value of the coin. (*Wil. Gloss* 68.)

"**Battalion,**" in its application to cavalry, or artillery, means, "Regiment, Brigade, or other Body into which Her Majesty may have been pleased to divide such cavalry, or artillery." (*Stroude*)

"BATTALION" defined. 44-5 V. c. 58, S. 190 (16).

Batta-vartti (*Tam*) Property held in severalty in contrast to that which is held in joint shares.

Battery

Battery is the actual and intentional application of any physical force of an adverse nature [*Rawlings* v. *Till*, (1837) 3 Mee & W 28) to the person of another without his consent, or even with his consent, if it is obtained by fraud, or the consent is unlawful, as in the case of a prize-fighting If the application is involuntary, accidental, or arises merely from negligence, it is not criminal. *See* "Assault" (Hawk, P C bk 1, c 62, 3 Russ on Crimes, 6th ed, 307 *et seq*, Arch Cr Pl 23rd ed, 835-838, Mayne, *Cr Law of India*, 1896, 581 *et seq*) The act of battering, attack or assault, with the view of beating down, as by a battering-ram.

BATTERY (*Mil*) A body of cannon for field operations.

Batti. (*Coorg.*) A land measure. (*Bad Pow in.* 470)

Battle. A fight, hostile encounter, or engagement between opposing forces This may occur on sea, land or air.

Battle-range, the range best suited to firing on an enemy's line of battle

Battle-royal A battle with fists or cudgels, in which more than two combatants are engaged, a free fight

DRAWN BATTLE. A battle in which neither party gains the victory or is decidedly successful

PITCHED BATTLE A battle in which the armies are previously drawn up in form with a regular disposition of the forces

TO GIVE BATTLE, to attack an enemy

TO JOIN A BATTLE, to meet the attack, commonly to begin a battle

WAGER OF BATTLE—In law, a species of trial for the decision of controversies used among the ancient rude military peoples of Europe It was introduced in England by William the Conqueror The contest was held before the Judges on a piece of ground inclosed and the combatants were bound to fight till the stars appeared, unless the death or defeat of one party sooner decided the contest The weapons used were batons or staves. Women, priests, men above sixty and lame and blind persons might appear by champions Though long fallen into desuetude it was a valid and legal mode of trial in England down to 1818 and was then formally abolished in consequence of the demand by the defendant in a suit for this mode of arbitrament, and of the fact that this demand could not legally be denied him.

Battle, action, affair Actions and affairs are engagements of less magnitude than battles, and are often unpremeditated, the result of surprises, or the meeting of armed reconnoitering parties, though the latter is usually termed a skirmish.

Battle, engagement, conflict, Fight, combat, contest, action. "*Battle* is a general term and the most common. It is the appropriate word for great engagements as, the Battle of Waterloo. A battle may last merely a few hours or for days. *Engagement* is in technical military usage practically equivalent to battle, but it is a less forcible word. *Conflict*, literally, a clashing together, is a strong word, implying fierce physical encounter. *Fight* also denotes actual conflict. A man may take part in a battle without actually fighting. A battle may include many fights. *Combat* like conflict is a word

Bazi-or Baji-kharch.

of more dignity than fight, it is by its history suggestive of a struggle between two, as persons, animals, squadrons, armies. *Contest* is a very general word, of uncertain strength, but often joined with a strong adjective as, a stubborn contest An *action* is a minor or incidental act of war, a single act of fighting as, the whole action lasted but an hour All these words apply equally to operations by land or by sea"

Battle-axe. An axe used as a weapon of war, which was in almost universal use before the introduction of fire-arms It is still occasionally employed among uncivilised peoples

Battle-ship. A ship of war, strong warship designed to fight in the line of battle

Batwar (*H*) A customs or police-officer stationed on the road to collect transit duties. (*Wil Gloss.*)

Batwara, corruptly, Butwarra, (*H*) A share, a portion Division of a crop in shares The partition of an estate by co-heirs (Act XX of 1836). Distribution of the lands of a village in allotments as originally made or agreed upon The allotment so held which the occupant may let in sub-divisions. (*Wil Gloss*)

Batwara Khesra is not a public document 7 Pat. 85

Bau (*H*) The fee or perquisite of a Zamindar when a daughter of one of his tenants is married. (*Wil. Gloss* 68)

Baudhayana. A great Hindu Sage and writer of an important Smriti that bears his name.

Bawd One who procures opportunities for persons of opposite sexes to cohabit in an illicit manner (*Ame Cyc*)

Bawdy-House. A house of ill-fame, kept for the resort and commerce of lewd people of both sexes, a brothel (*Tomlins Law Dic*)

Bayalu. (*Karn*) A field, a plain, an open space.

Bay-bil-wafa (*A*) A mortgage A conditional sale. (*MacNaughten*)

Bay Mokasa (*A*) Barter. A deed of sale in satisfaction of dower. (*MacNaughten*)

Bay Taljiah. (*P*) A fictitious sale made to serve a temporary purpose. (*MacNaughten.*)

Bazar (*H*) In the dialects which have not a 'z', *Bajar* A market, a daily market, a Market-place. As opposed to a Bazar, a hat is held only on certain days; a Ganj is where grain and the necessaries of life are principally sold, and generally wholesale. (*Wil Gloss.* 69)

"BAZAR" defined. Act XX, 1856, S.61, Ben. Act, III 1899, S 3 (1), Ben Act V, 1909, S. 2, Reg. V, 1910, S. 2 (1)

Bazar-batta (*H.*) The market rate of exchange for different coins (*Wil Gloss* 69.)

Bazi-or Baji-kharch (*H.*) Baje-Kharch. (*Mar*) An item in revenue accounts for sundry charges not included in the fixed regular disbursement. A deduction in revenue accounts formerly allowed to Zamindars to cover their claims to compensation for expenses incurred in the collection of the

Bazi-zamin.

revenue, the repair of roads and bridges, including something additional by way of remuneration for their public services (*Wils Gloss* 69.)

Bazi-zamin (*H*) Miscellaneous lands applied especially to Lakharaj lands, or lands exempted from assessment, and paying no revenue, or a light quit-rent only, to the Government, held under different tenures (*Wil Gloss* 69)

Bazi-Zamin-daftar (*H*) Before the permanent settlement, an office in Bengal for the investigation and registry of miscellaneous rent-free tenures (*Wil Gloss* 69)

Baz Nameh (*P.*) A deed of relinquishment. (*Wil Gloss* 69)

Bazoti The name of an independent Afghan tribe beyond the border to the North-west of Kohat

Bazu. (*H*) A document bearing the seal or signature of a competent officer of the Mogul Government authenticating a royal grant (*Wil. Gloss* 69)

Bazu-i-farman. (*H.*) A document giving effect to a royal grant (*Wil Gloss* 70)

Be. To "be" at a place, has a wider significance than to "Reside" (*Stroud*)

Beach The word "beach" must be deemed to designate land washed by the sea and its waves, and to be synonymous with "shore" (*Littlefield* v *Littlefield* 4 Am. Dec 155) The *beach of the sea* cannot be construed as including any ground always covered by the sea, for then it would have no definite limit on the seaboard, neither can it include any part of the land for the same reason. It denotes lands washed by the sea

Beacon A light-house, or sea-mark, formerly used to alarm the country in case of the approach of an enemy, but now used for the guidance of ships at sea, by night, as well as by day (*Black*)

Beaconage. Money paid for the maintenance of a beacon or signal-light

Beadle. "'Bedel' is derived of the French word Beadeau, which signifies a messenger of the court, or under-baylife," (Co Litt. 234b) *In English ecclesiastical law*, an officer attached to a church, who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings to the parishoners and execute its orders, to assist the constable in apprehending vagrants, etc (*Burrill*)

Beadsman. "'Beadsmen,' seem to have been in ancient times, persons who devoted themselves to prayer,—not merely on their own account but for the benefit also of others" (*Per* Cockburn, C J, *Faulkner* v. *Boddington*, cited in *Stroude*)

Bealisi *See* Chaurassi.

Bear One who intrigues for a fall in a market (See *Bull*)

BEAR. (*verb*) A covenant in a lease to "*bear and pay*" taxes, rates, duties etc, has "the effect of more distinctly developing its very comprehensive haracter". (*Per* Baggallay, L J, *Budd* v. *Marshall*, 50 L.J.Q.B. 29.)

TO BEAR DATE, to have the mark of time when written or executed: as, the letter bears date Sept. 30, 1877.

Bebandobasti

TO BEAR OUT, to defend, support, uphold; second with a personal object

"Aeschines by no means bears him out, and Plutarch directly contradicts him" (*Macaulay, Mitford's Hist. of Greece*)

Bear arms. To carry arms as weapons and with reference to their military use, not to wear them about the person as part of the dress *Aymette* v. *State*, 2 Humph (Tenn) 158

Bear-baiting. An old sport of setting dogs, to fight with captive bears The practice was prohibited in Great Britain by Parliament in 1835.

Bearer The "Bearer," of a Bill or Note, "means the person in possession of a Bill or Note which is payable to Bearer" (S 2, Bills Ex Act, 1882, *Good* v *Walker*, 61 L J Q B 736)

"PAYABLE TO BEARER" "The use of the words payable 'to Bearer" has the effect of making the note pass from hand to hand free from any equities which might have attached to it as between the original parties thereto" (Re *Marseilles Imperial Land Co*, 40 L J Ch 93)

Bear interest To generate or yield interest, so that the instrument or loan spoken of shall produce interest at the rate specified in the instrument or agreed upon by the parties or granted by law *Slaughter* v *Slaughter*, 21 Ind App. 641, 52 N E 995 (*Ame*)

BEAR INTEREST. An agreement that a sum loaned should "bear interest" at a certain per cent, means that such loan should produce or yield such rate of interest The use of the words "*Bearing interest*" in a Bill of Exchange or Promissory Note without defining the date from which interest is to run carries interest from its date, and not merely from its maturity (*Kennerly* v. *Nash*, 1 Starkie, 452)

Beast An animal, a quadruped, such as may be used for food or in labor or for sport. Any four-footed animal, as distinguished from fowls insects, fishes, and man, as, beasts of burden, beasts of the chase, beasts of the forest It is applied chiefly to large animals

Beasts of chase are the buck, the doe, the fox, the marten and the roe *Beasts of the forest* are the hart, the hind, the hare, the boar and the wolf *Beasts of warren* are the hare and cony [*Cowell, Law Dictionary, Co Litt* 233 (*a*)].

Beasts of the plow An old term for animals employed in the operation of husbandry This includes horses

Beat With reference to assault and battery this term includes any unlawful physical violence offered to another To overcome in battle, contest or strife, vanquish or conquer A stroke, a striking, a blow, whether with the hand or with a weapon

Beaver In medieval armor, a part of the helmet, a protection for the lower part of the face and cheeks, fixed securely to the armor of the neck and breast, and sufficiently large to allow the head to turn behind it, so that the wearer may be enabled to raise or lower his head to eat or drink.

Bebandobasti. The word means without settlement *i.e.* that the landlord did not conclude any ar-

Because.

rangement with the tenant when inducting him upon the land A I R. 1936 Pat 340.

Because By reason (of), on account (of), For the sake (of), in order (to). For the reason (that)

"Becoming"—"Being" The word "becoming" has been deliberately used in contradistinction to the word "being" in the Karachi Port Trust Am. Act VI of 1924, S 4 and is intended to connote something different to that which would be conveyed by the word "being" 92 I C 374=A I.R 1926 Sind 169

"Become useless and inoperative" The words "become useless and inoperative" in S 50, Expl (4), of the Probate and Administration Act (V of 1881), imply the discovery of something which, if known at the date of grant, would have been a ground for refusing it, *e g*, the discovery that the will was forged or that the alleged testator was still living *Gour Chandra Dass* v *Surat Sundary Dasaya* 16 C W N 880=15 I C 44 (46)

"Become vested" The expression "become vested" as used in S 10, Limitation Act, covers every possible manner in which the vesting can take place *The Secretary of State* v *Gur Prosad Dhur*, 20 C 51 (F B)

Bed (*In Matrimonial law*) The right of cohabitation or marital intercourse (*Ame Cyc*), as in the phrase, "divorce from bed and board" *a mensa et thoro*

Beddalu (*Karn*) Tax upon the straw of the dry grain, the whole of which is taken by the Ryots

Bedda-sistu (*Tel.*) The summer crop

"Bedding," in the County Courts Act, 1888 (51 and 52 Vict, c 43), S 147, includes "bedstead" *Davis* v *Harris*, (1900) 1 Q B. 729

Bedel (*In English Law*) A crier or messenger of Court, who summons men to appear and answer therein (*Cowell*)

Bedelary "The jurisdiction of a bedel as a bailiwick is the jurisdiction of a bailiff" (*Co Litt 234b, Cowell*)

Bed of a river The hollow or channel of a water course, a depression between banks worn by the regular and usual flow of water (*Black*) The space subjacent to the river through which it flows, the space contained between the banks of a river, the space between the boundaries of a river which contain its waters at the highest flow of the channel of a stream, that soil so usually covered by water as to be distinguishable from the banks, by the character of the soil, or vegetation, or both (*Ame Cyc*)

The bed of a river is the land over which the water normally flows, or, in other words, the land which is in vertical contact, as the banks of the river are in lateral contact, with the flowing water The term "bed" is commonly used in distinction to bank or shore.

"To constitute a part of the bed, it is not necessary that it should be always covered by water" (See *Angell on Watercourse, Coulson and Forbes on Waters*)

The 'bed of a river' is a space between the banks occupied by the river at its fullest flow *Ashgar Ali* v. *Secretary of State.* 129 I. C 416=53 C.L J. 229=A.I.R. 1930 C. 764.

Bees.

Bedlam The hospital of St Mary of Bethlehem in London originally a priory, founded about 1247, but afterwards used as an asylum for lunatics, hence—a mad house, a lunatic asylum

It is also used as meaning a scene of wild uproar and confusion.

"A general division of possessions would make the country a scene of profligate extravagance for one year and of universal desolation the next—a bedlam for one short season and a charnel-house ever after" (*Brougham.*)

Beer (In Excise law) A malt liquor, a fermented liquor made from any malted grain, a fermented liquor made from the malt of barley, and flavored with hops. (*Ame Cyc.*)

There are several varieties of beer—those in use at present are distinguished by the names of *ale, porter*, or *strong beer, table beer, small beer*, which differ little except in strength and the mode of preparation in their manufacture *Kerkow* v *Bauer*, 18 N.W 27, (*Quoting Craig Dict.*, 5 *Cyc* 678.)

"BEER" defined Mad Act 1, 1886, S. 3 (10)

Beer vinegar A vinegar prepared from beer wort

BLACK BEER A kind of beer manufactured at Dantzic It is of black colour and a syrupy consistence Also called Dantzic beer.

BROKEN BEER, remnants or leavings of beer

CONDENSED BEER. Beer which has been reduced in a copper vacuum pan to one-eighteenth its bulk.

GREEN BEER, beer which is just made.

SMALL BEER Weak beer, hence figuratively, a trifling matter, a small or unimportant thing or person

YEAST BEER, new beer with which a small quantity of fermenting wort has been mixed in the cask in order to make it lively

Beer-house A place where beer is sold to be consumed on the premises. (*Cent Dict*)

Beer-shop. A shop where beer is sold independently of any other circumstance

Beer-house and Beer-shop *Beer-house* means "a place where beer is sold to be consumed on the premises, and *beer-shop* is a place where beer is sold to be consumed off the premises" *Per* Fry, J, in *Holt* v *Collyer*, (1880), 16 Ch D 718, 721, Vide *Nicoll* v *Fenning*, (1881), 19 Ch.D. 258, 267. A beer shop "means a place where beer is sold by retail, and it does not matter whether the beer is consumed on the premises or not The word includes a beer house, but it also includes a shop where beer is sold, to be consumed off the premises".

Bees. "These insects were classed by the Roman law writers among animals *ferae naturae* and therefore like other wild animals were *res nullius* until captured, when they became the property of the captor by the *jus gentium* This right of property subsisted so long as the animals were kept, and if they escaped again and recovered their natural liberty, that is, if they got out of sight or could only be pursued with great difficulty, they ceased to be property (Just. Dig. 41, 1, 5, 2; Inst 2, 1, 13, 14) By the principles of the Roman law, accordingly which applied equally to the honey combs produced by bees,

Before

the mere presence of bees or their produce on a person's ground did not make them his, and if another hived the animals that other became their owner subject, it might be, to proceedings for trespass if he entered the ground in an illegal or wrongful manner. English law is, in the main identical, with Roman, except that in England the property in bees which have been hived and reclaimed is in the owner of the ground on which they have swarmed, and not in the captor trespasser" (*Blades* v *Higgs*, 1865, 11 H L C. 621. 11 E R 1474.)

That reclamation is necessary in order to constitute property in bees both Bracton and Blackstone insist. Bracton says: "Though a swarm lights upon my tree, I have no more property in them until I have hived them, than I have in the birds which made their nests thereon, and therefore if another hives them, he shall be their proprietor, but a swarm which fly from and out of my hive are mine, so long as I can keep them in sight and have power to pursue them, and in these circumstances no one else is entitled to take them" If, accordingly, bees while unreclaimed take up their abode in a tree, they belong to the owner of the tree, but if they have been reclaimed and have then taken refuge there they continue in their owner if they can be identified In other words, the facts that they are temporarily astray, and that their owner cannot pursue them without infringing another's rights, do not affect his right of property, and an action will, therefore, lie for their unlawful detention or destruction" (*Ency, of the Laws of England*)

Before —Prior to, in time preceding, earlier In the presence of; under the official purview of; as in a magistrate's order, "before me personally appeared," etc, on the forefront or in front, opposite of "behind" "The battle was *before* and behind" (*2 Chron. xiii*, 14)

Before cited Cited in a preceding part.

Before mentioned Mentioned before

Beg. To "beg" does not necessarily import spoken words. One who, to obtain alms, exhibits his need or infirmities, or attracts attention by signs or conduct to his desire to receive charity, is chargeable with a violation of a statute against begging, as fully, as if he had spoken

To beg the question, in logic, is to assume or take as granted that which is not more certain than the proposition to be proved or which obviously involves the point in question; assume as a premise what no one who takes the opposite view of the question will admit.

Begam (*Hindustani*), A Musalman lady of rank Among Saids the title is commonly affixed to all women's names.

Beget. To procreate; chiefly used of the father alone, but sometimes of both parents.

"Abraham begat Issac; and Issac begat Jacob; and Jacob begat Judas and his brethren." (*Mat. i. 2*)

The use of the word "beget", in a clause in a will that if a son should die leaving no heirs of his body by him begotten, indicates that the word "heirs" is to be limited to his own children, and not to include grandchildren.

Behri.

Begin To "begin" is to do the first act, to enter upon To "begin" an enterprise is to take the first step, the initiatory step.

Begotten The words "begotten" and "To be begotten," have always been held to have the same import, unless a contrary intent plainly appears" (*Co-Litt* 20*b*).

Behalf A witness testifies on "behalf" of the party who calls him, notwithstanding his evidence proves to be adverse to that party's case *See* 12 Q. B 693, 18 Q.B 512

Behaviour Manner of behaving whether good or bad, conduct, manners, mode of acting, deportment, as good behaviour, security for good behaviour.

SURETY TO BE OF GOOD BEHAVIOUR is said to be a larger requirement than surety to keep the peace

DURING GOOD BEHAVIOUR As long as one remains blameless in the discharge of one's duties or the conduct of one's life An office held during good behaviour, convicts are by law given certain privileges during good behaviour

CARRIAGE, BEHAVIOUR, CONDUCT, DEPORTMENT, DEMEANOR, MANNERS all denote primarily outward manner of conduct. *Carriage*, the way of carrying one's self may be mere physical attitude or it may be personal manners, as expressing states of mind, we speak of a haughty or noble carriage, but not ordinarily of an ignoble, cringing or base carriage *Behaviour* is the most general expression of one's mode of acting, it also refers particularly to comparatively conspicuous actions and conduct *Conduct* is more applicable to actions viewed as connected into a course of life, especially to actions considered with reference to morality *Deportment* is especially behaviour in the line of the proprieties or duties of life *Demeanor* is most used for manners as expressing character, (as) judge's remarks on the demeanor of the witness It is a more delicate word than the others and is generally used in a good sense We may speak of lofty or gracious carriage, good, bad, wise, foolish, modest, conceited behaviour, exemplary conduct, grand modest, correct deportment, quiet demeanor.

Behda, (*Mar*) A document under the Mahratta Government, shewing the amount of all the fixed receipts and disbursements of the state, all establishments, grants, and endowments, and all particular transactions during the past year It formed the basis of the collections of the ensuing year A budget A statement of ways and means (*Wil Gloss*)

Behind. Surviving, as in the phrase "Leaving no Issue behind him", 2 Jarm. 509.

Behindhand. Late, in arrear, in a state where expenditure exceeds the receipt of funds (*Webs*), delayed beyond the proper time, behind the time set or expected "Government expeditions are generally *behindhand*." (*Cornhill. Mag March* 1862)

Behri (*H.*) A proportionate rate or subscription: assessment on a share instalments paid by undertenants to the landlord, distribution of an aggregate sum among a number of individuals, or a monthly collection from them according to circumstances. A sub-division of a Pattidari or Bhayachari estate,

Behri-bandi.

being an unequal fractional part of a Thok, that is a Thok of three Biswas may be divided into three Behris. The share or interest of one of the co-parceners in such estate (Beng Reg. VII. 1822, S 12, *Wil Gloss.* 71)

Behri-bandi (*H*) One of the items formerly allowed in the revenue accounts as abatements of the collection (*Wil. Gloss.* 71.)

Behri-barar (*H.*) Collection on shares of the revenue in kind (*Wil Gloss* 71)

Beiman Badmash. Calling a man *beiman* and *badmash* would fall under S. 504 and not under S. 500, I P C. 51 P.L R 1922=A I R 1922 Lah. 459 (1).

"**Being,**" may create a covenant, as in a lessee's covenant to repair premises, "the same *being* first put in repair by the lessor", these latter words create a covenant by the lessor to put in repair (*Cannock* v *Jones*, 3 Ex 233)

"BEING," is also used in a sense similar to "having been" (*Stroude.*)

Being a trader The phrase, "being a trader," in the Bankruptcy Act, means "carrying on trade at the time when the act of Insolvency in question is committed" (*per* Jessel, M R, Ex. P *McGeorge*, 51 L J Ch 910)

Being Partners "Any two or more persons being partners" (who may proceed, or be proceeded against in the partnership name) does not connote that they must be partners at the time of the proceedings, but rather means, persons "who have had the relationship of partners for the purpose of the liability which is sought to be enforced" (*per* Alverstone, M R, *Re Wenham*, 69 L J Q B. 807, *See* C P C., O. XXX, Rr 1 & 2)

Bejot. (*H*) Untilled, as land applied also to a Ryot who has ceased to cultivate, and has thrown up his land (*Wil Gloss* 71)

Bejwar or Bijwar (*H*). Perquisite of the lower classes, consisting of a portion of the seed corn brought away daily from the fields (Rohilkhand) (*Wil Gloss.* 71.)

Belagan Belagan means simply not paying "agricultural rent" and does not imply anything as to liability to pay rent. *Keshwar Bhagat* v *Sheo Prosad Lal*, 21 Ind Cas 415 (416).

Belasadda-hola. (*Karn*) A field of grown corn.

Belief Confidence reposed in any person or thing, faith; trust. (as, a child's belief in his parents).

A persuasion of the truth, or an assent of the mind to the truth of a declaration, proposition, or alleged fact, a persuasion of the truth of a fact, formed in the way of inference from some other fact, an actual conclusion drawn from information, partial assurance without positive knowledge.

Belief admits of all degrees from the slightest suspicion to the fullest assurance.

"By a singular freak of language we use the word belief to designate both the least persistent and the most persistent coherence among our states of consciousness—to describe our state of mind with reference both to those propositions of the truth of

Belief distinguished from.

which we are least certain, and to those of the truth of which we are most certain" (*J Fiske, Cosmic Philos, I.* 61)

That which is believed, an object of belief.

"Superstitious prophecies are the belief of fools". (*Bacon*)

The whole body of tenets held by the professors of any faith.

"In the heat of persecution, to which the Christian belief was subject, upon its first promulgation" (*Hooker.*)

Belief in Good faith "Belief in good faith" in S 51 of the Transfer of Property Act means believing honestly and fairly after due inquiry Where a man has consciously avoided making an inquiry on any matter he may, nevertheless, be said to have a belief on that matter, but such belief would in such a case not be a belief in good faith *Abhoy Churn Ghose* v *Attarmoni Dassee*, 13 C.W N 931 1 Ind Cas 415

Belief distinguished from "imagination"– It imports a more certain and fixed conviction to say I believe, than it does to say I imagine"

DISTINGUISHED FROM "KNOWLEDGE" —Between "belief" and "knowledge", the difference is, after all nothing more than in the degree of certainty With regard to the things which make not a very deep impression on the memory it may be called "belief" 'Knowledge' is nothing more than a man's firm belief The difference is ordinarily merely in the degree

Knowledge and belief may differ not only in degree but in kind. Knowledge is a certainty founded upon insight, belief is certainly founded upon feeling (*Sir W Hamilton, Lectures on Logic, xxvii*)

DISTINGUISHED FROM "OPINION" —"An opinion is not the exact equivalent of belief It may be simply a judgment formed upon a given or assumed statement of facts It is said "The nice philological distinctions between the words, 'opinion,' and 'belief' are too subtle and refined to form a basis on which to ground a substantial justice"

DISTINGUISHED FROM "PRESUME" —'presume' is a weaker term, "for it means, to believe without examination"

DISTINGUISHED FROM "SUSPECT" —"The words 'suspect,' and 'believe' are not technical words, and have not, by the approved usage of the language, the same meaning. . 'Suspecting is not believing' That may be a ground for suspicion, which will not induce 'belief'" (*See* 5 *Cyc* 680)

DEGREES OF BELIEF —"Without recurring to the books of metaphysicians, let any man of plain common sense, examine the operations of his own mind. and he will assuredly find that on different subjects his belief is different I have a firm belief that the moon revolves round the earth. I may believe, too that there are mountains and valleys in the moon, but this belief is not so strong, because the evidence is weaker. I firmly believe that the *Bonaparte* was in the island of St Helena, but as to the state of his health, I may have my belief, but it cannot be called firm, because the evidence is not clear" Telghman, C J, in *Thompson* v. *White*, 4 Serg. & R. (Pa) 315, 317) Cited in 5 *Cyc.* 680)

Believe

"BEST OF HIS BELIEF" means "In the full Belief"

Believe. To put credit or confidence in the veracity of testimony, to apprehend, to have belief, to satisfy, to suppose, to think *See also* 6 Bom. 402

Belligerency Position or status of a belligerent, the state of being actually engaged in war, waging war, as, "Belligerent powers", "Belligerent rights"

"They were acting for a Government whose belligerency had been recognized" (*Soley Blockade and Cruisers, p* 224)

Belligerent Warlike, waging war, characterized by a tendency to wage war

"History teaches that the nations possessing the greatest armaments have always been the most belligerent" (*Sumner, Orations, I* 97)

BELLIGERENT literally means one waging war, in distinction to a neutral or one not taking part in a war The term is also used to distinguish the regular forces in warfare from irregular combatants

(In international law) The term is used to designate either of two nations which are actually in a state of war with each other, as well as their allies actively co-operating, as distinguished from a nation which takes no part in the war and maintains a strict indifference as between the contending parties, called a "neutral" (*U S. The Ambrose Light* (*D G*) 25 *Fed* 412)

As to meaning of the word "belligerants" in International Agreement, *see* Per Lord Sumner in *Blonde etc In the matter of the Steamships* (1922) 31 M L T 260 (P C)

Bello parta cedunt reipublicae (cited 2 Russ & My 56) A maxim meaning "Things acquired in war belong to the state" (*Burrill L Dict, Broom, Kent Com.* 101)

"Belongs" "Belonging" Being the property of, appertaining, that which is connected with a principal or greater things, an appendage

The word "belonging" may and very often does mean "ownership," but it may also mean that which is connected with a principal or greater thing, an appendage, an appertenance, and this is its use in the charter of a seminary exempting from taxation property belonging or appertaining to it

Property "belonging" to a person, has two meanings,—(1) Ownership, (2) the Absolute Right of User "A Road may be said, with perfect propriety, to belong to a man who has the right to use it as of Right, although the soil does not belong to him" (*per* Martin, B., *A -G* v *Oxford &c. Ry*, 31 L J Ex 227).

"Churchwardens and Overseers are said to hold as a Body Corporate, all buildings etc 'belonging' to the Parish", here that phrase is to be taken in its popular sense (*Dee* v *Terry*, 5 L.J.M.C 27)

Salvage for saving the lives of "*persons belonging to*" a ship, comprises passengers as well as the crew (*The Fusilier*, 34 L J P M. & A 25)

Belonging to and occupied by See *Attar Singh* v. *Bhagwan Das*, 2 I C 982=65 P.R. 190=104 P.W.R 1909.

The term "belong" in S 400 (I. P. C) implied something more than the idea of casual association; it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected was identified himself with a band, the common purpose of which is the habitual commission of dacoity (7 O W N 862=A I R. 1930 Oudh 455)

"Belongings" The grant of a country house by its name "*all the belongings thereto*" would include the furniture, pictures, and household effects therein, its gardens, green-houses, conservatories, stables, coach houses, outhouses, and farm buildings, and farm acres of land and orchard, together with the horses, carriages, agricultural and other implements, and all the live and dead stock in and about the premises" (*per* North J, in *Re Gundry*, 28th July, 1898, *Stroude*, 179)

Below Inferior, of inferior jurisdiction, or jurisdiction in the first instance The court from which an appeal or revision is preferred is called the "court below", and the court to which it is preferred the "court above"

Bemeyadi Settlement 133 I C 732=54 C L J 412=35 C W N 982=A I R 1931 P C 207=61 M L J 377 (P C)

Bemiade Patta Bemiade Patta means a lease without a term The mere mention of the rights of the lessee and his heirs to the minerals in the leased property do not make it permanent It is only a lease from year to year with the incidents attached to such a lease *Pershan Kuer* v *Tulsi Kuer*, 2 Pat L J 180=1 Pat L W 447=39 I C 658=1918 Pat 11.

Benami, (*H*) Nameless, fictitious, fraudulent, as a purchase under a false name, or land held in another name than that of the real proprietor. (*Wil Gloss* 70) A sale or purchase made in the name of some one other than the actual vendor or purchaser (*MacNaughten.*)

The habit of holding land *benami* is inveterate in India (11 M I A 551=8 W R P C 3=2 Suth 59=2 Sar 259=(1872) 14 M I A 496=18 W R 157=10 B L R 159=2 Suth 575=3 Sar 69)

"It is familiar to us all that the system of putting property *benami* is so extremely common in India that the mere fact of a deed being executed in proper form, and apparently effecting a valid transfer to another, is not as good evidence of a real transfer as it would be in other countries [(1887) 14 I A 127=15 C 20 (23)=5 Sar. 71=R & J's No 98]

The knowledge and assent of the person in whose name a *benamee* purchase is made is immaterial, the criterion is, the quarter from which the money comes, and in the greater number of instances of *benamee* purchases they are made in the names of persons ignorant at the time of their being so made [(1854) 6 M I A. 53=2 Suth. 13=4 W.R. 46=1 Sar. 493]

Fiction and falsehood are very usual in *benami* disputes [(1898) 25 I.A. 161=26 C. 81 (89)=2 C W. N 737=7 Sar. 432]

Benami purchases are very common in India, and are due to many considerations which may not find their counterpart here (England), yet none the less they can easily be made a cloak and cover for improper and even dishonest transactions. [(1921) 48 I.

Benamid.

A. 258 (266)=48 C 1019 (1028-9)=23 Bom.L R. 913 =14 L.W 104=(1854) 6 M.I A 53 (79)=(1921) M W N 554=19 A L.J 773=26 C W N 133=2 P.L T 725=62 I C. 76=30 M L T 24=1922 P C 235=41 M L J 68.

The Legislature has not, by any general measure, declared *benami* transactions to be illegal; and, therefore, they must still be recognised, and effect given to them by the courts, except so far as positive enactment stands in the way, and directs a contrary course [(1872) 14 M I A 496=18 W R 157=10 B.L R 159=2 Suth 575=3 Sar 69]

A *benami* conveyance is not intended to be an operative instrument Where a transaction is once made out to be a mere *benami* it is evident that the *benamidar* absolutely disappear from the title His name is simply an alias for that of the person beneficially interested [(1908) 35 I A 98 (102)=35 C 551 (558)=18 M L J 277=4 M L T 12=7 C L J 528=12 C W N 562=10 Bom L R 590=5 A L J 290=14 Bur L R 108=4 L B R 266

BENAMI DISTINGUISHED FROM 'ADVANCEMENT' 3 Luck 521=117 I C 385=1929 Oudh 97.

Benamidar (*H*) One whose name appears in a benami transaction but who is not the real proprietor of the right indicated A benamidar may be either a stranger whose name is used in order to conceal the real owner, or he may be a relative for the sake of whose reputation a nominal assignment of property is made

Benami transaction A transaction in which the purchase is made in the name of some one other than the real purchaser. It is very much the habit in India to make purchases in the names of others, and, from whatever cause or causes the practice may have arisen, it has existed for a series of years, and these transactions are known as "Benamee transactions" *Gopeekrist Gosain* v *Gungapersaud Gosain* (1854) 6 M I A 53=2 Suth 13=4 W R 46=1 Sar 493

BENAMI TRANSACTIONS are so common in India as to require no explanation why, in a particular instance, they were adopted *Ramamani Ammal* v. *Kulanthai Natchiar*, (1871) 14 M I A 346=17 W R 1=2 Suth 493=2 Sar 736

This principle also applies to the case of a transaction to which a public corporation is a party. [10 Luck 176=151 I C 1049=1934 Oudh 439 (F B)]

BENAMI TRANSACTIONS IN INDIA AND BURMA Per *Rutledge, C J* and *Carr, J*—Among Burmans the practice of *benami* is not indigenous and though it has to some extent taken root it is not so common as in India proper. The device is very seldom employed except as a means of defeating or delaying the immediately impending claim of some creditor or other person. Consequently the decisions of courts in India as to *benami* transactions as between Mahomedans and Hindus are not helpful to decide such questions among Burmans among whom stricter proof is necessary to uphold such transactions 4 Rang 522=100 I C. 250=A I R 1927 Rang. 102.

BENAMI TRANSACTION AND TRUST A *benami* transaction is quite unobjectionable and has a curious resemblance to the doctrine of the English law that the trust of the legal estate results to the man who pays the purchase-money and this again follows the analogy of the English common law that where a feoffment is made without consideration the use

Beneficence

results to the feoffer [(1915) 42 I A 202=37 A. 557 (565)=17 Bom L.R 1006=22 C L.J 516=13 A.L.J. 991=(1915) M.W N. 757=19 C W N. 1207=18 M.L. T 248=2 L W. 830=30 I C 299=29 M L J 335.]

A benami dealing has a curious resemblance to the doctrine of our English law that the trust of the legal estate results to the man who pays the purchase-money, and this again follows the analogy of our common law that where a feoffment is made without consideration the use results to the feoffer. [(1918) 46 I A 1=46 C 566 (574-5)=17 A L.J 66=9 L W 335=23 C W N 531=12 Bur L T 122=49 I C 1=36 M L J 68]

Benawa (*Hindustani*) The name of a community of Fakirs of the Beshara order. They are Sunnis

Bench The seat where Judges sit in Court, the seat of justice

"To pluck down justice from your awful bench." (*Shak 2, Hen IV*, V 2) Also (figuratively) the court itself, as the "King's Bench," or the aggregate of the judges composing a Court, as in the phrase "Full Bench"

"BENCH" defined N & O Act II of 1896, S 3 (2), S 2, Cl (2), U P Act II of 1896 (Honorary Munsif's Act)

Bench (Front Bench) In British Parliamentary usage, the leaders of a party so called because they occupy the front benches on their respective sides of the Legislative assembly

MINISTERIAL BENCHES, OPPOSITION BENCHES (In the British Parliament) the Benches occupied respectively by the supporters and the opponents of the administration

Benchers Members of the Inns of Court (*Sweet L Dict*)

Benedicta est expositio quando res redimitur a destructione A maxim meaning "That is a blessed interpretation when a thing is saved from destruction" (*Burrill, Broom*)

Benediction. The act of speaking well of, blessing An invocation of divine blessing, either by a private individual or a church official

Benefice An ecclesiastical living and promotion; a church office endowed with a revenue for its improper fulfilment, the revenue itself

Beneficence The practice of doing good, active goodness, charity

BENEFICENT DISTINGUISHED Dr Webster says "Etymologically considered, 'benevolent' implies merely wishing well to others, 'beneficent', doing well. But by degrees the word 'benevolent' has been widened to include not only feelings, but actions, thus, we speak of 'benevolent operation,' 'benevolent labours for the public good', 'benevolent societies' In like manner 'beneficent is now applied to feelings, thus, we speak of the 'beneficent intentions' of a donor. Thus, the phrase 'benevolent labours' turns the attention to the sources of these labours—that is, 'benevolent' feelings—while 'beneficent' would simply mark them as productive of good So 'beneficent intentions' point to the feelings of the donor as bent upon some specific good act, while 'benevolent intentions' would only denote a general wish and design to do good'. (In re *Hinckley's Estate*, 58 Cal. 457, 507)

Beneficial

Beneficial "Beneficial" and "Profitable" are not convertible terms. (*Dwar* 683.)

"Beneficial enjoyment" defined Act V of 1882, S. 4.

"Beneficial interest" defined. Act II of 1882, S 3

Beneficial owner. One who, though not having apparent legal title, is in equity entitled to enjoy the advantage of ownership

"BENEFICIAL OWNER," "is not a term of art It is a popular expression, and ought to receive a liberal construction" (Per *Wills, J R* v *Neat*, 69 L J Q.B 121).

Beneficially entitled "Beneficially entitled to possession," does not mean entitled and deriving a benefit from possession, but beneficially entitled in the sense of being entitled for one's own benefit, if there is any benefit to be derived from the estate, and not simply as trustee for others". (*Per* Cotton, L J, Re *Jones*, 53 L J Ch 811).

A Tenant for Life is "beneficially entitled to possession," although his actual enjoyment is intercepted by a Trust for accumulation to raise a fund to pay debts and legacies *Annesley* v *Woodhouse*, [(1898), 1 I.R. 69)]

Beneficially Interested "A person having a contingent interest in real estate is one beneficially interested" (Re *Sheppard*, 4 D G F. & J 423)

Beneficiary Beneficiaries are persons for whose benefit property is held by trustees, executors, etc , persons named in insurance policies to whom the insurance is payable upon the happening of the event insured against (*Bouvier*)

BENEFICIARY is one who is beneficially entitled to, or interested in property, that is, entitled to it for his own benefit, and not merely as trustee or executor holding it for others The word is nearly equivalent to the term *cestui que trust* Where property is dedicated to an idol, it would be a "beneficiary" (*Ranjit Singh* v *Jaganath Prosad Gupta* 12 C 375 But *see* 16 C W N 798)

"Beneficiary" defined. Act II of 1882, S. 3.

Benefit Defined in Act XLII of 1923, S 2.

BENEFIT. Advantage, profit, gain, interest, use, whatever contributes to, promote prosperity or add value to property

"BENEFIT" is much wider than *"Advancement"* [*M'Mahon* v *Gaussen*, (1896) 1 I R. 147]

In the Mussalman Wakf Act, (*a*) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli [Act XLII of 1923 (Mussalman Wakf), S 2, Cl (*a*)]

DISTINCTION FROM "SUPPORT" "The word 'benefit' is a much broader word than 'support', and has no such limited meaning as the latter word." "The word *'benefit'* and its synonyms mean more than simply 'support'; they mean any purpose to which the absolute owner of property can devote it" A gift for the benefit of person carries with it a much greater interest than a gift for his support or maintenance. (*Stowell* v *Hastings*. 59 Am. Rep 748)

Benefit of Clergy. The mediaeval Church claimed for its clergy exemption from the temporal jurisdiction, and for the ecclesiastical Courts exclusive cognisance of matters in which the clergy as a

Bequest for the Benefit of.

distinct estate were concerned. The claim was based apparently on the "Civis Romanus Sum" theory, applied by Hildebrand and the Popes who claimed to inherit the supreme dominion exercised by the Roman Confessors, and was supported by the Forged Decretals. In England from the Conquest the limits of the claim were in continual dispute, and were the cause of the quarrel between Henry II and Becket. The privilege however continued to be recognised for a long time, except in the case of persons convicted of treason, till it was abolished, as regards all persons other than peers, by the Criminal Law Act, 1827, S. 6 and as regards peers by the Felony Act, 1841

Benefit of Survivorship "There is a difference between a gift over of the shares of any prior legatees to the survivors, and a gift to several 'with benefit of survivorship' The latter expression is very general, and may without impropriety be held to pervade the whole fund, so as to carry accrued as well as original shares" (2 Jarm 714, citing Re *Crawhall*, 8 D G M & G 480)

Benefit Societies Friendly associations, chiefly among the industrial and lower classes of society for the purpose of affording each other relief in time of sickness and their widows and children assistance at their death

"Benefit to arise out of land" Future rents payable in respect of lands are "benefits to arise out of land" within the meaning of S 3, Registration Act (*Mangalasami* v *Subbiah Pillai*, 20 M L J 966=8 M L T 91=6 Ind Cas 504)

A debt which is made a charge on land, constitutes a "benefit to arise out of land," within the meaning of those words in S 2 (5) of the General Clauses Act, 1868, and is, therefore, immovable property. (*Appasami* v *Scott*, 9 M 5, but *see* 58 Cal 136 *infra*)

A mortgage is not a "benefit to arise out of land" *See* 58 Cal 136=131 I C 689=53 C L J 269=34 C W N 605=A I R. 1931 Cal 223

[*Appl* 66 M L J 380 (382) Expl and Appl 62 I. A 115]

"Benefit to estate". Under the Hindu Law it is impossible to give a precise definition of the expression "Benefit to the Estate," referred to in the case of Hunooman Pershad Panday (6 M I A 393) and the other cases which have followed it, applicable to all cases. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not [(1917) 44 I A 147= 40 M 709=22 M L T 1=(1917) M W N 507=6 L W 222=21 C W N 729=19 Bom L R 567=26 C L J 153=1 Pat L W 697=15 A L J 485=39 I C 722=33 M.L J 1]

"Benefit under will". Meaning of. A.I.R. 1928 O. 155

"Bequest for the Benefit of". A bequest "for the benefit of wife and her children," to the wife for life, with remainder to her children, in any case, the children, *inter se*, take as joint tenants (*Armstrong* v. *Armstrong*, 38 L.J.Ch. 463, L.R. 7 Eq. 518.)

Benefit Society.

Benefit Society A society intended to give pensions to widows and children of subscribers is a benefit society under Madras City Municipal Act. (*Jennings* v *The President, Municipal Commission, Madras*, 11 M 253)

"Benefited", meaning of. 30 C W,N. 366=94 I C 159=1926 Cal. 657; *see also* Contract Act, S. 70.

Benevolence An extraordinary aid granted by freemen to their sovereign as a voluntary gratuity, disposition to do good (*Century Dict*) *"Benevolence* is wider than charity in its legal signification" (*Thomson* v. *Norris*, 20 N J. Eq 489, 523)

Benevolent Distinguished from 'charitable' or 'religious' "The word 'benevolent' is certainly more indefinite, and of far wider range than 'charitable' or 'religious', it would include all gifts prompted by goodwill or kind feeling towards the recipient, whether an object of charity or not The natural and usual meaning of the word would so extend it It has no legal meaning, separate from its usual meaning" (*Norris* v *Thomson*, 19 N J Eq 307, 313)

"Though often used as synonymous with 'charitable', 'benevolent' may, as applied to objects or purposes, have a broader meaning, and include some not 'charitable' in the legal sense of that word Acts of kindness, friendship, forethought, or goodwill may properly be described as 'benevolent' Where, however, it is used in connection with the term 'charitable,' or other words indicating an intent to limit it to purposes strictly charitable, it will be held to be synonymous with 'charitable' (*Suter* v *Hulard*, 132 Mass 412, 413, 42 Am Rep 444)

Benevolent Association. "Benevolent" means, literally, well-wishing, and has a larger meaning than "charitable"

"Bengal" defined. *See* Bengal Act I of 1899, S 3 (5)

"Bengal Act" defined Act X of 1897, S 3 (5), Bengal Act I of 1899, S 3 (5), E B. & A Act I of 1909, S 5 (7)

"Bengalees" and "Bengalee Sunni Mohamedan Worshippers" Meaning of See 13 R. 27

Beniadi patta A *"beniadi patta"* means a lease without term, and the term beniadi does not apply to a lease from year to year which is a lease with a term 162 I C 797=17 Pat L T. 488=A I R 1936 Pat. 275

Benignae faciendae sunt interpretationes chartarum, ut res magis valet quam pereat A maxim meaning, benign (liberal) construction of documents is to be made, so that the instrument may avail rather than perish. (*Broom, U P Mitra's Leg Max.*)

Benignae faciendae sunt interpretationes, propter, simplicitatem laicorum, ut res magis valeaquam pereat, et verba intentioni, non e contra, debent inservire A maxim meaning "A liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into the effect the intention of the parties"

Benignior sententia, in verbis generalibus seu dubiis, est proeferenda (4 Rep. 15). A maxim meaning "Of general or doubtful words, the more liberal interpretation is preferred" (*Broom.*)

Berij

Benignius Leges Interpretandae sunt quo voluntas earum Conservatur A maxim meaning "Laws are to be more liberally interpreted, in order that their intent may be preserved" (*Burrill L. Dict*)

Bentagam. (*Tam*) Mortgaged plough-land

Benthal Of or pertaining to depths of the sea of a thousand fathoms and more.

Benthamic Of or pertaining to Jeremy Bentham or to his system.

Benthamism The political and ethical system taught by Jeremy Bentham who held that the greatest happiness of the greatest number is the rational end of moral rules, and ought to be the aim of Governments and individuals alike

Benvaris Property that escheats to the Government in default of heirs (*Wil. Gloss* 70)

Beohar (*H*) Behara (*Karn*) Business, calling, trade, traffic, money-lending A loan In law, legal proceedings At Jabalpur a kanungo (*Wil Gloss.* 72)

Beohara (*H*) Behari (*Karn*) A trader, a man of business, a merchant, a money-lender, a creditor A litigant, one who engages, or may engage, in legal proceedings (*Wil Gloss* 72.)

Bepraise To praise greatly or extravagantly, puff "Bepraised by newspapers and magazines" (*Goldsmiths, Essays, viii*)

Bequeath To give by will, assign as a legacy. This word is properly applied only to personalty, but in a will it avails to transmit real property also, "devise," however is the proper word.

"SPECIFICALLY BEQUEATHED," means "bequeathed expressly and not by reference" (*Jacksom* v *Hoste*, 27 L R Ir 450)

Bequest A gift of personal property by will, a legacy, but it generally means "any gift by will whether it consists of personal or real property."

Beradarzadah. The words *Bhai* and *Beradarzadah* are not limited in Urdu language to brother and his son but extend to more distant relations. A I R 1923 All 163

"Berar" Defined in X of 1897, S. 3,

Beri A small share in a village estate, a subdivision of the 'thok' or 'patti' (etymology and spelling are uncertain) (N W P) (*Bad Pow.* i 159, ii. 134)

BERI (*Ben*) A small embankment for drainage and irrigation purposes (*Bad Pow* i. 683 note.)

Berij, also written Barij, and Beriz, or Bariz, *Mar* Beriju, *Tel Karn* The total sum or aggregate of an account The total amount of a revenue assessment, the same as jama, the total assessment of a district The items of the assessment on a *Zemindari*, usually inserted, in former times, in the middle of the grant, and thence identified with the part of the document in which the entry was made, or the middle of the paper, also the net revenue assessment, after allowing for village and other fixed

Berm-Bank

charges. In Karnata the original Bidnur assessment was termed the Shist, the additions made by Hyder and Tippu, the Shamil The two together constituted the karim Berij, or old or original assessment The assessment of 1819-20 is termed the Tarao Berij the sasnata (S perpetual) Berij is the permanent settlement The term is more usually employed in the South than in the North of India to express the sense of a settlement of the revenue In Hindustan it is more commonly referred to the entry of the Jama in the Zamindari grant (*Wil Gloss* 73)

Berm-Bank The bank or side of a canal which is opposite to the tow-path (*Ame Cyc*)

In *Morris Canal, etc, Co* v *Fagin*, 22 N J. Eq 430 437 A witness is quoted as saying "It forms the canal, and holds the water, it is a hitching-place for boats when not in motion, forms a place for boatmen and canal repairers to walk along the canal, may be used to widen the canal, the water-way, if necessary, is of use to keep nuisances from the canal, is a place to load and unload cargoes, is a place to pass to and from, to keep the canal in order and repair when necessary"

Berne Convention An International Convention entered into between Great Britain, Belgium, Germany, France, Spain, Switzerland, Italy, Norway, Tunis, Liberia, and Hayti for the creation of an international union for the protection of literary and artistic works

Berth A post or an appointment, situation, employment, as, he has got a good berth at last Searoom, space kept or to be kept for safety or convenience between a vessel under sail and other vessels on the shore, rocks, etc Room for a vessel to turn around or to ride at anchor, as, to give wide berth to.

Bertillon system A system of taking measurements for future identification of persons "A method of anthropmetry, used chiefly for the identification of criminals and other persons, consisting of the taking and recording of a system of numerous, minute, and uniform measurements of various parts of the human body, absolutely and in relation to each other, the facial, cranial, and other angles, and of any eccentricities or abnormalities noticed in the individual" (*Black*)

Beruni The word 'beruni' means no more than the opposite of "khandani" or "ateli-e-beradan" The designation of a woman as a "beruni" woman means no more than that she was of a lower tribe and of lower status. It is not sufficient to raise the plea that she was not legally married (113 I C 785= A I R 1929 Oudh 1)

Besaya, more correctly vyavasaya (*Karn*) Cultivation, agriculture, farming.

Besayadabhumi. (*Karn*) Land under tillage

Besayadava (*Karn.*) A farmer, a cultivator.

Beshara (*Hindustani*) Without or above the law; the common name of those classes of fakirs which hold themselves above the law.

Beshi-jama. (*H.*) Increase of revenue or assessment upon that of the preceding year (*Wil. Gloss.* 73.)

Besides. "Other than". (*Walcott* v. *Bloomfield*, 4 Dr. & War. 235.)

Bet-kheta,

"Besides poramboke". The words "Besides Poramboke" exclude burning and burial grounds and other portions required for communal purposes, which are vested in the Government as trustees for the public [*Venkataram Swan* v *Secretary of State for India*, 9 L W 381=25 M L T 232=(1919) 1 M W N 191=50 I.C. 360=36 M L J 203]

Best Belief Swearing to the "Best of one's Belief", "imports that he is entitled to entertain the belief he expresses" (*per* Pollock, C. B, *Roe* v *Bradshaw*, L. R 1 Ex 108)

Best Evidence Primary evidence, as distinguished from secondary, the best and highest evidence of which the nature of the case is susceptible

Best evidence rule (*See* Evidence.) There seems to be no reason for assuming that a rule requiring the best evidence producible to be produced has no application to courts of which the Judges may be presumed to be, for want of professional training, less capable than they are elsewhere of weighing the effect of evidence [(1872) Sup I A 10=12 B.L R 120=18 W R 349=3 Sar 1=1 P R. 1872=2 Suth 628.]

"Best of His Knowledge and Belief". The phrase "to the best of deponent's knowledge and belief" imports the same as the phrase "so far as the deponent knows, and as he verily believes" Both imply that the deponent has information or evidence of the facts asserted, which, though it may not amount to certain knowledge, is, in his judgment, sufficient to justify a conclusion of the facts to which he swears

Bestial Belonging to a beast or to the class of beasts, animal, brutish "Of shape part human, part bestial" (*Tatler, No* 49)

Bestiality The qualities or nature of a beast, conduct or mental condition unworthy of human nature, beastliness.

BESTIALITY is the carnal knowledge and connection against the order of nature by man or woman in any manner with a beast

Bestiality, Sodomy, Buggery We take it that there is a difference, in signification between the terms "bestiality," and the "crime against nature". Bestiality is a connection between a human being and a brute of the opposite sex Sodomy is a connection between two human beings of the same sex, the male, named from the prevalence of the sin in sodom Both may be embraced by the term "crime against nature." Buggery seems to include both sodomy and bestiality (*Ausman* v *Veal*, 71 Am. Dec 331)

Bet (*H*) A pargana or Zamindari charge formerly allowed to be set-off from the assessment as being incurred for mats or wicker work in which goods or treasure were packed for transmission to the Subadar of the province, or to the court of Delhi. (*Wil Gloss* 73)

BET (*P J. and N W.P*) Khadir low lying land getting moisture by percolation from a river, or occasionally flooded. (*Bad. Pow. ii.* 535.)

Bet-kheta. (*Ch. Nagpur.*) Allotment of free land for the cultivators who worked the Raja's lot or farm. (*Bad. Pow. i.* 578.)

Bet, Betting

Bet; Betting To pledge as a forfeit to another who makes a similar pledge in return, on a future contingency, in support of an affirmation or opinion An agreement between two or more, that a sum of money or some valuable thing, in contributing which all agreeing take part, shall become the property of one or some of them, on the happening of future event, at present uncertain, the mutual agreement and tender of a gift of something valuable, which is to belong to the one or the other of the contracting parties, according to the result of a trial of chance or skill, or both combined, a wager, the thing or money waged

Bet distinguished from "premium" or "reward" In a wage or a bet, there must be two parties, and it is known before the chance or uncertain event upon which it is laid is accomplished, who are the parties, who must either lose or win. In a *premium or reward*, there is but one party until the act or thing, or purpose, for which it is offered, has been accomplished A *premium* is a reward or recompense for some act done, a *wager* is a stake upon an uncertain event. In a premium it is known who is to give before the event, in a wager, it is not known till after the event" (*Alvord* v *Smith*, 63 Ind 58, 62, *Ame*).

Betray To reveal or disclose in violation of confidence as, to betray a person's secrets or designs "Secrets are rarely betrayed or discovered according to any programme our fear has sketched out" (*George Elliot, Mill on the Floss*, v 5)

Betrayal. The act of betraying "Gained his freedom by the betrayal of his country's cause" (*S Sharpe, History of Egypt, xii*)

Betroth To contract for a marriage, to give in marriage to another, promise or pledge one's troth for marriage

Betrothal The act of betrothing, betrothment, engagement for a marriage. A mutual promise or compact between two parties by which they bind themselves to marry (*Burrill*)

It is essential in a contract of betrothment under Hindu Law that both persons whom it is intended to unite in marriage must be in existence at the time and Hindu law does not permit of antenatal betrothal of children (11 Lah 598=I R 1930 Lah 609=31 P L R 706)

Betrothment A mutual and formal promise by a man and a woman with a view to their marriage, betrothal, the act or state of being betrothed

Betta Literally a hill, also the name of an inferior sort of rice-land, situated on high ground and bearing only one crop a year

Bettering-house. A reformatory.

Betterment. A making better, improvement—an improvement of real property which adds to its value otherwise than by mere repairs, betterments are beneficial improvements made upon lands by the occupant or possessor, in building, fencing, draining, etc., additional value which property acquires from its proximity to a public improvement. [*Anderson*, See *Re London County Council and City of London. Brewery*, (1898) 1 Q. B. 387]

Between the Parties to the suit.

Betting (*See* Bet). Betting is a form of wagering contract in which money or money's worth is made payable by the parties on the result of an uncertain event, usually a game or sport. (*Ency.*)

BETTING AND GAMING DISTINGUISHED In common usage the term "betting" may sometimes be employed interchangeably with gaming, but not always If two persons play at cards for money they are said to be gambling or gaming, but they are gaming because they lay a wager, or make a bet on the result of the game, and therefore to say they are betting is equally appropriate If two persons lay a wager on the result of a pending election it will be said that they are betting, but not that they are gaming There is no gaming in which the element of the wager is wanting, but there is betting which the term "gaming" is not commonly used to express (*People* v *Wetthoff*, 47 Am Rep 557)

WAGERING, GAMING, PLAYING AND BETTING though each have a meaning more or less different from the other, are often used one for the other

Betting transaction Neither in India nor in England has the Legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that both in India and in England the Legislature regards it as undesirable in the public interest In India it has expressly been enacted that "agreements by way of wager" are void Similar provisions obtain in England, but up till 1892 it was not deemed necessary on grounds of public policy in England to include within the ambit of the legislation relating to betting and wagering transactions in which a principal had instructed an agent to back a horse for him (52 Cal 677=90 I C. 59=A I R 1925 Cal. 1007)

Bettu One cropped land (*Kar.*) (*Sund Mal. Law*)

BETTU (*S Kanara*) Land dependent on rainfall (barani, q v) *Bad Pow in*, 146 *note*

Between In the intermediate space, without regard to distance, extending or passing from one place to another, belonging to two as a mutual relation (*Bouvier*) When parties join in a legal instrument in different capacities it is expressed as being made "between" the parties The converse case is a unilateral instrument, in which this division of parties does not appear

A testamentary gift to two or more "between," or "between or amongst" them, creates a tenancy in common (*Lashbrook* v *Cock*, 2 Mer 70.)

"BETWEEN" TWO PLACES is exclusive of both. (*R.* v. *Fisher*, 8 C & P 613)

"Between the parties to any such instrument". These words refer to the persons who on the one side and the other, come together to make the contract or disposition of property, and would not apply to questions raised between the parties on the one side only of a deed, regarding their relations to each other under the contract. (*Mulchand* v. *Madho Ram*, 10 All 421=8 A W N 127)

Between the parties to the suit. The expression "between the parties to the suit" in S. 47, C P Code, means parties opposed to one another and not necessarily those who are plaintiff and defendant in a suit respectively. (*Samalapalli Mangayya* v. *Samalapalli*

Beverage.

Sriramalu, 19 I.C. 448=13 M.L T. 347=24 M.L.J. 477 =1913 M.W N. 382).

Beverage. This term is properly used to distinguish a sale of liquors to be drunk for the pleasure of drinking, from liquors to be drunk in obedience to a physician's advice. (*Com* v *Mandeville*, 142 Mass 469, 8 N E 327 *Black*)

Bewar. (*C P*) Shifting cultivation by burning the forest and dibbling in seed with the ashes (*Bad Pow* i 115, ii 440)

Bewray To disclose or reveal (the identity or the secrets of a person) perfidiously or prejudicially, betray, expose

"Beyond a reasonable doubt" The phrase "proof beyond a reasonable doubt" is synonymous with the term "moral certainty"

THE EXPRESSION **"beyond the age of 18"** in S 24 (*b*) of the Prevention of Crime (Young Offenders) Act means and includes the period up to the 19th birthday of the person concerned 14 Rang 625 (F B.) 163 I C. 1008=A I R 1936 Rang 485, 14 Rang 327

"Beyond the seas" defined. 44-5 V c. 58, S 190 (25).

BEYOND THE SEAS, has the same meaning in law as "out of the realm" or "out of the land" (*Ruckmaboye* v *Lullobhoy*, (1851) 8 Moore P C. 4=5 M I A. 234 Cf. *Musurus* v. *Gadban*, (1894) 2 Q B 352

Bhad-bach A fraudulent division or apportionment of the assessment

Bhag or Bhaga. (H) A share, a part, a portion, a share in kind: tax, duty, the share of the Government Share or portion of inheritance In Hindu law partition may be regulated amongst the sons according to the number of their mothers, or the wives of the deceased, which is termed *Patni-bhaga*, but this is allowable only where the usage has been long established as the custom of the family The more regular distribution is according to the number of sons (putra) thence denominated *Putra-bhaga* (*Wil. Gloss* 74.)

Bhagdari (Bhag—a share portion) One of the names of the joint villages surviving in Guzarat (Bo), *see* narwadari (*Bad Pow* iii 259.)

Bhaghayat (*Hindi*) Lands which are artificially watered—usually by means of a well, from which the water is raised by bullock power and distributed by channels cut for it in the field—and rendered fit for the growth of vegetables, fruit-trees, and superior crops of grain

Bhagnar. (*H*) A name given to the rich alluvial lands under the banks of the Jamna (*Wil. Gloss* 74.)

"Bhagra" The word "Bhagra" means the old bed of a river [*Ram Subhag Rai* v *Sheo Sahai Rai*, 14 L.R 172 (Rev)=17 R D 252=A I.R 1933 All 376]

Bhai. A sister is included in the expression "bhai" in a wajib-ul-arz (*Niaz* v. *Tamiz*, 15 Ind Cas. 175)

Bhai and Beradarzadah. The words *Bhai* and *Beradarzadah* are not limited in *Urdu* language to brother and his son but extend to more distant relations. [*Syed Fazal Haq* v *Aziz Hasan*, 77 I.C. 940= L.R 4 All (Civ) 23=A I R 1923 All. 163.]

"Bhai-band." The term "Bhai-band" used in a *wajib-ul-arz* sometimes means, according to the

Bhanguni

context, not only kindred by blood, but also the brotherhood of the village. (*Hira Lal* v *Ramjas*, 6 A 57=3 A.W.N. 206]

Bhai Batija Hakiki A sister is included in the term 'Bhai Bhatija Hakiki' *i e*, own brothers and nephews [*Niaz Fatima* v. *Tamiz Begam*, 15 I C 175 (All)]

Bhai Hakiki The word *Bhai Hakiki* includes a sister also. [*Mussamat Najibar* v *Nihal Singh*, 19 I C 647 (All)]

'Bhai nazdiki' Near collaterals.

Bhaiyachara, (*H*) Lands or villages, or certain rights and privileges held in common property, either entirely or in part, as in the perfect, or imperfect pattidari tenure by a number of families forming a brotherhood, originally perhaps descended from a common ancestor, but now not always connected by sameness of descent (*Wils Gloss*)

Bhaiwadi-bigha Bigha of the brotherhood, the artificial measure in the Benares villages (*Bad Pow* ii 138)

'Bhaiya', 'Walda' The words 'Walda' 'Bhaiya' are applied out of love and affection as mother and brother and they cannot be taken literally. (*Mumtaz-un-nissa Begam* v *Wazirali*, 65 I C 308=8 O L J 569)

Bhajidast (*Mar.*) A tax levied in kind, either by the Government or the village officers, on fruit and vegetables brought to market (*Wil Gloss*)

Bhakti The term bhakti, or bhagti as used in Bihar, means devotion or loving faith and involves the idea of God as a personal being 14 Pat L T 415 =A I R 1933 Pat. 449

Bhal Means deposit of silt brought by canal water

Bhale Sultan Clan of Sultanpur The *Bhale Sultan Clan* appear to have derived their name, some three centuries ago, from their warlike exploits in the service of the Emperors of Delhi They are now settled in considerable numbers in the district of Sultanpur in Oudh, in several villages, in which they constitute the bulk of the population In the language of the Evidence Act, S 48, they form a "considerable class of persons." [(1907) 35 I A 1 (9)=30 A 1 (145)=12 C W.N 74=9 Bom L R 1348=6 C L J 766=3 M L T 1=5 A.L J 1=11 O.C 78=17 M L J. 605]

"Bhamah wajah" The words "Bhamah wajah" mean "with all rights". (*Ram Chandra Sarup* v. *Kirpa Devi*, A I R. 1923 All. 216)

Bhandari (*H Mar*) A treasury, a store In Guzerat, a kind of guarantee-assurance to a creditor that a loan made by him shall be repaid by the borrower, without the surety's becoming personally liable Also, guarantee or assurance to any person of the undisturbed enjoyment of recognised office or property, granted on many occasions by the British Government to the creditors and officers of the Gaikwar (*Wil Gloss*)

Bhang (*H.*) An intoxicating preparation of hemp

"BHANG" defined Ben. Act, V of 1909, S 3, E. B. & A. Act, I of 1910, S. 5, U.P Act, IV of 1910, S. 5.

Bhanguni (*Tel.*) Settlement of a dispute among ryots by arbitration.

Bhaoli (*H*) Distribution of the products of the harvest in previously stipulated proportions between the landlord and tenant Rent paid in kind, instead of money. (*Wil Gloss*)

Bhaoli rent. 107 I.C. 844.

Bharai. (*H.*) An allowance formerly made to the Government revenue officers in the provinces of Bareilly and Benares, to cover the cost of remitting the collections to the Government treasury, and of exchanging the different sorts of rupees received in payment into standard currency.

Bharti (full), used in S Kanara of estates paying a full assessment (*Bad Pow* iii 150)

(Nilgiri dist, M) a system of cult (*Bad Pow* iii 185)

Bharuchi A writer on Ancient Hindu Law— who wrote commentary on Manu Dharma Sastra

Bhat (*H*) A title or cognomen of learned Brahmans, as Kumaril Bhat and others Also the name of a particular tribe of Brahmans in the province of Benares (*Wil Gloss.*)

Bhata-vritti (*M*) Grant for support of pious Brahmans (*Bad Pow* iii 81.)

Bhatija "*Bhatija*" has a far wider meaning than "brother" or "nephew" in English. [*Samher Singh* v *Sher Singh*, 18 A L J 454=2 U.P L R. (All) 158= 56 I C 183]

Bhatta-Gutta. An addition to the revenue assessment in Mysore, according to the productiveness of the soil, originally fixed by one of the petty chiefs of Mysore (*Wil. Gloss* 80)

Bhatta-manyam Lands granted either rent free, or at a low rent to Brahmans

Bhattavritti An assignment of revenue or lands granted to Brahmans at a low rent, or rent free, for their subsistence The term sometimes designates a village, the lands of which are permanently distributed among hereditary shares

Bhaunria (*Uriya*) An account of all the lands of a village specifying the fields according to their numbers, with the name of the cultivator, the length, breadth, square contents and species of land and cultivation (*Wil Gloss*)

Bhavi (*Tel, Karn*) Irrigation from wells, wells, the land so watered

Bheda Levying a contribution from the other ryots, to enable one who has been unfortunate, to pay his rent.

Bhej-barar (*H.*) A tenure frequent in Bundlekhand in which the proportions of the revenue or tax (Barar) payable by the common proprietors of a village are subject to periodical or occasional adjustment, and in which balances of the revenue and of village charges arising from the fraud or dishonesty of a sharer are made good by rateable contributions from the other sharers. Strangers are sometimes introduced into over-assessed estates on condition of paying the Barar, but their admission is not a necessary incident of the tenure, the essential feature of which is the re-adjustment of the shares The term is also applied to a village in which this tenure prevails (*Wil. Gloss*).

Bhet. (*H.*) Interview, introduction, but more commonly the presentation of a gift made to a superior on occasion of being presented or introduced to him; a complimentary gift, a Nazar (*Wil Gloss.*)

Bhet (or bhent) (*Marathi*) A small percentage on the Land Revenue allowed to certain officials. (*Bad. Pow* iii 203.)

Bhikh (*H.*) Alms, asking for alms, begging, giving alms. An item in the allowances formerly made as abatements from the revenue, a small sum so deducted on account of charity or alms (*Wil. Gloss*)

"Bhinna Gotra Sapindas" are those related to the propositus through a female They are also known as bandhus Bhandhus may be—

(*a*) "Atma Bandhus" that is relations of one's own, (*b*) "Pitri Bandhus" that is, the father's Bandhu, (*c*) "Matri Bandhus" that is the mother's Bandhu

Bhisti. Water-carrier

Bhit. (Sylhet=basti or bari of Assam (*Bad Pow.* iii 448)

Bhoga, or Bhog-dar (*H*) One in the possession or enjoyment of any property. (*Wil Gloss* 81)

Bhoga-bandhak-bundhuk, or Bhogya-bandhak, (*H*) A kind of bond or mortgage in which the article pledged or mortgaged may be converted to use, as land, houses, cattle, trees, the profits of which are to be appropriated by the lender or mortgagee in lieu of interest (*Wil Gloss* 81)

Bhogadhi or Bhogyadhi. (*H.*) A pledge or deposit which may be used until redeemed (*Wil Gloss*)

Bhogajasti An extra assessment on account of a second crop raised on land that usually bears only one crop in the year

Bhoga-labha. (*H.*) Usufruct in lieu of interest. (*Wil Gloss*)

Bhogdan (*Assam and probably elsewhere*) Land granted revenue free under the old native government (*Bad Pow* iii 423 *note*)

Bhogra (*C. P Sambalpur*) The special holding (sir of other parts) of the headmen, also in Chattisgarh (*Bad. Pow* ii 459) allowance for in assessing (*Bad Pow.* ii, 472)

Bhogra Bhogi land—Meaning of A I.R. 1937 Nag 184

Bhogum or Bogum Enjoyment, possession.

Bhogyadi Usufructuary mortgage (Kan) (*Sund Mal law*)

Bhoja Bhoja is a specially prepared screen devised for hunting. (*Emperor* v. *Malu Hiru Bagara*, 12 Bom L R 520)

Bhratarah (*S*) The word "bhratarah" (in Hindu law) means "brothers" and does not include sisters (*Lochan* v. *Babai*, 4 I.C 786=5 N L R. 161.)

Bhratri. What is given to a girl by her brother, mother or father (*Wil Gloss* 491.)

Bhratrudatta (*S*) What is given by a brother to a sister on her marriage; one sort of Sridhan or woman's wealth. (*Wil. Gloss.*)

Bhu-bandu (*Tel.*) Boundary of a field or an estate, particulars relating to it.

Bhubandu-jabita.

Bhubandu-jabita (*Tel*) The statement, shewing the total extent of the lands of a village and their distribution as arable, garden, and unproductive, and distinguishing those held free of assessment

"**Bhugut bandha mortgage**", means a transfer of the interest of a tenant in his tenancy, for the purpose of securing the payment of money advanced or to be advanced by way of loan, upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the tenancy during the period of the mortgage [Ben. Act VI of 1908 (Chota Nagpur Tenancy), S 3 (2)]

Bhuinhar The original (Dravidian) Families which founded the village and had special privileged holdings and furnished the village hereditary officers (Ben Chutiya Nagpur) (*Bad. Pow* 1 577)

BHUIN-HAR (*H*) A tribe of Hindus settled in great numbers in the Districts of Gorakhpur, Azimgarh, and Benares, the Raja of which last is a member of the clan (*Wil Gloss.*)

Bhuihari. (*H*) Land let at a low rent to tenants liable to be called out for military service (*Wil Gloss.* 83.)

Bhuinhari lands privileges of, (*Bad. Pow* 1 581)

BHUINHARRI The word "bhuinharri" in the Chota Nagpur Tenancy Act shall include the tenures mentioned in the preamble to that Act as *bhet-kheta, dalkatari, pehnai* and *mahtoai* Ben Act II of 1869 (Chota Nagpur Tenures), S 1

"BHUM" defined. Reg II of 1877 S 31.

BHUM (*H* soil) One of the tenures of Ajmer and Old Rajputana. Bhumiya, the holder of such an estate (*Bad Pow* II 329, 334, 539 *noel*) in Guzarat (Bo) (*Bad Pow* III 282)

Bhundari, (*H*) A small patch of cultivation, land let rent-free to the village servants, or to indigent relations, or paupers temporary occupants. (*Wil Gloss*)

Bhungai, Bhoongaee (*H*) The name of a tax levied by the Raja of Bijpur on part of the forest produce of Mirzapur In the official report of the settlement of the Tappa, the term is said to be derived from Bhunga, an axe. (*Wil Gloss*)

"**Bhunias**"—Lords of the **soil.** *See* 32 Cal 6 (14)

Bhunjari A term of the South West Provinces Lands held by those who first brought them into cultivation, or by their direct heirs (*Wil. Gloss.*)

Bhur (*Hindi*) An unproductive soil, consisting for the most part of seven-tenths of sand and the rest of clay (*Bad Pow* II, 76)

Bhusa and Karali, are demands, which are recognized by custom, and form part of the rent (14 R.D 634)

Bhuta. Devil, devil shrines being called Bhuta Sthana (Kan) (*Sund Mal law*)

Bhutal Pandyana Kattukattalai The enactments of Bhutala Pandya introducing Aliyasantana rules into S. Kanara. (*Sund Mal law*)

Bhutia. An inhabitant of Thibet, or an inhabitant of Bhutan of Thibetan origin

Bhut-kheta. Land allotted in the (Dravidian) village for support of worship, etc. (*Bad. Pow.* 1. 577.)

Bidding

Biaj (*H.*) Interest on money or grain In the North-Western Provinces, the interest paid by the cultivators on the advances made to them by the shopkeepers, for their subsistence and repair of agricultural implements, for seed, and for the Government revenue (*Wil Gloss* 84)

Bias. A leaning of the mind, prepossession, inclination, propensity toward an object, bent of mind a mental power, which sways the judgment, that which sways the mind toward one opinion rather than another, as, bias of arbitrator, of judge, or jury or witness.

Bias and Prejudice distinguished "'*Bias*' is not synonymous with 'prejudice;' A man cannot be prejudiced against another, without being biased against him, but he may be biased without being prejudiced" (5 *Cyc* 685)

Bias, Judicial No man can lawfully be a judge in his own cause This is a clear rule of law as well as of natural equity and it is rigourously enforced Hence, if a judge has any interest in the subject-matter of the litigation before him, all proceedings will be stayed or set aside unless the parties, with full knowledge of the facts, have waived the objection.

Bibi A Musalman lady Among Shaikhs the title is commonly affixed to all women's names

Bible. The scriptures of the Old and New Testaments.

Bibliographer. One who writes or copies books, one who writes about books, especially in regard to their authorship, date, typography, editions, etc, one skilled in bibliography

Bibliography The science which treats of books, their materials, authors, typography, editions, dates, subjects, classification, history, etc, a classified list of authorities or books on any theme or subject

Bid An offer to give a price for an article about to be sold in auction

A BID AT AN AUCTION is nothing more than an offer and can be withdrawn like all other offers before it is accepted by the other party which, in the case of an auction, is signified by the fall of the hammer 16 L W 816=45 M 799=70 I C 977=A I R 1922 Mad 486=43 M L J 132

Bidder. A person who makes an offer at an auction A puffer is not a real bidder By arrangement between him and the vendor his bid is to go for nothing, but as to the competing bidders, it appears to be what it is not, a real bidding 5 M I A 109 (133-4)=7 Moo P C 239=Perry, O.C 232=1 Sar. 403]

BIDDERS IN AUCTION SALE should be presumed to make an offer on the condition that it would be accepted or rejected within the period during which such sale ordinarily lasts and in the absence of anything to show that they consented to the period being protracted to any length of time it must be held that the offer was not intended to be open for a greater number of days (in this case 6 weeks) 78 I. C. 710=A I R 1925 Cal 557.

Bidding (at auction sale) By authorising the employment of puffers, the vendor is guilty of a fraud on the competing bidders, and cannot profit by

Bidu

it [*Doolubdass Pettamberdass* v. *Ramloll Thackoorseydass*, (1850) 5 M.I A. 109=7 Moo. P.C 239=Perry O C 232=1 Sar. 403.]

Bidu (*Tel*) **Bidukadu.** (*Karn.*) Waste uncultivated land.

Bienes Comunes "Bienes comunes" are those things which, not being the property of any, pertain to all as to their use—as the air, rain, water, the sea and its beaches. *Lux* v *Huggin*, 69 Calip 255.

Bigamy A double marriage, this word properly signifies the being twice married, but is now used by an almost universal corruption, to signify the offence of poligamy, or the having a plurality of wives or husbands at once 3 Inst 88 (*Tomlins Law Dict*) It is the wilfully and knowingly contracting a second marriage when the contracting party knows that the first is still subsisting, the state of a man who has two wives, or of a woman who has two husbands, living at the same time (*See also* Indian Penal Code, Ss. 494 and 495)

"**Bigamy with adultery**" means adultery with the same woman with whom the bigamy was committed. [Act IV of 1869 (Divorce), S 3, cl (7)]

Bigha (*H*) A measure of land, varying in extent in different parts of India. A standard area measure (of the Mughal Empire) In Upper India it is usually =3025 sq yds, in Bengal=1600 sq yds (*Bad Pow* i 275) (Ben) its sub-divisions, (*Bad Pow.* i. 459 *note*) (N W P) (*Bad. Pow.* ii 39) (P), use of the (*Bad Pow* ii 558) (Assam), use of (See *Bad Pow* iii 421)

Bigha-daftari Official record of the measurement of the lands of a District in Bighas in the time of Akbar

Bigha-dam A local name for the (bhaiachara), form of village-tenure in which the holding is made up of little bits of each kind of soil (N W P) *See* (*Bad Pow.*) Settlement of the revenue at so much per Bigha especially in villages held in common, in which the lands are apportioned in Bighas, and the assessment proportionably rated

Bigha-dan Rate levied on the sharers of an imperfect pattidari village, to make good any deficiency of revenue left by the produce of the land held in common

Bighati According to measurement by Bighas, as revenue assessed at so much per bigha, also division of lands by Bighas among coparceners Settlement of the revenue per Bigha with reference also to the quality and produce of the lands, generally made at a money rate, but sometimes in kind A coparcenary village, in which the lands are distributed among the shares in Bighas and their fractional parts

Bighavani Assessment of villages at a stipulated rate per Bigha Reduction into Bighas of measurements by a different standard

Bighoti (*Bo etc.*) A money-rate assessed on land *per* bigha. (*Bad Pow* iii. 264, 273.)

Bigotry Obstinate and unreasonable attachment to a particular creed, practice or ritual; excessive, or real warmth in favour of a party, sect or opinion; intolerance of the opinions of others.

Bihar Act. Defined in X of 1897, S. 3.

"**Bihar and Orissa Act**" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in

Bill

Council under the Indian Councils Act, 1861 to 1909, or the Government of India Act, 1915 [Act X of 1897 (General Clauses), S 3 (5-*a*).]

Bihisti (*vulg* bheestie) A water-carrier, one of the village servants (*Bad Pow* i 151)

Bij (*H*) Origin, commencement

Bijai (*H*) A portion of seed corn which the poorer classes are allowed to take from the field, also the portions of corn given to the village smith, carpenter, barber, and Washerman, by each cultivator (*Wil Gloss*)

Bijawari (*Karn*) Extent of land computed according to the quantity of seed required to be sown in it (Mysore) Allowance for such corn (Madras). Read also Bijwari

Bijkhal. (*H*) Advance of seed and food to agriculturists (Rohilkhand) (*Wil. Gloss* 86)

Bij parava. (*Tel*) Land actually sown (Bellary).

Bijwar (S Kanara) Old Land Revenue assessment based on calculation of seed used and its return (*Bad Pow* iii 149)

Bilabandi, (*H*) An account of the revenue settlement of a district, specifying the name of each Mahal, the farmer of it, and the amount of the rent In the North-West Provinces, Bilabandi usually means an arrangement for securing the payment of the revenue In Behar it is said to imply the annual distribution of the portions of the lands among the Ryots for their respective cultivations (*Wil Gloss.*)

Biladahola (*Karn*) A field lying waste.

Biladar (*H*) A collector of the revenue (Central India) (*Wil Gloss.*)

Bila intiqal The words 'bila intiqal' in a deed mean free of all charge or incumbrance, 1937 O.W.N. 356=167 I C 295=A I R 1937 Oudh 295

'**Bila lagan**' The words '*bila lagan*' do not necessarily imply a rent-free grant but merely denotes that rent has not been fixed (14 R D 712 *See also* 14 R D 640)

Bilateral Contract A contract in which both the parties are bound to fulfil obligations reciprocally towards each other.

Bilinguis denotes properly one who has the command of two languages, but is applied in a legal sense to the jury composed partly of denizens and partly of aliens, which was formerly competent in cases between Englishmen and foreigners (*See* 27 Edw. III stat 2, c 8, 28 Edw III c 13, and 8 Hen. VI c. 29, *Ency of the Laws of England.*)

Bill A formal statement or declaration of a thing in writing, a formal written statement of complaint to a court of justice, a written accusation of one or more persons of a crime, a common engagement for money, given by one man to another, a note for the absolute payment of money, an order drawn by one person on another to pay a third a certain sum of money, absolutely and at all events, a form or draft of a law, presented to a legislature, but not yet enacted, or before it is enacted, a proposed law, an account of charges and particulars of indebtedness by the creditor of his debtor (*Ame. Cyc*)

Thus "The word 'Bill' is one of the most general that can be used wherever it is not confined by other terms, *e g*, a Bill in Parliament, a Bill in Chancery

Bill-board.

In every kind of business the word 'Bill' occurs as representing any writing,—a Bill of Lading, a Bill of Exchange, a Bill of Parcels, a Pay Bill, a Bill of Fare, a Bill of Divorce and so on" (Per *Maule, arg Bank of England* v *Anderson*, 3 Bing N C 601)

DISTINGUISHED FROM "INDICTMENT" (IN ENGLISH LAW) "Strictly speaking, an indictment is not so called until it has been found 'a true bill' by the grand jury Before that it is termed a bill only" 1 Archbold Crim (Pl 230, note 1)

Bill-board A board or tablet on which advertising bills or placards may be posted

Bill book A book in which traders keep a record of the details of their bills of exchange, promissory notes, etc, payable and receivable

Bill-broker One whose business it is to negotiate the discount of bills of exchange

Bill and Note Broker A bill and note broker is a broker who buys and sells notes and bills of exchange

Billeting. In early times troops quartered under an order from the king to the civil magistrate of the district, requiring him to provide quarters and provisions Owing to the abuses to which it led, billetting was declared to be illegal by the Petition of Right (3 Chas I, c. 1) and various subsequent Acts (See *the Manual of Military Law.*)

Bill in equity. In an equity suit the pleading in which the plaintiff sets forth the circumstances on which he bases his claim for relief

Bill of Adventure. A writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce (*Ame Cyc.*)

Bill of Attainder A legislative act, which inflicted punishment without trial "Acts of the supreme power, pronouncing sentences, where the legislature assumes judicial magistracy" "Bills of attainder" are such special acts of the Legislature as inflict capital punishment on all persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings' (*Ex parte Law* 15 *Fad Cas* 3)

Bill of Costs A bill of costs is a detailed statement of the professional work done by a solicitor for his client, and of the sums which he charges for such work. In the absence of any special agreement every solicitor is bound to deliver such a bill to his client on his request. (See *Johnson's Bill of Costs*)

Bill of Credit A "bill of credit" in its commercial sense comprehends a great variety of evidences of debt, which circulate as money in a commercial community A letter whereby one person requests another to advance moneys to a third person named therein for a certain amount, and promises to reimburse the person making the advance It is more usually termed a Letter of Credit (*Ency*) A licence or authority given in writing from one person to another, very common among merchants, bankers and those who travel, empowering a person to receive money of their correspondents abroad

Bill of Debt (*Obs.*) An old term including promissory notes and bonds for the payment of money.

Bill of Exchange.

Bill of Entry is a certificate delivered to the Customs authorities by importers of goods, giving particulars of such goods, and the port or place from which they have been imported. The term is likewise applied to a somewhat similar certificate given on the exportation of goods (*Ency*)

Bill of Exceptions. "A formal statement in writing, of exceptions taken to the opinion, decision or direction of a judge, delivered during the trial of a cause, setting forth the proceedings on the trial, the opinion or decision given, and the exception taken thereto, a written statement of objections to the decision of the court upon points of law, made by a party to the cause, and properly certified by the judge or court making the decision. (*Ame Cyc.*)

Bill of Exchange A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. A promise or order to pay is not "conditional," within the meaning of this section by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain [Act XXVI of 1881 (Negotiable Instruments), S 5 *See also* Eng Bills of Exchange Act, 1882, S 3, Stamp Act, S 2]

"A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer" (S 3, Bills of Exchange Act, 1882).

The person who makes the bill is called the *drawer*, he to whom it is addressed, the *drawee*, and when he undertakes to pay the amount, he is then called the *acceptor* The person to whom it is ordered to be paid is called the *payee*, and if he appoints another to receive the money, that other is called the *indorsee*, as the payee is with respect to him, the *indorser*, any one who happens, for the time, to be in possession of the bill, is called the *holder* of it" (*Tomlin's Law Dict.*)

Bill of exchange includes a hundi and a cheque [Act IX of 1908 (Limitation), S 2 (2)]

Bills of exchange, with cheques, hundies and promissory notes, constitute a paper currency to which special characteristics, unknown to the common law, were attached by the law merchant The most important of these are negotiability, presumption of consideration, certain other presumptions and estoppels directed to enable a "holder in due course" to take and hold the paper without being prejudiced by any defect, irregularity, or special arrangement between earlier parties of which he is not aware at the time, and the concession of days of grace By virtue of the form of contract, the property in the sum payable is transferable by the mere delivery, or delivery and indorsement, of the bill, and (in the case of a negotiable bill) the contract itself is made ambulatory, so that when a bill has been drawn, accepted, indorsed, and negotiated through several hands, the holder may recover against any of the previous parties who are severally liable to him, and

Bill of Exchange Payable on Demand

as between them under implied contracts of indemnity, the liability may be brought home to the party intended to be ultimately subjected to it Special varieties of bills, of which non-negotiable bills are the most important, are also recognised in which some one or more of the normal characteristics above alluded to are wanting The law of bills, cheques and notes has been codified in England by the Bills of Exchange Act and in India by the Negotiable Instruments Act (*Ency*)

"BILL OF EXCHANGE" defined Act 9 of 1908, S 2 (2), Act 2 of 1899, S 2 (2), Act 15 of 1877, S. 3, Act 1 of 1879, S 3 (2), Act 26 of 1881, S 5

"Bill of Exchange payable on Demand" defined Act II of 1899, S 2 (3).

Bills in a Set Where a bill is drawn in a set (*i e* two or more copies are signed and issued by the drawer), each part being numbered, and containing a reference to the other parts, the whole constitutes one bill, where any one part is discharged the whole bill is discharged The acceptance may be written on any, but only on one part (*Ency*)

Bill of Health A certificate signed by an official delivered to masters of ships when they leave places, showing (in the case of a clean bill of health) that, when the ship sailed, no infectious disorder was known to exist at the port of sailing

Bill of Indemnity A bill introduced into Parliament to legalise transactions which, when they took place, were illegal, or to exempt particular persons from punishment for breaches of the law (*Ency*)

Bill of indictment A written accusation of one or more persons, of some crime or misdemeanour, preferred to, and presented upon oath by, a grand jury (*Burrill Law Dict*)

Bill of Lading. Receipt for goods delivered to a carrier for transportation A memorandum signed by masters of ships acknowledging the receipt of the merchant's goods, of which there usually are three parts, one kept by the consignor, one sent to the consignee, and one kept by the captain (*Tomlin's Law Dict*)

BILL OF LADING. Defined Act II of 1899 in S 2.

Bill of Lading Act A British statute vesting rights under bills of lading in the consignee or indorsee but reserving right of stoppage *in transitu* and claims for freight

Bill of Lading and charter-party A bill of lading differs from a charter-party, which is another contract of sea carriage in that "it is required and given for a single article or more laden on board a ship that has sundry merchandise shipped for sundry accounts, whereas a charter-party is a contract for a whole ship." (*Lawes, Charter-parties and Bills of Lading*, 1813, p 319)

"Bill of lading" as defined in the Indian Stamp Act includes a "through bill of lading," but does not include a mate's receipt Act II of 1899 (Stamp) S 2, (Cl (4)]

Bill of Pains and Penalties A bill introduced into Parliament usually in the House of Lords, with the object of inflicting punishment on a person without a trial in the usual way in a Court of law In this respect it resembles a bill of attainder, but while the latter imposes the punishment of death, the former inflicts some lesser penaty. (*May's Parl. Practice*)

Bill of parcels Invoice, account given by the seller to the buyer containing particulars of the goods bought and of their price.

Bill of particulars Writing setting forth particulars of a matter stated in a more general form in a pleading

Bill of Rights The title of "An Act of Parliament of 1689 declaring the rights and liberties of the subject, and settling the succession to the Crown of England"

Bill of Sale is a solemn contract, whereby a man passes to another the right or interest that he hath in goods and chattels (*Tomlins Law Dict.*) It is an assignment of goods, whereby the property in such goods is intended to pass, but without possession of them being given [Per Esher, M.R, *Johnson* v *Diprose*, (1893), 1 Q B 512]

Bill payable, Bill receivable A bill of exchange, promissory note, or other commercial paper It is called a *bill payable* by the person who is to pay it, and a *bill receivable* by the person who holds it Separate accounts under these names are usually kept in mercantile books

Bil-makta (*M*) According to agreement, stipulated, fixed, applied especially to a tenure by which a Ryot holds his land at a fixed rate per plough or per Bigha (*Wil Gloss*)

Bil-makta Inam (*M*) A grant of land at a low fixed rent

Bil-makta, Jama. (*H. A*) Consolidated revenue, stipulated assessment

Bil-makta-mukhasa (*H*) A village held either rent free, or at a low stipulated quit rent.

Bil-makta, patta (*H*) A lease for a gross aggregate rent, one in which the land tax and all other cesses or abwabs were consolidated

Bil makta Rai (*H M*) Consolidated rent or assessment, aggregate rate per Bigha

Bilmucta (See *Bil-makta.*) By estimate A term used in the Northern Circars, for a kind of tenure where the land is held at a very low rent

BILMUCTA (A ='in the lump'), generally for a lump payment of rent, etc, total sum of revenue allotted to a village, which the cultivators distributed for payment among themselves (M) (*Bad Bow.* III 47)

Bilu (*Karn*) Waste, uncultivated land

Bilu Bitti (*Karn*) The quantity of seed required to sow a given extent of land.

Bimetallism is an economic theory which seeks to establish that gold and silver should both be kept at a fixed standard

Binding Obligatory (as) the binding force of a moral duty Referring to a provision "binding" a company to do a certain thing the Judge said, "It seems to me that the words '*Charge*', '*Bind*', '*Oblige*' (whatever may be the ordinary use by conveyancers of one or the other of these words), in point of English language and of legal language, mean the same. 'To bind' means 'to charge,' and 'to charge

Bind Over.

means 'to bind,' and 'oblige' means to charge or bind All these words are in my opinion absolutely synonymous." (Re *Florence Land Co*, 48 L J Ch. 145)

Bind Over The act of requiring a person to enter into a bond or furnish bail to appear for trial, to keep the peace, or to attend as a witness. This term is correlative to "bond," but is used as a legal term only with reference to certain kinds of recognisances or bonds A person is said to be "bound over" when he enters into a bond or recognisance to the Crown to do or abstain from some act On committal for trial for an indictable offence the defendant, if bailed, is bound over to appear and take his trial, and the prosecutor and the witnesses on either side are bound over to appear and prosecute or give evidence, as the case may be. (*Ency.*)

Bir. A preserve.

BIR (Cis-Sutlej, Pj) Waste land (*Bad. Pow* ii 701)

Birakt Bairagi The word "Bairagi" means withdrawn from worldly affairs and perhaps in its primary sense it was intended to convey the idea of complete asceticism, that is to say, an hermetic life in which the individual cut himself off from his worldly desires and environments and retreated into a condition of isolated contemplation of things divine; but there is no doubt that this word has long since ceased to have any such restrictive meaning and it would seem that it now almost only has the significance of a person devoted to religion and does not itself in any way contemplate the necessary incidence of celibacy It is no sure that "Birakt" even with the conjunction of the word "Bairagi" now necessarily contemplates a non-marriageable state (*Raghunath Das* v. *Sheo Kumar Missir*, 67 I C 464= A.I R 1923 Pat 309)

Birgujar. (*H*) One of the thirty-six royal races of Rajputs settled chiefly along the Jamna, from Rohilkhand to Mathura

Birt. (*H.*) Grant or endowment to any person for his maintenance, or for religious and charitable objects. Proprietary right, whether acquired by purchase, inheritance or grant, heritable and transferable, subject to payment of revenue, either to Government, or to the Raja or Zamindar, when not specially exempt Various kinds of Birt are specified as recognised in Gorakhpur as *Jwan Birt* An assignment by the Raja to a younger son and his descendants of villages in perpetuity, granting them by Patta, or deed of lease, and receiving a fixed sum as rent An allowance to the family of an old servant deceased

BIRT generally implies an under-proprietary right It is a cession under which a superior proprietor parts with a certain portion of his proprietary rights either for money paid or for religious purposes *Ram Autar* v *Drigpal*, 14 O C 41=8 I C 725 *See also* 4 O.W.N 1225; 31 P R 1911=11 I C 331

BIRT. (S vritti) A grant of land or of rights and privileges, by a Raja, or later by the Taluqdar, in various forms and on various terms (Oudh) (*Bad Pow.* i. 132). different kinds of. (*Bad. Pow.* ii 218, 236, 239.)

Birt-Zamindari Grant of right of managing the land affairs of a village (Oudh) (*Bad. Pow* i. 132, ii. 225, 6, 239)

Bishop's Court.

Birt Zemindari right "Birt Zemindari right" implies merely subordinate zemindari interest [*Gouri Sankar* v. *The Maharaja of Bulrampur*, 4 Cal. 839 (P C.)]

MARWAT BIRT Compensation in land to the family of a man killed in the service of the Raja, chargeable with half the rent of a village held as Birt on the usual terms

SANKALP BIRT (*H*) A religious grant to a Brahman, and held at first rent-free, but latterly subject to a small payment

Birta (*H*) Grant of land rent-free, absolutely and for ever (*Wil Gloss*)

Birtdars Meaning of *See* 20 I C 474.

Birth. The fact of being born By analogical extension, an act or fact of coming into existence, origination as, the birth of Protestantism

Birthday The day on which a person is born, also the anniversary of that day, day or time of origin or commencement

Birth-hour. The hour at which one is born

Birthland The land country of one's birth

Birth-mark Some congenital mark or blemish on a person's body (as) a mole.

Birthplace The place, town or village of one's birth, place of origin

Birth-rate The proportion of births of children to the number of inhabitants of a town or country

Birthright Any right or privilege to which a person is entitled by birth

Birtia. (*H*) One holding a Birt, or subsistence grant of any description, upon the terms of the grant

Bisanam (*Mal*) A second or lighter crop (Travancore)

Bis dat qui cito dat A maxim meaning "He gives twice who gives quickly" (a formula in charity Appeals).

Bisen (*H.*) A powerful tribe of Rajputs in the eastern parts of the North-West Provinces (*Wil Gloss* 89)

Bishnottar (*H*) Land held rent-free by Brahmans professing the worship of Vishnu, or granted in honour of that divinity

Bishop is the title given to members of the highest order in the Christian Church. (*Ency.*) The chief of the clergy in his diocese or jurisdiction. (*Tomlin's Law Dic*)

"BISHOP," in modern Acts includes Archbishop (3 & 4 V c 86, S. 2)

"BISHOP" defined 37-8 V. c. 77, S 14

Bishopric. The diocese of a bishop, or the circuit in which he has jurisdiction, the office of a bishop (*Burrill*)

"A virtuous woman should reject marriage as a good man does a bishopric; but I would advise neither to persist in refusing" (*Addison, Spectator, No.* 89)

Bishop's Court An ecclesiastical court held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law.

Bisi

Bisi (*H*) A measure of weight, commonly a Vis or Visi equal to five Seers In Garwhal and Kamaon, a dry measure, also a measure of land (*Wil Gloss*) A fiscal division of the county a province or district paying revenue under the Hindu Government of Orissa also termed Bishe

Bismillah. (*A*) The name of the formula 'In the name of God the most merciful,' with which all letters and public documents, among Musalmans are inscribed, which is repeated on the killing of any animal for food, and which is worn as a Talisman against evil spirits Bismillah is also the name of the ceremony held when a child reaches the age of four years four months and four days, when it is made to repeat the first chapter of the Koran

Biswa (*H*) A twentieth, but applied especially to the twentieth part of a Bigha The biswa is divided into twenty biswansis

Biswa-barrar (*H*) Assessment or collection of the revenue upon the Biswas or shares of the land

Biswadar (*H*) The holder of a share or shares in a coparcenary village (*Wil. Gloss* 90.)

Biswadari (*H*) Proprietary tenure in Biswas, or shares so designated Also the tenure of independent village communities holding under a superior Talukdar, as in Aligarh, Mynpuri, and Gorakhpur

Biswani A land measure *See* Biswa

Biswansa, Biswansi or Biswani (*H.*) The fraction of a Biswa, usually the twentieth (*Will Gloss*)

Biswi (*Oudh.*) One of the sub-tenures arising out of a mortgage transaction (*Bad Pow* ii 241)

Biswi Where land held by tenant is mortgaged by the proprietor with the tenant such a mortgage is called 'Biswi' in eastern Oudh [*Sat Deo* v *Jai Nath* 9 O L J 141=A I R 1922 Oudh 75 (2)]

Biswi mortgage Biswi mortgage is an underproprietary tenure liable to redemption (*Bijai Partap Singh* v *Raghuraj Singh* 9 O L J 173=25 O C 116= A I R 1922 Oudh 7 *See also* 1922 Oudh 75=9 O.L J 141=67 I C 808

Bita (*H*) Lands of a village that have existed from time immemorial, in opposition to lands recently acquired by alluvial deposit (*Wil Gloss*)

Bitauri (*Hindi*) A tax upon artificers and shopkeepers for permission to work or trade in a village (*Puraniya, Wil Gloss* 90.)

Bitch The word "bitch" has not any such meaning as "prostitute," in English, and although used as a term of reproach when applied to a woman, does not charge the crime of prostitution, and is not actionable (*K* v *H* 91 Am Dec 397.)

Bittadahola. (*Karn*) A field left fallow.

Bitte (*Karn*) Performance of inferior offices in a village as porterage, etc, for fees in grain, or lands exempt from revenue

Bitte-khadi (*Karn*) A cess levied in lieu of a piece of cloth formerly exacted annually from each loom (*Wil. Gloss*)

Bitters. Liquor in which bitter herbs or roots are steeped.

Bitte-yettu (*Karn.*) A tax levied in Mysore in lieu of bullocks formerly required from the villages for the conveyance of a grain to the paligars.

Black List.

Bitti Gratuitous labour by tenants (*Kan.*) (*Sun Mal law*)

Bittuvadu (*Karn.*) Sowing seed.

Bivouac. An encampment of soldiers in the open air without tents, each soldier remaining dressed and with his weapons by him, hence, figuratively a position or situation of readiness for emergencies, extreme watchfulness.

> "In the world's broad field of battle,
> In the *bivouac* of Life.
> Be not like dumb, driven cattle,
> Be a hero in the strife" (*Longfellow*)

B L An abbreviation of Bachelor of Law, or of a Bill of Lading

Black Acre or White Acre. Fictitious names applied to pieces of land, and used as examples in old legal text books (*Burrill*)

Black Book of the Admiralty "This book contains the ancient ordinances and laws relating to the navy, and probably compiled for the use of the Lord High Admiral of England, Selden calls it 'the jewel of the Admiralty records,' and Prynne ascribed to it the same authority in Admiralty as the Black and Red Books have in the Court of Exchequer" Story, J speaks of it as "to highest authority in matters concerning the Admiralty" (*Ency of the Laws of England*)

Black cap A part of the judicial full dress, worn by the judges on occasions of especial state (*Ame. Cyc*) "A judge of the High Court possesses as part of his judicial costume a square limp cap of black cloth which he puts on over his wig on certain solemn or state occasions, *e g* when passing sentence of death, attending divine service in state, or on circuit, or officially receiving the Lord Mayor of London The practice rests purely on ancient usage, and is not in any way necessary, except in popular opinion, for the validity of sentence" (*Ency of the Laws of England*)

Blackleg A "blackleg" is properly a man who makes his living by betting and playing cards According to Pollock, C B (3 H & N, at p. 379) the word does not necessarily imply that the person so described cheats or is guilty of any conduct that is criminal, but merely that he "gets his living by frequenting race courses and places where games of chance are played, getting the best odds and giving the least he can." (*Ency. of the Laws of England.*) In recent labour disputes the word "blackleg" has been used in an entirely new sense, to denote a workman, who accepts employment during a strike, and without the leave of the trade union, from a master whose men have "come out" or strike, or sometimes, more loosely, any workman who refuses to join the "union" of his trade

Black List is a list of persons or firms against whom its compiler would warn the public, or some section of the public, a list of persons unworthy of credit, or with whom it is not advisable to make contracts Thus the official list of defaulters on the Stock Exchange is a black list. To put a man's name on such a black list without lawful cause is actionable; and the further publication of such a list will be restrained by injunction. (*Ency of the Laws of England.*)

Black List.

Blacklisting is a part of the paraphernalia of a strike It may be said to represent the malignant hate and revenge of the parties resorting to it In its purpose and effects it is closely allied to a boycott A "blacklist" is defind to be a list of the persons marked out for special avoidance, antagonism, and enmity on the part of those who prepare the list or those among whom it is intended to circulate, as where a trades union blacklists workmen who refuse to conform to its rules, but it is most usually resorted to by combined employers, who exchange lists of their employees who go on strikes, with the agreement that none of them will employ the workmen whose names are on the lists, and comes within the meaning of what is termed a " conspiracy "

Black Mail Black Mail appears to have three distinct meanings Its original meaning as the equivalent of rent reserved in labour, cattle, or produce, or otherwise than in sterling money, as distinct from white rent paid in current coin or white money (2 Co. Inst 19, 2 Bl Com 42, 3 Burn Justice 17th ed., 214) In this sense it is obsolete

2 Its proper and usual meaning is a tribute in money, corn, cattle, or other kind, levied by free booters on the northern borders of England for immunity from pillage

3. It is now popularly applied to extortion of money, etc , by threats of libel, prosecution, exposure or bodily harm (*Ency of the Laws of England*) It usually implies that the payment is involuntary and the ground for demanding it unlawful or pretended and fraudulent.

Blacksmith's Inam *See* 20 L W. 451=82 I C 942=(1924) M W N. 883=A I R 1924 Mad 867

Blanc Seign. Blanc seign is a paper signed at the bottom by him who intends to bind himself, giving acquittance or compromise, at the discretion of the person whom he in trusts with such blanc seign, giving him power to fully do that which he may think proper according to agreement .

Blank A part of an instrument not written upon or filled up (*Burrill*)

Blank Acceptance A term used when the acceptor of a bill of exchange signs the acceptance without naming the amount for which it is drawn It is open to the drawer in such a case to insert afterwards any amount up to the limit covered by the stamp.

Blank Credit A class of bills resembling accommodation bills, drawn for temporary financial convenience but representing actual indebtedness

Blank Indorsement An indorsement of a bill of exchange or other document, in which the name of the person to whom it is given is not mentioned

Blanks in Deeds and other Documents—Supplying the Omitted Matter Omitted words may be supplied from the context or from other parts of the instrument if the intention sufficiently appears thereby. [Norton on Deeds, p 82, *per* Lord Truro in *Mill v. Hill,* (1852), 3 H L C. at p 847; see also *Daniel's Trusts,* (1875) 1 Ch. D 375, and the note to *Reo* v *Tranmarr* in 2 Smith L C, 11th ed , p 517.]

Filling up the Blank. The filling up of a blank may be such an alteration in a material particular of the instrument as to vary its effect from that it would have had as it was and was intended to be when executed by the parties. In such case the deed is avoided [see the notes to *Master* v *Miller* in 1 Smith L.C , Norton on Deeds, p. 28 and *Suffield* v. *Bank of England,* (1881) 7 Q B.D 270] except as. evidence against the person who made or authorised the alteration [*Pattison* v *Luckley,* (1875) L R 10 Ex 330]

Blank Transfer The name blank transfer is commonly used to denote a transfer of stock or shares in a company executed without the name of the transferee having been filled in Such transfers are frequently made and deposited with the lender of money advanced upon the security of the shares, for the purpose of giving him power to deal with and realise the shares when he thinks fit so to do without further recourse to the borrower (See *Thomson on Corporations,* Chap 38, and especially paras. 2592 and 2593 and *M Neil* v *Tenth National Bank,* 7 Ame. Rep 341)

Blasphemy Blasphemy, according to the most concise definition, is the malicious reviling of God, or religion It consists in reviling God or in wantonly or maliciously attacking religion and religious tenets, for the purpose of exposing the doctrines to contempt and ridicule "Every publication is said to be blasphemous which contains matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound feelings of mankind, or to excite contempt and hatred against the Church by law established, or to promote immorality" (*Steph Cr Law*)

Blasphemy is a sin as well as a crime, but with the sin the State has no concern As Erskine, J , said, in sentencing, G J Holyoake in 1842, "The arm of the law is not stretched out to protect the character of the Almighty, we do not assume to be the protectors of our God, but to protect the people from such indecent language" A crime is an act which affects other men perniciously, which destroys the peace and harmony of the community. And it is only when the interests of society require that the repetition of any such act should be prevented that the secular Court intervenes to secure that end by punishing the offender Now the harm that may result to the community from the publication of blasphemous words is twofold In the first place, an immediate disturbance and breach of the peace may follow the utterance of such words, a demonstration may be made either for or against the speaker, which may lead to riot and disorder And the probability of such a demonstration will depend largely upon the tone and manner, rather than the matter, of the address In the second place, it was feared—perhaps with less reason—that the public utterance of such words would undermine religion and subvert the public morals, and "destroy those obligations whereby civil society is bound together" "But where no danger to the State can reasonably be apprehended, no crime has been committed." (*Ency. of the Laws of England*)

Blockade. The blocking of a harbour, port, or sea board by hostile ships, in order to prevent ingress or egress, and by stopping the supply of provisions or ammunition, compel surrender without bombardment or siege. "A Blockade may be more or less rigorous, either, (1) for the single purpose of watching the military operations of the enemy and pre-

venting the egress of their fleet, or (2) to cut off all access of neutral vessels to the interdicted place the latter is strictly and properly a Blockade, for the other is, in truth, no Blockade at all as far as neutrals are concerned" (Per *Lord Stowell in the Juffron*, 3 Rob. C. 154, at p. 156

Blockade, by international law, in order to be binding on any, must be effective as to all. It must be maintained by a force sufficient really to prevent access to the coast of the enemy

"Blockade" and Marine Insurance. A blockade is a "restraint of princes" and accordingly a shipowner is entitled to throw up a contract when a blockade prevents its performance within a reasonable time [*Geipel v. Smith*, (1872) L R 7 Q B 404] Insurances on the carriage of contraband goods of voyages in breach of blockade are not illegal (*Arnold on Marine Insurance*)

PAPER BLOCKADE A constructive blockade, a blockade established by proclamation without the actual presence of a force adequate to make it effectual

TO RAISE A BLOCKADE, to remove or break up a blockade, either by withdrawing the ships or troops that keep the place blocked up or by driving them away from their respective stations

TO RUN A BLOCKADE To pass through a blockading squadron, to enter a port under blockade

'Blood', in Law means (1) The relationship which enables a person to take by descent, (2) a number of persons connected by blood relationship, that is, by being descended for one or more common ancestors

Blood is of 2 kinds—the whole blood and the half-blood One person is said to be of whole blood to another when they are both descended from the same pair of ancestors, *e g*, two brothers who have the same father and mother Two persons are said to be of the half blood to one another when they are descended from one common ancestor only, *e g*, two brothers who have the same father but different mothers

HALF-BLOOD, relationship through one parent only, as that of half-brothers, or sisters

WHOLE BLOOD, relationship through both father and mother

Blood-guiltiness The guilt or crime of shedding blood

Blood-guiltless. Free from the guilt or crime of shedding blood, not guilty of murder. (*Rare use*)

Blood-money Money paid as the price of blood Compensation or reward for bringing about the death of another, either by bringing a capital charge against him or by giving such testimony as will lead to conviction

Blood Relation Persons descended from the same stock or ancestor are said to be blood relations They may be related either lineally or collaterally, lineally where one is descended in a direct line from the other, as father and son, grandfather and grandson, collaterally where they are descended from the same stock, but not the one from the other, as uncle and nephew (*Ency of the Laws of England*)

" 'BLOOD RELATIONS,' cannot embrace a larger class than 'relations.' No doubt, all men are blood relations of all other men, if they are descended from a common ancestor, however remote; and we are told that the nations of the earth are made of one blood' But, for manifest convenience, the word 'relations,' in legal import, is limited to nearest of kin, and now to next of kin under the statute". [*Per* Porter, M R, *Dunlop* v *Greer*, (1899) 1 I R. 335]

Bloodsucker. A cruel or blood-thirsty man, an extortioner, a sponger

"Thou art a villain and a forger,
A bloodsucker of innocence, an hypocrite"
(*Beau and Fl Knight of Malta* 1 3)

Bloody Stained with blood, exhibiting signs or traces of blood as, a bloody knife, also, attended with bloodshed, marked by cruelty. sanguinary, as, a bloody battle

B L R (*in Milit. Law.*) An abbreviation of "breech-loading rifle" used in the technical description of certain guns

Bludgeon A heavy stick, particularly one with one end loaded or thicker and heavier than the other, used as an offensive weapon

Blue-book A name applied to the reports and other papers printed by order of the British Parliament or issued by the Privy Council or other departments of Government because their covers are blue

Bluff Blustering, pompous

Blunder A mistake made through mental confusion, a gross or stupid mistake "It is worse than a crime, it is a blunder" (*Memoirs of Fouche*)

BLUNDER, ERROR, MISTAKE, BULL An *error* is a wandering from truth primarily in impression, judgment, or calculation, and, by the extension of the idea, in conduct A *mistake* is a false judgment or erroneous choice, it does not, as error sometimes does, imply moral obliquity, the defect being placed wholly in the wisdom of the actor *Blunder* is a stronger word a gross error in action or speech A *bull* is a blunder in language, involving generally a very obvious and comical contradiction, but the word is sometimes applied to any particularly inapt or ludicrously inappropriate remark

Blunderbuss A short gun or fire arm with a large bore and funnel-shapped muzzle capable of holding a number of balls or slugs, and intended to be used at a limited range without exact aim, a stupid blundering person

Board. To receive food as a lodger, or without lodgings, for a compensation (as in the phrase boarding and lodging)

"The term 'board' includes the ordinary necessaries of life, and must be considered as being synonymous with the word 'entertainment' ". (5 *Cyc* 718.)

A number of persons having the management, direction or superintendence of some public or private office or trust as, a board of directors; board of trade, board of Revenue, board of health, school-board, Local Board, Municipal board, Sanitary board, board of Agricultue, board of Education; board of Guardians, Local Government board, metropolitan board, board of Supervision, Board of Superintendance, board of works, board of trustees, etc.

Boarder

"BOARD" defined. Act 11, 1876, S 3, Act 5, 1886, S 3, Act 22, 1886, S 3 (1-A), Act 20, 1890, S 1, Ben Act 7, 1876, S 3, Ben. Act 5, 1897, S 3, Ben Act 6, 1908, S. 3 (3), Ben, Act 3, 1876, S 3, Cl 12, Bom Act 7, 1865, S 35, Bom Act 6, 1879, S 4, E B & A Act 1, 1910, S 3 (2), Mad Act 3, 1905, S 5, U P Act 3, 1899, S 3 (1), U P Act 3, 1901, S 4 (1)

Boarder. One who boards One who gets his meals, or both meals and lodging, in the house of another for a price agreed upon

A Sojourner in an Inn, on a special contract to stay and board, is a Boarder (*Chamberlain* v *Masterson*, 26 Ala 377) A mere guest is not a boarder, but only a simple way-farer (*Stroude*)

Boarder and Guest The guest comes and remains without any bargain, and may go away when he pleases, paying only for the actual entertainment he receives, long time in the inn, in this way, does not make him a boarder, instead of a guest [*Stewart* v *Mecready*, 24 How Prac (N Y) 62 Black]

Boarding-clerk The employee of a custom-house agent or shipping firm whose duty is to communicate with ships on their arrival in port

"The keeper of a *boarding-house* must be distinguished from an *inn-keeper* The latter holds out his premises for the reception of all travellers, who are willing and able to pay an adequate price for the accommodation they receive A boarding house-keeper receives his boarders by special agreement, and makes such bargain as he chooses as to the price to be paid to him" [See *Thomson* v *Lacy*, (1820), 3 Barn and Ald 283, 22 R R 385, *Parkhurst* v *Foster*, (1699), 1 Salk 387, *Dansey* v *Richardson*, (1854), 3 El & Bl 144, 23 L J Q B 217]

Boarding-house A house of entertainment, more home-like than a hotel or restaurant, where persons are furnished with board for a fixed price

Boarding-officer An officer of the custom-house who boards ships on their arrival in port in order to examine their papers and prevent smuggling

Boarding-school A school which also provides board for its pupils, a school at which the pupils are not only taught lessons but are also fed and lodged

"**Board of Commissioners**" defined Ben Reg 7 1822, S 35

Board of Guardians *See* Eng Int Act, 1889, S 16 (1), (3)

"**Board of Revenue**" defined. Act 12, 1851, S 18, Ben Act 7, 1864, S 3, Ben Reg 7, 1822, S 35, Ben. Reg 7, 1828, S 25, Bom Act 7, 1865, S 3, U P. Act 1, 1904, S 4 (7)

Board of Trade. An organization of the principal merchants, manufacturers, tradesmen, etc, of a city, for the purpose of furthering its commercial interests, encouraging the establishment of manufactures, promoting trade, securing or improving shipping facilities and generally advancing the prosperity of the place as an industrial and commercial community, a department of the British Government, forming a permanent committee of the Privy Council, and presided over by a member of the Cabinet.

"BOARD OF TRADE" defined 52-3, V, c. 63, S. 12 (8); Eng. Intr. Act, 1889, S. 12 (8).

Body Politic or Corporate

Board-school A school under the management of a school-board consisting members elected by the rate-payers, generally a public elementary school

"**Board's rates**"—Meaning of *See* 1936 K D 82.

Board-wages. A fixed payment made to domestic servants in lieu of board

Boat. A small vessel or water-craft, a small vessel moved by oars

Boatsman A boatswain

Boatswain. A subordinate officer of a ship who has charge of the rigging, anchors, cables and cordage

Boatwright A boat-builder

Bodily. Pertaining to or concerning or belonging to the body or physical constitution as opposed to the mental (as) bodily harm or bodily injury

Bodily Heirs Heirs begotten of the body, lineal descendants, children

Body The main portion, the bulk of anything, the larger part, the majority as, the body of the people are opposed to the measure A number of individuals spoken of collectively, usually associated for a common purpose, joined in a certain cause, or united by some common tie or occupation, as, a legislative body, the body of the clergy, a body corporate A number of things or particulars taken together a general collection, a code, a system as, a body of laws

Body corporate A corporation

"It is called a body corporate, because the persons are made into a body politic and are of capacity to take, grant, etc, by a particular name"

The phrase "Every body politic, or corporate, and person and persons," includes Parishes (*R* v *Barton*, 9 L J M C 23.)

The term "body corporate", when applied to a municipal corporation, must be construed as a body constituted of all the inhabitants within the corporate limits The inhabitants are the corporators The officers of the corporation, including the legislative or governing body, are merely the public agents of the corporators.

Body of an Instrument —The main and operative part consisting of the substantive provisions, as distinguished from the recitals, title, etc

Body of Laws. An organized and systematic collection of rules of jurisprudence, as, the body of the civil law.

Body politic An association of persons legally incorporated for the promotion of some specific object A body politic and corporate is a municipality governed according to a legislative act of incorporation, and thus possessing corporate political powers.

Body Politic or Corporate, "A body politic is a "social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good".

TRADING BODY may be a single individual in one case, it may be the whole inhabitants of a continent in another; it may be the individuals of a trade diffused through a country in a third.

Bogase

Bogase. (*Karn.*) The two hands joined so as to hold anything, hence it comes to imply the small perquisites granted to the village servants measured by handfuls.

Bogie-engine. A locomotive used in moving cars and making up trains at a railroad station

Bogus Spurious, not genuine, sham; as, a bogus claim, a bogus government, bogus cheque.

Bogus shareholder Where in the event of a company not making a profit the shares were not to be paid for at all, the shareholder was a "bogus" shareholder and this is opposed to the whole object of the Companies' Acts in England and in India (36 Bom. 557=14 Bom L R 648=16 I C 696.)

Bohemian. A person, especially an artist or a literary man, who leads a free and often somewhat dissipated life, despising conventionalities generally

"By Bohemian I do not mean to be uncomplimentary. I mean merely a class of persons who prefer adventure and speculation to settled industry, and who do not work well in the harness of ordinary life" (*Froude, Sketches, p* 217.)

Bohni (*H Tel Karn*) The first money received during the day, or the first ready money sale by shopkeepers and hucksters As a general rule no credit is given for the article first sold (*Wil. Gloss*)

Bohra (Bohara). A Muhammadan caste in parts of Bombay, holding the 'bhagdari' villages of Broach district (*Bad Pow in.* 260)

Bohra Brahmins Bohra Brahmins belong to the Bohra tribe, or brotherhood, whose members follow the business of money-lending—an astute class well accustomed to keep books and record events from which large pecuniary results might follow, and fully alive to the importance of preserving those records, and producing them when engaged in legal controversies in which they might be decisive [(1909) 37 I A 1 (3) =32 A 104 (107-8)=7 M L T. 57=11 C L J 172=14 C W N 285=12 Bom L.R 244=5 I C 249=20 M L.J. 182]

Boiler A person who boils, a vessel in which anything is boiled (*Webs*) "Boiler" includes both the boiler proper in which steam is generated, and also the conveying pipe and the receiver. [*R* v *Boiler Explosions Act Commrs*, (1891) 1 Q B. 703]

"Boiler," means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure for use outside such vessel, and includes any mounting or other fitting attached to such vessel, which is wholly or partly under pressure when steam is shut off. (Boilers Act, 1923, S 2.)

"Boiler" defined Act 2, 1907, S 2 (*a*), Ben Act 3, 1879, S. 3, Bom Act 2, 1891, S 3 (*a*), Bur Act 2, 1910, S. 3, Bur Act 18 of 1882, S 2, Mad Act 3, 1893, S. 2, P. Act 2, 1902, S. 2, U.P. Act 1, 1899, S. 2.

Boiler Insurance A species of casualty insurance against the explosion of, or accident to, steam-boilers and their appliances, and against loss or damage resulting therefrom.

Boisterous. Turbulent, rough and noisy; clamorous: applied to persons or their actions as, a boisterous man; a boisterous game.

Bona fide holder.

Boitokanah. Boitokanah appears to mean a house, or the part of a house, used for sitting or reception rooms, where entertainments are usually given, and business transacted. The ladies of the family do not commonly enter these rooms, which, when in the same house with the Zenana, are usually the outer rooms. [(1874) 1 I A 387=14 B L R. 60=22 W R. 377=3 Sar. 395=3 Suth 47.]

Bolans (*H*) Making over one's share to another (used in East Oudh and Benares). (*Wil. Gloss* 92.)

Bolansi. (*H*) The holder of a share properly belonging to another

Boledari (*S E P*) Village founded by an individual grantee, where the dependants and inferiors pay him 'bola' or rent (as opposed to bhaiachara where all the body are equal). (*Bad. Pow* II, 691)

Bolt "Bolted," when spoken of a debtor implies leaving the place suddenly with the intention of defrauding his creditors (*O'Brien* v *Bryant*, 16 L.J. Ex 77.)

Bolt (In fire-arms) In a needle-gun, the sliding piece that thrusts the cartridge forward into the chamber and carries the firing-pin.

Bomb An explosive projectile, consisting of a hollow ball, or spherical shell, generally of cast-iron, filled with a bursting charge, fired from a mortar, and usually exploded by means of a fuse or tube filled with a slow-burning compound, which is ignited by the exploding powder when the mortar is discharged Bombs are now commonly termed shells, though shell in the sense of a projectile has a wider meaning. Also called bomb-shell.

Bomb (*as a verb*). To attack with bombs

Bombardment A continuous firing upon a place with artillery capable of destroying it. An attack with bombs or shells upon a town, fort or other position occupied by an enemy

Bombast High-sounding words, extravagant language, speech too big and high-sounding for the occasion

"Bombay Act" defined Act 10, 1897, S 3 (6), Bom Act 1, 1904, S 3 (5)

"Bombay City Survey" defined Bom. Act 2, 1876, S 19.

Bona fide In good faith; without fraud or deception, honestly, as distinguished from bad faith, openly, sincerely That we say is done *bona fide*, which is done really, with a good faith, without any fraud or deceit (*Tomlin's Law Dic*)

The expression "*bona fides*" means only "good faith" or "honesty of dealing." (*Mathunsa Rowthan* v *Apsa Bin* 12 I.C. 444=21 M L.J 969.)

No distinction can be made between *bona fide* in fact and *bona fide* in law There is no such thing as constructive *mala fides*. (A I R 1928 Mad. 1215=55 M L J. 385)

"Bona fide dispute" The expression "*bona fide* dispute" means nothing more than that each party to a suit must intend to press his claim to the property in dispute. (*Sidh Gopal* v. *Behari Lal*, 50 All. 284=107 I.C 247=25 A L.J. 978=A.I.R. 1928 All. 65.)

Bona fide holder for value of a Bill or Note is "Holder in due course". (See *Neg. Ins. Act.*)

Bona fide mistake.

Bona fide mistake. The term *"bona fide"* as applied to a mistake, means that the mistake is not made deliberately. Where a mistake is honestly made, it is a *bona fide* mistake" (*Nistarini Dassya* v. *Sarat Ch. Majumdar*, 29 I C 680)

A *"bona fide Mistake"* includes a mistake of law as well as of fact. (*Duckett* v *Gover*, 46 L J.Ch. 407)

Bona fide Occupation "Actual and *bona fide* occupation" of lands means merely actual occupation. (*Stroude.*)

Bona fide payment "Payments really and *bona fide* made," mean payments which the party does not intend to reclaim (*Gibson* v *Muskett*, 11 L J C P. 225)

"Bona fide purchaser" means, one who is "really a purchaser, and not merely a donee taking a gift under the form of a purchase". (Per *James, L J Vane*, 42 L J Ch 299)

BONA FIDE PURCHASER is one who at the time of the purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside, and purchases in the honest belief that his vendor had a right to sell, without notice, actual or constructive of any adverse rights, claims, interest or equities of others in and to the property sold

Bona fide Traveller, within S 10 of the Licensing Act, 1874 [See *Cowap* v *Atherton*, (1893) 1 Q B. 49, *Penn* v *Alexander*, (1893) 1 Q B 522, *Williams* v *Macdonald*, (1899) 2 Q B. 308]

Bona fide possessor facit fructus consumptos suos By good faith a possessor makes the fruits consumed his own. (Tray Lat Max 57)

Bonae fidei possessor, in id tantum quod ad se pervenerit tenetur (2 Inst 285) A maxim meaning "A *bona fide* possessor is bound for that only which has come to him"

Bona fides exigit ut quod convenit fiat Good faith demands that what is agreed upon shall be done

Bona fides non patitur ut bis idem exigatur Good faith does not allow us to demand twice the payment of the same thing

Bona gestura. Good behavour.

Bona vacantia Goods in which no one claims a property but the king, such as royal fish, shipwrecks treasure trove, waifs, strays, etc (In English law) where a person dies possessed of personal property, intestate, and leaving no next-of-kin, the Crown becomes entitled to all such property Chattels, real and personal, vested in a person as a mere trustee upon private trust which has failed, are as a general rule held by him as trustee for the crown This title of the crown is in virtue of its prerogative, and in this respect differs from the title of the crown to land by escheats (*Byrne Law Dic*)

Bond An agreement of engagement, a covenant between two or more persons Technically a bond is a deed or obligatory instrument, in writing, whereby one doth bind himself to another, to pay a sum of money, or to do some other act, but in popular language any instrument in writing that legally binds a party to do a certain thing may be called a bond As a verb, the word "bond" is used in the sense of "to give bond for; to secure payment of duties by giving bond." (*Burrill.*)

Bondmaid

"BOND" as defined in the Stamp Act includes—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be,

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another, and

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another [Act II of 1899 (Stamp) S 2, Cl (5) *See also* 10 M 158, 13 M 147, 8 Cal 534.]

The state of being in a bonded warehouse or store in charge of custom-house or excise officers said of goods or merchandise as tea and wine still in bond A surety, a bondsman, bail A certificate of ownership of a special portion of a capital debt due by a Government, a city, a railroad, or other corporation to individual holders and usually bearing a fixed rate of interest

"Bond" defined Act 9, 1908, S 2 (3), Act 2, 1899, S. 2 (5)

Without attestation of witness, there can be no bond 80 I C 860=A I R 1925 Oudh 188

Bond, acknowledgment, Agreement Ordinarily, a balance struck by the debtor, followed by the words *"baqi rahe"* and signed by the debtor would be a mere "acknowledgment" In such a case it will be immaterial that the entry is or is not attested by witnesses If, however, the words used are *"baqi dene"* that would amount to an "agreement" If, further, such an entry is attested by one or more witnesses, it would be a "bond" and must be stamped accordingly 40 P L R 193.

Bond and Instrument "The legislature has used the words 'bond', and 'instrument in writing,' as convertible terms, and as meaning the same thing" (*Courand* v *Vollmer*, 31 Tax 397, 401, *Ame Cyc*)

Bond, covenant, or instrument, in Schedule I of the Stamp Act, 1891 (54 & 55 Vict c 39), includes agreements not under seal [*National Telephone Company* v *Inland Revenue Commissioners*, (1899) 1 Q B 250, (1900) App. Cas 1]

Bond of obligation is a deed whereby the person bound, obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another (the obligee) at a day appointed (*Tomlin's Law Dic*)

LLOYD'S BOND, a bond of legal instrument devised by an English barrister named Lloyd to enable railway and other corporate companies in England to increase their indebtedness without infringing the statutes under which they were incorporated and which prohibited borrowing

CONVERTIBLE BONDS. Evidences of debt issued by a stock company which contain a provision that they may be converted at the holder's will into an equivalent amount of stock.

Bond note A note authorising the removal of bonded goods for exportation or to another warehouse, and requiring the signature of a Customs House Official

Bondmaid. A female slave; or a female who is bound to render services without wages

Bondman.

Bondman (In old Eng Law) a villein or tenant in villeinage.

Bond-service Slavery, service without hire

Bond-slave A person in a state of slavery, one whose person and liberty are subjected to the authority of a master, a slave

Bond-woman, Bonds-woman A female slave.

Bondage Slavery, imprisonment, personal servitude, captivity (*2 Bl Comm 92*)

Bonded Put or placed in bond, as, *bonded goods* Encumbered, mortgaged as, heavily *bonded property* Secured by or consisting of bonds as *bonded debt*

Bonded debt is that part of the entire indebtedness of a corporation, state, etc, which has represented by the bonds it has issued, as distinguished from floating debt.

Bonded goods Goods in a bonded warehouse, and not chargeable with duty until required for consumption

Bonded Ware-house Licenced place where bonded goods (*i e*) goods in bond liable to duty are stored On the first introduction of the warehousing system by statute goods imported were to be placed in warehouses approved of by the Customs authorities, and bonds given by the importers for payment of the duties when the goods were removed It was from this system of bonds that the name of bonded or bonding warehouses was given to these public warehouses

Bondsman A surety, one who is bound or who by bond becomes surety for another

Bondu (*Tel*) A field or crop dried up for want of rain

Bondu-ponvadam (*Tel*) Parched or dried up crops, yielding no grain

Bonfire A fire kindled, usually in some high, open, and conspicuous place, such as a hill-top as an expression of public joy or exultation, or as a beacon.

Boni judicis est judicium sine dilatione mandare executioni (*Co Litt 289*)

A maxim meaning "It is the duty of a good Judge to cause judgment to be executed without delay"

Boni judicis est ampliare jurisdictionem A maxim meaning better Judge will, if necessary, extend the limits of his jurisdiction It is a part of the duty of a good Judge to enlarge (*i e*) use liberally his remedial jurisdiction or authority

Boni judicis est causas litium dirimere A maxim meaning "It is the duty of a good Judge to remove the causes of litigation"

Boni judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium (4 Rep 15) A maxim meaning "It is the duty of a good judge to put an end to litigation, that suit may not grow out of suit", and it concerns the welfare of the state that an end be put to litigation [4 Coke 15, 5 Coke 31 (*a*)]

Bonitarian Equitable, used to characterise a class or form of rights recognised by Roman Law, in contradistinction to quiritarian, which corresponds to legal in modern law. *Bonitarian ownership, or title*, the title of ownership recognised in Roman Law by the praetors in a person not having absolute legal (or quiritarian) title, because claiming by an

Book.

informal transfer It corresponds somewhat to the equitable ownership recognised by Courts of Equity, as distinguished from legal title at common law.

Bonitas tota aestimabitur cum pars evincitur. A maxim meaning "The value of the whole may be estimated when a part is proved"

Bonum defendentis ex integra causa, malum ex quolibet defectu The success of a defendant depends on a perfect case, his loss arises from some defect (II Coke 68a.)

Bonum necessarium extra terminos necessitatis non est bonum A maxim meaning "A good thing required by necessity is not good beyond the limits of such necessity" (*Burrill, Hob. 144, Black*)

Bonum vacans Property without an owner of any sort (See *Bona vacantia*)

Bonus A gratuity, a premium or advantage; a definite sum, to be paid at one time, for a loan of money for a specified period, distinct from, and independently of, the interest, a premium for loan, a sum paid for services or upon a consideration in addition to or in excess of that which would ordinarily be given (*Ame Cyc*) Allowance over and above the ordinary dividend of a company either in the form of extra money payment or otherwise A bonus is not a gift or gratuity, but a sum paid for services or upon some other consideration, but in addition to or in excess of that which would ordinarily be given

Bonus judex secundum aequum et bonum judicat, et aequitatem stricto juri praefert A maxim meaning "A good judge decides according to justice and right, and prefers equity to strict law" (*Coke Litt 34, Broom*)

Book Defined in XXV of 1867, S 1, XVI of 1908, S 2.

Book A treatise, written or printed on any material and put together in any convenient form Any printed literary compilation, a collection of sheets bound together containing manuscript entries or intended to contain such entries, the name of several important papers prepared in the progress of a cause, although entirely written and not at all in book form (*Burill Law Dict*)

The word book as defined in the Printing Presses and Books Act (XXV of 1867) includes part of a volume or pamphlet *Emperor* v *Hari Govind Limaye*, 13 I C 827=14 Bom.L R 40

"Book" has been defined in the Registration Act to include a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book [Act XVI of 1908 (Registration), S 2, cl. (2).]

"In its ordinary sense a 'book' signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to be movable in the sense of being undone and put together again A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book.

The definition of "book" given in the English Copyright Act, 1845, S. 3, is that the term means and includes "every volume, part or division of a volume;

Book.

pamphlet, sheet of letter press, sheet of music, map, chart, or plan separately published."

The term "book" in S. 34 of Evidence Act (I of 1872) means a collection of sheets of paper bound together with the intention that such binding shall be permanent, and the papers used collectively in one volume, but unbound paper, in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S. 34 [*Mukandram* v. *Dayaram*, 23 Ind Cas 893 (894)]

Book, in Copyright Act, 1842 (5 & 6 Vict , c. 45), S. 24, includes periodical [*Henderson* v *Maxwell*, (1877) 4 Ch. D. 163]

In Copyright Act, 1886, Book "includes any review, magazine, periodical work, works published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times "

The word also includes Trade Lists [*Exchange Telegraph Co* v *Gregory*, 1896, 1 Q B 147], or Time Tables (*Leslie* v. *Young*, 1894 A C 335), or Law Reports (*Butterworth* v *Robinson*, 5 Ves 709), or the Head-Notes of Law Cases (*Sweet* v *Benning*, 24 L.J C.P 175).

Trade catalogue, and advertisements, whether illustrated or not, though distributed gratis, are *books* for which there might be copyright. (*Hotten* v. *Arthur*, 1 H & M. 603)

A book must be judged as a whole with its introduction and acknowledgment or dedication 1930 A L.J 713=1930 Cr C 625=A I R 1930 All 401 (F B)

"A good book is the precious life-blood of a master spirit embalmed and treasured up on purpose to a life beyond life " (*Milton, Areopagitica*)

A New Edition is a new "Book," if, in substance, it is the result of new labour, as distinguished from a mere reprint (*Black* v. *Murray*, 9 Sess Ca , 341)

"Book" defined. 5-6 V c 45, S 2 , 7-8 V c 12, S 20 ; 49-50 V. c. 33, S 11 , Act 25, 1867, S 1 , Act 16, 1908, S. 2 , Act 1, 1910, S. 2

To BRING TO BOOK is to bring to account

To CLOSE THE BOOKS, to cease making entries for a time, as is done by corporations and business concerns when about to declare a dividend.

WITHOUT BOOK By memory, without reading, without notes as, a sermon delivered without book , argument made without book

Book-account An account or register of debt or credit in a book A "book account" means a book containing a statement in detail of the transactions between parties, including prices, made contemporaneously with the transaction, and entered in a book.

Book-case A case stated or mentioned in legal works ; a recorded case , a precedent.

Book-debt A debt standing against a person in an account book.

A gift of "Book debts," in a will would include the testator's share of trade debts of a partnership. (*Toplis* v. *Vanderheyde*, 9 L J Ex Eq. 27.)

Book-keeper. One who keeps accounts ; one whose occupation is to make a formal balanced record of pecuniary transactions in account books.

Book-seller.

Book-keeping. The art of recording pecuniary transactions in a regular and systematical manner : the art of recording, in a systematic manner, the transactions of merchants, traders, and other persons engaged in pursuits connected with money, the art of keeping accounts in such a manner as to give a permanent record of business transactions so as to show and exhibit at any time the true state and history of one's pecuniary affairs and mercantile dealings.

Book-maker One who makes a book on a race or other doubtful event , a professional betting man.

Book-making. The act or practice of making a book on a race or other doubtful event "Book-making" is the recording, or registering of debts or wagers on any trial or contest of speed or power of endurance of man or beast The business of book-making is betting on horse races, and is called "book-making" because the bets are booked or a record kept of them in a book

Book of Accounts. Books in which merchants, businessmen, and traders generally keep their accounts "Books of Accounts" mean such books of account as are usual in the business, and do not extend to "letters, cheques, and vouchers from which books of account can be made up" (*Per* Cave, J , Re *Winslow*, 55 L J Q B 238)

Unbound sheets of papers in whatever quantity, though filled up with one continuous account are not a "book of account" A book which merely contains entries of items of which no account is made, is not a book of account The term "book of account" signifies a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume (*Makund Ram* v *Durga Ram*, 23 I C 839= 10 N L R. 44)

"Book of account regularly kept in the course of business". It is only such books as are entered up from day to day or (as in banks) from hour to hour as transactions take place, that can be considered as "books regularly kept in the course of business" within the meaning of S 34, Evidence Act (I of 1872) 4 Bom. 576, *see also* 27 Cal 118 (P.C.)

The time of making the entries may affect their value, but the mere fact of the entries not being made then and there cannot make them entirely irrelevant 27 Cal 118 P C.

Book of Books. The Bible.

Book of Common Prayer in England *See* Stephen, Book of Common Prayer, with Notes, Blunt, Annotated Book of Common Prayer, Phillimore, Eccl. Law, Frere, Principles of Religious Ceremonial, Report of the Royal Commission on Ecclesiastical Discipline, Encyclopaedia of the Laws of England, Vol XI, 419.

Book of rates An account declaring the duties of customs. (*Jacob Law Dict.*)

Book-post Postal arrangement by which books and printed matter are conveyed at certain reduced rates, the wrappers must be left open at the ends.

Book-seller A person who carries on the business of selling books.

'BOOKS ISSUED BY A PERSON'. Term explained. (A I.R 1937 Cal. 49.)

Bookwright.

Bookwright. Writer of books, an author.

Boom. To bring into prominence or public notice, push with vigour or spirit: as, to boom a commercial venture A sudden increase of business; a rapid advance of prices as, a boom in real estate, a boom in petroleum.

Booth A stall for the sale of goods or refreshments at a fair or market.

Boothage Customary dues paid for leave to erect booths in fairs and markets.

Booty. Property captured from the enemy in war on land as distinguished from "prize" which denotes property captured at sea (28 Fed Cas 302, 6 Fed. Cas 461.) "Booty consists in whatever can be seized upon land by a belligerent force irrespectively of its own requirements, and simply because the object seized is the property of the enemy" (*Hall's International Law*)

Booty of War Movable property captured by one belligerent (*q v.*) from another The term is generally confined to arms, ammunition, and military provisions and stores, though it was at one time applicable to all kinds of property, susceptible of appropriation, captured on land.

Border The line which separates one country, state, province or district from another, a frontier line. Of or pertaining to the border of a country as, the border barons, border thieves. Figuratively, a limit, boundary or verge, brink: as, he is on the border of three score, driven by disaster to the border of despair, "in the borders of death." (*Barrow, Works* III, xvii)

Border-land Land forming a border or frontier, an uncertain intermediate district or space

Born To bring forth, to bring into life, to produce The word "Born" or "Begotten," in gifts to children as a class, does not exclude after-born children. (2 *Jarm* 183) "'Born', as ordinarily understood and in fact, means 'brought forth', and a child is completely born when delivered or expelled from and becomes external of the mother, whether the placenta has been separated or the cord cut or not"

A *child en ventre sa mere* for all purposes for his own benefit is considered as absolutely born.

Born alive. In an indictment for child murder, "born alive" means that the whole body must be brought into the world alive, and it is not sufficient that the child respires in the progress of the birth.

"**Borokta**". '*Borokta*' in a *Kabuliat* means in due and proper time and does not imply fixity of rent (62 I C 49=33 C L J 296=1921 C. 424)

Borough (*Fr.*) (Burg. Lat. burgus, Sax borhoe) Signifies a corporate town, which is not a city, and also a town or place as sends burgesses to Parliament or members to Municipalities (*Tomlin's Law Dic.*)

"Every Borough is a Town, but every Town is not a Borough". (*Lynne Regis Case*, 10 Rep. 123*b.*)

MUNICIPAL BOROUGH A corporate town possessing a regularly organised municipal Government is usually called a municipal borough.

PARLIAMENTARY BOROUGH. A town having the right to send one or more representatives to Parliament is usually called a Parliamentary borough.

Borrowing.

POCKET BOROUGH. In England before the passage of the Reform Bill of 1832 and the subsequent legislation dealing with the elective franchise, a borough the parliamentary representation of which was practically in the hands of some individual or family.

ROTTEN BOROUGH, a name given before the passing of the Reform Bill of 1832 to certain boroughs in England which had fallen into decay and had a mere handful of voters but which still retained the privilege of sending members to Parliament

TO BUY A BOROUGH To purchase the power of controlling the election of a member of Parliament for a borough. Under recent British legislation this is no longer possible.

Borough Council. A Borough Council in England consists of the mayor, aldermen and councillors.

Borough Court. The Court of record for an English borough, generally presided over by the recorder

Borough English A particular custom prevailing in certain ancient English boroughs, and copyhold manors, by which land descended to the youngest son instead of the eldest, or, if the owner had no issue, to his youngest brother. (*Burrill*)

Borough-master The mayor, governor, or bailiff of an English borough

Borough-monger Formerly, one who bought or sold the parliamentary representation of an English borough

Borough-town A town which is a borough

Borough-village. The words "borough" and "village" are to be understood as duplicate or cumulative names of the same thing.

Borrow A power "to borrow, or take up money at interest," gives power to raise money on any kind of security for its repayment at a future date (*Bank of England* v *Anderson*, 6 L J C P 158)

BORROW. To take or receive from another as a loan or on trust money or other article of value, with the intention of returning or giving an equivalent for, to take from another for one's own use, to adopt from a foreign source. (as) to borrow freely from ancient authors, to appropriate, to assume. Where the thing borrowed is not money, this word is used in the sense of returning the thing borrowed *in specie*, (as) to borrow a book or any other thing to be returned again But where money is borrowed the identical money loaned is not to be returned, because if this were so, the borrower would derive no benefit from the loan. In the broad sense of the term, it means a contract for the use of money. [*State* v *School Dist.* 13 Neb. 88, 12 N W 812, *Railroad Co.* v. *Stichter*, II Wkly. Notes Cas. (Pa.) 325]

Borrower One who borrows, opposed to lender. "Neither a borrower nor a lender be." (*Shakes.*) The term "borrower" has a well-known and definite meaning. It is used in contradistinction to "lender", and is intended to designate one of the parties to a contract for the loan; and may be extended to those standing in his place in a representative capacity, as heirs at law, executors, or administrators.

Borrowing. The act of taking or obtaining anything on loan. Contracting a loan taking money on credit; getting an article for temporary use (as, borrowing a book for reference and return).

Borrowing.

BORROWING AND HIRING DISTINGUISHED Borrowing may be a mere gratuitous loan Blackstone, in distinguishing between hiring and borrowing, says "hiring and borrowing are contracts by which a qualified property may be transferred to the hirer or borrower, in which there is only this difference that hiring is always for a price, a stipend, or additional recompense, borrowing may be merely gratuitous

Borwa (or Barua) (*Assam*), one of the local chiefs under Aham rule (*Bad Pow* III, 399)

Botch A statement in regard to a mason that he is no mechanic and that he is a botch, are slanderous *per se*, as imputing want of skill or knowledge

Bote "Bote," or "Boot," is an old word, and signifieth help, succour, aid, or advantage, and is commonly joined with another word whose significations it doth augment" (*Termes de la Ley*) A recompense, satisfaction, or amends The Saxon bote is synonymous to the word *estovers House bote* is a sufficient allowance of wood to repair, or burn in the house; which is sometimes called *fire bote Plough bote* and *cart-bote*, are wood to be employed in making and repairing all instruments of husbandry and *hay-bote*, is wood for repairing of hays, hedges, or fences. (2 *Comm* 35) Hence also comes *manbote*, compensation, or amends for a man slain, etc From hence, likewise we have our common phrase *to-boot*. (*Tomlin's Law Dic*)

Bottle. (*Verb*) To enclose in bottles (as) to bottle wine or porter

"To BOTTLE" defined Ben Act 5, 1909, S 2 (3) E B & A Act, 1,1910, S. 3 (3), U P Act 4, 1910, S 3 (21).

Bottle ale Bottled ale

Bottom, a marine term now applied to a ship generally

Bottomry In marine law, the act of borrowing money and pledging the bottom of a ship, that is, the ship itself, as security for its payment

Bottomry and Bottomry bond Bottomry or Bottomry bond is a contract by which, in consideration of money advanced for the necessities of the ship to enable it to proceed on its voyage, the keel or bottom of a ship is made liable for the repayment of the money in the event of the safe arrival of the ship at its destination (*See* Lord Stowell *The Atlas*, 1827, 2 Hag Adm 53) "A contract similar to this upon the cargo of the ship is called *respondentia* but it is of rare occurrence" (*Ibid* 57.) But in practice it is common for ship, freight, and cargo to be hypothecated together under the name of bottomry (*Ency of the Laws of England, Abbott, Shipping*; *Carver, Carriage by Sea, Kay, Shipmasters and Seamen, Maude and Pollock, Merchant Shipping, Wilhams and Bruce, Admiralty Practice*, (*Tomlins Law Dic.*).

Bottomry Bond, or Bottomry Contract A contract or mortgage by which a ship becomes a pledge for the repayment of money advanced to enable it to proceed to its destination. This is recoverable only if the ship succeeds in terminating its prescribed voyage satisfactorily

Bottu The husk or chaff of grain after threshing.

Bought. Where a price is made payable on all goods "*bought*," it becomes payable on orders accepted, though the person accepting is unable to deliver immediately the goods ordered. (*Lockwood* v *Levick*, 8 C B N S. 603.)

Bought and sold notes Documents which are usually delivered by brokers to their principals on the conclusion of a contract of sale and purchase, the bought note being delivered to the buyer, and the sold note to the seller (*Sweet Law Dict.*)

Bought and sold notes are the record of a transaction which a broker, who has effected it on behalf of one or both parties, sends to the principals They ought to correspond with each other and with the entry in the broker's book [Per *Abbot, C J*, in *Grant* v *Fletcher*, (1826), 5 Barn. Cres 436, 29 R R 286, *Berry on Sales*]

Bouleward. Formerly used to mean a bulwark or rampart, now applied to a public walk or road on the site of a demolished fortification, public drive

It is a place adapted and set apart for purposes of ornament, exercise, and amusement It is not technically a street, avenue, or highway, though a carriageway over it may be a chief feature. (*People* v *Green*, 52 How Prac N Y 445)

Bound (*Adj.*) denotes the condition of being constrained by the obligations of a bond or a covenant (as) bound by a covenant.

"Bound to" "Bound for." In the law of shipping, these words denote that the vessel spoken of is designed to make a voyage to the place named

A Ship "bound to London," means, that the ship is in the place indicated from which place she is under engagement to proceed direct to London (4 *Com Ca* 75.)

Bound or boundary. The utmost limits of land whereby the same is known and ascertained. (*See* 4 *Inst* 313, *Tomlin's Law Dict*) That which serves to indicate the bounds or limits of anything, hence a limiting or bounding line

"A boundary is line or object indicating the limit or furthest extent of a tract of land or territory, a separating or dividing line between countries, states, districts of territory, or tracts of land" (*Burrill*).

Bound signifies the limit itself (and may be an imaginary line) the latter designates a visible mark which indicates the limit But no such distinction is commonly observed (*Black*)

BOUND, BOUNDARY, BORDER, CONFINE, FRONTIER A *boundary* in its stricter sense, is a visible mark indicating a dividing line between two things or it is that line itself, it marks off a given thing from other things alike, in kind, as one field or country from another A *bound* on the other hand, is the limit or the furthest point of the extension of one given thing, as, the boundaries of a field There is also a figurative use of bound as, "I believe I speak within bounds", where boundaries would be absurd. Thus the bounds of a parish may be defined by certain marks or boundaries, as heaps of stones, dikes, hedges, streams, etc, separating it from the adjoining parishes But the two words are often interchangeable A *border* is a belt of territory lying along a bound or boundary. A *confine* is the region at or near the edge, and generally a narrower margin than a border. A *frontier* is a border viewed as a front or place of entrance:

Bound or boundary

as, he was met at the frontier. The word is used most in connection with military operations as their frontiers were well protected by fortresses. (*Cent Dic*)

BOUNDS, BOUNDARY *Bounds* is employed to designate the whole space including the outer line that confines *boundary* comprehends only this outer line *Bounds* are made for a local purpose, *boundary* for a political purpose

"METES AND BOUNDS" In the phrase "metes and bounds," the former term properly denotes the measured distances, and the latter the natural or artificial marks which indicates their beginning and ending.

"MORE OR LESS" IN THE BOUNDARY in a deed of grant of land are merely words of description to prevent the parties from being prejudiced from inaccuracies They do not have the effect to extend the grantee's boundary beyond the line fixed by a visible monument, or a map referred to in the deed

"EAST" CONSTRUED AS "WEST" In a grant, "east" will be construed to mean "west", where such correction is obviously required by the other clauses and an annexed plan (*Mizell* v. *Simmon*, 79 N. C 182)

The word "ADJOINING," in the description of the boundaries of the premises conveyed, has been held to mean "next to," or "in contact with," and to exclude the idea of any intervening space (5 *Ame Cyc* 868-9)

"To," "FROM", "BY" AND "ON" when used to express boundaries are always to be understood as terms of exclusion, unless there is something in the connection which makes it manifest that they were used in a different sense.

"Bound by law" "Bound by law to pay" The words "bound by law" in Section 69, Contract Act cannot restrict the section to statutory liabilities and exclude those arising out of contracts by parties (*Mathooranath* v *Krista Kumar*, 4 Cal 369, *Bepin* v *Kalidas*, 6 C.W N 336, 1925 M W N 486=90 I C 548=A.I R 1925 Mad 1041=49 M L J 88, 22 L W 836 *See* 30 C W N 366=94 I C 159=1926 Cal 657, Contract Act, S 69.

"Boundary-Mark" defined Bom Act 5, 1879, S 3 (9)

Bounty Bounties "Bounty," in the widest acceptation of the term, is gratuity, or an unusual or additional benefit conferred upon, or compensation paid to, a class of persons But the term, according to its common usage, signifies money paid or a premium offered to encourage or promote an object or procure a particular act or thing to be done (*Ame Cyc*)

BOUNTY has also been defined to be "a sum of money or other things given, generally by the government, to certain persons for some service they have done or about to do to the public", as bounty upon the culture of silk, the bounty given to an enlisted soldier, and the like (*Ingram* v *Colgan*, 116 *Calif.* 113)

"Bounty" and "reward." "The terms 'bounty' and 'reward' are nearly allied in meaning, the distinction being the former is said to be the appropriate term, where the services or action of many persons are desired, and each who acts upon the offer may entitle himself to the promised gratuity without prejudice from or to the claims of others; while a reward applies to the case of a single service, which can be only once performed, and therefore will be earned only by the person or co-operating persons who succeed while others fail." (*Ingram* v *Colgan*, 106 *Calif* 113, 124) A reward is offered for rescuing a person from a wreck or fire, for detecting and arresting an offender; for finding a lost goods. [*Kircher* v *Murray*, (C C) 54 Fed. 624]

Bounty Bonus. Bonus as compared with bounty, suggests the idea of a gratuity to induce a money transaction between individuals, a percentage or gift, upon a loan or transfer of property, or a surrender of a right (*Abbott*)

Bowstaff (In archery) a selected or prepared piece of timber for a bow

Bowstring String of a bow by which it is drawn when the arrow has to be discharged.

Boycott To combine in refusing to work for, buy from, sell to, give assistance to, or have any kind of dealings with. A combination of persons to cause a loss to one person or persons by coercing others, against their will, to withdraw from him or them their beneficial business intercourse, through threats, an organized effort to exclude a person from business relations with others by persuasion or intimidation, a combination between persons to suspend or discontinue dealings or patronage with another person (*Anderson*)

Language advising a strike or a boycott of foreign goods is not itself seditious, however misguided or mischievous such advice may be in the opinion of the presiding magistrate (*See* 5 M L T 1=32 M 3=9 Cr L J 108=1 I C 22 *See also* 53 All 407=130 I C 193=A I R 1931 All 263) As to threat of social boycott and labour boycott, *see* 1933 M W N 736.

It has been held that to allege of another that he has been guilty of a "Boycott," is libel (*Pink* v. *Federation of Trades Unions*, 67 L T 258)

ORIGIN OF THE TERM "Captain Boycott was an Englishman, an agent of Lord Earne, and a farmer of Lough Mark, in the wild and beautiful district of Connemara, in Ireland In his capacity as agent he had served notice upon Lord Earne's tenants, and the tenentry suddenly retaliated in a most unexpected way, by sending Captain Boycott to Coventry in a very thorough manner The population of the region for miles round resolved not to have anything to do with him, and as far as they could prevent it, not to allow any one else to have anything to do with him. His life appeared to be in danger—he had to claim police protection. His servants fled from him as servants flee from their masters in some plague-striken city. The awful sentence of excommunication could hardly have rendered him more hopelessly alone for the time No one would work for him—no one would supply him with food He and his wife had to work in their own fields themselves, and play out their grim part in their deserted fields with the shadows of the armed constabulary ever at their heals The Orangemen of the North heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organised assistance and sent him down armed laborers from Ulster. To prevent civil war the authorities had to send a force of soldiers and police to Lough Mark, and Captain Boycott's harvests were brought in and

Boyhood.

his field work done by the armed Ulster laborers guarded always by a little army" (*McCarthy's "England under Gladstone".*)

Boyhood. Immature age, state of being a boy, time of life during which one is a boy.

"Boyish". 5 M L T 16=32 M. 3=1 I.C. 36=9 Cr L.J 130.

"Bradaran" and "bradaran juddi". The word "bradaran" is not restricted to the relations of the same degree but also includes descendants of those on equal degree and the expression "bradaran juddi" means relations of the deceased through his grandfather or upwards (3 W.R 116, Ref) (*Amarendra Mansingh Bhramarbar Rai* v *Banamali Singh,* 123 I.C. 770=11 P L T. 268=A I.R 1930 Pat 417)

Brag Using boastful language

Braggart Boastful, ostentatious, vain glorious

Brahma (In Hindu religion) the highest object of adoration, the impersonal and absolute divinity

Brahma form of marriage So far as the eight forms of marriage referred to in the Hindu Sastras are concerned, it is now accepted law that all except the Brahma and the Asura forms are obsolete (48 Mad. 1=A.I.R. 1925 Mad 497)

Brahmachari (*S*) means the life long student, an unmarried person.

Brahmadaya (*H*) Grant or perquisite made or apportioned to Brahmans.

Brahman, Brahmin A member of the sacred caste among the Hindus. "A man of the first order or caste of Hindus, properly charged with the duties of expounding the Vedas, and conducting religious ceremonies they enjoin in modern times, engaged not only in such duties, but in most of the occupations of secular life The Brahmans of the present day are distinguished into a variety of divisions and sub-divisions between most of which no social relations exist (*Wil. Gloss.* 92)

Brahmanas Hindu scriptures, a portion of the Vedas which contain injunctions for the performance of sacrifices

Brahmanee A Brahman woman, the wife of a Brahman

Brahmanic, Brahmanical Pertaining to Brahmans or their doctrines or worship. (Also spelt as Brahminic, Brahminical)

Brahmanism. The religion of the Brahmans.

Brahmanist One who practises, professes, or adheres to the religion of the Brahman.

Brahmo Bhats are included in the term "Brahman" (25 A L J 678=101 I C. 844 (1)=A.I R 1927 All 486)

Brahmoism Tenets of the Brahmo-Samaj, founded by Raja Ram Mohan Roy (a Hindu Reformer) and further developed by his successor Keshub Chunder Sen.

Brahmottar (Brahma-uttara) (Ben Assam) a rent-free and revenue free grant for the service of religion (*Bad. Pow.* i. 542, iii, 448) (Cf. Debottar, Shibottar etc., similar grants for special temples or deities.)

Brahmottar.

Brahmottar Grant before Permanent Settlement, effect of, in relation to mining rights. *See* 19 C.W.N 375.

Brahmottara. Land originally granted rent-free to Brahmans, for their support and that of their descendants; properly as a reward for their sanctity or learning, or to enable them to devote themselves to religious duties and education. (*Wil Gloss*)

Brand To burn or impress or make a mark upon with a hot iron A distinguishing name, design, or trade mark used for putting on goods or packages. It generally defines ownership, class, or quality of the goods

BRAND, in Patents Act, 1883 (46 and 47 Vict , c 57), S. 64, means "a device applied to an article by burning, and not a device woven or incorporated into the substance of the article" [*Pirie* v *Goodall,* (1892), 1 Ch 35] Incorporation of a mark (by a water-mark) would suffice to constitute a trade mark brand (*Pirie* v *Goodall,* 1892, 1 Ch 35) , but mere words in common use would not amount to a Trade mark brand. (*Stroud*)

Branding The old punishment of marking convicted felons with a hot iron on the hand or face (*Burrill*)

Brandish To move or wave, as a weapon, to brandish a sword.

Brandy Rum, brandy, and gin are different species of spirituous liquors

Bravado One who indulges in boastful and arrogant menaces, arrogant or boastful menace, swaggering defiance, pretended bravery

Bravery The quality of being brave, noble, courage, fearlessness of danger.

BRAVERY, COURAGE, VALOUR *Bravery* lies in the blood, *courage* lies in the mind the latter depends on the reason the former on the physical temperament the first is a species of instinct, the second is a virtue a man is *brave* in proportion as he is without thought, he has courage in proportion as he reasons or reflects, *bravery* is of utility only in the hour of attack or contest, *courage* is of service at all times and under all circumstances It is as possible for a man to have *courage* without *bravery,* as to have *bravery* without *courage.* Cicero showed no marks of personal *bravery* as a commander, but he displayed his *courage* when he laid open the treasonable purposes of Catiline to the whole senate, and charged him to his face with the crimes of which he knew him to be guilty.

VALOUR is a higher quality than either *bravery* or *courage* and seems to partake of the grand characteristics of both, it combines the fire of bravery with the determination and firmness of *courage bravery* is most fitted for the soldiers and all who receive orders, *courage* is most adapted for the general and all who give command, *valour* for the leader and framer of enterprises, and all who carry great projects into execution, *bravery* requires to be guided, *courage* is equally fitted to command or obey, *valour* directs and executes.

Brawl. Brawling. In its original sense as a legal term, brawling meant creating a disturbance in a consecrated building or consecrated ground. In modern usage it means a clamorous or tumultuous quarrel in a public place.

Breach.

Breach. The act of breaking: violation, infringement; now used only figuratively of the violation or neglect of a law, contract, or any other obligation, or of a custom

"A custom more honoured in the breach than the observance" (*Shak. Hamlet, 1 4.*)

An opening made by breaking down a portion of a solid body, a gap as, a breach in the line of defence

BREACH, BRFAK, GAP, CHASM The idea is an opening is common to these terms, but they differ in the nature of the opening A *break* and a *gap* are the consequence of a violent removal, which destroys the connexion, a *break* and a *chasm* may arise from the absence of that which would form a connection A *breach* in a wall is made by means of cannon, *gaps* in fences are commonly the effect of some violent effort to pass through A *gap* may be made with a knife; a *breach* is always made in walls of a building or fortification the clouds sometimes separate so as to leave small *breaks*, the ground is sometimes so convulsed by earthquakes as to leave frightful *chasms*

Breach of arrest (*in Milt. law*) Offence committed by an officer in arrest who leaves his quarters or limits without authority from his superior officer

Breach of covenant Violation of a covenant contained in a deed either to do or refrain from doing an act

Breach of duty Failure to do one's duty, to execute any office, employment, trust in proper time or proper manner

Breach of law The breaking or violating of a law, right, or duty, either by commission or omission. (*Burrill*)

Breach of peace. Violation of the public peace, by riot, affray or any tumult contrary to law *Breach of peace* is an offence against the public peace The term includes all violations of public peace or order, or acts tending to the disturbance thereof. (*Cochran L Lex, Rex* v *Storr*, 3 Burr. 1698) The offence may consist of acts of public turbulance or indecorum in violation of the common peace and quiet, of an invasion of the security and protection which the law affords every citizen, or of such acts as tend to excite violent resentment Actual personal violence is not an element in the offence, but the conduct or language of the wrongdoer must be of a character to induce terror or fear of personal violence in a person of ordinary firmness (*Bishop Cr Law*)

"Peace," in this connection, means the tranquillity enjoyed by the citizens of a community where good order reigns among its members It is the natural right of all persons in political society

"The public peace" is that invisible sense of security which every person feels, and which is necessary to his comfort and for which government is instituted. (5 *Cyc.* 1024)

"BREACH OF THE PEACE" defined. Mad. Reg. 4, 1816, S. 30 (6)

Breach of promise. Not performing what one is bound to do under a contract; violation of one's word or undertaking, non-fulfilment of one's engagement: often used for breach of promise of marriage.

Breaking—Construction house breaking.

Breach of trust. Defined in II of 1882, S. 3.

It is violation or non-performance of the duty by a trustee, executor, administrator or any other person standing in a fiduciary pasition

"BRFACH OF TRUST" defined. Act II, 1882, S 3.

Break (This word is used in many senses) To destroy the continuity of in any way, destroy the order or formation of, as, to break the centre of an army. To open or force one's way into a house or a dwelling, store, etc, burglariously. A house is *broken* by a burglar when any part or fastening of it is removed with intent to enter To tame, train to obedience, as, to break a horse or a hunting dog for work in the field. To violate, as a contract or law, either by a positive act, neglect or non-fulfilment To make bankrupt, destroy the financial credit of, as a bank or a trader

"The credit of this bank being thus broken did exceedingly discontent the people" (*Evelyn Diary, March, 12, 1672.*)

To disband "My birthday was ominous . . . The regiment in which my father served being broke" (*Sterne*) To make a cautious and partial disclosure of, to impart or tell cautiously so as not to startle or shock, as, to break unwelcome news to a person

TO BREAK A BLOCKADE To render it inoperative by driving off or destroying the blockading force

TO BREAK INTO To enter by force, especially burglariously, as to break into a house

TO BREAK LOOSE To get free by force or violence, escape from confinement by fraud or force

TO BREAK OFF To sever by breaking To put a stop to, as, to break off a marriage engagement

TO BREAK ONF'S WORD. To violate a promise, pledge or engagement

TO BREAK OPEN. To force open, as, to break open a door

TO BRFAK OPEN OUTER DOOR OF A HOUSE.—Under the authority of the old maxim "an Englishman's house is his castle," it has been held to be the general rule of the common law that it is unlawful to break open the outer door of a dwelling-house, or even any wall surrounding, or any building within the curtilage, except for the purpose of executing criminal process (*Semayne's Case*, 1604, 5 *Co Rep* 91) The rule is an absurd survival of mediaeval theories, and its application is a fertile cause of dispute [See *American Concentrated Must Co* v. *Hendry*, (1893), 62 L.J. Q.B 388, *Holder* v *Wilhams*, (1895) 2 Q B. 663, (Bullen on Distress, 2nd ed, 154, 155)] The rule does not apply where goods have been fraudulently removed to prevent distress (*Bullen, L. C.* 146) If entry can be made without breaking the outer door, inner doors may be broken, and if the distrainer after lawful entry has been driven out he may re-enter by force. (*Bullen, L.C.* 155, *Ency. of the Laws of England*).

TO BREAK UP To dissolve and separate: as, a company breaks up, a meeting breaks up.

Breaking—Constructive house breaking. In burglary, "constructive breaking," as distinguished from actual, forcible breaking, may be classed under the following heads· (1) Entries obtained by threats; (2) when, in consequence of violence done or threa-

Breakneck,

tened in order to obtain entry, the owner, with a view more effectually to repel it, opens the door and sallies out, and the felon enters, (3) when entrance is obtained by procuring the service of some intermediate person, such as a servant, to remove the fastening, (4) when some process of law is fraudulently resorted to for the purpose of obtaining an entrance, (5) when some trick is resorted to induce the owner to remove the fastenings and open the door, and the felon enters

To obtain admission to a dwelling-house at night with the intent to commit a felony by means of artifice or fraud, or on pretense of business or social intercourse, is a constructive breaking (*Jhonston* v *Commonwealth*, 27 Am Rep 622)

Breakneck Literally, endangering the neck or life, hazardous. as, riding at a breakneck pace

Breech-loader. A fire-arm loaded at the breech, generally confined to small arms Large guns are usually referred to as breech-loading cannon

Breeze A noisy quarrel, a disturbance, a row, exchange of hot words in a debate or argument (as) A breeze in Court

Brehon Law. The native system of law which prevailed in old Ireland (See *Maine's Early Institutions*) This term is derived from the title of the Judges who were denominated "*Brehons*"

Brethren This word in a will, may from the contest, include sisters, as well as brothers of the person indicated, it is not necessarily limited to the masculine gender. [*Terry* v *Brunson*, 1 Rich Eq (S C) 78, *Black*]

Breve judiciale debet sequi suum originale, et accessorium suum principale A maxim meaning "a judicial writ ought to follow its original, and an accessary its principal"

Breve judiciale non cadit pro defecto formae A maxim meaning "a judicial writ fails not through defect of form". (*Rapalje & L L Dict*)

Breviate A short compendium, a lawyer's brief (*Chambers*)

During part of the seventeenth century it was customary to prefix to every bill introduced into Parliament a memorandum (known as a breviate or brief) of the contents of the bill At present, any member introducing a bill may prepare an explanatory memorandum—called simply a memorandum —which, subject to the approval of the officials of the House, will be circulated with the Bill (*Byrne*)

Brew. The mixture formed by brewing, that which is brewed, a fermented liquor

Brewage A mixed drink, drink which is brewed

Brewer. One who manufactures fermented liquors of any name or description, for sale, from malt, or other substitute.

Brewery A brew-house, an establishment in which the process of brewing is carried on Brewers collectively, also applied to beer-trade

Brew-house A house or building in which brewing is carried on

Brewing. Process of preparing liquors from malt and other substances

Brewster. A brewer, specially applied to a woman who brews.

Brief

Bribe. Reward or gift bestowed or promised with a view to pervert the judgment or corrupt the conduct of a judge, or other officer witness, or other person, to give a bribe to a person

Bribery Bribery is the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done. (*See also* I. P. C, S 171-B)

BRIBERY, is a high offence, where a person, in a judicial place, or holding a public office takes any fee, gift, reward, or brocage, for doing his office, or by colour of his office, but of the king only 3 Inst 145 Hawk (*Tomlins Law Dic*)

Bribery distinguished from Extortion "The distinction between bribery and extortion seems to be that the former offence consists in offering a present or receiving one, the latter in demanding a fee or present by color of office" (*State* v *Pritchard*, 107 N C 921, 929, 12 S E 50)

Bride. A newly married woman, a woman about to be married

Bridegroom A newly married man or one about to be married

"He that hath the bride is the bridegroom" (*John* III 29)

Bridge. A building of stone or wood erected across a river or canal, for the common ease and benefit of travellers (*Tomlins Law Dic* See definitions to the same effect, *Madison County* v *Brown*, 89 Ind 48, 52, *Whitall* v *Gloucester County* 40 N. J L 302, 305, *Sussex County* v *Strader*, 18 N L.J 108, 35 Am Dec 530.)

A bridge is a structure of wood, iron, brick, or stone, ordinarily erected over a river, creek, pond, or lake, or over a ravine, railroad, canal, or other obstruction in a highway, so as to make a continuous roadway, and afford to travellers a convenient passageway from one bank to the other While a bridge is a part of the highway which passes over it, no definite rule can be laid down as to where one terminates and the other begins. (*Cyc*)

Bridge, in S 46 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c 20), includes the highway passing over it [*Lancashire and Yorkshire Rail Co* v *Bury Corporation*, (1889) 14 App Cas 417 *R* v *Southampton*, (1886) 17 Q.B D. 424]

"BRIDGE" includes "CULVERT" Bur Act, I of 1900, S. 4

BRIDGES ARE EITHER PUBLIC OR PRIVATE Public bridges are such as form a part of the highway, according to their character as foot, horse or carriage bridges, for the accommodation of the public generally, with or without payment of toll, while a private bridge is one erected by one or more private persons for their own use and convenience (*Black Law Dict.*) Whether a bridge is public or private depends more upon the use to which it is subjected than upon who the builder was See *Rex* v *Yorkshire, etc.* 5 Burr 2594, 2 East 342, 5 Cyc. 1052)

Brief. "An abridgment of the client's case, made out for the instruction of counsel, wherein the case of the party is to be briefly but fully stated, the proofs must be placed in due order, and proper answers made to whatever may be objected against

Brief.

the client's cause, by the opposite side, and herein great care is requisite, that nothing is omitted to endanger the cause" (*Tomlins Law Dic*)

A formal memorandum in systematic order, but concisely expressed, of the points of law or of fact to be developed or expanded in argument, or to be pursued in the examination of a witness, an abridged relation of the facts of a litigated case drawn up by the attorney for the instruction of a barrister in conducting proceedings in a court of justice

A brief is a written or printed document, prepared by counsel to serve as the basis of an argument upon a cause in the original or an appellate court, and embodying the points of law which the counsel desires to establish, together with the arguments and authorities upon which he raises his contention

BRIEF (*Verb*) To abridge, shorten, make a brief of. as, to brief pleadings

Briefless Having no brief, without clients as, a briefless barrister

Brieflessness The state of a barrister who has no brief or client.

Brig. A vessel with two masts square-rigged, a place on board a man-of-war where prisoners are confined

Brigade Division of troops or soldiers, whether cavalry or infantry, regulars or militia, consisting of several regiments, squadrons or battalions under the command of a brigadier, or brigadier-general

BRIGADE OF HORSE is a body of eight or ten squadrons.

BRIGADE OF INFANTRY Generally consists of four, five or six battalions or regiments

Brigade area. Defined in II of 1924, S 2, VI of 1923, S. 2

Brigade-major An officer attached to a brigade, and appointed to assist the brigadier in the management and ordering of his brigade

Brigadier A general officer who commands a brigade, whether of horse or foot, and ranks next below a Major-general

Brigadier-General Officer in command of a brigade next in rank above a colonel and below a major-general

Brigand A robber, a lawless fellow, freebooter, a highwayman, one of a gang of robbers living in secret retreats

Brihaspathi A great Hindu Sage and writer of an important Smriti that bears his name.

Bring To fetch or put forward before a tribunal, institute, as, to bring an action or a charge against one, the jury brought the prisoner in guilty. *See* 1936 A L.J 962=1936 All 743

"A friend of mine here was doubting whether he should bring an action against two persons on so unfortunate a day as Saturday." (*E. W. Lane, Modern Egyptians, I* 340.)

TO BRING FORWARD To produce to view, cause to advance To adduce, as to bring forward arguments in support of a case.

TO BRING OFF To procure to be acquitted, to clear one from condemnation, to cause to escape

British India.

TO BRING OUT. To expose, to detect some secret fraud; to bring to light from concealment

TO BRING ROUND To persuade as, "I will undertake to bring round the judge to your views"

TO BRING TO (*Naut*) To check the coarse of (as a ship)

Bring suit or action To "bring" a suit is to initiate legal proceedings in a suit A suit is "brought" at the time it is commenced.

To "bring an action" has a settled customary legal, as well as general, meaning, and refers to the initiation of legal proceedings in a suit

BRINGING A SUIT AND PROSECUTING SUIT A suit may be "prosecuted" after it has been begun, but the "bringing of a suit" is its initiation The one phrase applied to the further conduct of a suit, and the other to the beginning of a new suit.

"BRINGING INTO CULTIVATION" means cultivating land which had not previously been cultivated or at any rate had not been cultivated for a long period The mere fact that land lies fallow for one, two or even four years cannot constitute it as waste land. 49 M L J 640=1925 M W N 871=A.I R 1926 M. 193.

Britannic Of or pertaining to Great Britain as, Her Britannic Majesty

British Of or pertaining to Great Britain as, the British people or empire

"British Burma", defined Act XIII of 1898, S 7

"British Burma Gazette". Act XIII of 1898, S 7,

"British Court in a Foreign Country", defined. 55-6 V c 6, S 6

British Dominions, includes the United Kingdom and all British possessions

Under the Copyright Act, 1842, "The words 'British Dominions' shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the Colonies and Possessions of the Crown which now are or hereafter may be acquired"

"BRITISH DOMINIONS", defined 5-6 V c 45, S 2.

"British India" defined 44-5 V c 58, S 190 (21), 52-3 V c 63, S 18 (4), Act XLV of 1860, S 15, Act XVI of 1861, S 21, Act III of 1864, S 1, Act VIII of 1864, S 1, Act X of 1865, S 3, Act XV of 1865, S 2, Act XI of 1867, S 1, Act XXV of 1867, S 1, Act V of 1869, Pt 1, cl (*e*) (15) (Ins Act XII of 1894, S 4), Act X of 1897, S. 3 (7), Bom Act III of 1886, S 3 (5), (Am Act XVI of 1895), Bur Act I of 1898, S 2, E B & A. Act I, of 1909. S. 5; Mad Act I of 1891, S 3 (3), P Act I of 1898, S 2 (5), U P Act IV of 1920, S 3 (14), Reg. VIII of 1874, S. 1

BRITISH INDIA, term which includes all the territories governed by His Majesty through the Governor-General of India or any officer subordinate to him [*See* The English Interpretation Act(1889), S. 18 (4)] The term does not include the territories of independent native princes or states

The words "British India" denote the territories which are or may become vested in Her Majesty by Statute 21 and 22 Vic Chapter 106 entitled "An Act for the better government of India" (Penal Code, S 15)

British India.

Wadhwan Civil station is not a part of British India. (*Emperor* v. *Chimanlal Jagjiwan*, 37 Bom 152 =14 Bom L.R. 876=13 Cr L.J 790=17 I C. 534 *See also* 9 B. 244).

Quetta does not form part of "British India" 28 S L.R. 54=155 I.C 677=A I.R 1934 Smd 123

"British Indian ship" defined Act VII of 1880, S. 4.

British Indian University Defined in XXVII of 1933, S 2

British Islands *See* Eng. Int Act, 1889 (c. 63), S. 18 (1)

"British Officer" defined. Act V of 1869, Pt I, cl (*e*) (3).

British Pharmacopaeia. The Medical Act, 1858, 21 and 22 Vict c 90, S 54, provides that the General Council of Medical Education and Registration in the United Kingdom established by the Act shall cause to be published a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed and such other matter as the Council think fit, to be called the British Pharmacopaeia, and shall alter, amend, and republish it as they deem necessary The Council have the exclusive right of printing and selling the book (25 and 26 Vict c 91) Any Act or Order referring to a Pharmacopaeia means the book so published A printed copy is evidence (S 3). It is illegal to compound any medicines of the British Pharmacopaeia, except according to its formularies unless they are manufactured under Letters Patent (*Ency of the Laws of England*)

British Port Any Port in the United Kingdom or the Channel Islands

"British Possession" defined 33 V c 14, S 17, 33-4 V c 52, S. 26, 33-4 V c 90, S. 30, 36-7 V c 88, S 2, 44-5 V c 69, Pt 4, S.39, 47-8 V c 31, S. 18, 48-9 V c 49, S 12, 49-50 V c. 33, S 11, 49-50 V c 48, S 27, 52-3 V c 63, S 18 (2), 5 Edw 7 c. 14, 7 Edw 7 c. 16, S. 1, Act X of 1897, S 3 (8), Bur Act I of 1898, S. 2, E B &A I of 1909, S 5, P Act I of 1898, S. 2

"British Possession" means any Part of His Majesty's Dominions other than British India, the United Kingdom and Ireland, and includes Protectorates and territories which are or may be administered by Dominion as a mandatory on behalf of the League of Nations Act III of 1924 (*Immigration into India*) S 2, Cl (*a*).

British Seaman One who, whatever his nationality, is serving on board a British ship. (*Per* Blackburn, J, *R* v *Anderson*, L.R. 1 C C.R 162)

British Settlement. *See* 50 and 51 Vic. c 54, S. 6

British Ship The term "British ship" applies to a ship owned by a British subject whether a natural person or naturalized or a body corporate established under or subjects to the laws of the British dominions, or a ship built for such a person, if intended to be his property [*Abbott*, citing *Chartered Bank of India* v. *Netherlands India S.N C.* (1883), 10 Q B.D. 535, 536, and *Union Bank, London* v. *Lenanton*, (1878), 3 C P.D. 243. See also *The Lencade* 1 Jur. N.S. 553.]

Broker.

A ship built in England for a foreign owner and not registered, or intended to be registered, as a British ship, is not a British ship within the Merchant Shipping Act (*Union Bank of London* v. *Lenanton*, 47 L.J C P 409)

"British ship" defined. Act VII of 1880, S 4.

'British Slave Court" defined 36-7 V c 88, S 2.

"British Steam-ship" defined. Act VII of 1884, S 3 (2)

British Subject. Defined in XX of 1918, S. 2, VII of 1926, S 2

One who owes permanent allegiance to the British Crown, as distinguished from an alien owing only temporary allegiance while within the British dominions British subjects are either natural-born or naturalised British Subjects (See *Def in the Code of Cr Pro*, Act VII of 1926, S. 2)

As to whether Parsees are 'British Subjects' within the Bombay Supreme Court Charter of 1823 See *Ardaser Cursetjee* v *Peroseboye*, (1856) 6 M I. A. 348

In the early statutes relating to India the words "British subject" mean a subject of the King of British India. (6 B L R. 392, relied on) 58 Cal. 919 =133 I C 188

Britisher A British citizen in any part of the world.

Briton Native of Great Britain

Britti (*or vritti*). The term "britti" is of Sanskrit origin and means literally means of subsistence, one's occupation (*Tarakeswar Pal Choudhury* v *Kumar Satish Kanta, Roy*, 51 C L J 297=A I R 1930 Cal 411=126 I C 679)

Broadsword. A weapon of offence, a sword with a broad blade, as distinguished from one with a narrow blade or from a three-sided thrusting sword

Brocage The wages or hire of a broker, which is also termed brokerage. (*Tomlins*) The commission or percentage paid to brokers on the sale or purchase of goods, etc

Broil Tumult, noisy quarrel, contention, discord

Brokage (Brocage) An arrangement made or sought to be made through the agency of a broker or go-between, commission of a broker, profit made by transacting business as broker for another, trade of a broker.

Broker A middleman or agent who, for a commission on the value of the transaction, negotiates for others the purchase or sale of stocks, bonds, commodities, or property of any kind, or who attends to the doing of something for another

Brokers "are those that contrive, make, and conclude bargains and contracts between merchants and tradesmen, in matters of money and merchandize, for which they have a fee or reward". (*Jacob*)

"Broker," includes not only barterers of merchandize, but also assurance-brokers (Ex p. *Stevens*, 4 Mad. 256), Bill-brokers (Ex. p *Phipps*, 2 Dea. 487), Pawn-brokers (*Rawlinson* v. *Pearson*, 5 B & Ald. 124), Ship-brokers (*Pott* v. *Turner*, 4 More & P. 551), and Stock-brokers (*Cullen on Bankry*, 12, Note 2, 48).

Broker

BILL BROKERS. Those who buy and sell notes and bills of exchange.

EXCHANGE BROKERS. Those who negotiate foreign bills of exchange

INSURANCE BROKERS Marine insurance is generally effected through the medium of insurance brokers, who get the insurers or underwriters to issue risks on behalf of the assured, and are "the middlemen between the assured and the underwriter" "The broker is, however, not merely an agent, he is a principal to receive the money from the assured and to pay it over to the underwriter" [Bayley, J, *Power* v *Butcher*, (1830), 10 Barn. & Cress 329, 34 R R 432] The course of dealing between the three parties is thus concisely stated by Phillips "The premium on a marine policy is due from the assured to the broker, and from the latter to the underwriter The broker has an action against the assured for the premium, and the underwriters against the broker All other claims and liabilities arising on the policy are between the assured and the underwriter" (*Arnold Mar. Ins.*)

MERCHANDISE BROKERS Those who buy and sell goods and negotiate between buyer and seller, but without having the custody of the property

MONEY-BROKERS A money-changer, on who lends or raises money to or for others.

PAWNBROKERS Those who lend money on goods deposited with them in pledge, generally on very high rates of interests

SHIP BROKERS Ship brokers are generally employed to negotiate the chartering of ships, and are remunerated by a commission, on the amount of the freight, and a stipulation to this effect is often inserted in charter-parties (See *Abbott, Shipping, Carver, Carriage by Sea*)

STOCK BROKERS Those who deal in stocks of monied corporations and other securities.

STOCK-BROKER A stock-broker is defined as a broker "who, for a commission, attends to the purchase and sale of stocks or shares, and of government or other security, in behalf and for the account of clients" His functions are recognised as broader than those of the ordinary broker, since he is entrusted with the possession of the property concerning which he acts, and may even take and transfer them without the name of his principal appearing in the transaction

STREET BROKER, OR CURBSTONE BROKER A stock broker who is not a member of the stock exchange, but who carries out the orders of others by transactions in the streets, or by going from office to office.

Broker and Factor A broker is an agent employed to negotiate and make contracts on behalf of his principal, and, in general, contracts of sale or purchase He is not put into possession of the property to be sold as a factor [*Baring* v *Corrie*, (1818) 2 Barn & Ald. 137, 20 R R. 383, *Stevens* v *Biller*, 1883, 25 Ch D. 31, *Smith, Mercantile Law*] A broker is an agent of his employer, and differs from a factor in that he does not ordinarily have the possession of the property which he is employed to sell, and his contracts are always made in the name of his employer.

AUCTIONEER DISTINGUISHED A broker is a person who makes a private bargain between other persons, but not a public one. He is described as a person who makes bargains betweenmerchant and merchant. He also both buys and sells A broker is essentially different from an auctioneer who only sells.

COMMISSION MERCHANT DISTINGUISHED A commission merchant is one who buys or sells goods or merchandise, consigned or delivered to him by his principal, for a compensation, commonly called "commission". He differs from a broker in that he may buy or sell in his own name, and very frequently does, without disclosing the name of his principal, while the broker has no right to buy or sell except in the name of his principal The commission merchant is intrusted with the management, control, or disposition of the goods to be brought or sold, and he has a special property in them, and a lien upon them for his share, advance, or commission. The broker is he who negotiates the purchase or sale for the principal He has no control of the property

Brokerage Business or employment of a broker; fee or commission given to or charged by a broker.

"BROKERAGE" is the name used to designate compensation for brokers' services

Where the owner of property employs a broker to find a purchaser, and agrees to compensate him therefor, the consideration is known as "brokerage commission" The very essence of a brokerage commission is success It is dependent upon the securing of a satisfactory purchaser and the consummation of the deal, and no matter how much time may be devoted to finding a customer, or how little, the element of success alone will determine whether he is entitled to compensation The promise to pay if a customer is found to purchase at a stated price is not the ordinary contract of employment, but is generally in the nature of an offer to pay a commission if a person is produced who buys at a price named This offer may be withdrawn at any time, provided the work done has not brought the person within the terms of the offer, and where the broker has been unsuccessful he is not entitled to recover on a *quantum meruit* for work done

MARRIAGE BROKERAGE CONTRACTS Contracts for procuring marriages for reward, such contracts are illegal and void, as being contrary to public policy [*Hall* v *Potter*, (1695) 3 Lev 411, Show P C 76, 1 E R 52, *Stribblehill* v *Brett*, (1703) 2 Vern 445, 23 E R 885, *Cole* v *Gibson*, (1750), 1 Ves Sen 503, 27 E. R 1169 *See also* Contract Act, S 23 23 All 495, 15 C W N 447, 74 I C. 107=1923 Nag 296]

Broker's Contract Notes are notes signed by brokers after effecting a sale or purchase of goods and sent to those for whom they have been acting. The note to the seller is called the "sold note". The note to the buyer is called the "bought note".

Broker's note *A* bought or sold note; a voucher delivered by a broker to his principal containing particulars of a sale or purchase.

Brokerly. Mean, of a servile disposition.

Bromoform (*in Medicine*). A colourless liquid of agreeable odor, formed by the action of bromine and potassium hydrate on wood-spirit or alcohol. It is analogous to chloroform but contains bromine in place of chlorine

Bromoform.

Bromutter.

Bromutter. For the use of Brahma. Lands the produce of which is appropriated to Hindu temples, and for the performance of religious worship

Bronchia. Bronchial tubes

Bronchitis Inflamation of the bronchial membrane

Brook. A natural stream of water, too small to be called a river "Springs make little rivulets, those united make brooks, and those coming together make rivers, which empty themselves into the sea" (*Locke*)

Brothel House of lewdness, a house appropriated to the purpose of prostitution "Place where people of opposite sexes are allowed to resort for prostitution." (*Per* Wills, J, *Singleton* v *Ellison*, [1895] 1 Q B 607) It is used in English law as a compendious term for a "common bawdy house" or house of illfame, *i e*, a house or part of a house, or a room, kept for purposes of indiscriminate fornication between men and women resorting thither [*R* v *Pierson*, (1700), 1 Salk 382, *Singleton* v. *Ellison*, (1895) 1 Q B 607]

Nuisance or no nuisance is not an element in the definition of brothel A brothel is a place resorted to by persons of both sexes for the purpose of prostitution, who are strangers to the occupancy. If a woman plies the trade of a prostitute in her own house, that does not make the house a brothel (*Emperor* v *Versimal, Bahagiomal*, 6 S L.R 224=19 I C 714= 14 Cr L J 282. *See also* 6 C L J 710, 6 S L R 224=19 I.C 714)

A place occupied by a woman, who permits no other woman but herself to be there for sexual purposes but who herself is accustomed to receive men for such purposes, is not a "brothel" (*Singleton* v *Ellison*, (1895) 1 Q B. 607)

A brothel involves the idea of a place of resort, therefore, the allowance of an isolated act of prostitution, even by strangers to the occupancy, would not make the place a brothel

Brothel, Bawdy house, Common bawdy house The terms "Brothel," "Bawdy-house," or "Common Bawdy-house," are often synonyms [*Singleton* v *Ellison*, (1895) 1 Q B 607]

Brother A male relative in the first degree of descent or mutual kinship, the converse of sister

The term brother in its primary sense means a brother of the whole blood and it is only in a secondary and extended sense that the term is deemed to include a brother of the half blood. Whether the term is to be taken in its primary or secondary sense depends in each case upon the context The term 'minor brother' in S 2 (1) (*d*) of the Workmen's Compensation Act does not include a minor half-brother (*Maung Kyan*, In the matter of, 9 Rang. 46=I R 1931 Rang 158= 131 I.C. 734=1931 Cr C. 669=A I R 1931 Rang. 173)

The word "brother" in S 22 (6) of the Oudh Estates Act (I of 1869) includes a brother born of a different mother. [*Thakuram* v *Rae Jagatpal*, 11 Bom.L.R 516=8 C W N 699=26 A 393=31 A 132 =1 A.L.J. 384=7 O C 248=3 I C 359 (P C) *See also* 27 A. 634 (644, 645, 648)=9 C.W N. 1009=2 C L. J. 194=15 M.L.J. 352=31 I A. 132=18 O.C. 188 (P.C).]

"BROTHER" defined. Act I of 1869, S. 21.

Bua.

Brother, Sister. "Brothers", "Sisters"—includes the half-blood, "and so with regard to every other degree of relationship" (*Jarmon on Wills.*)

Turner, V C., said. "I think that, in general, when a man speaks of his brothers and sisters he speaks of them, not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to one or both of his parents in which he himself stands. Though the half-blood are not descended from both the same parents, they are, 'after a sort brothers,' 'brothers by the father's side,' 'brothers by one mother', and however others might describe them or they might designate themselves, I think that, if required to give a precise description of the nature and degree of the relation subsisting between them, they, in ordinary parlance, would be called and would call themselves, brothers and sisters". (*Per* Turner, V C, *Grieves* v *Rawley*, 22 L J Ch 625) This construction may however be varied by context (Re *Reed*, 57 L J Ch 790)

A gift to "*Brothers and Sisters*," the testator knowing himself to be illegitimate, imports his putative brothers and sisters (Re *Cameron*, 91 Law Times, 176)

Brother-german A full brother, brother on both the father's and the mother's side

Brother-in-law The brother of one's husband or wife, also, one's sister's husband

The relationship between persons who have married sisters is not that of brother-in-law It means "the brother of one's husband or wife, also, one's sister's husband"

Brougham The name given to a vehicle, a four-wheeled close carriage, with one or two horses and licensed to carry either two or four persons

"Brought Against" If no relief is asked for against a defendant it cannot be said that an action has been "brought against" him [*Deutsche National Bank* v *Paul*, (1898) 1 Ch 283 *See* "BRING"]

"Brought Before" A person is "brought before" a magistrate, if he appear in answer to a summons, and it is not necessary that he should have been actually arrested and brought in custody (*Hadley* v *Perks*, 55 L J M C 177)

Bruise (*Medical jurisprudence*) Contusion, superficial injury upon the flesh of a person with a blunt or heavy instrument without breaking the skin (*State* v *Owen*, 4 *Am Dec* 571)

"Bruised" is more definite than "hurt", but does not indicate necessarily or generally more than a temporary contusion, which may be on any part of the person, and light or severe, but seldom more than temporary in effect

A bruise is a hurt with something blunt and heavy, and in judicial decisions it is synonymous with the word "wound"

Brumadayam What is due to Brahma Grants of land to Brahmans for religious purposes.

Brutal Pertaining to, or resembling a brute; brutish, savage, inhuman as, brutal nature, brutal passions

"Bua" means the house tax payable to the Khan of Teri by non-agriculturists resident in the estates held by the said Khan on istamrari tenure. [Pun. Regn. IV of 1902 (Teri), S. 2, Cl. (*c*).]

Bubble

Bubble. An inflated speculation, a delusive commercial project, hence a financial imposition of fraud, cheating as, the South Sea Bubble.

A person deceived by an empty project, a dupe.
"He has been my bubble these twenty years"
(*Arbuthnot, John Bull*)

BUBBLE. (*Verb*) To cheat, to deceive, to impose on

Bubble Act An English Statute of 1720, intended to restrict illusory schemes of corporate or associate organisations

Bubble companies to ensnare unwary Companies formed on the basis of fictitious or exaggerated prospectus are called "bubble companies".

SOUTH SEA BUBBLE. A financial scheme which originated in England about 1711 and collapsed in 1720 By means of a series of speculative operations and the infatuation of the people its shares were inflated from £100 to £1,050 Its failure caused great distress throughout England

Bubo (*in Med Jur*) An inflammatory swelling of a lymphatic gland, especially such as arises in the groin from venerial infection

Bubonic Pertaining to or of the nature of a bubo

Bucaneer Buccaneer A pirate, a freebooter

Bucketful A measure As much as a bucket will hold.

Bucket shop "A bucket shop is a place where wagers are made on the fluctuation of the market prices of grain and other commodities"

"PUTS" AND "CALLS" and bucket shop operations are a species of gambling transactions

Buddha Original meaning is the wise or enlightened one, applied to the historical founder of Buddhism

Buddhism The religion founded by Buddha.

Buddhist. One who professes Buddhism, a follower of Buddhism

Budget. The annual financial statement of the Government presented to the Legislature In making this statement the minister in charge gives a view of the general financial policy of the Government, and at the same time presents an estimate of the probable income and expenditure for the following 12 months, and a statement of what taxes it is intended to reduce or abolish, or what new ones it may be necessary to impose

"BUDGET" defined Mad Act I of 1884, S 3 (*b*).

"Budget-grant" defined. Ben Act III of 1899, S 3, Bom. Act III of 1888, Ss 115 (3).

TO OPEN THE BUDGET To lay before the legislative body the financial estimates and plans for getting the necessary income and mode of expenditure of the executive Government.

Budmash. A scoundral; a blackguard; a rude fellow

Budrukh. This is a Persian word signifying great or venerable

Budwar (*Ben*), a village watchman. Bad. Pow. i. 677.

Buffer. A person who takes pay to swear falsely; a hired perjurer.

Building.

BUFFER (*In Railroad law*) An apparatus attached to railroad-cars to prevent injury from violent contact or collision

Buffer-spring A spring which gives elasticity to a buffer so as to lessen the shock of collision

Buffet The space set apart for refreshments in public places (as) in Railway cars.

Bugara Rasi (*Tel*) A heap of unwinnowed grain

Bugger. One guilty of the unnatural crime of buggery, a sodomite.

Buggery, or sodomy, a carnel intercourse against nature, and this is either by the confusion of species, that is to say, a man or a woman with a brute beast, or of sexes, as a man with a man, or a man unnaturally with a woman. (3 Inst. 58, 12 Co Rep 36, *Tomlins Law Dic*, 71 *Ame Dec* 331)

Bui A plant, several plants in the Punjab are called *bui*

Builder A builder is one who builds, or whose occupation is that of building, specifically, one who controls or directs the work of building construction in any capacity (*Cent Dict*) A person whose business is to construct buildings, vessels, bridges, canals, or railroads, by contract (*Anderson*)

Builder artisan, architect "In the practice of civil architecture the builder comes between the architect who designs the work and the artisans who execute it" (*Cent Dict*)

Builder and contractor The word "builder" has been used by lawyers, judges, and courts as synonymous with "contractor" when used in connection with building contracts

Building A thing composed of the fabric of the building and the ground that the fabric rests upon and encloses *Corporation of the City of Victoria* v *Bishop of Vancouver* A I R 1921 P C 240 (P C)

"BUILDING" defined 33-4 V c 90, S 30, Bom Act III of 1888, Ss 3 (*s*), 300 (2), Act II of 1924, S 2; Bom Act III of 1901, S 3 (7), Mad Act IV of 1884 S 3 (ix), Mad Act V of 1884, S 3 (i), Mad Act II of 1888, S 2, Mad Act III of 1904, S 3 (3) Mad Act XIV of 1920, S 3 (3) See *St Botolph, Aldersgate Without, Vicar of* v *Parishioners of*, (1900) P 69

What is a "building" must always be a question, of degree, and circumstances its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof" [*Per* Esher, M R, *Moir* v *Williams*, (1892) 1 Q B 264]

The word "building" necessarily embraces the foundation on which it rests, and the cellar, if there be one under the edifice, is also included in the term" (Davis, J in *Benedict* v *Ocean Ins Co.*, 31 N Y. 389, 394)

"The land upon which the walls of a stone or brick building rest, or, indeed, of any other kind of building which in law is considered as annexed to the soil, and which is not clearly severed therefrom by the terms of the deed itself, must be considered as part of the building itself."

Building.

'Buildings' would include a Garden wall, or a wall, enclosing or defining some portion of a field. (*Per* James, V C., *Bowels* v. *Law*, L R. 9 Eq. 641)

A courtyard enclosed by low walls on three sides only, is not a building 84 I C. 863=26 Cr. L J. 383= A I R 1925 Lah 279.(2) If he house is in ruins without doors or roof, it cannot be said to be a building (99 I.C 376=A.I R 1927 A. 214)

The erection of a mere fence or boundary wall is not a building But where such a wall is built so as to enable the occupier of the main house to use the enlosed area as part of his habitation and not merely as a boundary or fence, it comes within the definition of building.[73 I C 972=24 Cr L.J. 732=A I.R. 1923 Rang 65 (2)]

The term "buildings" covers constructions such as gas mains under public streets [*Montreal Light, Heat and Power Consolidated* v *City of Outremont.* I R 1932 P C 165=136 I C 858 (P C)]

A side wall of a house expressly falls within the definition of a building. (35 Bom 412=13 Bom L R. 494=11 I C. 610=12 Cr.L J 426

BUILDING generally indicates a structure with a roof *Thakurlal* v *Secretary, Municipal Committee*, 64 I C 264 But the definition under special Acts might contemplate a building without a roof See *Public Prosecutor* v. *Kalia Perumal*, 8 M.L.T. 431

A courtyard attached to the living rooms walled in on all sides and provided by a door leading to the street which is secured is a building. 111 I.C.459= 29 Cr.L J 875.

"When we have a complex structure such as a house, 'the building' as contemplated by S 96 of Bombay District Municipal Act (III of 1901) is the whole house, and a single wall of the house is not by itself a building but only a part of a building." (*Emperor* v. *Braz H. De Souza*, 11 I C 610 (612)= 13 Bom L R 494=35 B 412, *per* Chandavarkar, J.) The following have been held to be buildings: a wing or tower newly erected 1 M L J 37, a wall rebuilt 8 M.L T 431, 35 B 236, 26 I C 651, 76 I.C. 478, extended doorstep Rat Un R Cr. C. 483, a corregated ironshed 7 C.L.J. 243, a verandah 1 Pat. 26, the foundation of a building 51 B 818, a moveable wooden shed 5 Lah 543 The following have been held not to come under the term "building" a small wall reconstructed 35 B 412, 18 B 547, 8 C W N 487, a new wattle fence Rat Un R.Cr.C 428, a mere boundary wall 15 C.W N 84, 73 I C 972, 45 B 1151, a screening wall 11 A L.J. 481, a fence made of reeds Rat Un. R Cr C 145

A compound or boundary wall is not a building, (*Corporation of Calcutta* v. *Binoy Krishna Bose.* 7 I C 890)

"The masonry on the sides of a canal is not sufficient to constitute it a 'building' A street, though paved and faced with stonework, would yet be 'land', whilst a viaduct would be a 'Building' " (*Per* Blackburn, J , in *R.* v. *Neath Canal Nav* , 40 L. J. M. C. 197)

Term "buildings" whether includes masonry rivetments *See* 33 C W N 930, 57 C 434. Masonry walls. (26 I.C. 651=16 Cr L J 59; 8 C.W.N. 487

"BUILDING" does not include enclosure by canvass screen. (1505 A.W N. 252. *See also* 26 I.C. 651, 35 Bom. 412=11 I.C. 610.)

Building Scheme.

BUILD, ERECT, CONSTRUCT. The word *build* by distinction expresses the purpose of the action, *erect* indicates the mode of the action; *construct* indicates contrivance in the action. We *build* from necessity, we *erect* for ornament, we *construct* for utility and convenience. Houses are *built*, monuments *erected*, machines are *constructed*.

Building Association (See *Building Societies*) Mutuality is the essential principle of a building association.

Building Contracts. "A contract containing an exact and minute description of the terms, account, or enumeration of particulars for the construction of a building.

Building Land. Land suitable for being built on (*per* Hatherley, C , *Lond & S W. Ry* v. *Blackmore*, 39 L. J. Ch 716.)

A building lease is a lease for either erecting a building on vacant land, or of pulling down old buildings and erecting new ones on the site. (*London* v *Nash*, 3 Atk 513, 514)

Building Lease A lease of land for a long term of years, usually ninety-nine, at a rent called a "ground rent," the lessee covenanting to erect certain edifices thereon according to specification, and to maintain the same, etc , during the term.

In determining whether a lease is, or is not, a Building Lease, regard must be had, (1) to the circumstances of the contract, (2) the subject-matter of lease, and (3) the nature and extent of the expenditure to be made (Re *Hogan*, (1894), 1 I.R 503)

Building Lien. The statutory lien of a contractor for the erection of a building (*Lumber Co.* v *Holt*, 83 Am. St Rep 512)

"Building-line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a street may lawfully extend. [Ben. Act III of 1899 (Municipal) S 3, cl 3 *See also* Mad. Act 3 of 1904, S 3 (4).]

BUILDING LINE, in Public Health (Building in Streets) Act, 1888 (51 & 52 Vict c. 52). See *Ravensthorpe L B* v *Hinchcliffe*, (1890) 24 Q B D 168, *Att-Gen* v *Edwards*, (1891) 1 Ch. 194 See also *Barlow* v *Kensington Vestry*, (1886) 11 App Cas 257, *London County Council* v *Cross*, (1892) 61 L J M C 160; *Allen* v. *London County Council*, (1895) 2 Q B 587.

Building material does not include sand 30 I. C. 1004

"Building materials and furniture" Electric fittings in a house come under the category of "building materials and furniture." (*Munna Lal* v. *Municipal Board, Jhansi*, 57 All. 655=4 A.W R 1255=A.I.R 1935 All. 153)

"Building of the Warehouse class defined. Ben. Act III of 3,1899, S 3 (4).

Building Scheme. Where land is sold in lots subject to restriction affecting it, those restrictions are imposed either for the benefit of the vendor alone, or for that of the purchasers *inter se* If for the benefit of purchasers *inter se* (which may or may not for this purpose include the vendor), the land is said to be affected by a "building scheme." (See *Pollock. Cont.*, 7th ed., pp. 239, 240.)

Building-Site.

"Building-site" defined. Bom. Act V of 1879, S 3 (8)

Building Societies A building society is a society for the purpose of raising, by the subscriptions of the members, a stock or fund for the purpose of making advances to members out of the funds of the society upon real or leasehold estate by way of mortgage (*See* the English Building Societies Act, (1874), S. 13, Wintzburg on Building Societies, Davies on building and Land Societies

Bujharat (*N W P*), annual adjustment of accounts of common expenditure incurred by headmen for service of a co-parcenary, (*Bad Pow*) ii, 105.

Bulk The gross, the greater part, the main portion as, the bulk of a debt, the bulk of a nation; the bulk of one's fortune

"It is certain that though the English love liberty, the bulk of the English people desire a king" (*W Godwin, Hist Commonwealth*, iv 2.)

Merchandise which is neither counted, weighed, nor measured A sale by the bulk is the sale of a quantity such as it is, without accurately measuring, counting or weighing (*Black*)

"Bulk License" defined Act IX of 1910, Sch, cl IX

BULKY, MASSIVE Whatever is *bulky* has a prominence of figure, what is *massive* has compactness of matter The *bulky*, therefore, though larger in size is not so weighty as the *massive* Hollow bodies frequently have *bulk*, none but solid bodies can be *massive* A vessel is *bulky* in its form, silver, and gold, are *massive*

"Bull" (*Stock Exchange term*) One who intrigues for a rise in the market, one who buys, or contracts, to buy shares in the expectation of rise in price.

BULL (*Eccl. Law*) A brief or mandate of the pope or bishop of Rome, from the lead, or sometimes gold, seal affixed thereto (*Tomlin's Law Dic*) The most authoritative official document issued by the Pope or in his name. usually an open letter containing some decree, order, or decision relating to matters of grace or justice A gross inconsistency in language, a ludicrous blunder, contradiction in terms (*Often called an Irish Bull*)

"Bull and Cow and any other animal," meaning of (*See* 22 C. 457)

Bull-baiting. The practice of baiting or attacking bulls with dogs, a sport formerly very popular in England, but made illegal in 1835

Bull-dog A variety of dog formerly used in bull baiting, of comparatively small size, very strong and muscular, with a large head, broad muzzle, short hair, tapering smooth tail, and remarkable courage and ferocity.

Bull-doze. To bully, to punish summarily with a bull whip, especially in politics to coerce, to intimidate by violence or threats.

Bullet A small ball, a missile, a small metallic projectile intended to be discharged from a small fire-arm.

Bulwork

DUMDUM BULLET. A half-covered bullet with an expansible soft core named from the dumdum ammunition-works at Calcutta.

NAKED BULLET An elongated projectile with one or more grooves encircling it, as distinguished from the patched bullet formerly used.

Bulletin. An official report concerning some public event, such as military operations, the health of the sovereign, etc, issued for the information of the public.

"False as a bulletin" became a proverb in Napoleon's time (*Carlyle.*)

Bulletin-board A board put up in a public place on which to placard important announcements, recent news, notices, etc

Bull-fight Fight with a bull, combat between a man and a bull or bulls an old popular amusement among the Spaniards and Portuguese.

Bullion Uncoined gold or silver, Gold or silver in the mass, gold or silver smelted and not perfectly refined, or refined but in bars, ingots or any uncoined form, as plate, often used to denote gold and silver, both coined or uncoined, when reckoned by weight or in the mass,—especially used of foreign or uncurrent coin

"A paper currency is employed, when there is no bullion in the vaults" (*Emerson, Misc p 32*)

"Foreign coin hath no value here for its stamp, and our coin is bullion in foreign dominions" (*Locke, Further Considerations*)

Bullootehdars Written also Bulutedars. A class of artificers in the Northern Circars.

Bulls-eye A policeman's lantern, a small lantern with a convex lens placed in one side to concentrate the light "He takes a lighted bull's-eye from the constable on duty there." (*Dickens, Bleak House*)

Bully A blustering person, quarrelsome fellow, a swaggerer, one who browbeats.

"The blustering bully in our neighbouring streets" (*Prior, Epilogue to Mrs Manley's Lucius*)

"Daily conflicts with prostitutes and thieves called out and exercised his powers so effectually that he (Jeffreys) became the most consummate bully ever-known in his profession." (*Macaulay, Hist. Eng.* iv.)

(Bully). (*Verb*) To act the bully toward; to insult with noise and menaces, overbear.

Bulootch. A bundle of corn, to which in the Northern Circars, each of the Bulootedars, or village artificers, was entitled.

Bulwark An outwork for defence, rampart; that which protects or secures against external annoyance or injury of any kind, a screen or shelter; means of protection and safety.

"The Royal Navy of England hath ever been its greatest defence and ornament, . . . the floating *bulwark* of our island." (*Blackstone, Com., I.* 418)

Bulwork. (*Naut.*) The sides of a ship above the upper deck.

Bum-Bailiff.

Bum-Bailiff. A person employed to collect a debt, bailiff employed to arrest for debt, under-bailiff, a subordinate civil officer.

"I have a mortal antipathy to catchpolls, bum-bailiffs, and little great men." (*Irving. Knickerbocker, p.* 156.)

Bund. (*Hindi*) A dam, an embankment, usually of masonry, built across a river or the course of a stream so as to retain a supply of water above it.

Bundela (*H.*) A spurious tribe of Rajputs, who give name to the province of Bundlekhand.

Bunder (*H.*) A harbour; a landing place; also a port town.

Bundle. A package, a number of things bound together, anything bound or rolled into a convenient form for conveyance or handling, a bundle of hay, bundle of papers.

Bundoobust. A settlement of the amount of revenue to be paid or collected. (*Fifth report.*)

Bunga. (*Punjabi*) A block of houses built round a sacred tank, a palace.

Bungalow. Storied, thatched, or tile-house, usually surrounded by a verandah, with a garden generally attached to it.

DAK-BUNGALOW A house for travellers, constructed on the high roads in many parts in India at the expense of the authorities for the use of which a small charge is generally made.

Bungas are partly religious and partly charitable institutions.

Bungas are hostels where pilgrims coming from various parts of India to pay a visit to the Golden Temple stay. These hostels were founded by rich men, especially by the Rajas and were dedicated to the public as wakf property. There was appointed in each bunga a custodian called bungai whose duty was to read Granth Sahib and arrange for the comfort of the pilgrims staying in the bunga and keep the bunga in a proper order. This shows that the bungas are partly religious and partly charitable institutions and the office of Manager may therefore be said to partake of the nature of a religious office. The Manager, if he has any powers at all, may himself be the bungai or he may appoint some one else to perform the duties of the bungai who has to read the Granth Sahib. His other duties are to look after the visitors and to take the proper care of the building. (*Committee of Management of Gurudwaras* v *Indar Singh*, 15 Lah 117=1933 Lah. 1041.

Bungle. A clumsy performance, a gross blunder awkward work.

Bungler. A clumsy, awkward workman; one who bungles or performs a work without skill.

To say of an artificer that he is a "Bungler" in his work, is Slander, *per se.* (*Redman* v. *Pyne*, 1 Mod. 19.)

Bungling. Unskilful; awkward; prone to bungle; clumsy.

"Letters to me are not seldom opened and then sealed in a *bungling* manner before they come to my hands." (*Swift.*)

Bureau.

Bunk A wooden case or small compartment in a vessel, a sleeping-car, etc., and sometimes also in a dwelling-house, used as a sleeping-berth

Bunt name of a (military) caste. (S. Kanara): Bad. Pow. III. 147.

Buoy To support, to sustain, keep afloat in a fluid, bear up or keep from sinking, as, in water or air. (*In Maritime Law.*) "A place of wood or cork, or a barrel raft, or other thing, made secure and floating upon a stream or bay, intended as a guide and warning to mariners, by marking a spot where the water is shallow, or where there is a reef or other danger to navigation, or to mark the course of a devious channel" (*Black*)

"Buoys and Beacons" defined (Eng Mer Ship Act 57-8 V c 60, s 742)

Bura, Boora (*H.*) Redeemable mortgage (East Oudh) (*Wil Gloss.*)

Bura-tukra, Boora-tokra (*Ben.*) An account of village receipts and disbursements made up for six or eight months by the Patwari, and balanced The balance is carried to the demands of the rest of the year (*Wil Gloss.*)

Burden Weight, load. So many "Tons Burden" when used in respect of a vessal connotes the capacity to carry.

So many "'Tons Burden' means the tonnage of a vessel ascertained in the manner directed by law (*i.e*) the Registered Tonnage of the vessel (*The Brunel*, 1899, p 45).

Burden of Proof The necessity which lies, now, on one party, now on the other, of calling evidence, to prevent judgment going against him The onus frequently shifts as the case proceeds from the person on whom it rested at first to his opponent This occurs whenever a *prima facie* case has been established on any issue of fact or whenever a rebuttable presumption of law has arisen (*Ency of the Laws of England*)

Per Dunkley, J.—The phrase "burden of proof" is used in two distinct meanings in the Indian Evidence Act, *viz*, the burden of establishing a case and the burden of introducing evidence In a criminal trial the burden of proving everything essential to the establishment of the charge against the accused lies upon the prosecution, and that burden never changes [14 Rang 666=168 I.C 193=9 R R 340=38 Cr L.J. 524=A.I R 1937 Rang 83 (F B)].

"BURDEN OF PROOF" defined. Act I of 1872, S. 101,

WEIGHT OF EVIDENCE DISTINGUISHED. "The burden of proof and the weight of evidence are two very different things The former remains on the party affirming a fact in support of his case, and does not change in any aspect of the cause. The latter shifts from side to side in the progress of the trial, according to the nature and strength of the proofs offered in support or denial of the main fact to be established."

Bureau. An office for the transaction of business. A department of Government for the transaction of public business; generally confined to subordinate and inferior executive departments.

Bureaucracy.

Bureaucracy A system in which Government is carried on in departments, each under the control of a chief officer, Government by bureaus, specifically excessive multiplication of, and concentration of power in, administrative officers on departments Bureaucracy tends to official interference in many of the details of private life.

"Republicanism and bureaucracy are incompatible existences." (*W R Greg. Misc Essays 2nd ser, p* 55)

Also, the body of officials administering such bureaus or departments considered as a whole or collectively.

Bureaucrat An advocate of bureaucracy, a member of a bureaucracy. Called also bureaucratist (rare).

Bureaucratic Relating to or pertaining or having the form of bureaucracy

Burgadar A *burgadar*, who stipulates that in return for his labour in cultivating the land of the owner, he would be entitled to keep half the produce, the remaining half being payable to the owner, is not a tenant (*Kada Mandal* v *Ahadali Molla*, 14 C W N 629=6 I C 594)

Burgbote (*in old English Law*) signified a tribute or contribution towards the building or repairing of castles, or walls of borough or city (*Tomlin's Law Dic*)

Burgess. An inhabitant of a borough, an elector or voter, a representative or magistrate of a borough, a representative of a borough in the British Parliament "The majority of the Burgesses had been returned by constituent bodies remodelled in a manner which was generally regarded as illegal" (*Macaulay, Hist Eng., X*)

Burgh. A fortified town, a city or town which sent members to Parliament, a division of the country in Scotland corresponding to a "Borough" in England.

Burgher. An inhabitant of a burgh or borough who enjoys the privileges of the borough, citizen of a borough or town

Burglar. A house-breaker, thief, especially one who commits robbery by breaking into a house in the night, The definition of burglar as given by Sir Edward Coke is "he that by night breaketh or entereth into a mansion house with intent to commit a felony". (*Blackstone Com IV, xvi*)

Burglar-alarm Any alarm so arranged as to sound upon the opening of a door, window, etc, with which it is connected.

Burglar-alarm lock A lock having an attachment which will sound an alarm if the bolt is improperly moved

Burglarian. A person who is guilty of burglary or an abetter in it.

Burglariously. With intent to commit burglary, in the manner of a burglar (*Blackstone.*)

Burglarize "Burglarize" is defined to mean to "commit burglary upon".

Burglar proof Constructed in such a manner as to be capable of resisting the attempts of burglars, (as) a burglar proof safe, or building.

Burking

Burglary House-breaking by night, with an intent to commit a felony therein, whether such felony be actually committed or not. (*Chitty Crim. Law.*)

Burglary defined *See* 4 Bl. Comm 224, 1 East P.C. 495, 1 Hale P.C. 358, 559, 1 Hawkins P C c. 38, Sect 1, 3 Inst 63.

Burglary Insurance. An insurance business that has grown up in recent years The general law and principles applicable are the same as under contracts of insurance [See in re *George and Goldsmiths' and General Burglary Insurance Association*, (1899) 1 Q B 595.]

Burial A grave, sepulture, a tomb, a burying place, the act of burying a deceased person, interment, the act of depositing a dead body.

BURIAL, INTERMENT, SEPULTURE Under *burial* is comprehended simply the purpose of the action; under *interment* and *sepulture*, the manner as well as the motive of the action We *bury* in order to conceal, *interment* and *sepulture* are accompanied with religious ceremonies *Bury* is confined to no object or place, we *bury* whatever we deposit in the earth, and wherever we please, but *interment* and a *sepulture* respect only the bodies of the deceased when deposited in a sacred place Christians in general are *buried* in the church yard, but the kings of England were formerly *interred* in Westminster Abbey *Burial* is a term in familiar use, *interment* serves frequently as a more elegant expression; *sepulture* is an abstract term confined to particular cases, as in speaking of the rites and privileges of *sepulture*

Burial case An air tight coffin intended for the preservation of the dead body

Burial-ground A grave-yard or cemetery

BURIAL GROUND includes ground in which no interment has taken place, and whether consecrated or not which has been at any time set apart for the purposes of interment (*Stroude.*)

"BURIAL-GROUND" defined. *See* Public Muhammadan burial-ground

"DISUSED BURIAL GROUND," is a burial ground which is not used for interments, whether or not it is closed for that purpose by an order of the proper officer or is otherwise disused [*Re Ponsford and New Port School Bd*, (1894), 1 Ch 454]

Burial mound The mound raised over the remains of deceased persons in ancient times

Burial place Same as burial ground, a portion of ground set apart for or occupied by a grave or gaves, a grave-yard.

Burial-service (*Eccl*) The religious service performed at the interment of the dead, or a prescribed order or formula for such service, the portion of a liturgy read at an interment.

Burka, (*Mar*) A sub-division or share of the lands of a village varying from ten to fifty, each comprising a certain number of fields, but not a defined quantity of land (*Will Gloss* 95.)

Burking The practice of killing persons for the purpose of selling their bodies for dissection (*Ame. Cyc.*) The term takes its name from a man

Burkism.

named Burke who was convicted and executed for the crime in Scotland in 1829.

The first instance of his name being thus used as a synonym for this form of death occurred when he himself was led to the gibbet, the crowd around the scaffold shouting "Burke him"

Burkism. Murder committed with the object of selling the dead body for purposes of dissection, generally, by *suffocating* or strangling the victim

"Burma" defined. Act XIII of 1898, S 3 (*a*), Act VI of 1900, S 2 (*a*), Bur Act I of 1898, S 2 (7).

"Burma Act" defined Bur. Act, I of 1898, S. 2 (8), Act X of 1897, S 3 (8).

Burman A native of Burma, an inhabitant of Burma

Burma notes Defined in India and Burma (Burma Monitary Arrangements) Order, 1937

Burmese adoption There is no special ceremony in Burmese adoption, but the adoption must be a matter of publicity and notoriety. (1923) 1 R 451=A I.R 1923 P C 156=33 M L T 361=2 Bur.L J 260 =(1923) M W N 711=29 C W N. 610=77 I C 63=46 M L.J 334 (337) (P C).

Amongst Burmans neither ceremony nor written document is required to constitute or initiate a keitima adoption There must be, on the one hand, the consent of the natural parents, and, on the other, the taking of the child by the adoptive parent with the intention and on the footing that the child shall inherit (1904) 32 I A 72=32 C 219 (225)=1 B L R 172=8 Sar 743

Burn To consume or destroy with fire, reduce to ashes by the action of heat.

Burning fluid Burning fluid is said to be a highly explosive and very dangerous illuminative liquid, a mixture of camphene and alcohol Kerosene is not such fluid

Burning-glass A double convex lens of glass used to produce intense heat on to ignite combustible substances, etc, by focussing sun's rays on them

Burnt-offering Offering burnt upon an altar, something offered to be burnt at the altar as an attornment for sin, a religious rite.

Burnt-sacrifice. This has the same meaning as burnt offering

Bury To cover out of sight, to hide in oblivion, to cover out of sight the body of a deceased person, as in a grave.

TO BURY THE HATCHET. To lay aside the instruments of war, forget injuries, and make peace.

Burying-ground. Same as burial-ground, a place set apart for the interment of the dead, a cemetery

Burying-place. Same as burying-ground or burial place

Bushel A dry measure containing four pecks, eight gallons or thirty-two quarts. Statutory Bushel is a measure of 8 gallons (S 15, 41 & 42 V, c 49)

"'BUSHEL,' taken by itself and without reference to any custom or particular agreement, means a Statutory Bushel" (*Hoskin* v. *Cooke*, 4 T.R. 314.)

"Business" and "Trade"

Bushwhacker. In the modern sense of the word as now sometimes used in common speech, it seems to be applied to a class of persons who are not a part of and regular army, any are not answerable to any military discipline, but who are mere lawless banditti, engaged in plundering, robbing, murder, and all conceivable crimes

Business. Defined in Act XI of 1922 of S. 2, IX of 1932, S 2.

BUSINESS. An affair requiring attention and care; that which busies or occupies one's time, attention, and labour as his chief concern, mercantile pursuits; that which one does for a livelihood, occupation, employment, as, the business of a merchant, the business of agriculture. *See* 130 I C 644=1931 Lah. 390, 1929 Cal. 826

The word business is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors

"Business" in the Income-tax Act includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture Act XI of 1922 (Income tax) S 2, Cl 4 *See also* Eng Partnership Act, 1890, S 45

Business has no definite technical meaning, but is to be read with reference to the object and intent of the Act in which it occurs Ex parte *Breull*, (1881) 16 Ch D 484 (*James*, L J) In the Companies Act, 1862 (25 & 26 Vict c 89), S 199, ordinarily means trading (for gain) under the Act [Re *Bristol Athenaeum*, (1889), 43 Ch D 236], and is not wide enough to include the case of literary or scientific institution not carried on for gain.

'Business' means an adventure or concern in the nature of trade A Turf club carries on business. A I R 1921 Cal 44=48 Cal 844, 40 Cal 678=21 I.C. 969

Business (as adjective) Relating to business; connected with business, trade, etc, as, business habits, business hours

"Business" and "goodwill" "The good will of a business is not the business but is one result springing out of it" (*6 Ame Cyc 259*) But the sale of a business has been held to imply the sale of its goodwill, though not expressly mentioned. *Shipwright* v *Clements*· Re *David and Matheus.*

"Business" and "labour" These words are not synonyms Labor may be business, but it is not necessarily so, and business is not always labour. (*Black*)

"Business" and "Trade" "'*Business*' has a more, extensive meaning than 'Trade'". (*Per* Willes, J, *Harris* v *Amery*, 35 L J C P 92) But "ordinarily speaking, Business is synonymous with 'Trade'." (*Per* Chatterton, V C, *Delany* v *Delany*, 15 L R. Ir. 67) There may, however, be a "Business" without pecuniary profit being at all contemplated In such a connection, "Business" is a very much larger word than "trade" and the word "business" is employed in order to include occupations which would not strictly come within the meaning of the word "Trade" (*Per* Pearson, J., *Rolls* v. *Miller*, 53 L J. Ch 101) *Per* Scrutton, L.J.—The words *"trade" and "business"* do not mean the same thing.. ".....The word "trade" is

"Business" and "Trade".

often confined to buying and selling commodities Where to draw the line between what is a profession and what is a trade is a matter which it is not possible to deal with any general definition "Business" is a much wider term than trade The word "business" at least covers a continuous occupation involving liabilities to others In re *A Debtor*, (1927) 1 Ch 9=96 L J. (Ch) 28 (C A)

BUSINESS, OCCUPATION, EMPLOYMENT, ENGAGEMENT, AVOCATION *Business* occupies all a person's thoughts as well as his time and powers, *occupation* and *employment* occupy only his time and strength the first is mostly regular, it is the object of our choice, the second is casual it depends on the will of another, *Engagement* is a partial *employment*, *avocation* a particular *engagement* Every tradesman has a *business*, on the diligent prosecution of which depends his success in life, every mechanic has his daily *occupation*, by which he maintains his family, every labourer has an *employment* which is fixed for him

BUSINESS, TRADE, PROFESSION, ART These words are synonymous in the sense of a calling for the purpose of a livelihood *business* is general, *trade* and *profession* are particular, all *trade* is *business*, but all *business* is not *trade* Buying and selling of merchandise is inseparable from *trade*, but the exercise of one's knowledge and experience, for purpose of gain, constitutes a *business*, when learning or particular skill is required, it is a *profession*, and when there is a peculiar exercise of *art*, it is an *art* every shopkeeper and retail dealer carries on a *trade*, brokers, manufacturers, bankers, and others, carry on *business*, clergymen, medical or military men, follow a *profession*, musicians and painters follow an *art*.

BUSINESS, OFFICE, DUTY *Business* is that which engages the time, talents, and interest of a man, it is what a man proposes to himself *office* is that which a man is called upon to do for another, it is consequently prescribed by others *duty* is that which duty prescribes one follows *business*, fills or discharges an *office*, and performs or discharges *duty* *Business* and *office* are frequently applied to that part which a man is called to perform, in which sense *business* and *office* come still nearer to the term *duty* What belongs to a person to do or see done, that is properly his *business* a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another, as the *office* of a prime minister, the office of a friend, that is his *office* *Duty* in this application expresses a stronger obligation than either of the other terms, where the service is enjoined by law, or commanded by the person, that is a *duty*, as the clerical *duties*, the *duty* of a soldier

Business, Carrying on. [See *Graham* v *Lewis*, 1882 22 Q B D 1]

In *Smith* v *Anderson* (50 L J Ch 43), Jessel, M R said:—"Anything which occupies the time and attention and labour of a man, for the purpose of profit is business"

Business transacts The expression transacts business assumes importance where the place of business is disputed The expression has been considered in 34 M L J 145, affirmed in 42 M 455= 36 M.L.J. 226 *See also* 52 M. 207, (1920) 3 K.B. 275, 58 M L.J. 337; 55 M. 848.

Business of Government.

The Council of Law Reporting carry on (probably) "a Trade and certainly a Business" within the phrase "Trade or Business" for purposes of assessment and the Customs and Inland Revenue Act (Re *Law Reporting Council*, 58 L.J Q B 90)

Business connected with a lease would include the previous negotiations and a preliminary agreement [Re *Field* 54 L J Ch 661 (Re *Emanuel*, 55 L J Ch 710) But abortive negotiations with strangers and third parties would not be business. (Re *Martin*, 41 Ch D 381, *Stroude*]

"INCOME FROM BUSINESS" for purposes of income-tax would include income even from business which is not absolutely lawful (1927) A C 193=95 L.J. (P C.) 193.

'Business connection' A single monetary transaction by a non-resident with a resident in British India cannot be described as a "business connection" within the meaning of S 42 (1) Where, therefore, a non-resident advances a loan to a company in British India taking security therefor, the interest earned by the non-resident on the loan, cannot be deemed to have accrued to him through or from any business connection in British India 63 I A 1=60 Bom 172=1936 M.W N 37=8 R P C 91=38 Bom.L. R 139=1936 A L J 715=1935 O W N 1361=159 I C 555=62 C L J 397=40 C W N 199=43 L W 53=1935 A W R 1526=A I R 1936 P C 1=70 M.L J 247 (P C) [On appeal from 57 Bom 651]

The words "business connexion" in S 42 (1), Income-tax Act, mean any adventure or concern in the nature of trade, commerce or manufacture being a business with which he, that is the person residing out of British India is connected The mere lending of money, purely as a loan, to a person in business does not establish a business connexion with the person, the business of the borrower does not thereby necessarily become connected with the lender. 170 I C 127=1937 Rang L R 174=A I R 1937 Rang. 258 (S B).

Business Hours "Business hours" as used in reference to presenting a note for payment, means that a presentment must be made at a reasonable hour This must be determined on consideration of the circumstances which in ordinary cases would render it reasonable or otherwise

Within the meaning of a rule that a note must be presented for payment during the usual business hours of the day on which it is due, business hours, except in the case of banks, include the whole day, unless there be some known custom or usage of trade to the contrary.

Business of Corporation "When applied to a public corporation 'Business' signifies the conduct of the usual affairs of the corporation, and the conduct of such affairs as commonly engage the attention of city and county officers" [*Jackson County* v *State*, 147 Ind 476 (Ame)]

Business of Government The word "business" in section 12 of the Letters Patent was used in a restricted sense The words "personally work for gain" would be unnecessary if the word "business" had been intended to be used in an unrestricted sense. The business of governing this country is not "business" within the meaning of the clause. [*Doya Narain Tewary* v. *The Secretary of State for India*

Bustee.

in Council, 14 Cal. 256 (273). But *see also* 1 M.H.C. 286.]

ZEMINDARI BUSINESS is not business of the kind contemplated in the section 8, Small Cause Court Act. (19 W.R. 341, 23 W.R. 223)

Bustee "Bustee" in the Bengal Municipal Act means an area containing land occupied by or for the purposes of any collection of huts-(*a*) standing on a plot of land not less than ten cottahs in area and bearing one number in the assessment-book, or (*b*) standing on two or more plots of land which are adjacent to one another and exceed in the aggregate one bigha in area. [Ben Act III of 1899 (Municipal), S 3, Cl 5]

Bustee Land "Bustee land" in the Bengal Municipal Act means land in a bustee which is let out for the building of huts under an arrangement by which the tenant of the land is the owner of the hut (Ben Act III of 1899 (Municipal), S 3, Cl 6, *Secretary of State for India* v *Belchambers*, 33 C 396=3 C L.J 169=10 C.W N 289.

Bustle Hurrying about, exerted activity

BUSTLE, TUMULT, UPROAR A crowded street will always be in a *bustle* Contested elections are always accompanied with a great *tumult* drinking parties make a considerable *uproar*, in the indulgence of their intemperate mirth.

But A term used to indicate the intention of those who use it, to limit or restrain the sense or effect of something which had before been said, a proviso, condition or qualification to what has been stated before "But" following a covenant "suggests a qualification" (*Per* Hall, V C, *Sear* v *House Property Co*, 50 L J Ch 77)

The primary meaning of the word "but" is except and it is manifestly used in that sense in a statute requiring the taxation of all property but that used for educational and charitable purposes.

"But on the contrary" *"But on the contrary,"* may render an allegation specific which before was general and uncertain (*Edge* v *Pemberton*, 12 H L W. 189)

The words "but on the contrary" should never be used" in a pleading or statement (*Carpenter* v *Parker*, 3 C B N S 243, Per *Willes, J*)

Butamari Barani 6 P R (Rev) 1914 Note=27 I.C 745.

'Buta Shigafi' A common revenue term for the act of clearing or reclaiming land (lit. breaking the bushes) 1 227, *Bad Pow.*

Butcher. The ordinary and natural understanding of the word "butcher" is one who kills and sells cattle for human food

BUTCHER is one who slaughters animals and dresses their flesh for the market, one who sells raw meat on the premises though the animals be slaughtered elsewhere (Doed. *Caskell* v. *Spr* 1 B & Ald 67. But see *Cleaver* v *Bacon*, 4 Times Rep 27)

Butcher shop "Butcher shop" is a synonymous term with "meat market"

But-Faroshi or Faroshi (*Tel*) A tax levied on different trades in a town or village to defray the cost of celebrating the worship of the tutelary divinity. A tax levied on the festivals of the inferior castes and the drums beaten on such occasion In former times, also, a fine imposed by a guru, or spiritual guide, to expiate certain breaches of the laws of caste. (*Wil Gloss*)

Buy over.

Buti-mar. A tenant who has cleared the land [Buti-bush, mar (marna), to destroy. (*Bad. Pow* II. 656, 658, 660)]

Buttawal Land newly cleared for cultivation. In the first year it is exempt from rent, in the succeeding years it pays the Government revenue in progressive fourths, until, in the fifth year, it is fully assessed (Travancore)

Butts and Bonds A phrase sometimes used in conveyancing, where a particular piece of land is described by enumerating the several lands or parcels which adjoin it, or upon which it abuts, on the different sides. (*Burrill*) Where it is said abut properly these words have "nearly or quite the same sense as the more technical expression 'metes and bounds'" (*Black*)

Butty Collier "Butty Colliers are two or more working colliers who join together, and enter into an agreement with a mine owner to get coal or ironstone from the mine at so much a yard or so much a ton, and sometimes at so much a day They are not allowed to underlet the work or leave it, but they employ other workmen under them, and they are responsible for their wages They usually work manually themselves, and they may bind themselves to the mine owner to do so" (*Bowers* v *Lovekin*, 6 E & B B 584) "We cannot take judicial notice of what a *Butty-man* is, the position may be very different in different collieries" (*Per* Rigby, L J, in *Marrow* v *Flumby, &c Co*, cited Employer)

Butwara. (*H.*) Shares A formal division of property into parts (*Mac Naughten*)

Buy Purchase, to acquire possession of, or title to property by paying a consideration, usually in money. (Opposite of "Sell") His (Emerson's) plan for the extirpation of slavery was to buy the slaves from the planters (*O W. Holmes, Emerson*, VIII)

TO BUY, PURCHASE, BARGAIN, CHEAPEN Buying implies simply the exchange of one's money for a commodity, *bargaining* and *cheapening* have likewise respect to the price to *bargain* is to make a specific agreement as to the price, to *cheapen* is not only to lower the price asked, but to deal in such things as are *cheap*. trade is supported by *buyers*, *bargainers* and *cheapeners* are not acceptable customers mean people are prone to *bargaining*, poor people are obliged to *cheapen*.

A HIRE-PURCHASE AGREEMENT is not an *agreement to "buy."* [*Helby* v. *Matthews*, (1895) A C. 471.]

Buy again To redeem

Buy in To purchase property, (as) at a public sale

Buy off To get rid of opposition by bribe or payment; purchase the non-intervention of.

TO BUY OFF COUNSEL To pay counsel or engage him so that he may not take employment from the opposite party..

Buy over. To detach or win over by a bribe or other consideration of some sort from one party.

Buy up.

Buy up. To purchase or acquire title to the whole of, or the whole accessible supply of a thing, as shares, a crop, or a stock of goods in market

Buyer. Defined in III of 1930, S. 2.

BUYER A purchaser, one who buys in the Sale of Goods Act, "'Buyer' of goods means a person who buys, or agrees to buy, goods"

Buyer's Over A term indicating buyers are in excess of sellers

"By" When time is given for the performance of any act till or *by a certain date* it includes that date also, so that an order dismissing a petition for non-performance of that act on that date is without jurisdiction [39 Mad 583 and 55 M L J 274, foll *Chinnah Chettiar* v *Kumaraswamiah*, 1933 M W.N. 88 (1)]

The expression "by" clearly indicates the utmost limit of time being the end or the expiry of the date or period indicated Where in an execution petition an order was made in the following words. "Sale papers to be filed by 11th October, 1921," and on the forenoon of 11thOctober, 1921, the execution petition was called and in the absence of the execution creditor and his vakil an order was made in the following terms "not filed, dismissed" *Held*, that the order dismissing the execution petition on the forenoon of 11th October, 1921, was wrong (*Muthu Chettiar* v *Narayanan Chettiar*, 51 Mad 672=110 I.C 63=A I R 1928 Mad 528=55 M L J 274.) A contract to complete a work *by a certain time* means that it shall be done before that time (*Black*)

An injury or damage is not "*done by*" a person or thing if he or it be impelled thereunto by the Act of God (*Weir Commrs* v *Adamson*, 47 L J Q B 193)

By, Bye, By the by A thing not directly aimed at, something not the immediate object of regard as, by the by (that is, by the way, in passing).

"By" contrasted with "under" As to difference between property passing "*By*" as contrasted with "*Under*," or "*Under or By Virtue of*" an instrument. (See *A G* v *Chapman*, cited in *Stroude*)

A Company incorporated "*by Act of Parliament*," means one which "*by*" such Act is brought into existence, and does not include a Company incorporated "under" an Act

By a certain date Where time is given to a party to pay a certain sum of money "by a certain date", it includes that date. The word '*by*' indicates the utmost limit of time, being the end or the expiry of the date or period indicated, and in reckoning a day it is to be taken as from midnight to midnight Although a Court of Law is not expected to receive money after 5 P M. or 6 P M, if a tender is made at any time before midnight that day, it is a valid tender (15 Mys.L.J. 503=42 Mys.H C.R. 545.)

By-altar. A minor or secondary altar, in distinction from the high altar, a side altar.

By Authority. A Gazette which merely purports to be printed "By Authority" does not necessarily purport to be printed "by the King's or Queen's Printers," or "by the King's or Queen's Authority." (*R.* v. *Wallace*, 14 W.R. 462).

"Bye Laws".

By Bill. "By Bill" does not necessarily mean, "By Approved Bill" (*Hodgson* v. *Davis*, 2 Camp. 530).

By day In the Canal Boats Acts, 1877 and 1884, "'By Day,' shall be deemed to include the hours between 6 o'clock in the morning and 9 o'clock at night" (S 9, 47 & 48 V., c. 75). (*See* Day)

By-election Election held to fill an *interim* vacancy.

By Estimation. (*In conveyancing*) Indicates that the quantity of land or other substance as stated is estimated only, not exactly measured, it has the same meaning and effect as the phrase "more or less". (*Tarbell* v. *Bowman*, 103 Mass 341; *Black*)

"By God And My Country" (In old English criminal practice) The established formula of reply by a prisoner when arraigned at the bar, to the question, "culprit, how wilt thou be tried?"

By land In the Land Customs Act, unless there is anything repugnant in the subject or context,—any reference to the passing or import or export of goods "by land" shall be deemed to include the passing or import or export of goods by any inland waterway constituting a foreign frontier or part of a foreign frontier [Act IX of 1924 (Land Customs) S 2 (*a*)]

By-lane By way, a private lane.

"Bye Laws" means by Implication of Law, as distinguished from Stipulation by contract (*Stroude.*)

A byelaw denotes etymologically a law for the regulation of the 'by' or township *Arnold's Municipal Corporations* 7th Ed p 150, It was in modern times been held to mean rules made by some authority subordinate to the legislature for the regulation, administration or management of a certain district and binding upon all persons who come within their scope *Law Relating to Meetings by Shackleton*, p 410 In *Kruse* v *Johnson*, Russel C.J. defined it as meaning "an ordinance affecting the public, or some portion of the public imposed by some authority clothed with statutory powers ordering something to be done or something not to be done and accompanied by some sanction or penalty for its non-observance It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which but for the byelaw they would be free to do or not to do as they pleased Further it involves the consequence that if valdily made it was the force of law within the sphere of legitimate operation

"BYE-LAWS" defined Act XX of 1891, S. 3 (10); Act X of 1904, S 2 (*a*); Act II of 1912, S. 2, Cl. (*a*).

BY-LAWS. Certain authorized rules, orders and constitutions of corporations, of for the governing of their members made by common asset, for cases to which the public law doth not extend. (*Tomlin's Law Dic*) Whenever the word occurs in Acts or Regulation it has the meaning given to it by the definition contained in the particular or Regulation. (*See* Co-operative Societies Act, S. 2, Cl. (*a*), U P. District Boards Act, S. 3, Cl. (1). By-Laws are the law of the inhabitants of the corporate place or district, made by themselves or the authorized body, in distinction from the general law of the country, or the statute law of the particular state; the orders and regulations which a corporation, as one of its legal incidents, has power to make, and which is usually exercised to regulate its own

"Bye Laws".

actions and concerns, and the rights and duties of its members amongst themselves, a rule or law of a corporation for its government.

"By-law" includes all orders ordinances, regulations, rules, and statutes made by any authority subordinate to the Legislature The subordinate authority must, of course, have power expressly or impliedly conferred on it to legislate on the matters to which the by-law relates

"Their early history is briefly this When the Danes acquired possession of a shire in England, the township was often called a 'by,' and as they enacted laws of their own they were called by-laws or town laws" (*Board of Health* v. *Copcutt*, 24 N. Y. Suppl 625)

The word "*ordinances*," "*rules*," "*regulations*," *and* "*by-laws*" are all equivalent to the term "ordinance"

The word "ordinances," as applied to cities, shall be synonymous with the word "by-law"

The terms "*by-laws*," "*ordinances* and "*municipal regulations*" have substantially the same meaning, and are the laws of the corporate district made by the authorised body, in distinction from the general laws of the state. They are regulations for the government of the inhabitants of the particular place They are not laws in the legal sense, though binding on the community affected They are not prescribed by the supreme power of the state, from which alone a law can emanate, and therefore cannot be statutes which are the written will of the Legislature, expressed in the form necessary to constitute parts of the law

By law and Resolution A resolution is not necessarily a by-law though a by-law may be in the form of a resolution. (79 Fed Cas 10)

By-legislation Legislation by the executive department on subordinate or secondary matters, by-laws, or the making of by-laws

"The Friendly Societies Act . gives power of by-legislation on specific matters such as terms of admission, administration, enforcement of rules, etc., all which has only to be certified by a Crown Registrar." (*Contemporary Review*, XLIX, 231)

By-name. A secondary name, an epithet, a nickname.

By-product, Bye-product A secondary or additional product.

"It is constantly the case that the bye-products of a complex industry are found to be the sole source of business profits." (*Ency Brit* IX, 756)

By purpose. An indirect or concealed purpose or design

By-report A side-report or statement.

By-road A road different from the usual or main high-way, a side-road. A private or secret way, an unfrequented path, an obscure road

"By sale or otherwise" (In S. 73, C. P. Code). 26 C. 772=4 C W.N 27

By-street. An obscure street, lane or by-way

By the By. Incidentally.

C F. & I

By virtue of his office Acts done within the authority of the officer, but in doing it he exercises that authority improperly, or abuses the confidence which the law reposes in him

The expression "*by virtue of office*," and the expression "*under color of office*," mean very different things "Proper fees are received by virtue of the office, extortion is under color of office" Any rightful act in office by virtue of the office A wrongful act in office may be under color of office, "color" meaning not the thing itself, but only the appearance thereof

By-way A secluded, private or obscure way, an out-of-the-way path or course as, highways and by-ways

"By Weight." To sell bread "By weight," the Bread, after it is baked, must be weighed, it is not enough to weigh the dough before baking and make an allowance for loss of weight in the oven (*Jones* v *Huxtable*, 36 L J M C 122), but if a fair sample of a few loaves from each batch are weighed after the batch has been baked, and as a test of the weight of all the loaves in batch that would suffice (*Webb* v *Manders*, 12 S J 1320) The point is, that in some fair way the baked bread must be weighed shortly before sale "I do not say that it is strictly the duty of the seller to weigh a loaf at the time of sale, but unless the loaf were weighed then, or shortly before, that would be evidence of a sale otherwise than 'by weight'" (*Per* Blackburn, J, *Jones* v *Huxtable*, supra)

Byabastha (*Vyavastha*) (*Ben*) A statute, a law A written opinion or dictum on a point of Hindu law drawn up by Bandits

Byana, Byara (*Karn*) A piece of pasture ground attached to a village, and assigned as a perquisite to the headman, who lets it out for the grazing of cattle at a charge per head

Bye-Bil-Wuffa. (*H*) A deed of mortgage or conditional sale

Bygone Out of date, antiquated

Byzantine Pertaining to Byzantium or Constantinople, (as) Byzantine Code

C

C Initial letter of lat *condemno*, an abbreviation for the same, also of the words "chapter," "circuit," "Code"

C A. Abbreviation for "Chief Accountant," "Controller of Accounts" or "Chartered Accountant"

C C Abbreviation of *Cepi corpus*, "I have taken his body"

C C., B B An abbreviation for "I have taken his body, bail bond being taken."

C F. & I Letters used in contracts for *cost, Freight and insurance*, indicating that the price fixed covers not only cost but freight and insurance to be paid by the seller. (*Benj. Sales.*)

C.O.D.

C O D An abbreviation for "Collect on delivery" In case of goods marked with these letters the carrier in addition to his ordinary liabilities, has to collect the amount specified by the consignor before delivering the goods

C.A S.A. Abbreviation of *capias ad satisfaciendum*

Cab Carriage for the conveyance of passengers which plies for hire and is not a stage carriage (or what is commonly known as an omnibus) that is, a carriage in which the passengers are charged separate fares for their seats

Cabal Intrigue by a small body of persons, plot, secret artifices of a few persons united in some design as, "curs'd cabals of women" (*Dryden*)

Centuries glide away in the same unvaried round of cabals at Court (*Brougham*)

The name of "the cabal" was originally given to an unpopular ministry of Charles II, consisting of Clifford, Ashley, Buckingham, Arlington, and Lauderdale, the initials of whose names happened to compose the word

"These ministers were therefore emphatically called the cabal, and . it has never since their time been used except as a term of reproach" (*Macaulay Hist Eng.* II)

Cabala, Kabala The theosophy or mystic philosophy of the Hebrew religion

Cabinet The select council of a sovereign or of an executive Government, the collective body of ministers who direct the Government of a country

The cabinet at the present day is the principal directing force in English Government Though only an informal council of the Crown, possessing no legal powers, and even unknown to the law (in other words, belonging not to the law, but to the custom of the constitution), it exerts a guiding and controlling influence over the Crown and Parliament, over the legal Executive and the legal Legislature, which secures the harmonious working of the various Governmental institutions and the unity of the Government

The word is also used to mean a meeting or session of a cabinet council

"*Cabinet* after *cabinet* passed over, and no mention was ever made of the affairs of the East" (*Brit Quarterly Rev* LXXXIII, 74)

A room set apart and devoted to the preservation of articles of antiquity, a set of boxes or drawers for curiosities, any place in which things of value are hidden, a closet, a small room (*Worcester Dict*)

IN PRINTING, an inclosed frame for printers' cases

Cabinet Council Private counsel, secret advice.

"Those are cabinet councils, and not to be communicated" (*Massinger, Duke of Milan*, II, 1)

Cabinet of arms A display of the escutcheons together with the sword, spurs, and the like of a gentleman after his decease.

Cable A large strong rope or chain, such as is used to hold a vessel at anchor, Submarine or Electric telegraph cable.

Caesarian operation.

TO BUOY A CABLE, to support it by floats, to keep it clear from a rocky bottom

Cabooleat An agreement, particularly that entered into by the Zemindars and farmers, with the Government, for the management and renting of the land revenues.

Cabotage A nautical term denoting navigation from cape to cape along the coast without going out into the open sea

Cachar, account of (*Bad Pow* III, 433.)

Cacodemon Evil spirit, a malignant person

Cacoeconomy Bad management, maladministration (Rare) "Marvellous cacoeconomy of their Government" (*Sydney Smith*)

Cadaster, Cadastre A register of the real property of a country, with the necessary particulars for serving as a basis of taxation, an official estimate of the taxable value of land, a kind of Doomsday Book

Cadastral Pertaining to real estate having reference to the extent, value and ownership of land, as a basis for taxation.

Cadastration Making a cadaster or a detailed official survey for purpose of taxation

Cadaver A dead human body, a corpse—the word being said to be formed of the first syllables of the words *caro data vermibus* (flesh given to the worms) The word is specially used in respect of a body prepared or used for dissection. (*Cent Dict*)

"There is no property in a cadaver" (*Williams* v. *Williams*, 51 L J Ch 385)

Cadaveric Relating to a dead body, pertaining to or derived from the changes induced in a corpse by putrefaction

Cadaveric rigidity means *rigor mortis*.

Cadaverous. Pertaining to a dead body, having the appearance or colour of the body of a dead person, pale, ghastly

Cadet One who carries arms in a regiment as a private, but solely with a view to acquiring military skill preparatory to a commission A young man in the course of training for the rank of an officer in the army or navy

Cadetship The rank or commission of a cadet

Cadjan. Leaves of the palmyra tree, on which the natives of South India write with an iron style. (*Fifth report*)

Cadmean Cadmean victory is a phrase used for a victory in which the victors suffer as much as the vanquished

Cadre. The permanently organised skeleton or framework of a regiment or corps, around whom the rank and file may be assembled at short notice

Caduciary In old Roman Law, relating or pertaining to forfeiture or escheat as, caduciary laws. (*Ency. Brit.* XX, 710.)

Caesarian operation A surgical operation whereby the foetus, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the

Cafe.

mother and foetus be yet alive, or whether either of them be dead, is by a cautious and well timed operation taken from the mother with a view to save the lives of both, or either of them [As to the right of inheritance of the husband of a woman on whom such operation is made, *see* Wharton's Law Lex]

Cafe. A coffee-house, a restaurant

Cage. A prison or place of confinement for prisoners a part of a building or of a room separated from the rest by bars, to confine persons under arrest "Stone walls do not a prison make nor iron bars a *cage*" (*Lovelace*)

Caitiff A captive, a prisoner, a slave, a mean despicable person.

Calcification "Calcification" is a term used with reference to arteries, and means a deposit of lime salts in the walls of the tube, making it rigid and fragile, instead of elastic, as it is in health

"Calcutated to deceive." In the English Patents Act 1883, means which will induce the public to purchase the article in question in the belief that it was other than it really is [*Eno* v *Dunn*, (1890) 15 App Cas 252 *See also* 53 L J Ch 247]

"**Calcutta**" defined Ben Act II of 1884, S 2, Ben Act III of 1889, S 3 (7), Ben Act II of 1891, S 3 (1), Ben Act I of 1896, S 2 (*d*)

Calefagium An old English word to denote the right to take fuel yearly. (*Blount*)

Calendar. An orderly arrangement of the divisions of time into years, months, weeks and days, or a register of them, an almanac. In court practice, a list of causes arranged for trial in Court. A list of things arranged in serial order (as) calendars of causes arranged for trials in a Court, calendars of state papers.

ECCLESIASTICAL CALENDAR An arrangement of the Civil year employed by the liturgical churches to designate the days set apart for particular religious celebration.

The Egyptians were the first to institute a sacred calendar, in which everyday—almost every hour—had its special religious ceremony (*Faiths of the World, p* 140)

GREGORIAN CALENDAR The reformed Julian Calendar, introduced by the Bull of Pope, Gregory XIII, in February, 1582, and adopted in England in September, 1752.

HEBREW CALENDAR The luni-solar calendar used by the Jew

JULIAN CALENDAR The solar calendar as adjusted by Julius Ceaser in which the chronological reckoning was first made definite and invariable, and the average length of the year fixed at 365¼ days

MAHOMEDAN CALENDAR The lunar calendar employed in almost all Mahomedan countries.

REPUBLICAN CALENDAR, (*in France*) The calendar of the first French Republic.

Calendar, Almanack, Ephemeris. These terms denote a datebook, but the *calendar*, is a book which registers events under every month: *almanack*, a book which registers times, or the divisions of the year: and *an ephemeris*, a book which registers planetary movements every day. An *almanack*, may

Call

be a *calendar*, and an *ephemeris* may be both an *almanack* and a *calendar*; but every *almanack* is not a *calendar*, nor every *calendar* an *almanack*.

"Calendar month". A 'calendar month' means one of the twelve months or to which the year is divided according to the calendar, also the space of time from any day of any such month to the corresponding day of the next, as opposed to a lunar month of four weeks [131 I.C 621 (2)=33 L W 763=A.I. R 1931 M 352=60 M L J 293.] A solar month as it stands in the almanac. In computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days (*Per* Brett, L J, in *Migotti* v *Colville*, 48 L. J C P 695.) Thus "One *calendar month's imprisonment* is to be calculated from the day of imprisonment to the day numerically corresponding in the following month, less one When there is no such corresponding day in the last month of the imprisonment, the prisoner's term will be up on the last day of such last month. Thus a prisoner "sentenced to a calendar month's imprisonment will never be imprisoned for a greater number of days than there are in the month in which he was sentenced" (*Per* Cotton, L J, *Migotti* v *Colville*, Supra.)

CALENDAR MONTH is computed in the same way in civil and criminal proceedings [*Radcliffe* v. *Bartholomew*, (1892) 1 Q B 161]

Calendar year There are two principal modes of computing the calendar years. One is by the annual course of the sun (solar year) The other is by the periodical revolutions of the moon (lunar year). The solar year consists of 365 days 5 hours 48 minutes and 45 seconds The lunar year consists of of 354 days, 3 hours, 48 minutes and 39 seconds

Calends, Kalends The first day of each Roman month

ON OR AT THE GREEK CALENDS, at no time, never: an ancient Roman phrase alluding to the fact that the Greeks had nothing corresponding to the Roman calends, hence to say that a debt would be paid at the Greek calends, meant that the debt would never be paid

Calif, Caliph Title given to the successor of Mahomed as head of the Moslem state and defender of the faith. This title was first given to Abubaker, who was elected successor to Muhammad on the death of the latter.

Califate, Caliphate (*Arabic.*) The Office of Caliph, the head of Islam according to the Sunnis. The Shiahs do not recognise the Caliphate, but substitute the office of Imam

Calingula. *See* Kalingula

Call. (*Noun.*) An official declaration that sums subscribed are required to be paid, a public claim or demand.

"The term '*call*' is susceptible of three meanings. It may signify the resolution itself, or the time of notification, or the day on which the money is made payable." (*Ambergate, etc. R. Co.* v. *Mitchell*, 4 Exch. 540 19 L.J. Exch. 89).

A request that holders of Government bonds may present them and receive payment of the principal sums mentioned in them, and whatever interest may then be due, no further interest being payable after the date named.

Call.

CALL (*in company law*) An assessment on the stockholders of a corporation or a joint-stock company, or members of a mutual insurance company, usually for payment of instalments of their unpaid subscriptions, or for their promised contributions to pay losses Instalment due on shares not fully paid, payable according to the terms of the prospectus or Articles of Association of a company

"CALL" as applied to the shares of a company is used in two senses, "(1) the application to the shareholders to pay, (2) the amount to be paid" (*Per* Parke, B, *Newry, &c Ry* v *Edmunds*, 2 Ex 121.)

CALL (*Naut*) A whistle used to summon sailors to duty

CALL (*Verb*) To convoke, assemble, issue a summons for assembling (as, to call a meeting) To name, apply to by way of name or designation,

"And God called the light Day, and the darkness he called Night" (*Gen* i 5)

CALL (*Milit*) A summons by bugle, pipe or drum, for the soldiers to perform any duty as a bugle-call

CALL, INVITE, BID, SUMMON, CONVOKE To *bid* and *summon* require the express use of words, the former is always directly addressed to the person, the latter may be conveyed by an indirect channel. *Bidding* in always the act of superior by way of command or entreaty. *Inviting* is an act of courtesy or kindness between equals To *summon* is an act of authority, as to *summon* witnesses When these words are employed in the sense of causing any one to come to a place, *call* and *summon* are most nearly allied, as are also *bid* and *invite* In this case to *call* is used on ordinary occasions and performed in an ordinary manner, as to *call* a meeting, to *call* together, to *call* home, to *summon* is a formal *act*, and more or less imperative according to the occasion, as to *summon* a jury *Bidding* and *inviting*, though acts of kindness, are distinguished according to the condition of the person, *bid* is properly the act of a superior, and *invite* of an equal, or one entitled to the courtesies of life (*Crabb*) *Convoke* implies an organization which is called into session or assembly (as) to *convoke* the House of Parliament

TO CALL IN To collect as, to call in debts or money, or to withdraw from circulation, as, to call in a clipped coin

TO CALL NAMES. To use opprobrious epithets towards a person, to apply reproachful application to person

TO CALL OFF To summon away, divert from duty as, to call off workmen from their employment.

TO CALL OUT To summon into service, (as, to call out the militia) To elicit, evoke to bring into play.

"New territory, augmented numbers, and extended interests *call out* new virtues and abilities and the tribe makes long strides." (*Emerson, Misc* p. 181)

TO CALL OVER To go over by reading aloud name by name: as, to call over a list or roll of names

TO CALL THE ROLL, To read aloud from a list the names of the members in a legislative or other body of persons (as) a military roll-call.

Calling

TO CALL TO ACCOUNT To demand an explanation or accounting from a person.

TO CALL TO MIND To recollect, revive in memory.

TO CAIL TO THE BAR To admit to the rank of barrister, to confer the dignity or degree, of a legal practitioner upon a member who has obtained the necessary qualifications

TO CALL UP. To bring into view or recollection: as, to call up a bill before a legislative body To require payment of as, to call up the sums due on shares. (*Cent. Dict*)

AT CALL. Without previous notice, on demand; applied especially to loans repayable on demand.

WITHIN CALL Within hearing distance

"I saw a lady within call." (*Tennyson, Fair Women*)

Call a halt Decide to stop.

Call-bell A small bell, used as a signal to summon a servant or an attendant

Call cousins Claim kinship with

Call day Day on which calls to the bar take place.

Call of the house A roll-call in a parliamentary body for the purpose of ascertaining what members are present or absent

Call over Roll-call.

Call to witness Appeal for confirmation

Call up Summon to serve in the army

Called Bond A bond concerning which a notice or "call" has been sent out that it will be redeemed on a date named.

Called forth There is a sound distinction between the *calling forth* of the militia, and their being in *actual service* and employment. The term "actual service" means something more than a mere calling forth of the militia It includes some act of organization, mustering, or marching done or recognised in obedience to the call in the public service. The terms "*called forth*" and "*employed in the service*" cannot, in any appropriate sense, be said to by synonymous From the very nature of things, the call must precede the service

"Called for Trial" When both parties in a cause have announced that they are ready, or when an adjournment having been applied for has been denied, the case is said to be "called for trial."

Call on the accused to enter on his defence. [15 Mys L.J 249=42 Mys H C R. 151.]

"Called on to act" Arbitrators are said to be "*called on to act*," when they are called on to do some specific thing in connection with the arbitration proceedings. Requiring them to appoint an Umpire, would be calling on arbitrators to act [*Baring-Gould* v. *Sharpington Syndicate*, (1899 2 Ch. 91.)]

Calligraphic Pertaining to calligraphy

Calligraphy Fair or elegant penmanship; handwriting in general

"Calling" Profession, trade or occupation, employment. The business of investment for interest resulting in gain is calling (11 Mad 255.)

Calling a case for trial.

"CALLING WITNESS FOR THE PROSECUTION"—What amounts to (Cr P C, S. 162.) (7 Pat 205=107 I.C 817=1928 Pat 215)

Calling a case for trial An announcement or declaration by the Court that the cause has been reached in its order, and that the judicial examination of the issues of law or fact upon which the decision of the cause depends is about to begin

Call Money Money lent to bill-brokers and repayable on demand or "call"

MONEY ON CALL Money loaned subject to being asked for at any moment

Caltrop, caltrap A steel trap, formerly, a military instrument with four iron points disposed in such a manner that, three of them being on the ground, the fourth pointed outward Caltrops were scattered on the ground where an enemy's cavalry were to pass, to impede their progress by wounding the horses' feet.

Calumniate. To utter calumny regarding a person, charge falsely, slander

Calumniation The act of calumniating, calumny

Calumniator One who calumniates or slanders, slanderer, backbiter

Calumniatory Slanderous, as, "calumniatory information"

Calumny False accusation of crime or other misconduct, untruth maliciously spoken, to the detraction of another, defamatory report, slander

Calvinist An adherent of the theological system of John Calvin

Calvo doctrine The doctrine stated by the Argentine jurist, Carlos Calvo, that a government is not bound to indemnify aliens for losses or injuries sustained by them in consequence of domestic disturbances or civil war, where the state is not at fault.

Camarella Cabal or junto

Cambist. (*Lat*) A dealer in notes and bills of exchange, A person skilled in exchange, a broker

Cambium Change exchange, applied in the civil law to exchange of lands, as well as of money or debts

Camera. In old English law, a chamber, room or apartment, judge's chamber

This term "in camera" seems to have been originally applied to the judges' chambers at Serjeants' Inn, as distinguished from their bench in Westminster Hall It is now used with reference to legal proceedings held privately (in camera, in chambers), from which the public are excluded (*Ency. of the Laws of England*)

As a general rule, all trials of an issue of fact are always held with open doors Under the Mediaeval procedure all suitors of a Court were summoned to attend its sittings, and bound under penalty to be there to witness or assist in the proceedings An English Court of justice is in theory open to as many citizens as can crowd into it without disturbing its proceedings. (*Ency. of the Laws of England.*)

Camera Stellata. (*Lat.*) The Star Chamber.

Candidate

Camera regis (*Lat.*) Chamber of the King

Camera Scaccarii. (*Lat*) The Exchequer Chamber

Camouflage. Especially in the case of an enactment for revenue purposes such as the Court-Fees Act, it is open to parties to avail themselves of any camouflage that the law allows or does not forbid. (110 I C 752=1928 M 929)

Campbell's Act "The English Statute by which an action for damages was given for the benefit of certain relatives of a person whose death has been caused by a wrongful act, neglect, or default, for which he himself could, if death had not ensued, have recovered damages from the wrongdoer" (*Sweet L Dict*)

Can To have power, either physical or moral, to be able having the necessary capacity (as, a witness *can* only speak of things which he had heard and seen)

Can, May. *Can* denotes possibility. *May* liberty and probability

"Canal" defined Act VIII of 1873, Ss 3 (1), 74, Ben Act III of 1876, S 3 (1), Bom Act VII of 1879, S 3 (1), Bur Act II of 1905, S 3 (1), Mad. Act II of 1890, S 3, P Act III of 1905, Ss 3 (11), 73.

CANAL An artificial water course It has been defined as "a trench or excavation, in the earth, for conducting water and confining it to narrow limits" The term includes the excavation banks, and other parts of the general structure, as well as the stream itself (*Agawam Canal Co* v *Edwards*, 36 Conn 476, 501)

Canal-Boat A boat used in canals

"Canal-officer" defined Act VIII of 1873, S 3 (7), Ben Act III of 1876, S 3 (7), Bom Act VII of 1879, S 3 (6), Bur Act II of 1905, S 3 (6)

"CANAL-OFFICER" in the Bengal Irrigation Act means an officer appointed to exercise control or jurisdiction over a canal or any part thereof, and includes every officer to whom any of the functions of a canal-officer have been assigned by the Lieutenant-Governor [*Ben Act III of* 1876 (*Irrigation*), S 3, Cl 7]

Cancel To blot out or obliterate, to cross and deface the lines of a writing, to annul or destroy, doing away with

"The Latin verb, from which the term 'cancel' is derived, means to make lattice work, and the corresponding noun in Latin, in the plural, *cancelli*, signifies lattice work, and when applied to marks, means marks made in the forms of lattice work" (2 *Bl Comm* 309)

Cancellation of instruments Cancellation, rescission, surrender up, and discharge of instruments are one and the same remedy, the decree for cancellation generally includes a direction for surrender up, and, if necessary, for a discharge of record (6 *Cyc* 285)

Cancelling or Cancellation Act of rendering inoperative any bill, note, Cheque, deed or other document, obliterating or striking or crossing out the signature on a document.

"Candidate" means a person who has been nominated as a candidate at any election and includes a

Candidate for a degree.

person who, when an election is in contemplation, holds himself out as a prospective candidate thereat provided that he is subsequently nominated as a candidate at such election (*Penal Code*, S 171-A).

CANDIDATE One who seeks or aspires to some office or privilege, or who offers himself for the same, a person offering himself to the suffrage of the electors, one put forward for election, whether with or against his own will.

"Candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat provided that he is subsequently nominated as a candidate at such election (*Election Offences and Enquiries Act*, S 2)

CANDIDATE, in 51 Geo 3, c 126, means a man who offers himself to the suffrages of the electors [*See Parl Elections Act* (1868), *S* 3]

"Candidate for a degree" The expression "candidate for a degree" as used in S 12 of Act XXII of 1857 (Bombay) does not mean a candidate for a degree at any stage of his University career, but means a candidate for the final examination, the passing of which would entitle him to the degree (23 B 465)

Candlemas-day A festival appointed by the church to be observed on the second day of February in every year, in honour of the purification of the Virgin Mary, so called from the great number of lights used on that occasion

Caniatchy. A term used in Malabar, signifying landed inheritance or property same as *Mirasi*

Cannot "Cannot," includes a legal inability, as well as a physical impossibility. (*The Newbattle*, 54 L J P D & A 16)

"Cannot be found" Where it appeared that the witness who was related to the accused and gave material evidence before the Magistrate was absconding and the Sessions Judge recorded his deposition before the Magistrate as part of the evidence in the case, *held*, that the procedure was permitted by S 33, Evidence Act, as such a witness can be said to be one who "cannot be found" (131 I C 855=32 Cr L J 810 =35 C W N 143=1931 C 473)

Canning's (Lord) Proclamation (1858) The effect of Lord Canning's Proclamation of 15th March, 1858, was to divest all the landed property from the proprietors in Oudh and to transfer it and vest it in the Crown (6 I A 63, Foll, 10 O & A L R. 1424=1925 Oudh 273.)

"Cannon" (*Milit-Law*) defined. Act II of 1878, S. 4

CANNON Mounted gun for throwing projectiles larger than bullets

"CANNON" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same (*Arms Act*, S. 4)

Cannonade. Continuous gun fire, bombardment.

Canon A law, rule or ordinance in general, and of the church in particular. (*Burrill.*)

Canvassing.

Canonical. Agreeable to the canons of the church.

Canonical obedience The obedience which the canons of the church declare to be due to an ecclesiastical superior. Duty which a clergyman owes to his bishop.

Canonist A professor of Ecclesiastical Law.

Canon Law A collection of ecclesiastical constitutions for the discipline of the church of Rome. (*Burrill L Dict.*)

THE CANON LAW consists partly of certain rules taken out of scripture, partly of the writings of the ancient fathers of the church, partly of the ordinance of the general and provincial councils, and partly of the decrees of the Popes in former ages. (*Tomlins Law Dic*)

THE AUTHORITY OF THE CANON LAW in England depends upon 25 Hen viii, c. 19, revised and confirmed, by 1 Eliz c 1, which enacted that a review should be had of the canon law; and that until such review should be made all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. No such review has ever been perfected. (1 *Black. Comm* 83) As to recognition by Courts of Rules of Canon Law in British India, see *Merian v Bishop of Mylapore* 17 M 447, 13 I C 549=24 M L.J. 630= 1912 M W N 152, 36 M 418 (424)

Canon Religiosorum A book of religious covenants (*Wharton*)

Canonry. An ecclesiastical benefice attaching to the office of canon (*Halthouse, Dict*)

Canons of descent or of inheritance Rules by which inheritances are regulated and according to which estates are transmitted by descent from the ancestor to the heir (2 *Bl Comm* 208.)

Canterbury, Archbishop of The primate of all England, the chief ecclesiastical dignitary in the English church His customary privilege is to crown the kings and queens of England

Cantonment. Place assigned to a body of troops for quarters, a more or less permanent shelter or place of rest for an army, a permanent military station or military quarters connected with a town or city

"Cantonment authority" defined. Act XX of 1887, S 2 (*2*), Act II of 1902, S 2 (1) (*a*), Act XV of 1910, S 5 (1), Act VI of 1923, S 2.

Cantonment Board. Defined in Act VI of 1923, S 2.

Canvasser A canvasser is a travelling salesman who goes out on the road soliciting orders for his firm and taking with him samples of the goods or wares his house deals in To "canvass" means to go about a region or district, to solicit votes, orders, subscriptions, or the like.

Canvassing CANVASSING AT ELECTIONS. In relation to elections canvassing indicates the practice, which of recent years has become very prevalent on the part of candidates and persons working on their behalf, of soliciting the support of a constitutency by personally interviewing the individual electors, or otherwise communicating with them, and so ascer-

Capable of instituting a suit.

taining approximately the number of votes which will probably be given in favour of the candidate at the ensuing election. Canvassing may be either by asking a man to vote for the one candidate, or by asking him not to go to the poll, but to remain neutral, and not to vote for the adversary. (*Ency. of the Laws of England*)

'Capable of instituting a suit' There is no legal warrant for placing on the words 'capable of instituting a suit' in S 17, Limitation Act, the limited interpretation as 'capable of instituting a suit and obtaining a decree.' S 214, Succession Act, is against such interpretation (A I R 1937 Sind 318)

"Capable of instituting such suit". S 17 of the Limitation Act, 1877, provides that when a person who would, if he were living, have right to institute a suit, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased "*capable of instituting such suit.*"

The expression "capable of suing" in the section is the antithesis to "not under legal disability to sue" It cannot refer to incapacity arising from want of means or absence of other physical causes What legal disabilities incapacitate from suing are pointed out in S 7, amongst which infancy is foremost (20 B. 15)

"Capable of physical possession" When property sold is in the possession of a third party as tenant, it is not 'capable of being taken into physical possession' by the vendee [8 N L R 68=15 I C. 890 (892)]

"Capable of remedy" The phrase "capable of remedy" in sub-S (2) of S 155 of the Bengal Tenancy Act, means physically possible of remedy and does not mean possible of remedy by compensation. (10 C.L J. 595=4 I C. 734)

Capacity Power, or competency of persons, for performance of civil acts (as) capacity to devise, to bequeath, to convey lands, or to take and hold lands, to make a contract (*2 Com Dig* 294) By 'capacity' is meant a position enabling one to do something (27 S L R 74=131 I C 673=A I R 1932 Sind 189) Capacity is "an ability or fitness to receive in law, it signifies when a man or body politic is able to give, or take, lands or other things, or to sue in an action" (*Cowel, Termes de la Ley, Tomlins*)

Capax Doli. The condition of one who has sufficient mind and understanding to be made responsible for his actions

Capias, writ of. A writ in English law to the sheriff commanding him to arrest the person named therein.

Capias ad satisfaciendum. A writ directed to the sheriff, commanding him to take a person named therein and safely keep him so that he may have his body in Court on the return day of writ, to satisfy the party who has recovered judgment against him.

Capita. Heads; persons individually considered, without relation to others, as distinguished from *stirpes* or stocks of descent. (*Burill L Dict.*), as in *per capita.*

Capita succession per, is where the claimants are next in degree to the ancestor, in their own right, and not by right of representation. (*Tomlins Law Dic.*)

"Capital" defined. Act II of 1876, S. 3, Act VI of 1882, S 13, *expln* 1.

CAPITAL when used with respect to the property of a corporation or company, it means the property or means contributed by the shareholders as the fund or basis for the business or enterprise for which the corporation or company was formed It is either fixed or circulating

The word "capital" is used in *the Madras City Municipal Act*, in its ordinary and popular meaning, that is to say, money actually contributed for employment in business (31 M 408=18 M L J 349=3 M L.T 400=9 Cr L J 68, 11 M 238 at p 245)

Premia and profits of investments of a Mutual Assurance[Company, constitute capital. (11 M 238.)

Capital and profits Unless profits are actually employed in business, they cannot be treated as capital Profits intended to be so used are not capital Whether they are so employed is a question of fact. (45 Bom 881=60 I C 964=23 Bom L.R 139)

"Capital borrowed for the purpose of the business" The words "capital borrowed for the purpose of the business" in S 10 (2) (*iii*) of the Income-tax Act must be construed as meaning capital borrowed and used for purposes of the business [27 L W 432=109 I C. 369=A I R 1928 M 487=54 M L.J 436 (F B)]

Capital, circulating or fixed *Bond* v. *Barrow Haematite Steel Co*, (1902) 1 Ch. 353

'Capital cost of the building" for the purposes of the City of Bombay Improvement Act shall be an amount equal to— (*a*) the cost of the construction of the building, including preliminary expenses, and an allowance for management, supervision and interest and sinking fund charges (to be calculated in the manner aforesaid) during construction, (*b*) the cost of the land forming the site of the building. [Bom. Act IV of 1898 (*City of Bom Improvement*), S 40 (foot note)]

Capital crime. An offence for which the punishment of death may be inflicted.

Capitalisation Act of providing money to be used as capital in a commercial or other business undertaking.

Capital punishment, means the penalty of death inflicted in pursuance of judicial sentence being brought to answer. (*Hale, Pleas of the Crown, Vol I, p* 497.)

Capital, reduction of See *Re Anglo-French Exploration Co.*, (1902) 2 Ch 845

"Capital stock" defined. Act II of 1876, S. 3.

CAPITAL STOCK. The common stock or fund of a company, the sum raised by subscription of stockholders divided into shares

CAPITAL STOCK AND CAPITAL DISTINGUISHED. The "capital" of a corporation is its property, while the "capital stock" of a corporation represents the interests of stockholders in the corporation, and is their property,

Capital "sum employed as".

Capital "sum employed as" in the English Income Tax Act, 1842, S. 100. See *Royal Ins. Co.* v. *Watson*, (1896) App Cas. 1.

Capitation tax. A capitation tax is a tax on the poll, without regard to property, business, or other circumstances.

Capitation or Capitation Tax A poll tax upon the person simply, without any reference to his property or to any business in which he may be engaged, or to any employment which he may follow

Capitis diminutio (*Lat.*) The loss of a status or civil qualification, the change of a man's former condition

Capitula Collections of ordinances drawn up under heads or divisions (*Spelman, Gloss*)

Capitulate From *capitulare*, to draw up in chapters or under different headings, hence to draw up terms of agreement, make conditions, negotiate, and lastly, conclude articles of surrender as distinguished from surrendering at discretion, to surrender on stipulated terms

Capitulation. The treaty which settles the conditions under which a place besieged is abandoned to the commanding officer of the besieging army, the instrument containing the terms of an agreement of surrender (*Wheaton International Law*)

Capitulations The name given to articles of agreement by which oriental states granted certain immunities and privileges to the English, French, and other European subjects trading or residing within their realm These immunities and privileges were in the reign of Elizabeth granted to English subjects (*Twiss, Law of Nations*, 1884, *p* 463)

'Such treaties," observes Twiss, "are in the highest degree exceptional But the law of European nations has itself always been exceptional in its application to Mohammadan and other non-Christian nations Amongst Christian States there are no such fundamental differences in their respective standards of morality, so as to render the criminal law of one State totally inapplicable to the subjects of another State, but amongst the Mohammedan and Buddhist nations there is so essential a diversity in the sanctions, which religion and morality attach to human conduct, as contrasted with those which prevail throughout Christendom, that from the oldest time an immiscible character between Europeans and Orientals has been maintained. Europeans are not admitted into the general body and mass of the society of Asiatic nations, they continue strangers and sojourners in the land, if they reside amongst them, they form *de facto* an extra territorial community, which does not acquire a national character by permanent residence amongst them" (*Law of Nations, Oxford*, 1884, *2nd Ed*, *p.* 267.) (*See* article "Egypt" Report of H.M.'s Agent and Consul General on Egypt and the Soudan, 1904, P P 1905, Cd 2409, Jenkyns, British Rule and Jurisdiction beyond the Seas, 1902, Hall, Foreign Jurisdiction, 1894, *Ency of the Laws of England.*)

Capitulum. (*Lat*) A division of a book, a chapter, a section.

Captain. One that leadeth or hath the command of a company of soldiers; and is either general, as he that hath the governance of the whole army, or special as he that leads but one band. (*Tomlins Law Dic.*) A chief military officer.

Caption. The act of taking or arresting a person by judicial process, the title or heading of a legal document

Captive One taken prisoner in war, one made prisoner by force or stratagem in war by an enemy. Captivity is neither a punishment inflicted on prisoners of war, nor an act of vengeance, it is merely a temporary detention which is devoid of all penal character. (*Ency. of the Laws of England.*)

Captor. (*In international Law*) One who takes or seizes property in time of war, one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea (*Burrill*) The term also designates a belligerent who has captured the person of an enemy

Capture The act of taking by force; arrest (as) the capture of an enemy, seizure as prize

CAPTURE (*In International Law.*) A taking or seizure of the goods of an enemy, a taking of prizes in time of war, particularly at sea "Capture," is a hostile seizure by one country of the ships or goods of the subjects of another country with which it is in a state of war, with intent to keep or to deprive the owner of the thing seized. (*Park*, Ch 4)

DISTINGUISHED FROM SEIZURE. "A 'capture,' in technical language, is a taking by military power, a 'seizure' a taking by civil authority" (*U S* v. *Athens Armory*, 24 Fed Cas No 14, 473)

"Capture," "Seizure" and "detention," distinguished "These words, though sometimes used synonymously, differ in the extent of their meaning, each embracing the one that follows it, but not the one that precedes it Every 'capture' is a 'seizure' and a 'detention', and every 'seizure' is a 'detention' But there may be a 'seizure' as for some violation of revenue laws, which is not a 'capture', and there may be 'detention', as by an embargo, which is neither a 'capture' nor a 'seizure'" (*Dole* v. *Merchants Mut Mar Ins Co* 51 Me 465, 472)

CAPTURE, SEIZURE, PRIZE. *Capture* and *seizure* differ in the mode a *capture* is made by force of arms, a *seizure* by direct and personal force. The *capture* of a town requires an army, the *seizure* of property is effected by the act of a bailiff A *seizure* always requires some force, but a *capture* may be effected without force, on an unresisting object. Merchant vessels are *captured*, contraband goods are *seized* *Capture* and *seizure* relate to the act of taking as well as the thing taken *prize* relates only to the thing taken, and its value to the captor There are many *captures* made at sea which never become *prizes*, the term *prize* is therefore applied to whatever valuable comes into our possession by our own effort.

Caput (*Lat*) Status, a person's civil condition.

Car. A vehicle running upon rails (*Century Dict*), a vehicle adapted to the rails of a rail road, a carriage for running on the rails of a railway, (*Webster. Dict*), any wheeled carriage used for carrying goods or passengers upon a railroad, whether the road be a tramway over the streets of a city, to be operated by horses or worked by steam tractors. (*Ame. Cyc.*)

Car

"In definition 'car', or 'coach,' or 'stage', or a 'stage coach,' is the same They are vehicles that turn, or that run by turning on wheels. Place boards over or between wheels and we have a platform car, adapted to freight, place benches or charis upon the platform and we still have a car, but adapted to passengers, and then easily termed a carriage. Instead of benches or charis put on the platform the body of a 'stage coach' and we have such a 'rail road car' as served at the inauguration of the earliest railroad in our state It is plain that by adaptation and improvement, 'the modern railway has been evolved from the old-fashioned stage coach' In common language, a rail road carriage designed for passengers is called indifferently a 'coach' or 'car' In every collection of words arranged according to the ideas which they express, these, and others with them, will be found classed together as having the same signification." (Per Cur *New York* v *Third Ave. R. Co* 117 N Y 404, 410)

CAR (*Tam.*) (*Revenue term*) The autumnal harvest, beginning with September and ending about the middle of December

Carat A measure of weight for diamonds and such other precious stones, a term also used in assessing the value of gold and precious stones.

Caray Four shares or pungus in the village tenure called Agraharah-vadiky

Carcass is the body of an animal when dead

Cardinal A dignitary of the Roman Catholic Church, whose rank is only next to that of the pope

"Cardinal issue" A cardinal issue in a case is an issue which goes to the foundation of the suit, and not one which merely relates to a matter of procedure (1 A L J 26)

Cards are "as much a gambling device as any device yet invented" (*Eubanks* v *State*, 5 Mo 450)

Card-sharper Swindler at card games

Care Charge, oversight, responsibility for safety

"CARE" "NEGLIGENCE" AND "DILIGENCE" are more or less relative terms They cannot always be defined arbitrarily, applicable indifferently to every state of facts They cannot always be determined abstractly Care and diligence must necessarily be judged of by the nature of the work to be done, the instrument to be used, the hazard and danger to life and limb from the character of the service to be performed [*Carter* v *Kansas City Cable Ry Co* (*U S*) 42 Fed 37, 38] "Care", as used with reference to liability for personal injuries, means such care as a man of ordinary prudence and caution would exercise under similar circumstances "Care" and "negligence" are terms entirely relative, varying in degree with every possible change of circumstances *"Ordinary care"* may mean very slight care in one state of circumstances, and comparatively very great care in another. One may drive a vehicle over a country road at a rapid rate of speed, and yet be free from every imputation of negligence, while, if he drive at the same rate through the streets of a populous city, he would be guilty of the grossest want of care, yet the measure of his legal duty in each case would be the exercise of ordinary care, graduated to suit the hazards of each changing exigency. So the ordinary care which is exacted from one as the person in the custody of a valuable jewel is the same in legal principle, though different in degree from the ordinary care required from another as the custodian of a grindstone In the one case it is the care usually taken by a prudent custodian of jewels, in the other, that usually taken by prudent custodians of grindstones

Careless The words "reckless" and "careless" do not impute wilfulness of intention They mean nothing more than simple negligence. (37 *Am St Rep.* 374)

Carelessness Negligence; heedlessness, inattention, the state or quality of being careless, lack of ordinary care.

Distinguished from *"misconduct"* —"'Misconduct' is a violation of a definite law, 'carelessness,' an abuse of discretion under an indefinite law 'Misconduct' is a forbidden act, 'carelessness, a forbidden quality of an act, and is necessarily indefinite" (*Ame Cyc*)

Care of Where a letter or package is sent by post to the *care of* another, a delivery to such other is proper compliance with the direction (9 Ame. Rep 619) The use of the words "To A care of F" indicates that the letter is to be delivered to A through F (29 Fed 705.)

Care taker One who takes care of something (*Cent Dict*) A "Care taker" is one whose only business is to guard the premises against injury and does not include one who may create danger (*Quin* v *National Assrce*, *Jones & Carey*, 330), therefore, a carpenter having charge of an unfinished house in which he also carries on his business as a carpenter, is not properly described as a "Care-taker" in respectof a Fire Policy. (*Stroude*, 259.)

Cargo Defined in Act XVI of 1881, S 7

CARGO The lading of a ship or vessel, of whatever it consists, the lading or freight of a ship, the goods merchandise, or whatever is conveyed in a ship or other merchant vessel

" 'Cargo' is a word with different meanings It may mean one thing in a charter-party, another in a policy, another in a contract of sale" "It is a word susceptible of different meanings in different contracts, and must be interpreted with reference to the context" [Lord Bramwell and Sir Barnes Peacock, *Colonial I C of New Zealand* v. *Adelaide, I C*, 1886, 12 App Cas 128, 129, 134)

"Generally speaking, the term 'Cargo,' unless there is something in the context to give it a different signification, means the entire load of the ship which carries it" (*Per* Mellish, L J, in *Borrowman* v *Drayton*, 2 Ex. D 19.)

Caricature Gross representation of a person or thing by over-emphasis of certain characteristics

Carlisle Tables. Life and annuity tables, compiled at Carlisle, England, about 1780 (*Black. L. Dict*)

Carnage Great slaughter in battle.

Carnal. Pertaining to flesh, sensual.

Carnal knowledge. Sexual intercourse, bodily connection by a man with a woman, In the definition of rape, "'Carnal knowledge,' means the penetration to any the slightest degree of the organ

Carnally knew.

known as the male organ of generation." (Steph. Cr 186 See *Indian Penal Code*, Ss. 375 and 376.)

Carnally knew A technical phrase to charge a person with the crime of rape.

Carpenter. A carpenter is one who works in timber—a builder of houses—and the term does not include a plasterer, who overlays work with plaster.

"Carriage" defined. Act IV of 1884, S. 4 (4); Act XI of 1886, S 3 (9), Ben Act V of 1876, S 6 (1); Ben. Act III of 1884, S 6 (1), Ben Act III of 1899, S 3 (8), Mad. Act III of 1879, S. 3

A carriage is a contrivance which is used for carrying or transporting, especially along or over a solid surface, a wheeled vehicle for the conveyance of persons. The term is sufficiently extensive to include a bicycle In cases involving the use of streets, or sidewalls, the payment of tolls, and liability for negligence, bicycles are uniformly held to be vehicles or carriages The term "carriage" includes a motor car (61 I C 641=25 C W N 21=33 C L J 19=22 Cr L J 401=A I R 1921 Cal 107, 132 I C 694=32 Cr L J 946=32 P L.R 639=1931 Cr C 860=A I R 1931 Lah 572

CARRIAGE "The act of carrying (*Anderson L Dict*), that in which anything is carried (*Johnson Dict*), or that which carries, especially on wheels (*Imperial Dict*), that which carries or conveys on wheels (*Webster Dict*), that which is used for carrying or transporting, especially on or over a solid surface (*Century Dict*), a vehicle, especially for pleasure or for passengers, but sometimes for burdens, a wheeled vehicle for the conveyance of persons, any vehicle on wheels, especially a vehicle of pleasure, or for the conveyance of passengers (*Worcester Dict*), manner of carrying one's self (*Anderson L Dict*), deportment The word '*carriage*' is understood to refer to vehicles for the conveyance of persons rather than for the transportation of property" (*Snyder* v *North Lawrence*, 8 Kan. 82, 84, cited in 6 *Cyc* 351)

CARRIAGE, in an English local Act of 1767 imposing bridge tolls was held to include bicycles and tricycles [*Cannan* v *Earl of Abingdon*, (1900) 2 Q B 66, but see *ante*, p 158, n]

"CARRIAGE" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled *Explosives Act (IV of 1884), S. 4.*

Carriage of goods (by sea) covers the period from the time when the goods are loaded on to the time when they are discharged from the ship [Act XXVI of 1925, Art. 1, Cl (e)]

Carried into, in 24 & 25 Vict c 10, S 6 (Admiralty), is used in a wider sense than "imported" [*Dapueto* v *Wyllie*, (1874) L,R. 5 P C 482].

"Carrier" defined Mad. Act VIII of 1878, S. 3.

CARRIER A person that carries goods for others for hire. (*Tomlins Law Dict*) Person or company engaged in conveying goods for hire in the regular way of business, one who undertakes to transport persons or property from place to place by means of conveyance for compensation. All persons carrying goods for hire, as masters and owners of ships, stage-coachmen and the like, come under the denomination of common carriers. (*See* 1 Com. Rep. 25; Bull N.P. 70: *Tomlins Law Dic.*)

Carrying on business.

A carrier in S 87, Karachi Port Trust Act (VI of 1886), is one who is employed to carry goods for others for reward It is essential that the conveyance of goods should be for hire or reward, otherwise the person carrying them is not technically a carrier (10 I C. 992=4 S.L R. 236.)

CARRIER AND COMMON CARRIER. 'Carrier' is of a wider meaning than the expression 'common carrier' and it is wide enough to cover the case of a railway owned or controlled by Government,, which takes upon itself to carry goods belonging to the public from one place to another. [I.L R. (1937) 2 Cal 614.]

RAILWAYS, whether state controlled or not, can quite accurately be described as 'carriers' even though for the purposes of the Carriers Act they are not common carriers [I.L R (1937) 2 Cal 614]

COMMON CARRIER A person who holds himself out as a carrier of the goods of all persons who think fit to employ him for hire, is a common carrier of such goods as he publicly professes to carry [*Johnson* v. *Midland Railway*, (1849) 4 Ex. Rep 367, 80 R R 611; *Dickson* v *Great Northern Railway*, (1886)18 Q B.D 176]

A common carrier has been defined as "one who undertakes for hire or reward, to transport the goods of such as chose to employ him from place to place "

It is not material to inquire how it was that the common law of England came to govern the duties and liabilities of common carriers throughout India. The fact itself is beyond dispute. It is recognised by the Indian Legislature in the Carriers Act,1865, an Act framed on the lines of the English Carriers Act of 1830 (1891) 18 I A 121=18 C 620 (625)=6 Sar 40.]

PRIVATE CARRIERS are persons who undertake to transport in a particular instance only, not making it their vocation, nor holding themselves out to the public as ready to act for all who desire their services.

Carrying Arms or Weapons To constitute the offence of carrying arms, the weapons must be carried as arms. The intent with which the weapon is carried must be that of going armed or being armed.

"Carrying on business" "The phrase 'Carrying on' business implies a repetition or series of acts" (*Per* Brett, L J, in *Smith* v *Anderson*, 50 L J Ch. 52. *See also* 4 Bom 416, C P. Code, S 20.)

The phrase "carry on business" is in itself one of varying import, accordmg as it is construed with an implied addition, so as to make it mean the whole business, the principal part of the business, any part of the business or that part which may properly be supposed to have been contemplated by the parties to a contract. It has, in the English Courts, been interpreted according to the context and the apparent purpose of the Legislature. (4 Bom 416, 14 Rang 758=A I.R 1937 Rang. 128, 71 M.L.J 607)

In (*Erichsen* v. *Last*, 51 L J Q.B 86) the Court said, "There is no principle of law which decides what '*carrying on' a trade is*—a multitude of circumstances make up what is called 'carrying on' a trade; for it is a compound fact made up of a variety of things. Now the facts of this case show that this is a Co. with stations in this kingdom, with the ends of cables in this kingdom, and these cables are worked from here by the staff of the Co. There is an office in London, and the Co. takes messages

Carry on business.

and sends them to foreign parts. There is, as it appears to me, a perfectly plain case of 'carrying on' trade here. A Co. in this country which regularly undertakes the carrying of goods abroad for money as part of its ordinary business, 'carries on' trade in this country, even though the whole of the carriage is done abroad. The mere fact that the Co. enters into contracts in this country with English subjects for the right of carriage appears to me to be the same thing as if it made similar contracts for the sale of goods Whether the contract is for carriage or for the right to transmit messages, makes no difference. So if a Railway Company, with a station at Dover and another at Calais, carries passengers from Dover to Calais as a regular practice, that would be a trading at Dover"

The expression "carry on business" used in Cl 12 of the Letters Patent, 1865, is a very elastic one and is incapable of definition. The tribunal must, in each case, look to the particular circumstances The expression is intended by the Legislature to relate to business in which a man might contract debts, and ought to be liable to be sued by persons who had business transactions with him [18 B 294 (P C)]

Agents, secretaries and treasurers of a mill company, are not to be considered as carrying on a business 45 Bom. 1064=63 I C 775=23 Bom L R. 609

The Calcutta Turf Club "carries on business within the meaning of S. 2 of the Excess Profits Duty Act and is liable to duty in respect of income derived from non-members. 66 I.C. 473=25 C W.N 734=48 C. 84.

Carry on business, in 9 & 10 Vict c 95, S. 60, of a railway company, applies only to the station where the general superintendence of the whole company is centred *Brown* v. *L & N W Rail Co*, (1863) 32 L. J.Q.B 318, *Palmer* v *Caledonian Rail Co.*, (1892) 1 Q B. 607.

A person who receives presents or offerings and reckons and keeps an account of them cannot merely on that account, be considered to carry on business, and it would be a misuse of the words to hold that a person paying domiciliary visits personally works for gain in the places visited by him. (14 B 541)

Where the defendant (the High Priest of a certain community) had a pedhi or place of business, in Bombay, where devotees paid in whatever presents they wished to offer him and these presents were received on behalf of the defendant by his servants and transmitted to him in due course Held, that this would not be equivalent to "carrying on business" with the result of giving the High Court Jurisdiction over the defendant under Cl. 12 of the Letters Patent. (18 B 290)

The place where a Building Contractor "carries on business" is his general place of business, and not the locality where particular contracts are being executed (*Gorslett* v. *Harris*, 29 L.T O.S. 75).

The expression "the place where the Corporation carries on business" in clause (*b*) of O 29, R. 2 refers to the principal place of the business of the corporation in British India. 108 I.C. 660=A.I R. 1928 Sind 111.

THE "CARRYING ON BUSINESS" need not be a personal carrying on. A "carrying on of business" through an agent would be business carried on by the principal [12 Bom. 507 (526); 17 Bom. 662 (665); 4 Mad. 209; 8 Cal. 678; 4 Bom. 416.]

Case.

When the liability of a foreigner defendant is in question, the "carrying on business" must include actual residence. [12 Bom. 507 (526)].

Carrying over, a term, in stock exchange, used to signify the postponement of the settlement of an account over the proper settling day to the next For such accommodation the speculator would have to pay backwardation and other charges

"Cart" defined. . Ben Act V of 1876, S. 6 (2), Ben Act III of 1884, S 6 (2), Ben. Act III of 1889, S 3 (9)

"CART" in the Bengal Mun. Act means any cart, hackery or wheeled vehicle with or without springs ordinarily drawn by animals, and not included in the definition of "carriage" Bengal Act III of 1884 (Municipal), S 6, Cl 2

It does not include "gigs, dog carts, or gentlemen's carriages" (*Per* Lush, J, *Danby* v *Hunter*, 49 L J M. C 16)

Cart Bote An allowance to the tenant of wood sufficient for carts and other instruments of husbandry (22 *Ala* 621, 58 *Am. Dec* 272)

Cart Note, the official note authorising the transfer of dutiable goods from one bonded warehouse to another

Carta A charter or written instrument

Carte Blanche The signature of one or more individuals on a white paper, with a sufficient space left above it to write a note or other writing, Blank-sheet, authorization to do what one wills.

Cartel. (*Milit*). A writing or agreement between states at war for exchange of prisoners

Cartel Ship. A ship used between belligerents under a cartel A cartel ship sails under a safe-conduct given by an officer called a commissary of prisoners, who resides in the country of the enemy "She is protected from capture or molestation both when she has prisoners on board, and when she is upon a voyage to fetch prisoners of her own country, or is returning from handing over those belonging to the enemy" (*Hall, International Law, 5th. Ed, p.* 551).

Cartels are conventions between belligerents which, being considered of an administrative rather than a political character are not subject to the ordinary formalities of solemn compacts between States. (*Ency*)

Cartmen. Persons who carry goods and merchandise in carts for hire.

Cartoon Large illustrations, especially on politics and political events in comic papers.

Cartridge Charge of explosives made up in case for use in guns

Carve out To take from a larger whole, to acquire by the sword.

Carve up. Partition or distribute (inheritance or territory).

Case. In a legal sense a state of facts which furnishes occasion for the exercise of the jurisdiction of a Court of Justice; a subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forms required by law;

Case, Cause.

a state of fact involving a question for discussion, especially a cause or suit in Court, a question contested before a Court of justice in an action or suit brought before it (*Cyc*)

The dismissal of an application for being added as a party is a 'case' within S 115, C P. Code 13 O C 109=6 I C 977, 15 O C 304=16 I.C 592 The case" as used in C P. Code, should be understood in its broadest and most ordinary sense, and includes all adjudications which might form the subject of appeal or revision. [7 All 661 (F.B)=5 A W N 156] The word "case" is wide enough to include an interlocutory order 14 Cal 768 *See also* 7 A L J 741=2 O C 67 (70), 18 B 35 (37), 12 C L R 148 The word "case" in the Court Fees Act must be confined to judicial cases or quasi-judicial cases as opposed to transactions [15 I C 122 (F B)=202 P W R. 1912] The word "case" as used in S 57, Stamp Act, II of 1899, means a matter which has to be disposed of by the Revenue authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue'authorities (25 Mad 751.) The term "case" in the Criminal Procedure Code, includes a proceeding upon a complaint as soon as the complaint has been received by the Magistrate who takes cognizance of the offence complained of [11 Ind Cas 621 (622)=7 N L R 97] *See also* 12 B H C A C J 217, Rat 494, 4 L B R 354 =9 Cr L.J 356 The word "case" in the Assam Civil Courts Act, includes a suit, and an appeal is a proceeding in relation to a case (28 A 93=2 A L J 576)

CASE DISTINGUISHED FROM "CONTROVERSY" "The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature" (*Matter of Pacific R Commission*, 32 Fed 241, 255)

CASE SUIT Does not necessarily mean 'suit', but can mean a proceeding 27 A L J 918=1929 A 743

DISTINGUISHED FROM "SUIT", "ACTION", "CRIMINAL PROSECUTION," "PROCEEDING IN REM"—"The definition of a "case" is wider than that of a 'suit' or 'criminal prosecution', or a 'proceeding in rem', although in law it usually applies to one of them. It may embrace, however, any state of facts involving matters for decision"

"In common parlance it has a more extended meaning than the word 'suit', or 'action', and may include application for divorce, applications for the establishment of high ways, applications for orders of support of relatives, and other special proceedings unknown to the common law"

The word "case in S. 115 of C P C. is not confined to a litigation" in which there is a plaintiff who seeks to obtain particular relief in damages or otherwise against a defendant who is before the court. It includes an *ex parte* application praying that persons in the position of trustees or officials should perform their trust or discharge their official duties (1917) 44 I A 261=40 M 793=22 C W N 60=22 M L T 45=26 C L J 143=15 A L J. 645=2 Pat L W 101=19 Bom L R 715=(1917) M W N. 628=6 L.W 501=40 I C 650=33 M L J 69.

Case, Cause The *case* is matter of fact, the *cause* ismatter of question, a *cause* involves circumstances and consequences, a *cause* involves reasons and arguments. a *case* is something to be learned; a *cause* is something to be decided. A *case* needs only to be stated; a *cause* must be defended. a *cause* may include *cases*, but not *vice versa* in all *causes* that are to be tried, there are many legal *cases* that must be cited.

Case and Action on the case. "Case" is used as a brief name for "action on the case" (*Abbot Law Dict*)

Case, Action on the A form of action designed to afford relief in all cases where one man is injured by the wrongful act of another where no other remedy is provided A remedy for all personal wrongs committed without force where the injury is consequential (*Anderson*) An "action on the case" lies generally to recover damages for torts not committed with force, actual or implied, or having been occasioned by force, where the matter affected was not tangible, or the injury was not immediate but consequential, or where the interest in the property was only in reversion in all of which cases trespass is not sustainable (*Cyc*)

"TRESPASS ON THE CASE" is the technical name of the action usually denominated "Action on the case" (*Abbott Law Dict*)

Cases at Law Ordinary law suits, common law actions as distinguished from suits in equity or admiralty, and other special proceedings (*Ame. Cyc*)

Case certified Case referred Where there is a difference of opinion between judges of a Division Bench they may certify or refer the question to the Full Bench, but it must be a distinct point or proposition of law so clearly stated that it can be answered without regard to the other issues of law or fact in the case.

"CASE DECIDED" 1937 A L J 877=1937 R D 498= 1937 A.W R 778=A I R. 1937 All 658=1930 Nag 51 =121 I C 672 *See* Civil Procedure Code, S. 115.

'CASE DECIDED BY A COURT', meaning 27 A L.J. 911= 1929 A. 581

Case-law The body of law created by judicial decisions, as distinguished from law derived from statutes and other sources

Case stated or agreed on A statement in writing of facts agreed upon and submitted to the Court for a decision on the legal points arising on them. (*Burrill*)

Case system A modern method of teaching or studying the science of the law by a study of the cases historically, or by the inductive method.

"Cases to which English law is applicable." "The phrase occurring in an Indian enactment does not mean cases to which, in their whole extent (the original constitution of the right as to the persons and the legal acts or events, the infringement of the right alleged as a ground of complaint, the suit and the procedure, and the legal consequences of the judgment), the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case on which an Act of the Indian Legislatures had any bearing. It must mean cases to which the English law is, in some measure, applicable, but what this measure may be is not indicated in the Act The English law must be regarded as applicable in the sense intended, if the principles recognised by the English Equity Courts are applicable." (5 Bom. 154)

Case

Case. A covering box or sheath, a box and its contents, the quantity contained in a box (as) A *case* of goods

Case or Canister A linen or calico Bag is not "a Case or Canister" within S 23(2*b*), Metalliferous Mines Regn Act, 1872, 35 & 36 V c 77 (*Foster* v. *Diphwys Casson Co*, 56 L. J M. C 21), Coleridge, C.J said —in that case —"We should be violating the rules of construction if we were not to say that the words 'Case or Canister' explained one another, and that 'Case' meant something in the nature of a 'Canister', something that is solid, substantial, covered over, and calculated to prevent the escape of its contents and to resist their accidental ignition. The whole end and object of the Act is to preserve human life, and placing the construction we do upon the rule in question and holding that 'Case' must be something in the nature of a 'Canister,' we are construing it in accordance with its manifest intention and giving effect to the spirit of the Act.'

In Case. In the event of contingency

Case of Need, a conditional endorsement on a bill of exchange naming an additional person to the acceptor to apply to "in case of need" to take the bill up The usual form is "in case of need apply to Messrs —"

Cash Cash means the actual coin of the country, or bank-notes, which are part of the currency, and are treated as equivalent to coin (*Miller* v *Race*, 1758 1 Burr 452) It passes by mere delivery and so cannot be followed by a former owner in fraud of whom it is paid away, if paid to a creditor of the payer who has no notice of the fraud (*Thompson* v *Clydesdale Bank*, (1893) App Cas 282)

Ordinarily *'cash'* has a narrower meaning than money. (23 C L J 241=33 I C 102).

CASH, in 30 & 31 Vict c 131 (Companies), S. 25 See *In re Johannesburg Co*, (1891) 1 Ch 119

Cash Bonus Bonus paid in cash to the insurer.

Cash-Book Account book in which is kept a record of all cash transactions.

"Cash on delivery" —"Cash on delivery" means cash in exchange for and simultaneous with delivery of the goods (16 Cal 417)

Cash price—the price of articles paid for in cash at the time of purchase, in distinction from the barter and credit prices.

Cash purchase is payment of the purchase money and a delivery of the thing purchased

Cash sale is a sale for money in hands in contradistinction to a sale on credit.

Cash Surrender Value "Has a defined and legal meaning, namely, the cash value, ascertainable by known rules, of a contract of insurance, abandoned and given up by the owner having right to do so The surrender is not the subject of negotiation or agreement, but of right. (In re *Welling* (U S.) 113 Fed. 189.)

Cash Value of an article is measured by the amount of cash into which it can be converted.

Cashier. An officer or agent whose business is mainly to take care of the money of an institution, of a private person, or of a firm or public company. (*Anderson Law Dict.*)

Cassare. To render void; to break, to cease.

Cast. Imposition upon a party litigant of costs in the suit "A is *cast* for the cost of the case."

Castaway (*noun*) one who is cast away, that which is cast away. A Vessel "Castaway" is one lost and irrecoverable by ordinary means (*United States* v. *Johns*, 1 Wash 372) (*Adject*) Rejected; thrown away; Useless or of no value

Caste A word applied to the distinctions of birth tribe, and occupation, which separate the hindus into different groups, and preclude their eating or drinking, together, their using the same vessels, their intermarrying, and other relations of social life. The lower orders of Indian Mohammadans pretend to similar distinctions "A caste may be taken to be a combination of a number of persons governed by a body of usages which differentiate them from the others. The usage may refer to social or religious observances, to drink, food, ceremonials, pollution, occupation or marriage Some of these usages may be common to others also The caste is invariably known by a distinctive name for identification It has its own rules for internal management, and has also got power of exclusion" (20 M L J 49=7 M. L T 17=5 Ind Cas. 42=33 M 342.

Caste and Corporation "That unique aggregation, the Hindu caste, is so wholly unknown to the English Law that, as it seems to us, English decisions concerning English corporations and partnerships tend rather to confusion than to be guidance upon such a question as that now in hand A Hindu caste may have points of resemblance to English corporations, and partnership, but its points of difference appear to us even more numerous and more radical" (11 Bom L R 1014=4 I C 108 at p 115)

Caste autonomy. Courts ought to be chary of taking cognisance of such purely caste questions as would be an interference with the autonomy of the caste Autonomy is rather a large word, and, without attempting to define it, we think it must mean at least as much as this, that "where rights to property are not involved, all matters of internal management of the caste must be left to the decision of the caste." *Jethabhai* v *Chapsey*, 4 Ind Cas 108 (115)=11 Bom. L R 1014

Castigatory An engine formerly used to punish women who have been convicted of being common scolds

Casting Vote is the term used to denote the final and decisive vote which the law, in some cases, allows the chairman or the president of a meeting to give in case of an equality of votes, Vote given by the chairman of a deliberative assembly.

Castle Castle most commonly signifies the house or building, "and the parcel of ground inclosed wherein it doth stand" (*Touch* 92)

"By the name of a castle, one or more manors may be conveyed, by the name of a manor, etc., a castle may pass" (*Co Litt.* 5 a)

Castration. The act of gelding; the act of depriving of the testicles. The consequences of castration, when complete, are impotence and sterility. (1 Beck, Med. Jur. 72.)

Castration.

Casual.

Casual. Occasional, incidental, accidental (as) casual expenses.

Casual Election. Defined in II of 1924, S. 2

"**Casual Vacancy**" on the Board, "is any vacancy in the office of Directors arising otherwise than by retirement in rotation" (*per* Fry, J., *Munster* v *Cammell Co*, 51 L.J Ch 731.)

A "casual vacancy' means a vacancy occurring by death resignation or bankruptcy and not by efflux of time (*York Tramways Co* v. *Willows*, 8 Q.B D 685 and *Munster* v *Cammell Co*, 21 Ch D. 183, Ref) 34 L W 746=61 M.L J 724

Casual Vacancy. Defined in II of 1924, S 2.

"CASUAL OR NON-RECURRING NATURE," 47 All 368=23 A L J 65=86 I C 185=L R 6 A. 198=A I R 1925 All 469

Casualty Inevitable accident, event not to be foreseen or provided against (*Standard Dict*), What happens by chance or accident

Casuality An "accident" or "casuality", according to the common understanding, proceeds from an unknown cause, or is the unusual effect of a known cause Either may be said to occur by chance or unexpectedly

Casualty insurance "Casualty insurance" has a well-defined meaning as insurance against loss through accidents or casualities resulting in bodily injury or death It is a contract of life insurance limited to specified risks

Casualty Ward, the ward in a hospital in which the casualities or accidents are treated (*Mayhew, Imp Dic*)

Casus Belli, an occurrence viewed as a justification for war An occurrence which interferes with the full enjoyment of the rights, or affects the independence, of a State, has generally been regarded as a justification for war Where the dignity of a nation is concerned, or it has suffered an injury from another nation and has made representations to the offending nation to that effect, a casus belli may be considered to arise if the offending Power fails to give adequate redress

Casus Faederis (*Lat*) (In international law) A case within the stipulations of a treaty or alliance (*In Com Law*) Event contemplated by parties to a contract.

Casus Fortuitus (*Lat*) An inevitable accident.

Casus Fortuitus Non Est Sperandus, Et nemo Tenetur Divinare A maxim meaning "A fortuitous event is not to be expected, and no man is bound to divine it or foreseen it." (*Burrill Law Dict.*).

Casus Fortuitus Non Est Sperandus A maxim meaning "A fortuitous event is not to be presumed." (4 Coke 66.)

Casus Major. (*Lat*) An unusual accident (*Story, Bailm*).

Casus Omissus A point unprovided for by a statute. (*Wharton*)

CASUS omissus et oblivioni datus dispositioni communis juris relinquitur A maxim meaning "A case omitted and consigned to oblivion, is left to the disposal of the common law" (5 Coke. 37)

Casus Omissus Pro Omisso Habendus Est. A maxim meaning "A case omitted is to be held as intentionally omitted"

Cat Instrument used in ancient England for the flogging of prisoners over sixteen, sentenced by a Court to suffer that punishment (*Jacob*)

Catalla Juste Possessa Amitti non Possunt. A maxim meaning "chattels justly possessed cannot be lost."

Catalla Reputantur Inter Minima in Lege A maxim meaning "chattels are considered in law among the minor things

Catamaran A raft made of three logs of wood lashed together and propelled by a sail or paddle. They are used in Ceylon and on the Madras Coast.

Catch. "To seize, to acquire possession (as) catching fish A person would be said to be 'catching' fish, if he is seen fishing and any of that river's fish is found upon him." [*Swanwick* v *Varney*, 30 W R (Eng) 79]

Catching a bargain A bargain for a loan or payment of money made on oppressive, extortionate, or unconscionable terms, between a person having money and another person having little or no property immediately available, but having property in reversion or expectancy (*Sweet Law Dict.*) The jurisdiction of Courts of equity to set aside any transaction entered into by a person, who, from his youth, ignorance, or the pressure of his necessities, was unable to make a fair bargain with the other party, wherever the transaction is grossly one-sided and unfair by reason of such incapacity, is said to be one of the oldest heads of Equity (*O'Rorke* v *Bolingbroke*, 1877, 2 App Cas 714, *Aylesford* v *Morris*, 1873, L R. 8 Ch 484, per *Lord Selborne*)

Catchpole. A name formerly given to a constable or other officer whose duty it is to arrest persons

Cater Cousin. A very distant relation

Cathedral Land or building set apart for the service of the church

Catholic Catholic chappel "*Catholic chappel*" does not necessarily mean a place devoted to worship according to the terms of the Roman Catholic church. The term "Catholic chappel" has no necessary, precise and definite signification The courtesy of private society, and all political and religious controversies, require us to concede to persons of any communion or party such appellations, by way of distinction, as they choose to assume for themselves. Large bodies of Christians not in communion with the church of Rome assert in their creeds and daily worship a right to the name "Catholic" and reject as heretical and schismatical any assumption that the terms "Catholic" and "Roman Catholic" are equivalent, or even allied in signification. Such terms, when occurring in a will, therefore must be explained by extrinsic evidence" (80 *Am. Dec.* 653)

Cattle.

"**Cattle**" defined Act 24 of 1859, S 1, Act 5 of 1861, S. 1, Act 1 of 1871, S 3, Act 7 of 1878, S. 2; Act 9 of 1890, S 125 (5), Act 16 of 1927, S 2; Ben Act 2 of 1866, S. 51; Ben Act 7 of 1867, S. 1, Bom. Act 7 of 1867, S 1, Bom Act 4 of 1890, S. 3 (f);

Cattle doing damage to a public plantation.

Bom Act 4 of 1890, S 3; Bom. Act 4 of 1902, S. 3, Bur. Act 4 of 1899, S. 5, Mad. Act 5 of 1882, S. 2, Mad Act 3 of 1888, S 3, Mad Act 41 of 1902, S 3, Reg 1 of 1874, S. 2, Reg 3 of 1907, S 3, Reg. 6 of 1874, S. 2, Reg. 4 of 1909, S 3, Reg 6 of 1887, S 2 (6); Reg 5 of 1890, S 2 (9), Reg. 7 of 1891, S. 3 (6).

CATTLE, beasts subject to ownership, domestic animals useful for labour, Live stock, domestic quadrupeds which serve for tillage or other labour, or as food for man

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine (Act 5 of 1861, S 1.)

In the Forest Act "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids (Act 16 of 1927, S 2)

[CATTLE, in 28 & 29 Vict c 60 includes pigs (*Child* v. *Hearn* (1874), L R 9 Ex 176) and horses *Wright* v *Pearson*, (1869) L R 4 Q B 582]

"Cattle doing damage to a public plantation" defined Act 7 of 1878, S 69, Mad Act 5 of 1882, S 57, Reg. Act 5 of 1890, S 1, Reg 7 of 1891, S 66, Reg 6 of 1893, S 34.

Caucus A meeting of the legal voters of any political party assembled for the purpose of choosing delegates, or for the nomination of candidates for office

Caught To say that a person was "caught" with his house girl, would import that he was discovered in such a position that adultery would be inferred

Causa (*Lat*) A cause, reason, suit or proceeding in Court

Causa causae est causa causati A maxim meaning "the cause of a cause is the cause of the thing caused" (12 *Mod* 637, *Freem* 329)

"Causa Causans" The immediate cause as opposed to a remote cause, the "last link in the chain of causation" (*Raj & L L Dict*), the real effective cause of damage (*Per* Esher, M R, *Pandorf* v *Hamilton*, 55 L J Q B 548)

Causa causans, or remota the original or remote cause.

Causa causataor proxima. (*Lat*). the immediate or next cause.

Causa consanguinitatis (*Lat*) by reason of consanguinity.

"Causa Et Origio Est Materia Negotii" A maxim meaning "The cause and origin is the substance of the thing" (1 *Coke* 99, *Wingate Max* 41)

Causa impotentiae (*Lat*): by reason of impotence

"Causa Mortis" With reference to or in contemplation of death.

Causa Proxima. The immediate cause.

"Causa Proxima et Non Remota Spectatur." A maxim meaning "The immediate and not the remote cause is to be considered" (*Law Dic.*)

Causa Rei. (*Lat.*) *In Civil Law.* Things accessory or appurtenant.

Cause.

Causa Remota Remote cause A cause operating indirectly by the intervention of other causes.

Causa sine qua non (*Lat*) a cause without which a thing cannot exist

Causa turpis (*Lat*). an unlawful motive or purpose; an illegal or immoral consideration

"Causa vagu et incerta non est causa Rationabilis A maxim meaning" A vague and uncertain cause is not a reasonable cause" (5 *Coke* 57)

Causare (*Lat to cause*), to litigate, to conduct a cause

Causator (*Lat.*) A litigant, one who takes the part of the plaintiff or defendant in a suit.

Cause In a legal sense "a suit" or litigation, an action at law, case, prosecution, a judicial proceeding, any question, civil or criminal, contested before a Court of justice, the origin or foundation of a thing as of a suit or action, a ground of action; the subject of difference between the parties, as settled by the pleadings, whether oral or written (*Ame Cyc*) In ordinary meaning that which produces an effect, that which produces or effects a result, that from which any thing proceeds, and without which it would not exist, (*Webster Dict*), to compel (*Sweet L Dict, Ame Cyc.*)

Cause (*as verb*) To cause a thing to be done is one thing, to direct it to be done is quite another thing What is caused to be done is done, what is directed to be done is by no means always actually done

"CAUSE" AND "CASE" are used as synonyms in statutes and judicial decisions each meaning a proceeding in Court, a suit, action (20 *L Ed.* 638.)

Webster defines an "OCCASION" AS DISTINGUISHED FROM A "CAUSE" to be that which incidentally brings to pass an event without being itself efficient cause or sufficient reason (39 *Am St. Rep* 251)

CAUSE, REASON, MOTIVE *Cause* respects the order and connection of things, *reason* the movements and operations of the mind and body *Cause* is said of all inanimate objects *reason* and *motive* of rational agents Whatever happens in the world happens from some *cause* mediate or immediate, the primary or first *cause* of all is God For whatever opinion a judge delivers he ought to be able to assign a substantial *reason*, and for all actions that men do, they generally have a sufficient *motive* As the *cause* gives birth to the effect, so does the *reason* give birth to the conclusion, and the *motive* gives birth to the action (Crable).

TO CAUSE, OCCASION, CREATE What is *caused* seems to follow naturally; what is *occasioned* follows incidentally, what is *created* receives its existence arbitrarily Hurt *causes* pain, accidents *occasion* delay, Offences are *created* by statute.

CAUSE FOR REMOVAL FROM OFFICE A cause which is sufficient to authorise a removal from office of an officer means legal cause, and not any cause which the council may think sufficient. (39 *Am St. Rep.* 595)

"In an act authorising the removal of certain municipal officers for cause means "a cause founded on some act of omission or commission by the officer in regard to his duties or affecting his general

Cause list

character, which the law and public opinion will pronounce to be sufficient to justify a forfeiture of the office, and not in the political bias or personal dislike of the city's chief executive, nor in his leaning to another individual for whom the place is desired Removals for cause are distinguishable from removals which are in the arbitrary will of the officer vested with the power, and which generally follow the changes of the removing power or of party ascendancy A removal for cause must be for a substantial, reasonable and just cause"

CAUSE OF ACCIDENT OR INJURY "Ordinarily that condition is usually termed the cause of accident whose share in the matter is most conspicuous and is the most immediately preceding and proximate in the event" Everything which induces or influences an accident does not necessarily and legally cause it It might be the agency, or medium or opportunity, or occasion or situation, or condition, as it is variously styled, through or by which the accident happened, but no part of its real and controlling cause Much must depend upon the circumstances of each particular case and upon the common sense of the thing (47 *Am St Rep* 326)

CAUSE OF ACCUSATION "An indictment must exhibit the nature and *cause of the accusation*, it must set out the crime laid to the charge of the accused, but the mode in which the crime was committed, the instrument with which the murder was effected, whether it was held in the right hand or the left, whether the wound was inflicted on the head or the body, are entirely apart from the nature and cause of the accusation" It is not necessary to state the means or agency by which the crime was committed, whether it was done by his own hand or the hand of another employed by him for the purpose It is sufficient if the charge be stated with such certainty that he may know what he is called upon to answer.

CAUSE TO BELIEVE. As the phrase "cause to believe a trader insolvent" means knowledge of such a state of facts in respect to the affairs and pecuniary condition of the debtor as would lead a prudent business man to the conclusion that the debtor cannot meet his obligations as they mature in the ordinary course of business.

Cause list An official list of actions petitions, appeals etc, set down for trial or argument in open Court. Courts have their respective cause lists, in which are entered in succession, the various actions or matters set down for trial or hearing in open Court. The books which are kept for this purpose are extremely numerous and somewhat complicated, and the nature and extent of their contents are regulated by the rules prescribed for the Courts or groups of Courts for which such lists are kept

Cause of action "The elements of a cause of action are. First, the breach of duty owing by one person to another, second the damage resulting to the other from the breach." The commission or omission of an act by the defendant, and damage to the plaintiff in consequence thereof, must unite to give a good cause of action. No one of these facts by itself is a cause of action.

"CAUSE OF ACTION" for a suit is the sum total of the facts and circumstances which the plaintiff has to prove in order to entitle him to the relief claimed. 38 All. 217=14 A.L.J. 257=33 I.C. 124.

Cause of action

The expression "cause of action" comprises every fact which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court. 60 Cal 918=38 C.W.N. 120=A.I.R 1933 Cal. 706. The expression "cause of action" in S. 2 of C.P C., of 1859 cannot be taken in its literal and most restricted sense. It must be construed with reference rather to the substance than to the form of action (1875) 2 I A. 283=1 C. 144 (146) =25 W R. 1=3 Sar 559=3 Suth. 213=(1873) Sup I. A 212=12 B L R. 304=20 W R. 377=3 Sar 285=2 Suth 899=(1884) 12 I A 23=11 C. 301 (308)=4 Sar. 602=(1878) 5 I A 149=4 C 190 (198-9)=3 C L R 31 =3 Sar 827=3 Suth 540=1930 Mad 173=58 M L J. 349, *'good cause of action'* can mean no more than 'cause of action', and the word 'good' is that connection is clearly superfluous The expression "cause of action" refers to the entire set of facts that gives rise to an enforceable claim or "everything which if not proved gives the defendant an immediate right to judgment, every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant could have a right to traverse" 'Cause of action' with reference to cases of contracts discussed 58 Cal 539=134 I C 65=1931 Cal 659

By the term *"Cause of action"*, must be understood all the circumstances alleged by the plaintiff to exist, which if proved or admitted, will entitle him to the relief prayed for *Ittappan* v. *Manavikrama*, 21 Mad 153 (156), 8 M L J. 92.

Any proceeding in a Court of Justice to enforce a demand, is a suit, the person, who applies to the Court, is a *suitor for relief* or *plaintiff* the person who defends himself against the enforcement of the relief is a *defendant* the claim, if recoverable, is a *cause of action* 9 W.R 402 (F B.)

CAUSE OF ACTION means everything which the plaintiff would have to prove if traversed in order to support his claim to the judgment of the Court. *Cooke* v *Gill*, (1872) L.R. 8 C.P. 107 *Payne* v. *Hogg*, (1900) 2 Q B. 43 (C A), and see *Felton* v. *Bower*, (1900) 1 Q B 598

The term "cause of action" should be construed with reference to the substance rather than to the form of action. [1 C 144 (P C)=25 W R 1=2 I. A 283].

The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour [16 C 93 15 I A. 156 (P.C)]

In the case of an action on a contract, "the cause of action," means the whole cause of action, and consists of the making of the contract and of its breach in the place where it ought to be performed. 11 B 649 (652), *see also* 21 B 126 (134)

DISTINGUISHED FROM "ACTION". The action is simply the right or power to enforce an obligation It springs from the obligation, and hence the "cause of action", is simply the obligation. *Frost* v *Witter*, 132 *Cal.* 421 (*Ame*).

DISTINGUISHED FROM "REMEDY" AND "RELIEF"— "Cause of action" is to be distinguished from the "remedy", which is simply the means by which the

Cause of a like nature.

obligation or the corresponding action is effectuated, and also from the "relief" sought. (84 *Am. St Rep.* 53.) "A cause of action may be defined in general term to be a legal right, invaded without justification or sufficient excuse. Upon such invasion a *cause of action* arises, which entitles the party injured to some relief by the application of such remedies as the laws may afford. But the cause of action, and the *remedy* sought, are entirely different matters. The one precedes and, it is true, gives rise to the other, but they are separate and distinct from each other, and are governed by different rules and principles. (53 *Ame. Rep.* 730).

"Cause of a like Nature". *See* 15 I.C 260=5 S, L.R. 181, 9 I C. 680 (681).

"Cause or procure"—The words in a covenant "do and execute, or cause or procure to be done or executed," all such acts as may be necessary for vesting property in trustees," only mean that the covenantor would procure persons who were bound to obey his orders,—*e g*, trustees,—to do such acts as were necessary" (*per* Kay, J., *Re De Ros*, 55 L J Ch. 75).

"Cause similar publication to be made" The words "cause similar publication to be made" in cl 3 of S 8 of Reg VIII of 1819, refers to a publication similar to that, which is prescribed by the preceding cl 2, the requirements in that clause, so far as the publication of the notice of sale and the period at which it is to be published, must be imported into cl 3 *mutatis mutandis* *Surnomoyi Debya* v *Grish Chunder Moitra*, 18 C. 363

Causeway A way raised above the natural level of the ground by stones, earth, timber fascines, etc, serving as a dry passage over wet or marshy ground, or as a mole to confine water to a pond or restrain it from overflowing lower ground (*Webster Dict*) Cent. Dict. cited in *Ocean Causeway* v. *Gilbert*, 54 App Div 118.

CAUSEWAY—"Causeway" seems to be synoymous with Footpath

A *Causeway* is a Sideway, "connoting the same as a Footpath, except when expressed to be a Horse Causeway." (*Stroude*)

"Causing death." The accused sent some sweetmeats containing poison to one person The sweetmeats was shared by some others but none of them died. The accused was guilty of attempting to cause death as his intention was to cause death although the quantity of arsenic was insufficient to cause death 3 U P L R 12 (Lah.)=60 I C 50=22 Cr L J 194=3 L L J. 191.

Cautio (*Lat*) Security for performance, security in an action, bail.

Cautio fide jussoria (*Lat.*) Security given by sureties, pledges, or bondsmen

Cautio pignoratitia (*Lat.*) Security given by way of pledge, or deposit, as plate, money or other goods.

Cautio pro expensis. (*Lat.*) Security for costs.

Caution. Avoidance of rashness, taking care. "The caution which the law requires a man to exercise in order to excuse homicide by misadventure is not the utmost caution that can be used. The law is not so extravagant as to require that a man should always do what is right to the very letter. It is sufficient that a reasonable precaution be taken, such as is usual and ordinary in similar cases, such as has been found by long experience, in the ordinary course of things to answer the end of safety of life and property

Cautionary Warning (as) cautionary signal.

Cautionary judgment Where pending an action for damages plaintiff feared that defendant would dispose of his property before judgment a cautionary judgment may be entered with a lien on the property (*Bour*)

Cautioner A surety, a bondsman

Cautious Careful. Prudent *"Cautious"* differs from *"prudent"* It suggests the idea of timidity, and Webster gives its secondary meaning as overprudent, fearful, timorous A man is cautious chiefly as a result of timidity

Cavalier Horseman, courtly gentleman, a lady's protector or escort.

Caveat Literally, "Let him beware" a formal notice, or caution given by a party interested, to a court, judge, or public officer, against the performance of certain judicial or ministerial acts, (*Burrill Law Dict*) a caution entered in a competent court, to stop probates, administrations, and such like, from being granted without the knowledge of the party that enters (*Will Eron* 581)

It is a caution registered in a public Court or office to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator Several kinds of such caveats are recognised by our law For instance, in connection with the grant of marriage licenses, and dealings with land registered in the land registry The most important instance is the caveat in probate proceedings. The office of a caveat, in probate proceedings is to arrest the proceedings until the truth of the facts alleged or affecting the validity of the will can be determined, and it enures to the benefit of all parties interested in the subject

CAVEAT in 15 & 16 Vict c. 83 (*Patents*), S 20, meant "anything in the nature of an opposition at any stage, and is not confined to the opposition at the Great Seal, which was the meaning of *'caveat'* under the old practice" Per Lord Cairns, L C, in *Johnson's Patent*, (1880) 13 Ch D 398, note (1)

Caveat Emptor. It means "Let the purchaser beware", Disclaimer of responsibility for buyer's disappointment It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence.

"In general, where an article is offered for sale, and is open to the inspection of the purchaser, the common law does not permit the latter to complain that the defects, if any, of the article are not pointed out to him. The rules are Caveat Emptor and Simplex commendatio nonobligat" (Benjamin on Sales, 5th ed, 449, See *Barr* v. *Gibson*, 1838 3 Mee. & W. 390; 49 R.R 650; and *Jones* v. *Just*, 1868, L R 3 Q B. 197).

IN PRIVATE SALES The rule of *Caveat Emptor* has no application in India in the case of ordinary sales

Caveat venditor.

of goods by private contract. 14 O.C. 343=13 I C. 803. *See also* 15 M.L.T. 240.

IN JUDICIAL SALES "It may regarded as a general and well-settled rule that the doctrine caveat emptor applies to all judicial sales"

IN SALES OF RAIYATI HOLDINGS The doctrine of *caveat emptor* applies with the greatest force to persons who undertake to purchase *raiyati*-holdings from tenants 6 I.C 761.

IN SALES OF LAND "The maxim is used with reference to sales of property with respect to which the buyer must use proper diligence to inform himself as to its quality, and in the case of real estate, as to its location. The quality of land on which its value depends, and which is too various for a market standard, the purchaser can see, if he will but look No action lies against the vendor of real estate for false and fraudulent representations as to the location of lands Land is not like a ship at sea, it has a known location and can be approached, and even should it be necessary to purchase the land unseen, covenants may be inserted respecting the quality as well as seisin or title He must look to the title papers under which he buys, and is charged with notice of all the facts appearing upon their face or to the knowledge of which anything there appearing will conduct him He may not shut his eyes or his ears to the inlet of information, and then say he is a *bona fide* purchaser without notice"

Caveat emptor, qui ignorare non debuit quod jus alienum emit A maxim meaning "Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another. (*Hob* 99, *Broom Leg Max*, *Co Litt.* 102a, 3 *Taunt* 439)

Caveat venditor A maxim meaning "Let the seller beware" (*Broom*) "If the seller wishes to secure himself from future responsibility in case the article sold should afterwards be found to be different in kind or quality from what the party supposed it to be, he must take care or provide against such responsibility by a particular agreement with the purchaser."

Caveat viator A maxim meaning 'Let the traveller beware' (*Broom*)

Caveator One who files a caveat

Cavelgar or Cawelgar (*Tam*) A guard or watchman

Cavel lands or Caval Maniam. Lands, the rents of which were held to defray the expenses of guarding and watching; lands held by the village watchman

Cawel or Cavul Tallum. Watching the place Village watching fees, or perquisites, formerly received from the inhabitants by the petty Poligars, but which belonged to the Talliaris, or public officers, of each village.

Cawnie *Kani* Hereditary land or field (*Fifth report, Bad.-Pow.*) A land measure.

Cease To put an end to, to put a stop to; to come to an end; to stop doing. "To 'cease,' does not, necessarily, import an act of free will The East India Co has '*ceased*' to employ a military force because it has no longer any necessity for its employment" (*Per* Lord Chelmsford, *Walsh* v *Secretary for India*, 10 H.L.Ca. 396.)

Celestial marriage.

"**Ceased**" is a strictly proper word to apply to the case where the entire thing has "ceased to be" (*Lancashire Jus.* v *Rochdale*, 53 L J.M.C 5)

Cease fire. (*Milit.*) Order to troops to stop firing

"**Cease to be operated**" "A fire policy on a sawmill providing that if the insured ceases to operate the mill it shall be void is to be construed as meaning its operation in the usual method, and is not violated by a temporary suspension of work by reason of sickness," nor does it apply to a mere temporary interruption of operations occasioned by the prevalence of an epidemic (40 Am Rep 68)

Cease to operate A statute ceases to operate when it has passed out of existence, as if repealed by a valid Act of the legislature (*i e*) when it ceases to have existence

"**Cease to reside**" When an officer in a city or ward removes himself and his family out of such city or ward for a mere temporary residence elsewhere, as to a cottage at the seaside for residence during summer, he does not "*cease to reside* in such city or ward"

Cede To assign or transfer, To transfer territory. "Where one nation cedes territory to another, it hands over the title and sovereignty good against all the world, but this does not necessarily determine in what way it shall be held by the new sovereign." (103 Fed 72, 77)

Cedent An assignor

Celebrate Duly perform "Celebrate" is equivalent to "solemnise."

TO CELEBRATE, COMMEMORATE *Commemorate* is a species of *celebrating*, we always *commemorate* when we *celebrate*, but not *vice versa* Every thing is *celebrated* which is distinguished by any marks of attention, without regard to the time of the event, whether present or past, but nothing is *commemorated* but what has been past A marriage or a birthday is *celebrated*, the anniversary of any national event is *commemorated* *Celebrating* is not limited to any species of events or circumstances, whatever interests any number of persons is *celebrated commemorating* is confined to whatever is thought of sufficient importance to be borne in mind, whether of a public or private nature The election of a favourite member is *celebrated* by those who have contributed to his success a remarkable preservation whether national or individual, sometimes demands some signal act of *commemoration*

Celebrating is a festive as well as social act; it may be sometimes serious, but it is mostly mingled with more or less of gaiety and mirth, *Commemorating* is a solemn act, it may be sometimes festive and social, but it is always mingled with what is serious, and may be altogether solitary, it is suited to the occasion, and calculated to revive in the mind suitable impressions of what is past The birth-day of our sovereign is always *celebrated* by his people with such marks of honour and congratulations as are due from subjects to a prince the providential escape of our nation from destruction by the Gunpowder Plot is annually *commemorated* by a public act of devotion, as also by popular demonstration of joy.

Celestial marriage: In the Norman Church, instead of the ordinary marriage, the parties are

Celibacy

said to be sealed for time and all eternity and such part of the sealing as relates to eternity is called "celestial marriage." (95 Am St Rep 821)

Celibacy. The condition of a person not married.

"Celluar confinement" defined Act IX 1894, S 46 (10), Expln

Cemetery. A cemetery is an area or place where the dead bodies of human beings are buried (*Wor Dict.*) What creates the cemetery is the act of setting the ground apart for the burial of the dead—marking and distinguishing it from adjoining ground as a place of burial It includes not only lots for depositing the bodies of the dead, but also avenues, walks and grounds for shrubbery and ornamental purposes. All must be regarded as consecrated to a public and sacred use. (21 Am Rep 643)

"A cemetery is as public a place as a court house or market It may not be frequented as much, but visits to it are as necessary and as certain, and the accommodation of the public requires a high way to it over which all must travel, so as to permit its dedication by public use"

The words *"cemetery" and "burial place"* are synonymous in common parlance

"'Cemetery,' both in its original meaning and as commonly used, is quite sufficient to comprehend all Burial grounds". (*Per* Campbell, C J, *R* v. *Manchester*, 5 E & B 707)

CLASSES OF CEMETERIES A cemetery may be either a public or a private one The former class is used by the general community or neighbourhood or church, while the latter is used only by a family or a small portion of a community. (*Lay* v *State*, 12 Ind, App 362)

Cenninga (*In Old English Law*) Notice given by a buyer to a seller that the thing or article which had been sold was claimed by another, in order that he might appear and defend the sale (*Blount Whis. Law*)

Censaria (*In Old English Law*) Land, house or farm let out at a standing rent (*Cowell*)

Censorious. Fault finding, given to judging others

Censoriousness Disposition to blame and condemn, the habit of censuring or reproaching (*Webster Dict*), the degree of censure does not enter into the definition

Censure. Expression of disapproval, The word "censure" is synonymous with the words "reproach" and "obloquy"

TO CENSURE, CARP, CAVIL To *censure* respects positive errors, to *carp* and *cavil* have regard to what is trivial or imaginary the former is employed for errors in persons, the latter for supposed defects in things. *Censures* are frequently necessary from those who have the authority to use them, a good father will *censure* his children when their conduct is *censurable* *Carping* and *cavilling* are resorted to only to indulge ill-nature or self-conceit. party politicians *carp* at the measures of administration, infidels *cavil* at the evidences of Christianity, because they are determined to disbelieve.

Certain person.

Census. A census is an official enumeration of the inhabitants of a state or country, with details of sex, age, family, occupation, possessions, etc (*Cent. Dict*) "An official reckoning or enumeration of the inhabitants and wealth of a country." (*Bouvier.*)

"An official numbering of the people of a country or district"

Center Line "The center line of a road or railroad is the line equidistant from each of the side lines, and is usually the line surveyed when the road is laid out The term is used in distinction from the side lines of the road, as all public roads and highway and railroads are regarded as having three lines—the center line and the two side lines"

Central Act Defined in Act X of 1897, S 3

Central Board Defined in Act II of 1934, S 2

Central Board of Revenue. Defined in Act XI of 1922, S 2

"The *Central Board of Revenue*" in the Income Tax Act means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 *See* Act XI of 1922, S 2, Cl (4) (*a*)

Central Government Defined in Act X of 1897, S. 3

"**Central Provinces Act**" means an Act made by the Chief Commissioner of Central Provinces in Council, Act X of 1897 (*General Clauses*), S 3 (8-*b*)

Central Provinces and Berar Act Defined in Act X of 1897, S 3

Centumviri (*Lat*) A hundred men, a Roman court consisting of a hundred judges, to whom belonged the decision of the most important questions of law

Cera Impressa A seal, "It need not necessarily refer to an impression on wax, but an impression made on wafers or other adhesive substances capable of receiving an impression, will come within the definition of 'Cera Impressa'"

Certa debet esse intentio, et narratio, et certum fundamentum et certa res quae deducitur in judicium (Co Litt 303, a) A maxim meaning "The intention, count, foundation, and thing, brought to judgment, ought to be certain." (*Cyc Law Dic*, *Broom*)

"**Certain**" defined, Act XXVI, 1881, S 5

CERTAIN. Reliable. Sure to happen In matters of obligations, a thing is certain when its essence, quality and quantity are sufficiently described, such as one hundred Rupees, such a house, or such a horse

Certain date A subpoena which does not require the accused to attend at a *certain place* but which requires him to attend at thana or wherever the inspecting officer might happen to be is not a legal subpoena and consequently failure to comply with it is not an offence. 27 Cr.L.J. 697=94 I.C 889 =24 A L.J 536=A.I R. 1926 All 474

Certain duty A duty is certain when by law it must be absolutely performed, and the occasion and mode of its exercise are fixed, so that nothing remains subject to the discretion of the officer.

"Certain person." The words "a certain person", *in sections 4 and 5 of the Negotiable Instruments Act*

Certainty.

(*XXVI of* 1881), mean a person who is capable of being ascertained at the time when the promissory note is made (4 I C 293=5 L B R. 162)

Certainty Distinctness, accuracy of statement, the fact of being certain, exemption from doubt "Certainty is the Mother of Repose, and Incertainty is the Mother of Contention" (*per* Pollard, arg, *Colthirst* v *Bejushim*, Plowd. 25)

CERTAINTY is a plain, clear, and distinct setting down of things so that they may be understood (5 Rep 121 *Tomlins Law Dic*)

IN PLEADING Certainty in pleadings includes both precision and particularity, but these words are used in a sense opposed to ambiguity and generality Reasonable certainty of description is all that can be required, even in reference to written instruments, involving such particularity only as would lead to the indentification of the property, and enable the sheriff to seize it under process

It is a clear and distinct setting down of facts, so that they may be understood both by the party who is to answer the matters stated against him, the counsel who are to argue them, the jury who are to decide upon their existence, and the court who are the judges of the law arising out of them, (*Ame Cyc.*, *State* v. *Hayward*, 83 Mo. 299 (309).

IN PROOF It has been held that by the term "certainty" as applied to the degree of proof required, is meant generally that there must be sufficient positive facts proved to take the matter out of the realm of conjecture and presumption

Certificate. A writing by which an officer or other person bears testimony that a fact has or has not taken place (*Bouvier*), a written testimony to the truth of any fact (*Webster*), a writing so signed and authenticated as to be legal evidence (*Standard Dict*), a writing by which testimony is given that a fact has or has not taken place "A 'Certificate,' *ex vi termini*, imports that the party certifying knows the fact that he certifies" (*per* Kenyon, C J, *Farmer* v. *Legg*, 7 T R 191)

Certificate of character The expression "Certificate of character" in S 7, Legal Practitioners' Act (XVIII of 1879) means nothing more than a certificate that the presiding officer of the Court is not aware of any misconduct of the pleader justifying action under Ss 12 to 14 of the Act 13 C W N 415 =1 I C 534

Certificate of costs. Attorney's bill of costs certified by the judge or other authorized officer of the Court

Certificate of Damage, a dock certificate testifying that certain goods on being landed from shipboard are in a damaged condition

Certificate of deposit (in banking) a writing acknowledging that the person named has deposited in the bank a specified sum of money.

Certificate of incorporation. The instrument by which a private corporation is formed is called "articles of incorporation" or "certificate of incorporation"

It is a certificate issued by the Registrar of Joint Stock Companies, after the registration of a company. The instrument by which a corporation or company is formed under the law of the land, setting

Certified Copy.

forth the name, objects and other particulars of the company, and filed in some designated public office as evidence of its corporate existence.

"Certificate of naturalization" means a certificate of naturalization granted under the Naturalization Act and Act VII of 1926, S 2, cl (*b*)

"Certificate officer" defined Ben Act I, 1895, S 4 (*2*), Ben Act VI, 1908, S. 3 (4).

Certificate of Origin Document indicating the place of origin of the goods, materials, or manufactures mentioned therein

Certificate of qualification The words "license" "diploma" and "certificate of qualification" do not mean the same thing

"Certificate to which effect" (*See* 17 Cal. 474).

Certification The act of certifying, a notice to the party in a suit that if he fail to do something certain consequences would follow "He was served with a new order to appear,... with this certification, that if he appeared not they would proceed" (*Bp Burnet*)

Certification of Shares is when shares represented by one certificate are sold in batches, and the company takes the certificate and certifies on the transfer that the shares therein enumerated are in their custody

Certified Defined in XX of 1928, S 6

'CERTIFIED" officially declared or informed.

In the Insurance Company Act, unless there is anything repugnant in the subject or context,—

"*Certified*" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurance company, means certified by a responsible officer of the company to be a true copy or a correct translation, as the case may be Act XX of 1928, S 6a, *see also* Com Act VII of 1913, S 277, cl (6).

Certified Bankrupt, one who is granted a certificate of discharge from his existing debts by the Bankruptcy Court, a discharged insolvent under the Indian Act

Certified cheque (in the practice of bankers) It is a depositor's cheque recognized and accepted by the proper officer of the bank as a valid appropriation of the amount specified to the payee named and as drawn against funds of such depositor held by the bank "The object of the certification is to indicate the assent of the bank, at the request of the drawer, that the drawee will pay the sum mentioned in the check" (23 Am Rep 129)

"Certified copy" defined. Act I, 1872, S. 76, Act XVIII, 1891, S 2 (8)

A copy of a document signed and certified as a true copy by the officer to whose custody the original is entrusted A certified copy of a deed imports that it is an office copy taken from the record of deeds and certified by the proper officer.

Certified Copy and duplicate. The term "certified Copy" is not synonymous with "duplicate" A duplicate must be executed by the same parties with the same formalities as the original Where the law requires a duplicate of a certificate of incorporation to be filed, it is not complied with by filing a certified copy.

Certified purchaser.

A copy of a document is a certified copy when there is in it a certificate of a public officer that it is a true copy of a document contained in the office. (1887) 14 I A. 71=14 C. 486 (491)=5 Sar. 13 (P.C.)

Certified purchaser. The words "certified purchaser" in the C. P. Code, include the person standing in the shoes of the court purchaser (26 C 950=3 C W N. 657, *see also* 14 M I A 496, 2 I A 154, 2 C.W.N. 433, 21 Mad 7, 31 Bom 61=8 Bom L R 873, 21 All. 196=19 A W.N 30, 19 I C 909, 5 All 478, 2 C.W.N 433, 14 M 396

Certified transfer Transfer testifying that the certificate of the shares mentioned therein has been lodged with the company

Certifier, one who certifies or assures.

Certify. To give certain knowledge or information of, make evident, vouch for the truth of, attest, to make statement as to matter of fact; to testify in writing, give a certificate of, make a declaration about in writing under hand, or hand and seal, to make attestation either in writing or orally as to the truth or excellence of something. (*Standard Dict*)

"The usual meaning of 'Certify' does not require anything written, otherwise why should parties ever expressly stipulate as to certifying in writing?" (*Per* Byles, J, *Roberts* v. *Watkins*, 32 L.J C P 291)

In the absence of statutory provision prescribing any particular form of certification, any form which affirms the fact in writing is sufficient

Certiorari Certiorari is a writ out of the High Court "to an Inferior Court to call up the records of a Cause therein depending, that conscionable justice may be therein administered" (*Cowel Termes de la Ley*, *Tomlins*, *Jacob*)

CERTIORARI is a writ, issued from a superior Court directed to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case It differs from appeal in that it brings up the case on the record, while on appeal the case is brought up on the merits, and from mandamus, for by that writ the case is proceeded with in the inferior Court, in accordance with the order of the Court granting it In most cases and in modern practice a review is a substitute for and serves the purpose of certiorari (*Ame Cyc*)

Certiorari according to the English rule is only to be granted when no other suitable remedy exists (1919) 46 I A 176=43 M 146 (160)=23 C.W N 986=17 A.L J 925=26 M L T 408=10 L.W 451=21 Bom L R 867=(1919) M W N 555=20 Cr.L.J 593=52 I.C 209=37 M L J 139

Certiorari and prohibition are matters of procedure (1922) 31 M.L T 163 (P.C)

A writ of certiorari does not lie to quash an order, merely ministerial, it is intended for the purpose of adjudication on the validity of acts judicial The term *"judicial"* does not necessarily mean the act of a judge or legal tribunal sitting for the determination of matters of law. *"judicial act"* means an act done by competent authority and imposing a liability or affecting the rights of others. An order passed by the Hindu Religious Endowments Board under S 70 of the Madras Hindu Religious Endowments Act assessing and demanding the amount of costs and expenses incurred by the Board in connection with legal proceedings in respect of an endowment is only an administrative or ministerial order, not involving the determination of any question of the rights of subjects or any duty to act judicially, and consequently a writ of *certiorari* cannot be granted to quash such an order 1936 M W N. 1186=71 M L J 594.

Certum est quod certum reddi potest

A maxim meaning "That is sufficiently certain which can be made certain" (*Broom. Leg. Max*, *Co Litt* 45b, 96a, 142a, *Bl Comm*)

Where the performance of an agreement to sell was made conditional on certain other events and a suit was filed for specific performance on fulfilment of one of the conditions, *Held*, that the maxim *certum est quod certum reddi potest* did not apply 31 P L R 636=130 I C. 52=A I R 1930 Lah 1020.

Cess. An assessment or tax.

"CESS" defined. Burma Act II of 1880, S 6.

The remuneration that is payable to the patwari or a lambardar does not fall under the head of cesses 171 I C 658=20 N L J 173=A I R 1937 Nag 211

Cess on houses *See* Bur Act II of 1880, S 6

Cessante causa, cessat effectus A maxim meaning "The cause ceasing the effect ceases also" (*Broom Leg Max*, 1 Exch 430)

Cessante ratione legis cessat ipsa lex A maxim meaning "Reason is the soul of the law and when the reason of any particular law ceases so does the law itself." (*Broom Leg Max*, 4 Coke 38, 7 Coke 67, *Co Litt* 70*b*.)

Cessante statu primitivo, cessat derivativus. A maxim meaning "The derived estate ceases on the determination of the original estate" (*Broom*, 4 Kent Comm 32, 8 Rep 34)

Cessat ratis cessat lex Maxim does not apply to custom, so where a custom has originated in a family for certain reasons, it cannot be said that those reasons being non-existent the custom itself should cease to exist. 50 C L J. 267=118 I C. 342=1929 C 577

Cesser Neglect, omission, a ceasing from or omission to do a thing, the determination of an estate (3 Bl. Comm 232, 4 Kent Comm. 30, 90, 105, 1 Coke 84, 6 Mod 232)

Cesses on trades and professions. (1890) 17 I.A. 103=14 B 526 (530-1)=5 Sar 578.

Cession (*from cessio, yielding*) A giving up, an assignment; transfer, relinquishment or abandonment of a right, or property (*Burrill*)

"Cess year" defined. Beng. Act III of 1885, S 5.

Cestui que trust, a beneficiary under a trust, one entitled to the income and profits of trust funds, which the trustee is bound to apply according to the terms of the trust.

Cestui que use He to whose use lands or other hereditaments were held by another person (*Sweet L. Dict.*; *Jacob.*)

Cestui que vie. He for whose life any lands or tenements are granted. (*Perk.* 97; *Tomlins L. Dic.*)

"C F.I." Contract

"C.F I." Contract or "C.I.F" contract. "These letters in a mercantile contract denote "cost, freight and insurance," and mean that the price named in the contract includes the expense of the goods, their carriage, and their insurance during the transit to the purchaser" (Blackburn, J. in *Ireland* v *Livingston*, (1871) L R 5 H L 406)

Under a *C F I* Contract there is an absolute duty on the Vendor to procure the shipment of the goods under such a Bill of Lading as will, subject to its exceptions, ensure their delivery at the Port of Destination. (*Lecky* v. *Ogilvy*, 3 Com Ca 29) *See also* C I F Contract and also 5 L B,R. 144=4 I C 1037, 40 Bom 11=17 Bom L R 249=28 I C 433

Chabutra A survey mark at the meeting place of three villages.

Chabutarah (*H*) A raised bank or terrace detached from the residence, sometimes covered over, on which persons sit and converse A kind of summerhouse or pavilion A place where the head of the police is usually stationed. A police office or station, or the Magistrate's Court A room or hall used for public meetings of the villagers A custom-house or station A guard house A market place A stone platform erected as a boundary mark (*Wil Gl*)

Chachar (*H*) Land that has lain fallow for a year or more, but not a very long time

Chadarandazi "Throwing of the sheet" A simple marriage ceremony adopted when the bride is a widow

Chadaru guddi (*Karn*) Boundaries of an estate or of village lands, including waste.

Chah (*P*), a well (Upper India) often includes the area of land which the well waters A well is called a '*kachha*' when not lined with masonry, but a mere hole in the ground near a river, with perhaps a lining of basket-work or twigs '*pakka*' when lined with brick and mortar—*Chahi* (*Zamin*) land irrigated by a well (*Bad Pow*)

Chaharam (*one-fourth, P*), an allowance out of the revenue to chiefs (*Pj*) (*Bad. Pow II* 642)

Chaharami A share properly one-fourth of the revenue or of the State's share of the produce allowed by the ruler to an individual A person enjoying chaharam allowance. (*Bad Pow*)

Chahi Irrigated from a well (Land Revenue Assessment Rules, 1929)

Chahi Nahri Applied to crops started by canal irrigation and matured by the help of a well.

Chahi-sailab Dependent partly on well irrigation and partly on river floods.

Chain An engineer's measure of twenty-two yards length, a series of things, links, or rings connected generally of some kind of metal used for various purposes (as) a support, connection, ornament measurement, etc. (*Imp. Dict*)

Chain, Fetter, Band, Shackle All these terms designate the instrument by which animals or men are confined. *Chain* is general and indefinite; all the rest are species of *chains*. but there are many *chains* which do not come under the other names; a *chain* is indefinite as to its make, *fetters* are large, they consist of many stout *chains* *Bands* are in general any thing which confines the body or the limbs, they may either be *chains* or even cords· *shackle* is that species of *chain* which goes on the legs to confine them; malefactors of the worst order have *fetters* on different parts of their bodies, and *shackles* on their legs.

Chakeran.

Chain of circumstances The expression "chain of circumstances" in a criminal case, conveys substantially the same idea as that of "inculpatory facts". Where a chain of circumstances is the means by which the guilt of a defendant is to be established, each necessary link in that chain must be established beyond a reasonable doubt, for the reason that the chain without the necessary links would be incomplete and ineffectual To constitute a chain of circumstances sufficient to establish guilt, each independent fact in the chain relied on must be established to a moral certainty or beyond a reasonable doubt.

Chain of title Where a grantor of land agreed to show and present to the grantee a perfect "chain of title from the Government", the words "chain of title from the Government" mean the successive links, each perfect in itself, to communicate to the grantee, and invest in him, the title of the Government, and not merely a colorable title with possession and payment of taxes, sufficient to bar a recovery by an adverse claimant under the statute of limitations

"Chairman" defined Act VI of 1912, S. *2 (2)*; Ben Act IX of 1880, S 171, Mad Act II of 1888, S 2

CHAIRMAN. A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc (*Black L Dict*, 6 *Cyc* 845.)

Chak (*P.*) A circle or group (*e g*, an alluvial chalk) for assessment purposes (*Bad Pow* II 755) a clearing tenure (*Ben*) (*Bad Pow* I 548), a holding made up of bits of different land (locally), N W. P (*Bad, Pow* II 136) A group of villages for settlement a survey number.

Chak-bandi (*H*) Determining the limits or boundaries of a detached piece of land, an estate, or Chak The limits of a Police or revenue jurisdiction

Chak-bat form of division of an estate where the holding is compact (*Pj*) (*Bad Pow.* II. 675)

Chakaran (*Hindi*) Lands held rent free or at a reduced rent in remuneration of service, but especially that of village servants such as the kanungo, patwari, the peons and chaukidars.

Chakaran-Zamin (*H*) Lands exempted from revenue on the plea of being appropriated to maintain the public officers and servants.

Chakari (*H*) Allowance of land for public officers and servants. Service land

Chakaria (*Mar*) Applied to land held revenue free, on condition of performing some office or discharging some obligation, service land. (*Wil Gl* 97)

Chakdar Lessee of grazing in a tract of land known as chak.

Chakeran. Chakeran means "service". (1914) 42 I.A. 30 (35)=42 C. 710 (721)=17 M.L.T. 1=2 L W. 2

Chakeran lands.

=17 Bom.L.R. 32=19 C W.N. 95=26 C L J. 31=26 I. C 676=28 M.L J. 457.

Chakeran lands. Amongst the lands granted to the zemindars were often included lands which had been appropriated to the payment and support of public officers of the zemindaries, or villages included in them. These lands were called CHEKERAN LANDS, and it appears that under the ancient system such lands were usually exempted from assessment in favour of the zemindar, though they had no legal title to exemption (1855) 6 M I A 101=1 Suth 248 =4 W.R 77=1 Sar 505 (P C)

Chakeran lands are lands held by service tenure Generically the term includes all lands so held, whether by Police Officials, Chowkidars, or persons whose only duties are personal to the zemindar The expression "Tannadhari lands or Tannadhari Chakeran lands" means lands held on service tenure by Tannadhars or Police Officials The expression "CHOWKIDARI CHAKERAN LANDS" means lands held on service tenure by Chowkidars, or village watchmen (1917) 44 I A 117=44 C. 841=2 Pat L W 1= 21 C W N 609=19 Bom L R 462=15 A L J 390=22 M L T. 489=(1917) M W N 459=6 L W 101=25 C L J 499=40 I C 981=32 M L J 565

The effect of the permanent settlement is to divide CHAKERAN LANDS into two classes, namely (1) Tannadhari Chakeran lands, that is, lands held on service tenure by Police Officials, and (2) all other Chakeran lands As to Chakeran lands of the former class, they were made resumable by Government, the Government relieving the Zemindar from the duty of maintaining a Police establishment These Tannadhari Chakeran lands were, in fact, shortly afterwards resumed and became Government lands, the title of the zemindar being extinguished by such resumption As to all other Chakeran lands, whether held by public officers or private servants in lieu of wages, they are dealt with by Bengal Reg VIII, S. 41 (1917) 44 I A 117=44 C 841=2 Pat L W 1= 21 C W N. 609=19 Bom L R 462=15 A L J. 390=22 M.L T 489=(1917) M W N 459=6 L W 101=25 C L J. 499=40 I C 981=32 M L J 565

Chaki (*Karn*) An extra assessment in Kanara (*Wil Gl* 97)

Chakkubandi (*Tam Karn.*) Land measure, the four boundaries of land.

Chakla (*H*) A large division of a country, comprehending a number of parganas, first introduced as a recognised local division in the reign of Shahjehan.

Chaklanbandi (*H.*) The distribution of a Zamindari or of a province into chaklas, especially for financial convenience

Chakledar (*H*) The superintendent or proprietor, or renter of a chakla

Chakra-vriddhi (S.) compound interest (*Wil Gl.* 98)

"Chakran land" 117 I.C. 848.

Chal (*Maratha*) (C P), a class of lands as valued comparatively to others for assessment purposes. (*Bad. Pow* ii. 376)

Chalan: an invoice of goods, etc in revenue matters, a schedule of revenue paid into an office or treasury. (*Bad. Pow.* iii 450.)

Chamar.

Chalanta, Passing, moveable, saleable Duties formerly levied by Zamindars on goods passing through their jurisdiction. Ben. Reg XXVII, 1793. (*Wil Gl* 99)

Chali-gaini-chittu (*Karn*) An agreement or lease for a short time, usually for a year

Chaligeni (*S Kanara*) A tenant at will, as opposed to mulgeni, the heriditary tenant (*Bad. Pow* iii 151) Name for yearly lease in S. Kanara

Chali-gaini-gar (*Karn*) A tenant-at-will

Chalian (*Mal*) Name of a caste whose profession is weaving They follow Marumakkathayam. (*Moore's Mal Law*)

Chalisi, or Chalisa (*H*) An aggregate of forty, as of forty seers, forty cubits Also a period of forty days of impurity from the birth of a child, or death of a relative A period of quarantine The great famine in Hindustan of 1783 is known by this name, from its occurring in Samvat 1840 (*Wil. Gl* 99)

Challenge An objection to the right or capacity of a person An objection to persons returned to be jurors in a criminal trial (*Sweet L Dict*) also used to denote exceptions taken to a judge's capacity on account of interest (*Cyc Law Dict*) A Summons or invitation, given by one person to another in ancient days, to engage in a personal combat, a request to fight a duel (*Black Law Dict*)

CHALLENGE OF JURY An objection made to the swearing in and impanelling of the jury, and not an objection made after they are sworn in and impanelled

CHALLENGE FOR CAUSE is an objection to a particular juror, and is either (1) that the juror is disqualified from serving in any action, or (2) particular, that he is disqualified from serving in the action on trial

CHALLENGE PROPTER AFFECTUM is a challenge on account of the relationship of the juror to one of the parties to the case "By the common law any one related by blood or marriage, as remotely as the ninth degree even, is subject to challenge propter affectum, and no evidence to the contrary will be heard The fact constitutes almost an absolute disqualification"

CHALLENGE TO THE ARRAY is an objection to all of the jurors collectively because of some defect in the panel as a whole

CHALLENGE TO THE FAVOR is one grounded upon facts giving rise rather to a suspicion of partiality than to a positive presumption or belief

CHALLENGE TO THE PANEL is an objection made to all the trial jurors returned, and may be taken by either party.

Chaltidaftar, (*H*) Under the Maratha Government, the records required for current business That portion of the register which was always in the hands of the Farnavis, or Secretary of State (*Wil. Gl* 99)

Chamar, (*H.*) A man of a low caste, whose business is working in hides and leather, a curvier, a tanner, a shoemaker, a harness maker, and the like. (*Wil. Gl.* 99.)

Chamarjulaha.

Chamarjulaha. (*Punjab*) A division of the Chamar caste who have given up their hereditary calling and have taken to weaving.

Chamayam (*Mal*) (*or chamayom*) *Lit.* To prepare. Generically the expenses of improving land, used specially for fixtures, as opposed to *Kulikur*, plantations, and *Vettu Kanam*, tillage (*Moore's Mal. Law, Sundaram Iyer's Mal, Law*)

Chamayam, Kil or, *Kil chamayam*—expenses of cultivation

Chamayom, Pura or, *Pura chamayam*—expenses of building

Chamber, Chambers Room or apartment, a private repository, The private room or office of a judge, where, for the convenience of parties, he hears such matters and transacts such business as a judge in vacation is authorized to hear, and which do not require a hearing by the judge sitting as a court, the office or private rooms of a judge, where parties are heard and orders made, in matters not requiring to be brought before the full court, and where costs are taxed, judgments signed, and similar business transacted (*Burrill Law Dic*) The office of a Barister An association of persons habitually meeting together in an apartment, *e g*, the "Star Chamber," "Chamber of the Deputies", "Chamber of Commerce"

Chamber business All business done out of court by the judge (In re *Neagle*, 39 Fed. 833, 855) It is not necessary that chamber business should invariably be done in what is usually called "chambers". It may be done, and often is done, on the street, in the judge's own house, at the hotel where he stops, when absent from home, or it may be done in transitu, on on the cars, in going from one place to another within his territorial jurisdiction For the purposes of jurisdiction, the chambers of the judge are wherever he happens to be in his circuit or district, when the exigencies of the case call for the transaction of chamber business, and a Judge is as clearly engaged in the discharge of the duties of his office, when going from one place of holding Court to another, for the purpose of holding court (*Black Law Dic.*)

Chamber of Commerce An association of the principal merchants, traders, and others, organised, for promoting the interests of trade It is useful in obtaining and spreading statistical information, aiding commercial legislation, and otherwise It is designed for convenience in buying, selling and exchanging goods and to foster the commercial and industrial interests of the people

Chambers, (*Judge's Chambers*) The origin of "Judges' Chambers" is wrapped in considerable obscurity There are early English statutes and orders regulating from time to time the practice of Judges' chambers, but they all appear to have been passed for the purpose of extending the previously existing power of the judges to make orders out of Court There does not appear to be any statute directly creating such jurisdiction which probably originated in custom, and grew in proportion to a gradually increasing demand for its exercise. The inconvenience and injustice occasioned by closing the Courts during the vacation (*i.e.*) the intervals between the

Champerty.

legal terms appear to have induced the judges to make orders for time to plead, or to stay proceedings and other interlocutory orders, at times when the Courts were not sitting. These orders were made by the judges either at their own houses or in their chambers, and the practice must have existed as far back as the seventeenth century, for Lord Coke in 1669 expressed his disapproval of it, and even appears to have doubted the validity of orders so made. (2 Inst 103) Seeing, however, that at that time no one but a judge had power to make any order in a cause, and that the Courts remained closed for a considerable part of the year, it is not surprising that, in spite of Lord Coke's disapproval, the practice was retained, and gradually developed to meet the growing requirements of increasing litigation

Nevertheless, it appears that as late at 1802 some ground for doubt remained as to the validity of orders made in chambers Lord Justice Wilmot (*Witmot's Notes*, 264) wrote as follows —"A doubt has been rather hinted at than made as to the legality of orders made by judges at their houses or chambers When the practice first began, I cannot find out But, whenever it began, it stands, upon too firm a basis of the land as any other course of practice which custom has introduced and established" (See *Ency of the Laws of England*)

Chamchori, (*H*) Adulterous connexion with the wife of another. (*Wil Gl*)

Champertor, One who is guilty of champerty

Champerty A bargain with the plaintiff or defendant in any suit, to have part of the land, debt, or other thing sued for, if the party that undertakes it prevails therein, whereupon the Champertor is to carry on the party's suit at his own expenses (*See* 4 Com 135, 1 Inst 368, *Tomlins Law Dic*) As to what is or is not champerty in Indian Law *See* 22 Mad 310, 14 Mad 72, 18 Mad. 374, 9 C W N 470, 86 I C 155=27 All 271 P C, 3 Bom 402, 33 Cal. 433 (439)=8 C W N 408, 2 Cal 238, 8 M.I A. 177.

"*A* bargains with the plaintiff or defendant, to have part of the thing in suit, if he prevail therein, for maintenance of him in that suit" [*Bayard* v. *McLane*, 3 Harr (Del) 139, 208]

"The unlawful maintenance of a suit in consideration, of an agreement to have a part of the thing in dispute." (*Johnson* v. *Van Wyck*, 4 App Cas 294, 315)

"An agreement to aid in a suit, and then divide the thing recovered." (*Rust* v. *Larue*, 14 Am Dec. 172.)

Although the English law of champerty and maintenance is not in force in India as specific laws, either in the Presidency towns or in the mofussil, yet such contracts, if opposed to public policy, will not be acted upon by the Indian Courts 2 C 233=4 I A 241, 1 M H C 153 *See also* 20 C 843=20 I A. 112, 22 W R 148, 13 W R 426, 9 W R. 490, 31 C. 433=8 C.W.N 408. In India, an agreement cannot be avoided on the ground of champerty An assignment, though of a champertous character, is not void on that account, nor opposed to public policy and void as such by reason of a stipulation relating to payment of consideration Nor can an assignment be questioned as unfair and unconscionable by a person who was not a party to it. 12 C W.N. 393

Champerty and maintenance.

(P.C.); 10 Bom L R. 230=35 C. 420=7 C.L J. 335=5 A.L J. 184=18 M L J. 100=3 M L.T 344=14 Bom. L R 49; 4 I A. 23=2 C. 233; 20 I A 112=20 C. 843 and 9 C W.N. 477=32 I.A 113; 27 I A. 271 (P.C.) followed; 8 Ind. Cas 500.

Champerty and maintenance "Champerty is maintenance in which the motive of the maintainor is an agreement that if the proceeding in which the maintenance takes place succeeds, the subject-matter of the suit shall be divided between the plaintiff and the maintainor" (*Steph Cr* 97, *Co Litt* 368)

The distinction between maintenance and champerty seems to be this Where there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only, but where he stipulates to receive part of the thing in suit that will be champerty (4 *Cooley Bl Comm* 134 *note*)

To constitute *champerty* it is not essential that there be an action pending at the time the contract was entered into There must, however, be a contemplated litigation To constitute *maintenance* the pendency of a suit is essential. There must also be actual assistance (*Ame. Cyc*)

Maintenance is defined to be an intermeddling in a suit that in no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it, a taking in hand or upholding of quarrels of others (*Cok Litt* 368*b*)

To constitute an act champerty or maintenance according to the English law, it must be something against good policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral and to the constitution of which a bad motive in the same sense is necessary The substance of the transaction must be looked at, and not merely the language of the instruments in question (1860) 8 M I A 170=3 W R P C 33=1 Suth 395=1 Sar 733

Champerty is *confined to civil actions* and does not apply to criminal proceedings (*Gant* v *Thompson*, 18 Cox C C 100)

A contract may be void for Champerty, though it may not strictly amount to a criminal offence. (*Rees* v *De Bernardy*, (1896) 2 Ch 437)

The purchase of a law suit by an attorney is champerty in its most odious form

"So odious in the eyes of the law are these contracts, that they confer no rights on the parties making them, and if one pay out money under them he cannot recover it"

Champion One who fights for another or takes his place in a quarrel. (*Bracton*)

Chance Possibility, hazard, fortune, risk, or "the result or issue of uncertain and unknown conditions or forces, neither understandingly brought about by one's act nor pre-estimated by one's understanding". (*Goodman* v *Cody*, 34 Am Rep. 808)

It has been said that,—"chance, is but the pseudonym of God, for those particular cases which he does not choose to subscribe openly with his own Sign Manual" (*Cited in Stroude's Jud. Dic*)

Chance · Accident "There is a wide difference between 'chance' and 'accident'. The one is the intervention of some unlooked for circumstances to prevent an expected result, the other is the uncalculated effect of mere luck. A shot discharged at random strikes its object by chance, that which is turned from its well directed aim by some unforeseen circumstance misses its mark by accident. (*Cited in 6 Cyc.* 890.)

The word "chance" in the definition of a lottery as "a chance for the distribution of prizes by lot or chance," would have the same meaning as "an accident"

Chance, Hazard. Both these terms are employed to mark the course of future events, which is not discernible by the human eye. With the Deity there is neither *chance* nor *hazard*, his plans are the result of omniscience but the designs and actions of men are all dependent on *chance* or *hazard* *Chance* may be favourable or unfavourable, more commonly the former *hazard* is always unfavourable, it is properly a species of *chance* In business transactions, there is always a *chance* either of gaining or losing In speculation there is a *hazard* of losing In most speculations the *chance* of succeeding scarcely outweighs the *hazard* of losing

Chance medley. A casual meeting or affray, accidental killing of a man in self-defence in a sudden quarrel

Chance verdict. Where a jury agreed that each member thereof should write out the sum which he thought plaintiff was entitled to recover, and then divide the aggregate of such sums by twelve, pursuant to an agreement that the quotient should be their verdict, the verdict was obtained by a resort to the determination of chance (35 *Am St Rep* 180)

Such verdicts are condemned because they are the result of chance and lottery, rather than of the deliberation of the jurors As well put in one case "It substitutes the fluctuating and uncertain hazards of the lottery for the deliberate conclusions of their reflections and interchange of views"

Chancel Railed Eastern part of a church The chancel is the part of the church in which the altar or communion table stands, and where the services of the church are performed. The chancel is called the choir in cathedral and collegiate churches (*Steer, Parish Law, Shaw, Parish Law; Phillimore, Ecc. Law*)

Chancellaria. This was the highest court of judicature in the United Kingdom next to the parliament, a very ancient institution (*Tomlins Law Dict*)

Chancellor Judge or presiding judge of the court of chancery In modern Law, besides being the designation of the chief judge of the court of Chancery, the term is used as the title of several judicial officers attached to bishops or other high dignitaries, and to the Universities. (*Black*)

Chancellor, the Lord. See English Int. Act, 1889 S 12 (1)

Chancellor of the Exchequer. The officer who formerly presided in the Exchequer.

THE LORD HIGH CHANCELLOR is the highest judicial officer of the realm, supreme judge of the Court of Chancery, Keeper of the Great Seal and Privy Councillor.

Chancer (*verb.*) To adjust differences according to principles of equity, as would be done by the Chancery Court. (*Cent. Dict.*; *Bouv.*)

Chancery: "*Chancery jurisdiction*" is a judicial power to hear and determine all cases wherein the law, on account of its universality, could not afford adequate relief.

Chanda Village boundary main survey mark.

Chandai Chauk (*H*) The principal market-place of any considerable city (*Wil Gl* 100)

Chandal Bhata (*C.P*) Land void of cultivation in Chhattisgarth

Chandawand and Pagwand In cases of collateral succession arising under the customary law of the Punjab, where the dispute is as regards the property of a common ancestor of the deceased and of the claimants, if the *Chandawand* rule of distribution prevails the whole-blood excludes the half-blood, if the *Pagwand* rule prevails both succeed together. A.I.R. 1923 Lah. 65. The normal custom in the Punjab undoubtedly prescribes a division according to the *Pagwand* rule, and the *onus* lies heavily upon the person who relies upon the *Chandawand* rule, *i e*, division *per stirpes* Not only is there a general presumption in favour of the division of property per *capita* but there are judgments relating to the jats of Gurdaspur Tahsil in which the rule *Chandawand* was held not to be proved and the rule of *Pagwand* was followed in the matter of inheritance 5 L L J. 212=A.I R 1923 Lah 37

Chandi (*Tam*) A fair, one held at fixed intervals weekly, monthly, annually, the *mela* of Hindustan (*Wil Gl* 100)

Chandua tenure. Nature and incidents of 16 Pat L.T. 858

"Chandul." *See* 9 Cr L.J 254=1 S L R. 8 Cr

Changngatam (*Mal*) (*Sanskrit*) convoy, guard, income of Rajas from granting such guards grants of land to persons liable to such service, companion Is also a kind of vassalage, and is applied particularly to Nayars who have placed themselves in a state of dependency upon some Desavali, Naduvali or Raja. (*Log Mal Man.*)

Changati-Kuri (*Mal*) *Lit* a lottery association a provident club in which the periodical subscriptions are drawn for by lot and each subscriber in turn receives a prize The early prize-winner thus receives a loan, free of interest, and repayable by instalments (*Moore's Mal Law*)

Change Exchange of money against money of a different denomination.

CHANGE (*Verb.*) To exchange, to alter or make different; to cause to pass from one place to another

TO CHANGE, ALTER, VARY We *change* a thing by putting another in its place, we *alter* a thing by making it different from what it was before, we *vary* it by *altering* it in different manners and at different times We *change* our clothes whenever we put on others. the tailor *alters* clothes which are found not to fit, and he *varies* the fashion of making them to suit social conditions. A man *changes* his habits, *alters* his conduct and *varies* his manner of speaking and thinking, according to circumstances.

TO CHANGE, EXCHANGE, BARTER, SUBSTITUTE *Change* is the generic, the rest are specific terms whatever is *exchanged, bartered*, or *substituted*, is

changed, but not *vice versa*. To *change* in respect to persons is to take one for another, without regard to whether they are alike or different, as a king *changes* his ministers, any person may *change* his servants, to *exchange* is to take one person in return for another who is in like condition, as prisoners are *exchanged* in time of war In respect to things, to *change* is to take any thing new or fresh, whether alike or different. Books may be changed, or things may be changed for others quite different, to *exchange* is to take one thing for another, that is, either, of the same kind or equivalent in value, as to *exchange* one commodity for another, one house, or one piece of land, for another To *change* may often be the result of caprice, but to *exchange* is always an act of either of discretion or necessity To *barter* is a species of *exchanging*, namely, the giving of any commodity for others of the same or a different kind; it is confined properly to what passes by way of commerce (as), in dealing with savages to *barter* toys or knives for provisions To *substitute* is to put one person in the place of another for the purpose of doing any service or filling any office, as to *substitute* one for another who has been drawn for the militia

CHANGE IN CIRCUMSTANCES Divorce effects change—not in circumstances—but in status 1933 M W N 734.

"CHANGE OF CITIZENSHIP" means change of one domicile to another, an actual removal from one state to another with intention of abandoning the former place of residence and establishing a new one (5 Fed at p 764)

CHANGE OF DOMICILE Change of residence to a new state or country combined with the animus manendi.

CHANGE OF VENUE Change of the place of trial to another Court or country, transfer of the cause to another court or Judge

"Channel" defined. Ben. Act V, 1864, S 1, Mad. Act, II, 1890, S 3

The word "channel" in the Canal's Act includes any river, canal, khal, nala or waterway, whether natural or artificial (Ben Act V of 1864, S 1)

CHANNEL The bed of a stream of water, the hollow or course in which a stream flows, the hollow bed of running water, a passage way between banks through which flow the waters of the stream, the bed of the stream over which its waters run

MAIN CHANNEL. "The main channel is that bed of a river, over which the principal volume of water flows. (St Louis, etc, *Packet Co* v *Keokuk, etc*, *Bridge Co*, 31 Fed 755, 757)

Chantavila (*Mal*) Market place

Chantry, Chauntry A church, chapel or altar.

Chapari (OR CHUPURI) (Ben. and Assam), moist land liable to inundation and erosion by the river (*Bad Pow* III. 405, 418)

Chapavani (*Karn*) Concealment of lands in order to defraud the revenue.

"Chapel" defined, 37-8 v. c 77, s. 14.

CHAPEL A place of religious worship of the Church attached to a place, college or school, other than a cathedral and a parish church. This is its

Chaplain

proper legal sense (see *Caiger* v. *Islington Vestry*, 1881, 50 L.J.M C. 59) A place of worship of any Christian religious body. The distinction between church and chapel is fading, Chapel is either adjoining to a church, for performing Divine service, or separate from the mother-church, where the parish is wide. (*Tomlins Law Dic*)

Chaplain. A clergyman of a Church who conducts religious service in a chapel.

Chapman. A trader who trades from place to place.

Chapparband A tenant whose home is fixed, a settled resident tenant (*Bad Pow i.* 599)

"Chapter" defined. Act X, 1897, S. 3(9), Bom Act III, 1886, S. 3 (21), Mad. Act I, 1891, S 3 (4), N & O Act I, 1887, S. 2 (4).

CHAPTER (*In Eccles Law.*) A congregation of clergyman under the dean in a cathedral church (*Tomlins Law Dic*)

"CHAPTER" shall mean a Chapter of the Act or Regulation in which the word occurs. [Act X of 1897 (General Clauses), S. 3 (9)]

"Character" defined Act I of 1872, S. 55, *Evpln* (Am Act III of 1891, S 6)

CHARACTER Estimation of a person by his community Particular qualities impressed by nature or habit on a person which distinguish him from others

Character, Reputation *Character* lies in the man, it is the mark of what he is, it shows itself on all occasions *reputation* depends upon others, it is what they think of him A *character* is given particularly a *reputation* is formed generally Individuals give a *character* of another from personal knowledge. public opinion constitutes the *reputation Character* has always some foundation, it is a positive description of something, *reputation* has more of conjecture in it, its source is hearsay. It is possible for a man to have a fair *reputation* who was not in reality a good *character*, although men of really good *character* are not likely to have a bad *reputation.*

Character and Reputation "Character consists of the qualities which constitute the individual, reputation, the sum of opinions entertained concerning him. The former is interior, the latter external

'Character' and 'reputation' are not synonmous character is what the man is morally, while reputation is what he or she is reputed to be Reputation is the estimate which the community has of the person's character."

"Character certificate" (in the Leg. Prac. Act) means that the person certifying as to character is not aware of any misconduct. 1 Ind Cas 334 (335)

Chara-pair (*Karn.*) Duties on grain levied from the peasantry A tax on villages of various items

"Charas," defined. Ben Act V of 1909, S 3, E. B. & A. Act I of 1910, S. 5; U. P. Act IV of 1910, S. 5.

Charbon. Charbon is a disease caused by the infliction upon the body of putrid animal matter containing poisonous bacillus anthrax. (20 *Am. St. Rep.* 748.)

Chargeable

Charcha (*Ben.*) A tenant of a tenant. (*Bad Pow* 1 549)

Charge Charge is the price required or demanded for services rendered, or less frequently for goods supplied It is a word of very general and varied use It also signifies a debt or liability. The word "charge" as a technical word of legal use, conveys the idea of obligation It is also used in the sense of a lien, encumbrance or claim on property. (*See* 30 Mad 426, P C, 15 Cal 492, 10 C P L.R. 48, 29 I C. 869, 14 Cal 687 "The word 'Charge' has however a wider meaning than the words 'Mortgage' or 'Lien'". (*Per* Cur *Emanuel* v *Bridger*, 43 L J Q. B 99 *See* T P Act, S 10 (1).)

CHARGE. (CHARGE IN CRIMINAL LAW.) The expression "charged with" as applied to a crime, is sometimes used in a limited sense, intending the accusation of a crime which preceded a formal trial In a fuller and more accurate sense the expression includes the responsibility for the crime

"CHARGE" includes any head of charge when the charge contains more heads than one (Cr P. Code, S 4)

CHARGE, as used in the Criminal Procedure Code as indicating the whole series of Courts or heads of charge and also as indicating a charge of one specific offence (*Q Emp* v. *Appa*, 8 Bom 200)

CHARGE (AS FORMAL COMPLAINT) Charge signifies an accusation, made in a legal manner of legal conduct, either of omission or commission by the person charged.

"As it is usually used and understood, *'charged with crime'* means something more than suspected or accused of crime by popular opinion or rumour, and implies that the offence has been alleged against the party according to the forms of law"

Charge at Law A charge in an attorney's bill rendering the same subject to taxation

CHARGE (TO JURY) An exposition by the judge to the jury of those principles of law which the latter are bound to apply in order to render a proper verdict on the facts proved at the trial Such an exposition of law by the judge is an authoritative statement of the law, which the jury are bound by their oath and by moral obligation to obey

Charge and Discharge A charge is said to be a thing done that bindeth him that doth it, or that which is his to the performance thereof, and discharge is the removal, or taking away of that charge. (*Termes de Law Ley*, *Tomlins Law Dic*)

Charge or control, in the Employers' Liability Act, 1880 (43 & 44 Vict c 42), S. 1, *Gibbs* v *G W R* (1883), 11 Q B D. 22.

Charge or control of a child *See* Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c 41), S. 23, sub-S. 3.

Charge-sheet. Charge-sheet is the form of sheet on which the officer in charge of a police station or lock-up enters the accusations or charges against persons brought there in custody, whether arrested with or without warrant *See* Ency of the Laws of England, Cr. P. Code, (Act V of 1898), S. 3, Cl (*c*).

"Chargeable" defined Act 1, 1879, s 3, Act 2, 1899, S. 2.

Chargeable with Stamp duty.

Chargeable with Stamp duty" (*See* Act II of 1899 (STAMP), s 2, cl. (6)

"Chargeability" and "assessability". There is a clear distinction between chargeability and assessability The former expression connotes liability to pay tax, the latter expression has reference primarily to the procedure that must be followed in determining the amount which should be levied as tax 12 Lah. 757=33 P.L.R 357=136 I.C 725=33 P L.R. 357=A I.R 1931 Lah 441.

"Charged" The word "charged" in S 218, Penal Code, is not restricted to the narrow meaning of "enjoined by a special provision of law" *Q Emp* v *Deodhar Singh*. 27 Cal 144 *See also* Rat Unr Cr Cas. 298

Charged upon land, in the English Limitation Act, 1832 (3 & 4 Will. 4, c 27), S 1, applies to payments in the nature of tithes imposed on houses in the City of London *Payne* v *Esdaile* (1888), 13 App Cas 613

Charge D'Affaires Persons invested with the affairs of their Government at the seat of a foreign Government, diplomatic agents, envoys, etc

"Charges" *See* 11 C P L.R Cr 10

Charging lien An attorney's lien on clients monies Attorneys have two kinds of liens in their relations with their clients one, a lien on the papers of the client, called a "retaining lien", another on the fund or money which he has recovered as attorney which is denominated as *"charging lien."*

Charging order an order obtained, under English practice, by a judgment creditor to have the stock of the debtor in any public company or funds charged with the debt

Chari Jawar sown close and not suffered to run to seed, but cut unripe, and used as fodder for cattle. In the Lower Doab, a small portion of rent-free land 1 P W R (Cr) 1914=24 I C 980

Chariot "A half coach with four wheels, used for convenience and pleasure" (*Johnson*)

Charitable Purpose In Charitable Endowments Act "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship Act VI of 1890 (Charitable Endowments), S 2

The expression "charitable purpose" has acquired a technical meaning in this (Bombay) Presidency, and it includes all purposes within the meaning of Statute 43 Eliz , C. 4 16 B 217

Per *Mukerji, J* The expression "charitable purposes" in Act XXI of 1860 should be understood in a wide sense If relief of wants occasioned by lack of pecuniary means is charity, adoption of preventive measures to ward off pecuniary wants is also charity. 51 C L J 272=A.I R. 1930 Cal 397

CHARITABLE PURPOSES, technically, and in the eye of a Court of justice, "has a meaning so extensive as to include everything which is expressly described as a 'charitable use' in 43 Eliz. c. 4, s 1, or is within what has been called the equity of the statute, but there is perhaps not one person in a thousand who

Charity

knows what is the technical and legal meaning of the word 'charity'" Per Lord Cairns in *Dolan* v. *Macdermott*, (1868) 3 Ch. App. 678

In the Income Tax Act, 1842 (5 & 6 Vic c 35), sch A, s 61, this term has the legal technical meaning given it by English law *Commissioners of Income Tax* v *Pemsel*, (1891) App Cas 532, and see *Cunnack* v *Edwards*, (1896) 2 Ch 679 (C.A.)

A bequest to an Anti-Vivisection Society is a good exercise of a Power to appoint "for some Charitable Purpose" (*Re Foveaux*, 1895, 2 Ch 501)

The Exemption from Income Tax of property devoted to "Charitable Purposes," does not require the ingredient of Poverty in the objects of those Purposes, (1891 A.C. 531.)

"Charitable and religious purpose" The words "charitable and religious purpose" in a deed of wakf must be understood from a Mussalman and not from an English point of view. *Meer Mahomed Israil Khan* v *Sashti Churn Ghose*. 19 C. 412

Charitable Trust. Trust for charitable purpose; charitable trusts are Public trusts. See *Att Gen* v. *Webster*, (1875) L R 20 Eq 483, *Fell* v. *Official Trustee of Charity Lands*, (1898) 2 C 44 (C A), *Re Hunter*, (1897) 2 Ch 105

Charitable trusts are those created for the benefit of an unascertained, uncertain and sometimes fluctuating body of individuals in which the cestui que trust may be a portion or class of a public community, as for example the poor or the children of a particular class or caste or community town or district

Charitable Uses. The laws against devises in mort main do not extend to any thing but superstitious uses, it is therefore held, that a man may give lands for the maintenance of a school, an hospital, or any other charitable uses (*Tomlins Law Dic*) Such uses may be applied to almost anything that tends to promote the good and well-being of social men *Re Church Patronage Trust*, (1904) 2 Ch 643 (C A).

Charity "In the broadest sense charity includes whatever proceeds from a sense of moral duty or from humane feelings towards others, uninfluenced by one's own advantage or pleasure" (*Doyle* v. *Lyun*, 19 Am. Rep 431) In *Jones* v *Williams*, *Ambll* 651, Lord Camden defined a charity to be "a gift to a general public use, which may extend to the poor as well as to the rich' It embraces all that is usually understood by the words "benevolence," "philanthrophy" and "good will." A gift to a home for the friendless is a gift to charity.

This "word, in its widest sense, denotes all the good affections men ought to bear towards each other, in its most restricted and common sense, Relief of the Poor In neither of these senses is it employed in the English Chancery Courts. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz c 4) Those purposes are considered charitable which that statute enumerates, or which by analogies are deemed within its spirit and intendment" (*per* Grant, M R, *Morice* v. *Dhurham Bp.*, 9 Ves. 405)

"Charity in English law is a highly technical term. The method employed by the English Courts is to

Charity Commission

consider the enumeration of charities in the Statute of Elizabeth, bearing in mind that the enumeration is not exhaustive. (*See also* the Indian Charitable Endowments Act) Institutions whose objects are analogous to those mentioned in the Statute are admitted to be charities, and, again, institutions which are analogous to those already admitted by reported decisions are held to be charities As generally understood, to be a charity, there must be some public purpose, something tending to the benefit of the community"

The term "charity" under the Hanafi School of Mahomedan Law has a more general import than under the English Law A wakf of property by a Mahomedan to defray the expenses of the poor, the fakirs, the orphans, the needy and the indigent, and to defray the expenses of good deeds, creates a trust for public purposes of a charitable nature. (32 All 499=7 A L J 420=6 I C 188)

CHARITY, in 16 & 17 Vict c 137, S 66 (Charitable Trusts), applies to every institution endowed for charitable purposes, "even though the constitution of the charity or the *corpus* of the property should be abroad" (*Re Duncan*, (1867), 2 Ch App. 392, see *Cunnack* v *Edwards*, (1896) 2 Ch 679 *See* Duke on Charitable Uses, Highmore on Mortmain.)

CHARITY AND BENEVOLENCE. "Charity" is not synonymous with "benevolence" There can be no charitable purpose which is not also a benevolent purpose But there may be a benevolent purpose which is not charitable in the strictly legal sense of the term.

Charity Commission (*in England*) Officers appointed for superintendance of charitable institutions under statutes regulating such institutions some of principal English statutes regulating the Charity Commission are The Charitable Trusts Act, 1853, 16 & 17 Vict c. 137, the Charitable Trusts Amendment Act, 1855, 18 & 19 Vict c 124, the Charitable Trusts Acts, 1860, 23 & 24 Vict. c 136, 1862, 25 & 26 Vict c 112, 1869, 32 & 33 Vict c 110, 1887, 50 & 51. Vict c 49, the Charitable Trusts (Recovery) Act, 1891, 54 Vict 17, and the Charitable Trusts (Places of Religious Worship) Amendment Act, 1894, 57 & 58 Vict. c. 35.

Charity Property The purpose to which the property is dedicated, and not the source from which it is derived will determine whether or not any property is "charity property," (*Re St Botolph Without*,56 L.J Ch 691)

Charity School means, "School primarily intended for the supply of gratuitous education" (*Per* Charles, J., *Southwell* v *Hollway College*, 1895, 2 Q B 487)

Charivari. A mock serenade of discordant noises A vile or noisy music made with horns, bells, etc., in derision of some person or event In *Wisconsin* v. *Minaghan*, 23 Am St Rep. 428· it was laid down that "A charivari" is an unlawful and riotous assembly, wholly indefensible in law and morals, and reprobated by every well-disposed person"

Charnavan. (*Mal.* also called Menon.) A member of a section of the Nayar community who used in days gone by to serve as attendants on Rajahs and nobles. (*Moore's Mal. Law*)

Chase.

Charsa: (*H.*, a large leather bag to draw water from a well, lifted by a rope drawn by oxen. (*Bad.. Pow.* ii 9.)

Chart A map, a draft or projection on paper of some part of the earth's surface, a sheet on which information is exhibited in a methodical or tabulated form (as) a historical chart, a genealogical chart, a chart of the Kings of England (*Cent Dict.*) Navigator's sea map showing rocks, depths, etc

Charta De Foresta A collection of Forest laws made in the reign of Henry III

Charta de non ente non valet (*Co Litt. 36a*) A maxim meaning "A charter or deed concerning a thing not in existence is not valid"

Charter A written grant of rights by a sovereign or state, of certain privileges or rights, which, in case of doubt, is to be construed strongly against the grantee, but not against the state A grant made by the sovereign, either to the whole people, or to a portion of them, securing to them the enjoyment of certain rights (*Bouvier*) A grant of concessions, powers, privileges by the Crown to individuals, companies, or institutions Such an organisation does not come under the Indian Companies Act *In Mercantile Law*, to hire a vessel for a voyage.

Chartered accountant Member of chartered institute of documents.

Chartered Ship A ship hired for freight, a ship which is the subject-matter of a charter-party

Charterer One who by contract acquires the right to use a vessel belonging to another One who charters or hires or engages the whole or part of a ship under an agreement of charter-party for a voyage

Charter-party "is an Indenture of Covenants and Agreements made between Merchants and Mariners concerning their Sea Affaires. (*Termes de la Ley.*) "Charter parties of affreightment settle agreements, as to the cargo of ships, and bind the master to deliver the goods in good condition at the place of discharge, according to agreement, and the master sometimes obliges himself, ship, tackle and furniture for performance" (*Tomlins Law Dic*) It is a contract by which a ship, or some principal part thereof, is let to a merchant, for the conveyance of goods on a determined voyage to one or more places, a contract for the entire or some principal part of a ship for the conveyance of goods on a determined voyage, or for employment in other trade, an agreement by indenture whereby the owners, etc., of a ship and the freighters covenant with each other that such a ship shall take in such a lading, and carry the same to such a place, etc, in consideration of which the freighter is to pay so much. (*Abbott Shipping*; *Carrier Carriage by Sea*, *Leggett*, *Charter Parties*, *Scrutton Charter Parties.*)

Charwala Graziers.

Chasa (*Chittagong*), a tenant under a taluq holder. (*Bad. Pow.* i. 607)

Chase. An enclosed park land. *A Chase* "is of a middle nature between a Forest and a Park,—less than a forest and yet of a larger compass, and having greater diversity of keepers and game, than a Park." (*Termes de la Ley.*) It differs from a Forest

Chaste.

in that it is not subject to the forest laws. (*Chitty, Prerog*, 137).

Chaste Pure from all unlawful commerce of sexes Applied to persons before marriage, it signifies pure from all sexual commerce, undefiled; applied to married persons true to the marriage bed. "In language, pure, genuine, uncorrupt" (87 *Am Dec.* 401)

Chaste with respect to a wife means (according to Hindu Smritis) one "who is well restrained and who by reason of her continence is competent to perform vedic and smarta ceremonies living with her husband"

Chaste Chaste Character Where a statute makes the seduction of a female of "previous *chaste* character" an offence under law, it means and refers to actual personal virtue If a female had previously fallen from virtue, but had subsequently reformed and become chaste, she is within the meaning of the statute Though a woman has fallen, yet, if at the time of the seduction she is reformed, she is of "chaste character" In this respect, the legal significance of "chaste" or "chaste character", is not the same as is usually or ordinarily attached to the term

Chaste wife The expression "chaste wife" in Hindu Law means *sadhvi, i e*, "she who slights not her lord, but keeps her mind, speech and body to him." 7 I C. 543=6 N L R 103

Chasten To correct by punishment, to purify from errors on faults

To CHASTEN, To CHASTISE Chasten has most regard to the end, chastise to the means, the former is an act of the Deity, the latter, a human action God chastens his faithful people, parents chastise their children, afflictions are the means which God adopts for chastening those whom he wishes to make more obedient to his will, stripes are the means by which offenders are chastised

Chastisement Correction, punishment No chastisement is legal unless it is given under authority of a competent Court or by a person having some recognised punitive authority over the person chastised

There is a tradition, in England, supported by some dicta, that a HUSBAND MAY CHASTISE HIS WIFE with a rod not thicker than his little finger It seems to have originated inveterate ancient and modern practice, but, like all other forcible modes of exercising marital authority, is now recognised as illegal [*R* v. *Jackson*, (1891) 1 Q B 571]

It seems to have been legal at common law to chastise *servants*. (See *Mawgridge's Case*, 1706, 16 St. Tri 57.)

MASTERS may apparently still chastise *apprentices* for negligence or disobedience, provided that the chastisement is moderate and given by the master himself (*Coomb's Case*, 1613, 9 *Co Rep* 76*a*, *Hallwall* v *Counsell*, 1888, 38 L.T. 176).

PARENTS AND GUARDIANS, or persons in *loco parentis*, are entitled to chastise children with moderation. The occasion must be sufficient, and the implement and punishment must be of a kind suited to the misdeed for which the correction is inflicted and the age of the child, otherwise the assault cannot be justified.

Chattel: Chattels.

Occasionally a Court may discharge a child charged with an offence, on condition that the parent whips it or lets a police-officer whip it (*R.* v. *Hopley*, 1860, 2 F. & F. 202).

SCHOOLMASTERS AND TEACHERS are entitled to chastise their pupils while under their care and discipline to the same extent as parents, whose delegated authority they are often said to exercise (*Cleary* v *Booth*, (1893) 1 Q B 465)

THE POOR LAW AUTHORITIES, and managers of *reformatories* and *industrial schools* have also the same power as a parent with respect to punishment, subject to the regulations of the Government.

The MASTER OF A SHIP may inflict reasonable corporal punishment on a seaman for disobedience to reasonable and lawful commands, or for disorderly, riotous and insolent conduct while the ship is at sea, or in a foreign port or river, (*The Agincourt*, 1824, 1 Hag Adm 271 *Lamb* v *Burnett*, 1831, 1 Comp. & J 291)

CHURCHWARDENS and other *church officers* in England are entitled to whip little boys who play in church. In old fashioned places they still do so, but legality of their action is questionable.

PEACE OFFICERS have no legal authority to chastise any one except under sentence of a judicial authority (*Ency of the Laws of England*) For further authorities on this subject [*See* Bacon, Abr, tits "Baronet Feme," F, "Master and Servant,", 1 Hale, P.C. 453, 474, Hawk, P C, Bk 1 c 29 S 5, c 60, S 24, Fost Crown Law 262, Arch, Cr Pl (23rd ed) 795, 837, Macdonell on Master and Servant 32, 33, Kay on Shipmasters and Seamen, 2nd ed, S 542, Eversley, Domestic Relations, 2nd ed, 169, 460, 846, 860].

Chastity Chasteness. virtuous conduct, that virtue which prevents the unlawful commerce of the sexes, it relates to the question whether a woman has improper sexual relations with a man or not.

Chastity, Continence These two terms are equally employed in relation to the pleasures of sense, both are virtues, but sufficiently distinct in their characteristics *Chastity* prescribes rules for the indulgence of these pleasures, *continence* altogether interdicts their use. *Chastity* extends its views to whatever may bear the smallest relation to the object which it proposes to regulate, it controls the thoughts, words, looks, attitudes, food, dress, company, and in short the whole mode of living, *continence* simply confines itself to the privation of the pleasures themselves it is possible, therefore, to be *chaste* without being *continent*, and *continent* without being *chaste* *Chastity* is suited to all times, ages and conditions, *continence* belongs only to a state of celebacy the Christian religion enjoins *chastity* as a positive duty on all its followers; the Romish religion enjoins *continence* on its clerical members, old age renders men *continent*, although it seldom makes them *chaste*

Chathurbhagam—explained. *See* 78 I C. 287.

Chatram (*M*) a covered place or building where refreshments are given gratuitously (*Bad Pow* III. 81.) A house or building dedicated as a resting place for pilgrims or travellers.

Chattel Chattels. Chattel is any article of personal property. It consists of movable property

Chattels and goods.

such as furniture and household goods generally, as distinct from fixture or land.

"There is no term broader than 'chattel' The term in English law includes all kinds of property except the freehold and things which are parcel of it" Blackstone, in his commentaries (p 385) says "that things personal by our law not only include things movable, but also something more, the whole of which is comprehended under the general name of 'chattels', which Sir Edward Coke says is a French word signifying 'goods' "*Chattels*," in a Bequest includes Debts (*Ford's Case, 12 Rep.* 1).

Chattels and goods "Chattels" is more comprehensive than "goods" and includes animate as well as inanimate property. (82 *Am. Dec* 302) "Every movable thing which can be weighed, measured or counted is included under the general term 'chattels,' which Lord Coke says is a French word signifying 'goods'"

Chattel Interest An interest in corporeal hereditaments, not amounting to a freehold, as distinguished from a free hold interest, such as an estate for years in land (*Burrill Law Dict , 2 Kent Comm* 342, *Washhur Real Prop* 310, *Stearns Real Actions* 115).

Chattel mortgage. A transfer of *in* an interest in personal property, as security for the payment of money or performance of some obligation In a chattel mortgage there is a transfer of personal property, or of some interest therein, by the mortgagor to the mortgagee as security The mortgagee acquires, not the legal title to the property, but merely a lien thereon, the legal title remaining in the mortgagor

CHATTEL MORTGAGE AND PLEDGE DISTINGUISHED A chattel mortgage is technically distinguished from a pledge in that it is in form a sale of personal property, which passes title to the mortgagee with a condition that, if a debt which it is given to secure is paid, the sale shall be void while a pledge contains no words of sale, and does not pass title, but only authorises the pledgee to sell the property in case of default.

Chattel or valuable security, in the Larceny Act 1861 (24 & 25 Vict c. 96), s 75, does not include a policy of insurance which has become due *R.* v *Tatlock* (1877), 2 Q B.D 163

Chattels personal Things movable, which may be carried about by the owner, such as animals, household stuff, money, jewels, corn, garments and everything else that can be put in motion and transferred from one place to another (*Bouvier*)

Chattels real are such chattels as concern, are annexed to or savour of the reality, as, terms for years of the land.

Chaubisi *See* Chaurassi

Chaudhari (*P.*), head of a tappa or group of villages (Sikh times). (*Bad, Pow.* ii. 541.); A rural nobleman, a land-officer in ancient times: sometimes having considerable influence (*Bad Pow see* i 526) now applied to the headman of a guild or trade, etc. In Moghul times the executive headman of a pergana many of them became proprietors in several places (*Bad. Pow* i. 254, 7).

Cheat.

Chaudmedley. The killing of a person in an affray, in the heat of blood, and thus distinguished from chance medley, which is killing in a casual affray in self-defence

"Chaukidar" defined U. P. Act 3, 1892, s 2 (8).

Chaukidar (*Persian*). Any one in charge of a chauki; a watchman especially a village watchman.

"CHAUKIDAR" in the U.P. Village Courts Act mean a village policeman appointed under the North-Western Provinces Village and Road Police Act, XVI of 1873, or under the Oudh Laws Act, XVIII of 1876 (U P Act III of 1892, s. 2, cl 8)

"Chaukidari Chakran lands" defined. Ben. Act 6, 1870, s 1.

"Chaukidari Fund" defined. Ben. Act 6, 1870, s. 23

Chaupal (*N W P.*), public place for meeting and business in a village may be a roofed building or a raised masonary platform under a tree the pandal or the chavadi, or kovil of South India (*Bad. Pow*)

Chaurassi, a group of eighty-four villages, supposed to be a relic of a tribal grouping, or of an administrative division of the ancient kingdom, we hear also of smaller groups, *bealisi* (of forty-two) and *chaubisi* (of twenty-four). (*Bad. Pow.* i, 179, ii, 124-125, 668, 674)

Chauri (*Berar*), village place of assembly (*Bad Pow.* iii *383.*)

Chauth (*H.=one-fourth*), share of the revenue granted to or exacted by the Marathas before they took the whole revenue, or assumed the direct government (*Bad Pow* i. 273, iii 205 *note*)

Chavadi (*M*), same as Chauri Place where villagers assemble. (*Bad. Pow.* iii 88)

"Chavadi" defined. Bom Act 1, 1889, s 4 (*c*)

Chaver Mal. Lands in Malabar granted by Rajas to the families of deceased heroes who fell in performance of solemn vows to fight till death against the enemy If any escaped this conflict they were excommunicated their caste and obliged to flee from the country

Chavudai Land held on payment of one-fourth of the nett produce to the State.

Chavulu, Chaulu, Chaudu or **Chaulugadde** (*Karn*) Sterile land, Saline soil in which corn will not grow, unless much watered, barren dry cultivation.

Chavulunela (*Karn.*) Barren unproductive land.

Chawadi A public office, a lodging place for travellers

Chawati. The Malayalam form of a Chawadi.

Cheat Trick, fraudulent device, a swindler, an imposter A Cheat in its ordinary meaning "is a deceitful device for defrauding another of his known right, contrary to the plain rules of common honesty. (*Tomlins Law Dict* ; 1 *Hawk. P.C Ch.* 71, 8 *ed, Book II, Ch 23, Sec.* 1; *Jacob.*), "the fraudulent obtaining of the property of another by deceitful practices it does not include mere false pretenses. (*East*, 818.)

"Cheating".

To CHEAT, DEFRAUD, TRICK These terms convey the idea of practising deception, but in different ways One *cheats* by direct and gross falschood or artifice, one *defrauds* by a settled plan or contrivance, one tricks by a sudden invention *Cheating* and *tricking* are resorted to in the common dealing of men, both may be equally low in their ends, but may be equally base in their means Tricking requires ingenuity, which is not wanted in the practice of cheating *Defrauding* applies to the more serious concerns of life, and for the most part involves a breach of confidence, as to *defraud* one's creditors

"CHEAT AND DEFRAUD", mean "every kind of trick and deception, from false representation and intimidation to suppression and concealment of any fact or information by which a party may be induced to part with his property for less than its value or to give more than its worth for the property of another"

"Cheating" defined Act 45, 1860, ss. 415 to 420

CHEATING "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat" *Explanation*—A dishonest concealment of facts is a deception within the meaning of this section" (Penal Code, S 415)

In *People* v *Cummings*, 114 Cali 437, 439 it is said "Cheating at common law was a fraud perpetrated, by means of a false symbol or token, such as selling goods by false weights or measures, or other like act or thing of a character calculated to deceive and defraud the public or the individual to their pecuniary injury, and against which ordinary prudence could not guard"

Cheating by personation A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is *Explanation*—The offence is committed whether the individual personated is a real or imaginary person (Penal Code, S. 416)

Cheb, a clan of Rajputs (Pj) (*Bad-Pow* II 670)

Check (*Noun*) (*See* cheque) A written order on a bank directing it to pay a certain sum of money

Check (*Verb*) To repress, moderate, rebuke

To CHECK, CHIDE, REPRIMAND, REPROVE, REBUKE. The idea of expressing one's disapprobation of a person's conduct is common to all these terms. A person is *checked* that he may not continue to do what is offensive, he is *chidden* for what he has done, that he may not repeat it To *chide* marks a stronger degree of displeasure than *reprimand* and *reprimand* than *reprove* or *rebuke*, a person may *chide* or *reprimand* in anger, he *reproves* and *rebukes* with coolness great offences call forth *chidings*, omissions or mistakes occasion or require *reprimand* irregularities of conduct give rise to *reproof*; and improprieties of behaviour demand *rebuke*. *Chiding* and *reprimanding* are employed for offences against the individual and in cases where the greatest disparity exists in the station of the parties, a *child* is chid by his parent, a *servant* is reprimanded by his master. *Reproving* and *rebuking* have less to do with the relation or station of the parties.

Chemist Druggist: Apothecary.

Check book. A book containing blank checks upon a bank

CHECKING A VOTER'S LIST is to make a mark against names etc., in going over the list of voters

CHECKING ACCOUNTS is to compare with vouchers to ascertain the correctness or authenticity of items of account

Cheduru (*Tel*) An allowance of grain made to the ryots in compensation of the right of gleaning.

Cheese In the law relating to the sale of adulterated foods (as) cheese or butter, the terms "butter" and "cheese" mean the products usually known by those names and which are manufactured exclusively from milk or cream, or both with salt, and with or without coloring matter.

Chekku (*Tel*) Grain derived from extra measure.

Chekku (*Karn*) Half-a-bullock load.

'Chela' *See* 134 I.C. 484=32 P.L R. 589=A I R 1931 Lah 385

Chelike (*Tel*) A field left fallow, a field after the crop has been cut and cleared.

Chellu chiti (*Tel, Karn*) A receipt.

Chemical. Any substance used for producing a chemical effect, or one produced by a chemical process It also denotes a chemical agent prepared for scientific or economic purposes Drinks like Soda or Lemonade are not "chemicals"

Chemical analysis The court takes judicial notice that to analize a beverage requires knowledge of chemistry as well as instruments and appliances not in common use (*State* v *Powell*, 41 N C 780, *Bouv.*)

Chemically pure. "Chemically pure" means absolutely pure (69 *Fed* 597, 608) It means a much greater degree of purity than that required for trade and commercial purposes

Chemical Manure—The manufacture of chemical manures is liable to cause a nuisance It can therefore only be carried on subject to the statutory restrictions affecting offensive trades Chemical manure works are specifically included in the schedule to the English Alkali, etc. Works Regulation Act, 1906 (*Ency. of the Laws of England*)

Chemist "A Chemist is one who sells medicines which are asked for", he does not select the medicines (per *Cresswell, J*, *Apothecaries Co* v. *Lotinga*, 2 Moo & R. 500) "A Chemist may prepare and vend, but not prescribe or administer, medicine" (per *Best, C J*, *Allison* v *Haydon*, 4 Bing. 621).

Chemist Druggist: Apothecary. A chemist (as distinguished from an "apothecary") is one who sells and prepares drugs prescribed by others; he does not prescribe drugs himself, which the apothecary does The English Pharmacy Act, 1868 defines "chemists" and "druggists" for the purposes of the

Chengavarusa

Act as all persons who carry on the business of a chemist and druggist, in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners, also all assistants and associates who shall have been duly registered under or according to the provisions of the Pharmacy Acts."

Chengavarusa (*Tel*) A land roll, a list of farmers and fields

"Cheque" defined Act 1, 1879, s 3, Act 26, 1881, s. 6; Act 2, 1899, s. 2.

CHEQUE."A Cheque is a Bill of Exchange drawn on a Banker, payable on demand"(S. 73, Bills of Ex Act 1882). It is an order on a bank purporting to be drawn upon a deposit of funds for the payment of a specified sum of money, on presentation, to the person named in the document, or to him on his order or to the bearer It is made payable instantly on demand

"Cheque" in the Stamp Act means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand (Act II of 1899, S 2, cl. (7), Neg Ins. Act, 1881, S 6)

Cheque Book A book containing blank cheques no a particular bank or banker with an inner margin, called a "stub" on which to note the number of each cheque its amounts and date and the payee's name andthe memorandum of the balance in bank.

Cheques Crossed A cheque is crossed for protection The crossing is usually done by the drawer, who writes, "& Co," between two parallel transverse lines across the face of the cheque after which the cheque can only be realised by being passed through a bank The simple "& Co," crossing is called "general", when the name of a particular bank is added it is called "special." (2 *Steph. Comm* 118, *Note C*)

"Cheque crossed generally" defined Act 26, 1881, s 123.

"Cheque crossed specially" defined Act 26, 1881, s. 124

Cheque to bearer, a cheque payable to the person holding it without requiring endorsement

CASHIER'S CHECK. A "cashier's check" so called, differs radically from an ordinary check The latter is merely a bill of exchange drawn by an individual on a bank payable on demand, or, in other words, it is an order upon a bank purporting to be drawn upon a deposit of funds for the payment of certain sum of money to a person named or to order or bearer on demand. As between himself and the bank the drawer of the check has the power of countermanding his order of payment at any time before the bank has paid it or committed itself to pay it A cashier's check is of an entirely different nature It is a bill of exchange drawn by the bank upon itself, and is accepted by the act of issuance and, of course, the right of countermand as applied to ordinary checks does not exist as to it *Drinkall* v *Movius State Bank* 95 Am St Rep. 693.

Memorandum Cheque. A cheque given by a borrower to a lender, for the amount of short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due This understanding is endorsed by writing the word "Memo" on the cheque.

"Chief".

Cherra (*Mal.*) Artificial reservoir constructed for irrigating lands

CHERA, ancient name of a country (*Bad-Pow* i 156)

Cherakkal (*Mal.*) Land appropriated for the support of Rajahs and temples (*Moore's Mal. Law*)

Cheralabham or cherulabham. (*Mal.*) Means generally the same as *Kolulabham* but more literally the profit of the earth or soil—the cultivator's share. (*Log Mal. Man*) The cultivators share in the profit from, or produce of, a piece of land (*Moore's Mal. Law*)

Cherujanmam (*Mal*) The hereditary rights and perquisites claimed in their respective villages by the village astrologer, carpenter, goldsmith, washerman, barber, etc (*Moore's Mal Law.*) These hereditary rights and perquisites were claimed in Malabar within certain defined local limits by, (1) the Kanisan (astrologer) for feasts, (2) the Asari (carpenter) for dedication of houses, (3) the Tattan (goldsmith) for marriages, (4) the Malayan (musicians and conjurors) for devil feasts, (5) the Vannan (Washerman), (6) the Velan (midwife, accoucheur), (7) the Vilakkattaravan (barber), etc (*Log. Mal Man*)

Cherulabhom (*Mal*) See cheralabham cultivation share of the profits of cultivation. (*Moore's Mal Law*)

Cherumakkal (*Mal*) Members of an inferior caste in Malabar, who are, as a rule, toilers attached to the soil (*Moore's Mal. Law*), Slaves in general. It is supposed to be derived from Cheru-soil, and makkal-children children of the soil or sons of the earth Others say from Cheru, small, and makkal, children, indicating that they are to be treated as young children by their masters (*Log Mal Man*)

Cherumanakaran (*Mal*) An inferior revenue officer.

Cherumanam (*Mal*) Collection of revenue, the duty of an inferior collector.

Chette (*Karan*) Half a bullock load

Chewara or Chewarra. Lands situated at the extreme boundaries of a village.

Chhatank (*Vulg. Chittack*), the 1/16 part of a sir (seer), which is roughly 2 lbs av (*Bad Pow.*)

Chhuthi (*H.*),='let off,' any allowance or rebate (Bihar) (*Bad-Pow* i. 605.)

Chichar, a class of land in Akbar's time. (*Bad. Pow* i 275.)

Chicory A substance used to some extent to flavour coffee or to mix with coffee; Sometimes, as a substitute for coffee, for purposes of economy

"Chief" defined Act 15, 1888, s 2 (2). *See* Bur. Cook (4th Ed.), p. 659.

CHIEF A principal thing, as distinguished from that which is incidental or subordinate. (*Burrill L. Dict.*)

Chief baron.

The meaning of this word is often controlled by the context The word is used in several Acts, and is there defined to suit the subject-matter of each Act(as) chief constable, chief clerk, chief Secretary, chief Magistrate, chief Engineer; Chief commissioner; chief controlling Revenue authority, chief Medical Officer, etc (*Stroude*)

Chief baron. The name by which the presiding judge in the Court of exchequer division of the High Court of justice in England is known. (3 *Bl Comm.* 44)

"Chief Commissioner" defined. Act III of 1867, S 1, Act XXIV of 1870, S. 2; Reg IV of 1872, S 1, Reg. III of 1890, S. 96 (1), Reg V of 1910, S 2 (*u*).

"Chief Controlling Revenue-authority" defined. Act VII of 1870, S 2, Act III of 1879, S 7, Act XVIII of 1888, S 4, Act II of 1899, S 2 (8).

"Chief Court" defined . P. Act I of 1898, S 2 (8)

Chief Customs Authority Defined in XIX of 1924, S 2, VIII of 1878, S 3.

"CHIEF CUSTOMS-AUTHORITY" defined Act VIII of 1878, S 3 (*a*), Act II of 1896, S. 3 (2)

"Chief Customs-officer" defined. Act VIII of 1878, S 3 (b), Act X of 1887, S 5 (6), Act XIV of 1895, S. 5 (4)

"Chief Forest officer" defined Reg V of 1890, S 2 (4)

Chief Inspector (*of Boilers*) defined. Boilers Act (V of 1923), S 2

"Chief Justice" defined Act XVII of 1864, Ss 1, 34 (1) (*v*), Act XV of 1865, S 2, Act V of 1898, S 4 (*d*), Act XIV of 1891, S. 3, Government of India (High Court Judges) Order 1937, Para II; Government of India (Federal Court) Order, S 1, III of 1936, S 2

CHIEF JUSTICE is the presiding or principal judge of a High Court (*See* Crim Pro Code, 1898, S 4)

"Chief Justice" in the Parsi Marriage Act includes Senior Judge, Act XV of 1865 (Parsi Marriage and Divorce), S 2

"Chief of Amb" defined Reg. II of 1900, S 2 (*c*)

"THE CHIEF OF AMB" means the person for the time being appointed and recognized by the Government as the Chief of Upper Tanawal [Regn II of 1900 (Hazara U. Tanawal), S 2, Cl (c)]

"Chief Officer of Customs" defined 57-8 V c 60, S 742, Mad. Act II of 1905, S 5 (2)

"Chief Revenue Authority" defined Act XVIII of 1888, S 4, Act XII of 1896, S 3 (*a*), Act X of 1897, S 3, U. P Act IV of 1910, S 3 (4).

Chief Secretary, when used with reference to Ireland, meant the Chief Secretary to the Lord Lieutenant for the time being English Int Act, 1889 (c 63), S. 12 (10)

Chigaravantige (*Karn.*) A tenure of land in Mysore by shares, in which the whole village was parcelled out in lots of equal value, each containing a due proportion of wet, dry and garden land.

Chila. (*H*) A slave brought up in the house; a favorite slave; a pupil. (*Mac Naughten MhnLaw*)

"Child", "Children".

Chilavu The English word "maintenance" is not a correct equivalent of the Malayalam word "chilavu" of which it is generally understood to be a translation The term means "expenses" and is comprehensive in its significance. (49 Mad. 407=1926 M. W.N. 413=24 M L W 269=95 I.C 401=1926 Mad. 723=50 M L J 434)

"Child", "Children" defined Act XIII of 1855, S. 4, Act X of 1865, Ss 86, 87; Act XXI of 1870, S.6, Act III of 1911, S. 17 (4), Act XV of 1881, S. 2, Act VIII of 1901, S. 3 (*b*), Mad Act IV of 1896, S 2, Act XXXIX of 1925, S 99, Act XIX of 1929, S 2, Act XXV of 1934, S 2, Act II of 1933, S. 2.

CHILD, CHILDREN. Irrespective of parentage, persons under lawful age, as distinguished from adults, infants, (*Anderson L Dict*), Minors, persons of tender years, young persons, youths, the young of the human species, generally under the age of puberty, without distinction of sex (*Black L Dict*), young persons of either sex, metaphorically persons who exhibit the character of very young persons With respect of parentage, sons and daughters of whatever age, children born in wedlock, descendants of the first degree (*Webster*), male or female descendants of the first degree, immediate descendants (*Cyc*)

These words are generally used as synonymous with Infants, or minor persons under the age of majority (*R* v *St John, Beadwardine*, 5 B & Ad 169)

But the context may show that these words have been used, by mistake, for "Descendants," or something else, and so they would sometimes receive another construction than their ordinary one. (*Morgan* v *Thomas*, 51 L J Ch 771)

The word children "is applied to infants from their birth, but the time when they cease ordinarily to be so called is not defined by custom" A foetus not bigger than a man's finger but having the shape of a child has been held to be a "child" *Prima facie* the word *"child"* or *"children"* means legitimate child or children, bastards are not within the meaning of the term "child" or "children" "The rule cannot be stated too broadly that the description 'child', 'son', 'issue' and every word of that description must be taken *prima facie* to mean legitimate child, son or issue" (80 Am St Rep 625) At common law, the words *"child"* and *"children"* mean only legitimate child and children [*Kent* v *Barker*, 2 Gray (Mass) 535, 536] The word "children" means those born in lawful wedlock, and such, indeed, has been its legal meaning in every known system of law. (*Matter of Wardell*, 57 Cali. 484, 491) In *Hill* v. *Crook*, L.R 6 H L 265, 280, 42 L J Ch 702 it is said "The term 'children' in itself means only children lawfully born, and must be so understood, unless there is in the will something sufficient to show the contrary" "According to natural law, the "children" of a man mean the issue begotten by him, and the criteria of this condition are, the being born of a wedded wife or wives, or if born of other women, the being recognized and acknowledged as children by their putative father. Where the word "children" is used in a will or any other document, the question whether it includes the illegitimate children is to be decided with reference to the context showing the intention of the executant." (5 B.L.R. 1 (P C)=13 W R. (P.C.) 41=13 M.I.A. 277.) The reference to

"Child", "Children".

children in section 6, Married Women s Property Act (III of 1874), is incidental and the only children contemplated by it are children born of marriage of the kind to which the rest of the Act relates (*per* Richardson, J). (20 C L J. 44=18 C W N 1335)

CHILDREN AS MEANING GRANDCHILDREN. "The words *'Child or Children'* primarily mean, issue in the first generation only—Sons and Daughters—to the exclusion of grandchildren or other remoter descendants" (*per* Ld Blackburn, *Bowen* v *Lewis*, 54 L.J.Q B 68) In *Butler* v *Ralston*, 69 Ga 485, 489, it is said: "In the ordinary and proper sense of the word "Children" it means the immediate descendants of a person, as contradistinguished from issue but in its legal signification, as applied to testamentary instruments (unless the manifest intention requires a different construction) it is extended to *all the descendants, whether mediate or immediate of the ancestor"* (See S. 99, Suc Act, 1925) If there be no child, grandchildren may take under a bequest to "children" (*Crooke* v *Brookeing*, 2 Vern 108) But *"Grandchildren"* are rarely called "children" (*Matter of Chaoton*, 104 Mich 11, 12.) *"Children"* might mean "grand children" where there could be no other construction, but not otherwise (*Ame Cyc*) Child, in the Poor Relief Act, 43 Eliz c 2, S 7, does not include grandchild. *Maund* v *Mason*, (1874), L R. 9 Q B 254.

CHILDREN BY ADOPTION may be included in the term "children" They are the legal children of their adoptive parents. (*Power* v *Hafley*, 85 Ky 671, 675, 9 Ky L Rep 369, 4 S W. 683.) A son adopted after the death of the deceased is not a "child" within the meaning of the term "child" in the Fatal Accidents Act (XIII of 1855) (25 P W R 1914=22 I C 846)

CHILDREN MADE LEGITIMATE BY MARRIAGE of their parents may be included in the term "children" (*Power* v *Hafley*, 85 Ky 671, 675, 9 Ky L Rep 369, 4 S W 683; Evidence Act, S. 112)

BEQUEST TO "CHILDREN" *prima facie* means, if no intervening interest be given, a bequest to those who may be living at the date of the testator's death *Krishnarao Ramchandra* v *Benabai*, 20 Bom 571 (591).

A bequest to "children" should not be construed as bequest to "sons" only (20 B 571)

In the Cri Pro Code, S 488, child means son or daughter (6 Ind Cas 959) Per *Chevis, J*

CHILD *In the law of negligence*, and in laws for the protection of children, etc , "child" is used as the opposite of "adult". (*Black L Dict*)

CHILDREN *distinguished from Descendants.* "Descendants" is ordinarily considered a more comprehensive word than "children" (*Matter of Chapoton*, 53 Am St Rep 454)

———*distinguished from Heirs* "Heirs" is not synonymous with "children". (*Clarkson* v. *Hatton*, 143 Mo 47)

———*distinguished from "heirs of the body"*. The term *"heir of the body"* is a well-established technical term, with which the words "children" or "issue" or "lawful issue" are not synonymous. (*Sewall* v *Roberts*, 115 Mass 262, 276.)

———*from "issue"* The distinction between the word children and 'issue" is carefully preserved throughout. "Issue" necessarily includes children, but "children" does not include more remote issue.

Chimney

———*from a Minor* In *Allen* v. *State*, 7 Tex App. 298, 301 "The Court instructed the jury that the term 'child' means one of tender years, not a minor or under twenty-one years of age, and that they must take the word in its common acceptation"

———*distinguished from offspring* The words, "the offspring of," do not enlarge the meaning of the word "children". They are synonymous with "born of" or "the fruit of", and can have no other effect than to make more definite the persons who are described as "children". (*McGuire* v *Westmoreland*, 36 Ala. 594, 596.)

———*from Youth.* The word "children" includes persons of both sexes, and "youth" differs from it only by referring to and including persons of somewhat more advanced age and proficiency

CHILDREN MALES AND FEMALES The use in any Act of words expressive of relationship, (as) "parent", "child", "ascendant", "descendant""minor", "infant", "ward", "guardian", or the like, includes both males and females

CHILD (FEMALE) AND WOMAN In *Blackburn* v. *State*, 22 Ohio St. 102, 110, it is said that in the popular and most common use of the words the female ceases to be a "child" and becomes a "woman" at the age of puberty, and this seems to be in accordance with the primary or leading definitions of the terms by lexicographers

CHILD, PARENT AND CHILD Parent and child mean either father or mother, and son or daughter, the immediate progeny of the parent. If another degree is meant, the appropriate term is used thus, grandparent, and grandchildren (*Cyc* 124, *Black. L Dic*)

Child en ventre sa mere A child while yet unborn, child in the womb of the mother From the time of conception the infant is *in esse* for the purpose of taking any estate which is for his interest, whether by descent or devise *Children en ventre sa mere* are included within the meaning of the word "children"

"An infant unborn, but *in esse* is deemed a person capable of taking by deed or other writing any estate whatever in the same manner as if he were born"

Child Marriage Defined in Act XIX of 1929, S 2.

"Children's Children" mean 'issue of Children' (*per* North, J , Re *Natt, Walker* v. *Gammage*, 57 L. J Ch 798)

"Children of the Wife" In a Marriage Settlement of a husband's property, means children of the wife by that husband (*Dafforne* v *Goodman*, 2 Vern. 362).

Childish "Childish" refers to mere simplicity or weakness of mind. A childsh person is not *non compos mentis*, or an idiot

Chillari-Manyam. (*Tel.*) Small grants of land for village charges, the pay of revenue officers, or support of temples, etc

Chiminage. (*In old English law*) A toll for passing on a way through a forest. (*Co Litt* 56 (*a*), *Spelman Termes de la Ley.*)

Chimney, in S. 24 of the Public Health (London) Act, 1891 (54 & 55 Vict c. 76), includes the funnel of a steamboat *Tough* v *Hopkins*, (1904) 1 K B 804.

Chimney Sweeper

Chimney Sweeper A person engaged in the Trade or Business of a Chimney Sweeper, one whose occupation is to sweep chimnies (*i e*,) to clean them of the soot that adheres to their sides

Chinaware. The words "Chinaware" and "procelainware" in the Tariff Acts do not include porcelain on which pictures have been painted, the porcelain being manufactured and used only for the purpose of being used for such purpose (26 *L Ed* 454)

Chinese marriage "According to the Encyclopaedia Britanica a "marriage in China" is an arrangement with which the parties most concerned have nothing to do The duty of filial piety is said to be the final object of Chinese religious teaching, and, under its influence parental will is a supreme authority from which there is no appeal. Marriage, therefore, is not the result of acquaintanceship "The bridegroom rarely sees his betrothed until she has become his wife" (59 Fed 682, 683)

"Chin Hills" defined Act XIII of 1898, S 3 (*c*), Bur. Act I of 1898, S 2 (10).

"Chins" defined Bur. Act I of 1898, S 2 (11), Reg V of 1896, S 2 (3).

Chira (*Mal.*) Enclosure, dam, tank A reservoir of water or tank on a small scale. (*Moore's Mal. Law*)

Chiraghi, a small Revenue free grant to keep a lamp (chiragh) burning at a (Muslim) tomb or shrine (Ben and Sylhet) (*Bad. Pow* III 448)

Chirographum. (*In the Roman law*) A handwriting, that which was written with a person's own hand, evidence or voucher of debt

Chirographum apud debitorem repertum praesumitur solutum A maxim meaning "An evidence of debt found in the possession of the debtor is presumed to be paid (*See* Evi Act, S 114) Chief document when found with a debtor is presumed to be satisfied

Chitha Statement of cattle of a village (one of the annual papers prepared by patwari)

"Chittagong Hill Tracts" defined Reg I of 1900, S 2 (1) (*a*).

Chit transaction when lottery *See* 49 M.L J 791 =22 L W 772=1925 M W N 857.

Chivalry (*In feudal law*) Knight-service, Tenure of land by knight-service.

Chloroform Liquid of an aromatic ethereal odor, consisting of carbon, hydrogen, and chlorine.

"Cho" defined. P Act II of 1900, S. 2 (*b*).

The expression "*cho*" in the Punjab Land Preservation Act means a stream or torrent flowing through or from the *Siwalik* mountain range within the Punjab [Pun Act II of 1900, S. 2, Cl. (*b*)]

Chobdar (*Hindustani*) An attendant who carries a silver stick or mace before a chief or an officer of rank, as an ensign of authority.

Chocolate. Cocoa beans roasted, prepared and molded into cakes. Sweetened chocolates are also manufactured in the same way, but the paste is mixed with sugar. (53 Fed. 81, 82.)

Choses in Action.

Choice Act of choosing; deciding between two alternatives. "Choice" or "Selection" means the power to determine between two or more. No choice or selection can be made when there is no alternative.

Choke Stop breath by strangling or smothering; Rendered unable to breath by filling or squeezing the windpipe, suffocated, strangled. In the term "mortally choked, suffocated and drowned", it means dead.

Choondipanayom (*Mal*) Choondi: return, simple mortgage sometimes with provision to take possession on default (*Sun Mal Law*)

Choose Select out of a greater number, make choice, decide as between several alternatives. The word "*choose*" when used of a superior Government officer with power of appointing a person to office, is equivalent to the word "appoint"

Chora (*Pashto*). A long straight knife used by Afghans

Choranna-lutle. (*Karn*) An item of revenue, remission on account of plunder by thieves or robbers

Chose means personal property, things in general.

Chosen by lot (*in selection of jurors*). The object of Ss 276 to 279 of the Cr P Code, is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case and that an accused person has a right to claim to be tried by a jury chosen with strict regard to all the safeguards provided in the code to secure perfect impartiality The central idea is to have a jury *chosen by lot* from the persons summoned to act as jurors. 46 C L J 160=31 C W N 1102=104 I C. 905 =1927 Cal 787 S 284, Cr. P. Code, does not prescribe that the assessors are to be chosen by lot, it does not at all say that they should be chosen in any particular manner The word 'chosen" in the section does not imply that there ought to be a selection from a larger number than required for the trial and it is not at all necessary that there should be more present than required, so that the assessors may be "chosen" 18 Pat L T 964=A I R 1938 Pat 60

Choses in Action The term "chose in action" is now used to cover a miscellaneous assortment of rights and properties As Lindley, L. J, remarked in *Colonial Bank* v *Whinney*, 1885, 30 Ch.D, at pp. 282, 284 "It is difficult to find out the exact meaning of the expression 'chose in action' it is impossible, I think to look into the authorities upon this subject without seeing, that the meaning attributed to the expression has been expanded from time to time We all know that our law has not been put into a very scientific shape, and there is often considerable difficulty in determining in what sense a particular expression, such as 'chose in action,' is used" Originally the phrase had a clear and definite meaning *viz.*, a present right to take proceedings in a Court of Law to recover a debt or damages In this sense it was opposed to chattels in possession, which were tangible personal property, capable of being taken in execution The term is thus defined in *Termes de la Ley* (edition of 1641, at p. 59). "Things in action is when a man hath cause, or may bring an action for some duty due to him, as an action of debt upon an obligation, annuity, or

Chose in possession.

rent, action of covenant, or ward, trespass of goods taken away, beating, or such like, and because that they are things whereof a man is not possessed, they are called things in action." So in *Brook's Abridgment* (edition of 1651, at p. 51) the phrase is thus referred to. "A thing in action, which is personal, as debt, and damages, and the like." A right of action to recover unliquidated damages was as much a chose in action as a debt for a fixed amount. (*Ency. of the Laws of England*) The term now includes all debts, and all claims for damages, for breach of contract, or for torts connected with contract, which cannot be enforced without action. "A chose or thing in action" is a term in contradistinction to a chose or thing in possession and is applicable to cases where the title to the money or property is in one person and the possession is in another, which by contract he is bound to deliver to the owner"

Chose in possession Choses in possession are personal things of which one has possession This term used in opposition to Chose in Action to denote tangible and movable personal chattels of which a person has not only the absolute ownership, but also the possession. The possession may, however, be either absolute or qualified. (*Smith, Real and Personal Property*, (4th ed), p. 344, see also *Williams, Personal Property*, 15th ed, *pp* 43 *et seq.*)

Chota (*Hindustani*) Little, small. The word is often used in English with an Indian noun, as chota haziri, a light early breakfast, chota saheb, the younger gentleman

Choultry Chatram A choultry is a corruption of chavadi It means a shelter or resting place for travellers A chathram (corruption of the Sanskrit Sathram) is a house where pilgrims and travellers are fed 146 I C 307=38 L W 642=1933 Mad 782=63 M L J 672 (See also *Bad Pow in*, 12.)

Chouse To cheat, trick, or defraud, as "to chouse one of his money"

Chowdhuri. Office of—Nature and remuneration of (1908) 36 I.A 49=36 C 590 (595-6)=6 M L T 84=9 C L J. 499=13 C W N 581=11 Bom L R 530=6 A L.J. 364=1 I C 754=19 M.L J 239.

Chowhuddibandi "Chowhuddibandi" means boundary. (1917) 43 I.C. 361 (365)=22 M.L.T 438=26 C.L J 590=1918 M W N 28=20 Bom L R 49

Chowkeedars The Zemindar had an interest in the performance of duties of the village watchmen, inasmuch as they protected his property, but the public also had a great interest in their maintenance, and in the peace and good order which they were employed to preserve, and the Government, as representing the public, reserved therefore a strict control over them. Accordingly, various Regulations were passed for the purpose of enabling the Government to effect this object Registers were required to be kept of the different persons filling these offices in each Zamindary, with a statement of the lands allotted to their support 10 M.I A 16=1 W.R. (P C.) 26.

It appears that the Zemindars were entrusted, previously to the British possession of India, as well with the defence of the territory against foreign enemies, as with the administration of law and the maintenance of peace and order within their district,

Christian.

and for this purpose they were accustomed to employ not only armed retainers to guard against hostile inroads, but also a large force of Tannadhars, or a General Police force, and other officers in great numbers, under the name of *Chowkeedars, Pykes*, and other descriptions, as well for the maintenance of order in particular villages and districts as for the protection of the property of the Zamindar, the collection of his revenue, and other services personal to the Zemindar All these different officers were at that time the servants of the Zemindar, appointed by him and removable by him, and they were remunerated in many cases by the enjoyment of land rent free or at a low rent in consideration of their services The lands so enjoyed were called *Chakeran* or service lands (1864) 10 M I A. 16=1 W R.P.C. 26=1 Suth. 542=2 Sar 54.

Chowkeedari grant The history of *chaukidari* grants is set out in 10 M I.A 16, and the nature of the lands held by chaukidars in lieu of wages is also explained there (1914) 42 I A 30=42 C 710 (721) =17 M L T 1=2 L W 2=17 Bom L R 32=19 C.W N 95=26 C L J 31=26 I C 676=28 M L. J. 457

Chowkeedary The duty, or pay of a watchman. A tax for defraying the expenses of watchmen (*Fifth Report*)

Chowrasigaddis. The holders of the chowrasi gaddis all claim to be Surjabansi Rajputs, and, as such, high-caste Hindus They differ, however, in some customs, social and otherwise, from ordinary high caste Hindus, and it is now said of them that they are really descendants of an aboriginal tribe called Bhuiyas, who have assimilated the manners of Hindus for many generations, and, having had fictitious pedigrees made out for them by Brahmins, now claim to be Rajputs Certainly the bulk of the inhabitants in the District are Bhuiyas, and, though it is possible that these particular gaddi holders may be lineal descendants of Rajput invaders and conquerors, the High Court has proceeded on the footing that they are by descent Bhuiyas Their Lordships, without pronouncing upon the anthropological question, will assume, as the assumption is favourable to the plaintiffs, that this class or collection of families and in particular the family in which the suit (Lachmipur) estate has been held, are aboriginal Bhuiyas (1922) 50 I A 58=2 P 230=A I R 1923 P C 21=32 M L T 121=4 Pat L T. 217=37 C L J 369=18 L.W 597=1923 M W N 377=27 C W.N. 901 =25 Bom L R 560=71 I C. 769=44 M L J. 476.

Christian Pertaining to Christ and his religion. As applied to the doctrine of Christian religion means the teaching of Jesus as understood and followed The term denotes one who really believes the Gospel, imbibes the spirit, is influenced by the grace and obedient to the will of Christ." There is also another use of the word, which may be called the 'political or conventional' use, which denotes one who assents to the doctrines of the religion of Christ, and who being born of Christian parents or in a Christian country, does not profess any other religion or belong to any other of the divisions of men, such as Jews, Mahomedans, pagans or atheists.

The expression "Christians" means persons professing the Christian religion, (Act XV of 1872, S.3).

Karen Christians are Christians of Asiatic descent. 88 I C. 609=4 Bur.L.J. 76=A.I.R. 1925 Rang. 233.

"Christian Religion."

Where a statute provides that a writ or document has to be authenticated by the Christian Name, a well-known abbreviation,—or initials *e g.*, Wm for William,—will suffice (*R* v. *Bradley*, 30 L J Q B. 180)

"The custom of giving a new name to every person on his or her admission to baptism into the Christian Church dates from a very early date—period in the history of the Church, and was probably adopted from the Jewish custom of giving a new name to every child at circumcision Its object is to remind the Christian of the duties and privileges on which he entered at baptism" (See *Hook's Church Dictionary*, *Phillimore's Ecclesiastical Law*, 2nd ed *Suretee's Society's Publication*, Vol 43, App 96, *Ency of the Laws of England*)

"Christian Religion" The religion of Christ "Christianity is parcel of the Laws of England." (*Per* Hale, C.J, *Taylor's Case*, 1 Vent. 293)"

Christian Service "'Christian Service,' includes every religious service used by any Church, Denomination, or Person, professing to be Christian" (Eng Burial Laws Am Act, 43 and 44, Vic. c 41, S 6)

Christianity The religion of those who believe that Jesus Christ is the true Messiah and Savior of men

"There is abundant authority for saying the Christianity is part and parcel of the law of land" So Kelly, C.B, said in *Cowanvy* v *Milbourn*, 1867, 2 Ex at p 234 But the statement must not be taken too literally. It is true that Christianity is the religion of the Church which is by law established in this country, and that it had a large share in making our law what it is But in no other sense is Christianity part of the law of England English Law recognises and protects the Jewish religion and other beliefs which are opposed to Christianity (See 9 & 10 Vict c 59, 32 & 33 Vict c 68, 33 & 34 Vict c 49, 51 & 52 Vict c 46) Lord Hale was the first to assert that "Christianity is parcel of the laws of England," in 1676, in the course of his judgment in *R* v *Taylor*, as reported in 1 Vent, 293 and "therefore to reproach the Christian religion is to speak in subversion of the law" It was merely an *obiter dictum*, and it was not a sound argument For, as the Commissioners on Criminal Law remarked in their *Sixth Report* (May 3, 1841, p 83), "It is not criminal to speak or write either against the common law of England generally, or against particular portions of it, provided it be not done in such a manner as to endanger the public peace by exciting forcible resistance." *See also* Jefferson's Letter to Major Cartwright, published in Cartwright's Life and Correspondence Lord Hale's dictum has been often repeated. "it is a pleasant phrase to quote, but it has no precise meaning." *Ency. of the Laws of England*)

Christians. Defined in XV of 1872, S. 3.

Christmas. The festival of the Christian Church observed in memory of the birth of Christ.

Christmas Day. The christmas day, *i e*, the Festival of the Birth of Christ, has been observed in the Christian Church from very early times, and, since the fifth century, on the 25th of December.

Chrome Tanning, is contradistinguished from other kinds of tanning, in that it makes use of

"Church."

mineral salts in the tanning process, rather than vegetable matter (66 Fed. 986, 988)

Chronic Pesistent "In order to distinguish a disease as "Chronic" it is necessary that it should have been of long standing as applied to diseases of a body "Chronic" and "acute" are the antithesis of each other An acute disease is one usually attended with violent symptoms, while a chronic disease is deep-seated and obstinate, threatening a long continuance"

Chronogram A sentence or passage by which, each letter having a certain numerical value, a date is expressed. The sum total of the values of all the letters used gives the date Hijra For example the date of Akbar's mosque at Fatehpur Sikri is given by the Chronogram 'This mosque is the duplicate for the holy place'

Chucker (*Kan*) Extra assessment imposed in 1720 in lieu of interest and an addition made in 1758 for Mahratta chowth.

Chudiwala (*Hindustani*) A class of Sunni Musamans who make bracelets of glass and lac or tin

Chuhra (*H*) sweeper caste, one of the village menials. (*Bad Pow* 1, 151)

Chukani lease Tenant mere under-raiyat—If acquires permanent right of occupany *See* 39 C W N 454

The term "Chukni" is used with regard to a particular sort of tenancy in Mymensingh and its incidents are governed by custom A I R. 1923 Cal. 375

Chukanidai (*Ben.*) A kind of tenant under a 'jotdar' (*Bad Pow* 1 552, 606)

Chukota (*incorrectly chakota*) (*Pj*). A lump sum of rent for a holding as contracted with a rent by acreage rate according to soil, etc. (*Bad Pow* iit 116).

Chundavand A custom of inheritance under which several sons by one wife inherit together the same share as a single son by another wife Under the usual custom of pagvand each son takes an equal share.

Chundipanayam A mortgage, in which land is pledged as security for the repayment, with interest, of a certain sum advanced, the lender being deprived of all right to interfere in the management of the property In some cases, it is stipulated that, on failure on the part of the borrower to pay the interest, the lender shall be placed in possession of the land Where such stipulation exists, the lender can sustain an action for possession In other cases, he must sue for the recovery of the principal and interest of the loan, the land being liable in the event of the money not being paid (*Moore's Mal. Law*) Transactions of this nature are sometimes called *Thodu-panayam*. (*Ibid.*)

Chungantam. (*Mal*) An assignment of land for payment of protection fee to the superior. (*Sun. Mal. Law*)

Churait (*perhaps Chuhrait*). A tenant-at-will. (*Bad. Pow.* ii, 639.)

"Church" defined. 37-8 V. c. 77, S. 14, Act XV of 1872, S. 3.

Church.

Church. A building where "the sacraments are administered as of right". (*Cowel, Ecclesia.*) A temple or building consecrated to the honour of God and religion, and anciently dedicated to some Saint, whose name it assumed, or it is an assembly of persons united by the profession of the same Christian faith, met together for religious worship A Church to be adjudged such in law must have administration of the sacraments and sepulture annexed to it. (*Tomlins Law Dict.*) A church is a voluntary association of Christians united for discipline and worship, connected with and forming a part of some religious society having a legal existence The word "Church," in the phrase "any Particular *Church, or Denomination,*" "does not mean Building, but means a Religious Society of some sort" (*Phil Ecc. Law*).

"CHURCH" in the Christian Marriage Act includes any chapel or other building generally used for public Christian worship (Act XV of 1872, S 3)

RELATION OF CHURCH AND STATE —The Church of England is legally described as "by law established," but the sense in which this expression must be understood is best explained by SIR WILLIAM ANSON (*Law and Custom of the Constitution,* p 378), in his account of the Royal Supremacy, when he says, "The sovereign is head of the Church, not for the purpose of discharging any spiritual function, but because the Church is the National Church, and as such is built into the fabric of the State"

Church of England defined in XV of 1872, S 3.

"Whatever legal difficulty there may be in giving a strict legal definition of what constitutes legal Membership of the Church of England,—I think that a person who has been baptized, has been confirmed, (or is ready and desirous so to be), and is an actual communicant, does hold the status of a Member of that Church, and would be ordinarily regarded and spoken of as such" (per *Stirling, J*, Re *Perry Almshouses,* 67 L J Ch 210)

"CHURCH OF ENGLAND" defined. Act XV of 1872, S. 3, Act VI of 1886, S 24

"CHUCRH OF ENGLAND" and "ANGLICAN" mean and apply to the Church of England as by law established (Act XV of 1872, S 3, *see* 67 L J Ch 210).

CHURCH OF ENGLAND means the religious establishment of England, considered in the aggregate, under the superintendence of its spiritual head In this sense 'the Church of England' is said to have peculiar rights and privileges, not as a corporation, but as an ecclesiastical institution under the patronage of state." (3 L. Ed 735).

"Church of Rome" defined. Act XV of 1872, S 3, Act VI of 1886, S 24

"Church of Rome" and "Roman Catholic" in the Christian Marriage Act mean and apply to the Church which regards the Pope of Rome as its spiritual head (Act XV of 1872, S 3)

"Church of Scotland" defined. Act XV of 1872, S. 3, Act VI of 1886, S. 24

Church member To constitute one a "church member" two points at least are essential, a profession of its faith, and a submission to its government.

Church property. Means "the church building and a lot of reasonable size for its location and does not include camp meeting ground used by the several congregations."

C. I. F. Contract.

Church-rate A tax levied on parishoners for the repairs and maintenance of the church and its services

Churchwarden. An officer, whose duty it is to take care of the church and its properties. (2 Steph. Comm 90, 1 Bl Comm 394, *Cowel, Jacob*) Officers instituted to protect the edifice of the church; to superintend the ceremonies of public worship, to promote the observance of religious duties, to form and execute parochial regulations, and to become, as occasion may requtre, the legal representative of the body of the parish (*Tomlins Law Dic*) The word "*Churchwardens,*" in modern Acts generally includes "Chapelwardens, or other persons discharging the duties of Churchwardens".

Churchyard The ground adjoining to a church in which the dead are buried, a cemetery It does not include tombs lying therein (Re *Rigley,* 36 L J Ch. 147).

Churs or Chur Lands The streams in the Gangetic delta are capricious and powerful In the course of ages the land itself has been deposited by the river, which always carries a prodigious quantity of mud in suspension. The river comes down in flood with resistless force and throughout its various branches is constantly eroding its banks and building them up again It crawls or races through a shifting net work of streams Sometimes its course changes by imperceptible degrees, sometimes a broad channel will shift or a new one open in a single night Slowly or fast it raises islands of a substantial height standing above high-water level and many square miles in extent Lands so thrown up are called churs 41 I A 221=42 C. 489 (508)=25 I C 467=27 M L.J. 419

Chute Any opening in the banks of a stream where a part of its waters diverge from the main stream, irrespective of the question whether it flows out with a rapid or slow current (41 Am Rep 66)

Cider Fermented apple juice as drink, Juice when first pressed from the apple, also means manufactured article when the whole process is complete The terms "*sweet cider*" and "*hard cider*" are used to distinguish between the juice of the apple before and after fermentation.

Cider vinegar Vinegar made exclusively of pure apple juice.

C I. F Contract. On a sale C I. F the seller undertakes to ship the goods sold on a vessel bound to the port mentioned and to deliver the goods on board such vessel by tendering to the buyer a bill of lading for them together with a policy of insurance covering their insurance to the port to which the goods are to go, and the seller must be ready and able to endorse the bill of lading and to transfer the policy to the buyer on receiving payment of the price. 4 I C. 1037=5 L.B R. 144.

A C. I F. contract is one under which the purchaser is bound to pay the stated price for the goods on tender of the documents showing that the goods have been shipped for transit to the port of destination, duly insured according to the terms of the contract and that freight has been paid. A. C. I. F.

Cigar.

purchaser is entitled to ask for a bill of lading for he is not bound to pay upon proof merely that the goods have arrived at the port of destination. *Nassim Isaal Bekhur* v. *Sultan Ali Shurtary*, 40 Bom 11=17 Bom.L R 249=28 I.C 433

As to the incidents of a C I F Contract, *see* 37 M.L J. 712=26 M L.T 504=54 I C. 550 (and also cases referred to therein). *See also* 41 Mad. 1060=35 M.L.J 184=8 L W 565=49 I C. 196,) *see further* on this point. 42 Cal 334,1 Lah. 22=62 P L R 1920=1 Lah.L J 51=39 P.W R. 1920=55 I C 975, 33 M L. J. 410=43 I C. 673, 32 M L J. 146=40 I C. 526, 42 Bom 473=18 Bom L R 915=37 I C 644 *See also* C F I. Contract

Cigar A bunch of tobacco or tobacco leaf rolled together, usually in a cylinder form, and put into shape for smoking, and intended for that use

Cigarette Cylinder of cut tobacco rolled in paper for smoking

"Cinematograph" includes any work produced by any process analogous to cinematography (*Eng Copy-Right Act*) It is an apparatus producing pictures of motion by the rapid projection on a screen of a great number of photographs taken successively on a long film.

"CINEMATOGRAPH" includes any apparatus for the representation of moving pictures or series of pictures, Act (11 of 1918), S. 2

Circar A Hindu head official, the government

Circar Maramut Repairs by government Repairs performed at the expense of government to rivers, and great water-courses (*Fifth Report*)

"Circle" defined. Act XI of 1886, S 3 (4), Ben Act V of 1887, S 2, Mad Act IV of 1889, S 3 (*g*) U P Act III of 1892, S 2 (5).

"CIRCLE" in the Village Courts Act means the area within which a Village Munsif exercises jurisdiction U P Act III of 1892, S 2 (5).

"Circle Tahsildar" defined Ben Act V of 1887, S 2.

Circuit. A civil division of a country, state or kingdom, for the more convenient administration of justice (*Burill*) Circuits are certain divisions of the kingdom appointed for the judges to go at stated times every year, for administering of justice, in the several counties (*Tomlins Law Dic*)

Circuit Judge Judge of the circuit Court.

Circuit Justice Justice of the Court who is allotted to any circuit

Circuit, Tour, Round A *circuit* is made for a specific end of a serious kind, a *tour* is always made for pleasure, a *round*, like a circuit, is employed in matters of business, but of a more familiar and ordinary kind A judge goes his *circuit* at particular periods of time· gentlemen, in times of piece, consider it as an essential part of their education to make what is termed the grand *tour*, *tradesmen* have certain rounds, which they take on certain days

Circuitus est evitandus. A maxim meaning 'circuity is to be avoided". (*Broom, Leg. Max.*, 5 Coke. 34; *Co. Litt.* 384*a*; 5 Exch. 829.)

Circumstance Circumstances.

Circutus est evitandus; et boni judicis est lites dirimere ne lis ex lite oriatur A maxim meaning "Circuity is to be avoided and it is the duty of a good judge to determine litigations, lest one law suit arise out of another." (*Black Law Dict.*, 5 Coke. 31; *Cyc Law Dic.*)

Circuity of action. A longer course of proceeding to recover a thing sued for than requisite. (*Termes de la Ley*)

Circular Letter "Circular" is a written or printed communication which is general and not personal in its character, and the same paper may be both a letter and a circular There are many circulars which are not letters, but a circular which is in the form of a letter may be well described as a "letter and a circular" or a circular letter. (22 Fed 707).

Circular Notes are instruments which are somewhat similar to letters of credit They are issued by banks to persons about to travel abroad to obviate carrying large sums on the person. A circular note is a request in writing by a bank to its correspondents abroad to pay up a specified sum to a specified person The payee is usually furnished with a "letter of identification" which is referred to in, and produced on presentation of, the circular note This letter is signed by the manager of the bank, and also subsequently, in a space left for the purpose, by the payee as a precaution against forgery The holder is not bound to cash circular notes, and in the event of his not electing to use them, may, after reasonable notice of such election, require payment at the issuing banker's hands (See *Conflans Quarry Co* v *Parker*, 1867, L R 3 C P 1, where the nature and incidents of these notes are discussed at length)

Circulars of High Court Unless the High Court circulars are passed under some enactment, which gives it the force of law, the mere fact that a circular is issued under the authority of the High Court is not sufficient to give it that force. 28 Bom L R. 1082=1926 Bom. 548.

Circulating capital is money provided for in a business for the purchase of raw material the remuneration of employees, and other working expenses in the ordinary course of business

Circulating medium Medium of exchanges, of purchases and sales It is more comprehensive than the term "money"

Circulation A Bank-note is said to be "In Circulation," when it is passing from hand to hand as a Negotiable instrument, and when returned to the Bank (or any of its branches), it ceases to be "In Circulation" or "Outstanding" (*Bank of Africa* v. *Colonial Government*, 57 L J P C 66)

Circumstance Circumstances The particulars which accompany an act The surroundings of an act The word "circumstances" in S. 85 of the Bengal Municipal Act, is equivalent to "means" so that the taxation should be according to the means and property of the rate-payer within the Municipality. 17 C W N 1230=20 Ind Cas. 264 *See also* 41 Cal 168, 35 Cal 859, 7 C L.J. 631=12 C W.N. 709; 39 Cal. 141 =12 I.C 32.

The introduction of the word "circumstances" in the section is not intended to restrict the term "pro-

Circumstantial evidence.

perty" but to widen the scope of the section. And although it is not easy to define what the "circumstances" are, still the amounts which pass through the limits of the municipality and are available to the persons taxed at any moment, and the fact that the persons are wealthy zamindars, cannot be altogether ignored while estimating the "circumstances and property". (35 Cal. 859, Rel on) 124 I C 335=49 C L J. 383=33 C W N 684=A I R 1929 Cal 452 *See also* 27 Cal 849

Where it is provided that a person is to form an opinion 'after considering the whole circumstances of the case', it means that he is to "consider all the circumstances which appear to him, honestly exercising his judgment, to bear upon the particular case." (*per* Ld Herschell, *Allcroft* v *London Bishop*. 1891 A C. 666, 61 L J Q B. 62, 65 L.T 92, 55 J.P. 773)

"The enquiry into all the circumstances of the case is one which may justly include considerations of the good to be done by, or the mischief involved in, the proceedings" (*Ibid*)

CIRCUMSTANCES OF THE PARTIES This phrase, as used in statutory provisions in relation to alimony, relates not only to the pecuniary circumstances and requirements of the parties but also a consideration of the conduct of each, and if the wife was to some extent responsible for the misconduct of her husband, or in fault, though this did not justify his acts, yet, it might be consisidered in determining the amount of alimony.

"CIRCUMSTANCES TENDING TO SHOW MALICE" include such matters as the bad character of accused The term is broader than the word "facts".

Circumstantial evidence Evidence which tends to prove the ultimate fact in issue, Presumptive evidence. Evidence derived from circumstances, as distinguished from direct and positive proof It is the inference of a fact from other facts proved, and the fact thus inferred and assented to by the mind is said to be "presumed", that is to say, it is taken for granted until the contrary is proved

Circumvention, overreaching, outwitting; baffling. It is nearly, if not quite synonymous, with fraud It denotes a trick or device as induces the giving of one character of instrument under the belief that it is one of a different character (30 L Fd 323)

Circus Anciently it was an edifice or inclosure used for the exhibition of games and shows to the people It now means a circular inclosure for the exhibition of feats, horsemanship, etc Every building, space, tent or area where feats of horsemanship or acrobatic sports or theatrical performances are exhibited are regarded as a circus.

CIRCUS THEATER, AMUSEMENTS The word is not synonymous with *"theater"*. The dramatic performances which belong to a theater are those adapted to the stage. A "Circus" on the other hand, has no stage, but a ring and the performances are of a character that can take place in the circle in the absence of the stage and its appurtenances. They may both be arranged under the general term *"amusements"* but differ from each other as one species differs from another under the same genus

Citadel. (*Milit*) Fortress, generally on a high ground protecting or dominating a city

Citizen and Subject.

Citation. Citation is a summons to appear and answer or do something. It was applied particularly to processes in the spiritual Court, but is more recently adopted in civil procedure from the canon and civil law. It is an official call or notice to appear in court, the act of quoting authorities, and sometimes an authority quoted (*Abbott. L. Dict*)

Cite To call or summon, to notify a party of a proceeding against him, or call him to appear and defend, to quote or refer to authorities in support of a proposition (*Abbott L Dict*) as, citing authorities in support of an argument in a case

TO CITE, QUOTE. To *cite* is employed for persons or things, to *quote* for things only authors are *cited*, passages from their works are *quoted* we cite only by authority, we quote for general purposes of convenience. Historians ought to *cite* their authority in order to strengthen their evidence and inspire confidence, controversialists must *quote* the objectionable passages in those works which they wish to confute

TO CITE, SUMMON The idea of calling a person authoritatively to appear is common to these terms. *Cite* is used in a general sense, *Summon* in a particular and technical sense a person may be cited to appear before his superior, he is summoned to appear before a court The station of the individual gives authority to the act of *citing*, the law itself gives authority to that of *summoning* When *cite* is used in a legal sense, it is mostly employed for witnesses, and *summon* for every occasion a person is *cited* to give evidence he is *summoned* to answer a charge.

Citizen Member or inhabitant of a state, one who, as a member of a nation or state, owes allegiance to and may claim reciprocal protection from its government. (*Abbot L. Dict.*)

OTHER DEFINITIONS OF "CITIZEN" "A constituent member of the sovereignty." (*Black.*) "A freeman of a city" (*Johnson Dict*) "A freeman of a city, not a foreigner nor a slave, a townsman, a man of trade, an inhabitant, a dweller in any place" (*Johnson Dict.*) "A member of a nation or sovereign state, especially of a republic, one who owes allegiance to a government, and is entitled to protection from it." (*Standard Dict*) "A member of the civil state entitled to all its privileges." (*Black L. Dict*) "One who enjoys the freedom and privileges of a city, as distinguished from a foreigner, or one not entitled to its franchise." (*Webster.*) "In the popular and appropriate sense, one who by birth, naturalization, or otherwise, is a member of an independent political society, called a state, kingdom, or empire, and as such is subject to its laws and entitled to its protection in all his rights incident to that relation" (*Blanck* v *Pausch*, 113 Ill. 60, 64) Age or majority is not involved in citizenship. Women are citizens as fully and truly as men

Citizen and Subject. *Citizen* is a term usually employed under the republican form of government as the equivalent of subject in monarchies of feudal origin Though it means properly the inhabitant of a city, it is now used of persons possessing civic rights in any city or town or village. (*Ency of the Laws of England.*)

"The term *citizen*, as understood in our law, is precisely analogous to the term subject, in the common

Citizen.

law; and the change of phrases has entirely resulted from the change of government. The sovereignty has been changed from one man to the collective body of the people, and he who before was a subject of the King is now a citizen of the State". (*State* v. *Manuel*, 20 N C 122, 129)

"There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an association of persons for the promotion of their general welfare Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance For convenience it has been found necessary to give a name to this membership The object is to designate by title the person and the relation he bears to the nation For the purpose the words 'subject', 'inhabitant' and 'citizen' have been used, and the choice between them is sometimes made to depend upon the form of the government Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the states of the U S of America upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more" *Minor* v *Happerset*, 21 Wall (U S) 162.

Citizen Inhabitant Resident, Elector Voter. While the word *"citizen"* is capable of more meanings than one, it is not a convertible term with "inhabitant" or 'resident', women and minors may be citizens, hence 'citizen' is not synonymous with 'elector' or 'voter,' although as a rule one who has the right to vote for civil officers and himself is qualified to fill elective offices is a citizen. (*Black Law Dict*) Race or color does not seem to be involved in definition of the term (*Abbot Law Dict*) Again one may be considered a citizen for some purposes and not a citizen for other purposes (*Ame Cyc*)

The terms *'citizen'* or *'subject'* and *'alien'* and *'alien born'* are in their nature relative (7 Cyc. 133)

Citizenship Status of being a citizen, the relation of allegiance and protection between individuals and the Government As distinguished from *alienage* the right of citizenship is a national right or condition Sex is not involved in citizenship A woman is a citizen Age or majority is not involved A minor is a citizen.

CITIZENSHIP AND DOMICILE *"Citizenship"*, *"habitancy"*, and *"residence"* are several words which may in a particular case mean precisely the same as *"domicile"*, but very frequently they may have other and inconsistent meanings "Citizenship" while including "domicile" means something more It means allegiance to the Government of the domicile, or a part of the community entitled to all the rights, privileges, and immunities of members thereof. (42 Am. Rep. 424)

"CITIZENSHIP" AND "RESIDENCE" are not convertible terms. "Citizenship is a status or condition and is the result of both act and intent. An adult person cannot become a citizen of a state by simply intending to, nor does anyone become such citizen by mere residence. The residence and intent must co-exist and correspond, and though, under ordinary circumstances, the former may be sufficient evidence of the latter, it is not conclusive, and the contrary may always be shown." (26 Fed. 337.)

Citron Fruit of lemon kind, but larger. It is the fruit of the citrus or citron tree. It belongs to the family of fruits and falls within the term "dried fruits" In common speech and by the language of trade and commerce it is a dried fruit. (121 Fed. 690, 691)

"City" defined Bom Act 3, 1888, S. 3 (*a*); Mad. Act 3, 1904, S 3 (5), *See also* 7 Bom.L.R 726.

CITY The legal as well as the popular idea of a town or city, is that of oneness, community, locality, vicinity, a collective body of inhabitants, that is, a body of people collected or gathered in one mass and having a community of interest, as being residents of the same place or locality.

City Council The legislative body in the government of cities Municipal Council (*Bouvier Law Dict*) A part of the legislative power of the state within a limited district, the agents of the inhabitants of a municipality so long as they act within the scope of the authority conferred upon them by law, trustees of the corporation clothed with local and limited powers, a public board for municipal governmental purposes (7 *Cyc* 150)

"City Court" defined. Act 7, 1892, S 2 (1).

City election Municipal election held in a city or town for electing Councillors for the Municipality

City limits, Corporate limits of the city, territorial limits of the city

"City Municipality" defined Bom. Act 3, 1901, S. 3 (1).

"City of Bombay" defined, Bom. Act 3, 1886, S. 3 (7).

"City of Madras" defined. Act 7, 1892, S 2 (2); Mad Act 1, 1884, S 3 (f), Mad Act 3, 1888, S 3; Mad Act 1, 1891, S 3 (5)

City officers Those appointed for a city and who must generally reside therein and perform the functions assigned to them Mayor, recorder, alderman, etc. are city officers

City purpose A purpose which will be for the benefit of city "It is impossible to define in a general way with entire accuracy what a city purpose is within the meaning of an Act. Each case much largely depend on its own facts, and the meaning of these words must be evolved by a process of exclusion and inclusion,—judicial construction" The construction of a bridge over a river between two cities would be a "city purpose", so also acquisition of a park or garden for the enjoyment of the inhabitants In order to constitute a city purpose, the purpose must be "primarily" for the beneficial use and convenience of the city, as distinguished from that of the public outside of it, and the work must be of such character as to show plainly the predominance of that purpose".

Civic.

Civic. Pertaining to a citizen, citizenship or city (as) civic rights or duties, civic institution; Civil activity.

Civics. Principles of civil duty.

Civil. In legal language the word "Civil" has various significations. In contradistinction to "barbarous" or "savage" the term may be used to indicate a state of society reduced to order and regular government; in contradistinction to "criminal," it indicates the private rights and remedies of men as members of the community, in contrast to those which are public and relate to the government, it also relates to rights and remedies sought by action or suit distinct from criminal proceedings, and concerns the rights of and wrongs to individuals considered as private persons, in contradistinction to criminal or that which concerns the whole political society, the community, state, government: as, civil-action, case, code, court, damage, injury, proceeding, procedure, process, remedy. (*Anderson Law Dict.*) Again, the term is often used in contradistinction to "military" or "ecclesiastical" to "natural" or "foreign." (*Ame Cyc.*)

Civil action A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil. It is an action which deals with acts which constitute an infringement or privation of the private or civil rights belonging to individuals *Civil actions*· "All legal proceedings partaking of the nature of a suit and designed to determine the rights of private parties." The phrase "civil actions" is used as opposed to criminal actions. The phrase "civil actions" includes actions at law, suits in chancery, proceedings in admiralty, and all other judicial controversies in which rights of property are involved, whether between parties, or such parties and the government. It is used in contradistinction to prosecutions for crime The precise meaning of the descriptive term "civil actions" must however be judged by its connections and the manner in which it is used in any particular case. It is in all cases dangerous to take particular expressions applicable to the subject under consideration and to treat them as general words affecting rules and definitions applicable to all cases *Howard* v. *Merrimac River Locks, etc*, 12 Cush Mass. 259

The words *"civil action"* or *"civil suit"* or a *"civil case"* mean more or less the samething, and is a proceeding in a Court of Justice by one party against another for the enforcement or protection of a private right, or for the redress or prevention of a private wrong. (37 Fed. 497.)

Civil Commotion. An Insurrection of the people for some purposes, though it may not amount to a Rebellion (*per* Mansfield, C.J., *Langdale* v *Mason, Park*, 968)

"RIOT, INSURRECTION, AND CIVIL COMMOTION" import occasional local or temporary outbreaks of unlawful violence, which, though temporarily destructive in their effects, do not rise to the proportions of organised rebellion against the Government.

Civil conspiracy.-A conspiracy which will furnish ground for a civil action The gists of civil conspiracy is injury or damage While criminal conspiracy does not require overt acts, yet, so far as the rights and remedies are concerned, all criminal conspiracies are embraced within civil conspiracies. (90 *Am St. Rep.* 126)

Civil contempt Contempts of court which consist in failing to do something which the contemnor is ordered by the Court to do for the benefit or advantage of another party to the proceedings

Civil contempt and Criminal contempt distinguished "There is a well-defined distinction between "contempts" which are merely criminal or punitive, and those which are termed "civil contempts", the latter applying to such as are remedial in character. The two classes of contempts are often distinguished as "direct" and "constructive" or "consequential" Civil contempts are those quasi contempts which consist in failing to do something which the contemnor is ordered by the Court to do for the benefit or advantage of another party to the prosecution before the Court, while criminal contempts are those acts in disrespect of the Court or its processes, or which obstruct the administration of justice or tend to bring the Court, into disrespect Criminal contempts are those committed in the immediate view and presence of the Court, such as insulting language or acts of violence which interrupt the regular proceedings of the Court"

"Civil Court" defined 44 5 V c 58, s 150 (31) Act 35, 1858, s 23 Act 20, 1863, s 2 Act 17, 1879, s 47 Expln (Ad Act 23, 1881, s 9) Berg Act 7, 1876, s 3 (1), Bom. Act 6, 1862, s 21 (1)

'CIVIL COURT' The phrase "Civil Court" is comprehensive enough to include the Revenue Court deciding rent suits and executing rent decrees 7 Ind Cas 787 (788)=38 Cal 288

Civil Death Deprivation of all rights whose exercise or enjoyment depends upon some provision of positive law, the state of a person who, possessing natural life, has lost all his civil rights and as to them is considered as dead, *Civil Death* is used, in contrast with natural death, to describe loss of all civil rights and status. It arose originally (1) by taking monastic vows, (2) by abjuring the realm (*Bracton*), (3) by conviction and attainder for treason or felony

Civil disabilities. Disqualification created by law Minors, lunatics, proprietors of Zamindari estates under Court of Wards and other disqualified proprietors are persons under civil disabilities

"Civil District" defined Act 20, 1869, s. 4 (3) (Ins. Act 10, 1896, s. 2)

Civil Government. "Civil government in itself implies an abridgement of natural liberty" (*In re* Ferrier 103 Ill 367, 372, 43 *Am. Rep* 10)

Civil impositions. Burdens, taxes, and duties imposed by the Civil authority on lands, or on the owner or occupant of land within the City

Civil injuries Infringement or privation of the private or civil rights belonging to the individuals, considered as individuals. It is to be distinguished from a breach and violation of a public right or duty which affects the whole community,

Civil injuries.

Civil Jail

considered as a community, which is termed "crime or misdemeanor."

"Civil Jail" defined. Act. 10, 1859, s 168, Act 12, 1881, s. 3 (8), Ben. Act 1, 1879, s. 2, Ben. Act 6, 1908, S 3 (5).

Civil jurisdiction Jurisdiction of court which exists when the subject-matter is not of a criminal nature. It means jurisdiction to hear and determine civil actions

The terms *"civil" and "criminal"* when used, whether in reference to jurisdiction, or judicial proceedings generally, have respect to the nature and form of the remedy and the cause of action or occasion for instituting legal proceedings Civil stands for the opposite of criminal, and hence, we have courts known as courts of civil jurisdiction and of criminal jurisdiction, distinguished by the character of the prosecutions in each (*Bacon Abr. Actions*)

Civil Law In its general signification, the established law of every particular nation, commonwealth, or city, more properly distinguished by the term "municipal law", that division of municipal law which is occupied with the exposition and enforcement of civil rights, as distinguished from criminal law (*Burrill Law Dict*) In particular significance, it usually means the body of jurisprudence known as the Roman law (*Wharton Law Lex, Ame. Cyc Tomlins Law Dic*) Civil law is the law of the Roman Empire, as codified by Justinian, and preserved, with some additions, in the collection known as the *"Corpus Juris Civilis"* This collection was so described by the "Glossators" of the twelfth century, to distinguish it from the collections of ecclesiastical canons, which were afterwards embodied in the *"Corpus Juris Canonici"*

"The civil law, as a system of jurisprudence framed by wise men and approved by the experience of ages, must in every country and in every age, furnish principles which, modified and applied as circumstances may require, will greatly contribute to the real interests and welfare of society" (1 Fonb. 255.)

DISTINGUISHED FROM "LAW OF NATIONS" The law which a people enacts is called the civil law of that people, but that law which natural reason appoints for all mankind is called the law of nations, because all nations use it (*Bowyer Modern Civ. L 19 quoted in Black L Dict*)

"ROMAN LAW" AND "CIVIL LAW" are convertible terms, meaning the same system of jurisprudence. (*Jacob. L Dict.*)

Civil Liberty "Civil liberty consists in protecting the rights of individuals by the united force of society" (1 *Bl Comm* 251) It is natural liberty so far restrained by human laws as is necessary and expedient for the general advantage of the public, the power of doing whatever the laws permit (1 *Bl. Comm*, 6 & 125) Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will It is only freedom from restraint under conditions essential to the equal enjoyment of the same rights by others. (91 *Am St. Rep.* 934.)

Civil list. The designation of an appropriation made by the British Parliament for the maintenance

Civil Process.

of the Royal household and establishment, as distinguished from the exigencies of the State. (1 *Bl. Comm.* 332.)

Civil matters. Include all matters other than criminal

Civil obligation A legal obligation enforceable by a judicial tribunal.

CIVIL OBLIGATION AND NATURAL OBLIGATION A civil obligation which gives the person in whose favour it is contracted a right of judicially enforcing it. "A natural obligation is that which obliges the person in honour and conscience Obligations are commonly both natural and civil There are some, however, which are merely civil, and which the debtor may be judicially compelled to perform without being under any obligation to do so in point of conscience"

"Civil offence" defined. Act 5, 1869, Pt. I, cl. (*e*) (21), (Ins. Act 12, 1894, s 4)

Civil office A grant and possession of the sovereign power, and the exercise of the power within the limits prescribed by the law which creates the office constitutes the discharge of the duties of the office. (*Ame Cyc*)

Civil office and Military office distinguished. "Civil office" means any office not a military office, including all offices connected with the civil administration of the country, in contradistinction to "military" Officers in the army and navy are military officers (37 *Am St Rep* 517)

Civil Officer Any officer holding appointment under the government, except in the military ornaval service, whether the duties are executive or judicial, or in the highest or the lowest departments

Civil officer and Police officer Police officers are civil officers Their duty is the preservation of the public peace, a matter of public concern (85 *Am. St Rep* 637)

Civil prison means jail and not Court house (39 P L R 471=A I R 1937 Lah 253

Detention in the Court-house cannot be said to be detention in a civil prison (39 P L R 471=A I R. 1937 Lah. 253.

"Civil prisoner" defined. Act 9, 1894, s 3 (4)

CIVIL PRISONER. The term includes all persons imprisoned for Civil Debt, or for performance of a "Civil Obligation" means any prisoner who is not a criminal prisoner [Prisons Act (IX of 1894), S. 3].

Civil Proceeding Is a process for the recovery of individual right or redress of individual wrong; inclusive of suits by the Crown (*Bradlaugh* v. *Clarke*, 52 L J Q B. 505) It is opposed to a criminal proceeding

If the term covers execution proceedings. *See* I. L R (1937) Mad 161=107 I C. 524=A.I R. 1937 Mad. 357=(1937) 1 M L J 303

'Civil Proceeding in a Court of Appeal" A revision proceeding in the High Court under S. 115, C. P. C., is a "civil proceeding in a Court of Appeal" within the meaning of section 14, Limitation Act (17 I.C 593).

Civil Process. Process issued by a Civil Court We have civil process and criminal process just as we have civil jurisdiction and criminal jurisdiction.

Civil Remedy.

Civil Remedy. The remedy afforded by law, to a private person in the Civil Courts in so far as his private and individual rights have been injured by a tort or crime as distinguished from the remedy by criminal prosecution for the injury to the rights of the public. (*Black L Dict , Ame Cyc)*

Civil Responsibility The liability to be called upon to respond to an action at law for an injury caused by a civil wrong or crime, as opposed to criminal responsibility or liability to be proceeded against in a criminal tribunal.

Civil rights are those which appertain to citizenship, and which may be enforced or redressed by a civil action. (*Burrill. L. Dict., Rapaje & L L. Dict.*)

DISTINGUISHED FROM NATURAL RIGHTS "By civil rights, are understood those rights which the municipal law will enforce, at the instance of private individuals, for the purpose of securing to them the enjoyment of their means of happiness. They are distinguishable from natural rights, which would exist even if there were no municipal law.

DISTINGUISHED FROM POLITICAL RIGHTS " As defined by Anderson, a civil right is, 'a right accorded to every member of a distinct community or nation,' while a political right is a 'right exercisable in the administration of government' 'Political rights consist in the power to participate, directly or indirectly, in the establishment or management of the government Every citizen has the right of voting for public officers, and of being elected, these are the political rights which the humblest citizen possesses Civil rights are those which have no relation to the establishment, support or management of the government They consist in the power of acquiring and enjoying property, or exercising the paternal and marital powers, and the like (*Fletcher* v *Tuttle*, 42 Am St Rep 220)

Civil service. Service rendered to and paid for by the state, other than that pertaining to naval or military affairs.

ORIGIN OF CIVIL SERVICE IN ENGLAND "Down to a comparatively recent time, the clerks and subordinate officials employed in the public service were appointed by the heads of departments, as a general rule they were not required to undergo any test of their knowledge and capacity The report prepared by Sir S. Northcote and Sir C Trevelyan in 1853 was the beginning of a new order of things By an Order in Council of the 21st May 1855 the Civil Service Commission was appointed to organise a system of examination. Persons appointed after examination enter on a period of probation The Playfir Scheme establishing a Lower Division of the Civil Service, was confirmed by an Order of the 12th February 1876, the name "Lower Division" was altered to "Second Division," and other changes recommended by Sir M. W. Ridley's Commission were introduced by the Orders of March 21, and August 15, 1890 Members of the Civil Service held their places during pleasure, but in practice they are recognised as permanent officials, they are not dismissed unless for misconduct or inefficiency, and they are entitled to pensions on retirement In this, as in other branches of the public service, the relation between superior and subordinate is not contractual in its nature; all

Civis.

alike are servants of the Crown [see *Dunn* v. *R.*, (1896) 1 Q.B. 116; *Dunn* v. *Macdonald*, (1897) 1 Q.B. 411, 505] Members of the Civil Service are expected to act loyally upon the directions of the political heads of departments, whatever be the party to which the Ministers for the time belong. It is therefore considered to be improper for a civil servant to take an active or conspicuous part in politics; and an Order in Council of the 29th November, 1884, directs that a civil servant who becomes a candidate for a seat in the House of Commons is to resign his office." (*Ency. of the Laws of England*).

Civil status Lord Westbury in *Udny* v *Udny*, L.R. 1 H L Sc 441, said "The law of England and of almost all civilised countries ascribes to each individual at his birth two distinct legal status or conditions; one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance,and which may be called his 'political status', another by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights and subject to certain obligations, which latter character is the 'civil status' or condition of the individual, and may be quite different from the political status." (42 *L Ed* 890)

Civil subjection Situation "whereby the inferior is constrained by superior to act contrary to what his own reason and inclination would suggest." (4 *Bl. Comm* 28)

Civil War. An internecine war, war carried on between opposing masses of citizens of the same country, or nation *Civil War* is said to exist when a party arises in a State which no longer obeys the Sovereign, and is sufficiently strong to make head against him, so also when a nation is divided into two opposite factions and both sides take up arms. (*Brown* v *Hiatt*, 1 Dillon 379) "A civil war breaks the bands of society and Government, or at least, it suspends their force and effect" (13 *Fed. Cas.* 1179, 1183)

Civilian. A person who is not serving on the army or navy.

Civilitas successit barbarum. Civilization succeeds barbarism (*Adams Gloss*)

Civilization An advanced stage of social development, opposed to barbarism It is relative term and has not a fixed sense, but in all its applications it is limited to a state of society above that existing among the barbarians "It implies an improved and progressive condition of the people, living under a recognised Government, with systematized labor, individual ownership of the soil, individual accumulation of property, humane and somewhat cultivated manners and customs, the institution of the family with well-defined and respected domestic and social relations, institutions of learning, intellectual activity, etc."

Civis (*Lat.*) One entitled to the privileges of a city of which he is a member There is a distinction between a citizen and an inhabitant in the same city, for "every inhabitant there is not a citizen."

Claim.

Claim is a word of very extensive signification, embracing every species of legal demand. It is one of the largest words of law and includes "demand" and "debt"

"The word *'claim'* has been considered a 'word of art', and long since was defined by Chief Justice Dyer to be 'a challenge, by a man, of the property or ownership of a thing which he has not in possession, but which is wrongfully detained from him' (*Ame Cyc. Terms de la Ley*)

The term also signifies a "demand made of a right or supposed right, a calling of another to pay something due or supposed to be due, as a "claim for wages or services" "Claim" is sufficiently comprehensive to embrace actions founded on tort as well as actions founded on contract

CLAIM AND "AMOUNT SUED FOR" The word 'claim' in C P C., Order IX, rule 8, is not necessarily synonymous with the "amount sued for" It may refer to the right litigated, irrespective of the arithmatical figure stated in the relief column, (35 Ind Cas 65 As to the meaning of the word "claim" in S 55-B of the Lower Burma Land and Rev Act. *See* 35 Ind Cas 277.)

The word "claim" in S 12 of the Dekkhan Agriculturists' Relief Act, 1879, does not mean the amount mentioned in the bond or deed sued upon, (7 Bom L R 688)

CLAIM AND CAUSE OF ACTION. In practice, "the word 'claim', and the phrase 'cause of action' relate to the same thing and have one meaning. The plaintiff before suit may have 'a claim' for damages, and this, when stated in a complaint, is technically, a 'cause of action'."

The word "claim" in S 373, C P C means such a claim as, if the allegations on which it is based are true, gives the plaintiff a cause of action *qua* that particular claim—not a claim which is not the cause of action and which the Court may, in any event in the exercise of its discretion, either grant or refuse. 15 M L J 462 (F B)

CLAIM AND DEMAND. "It is certainly a very broad term, when used in certain connections, and in reference to certain matters Lord Coke truly says, that "the word demand is the largest word known to the law, save, only, claim, and a release of all demands discharges all right of action."

CLAIM AND MERE RECITAL. The word "claim" denotes a demand or assertion in relation to a thing or attribute as against or from some person or persons, showing the existence of a right to it in the claimant A bare statement may or may not be a claim according to the attending circumstances in which it is made. It may amount to a claim or be a mere statement of claim, though in some circumstances a statement may amount to a claim A statement in a pattah that the land to the west of the land demised under that pattah belongs to the executant of the pattah is not a "claim" but a mere recital (17 C.W.N. 1016 and 31 Cal 380, Foll) 86 I C. 674=29 C.W.N. 469=A.I R 1926 Cal. 684 (2).

CLAIM, (*in Parliamentary Registration Acts,*) includes a statutory declaration in support of a claim to vote. *Ainsley* v. *Nicholson*, (1890) 24 Q B.D. 144.

CLAIM. (*In Patent Law.*) "Claim" as used in patent law, is the specification, by the applicant for a patent, of the particular things in which he insists his invention is novel and patentable. The claim in the application is required and designed to make the patentee define precisely what his invention is and the specifications of the patent outside of the claim cannot be resorted to to alter or enlarge it, though they are admissible to explain it. 30 L Ed 303

Claimant.

"Claim against Government" The words "claim against Government relating to property or lands" may fairly be said to imply that relief of some kind is sought against Government. Government must be more than a purely formal party If Government is to be bound by the decree to make any payment or to restore any property, or if an injunction is sought against Government, the position is clear—that is a "claim against Government" I L R (1937) Bom 464=170 I C 801=39 Bom L R 288=A.I.R. 1937 Bom 307

"Claim an interest in the estate of the deceased" A person who claims outside and independently of the Will or claims adversely to the testator and disputes his right to deal with the property, can in no sense be deemed to "claim an interest in the estate of the deceased" within the meaning of section 69 of the Probate and Administration Act (V of 1881). (20 Ind. Cas 342)

"Claimed in common" The expression "Claimed in common" occurring in S 11, Exp VI, Act V of 1908, refers to persons who would be benefited by the granting of the relief claimed and have such an interest in the relief that they could be joined as co-plaintiffs (28 Mad. 457 F B, 14 M L J 404)

Claim in suit is not always same as subject matter of suit. 30 L W 562=1929 M 798

Claim of Right. The expression "claim of right" (used in respect of a person holding adversely) means nothing more than that the person holding intends to hold and use the land as his own to the *exclusion* of all others It is not necessary that such person should enter under colour of title, or should either believe or assert that he had right to enter

Claim of title Possession commenced under "claim of title," does not require that the possessor should think that the land belonged to him before entry, "but it is sufficient if the entry be hostile to all the world and he intends to hold the land as his own"

Claimable The word "claimable," in S 26, Stamp Act I of 1879 means "claimable in a Court of Justice." (3 I C. 807=8 C W.N 667)

"Claimants against debtor's estate." 49 A. 71= 98 I C. 1001=A I R 1927 All 66.

"Claiming right thereto," in Sect. 2 of the Eng. Prescription Act, 1832 (2 & 3 Will 4, c. 71.) *Gardner* v *Hodgson's Kingston Brewerites Co*, (1900) 1 Ch. 592.

Claimant. A party making a claim in a law suit. In *admiralty proceedings in rem* the word is used to denote the person who makes claim to the property seized, as the owner thereof, and by virtue of such ownership or other interest therein is admitted to defend the suit

CLAIMANT (*Of attached property*) Person who has filed a claim to the property attached in execu-

Clan,

tion. It does not refer to one who has merely alleged a claim to a property but has done nothing and has taken no steps to support or enforce it.

"Clan" defined. Reg. I, 1895, S. 2 (3); Reg. II, 1896, S. 2 (1); Reg. V, 1896, S. 2 (4).

Clandestine. Secret, hidden, concealed The "clandestine importation" of goods is a term used in English Statutes as equivalent to "smuggling."

CLANDESTINE, SECRET. *Clandestine* expresses more than *secret*. To do a thing *clandestinely* is to elude observation; to do a thing *secretly* is to do it without the knowledge of any one: a *clandestine marriage* is effected by a studied plan to escape notice, a *secret marriage* is conducted by the forbearance of all communication. conspirators have many *clandestine* proceedings and *secret* meetings an unfaithful servant *clandestinely* conveys away his master's property from his premises, a thief *secretly* takes a purse from the pocket of a bystander.

"Class" defined. Reg. IV, 1887, S. 1 (6).

A "class" as used in the law of wills is where several persons answering the said description sustain the same relation to the legacy so that one word describes them all

The word 'classes' (in S 153-A, I P.C.) does not mean races but means religious denominations 103 I C 769=1927 Lah 590=28 Punj L R. 514.

CLASS, ORDER, RANK, DEGREE *Class* is more general than *order*, degree is more specific than *rank* *Class* and *order* are said of the persons who are distinguished, *rank* and *degree* of the distinction itself men belong to a certain *class* or *order*, they hold a certain *rank*, they are of a certain *degree* there are the labouring class, the class of merchants, mechanics, etc the general *orders* are divided into higher, lower, or middle, arising from the unequal distribution of wealth and power, the particular orders are those of the nobility, of the clergy

Class, or Section The words "Class or section" mean a definitely ascertainable body of individuals, not an indeterminate body or group having no clearly defined and non-variable characteristics or criteria by which they may be distinguished from any other body or group Exploiters or capitalists as such, any more than, say, literates or illiterates, or the rich or the poor, do not constitute a "class" or a "section" 41 C W N 1217=A I.R 1937 Cal. 691

Class, Gift to a "Class" "A number of persons are popularly said to form a 'Class' when they can be designated by some general name as 'Children,' 'Grand-children,' 'Nephews' But in legal language the question whether a gift is one to a Class depends not upon these considerations, but upon the mode of gift itself, namely,—that it is a gift of an aggregate sum to a body of persons uncertain in number at the time of gift, to be ascertained at a future time, and who are all to take in equal, or in some other definite, proportions, the share of each being dependent for its amount upon the ultimate number of persons". (1 *Jarm* 268, 269)

"A gift is said to be to a 'Class' of persons when it is to all those who shall come within a certain category or description defined by a general or collective formula, and who, if they take at all, are to take one divisible subject in certain definite proportionate

Clausulae in consuetae

shares" (*per* Selborne, C., *Pearks* v. *Moseley*, 5 App. Cas. 723).

Class Legislation. "Such legislation as denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending" (*Ame Cyc*) "Class legislation" is legislation which selects particular individuals from a class and imposes upon them special burdens from which others of the same class are exempt, and thus denies them the equal protection of the laws. "Class legislation is of two kinds, namely, that in which the classification is natural and reasonable, and that in which the classification is arbitrary, and capricious" (See 82 *Ame St Rep.* 524)

"Class of persons" meaning of *See* 14 R.D 644.

"Classification-mark" (*in the Burma Forest Act*) means a mark placed on timber to denote its origin or the agency by which it has been handled Bur. Act IV of 1902 (Forests), S 3, Cl (2)

Clause. "Clause" means one of the sub-divisions of the instrument A single paragraph or sub-division of a legal document, such as contract, deed, will, constitution, or statute Sometimes a sentence or part of a sentence

Clause of a Will, in 29 Chas. 2, c 3, s 6, means "some collocation of words in the will which, when removed out of the will, will leave the rest of the will intelligible" *per* Lord Cairns in *Swinton* v *Bailey*, (1878), 4 App Cas. 70,77, and *per* Mellish, L J. (Sc.), 1 Ex. D 121, "the word 'clause' is not used in any strict or technical sense, but merely means the same thing and has the same effect as 'part'"

Clausula generalis de residuo non ea complecti-turi quoe non ejusdem sint generis cum is quoe speciatim dicta fuerunt A maxim meaning, "A general clause of remainder does not embrace those things which are of the same kind with those which had been specially mentioned" (*Burrill Law Dict Lofft* 419)

Clausula generalis non refertur ad expressa A maxim meaning, "A general clause does not refer to things expressed" (*Burrill* 8 *Coke* 154.)

Clausula quae abrogationem excludit ab initio non valet. A maxim meaning "A clause (in an Act) which precludes its abrogation, is void from the beginning" (*Burrill Law Dict Bacon's Max Reg* 19, *p.* 89, 2 *Dwar St.* 673, *Broom Leg Max*)

Clausula vel dispositio inutilis per proesumpti onem remotam, vel causam remotam ex post facto fulcitur A maxim meaning "A useless clause or disposition (one which expresses no more than the law by intendment would have supplied) is not supported by a remote presumption or by a cause arising afterwards. (*Burrill Law Dict. Bacon's Max*; *Broom Leg Max*)

Clausulae inconsuetae semper indunt suspicionem A maxim meaning "Unusual clauses (in an instrument) always excite suspicion." (*Wharton Law Lex.*) *Broom Leg Max*, 3 *Coke*. 81. An unusual provision in an instrument, whereby the draftsman of the instrument obtains an advantage over the other party, excites a suspicion of a fraudulent motive.

Clean Bill of Lading

This rule was applied in the case to a provision in the release of a cause of action, stating that the party making the release agreed to release "deliberately, and of his own free will, and without any undue influence from any one" (*Girard* v. *St. Louis Car-Wheel Co*, 46 Mo App. 79, 84) In a deed of gift it was held a circumstance of grave suspicion that a clause in the conveyance recited that the deed was made "honestly, truly, and *bona fide*, without deceit and cunning," and the instrument was declared fraudulent and void (*Twyne's Case*, 3 Coke 80*b*, 81, 1 Smith Lead Cas 1.)

'Clean Bill of Lading' Bill of Lading which contained nothing in the Margin qualifying the words in the Bill of Lading itself (*Restitution S. S Co* v *Pirie*, 6 Asp. N S 428) If, in a Bill of Lading, words are inserted in the Margin to the effect that the Weight, or Quality, or Quantity unknown, that is not a Clean Bill of Lading, because that contains a qualification Where, on the other hand, there is no such qualification inserted in the Margin, there the Bill of Lading is a clean one (per *Cave, J.*, in 6 Asp. N. S 428).

Clean hands The maxim that one who comes into equity must come with "clean hands" is based on conscience and good faith The maxim is confined to misconduct in regard to, or at all events connected with, the matter in litigation. "Clean hands" means a clean record with respect to the transaction with the defendant, and not with respect to any third person

Clear As an adjective, manifest to the mind, comprehensible, well defined or apprehended (*Cent Dict.*), free from charges or deductions, (*as*) in a gift of real property clear of all assessments and charges", free from encumbrances without diminution or deduction, absolute, net In the condition for an auction sale providing that all small remnants must be cleared at the price stated in the catalogue, "cleared" means "taken away"

Clear and positive proof "Clear and positive proof" in the exception to S 14 of Bengal Reg III of 1793, is such as, upon the case made, leaves no reasonable doubt as to the matter required to be proved, the truth of which it establishes to a moral certainty, and it is by the combined effect of the whole evidence that the Court has to judge, whether the proof is "clear and positive". [(1869) 13 M I A 37=12 W R P C 36=3 B L R. 37=2 Suth 261=2 Sar 479]

"Clear annuity or legacy" is one on which legacy duty has been paid (*Louch* v *Peters*, 1 My. & K. 489)

Clear days If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last (*Black Law Dict*) "Clear days" as used in a statute requiring the Court to allow three clear days in a criminal case to intervene between the verdict and the rendition of the judgment, mean "days exclusive of the day the verdict was rendered and the day upon which judgment should be pronounced" By R S C., O. 64, r. 12 it is provided that where any number of days, not expressed to be clear days, is prescribed by the rules, the same shall be reckoned exclusively of the first day and inclusively of the last day. Where the term "clear days" is used, its effect is to exclude also the last day.

Clear evidence of proof In speaking of the meaning of the words "clear and decisive proof", "clear and satisfactory evidence", "clear and convincing evidence", "clear and conclusive proof" and "conclusive proof" the Court quotes with approval the statement of Baillinger in his work on Community Property, where it is said that "it is not believed that these terms should be considered as going to the length that their general meaning might import, and that it is certainly not required that the proof should be any more than sufficient to satisfy the mind of Court or jury that its weight is enough to cause a reasonable person, under all the circumstance, to believe in its sufficiency".

"PROOF MUST BE CLEAR", "CONVINCING", "SATISFACTORY", "CLEAR OF ALL REASONABLE DOUBT".—These phrases substantially convey the same idea, and require the same degree of proof, that is, facts must be established "by a fair preponderance of the proof" Proof must be clear of all reasonable doubt. (21 Am. St Rep 289)

Clear income The net amount of a person's income after payment of all outgoings

"Clear out" "*To clear out* a highway", means nothing more than to clear out for all the purposes to which it is dedicated (*Winter* v. *Peterson*, 61 Am Dec 678)

The words "*clear profits*", when used in a pleading is equivalent to the expression "ascertained balance" (7 Cyc 187)

"Clear yearly value" In the phrase "*clear yearly value*", clear means free from all outgoings like a rent charge, as losses by tenant and management, to which a rent charge is not liable. (*Tyrconnel* v *Ancaster*, Ambl 237 2 Ves 500.)

"PERFECTLY CLEAR", means clear in the view and judgment of reasonable men of sound mind.

Clearance (*In Maritime Law*) A Custom House permit for a vessel to sail out of a port and signifying that all dues have been satisfied, a document in the nature of a certificate given by the officer appointed for collecting customs duties to an outward bound vessel, to the effect that she has complied with the law and is duly authorized to depart.

Clearance card A letter given to an employee at the time of his discharge or end of service, showing the cause of such discharge or voluntary quittance, the length of time of service, his capacity, and such other facts as would give to those concerned information of his former employment (*Ame. Cyc*) It is in "no sense a letter of recommendation, and in many cases might, and probably would, be of a form and character which the holder would hesitate and decline to present to any person to whom he was making application for employment" (*McDonald* v *Illinois Cent. R Co*, 187 Ill 529, 537 58 N E 463)

Clearance Inwards The term refers to ships that have arrived in port and discharged their cargo.

Clearance Outwards The term refers to ships or vessels ready for leaving port.

Clearance outwards.

Clearing a Bill

Clearing a Bill To provide cash to satisfy a bill of exchange

Clearing Ground Mere *'clearing'* does not amount to 'breaking' of ground where the notification issued under the Forest Act prohibited 'breaking' of ground in a protected forest and the evidence only showed that the accused had cleared the ground *Held*, that no offence was committed (49 A 291=25 A L J 148=99 I C 407=A I R 1927 All 121)

Clearing House An institution organised by the Banks of a city –the house through which bankers pass the bills and cheques they hold on other banks by a mutual arrangement This is a place where bankers meet daily adjust balances of accounts and receive and pay differences

The London Bankers' Clearing House was organised, and is now employed, by the leading banking firms in London for the double purpose of saving time and trouble in the presentment for payment of cheques and bills by one broker to another, and arranging for the payment to be made as far as possible by set-off, without the exchange of actual money.

The Clearing House was established about 1775 (*Encyclopaedia Brit*, 9th ed, "Banking") and its operations were extended to clearing country cheques and drafts payable on demand in 1858 The principal banks in London are members, and make use of it, and the smaller banks do their "clearing," through one or other of the members The Bank of England, which acts as the banker of the Clearing House itself, uses it for making presentation to and receiving payment from other banks, but not for converse operations [*Chambers, Encyclopaedia* (ed 1891, "Clearing House", *Ency of the Laws of England*]

Clearing House Stock Exchange deals with bonds and shares on much the same principle as that of the Banker's Clearing House in respect of cheques and bills

"Clearly" Where a statute requires that notice of action shall "clearly and explicitly" state the cause of action, both time and place of the occurrence must be stated (*Martins* v *Upcher*, cited in Stroude 324.)

Clearly proven "Clearly proven" as used with reference to the amount of evidence required to establish the guilt of a defendant in a criminal case, is synonymous with, and has been held to mean, "beyond a reasonable doubt"

Clearly unjust. A wrong decision on a plea of limitation or no decision at all on the plea of limitation, where no argument is addressed to the Court on that ground by the complaining party will not make the decree "clearly unjust" (1937 M.W N 894)

Clemency Disposition to treat with favour and kindness, to forgive and spare offenders; tenderness

Clemency, Lenity, Mercy All these terms agree in denoting the disposition or act of forbearing to inflict pain by the exercise of power *Clemency* and *lenity* are employed only towards offenders; *mercy* towards all who are in trouble, whether from their own fault, or any other cause *Clemency* lies in the disposition, *lenity and mercy* in the act, the former as respects superiors in general, the latter in regard

Clerical error,

to those who are invested with civil power a monarch displays his *clemency* by showing *mercy*, a master shows *lenity* by not inflicting punishment, where it is deserved *Clemency* is arbitrary on the part of the dispenser, flowing from his will, independent of the object on whom it is bestowed, *lenity* and *mercy* are discretionary, they always have regard to the object and the nature of the offence, or misfortunes, lenity therefore often serves the purposes of discipline, and mercy those of justice, by forgiveness instead of punishment, but clemency sometimes defeats its end by forbearing to punish where it is needful A mild master, who shows clemency to a faithless servant by not bringing him to justice, often throws a worthless wretch upon the public to commit more atrocious depredations. A well-timed lenity sometimes recalls an offender to himself, and brings him back to good order Upon this principle the English constitution has wisely left in the hands of the monarch the discretionary power of showing mercy in all cases that do not demand the utmost rigour of the law.

Clergy "Signifies the assembly or body of clerks or ecclesiastics" (*Tomlin's Law Dic* See also *Burrill, Black*) The members of the Church of England are divided into clergy and laity The clergy are that body of men who have a peculiar and defined position in the Church, and are distinguished from the laity by their ordination The clerical order consist of bishops, priests and deacons. The clergy are also known as the Spirituality In the Middle Ages the *status clericalis* carried with it special privileges, both civil and political, called benefit of clergy (*Ency*)

Clergy, Benefit of the clergy The benefit of clergy had its original from the pious regard paid by Christian princes to the church in its infant state and the ill use the Popish ecclesiastics soon made of that pious regard The exemptions which they granted to the Church were principally of two kinds (1) Exemption of places, consecrated to religious duties, from criminal arrests which was the foundation of sanctuaries, (2) Exemption of the persons of clergymen from criminal process before the secular judge in a few particular cases, which was the true origin and meaning of the *privilegium clericale*. (*Tomlin's Law Dic*)

Clerical. *"Clerical service"* means strictly a service that involves writing.

Clerical error A mistake of a copyist in copying, a mistake in transcribing a written instrument, the mistake of a clerk in writing, error made by a clerk or by a transcriber (*Imperial Dict. See* S. 151, C P Code)

'CLERICAL ERROR' is one which is committed in the course of what may be called clerical duties (A.I R 1928 Mad 690=1928 M W.N. 634=110 I C 837)

"Clerical errors are to be distinguished from errors of substance, of judgment, or of law"

By Rules of Court the Court of a Judge may at any stage of the proceedings allow the pleadings to be amended, and, clerical mistakes in judgments or orders, or other accidental slips or omissions therein, may at any time be corrected by the Court or a judge on its own motion or on petition (*See* C. P. Code, S. 151.)

Clerical error.

"An order, even when passed and entered, may be amended by the Court so as to carry out the intention and express the meaning of the Court at the time when the order was made, provided the amendment be made without injustice or on terms which preclude injustice" [*per* Bowen, L J, in In re *Swire*, (1885) 30 Ch D at p 247, cited by Romer, J., in *Ainsworth* v *Wilding*, (1896) 1 Ch at p 678 But *see also* the remarks of Vaughan Williams, L J, on the former case in In re *Gist*, (1904) 1 Ch 409]

"Clerk" defined Act 45, 1860, S 27, Expln

The term *'clerk'* as used, in its popular sense, denotes as one whose duties are clerical, and they may be of various kinds (*In ecclesiastical law*), clerk is a person in holy orders, a clergyman (*In Court practice*), clerk is an officer of a Court who keeps its minutes, or records its proceedings, and has the custody of its records and seal (*i e*) the clerk of the Court. (*In commercial law*), one employed to keep records and accounts, a scribe, penman or accountant, (*Webster Dict*) one employed to write orders, letters, despatches, public or private papers, records, and the like.

ORIGIN OF TERM. Blackstone gives the origin of the term as follows "The clergy, in particular, as they then engrossed almost every other branch of learning, they were peculiarly remarkable for their proficiency in the study of the law The judges, therefore, were usually created out of the sacred order, as was likewise the case among the Normans, and all the inferior offices were supplied by the lower clergy, which has occasioned their successors to be denominated *clerks* to this day" (1 Bl Comm 17.)

The original meaning of the word "clerk" has become so enlarged that in modern usage it may include a salesman in a retail store It cannot, however, be extended to include one whose business is to travel and secure customers, and whose compensation is by commissions on sale effected by or through him

Attorney at law is not a clerk *Merchant appraiser* is not a clerk (*Auffmordt* v *Hedden*, 137 U S 310.) *Police surgeon* is not a clerk *Traveller* paid by commission and employed to get orders and to receive payments was held to be a clerk or a servant, although he was at liberty to receive orders for other persons. (Also *Reg* v. *Tite*, 8 Cox C.C 458, 7 Cyc 190-191)

Clerk distinguished from broker The leading and essential difference between a clerk and a broker is that the former hires his services exclusively to one person, while the latter is employed to make bargains and contracts between other persons in matters of trade, commerce and navigation

"Clerk or Servant." "A 'clerk or servant' is a person bound either by express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact". (Steph Cr, pp 27, 240.)

CLERK OR SERVANT, in the Preferential Payments in Bankruptcy Act, 1888 (51 & 52 Vict, c 62), as extended by 60 & 61 Vict, c. 19, S 3, does not include the managing director of a company Re *Newspaper Proprietary Syndicate, Limited*, (1900) 2 Ch. 349. *Cf.* Archbold, Cr. Pl. (23rd ed), 558]

Clerk of Court or Court clerk. A clerk of court is an officer of a Court of Justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc (*Black L Dict*) A clerk of the Court is included in the term "officer of the law" The clerk is not the Court He is simply the scribe and custodian of its records He is not an agent of the Court, nor has he any authority to act for or represent the Court in its absence.

"Clerk of the Crown" defined. Act 10, 1882, S. 4 (*l*).

"Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by the Cr. P Code to the Clerk of the Crown. (Cr P Code, 1898, S 4.)

Clerkship "A clerkship to an attorney imports the office of assistant to an attorney, an actual occupation in and about the attorney's business and under his control. The services are to be rendered, not solely or mainly by the study of law books, but chiefly by attending to the work of the attorney under his direction" Every applicant for an examination for an attorney's licence must first serve a regular clerkship with some practising attorney for some years (39 Am Rep. 600)

Client One who applies to a lawyer or counsellor for advice and direction on a question of law, or commits his cause to his management in prosecuting a claim or defending a suit, in a Court of Justice. (*Cyc*)

In the English Solicitors Act, 1870, S. 3, " 'Client' includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, a solicitor; and any person who is or may be liable to pay the solicitors Bill of costs, for any services, fees, costs, charges, or disbursements" (S 3).

Cloister A monastic establishment, a place for retirement from the world for religious duties.

CLOISTER, CONVENT, MONASTERY The proper idea of cloister is that of seclusion, the proper idea of convent is that of community, the proper idea of a monastery is that of solitude. One is shut up in a cloister, put into a convent, and retires to a monastery Whoever wishes to attach himself to a community that has renounced all commerce with the world goes into a convent, whoever wishes to shun all human intercourse retires to a monastery. In the cloister our liberty is sacrificed, in the convent our worldly habits are renounced, and those of a regular religious community being adopted, we submit to the yoke of established orders: in a monastery we impose a sort of voluntary exile upon ourselves; we live with the view of living only to God.

Close (*Noun*) "Close," means an inclosure or inclosed field (*Richardson* v *Watson*, 4 B & Ad. 787) "Close" may mean the quality or description of land, as well as the land itself. (*Heath* v. *Milward*, 4 L J C.P. 292.)

Close. (*Verb.*) Bring to an end; finish; complete.

Close.

"A *bargain is closed* when nothing mutual between the parties remains to be done to give either a right to have it carried into effect, but when either can enforce it against the other, or recover damages for the non-fulfilment of it." (1 Am Dec 262) A saloon is not closed when people can go in and purchase liquor, no matter if the front door is closed, or by what means they gain admittance.

Close season For hunting and fishing is a time in the year when all persons are prohibited from hunting and fishing (67 Am. St. Rep 695.)

Closing time The time or hour at which public house or office has to be closed and business should be stopped.

Closure This word, as used in the Standing Orders of the House of Commons and other Legislative Councils and Assemblies is restricted in meaning to the conclusion of a pending debate, but the process may be used so as to limit the time assigned to the stages of a bill. The closure dates from 1881 The celebrated forty-one hours' sitting, which commenced 31st January, 1881, was ended by the summary action of Mr. Speaker Brand, who, stating that "under the operation of the accustomed rules and methods of procedure, the legislative powers of the House are paralysed," said that he was satisfied he should best carry out the wishes of the House if he put the question at once. (3 *Ency of the Laws of England* 101.)

Cloud on title "A cloud upon one's title is something which shows *prima facie* some right of a third person to it." "To constitute a cloud upon the title of lands, there must be some color of title shown in the defendant The conveyance of land by the grantor who sets up no title whatever does not cast any cloud over the title of the true owner." (*Dunklin County* v. *Clark*, 51 Mo 60, 62)

"A sale of the land of the true owner, as the property of a mere stranger, with whom he is not connected, from whom he does not mediately or immediately trace title, cannot cast a cloud on his title"

No body can be compelled by way of specific performance of contract to purchase property with a cloud on its title. Any purchase with a cloud on title will embarrass the alienation of the estate and freedom of alienation, which, it is the policy of the law to promote. It will render the true owner uneasy in the possession and enjoyment of the estate, because it may at any time be the foundation of litigation; and it awakens suspicions of his title in the minds of others, though when the facts are developed its invalidity may be as apparent as if written on its face."

Chief Justice Cooley says: "A cloud upon one's title is something which constitutes an apparent incumbrance upon it, or an apparent defect in it, something that shows *prima facie* some right of a third party, either to the whole or some interest in it An illegal tax may or may not constitute such a cloud." (Cooley Tax 542)

Club. (*Association of persons.*) "A club is a definite association organised for an indefinite period, not an ephemeral meeting for a particular occasion, to be lost in the crowd at its dissolution" (40 Am Dec 540.) It is an association of individuals for pleasure or profit (as) social club; literary club, political club.

Co-adjutor.

Clubs may be either incorporated or voluntary associations. They are not partnerships nor "associations" nor company (7 Cyc. 259.)

Club (*a weapon*). A heavy staff or piece of wood, heavy stick, fit to be used in the hand as a weapon

A club may be a deadly weapon

Club and pistol "A pistol is not a club and has no resemblance to it The one is a recognized dangerous weapon, the other when employed as such" (*State* v. *Braxton*, 47 La Ann. 158, 159.)

Club law Rule of violence, Rule by force; the law of arms

"Clubbed packet" defined. Act 14, 1866, s. 2.

Co. An abbreviation of company and of county. (*Anderson L Dict*) A prefix to words, meaning "with" co-appellant, co-appellee, co-conspirator, co-defendant, co-employee, co-executor, co-heir, co-obligor, co-owner, co-partner, co-respondent, co-sharer, co-surety, co-tenant, co-trespasser, co-trustee, co-worker, etc.

"Co" "and Co" The abbreviation "& Co," added to a name does not necessarily give rise to the presumption of the existence of a partnership

Coach. A kind of carriage, and is distinguished from other vehicles chiefly as being a covered box, with four wheels *Coach* is a generic term and includes mail coach, stage coach, and omnibus (*Encyclopaedia Americana* 271, 272, *Johnson Dict.*)

MAIL COACH is a "coach that carries the mail". (*Johnson Dict*)

STAGE COACH is "a coach that regularly carries passengers from town to town."

HALF COACH with four wheels used for convenience and pleasure is called a *chariot* (*Johnson Dict*)

COACH-CAR. The common use of the words "car" and "coach", *in reference to railroad passenger cars*, would seem to indicate that there is no such generic difference between the word "car" and the word "coach", as applied to vehicles devoted to the carriage of passengers, as to make it impossible to use the words interchangeably. (*New York* v. *Third Ave R Co.*, 1 N.Y. Suppl 397.)

Co-adjutor. A fellow-helper or assistant, particularly applied to one appointed to assist a bishop, being grown old and infirm so as not to be able to perform his duties. (*Jacob L. Dict*)

CO-ADJUTOR, ASSISTANT. A *co-adjutor* is more noble than an assistant the latter is mostly in a subordinate station, but the former is an equal, the latter performs menial offices in the minor concerns of life, and a subordinate part at all times; the former labours conjointly in some concern of common interest and great importance. An assistant is engaged for a compensation; a co adjutor is often a voluntary fellow labourer. In every public concern where the purposes of charity or religion are to be promoted. co-adjutors often effect more than the original promoters: in the medical and scholastic professions

Co-adjutor Bishop.

assistants are indispensable to relieve the pressure of business. Co-adjutors ought to be zealous and unanimous, assistants ought to be assiduous and faithful. (*Crabb. Syn.*)

Co-adjutor Bishop. A "Co-adjutor Bishop" is a Bishop who is appointed to perform the functions of a regular Bishop who is old or infirm and unable to perform his duties

Co-administrator. One who is a joint administrator with one or more others.

Coal. In an order to a miner for coal, the word is to be construed to mean coal of a merchantable character

COAL, in the Metropolitan Streets Act, 1867 (30 & 31 Vict, c 134), s 15, does not include coke. [*Fletcher v. Fields*, (1891) 1 Q B 790]

Coal lease is an instrument conveying coal, with the right to mine the same.

Coal mine Consists of shafts, drifts, slopes, engines, machinery, platforms, cars, tracks, scales etc, as well as the hole in the ground.

Coalition. Fusion into one whole, temporary combination between parties retaining distinctive principles, (*In Diplomacy*), an alliance between States for combined action.

"Coast" defined. Act 5, 1883, s. 6 (5) (Mad Act 6, 1891, s. 9.)

Coast waters Tide waters navigable from the ocean by ocean craft, waters opening directly or indirectly into the ocean, and navigable by ships coming in from the ocean.

Coastwise trade Trade or intercourse carried on by sea between two ports or countries belonging to the same state or country.

Coaster. Vessel plying exclusively between domestic ports, and usually engaged in domestic trade.

"Coasting ship" defined. Act 10, 1889, Sc I, Pt II, Expln. 1.

"Coasting steamer" defined. Act 10, 1889, Sch. I, Pt. II, Expln. 1.

Coasting trade. A commercial intercourse carried on between different districts in the same state and between different places in the same district, on the sea coast or on a navigable river.

"Coasting vessel" defined Act 7, 1878, s. 3 (*g*).

Vessels plying exclusively between domestic ports, and engaged in domestic trade

"VESSEL IN COASTING TRADE" denotes "vessels engaged in the domestic trade or plying between port and port in the same State, as contradistinguished from those vessels engaged in foreign trade.

"Cocaine", meaning of. 5 Bom.L.R. 498

Cock-pit. "A name which used to be given to the Judicial Committee of the Privy Council, the council-room being built on the old cockpit of Whitehall Place." (*Black L. Dict.* 7; *Cyc.* 268.)

Code Napoleon.

"Cocoa manufactured" (*in the Tariff Act*) "is not a commercial term, and is broad enough to include the preparations of chocolate." (53 Fed 81, 84.)

C O.D. "Collect on delivery" These initials have acquired a fixed and determinate meaning "C O D." means "deliver upon payment of charges due to the seller for the price, and the carrier, for the carriage of the goods."

Code A general collection or compilation of laws by public authority, a system of law, a systematic and complete body of law, on any subject such as Civil Procedure Code, Code of Criminal Procedure, Penal Code, etc

"Code" includes rules made under the Code. [Act V of 1908 (Civil Procedure Code), S 2, Cl. (1)]

Code and compilation of statutes "There is quite a difference between a code of laws for a state and a compilation in revised form of statutes. The code is broader in its scope, and more comprehensive in its purposes Its general object is to embody, as near as practicable, all the law of the state, on any particular subject. It is more than evidentiary of the law, it is the law itself."

In 6 Am and Eng Enc Law (2nd Ed) p 173, it is declared that the word 'code' is used frequently to signify a concise, comprehensive, systematic re-enactment of the law, deduced from both its principal sources—the pre-existing statutes and the adjudication of Courts—as distinguished from compilations of statute law only

Code civil is the code which embodies the French Civil Law.

Code de commerce A French Code enacted in 1807, as a supplement to the Code Napoleon regulating commercial transactions and other laws of business

Code de instruction criminelle is a French code enacted in 1808, regulating criminal procedure of courts in that country

Code de procedure civil is that part of the Code Napoleon which regulates the system of civil courts, procedure, remedies, and the execution of judgments

Code of Civil Procedure That part of the laws of the state relating to procedure in Civil Courts.

Code of Justinian (*Roman law*) is a collection of imperial constitutions in Rome, compiled, under the order of that Emperor by a commission of ten eminent jurists, and promulgated A D. 529.

Code Napoleon was the name of the Code Civil under the empire (*Burrill*) Codified Law of France Under this name are often understood the five codes, the Civil Code (1804), Code of Civil Procedure (1806), Code of Commerce (1807), adopted in France during the first Napoleanic regime In 1807 the Emperor altered the title of the first of these from Code of Civil des francais to Code Napoleon, but at the restoration of the legitimate dynasty the title became Code Civil simply and thereafter the practice grew up of using the term Code Napolean as a short description of the whole of French codified law. (3 *Ency. of the Laws of England* 122.)

Code.

Code, the Probate. "That body or system of laws relating to the estates of deceased persons and of persons under guardianship." (28 Am St. Rep 382)

Co-defendants One of several defendants impleaded in a suit.

Codex. (*Lat*) A code or collection of laws.

"**Codicil**" defined Act 10, 1865, S 3, Act, 1, 1869, S 2; Act 5, 1881, S 3, Act 39 of 1925, S. 2.

It is "A testamentary instrument altering or modifying a will". A codicil may take effect without a will, if no will is forthcoming, though language is used in the codicil which implies the existence of a Will. [*Black* v *Jobling*, (1869) L R 1 P. & D 685, *Gardiner* v *Courthope*, (1886) 12 P. D 14, In the Goods of *Clements*, (1892) P 254.]

"CODICIL" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will [Act 39 of 1925 (Succession), S 2, Cl (*b*)]

"Codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions; it is considered as forming an additional part of the will [U. P Act 1 of 1869 (Estates), S 2]

"A codicil is a part of the will It is executed with the same formalities as any other testamentary disposition, and is to be carried out by the executors named in the will, and therefore, the same rules apply as would apply to the rights of the parties acquired under a will.

Codification. The process of consolidating the law of a country on any particular subject, or any portion of it, into a Code, whether that law consists of statutes, or case-law, or customs, or all three (*Sweet L. Dict*)

CODIFICATION. The Act of putting a body of laws so related to each other as to avoid inconsistency and overlapping. Bentham is responsible for the invention of the word "codification," or at all events for its introduction into the English language. (*Murray's Dict.*)

We are therefore bound to ask what meaning he himself attached to the term The answer is to be found in general view of a Complete Code of Laws (published in French by Dumont, 1802, Bowring's edition, Vol III, p 157). The object of a code is that every one may consult the law of which he stands in need, in the least possible time (p 193) "Citizens," says the legislator "What is your condition? Are you a father? Open the chapter 'Of Fathers.' Are you an agriculturist? Consult the chapter "of Agriculturist." "A complete digest, such is the first rule Whatever is not in the code of laws ought not to be law" (p. 205). "The great utility of a code of laws is to cause the debates of lawyers and the bad laws of former times to be forgotten" (p 207) Its style should be characterised by force, harmony, and nobleness. "With this view, the legislator might sprinkle here and there moral sentences, provided they were very short, and in accordance with the subject and he would not do ill if he were to allow marks of his paternal tenderness to flow down upon his paper, as proof of the benevolence which guides his pen" (p. 208). "A code framed upon these principles would not require schools for its explanation, would not require casuists to unravel its subtleties It would speak a language familiar to everybody, each one might consult it at his need. It would be distinguished from all other books by its greater simplicity and clearness The father of a family, without assistance, might take it in his hand and teach it to his children, and give to the precepts of private morality the force and dignity of public morals" (p 209) The code having been prepared, the introduction of all unwritten laws should be forbiddden

Coercion.

Judges should not make new law Commentaries, if written, should not be cited "If a judge or advocate thinks he sees an error or omission let him certify his opinion to the Legislature, with the reasons of his opinion and the correction he would propose" (p. 210). "Finally, once in a hundred years, let the laws be revised for the sake of changing such terms and expressions as by that time may have become obsolete (*Ibid*)

In short, the code was to be complete and self-sufficing and was not to be developed, supplemented, or modified except by legislative enactment

These views were characteristic of the age in which Bentham wrote. It was an age of great ideals It under-rated the difficulties of carrying them into execution It over-rated the powers of government It broke violently with the past. It was deficient in the sense of the importance of history and of historical knowledge It aimed at finality and made insufficient allowance for the operation of natural growth and change It forgot Bacon's maxim that *subtilitas naturae subtilitatem artis multis partibus superat* It ignored or under-estimated differences caused by race, climate, religion, physical, social, and economical conditions." (3 *Ency of the Laws of England* 125).

Co-employee One of several persons employed for wages in the same or common work The essential elements are common employment, a common employer and payment from a common fund. All who work for a common master or who are subject to a common control or derive their compensation from a common source and are engaged in the same general employment, working to accomplish the same general end, though it may be in different departments or grades of it, are co-employees.

"**Coercion**" defined Act 9, 1872, S 15

Coercion coerce Coerce is to restrain by force, especially by law or authority, to repress, to curb, to compel or constrain to any action (*Standard Dict.*) "Coerce had at first only the negative sense of checking or restraining by force, as, to coerce a bad man by punishments, or a prisoner with fetters It has now gained a positive sense, *viz*, that of driving a person into the performance of some act which is required of him by another, as to coerce a man to sign a contract, to coerce obedience In this sense (which is now the prevailing one), 'coerce' differs but little from 'compel', and yet there is a distinction between them" (*Webster*) "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening, to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Coercion

(Contract Act, S 15) To constitute coercion or duress, there must be some actual or threatened exercise of power, possessed or believed to be possessed, by the party coercing over the person and property of another Actu l violence is not necessary to constitute coercion, imaginary terrors may be sufficient for that purpose (*Boyse* v *Rossborough*, 6 H L Cas 2, 48)

The word "coercion" in S 72, Contract Act, is used in its general and ordinary sense as an English word and its meaning is not controlled by the definition in S 15 which is expressly inserted with the special object of applying to S 14 of that Act where "free consent," such as is required to render an agreement a contract under S 10 of the Act, is defined [17 C W N 511=(1913) M.W N 406=13 M L T 400=11 A L J 413=17 C.L J 478=15 Bom L R. 472 (P C)]

The word "coercion" in S 72, Contract Act, is used in its general or ordinary sense as an English word and not in the special sense in which it is used in S 15 of the Act The definition in S 15 is expressly inserted for the special object of applying to S 14, *i e*, to define what is the criterion whether an agreement was made by means of a consent extorted by coercion and does not control the interpretation of "coercion" when the word is used in other surroundings [40 I A 56=40 C 598 (611-2)=17 C W N 541=1913 M W N 406=13 M L.T 406=11 A L.J 413=17 C I J 478 =15 Bom.L R 472=184 P L R. 1913=18 I C 949=25 M L J 104 (P C)]

COERCION, UNDUE INFLUENCE, FRAUD, MISREPRESENTATION Under the contract law of India, as well as by ordinary principles, coercion undue influence, fraud and misrepresentation are all separate and separable categories in law It is true that they may overlap or may be combined [42 I A 135=30 B 441 (457)=17 Bom L R 527=19 C W N 729=22 C L J 1=13 A L J 570=18 M L T 1=1915 M W N 554=2 L W 611=29 I C 639=29 M L J 34 (P.C.).]

"Coercion by law is where a court, having jurisdiction of the person and the subject-matter, has rendered a judgment which is collectable in due course" (*Peyser* v *New York*, 26 Am Rep 624.)

Coercion in fact is "duress of person or goods, where present liberty of person or immediate possession of goods is so needful and desirable, as that an action or proceedings at law to recover them will not at all answer the pressing purpose" (*Peyser* v *New York*, 26 Am Rep 624, 7 Ame Cyc 270)

Co executor A joint executor, one who is an executor along with one or more others

Co-executors and co-administrators With respect to the representation and management of their descendant's estate, co-executors and co-administrators are regarded in law as one person, and consequently the acts of one of them in relation to the regular administration of the estate are deemed to be the acts of all, inasmuch as they have a joint and entire authority over the whole property

"Coffee" defined Mad. Act 8, 1878, S 3.

"Coffee estate" defined Mad Act 8, 1878, S 3

Coffee-house A house for the entertainment of guests, who are supplied with coffee and other refreshments, and sometimes also with lodging.

Cognomen

Coffee house and inn A keeper of a coffee-house merely furnishes tea and coffee, and a person who furnishes beds and provisions to such persons as apply therefor is regarded as an inn keeper A coffee-house is not an inn A coffee housekeeper is not an inn-keeper. "Coffee-house" is defined by Worcester to be a house of entertainment where coffee is sold It is sometimes used to denote a hotel or tavern But a license to keep a coffee-house does not justify the sale of intoxicating liquors.

Cogitationis poenam nemo meretur A maxim meaning "No man deserves punishment for a thought." (*Morg Leg Max*)

Cogitationis poenam nemo patitur. A maxim meaning "No man is punished for his thoughts." (*Salmond Juris*)

Cognates or cognati Relations by the mother's side (2 Bl Comm 235), relations by or through females (Same as Bhandus in Hindu Law)

Cognitio (*In old English law*) Acknowledgment of a fine, the certificate of such acknowledgment.

"Cognizable case" defined Act 10, 1882, S. 4 (*q*).

"Cognizable offence" defined Act 10, 1882, S. 4 (*q*), Bom Act, 3, 1888, S. 440 (3).

"COGNIZABLE OFFENCE" means an offence for, and "*cognizable case*" means a case in, which a police officer, within or without the presidency towns may, in accordance with the second schedule of the Code of Criminal Procedure, or under any law for the time being in force, arrest without warrant. (Cri. P Code, 1898, S 4)

Cognizance Judicial notice or knowledge; the judicial recognition or hearing of a cause, jurisdiction, or right to try and determine causes It is a word of the largest import, embracing all power, authority and jurisdiction The word "Cognizance" is used in the sense of "the right to take notice of and determine a cause" Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind of the suspected commission of an offence (37 Cal. 412=14 C W N 512=6 I.C. 8=11 Cr L J 217)

To take cognizance implies a conscious volition on the part of the Magistrate. The fact that a Magistrate passes an order remanding the accused to custody pending investigation does not lead to the inference that he has taken cognizance, when he never considers at all whether he is or is not taking cognizance (1936 A M I J 85)

Cognizance, judicial Matters of which the Courts take *judicial cognizance* require no proof, although they are not formally admitted They include matters of law and of fact

Cognizance of an offence in S 190 (*c*), Criminal Procedure Code, is not equivalent to cognizance of any offender, for the definition of complaint includes a complaint that some person unknown has committed an offence, section 4 (*h*) (11 I. C. 583=4 S L R 258)

Cognomen A man's family name, a surname; a nickname, a name added to the nomen proper, or name of the individual.

Cognomen majorum.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu A maxim meaning "The cognomen is derived from the blood of ancestors, and is intrinsic, it arises from an event and is extrinsic"

Cognovit Defendant's acknowledgment that plaintiff's cause is just

Cohabit. To dwell or live together, to inhabit the same place, to dwell or live together as husband and wife (usually of unmarried pair) "If they live together in the same house, in like manner as respects bed and board, as marks the intercourse between husband and wife, they may be said to cohabit as husband and wife" (*Lyerly* v. *State*, 36 Ark. 39, 40) "The primary meaning of the word '*cohabit*' is to dwell with some one, not merely to visit or see them It includes more than that."

Cohabitation. Cohabitation does not mean merely living together, but is used in the law as relating to the living together of a man and woman, as husband and wife Cohabitation implies sexual intercourse, which will be inferred from the fact of the living together of husband and wife.

MATRIMONIAL COHABITATION comprehends "a living together as husband and wife, embracing relative duties as such, and does not mean merely living together in the same house."

"Cohabiting together as husband and wife" means living together publicly in the face of society as if the conjugal relation existed, living in the same house in like manner as marks the intercourse between husband and wife

Cohaeredes una persona censentur, propter unitatem juris quod habent A maxim meaning "Coheirs are deemed as one person, on account of the unity of right which they possess" (*Black L Dict*)

Co-heir. One of several to whom an inheritance descends.

Co-heiress. A joint heiress, a woman who has an equal share of an inheritance, with another woman.

"Coin" defined (*See* Counterfeiting coin, Queen's coin.) Act 45, 1860, S. 230.

COIN. Mettalic money authorized to be issued from the mints of the State, and those of the foreign countries, current in the country Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used (Penal Code, S 230) The coining and legitimation of money is an exclusive prerogative of the Crown, but this prerogative has from the earliest times been both asserted and regulated by Acts of the Legislature. (*See* Indian Coinage Act.)

As a verb coin means to stamp metal and convert it into coin. To emit stamped paper is not to "coin" money.

COIN: MONEY. "Coin" differs from "money" as the species differs from the genus "Money" is any matter, whether metal on paper, which has currency as a medium in commerce. "Coin" is a particular specie, always made of metal, and struck according to a certain process, called "coining."

Collateral assurance.

COUNTERFEIT COIN. One in imitation of the genuine, not genuine

FALSE COIN. Imitation of coin in base metal, spurious coin.

Coinage. The process or the function of coining metallic money, also used to denote the great mass of metallic money of the country in circulation at any particular period. The phrase "coining" cannot without violence, be applied to the issue of paper money

Coiner. Maker of counter feit coins.

Coition. Sexual copulation.

Coke Solid residue of coal after distillation of volatile parts, it consists of coal, with some gases expelled

Co-labourer A fellow servant in a factory or in any other plaint work He is not one employed to do any of the duties of the master

Cold-blooded murder Wilful, deliberate and premeditated homicide.

Cold storage A "warehouse or store room ordinarily used for the preservation of butter and eggs, where the temperature is kept at a low degree, but above freezing point" (84 Am St Rep 158)

Cold storage business Business of storing and preserving commodities in a cool place for hire or reward

Cold-water-ordeal The trial which was ordinarily used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river, if they sank to the bottom until they were drawn up, which was in a very short time, then they were held guiltless, but such as did remain upon the water, were held culpable, being, as they said, of the water rejected and kept up. (*Wharton L Lex*)

Collam Malabar year

Collated telegram A telegram that the sender has repeated to secure accuracy and for which he pays an extra charge.

Collateral By the side, at the side, attached upon the side

The word "collateral" is of frequent use in law, where it bears its ordinary signification of "parallel" or "additional" It is used in a variety of connections, *e g*, we speak of a collateral agreement, collateral security, collateral relations, and collateral facts. There is no technical legal definition of the word "collateral" distinct from its common signification It is an additional security for the performance of the principal obligation, and on the discharge of the latter it is to be surrendered

Collateral agreement is one related, but ancillary to the main contract come to between parties. "Collateral" means in effect not inconsistent with the terms of the agreement in question. (49 All 680=25 A L.J. 349=100 I.C. 1029=A.I.R. 1927 All 422)

Collateral ancestors. Uncles, aunts, and others who are not "ancestors" in the sense of progenitors

Collateral Assurance. That which is made over and above the principal assurance or deed itself.

Collateral attack

Collateral attack Every proceeding in which the integrity of a judgment is challenged, except those made in the action wherein the judgment is rendered, or by appeals, and except suits brought to obtain decrees declaring judgment to be void *ab initio*. (87 Am St Rep 416)

It is an attempt to avoid, defeat or evade it, or to deny its force and effect in some indirect manner When a judicial order, judgment or proceeding is offered in evidence in another proceeding, an objection thereto on account of judicial error is a collateral attack

COLLATERAL ATTACK AND DIRECT ATTACK DISTINGUISHED. When the validity of a judgment, decree or order attacked is directly put in issue, by the pleadings of the party attacking it by proper averment, the attack is direct, and not collateral, but when there is no proper averments attacking it although its validity is drawn in the issue of the case, the attack is collateral

"Collateral consanguinity" defined. Act 10, 1865, S. 22

Collateral consanguinity, or kindred Collateral relations agree with the lineal in this, that they descend from the same stock or ancestor, but differ in this, that they do not descend from each other Collateral kinsmen, therefore, are such as lineally spring from one and the same ancestor, who is strips or root, the stripes, trunk, or common stock, from whence these relations are branched out (2 Comm 204, *Tomlin's Law Dic*)

The series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the *"collateral line"*, or *collateral consanguinity"*

Collateral descent Descent from brother to brother, cousin to cousin, and the like in contradistinction from "lineal descent", as from father or grandfather to son or grandson

Collateral facts in the law of evidence are those not bearing directly on the issue before the Court, facts which are not directly involved or connected with the principal issue or matter in dispute.

Collateral guaranty, collateral surety In a "collateral guaranty" a guarantor undertakes, in the event the principal fails to do what he has promised to pay damages incurred on such failure A guarantor undertakes to pay such damages as a result of the principal's default. A surety undertakes to do the particular thing if the principal fails

Collateral impeachment. "A collateral impeachment of a judgment or decree is an attempt made to destroy or evade its effect as an estoppel by reopening the merits of the case, or by showing reasons why the judgment should not be rendered or have a conclusive effect in a collateral proceeding, that is, in any action other than that in which the judgment was rendered, for, if this be done upon appeal, error, or *certiorari*, the impeachment is direct."

Collateral obligation. A separate obligation attached to any other contract to guarantee its performance (56 Fed. 849.)

Colleague

Collateral proceeding Another proceeding, not for the direct purpose of impeaching the proceeding to which it is said to be collateral

Collateral Promise One whose primary object is to make the promisor the grantor of another's debt It is a promise to answer for a pre-existing debt or liability without any new consideration

Collateral Proof (*of an instrument*) such an account as may reasonably be expected under the circumstances of the case and as will afford a presumption in its favour.

Collateral purpose and collateral matter—distinction 1937 Rang L R 127=A I R. 1937 Rang 408.

"Collateral relations" is used in opposition to "lineal relations" Collateral relations are those who are descended from the same stock or ancestor, but not, like lineal relations, descended the one from the other

Collateral relationship Words expressive of collateral relationship apply alike to relatives of full and of half blood [Act XXXIX of 1925 (Succession), S 99 (*h*)]

Collateral security A security given in addition to the direct security, an additional security given by a debtor to further safeguard the interests of the creditor

Whether a security is collateral or not depends upon the time of its operation and not necessarily on the precise moment at which it is given. Security may equally be collateral, whether it is given at the same time as what may be called the principal security or whether it is given subsequently, provided only that it is intended to take effect and to operate and to enure for the benefit of the person to whom it is given, alongside and parallel with the other security that has been given. [*Athill* v. *Athill*, (1880) 16 Ch D 211 and *Leonine* v *Leonine*, (1879) 10 Ch. D. 460, Foll, (1871) 16 W R. 203, (1870) 3 P. C. 299, Dist] 127 I C 760=34 C.W N. 605=57 Cal. 328= A I R 1930 Cal 536

Collateral undertaking "Where there is a pre-existing debt or other liability, a promise by a third person having immediate respect to and founded on the original liability, without any new consideration moving to him to pay or answer for such debt or liability, is a collateral undertaking" (See *Fish* v. *Hutchinson*, 2 Wills 94)

Collateral warranty Warranty made by a person not having the title, and who could not at any time have held it

Collation. "Collation" is the bringing the mass of property of an estate together, and so dividing it that each may have his proper share.

Colleague. Member in a joint office (as) colleagues on the Bench or the Bar

COLLEAGUE, PARTNER. Colleague is more noble than partner men in the highest offices are *colleagues*, tradesmen, mechanics, and subordinate persons, are *partners*, every Roman Consul had a colleague, every workman has commonly a partner *Colleague* is used only with regard to community of office, *partner* is most generally used with regard to community of interest: whenever two persons are employed to act together on the same business they stand in the

Collect.

relation of colleagues to each other; whenever two persons unite their endeavours either in trade or the business of life, they are denominated partners ministers, Judges, Commissioners, and pleni-potentiaries, are colleagues, bankers, merchants, and the like, have partners

Collect — Collection. Assemble; accumulate, bring together.

"COLLECT" can only apply to movable property or money; it also applies to the proceeds of the sale of immovable property It cannot apply to immovable property (26 Am. Dec 645) To "collect" is to gather; to assemble When used with reference to the collection of money, it often implies much more than the mere act of receiving the money

"'AUTHORITY TO COLLECT' money implies and includes authority to use the means ordinarily employed for the purpose of accomplishing a collection, and among these are the retaining of counsel and the institution of suit 'Authority to collect' is broader and more comprehensive than 'authority to receive payment'."

"Collection Agent" defined Reg. 1, 1894, S 10 (1)

Collection of antiquities The mere purchase of articles of antiquity singly, at separate times, is insufficient to constitute them a "collection" of antiquities if they have not been brought together in any particular place (77 Fed 172, 173)

Collection of Assets "Although the words 'Collection of Assets' in the Administrator-Generals' Act do not necessarily mean realization by sale or by actual receipt or possession, yet they imply that the Administrator-General incurred trouble or expense or responsibility" (1 M H C R 171) The expression "collection of assets" in S 54, Act II of 1874, implies the doing of some act in connection with such assets (25 C 65, 1 M.H C 171, F)

Collective naturalization, is "where the Government by treaty or session, acquires the whole or a part of the territory of another nation, and takes to itself the inhabitants thereof"

"Collective work" means—(*a*) an encyclopaedia, dictionary, year book, or similar work, (*b*) a newspaper, review, magazine, or similar periodical, and (*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated. (Copy Right Act, S 35)

"Collector" defined This word also occurs in combination with other words (as) Customs Collector, Deputy Commissioner, District Collector; Sub-Collector Act 20, 1848, S 6, Act 23, 1850, S 14, Act 12, 1851, S 18, Act 32, 1855, S 21, Act 11, 1859, S 61, Act 22, 1872, S 4, Act 8, 1873, S 3 (6), Act 6, 1878, S 3, Act 19, 1883, S 3, Act 8, 1885, S 3 (16), Act 2, 1886, S 3 (9), Act 5, 1886, S 3 (2); Act 11, 1886, S 3 (14), Act 16, 1887, S 75 (2), Act 1, 1890, S. 2 (2), Act 8, 1890, S. 4 (6); Act 9, 1890, S. 3 (18), Act 1, 1894, S 3 (*c*); Act 2, 1896, S 3 (3), Act 12, 1896, S 3 (*b*), Act 10. 1897, S 3 (10), Act 2, 1899, S 2 (9); Act 7, 1903, S 2 (*f*); Ben Act 8, 1865, S 1, Ben Act 7, 1866, S 10; Ben Act 7 1868, S 1, Ben Act 4, 1870, S 1; Ben Act 6, 1873, S. 3; Ben Act 5, 1875, S.2; Ben. Act 3, 1876, S. 3 (5); Ben. Act 7, 1876, S. 3 (13), Ben Act 9, 1879, S 3; Ben Act 6, 1880, S. 3, Ben Act 9, 1880, S. 4, Ben. Act 2, 1882, S 3, Ben Act 8 1895, S 2 (*f*), Ben Act 1, 1899, S 3 (8), Bom. Act 3, 1869, S 13, Bom Act 5, 1878, S 3 (4), Bom Act 5, 1879, S 3 (3), Bom Act 7, 1879, S 3 (5), Bom. Act 2, 1890, S (*b*), Bom. Act 1, 1904, S. 3 (11); Bur Act 1, 1898, S 2 (12), E B & A. Act 1, 1909, S 5 (11), E.B & A Act 1, 1910, S 3 (4); Mad Act 5, 1882, S. 2, Mad Act 1, 1891, S. 3 (6), P Act 1, 1898, S 2 (9); P Act 3, 1905, S 3 (iii), U P Act 2, 1892, S 2 (14), U P Act 2, 1892, S 2 (3), U.P. Act 1 1904, S. 4 (9), Reg Act 2, 1877 S 2 (*b*)

College.

"COLLECTOR"—(*a*) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively and, without those limits the Collector of a district, and (*b*) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf [Act II of 1899 (Stamp), S 2 (9)]

"Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act [Act VI of 1878 (Treasure Trove), S 3]

Collector (*In S 80, C P Code*, 1908), means the Collector of the District in which the suit is instituted (18 C W N 1340)

(*In the Land Acquisition Act*) means the Collector of a District and includes a Deputy Commissioner and any officer empowered by the Local Government to perform the function of a Collector under the Act. (8 O C 118)

The term "Collector" in S 93, C P Code, 1908, does not include "Assistant Collector" in charge during the Collector's illness (35 Bom 245)

"Collector of Land Customs" means a Collector of Land Customs appointed under S 3 of the Land Customs Act [Act XIX of 1924, S. 2, Cl (*c*)]

"Collectorate" defined. Act 6, 1853, Ss. 3 and 4.

The word "Collectorate" in this Act means the zila or other district to which a Collector is appointed, and no lands situate beyond the limits of such zila or district shall be deemed to be situate within the collectorate by reason of their forming part of an estate paying revenue to the Collector thereof. [Ben. Act VI of 1853 (Rent Recovery), S 3.]

College. Defined in VIII of 1904, S. 2.

COLLEGE (*Collegium*). A particular Corporation, company, or society of men, having certain privileges founded by the King's licence (*Tomlin's Law Dic.*) An organized assembly or collection of persons established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character

The term *"college"* is used in various senses, as a college of electors, a college of surgeons, or a college of cardinals.

In ordinary usage, a college is an institution of learning, which offers instruction in the liberal arts and in scientific branches. The word is applied to institutions which are confined to some special grades of instruction.

College.

The term "College" or "affiliated College" includes any collegiate institution affiliated to or maintained by the University [Act VIII of 1904, S. 2, Cl (2) (*a*)]

"College" generally means a place where a collection of students is contemplated, and not the hall or other buildings intended for their accommodation. It is an institution

Collegium seu corpus corporatum nisi regnis constitutionibus non potest existere A maxim "A college or incorporated body can only exist by consent of the sovereign." (*Pelonbet Leg Max*)

Collier One who works in a coal mine, also a dealer in coal

Colliery A place where coals are dug A mine, pit or place where coals are dug, together with machinery used in digging and raising of coal

Collision Violent encounter of moving bodies, a dashing or violently running together In maritime law, "collision" is the act of ships or vessels striking or colliding together. In its strict sense collision means the impact of two vessels, both moving (*Abbott L Dict., Burrill L Dict*) By common usage the term "collision" is applied to cases where one vessel quite stationary is run into by another (See *The Dea Richmond*, 107 Fed 1001)

COLLISION, in S 3 of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict, c 71), applies only as between vessels and not as between a vessel and a pier. [*The Normandy*, (1904) P 187.]

As to collisions at sea, *see* Marsden, Collisions at Sea, William and Bruce, Admiralty Practice Pritchard's Digest, "Collision", Abbott, Shipping, Maclachlan, Shipping, Roscoe, Admiralty Practice

Collision of Ship The striking or running foul of one ship against another.

Colloquium The colloquium "is that part of allegation used in pleading in libel or slander cases to show that the words were spoken in reference to the matter of the averment" (24 Am. Dec 339), (*i e*) alleging that the words were spoken with reference to some extrinsic facts, on account of which the words be come actionable.

Collusion A secret agreement for a fraudulent purpose, a secret or dishonest arrangement in fraud of the rights of another, a secret agreement by two or more persons to obtain an unlawful object. An agreement between persons to obtain an object forbidden by law, or to obtain a lawful object by illegal means.Collusion is a deceitful agreement or contract between two or more persons, for the one to bring an action against the other, to some evil purpose, as to defraud a third person of high right, etc This collusion is either *apparent*, when it shews itself on the face of the act, or, which is more common, it is *secret*, where done in the dark, or covered over with a show of honesty. And it is a thing the law abhors: wherefore, when found, it makes void all things dependant upon the same, though otherwise in themselves good (Co Lit. 109, 360, *Tomlin's Law Dic*) The word 'collusion' when used in connection with judicial proceedings means a secret agreement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for the some sinister purpose or

Colony

even in the wider sense of a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person or for some improper purpose 131 I C 886=33 Bom L R 141= A.I R 1931 Bom 218 *See also* 113 I C 229=30 Bom. L R 1539=A I R 1929 Bom 1=53 Bom 75, 1935 R. D 259 "More than one mind must be involved to constitute a collusion."

COLLUSION (*In divorce proceedings*) Collusion is secret arrangement between husband and wife that one of them shall represent in Court the other as having committed acts constituting a cause of divorce, for the purpose of enabling the plaintiff to obtain a divorce, the dependant not actively contesting the plaintiff's allegations It has a far wider meaning than *connivance*, and extends to the cases where the original ground of the petition has not been connived at, where the parties have subsequently agreed to use it as a means of divorce, so that collusion in this sense may exist without any connivance at all (11 Cal 651)

Collusion, in the Matrimonial Causes Act, 1860 (23 & 24 Vict, c 144), S 7—See *Hunt* v *Hunt*, (1878) 47 L J P D & A 22, *Alexandre* v *Alexandre*, (1870) L.R. 2 P & D 164, *Butler* v *Butler*, (1890) 15 P D 67 (C A), *Same* v *Same*, (1893) P 185, (1894) P 25, *Rogers* v. *Rogers*, (1894) P 161; *Churchward* v. *Churchward*, (1895) P. 7

"Collusion" is synonimous with "conspiracy". Both are agreements for a wrongful purpose Both are secret agreements by two or more persons to obtain an unlawful object.

Collusion and fraud "Collusion" is not the appropriate term to apply to the obtaining of a decree by a fraud on the Court. 63 I A 53=15 Pat. 203=160 I C 68=38 Bom L R 339=40 C W N. 289= A I R 1936 P C 46=70 M L J 122 (P C.).

Cologne A perfumed liquid containing alcohol and certain aromatic oils Cologne has been held not to be an intoxicating liquor, though containing sufficient alcohol to produce intoxication 37 Am. Rep. 284

Colonial Pertaining to colony (as) colonial government

"Colonial Court of Admiralty" defined 57-8 V, c. 60, S. 742

"Colonial law" defined 53-4 V, c 27, S 15.

Colonial legislature" defined 52-3 V, c 63, S. 18 (7).

COLONIAL LEGISLATURE The authority other than the Imperial Parliament or the King in Council competent to make laws for a British possession (including India) Int Act, 1889 (c 63), S. 18 (7)

"Colony" defined 13-14 V, c 96, S 5; 23 4 V, c 88, S. 1, 37-8 V, c 27, S. 2, 44 5 V, c 58, S. 190 (23), 46 7 , c 3), S 2, 52-3 V, c 63, S 18 (3), 53 V, c 4, S 9 (2), Act 10, 1897, S. 3 (11), Punj, Act 5, 1912, S 3

"COLONY" shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a Central and a Local Legislature, all parts under the Central Legislature shall for the purposes of this definition be deemed, to be one colony.

Colony.

[Act X of 1897 (General Clauses), S 3 (11); Eng Int Act, 1889, S. 18 (3)]. Colony is a dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another country and remain subject to the mother country (*Black L. Dic.*)

OLD MEANING OF THE TERM The word "colony", as popularly used, denotes a body of persons who form a settlement at distance from the country to which they belong According to Greek ideas, the colony was an independent State, connected with the mother city chiefly by religious tie The Roman colony was a body of citizens under arms, stationed in one of the towns or strongholds of the empire, and possessing institutions modelled on those of Rome. In English law the title "colony" was formerly restricted to territories on which it had been formally conferred, whilst the other communities formed by subjects of the Crown beyond seas were described as *plantations, islands, territories, settlements, dominions, forts and factories* [see *Lubbock* v. *Potts*, (1806) 7 East. 449, where it was held that Gibralter was merely a fortress, and not a plantation within the meaning of the Navigation Acts]

PRESENT MEANING OF THE TERM The distinctions have, so far as nomenclature is concerned, been abolished, and the term "colony," in Acts of Parliament passed since 1889, includes every British possession except the Channel Islands, the Isle of Man, and British India (Interpretation Act, 1889, 52 & 53 Vict., c 63, S. 18) In other words, it embraces every part of "the Kings Dominions," except the United Kingdom and the possession so excepted (*See* Colony Office List, which contains a most useful list, by Mr Chewton Atchley, of Parliamentary Papers relating to the affairs of colonies and protectorates, *Ency of the Laws of England.*)

Color. Hue or tint as distinguished from white (as) "give color to my pale cheek" (*Shafles*) The term "Color" means semblance, show, pretence, disguise, appearance, and implies in the language of the law, that the thing to which it is applied has not the real character imputed to it, an apparent or *prima facie* right, appearance of a thing as opposed to the thing itself

Color blindness An imperfect perception of colors, inability to recognise colors at all, or to distinguish between different colors or shades of them

Color of authority The words "color of authority" includes authority derived from an election or appointment, however irregular or informal, "so that the incumbent be not a mere volunteer"

Acting under "colour of authority" or "in excess of duty". 30 Bom, L R. 1018=A I R 1928 Bom. 352

"Color of law" is not the same actual law "Color" is a modifier in legal parlance, and means appearance, as distinguished from reality "Color of law" means mere semblance of legal right and not actual right. (43 L Ed. 936)

Color of office is the right or authority by which an officer exercises the duties of his office, which might have been invalid for some reason, In general, it is a pretence of official right to do an act made by one who has no such right (*Bouvier L. Dict.*); the mere semblance, shadow or false appearance of official authority; the dissembling face of the right of office, the use of official authority as a pretext or cover for the commission of some corrupt or vicious act (*Burrill L Dict*), an act evilly done, by the countenance of an office (*Tomlin's L Dict.*); an act unjustly done by the countenance of an office (*Wharton L Lex.*), an act wrongfully done by an officer under the pretended authority of his office (*Bouvier L Dict*), and is always taken in the worst sense, being grounded upon corruption, of which the office is a mere shadow or colour (*Tomlin's L Dict*), under statutes, the phrase is used to define an illegal claim of right or authority to take the security (*Griffiths* v *Hardenbergh*, 41 N Y 46, 469, *Ame Cyc*, Vol 7, p 401)

Color of right A "color of right" which constitutes one an officer *de facto* "may consist in an election or appointment, or in holding over after the expiration of one's term of office, or acquiescence in the acts of such officer for such a length of time as to raise the presumption of colorable right by election or appointment" (3 Am St Rep 176)

Color of title That "which in appearance is title, but which in reality is no title," an apparent right (15 L Ed 280) "When we say a person 'has color of title' whatever may be the meaning of the phrase, we express the idea at least that some act has been done or some event transpired by which some title, good or bad, to a parcel of land, has been conveyed to him" (77 Am Dec 586). To constitute color of title it is not essential that the title under which the party claims should be a valid one A claim asserted to property, under the provisions of a conveyance to pass a title to the subject thereof, is strictly a claim under color of title, and one which will draw to the possession of the grantee the protection of the statute of limitations, other requisites of those statutes being complied with

The term "*color of title*" is not synonymous with the term "*claim of title*" To constitute the former, there must be at least a paper title; but the latter may be constituted wholly by parol or without any evidence or foundation for the same.

"UNDER COLOR OF" "BY VIRTUE OF" The expressions "by virtue of" and "under color of" do not mean the same thing, for instance, the proper fees are received by "*virtue of the office*", extortion is under "*color of the office*" Any rightful act in office is by "virtue of the office", a wrongful act in office may be under "color of the office".

Colorable Designed to give color or conceal, that which has or gives colour, that which is in appearance only, and not in reality, what it purports to be (*Black L Dict*) "*Colorable* and subtle crimes, that seldom are taken within the walk of human justice." (*Hooker*)

Colorable deviation (*in Patent Law*). A certain device, which was a plain equivalent, performing the same function in a combination as that covered by the patent, is a mere colorable deviation It is however, a smaller and more restricted term than "equivalent" as used in its technical patent law sense

Colorable transaction. Ordinarily, a transaction may be described as colourable when it is not what it purports to be, but when, as a matter of fact, a substantial part of the consideration appears to have been paid, the transaction cannot be described

Colorable transaction.

Colorable child

as colourable within the meaning of S. 53, T P. Act. (8 Bom L R 110)

Colored child (*in American Law*) The term includes all persons of mixed blood descended from Negro ancestry.

Colored man "There are various shades of color among the human race in this country and there is no legal technical signification to the phrase 'colored man,' which the courts are bound judicially to know A man of pure caucasian blood, in the freaks of nature and the idiosyncrasies of families, is sometimes impressed with the dye much deeper than falls to the common lot of his race"

"Colored people". Generally means black people, Africans or their descendants, mixed or unmixed, persons belonging to the Negro race

Colored person "The question whether a person is a colored person, in cases involving the status of colored persons, partakes more of a political than of a legal character and should be determined, not solely by the admixture of Negro blood, but by reputation, by reception in society, and by the exercise of the privileges of a white man" There is no legal technical signification attached to this phrase which theCourts are bound to take judicial notice of (*Pauska* v *Daus*, 31 Tex. 74, *Bouv*)

Colt An animal of the horse species, whether male or female, not more than four years old (Russ. & R 416) As distinguished from "horse" colt means a horse not old enough to work

"Com", "Co" Abbreviations of the word "company"

Combat An engagement, battle, forcible encounter between two or more individuals or bodies of men

Combatants (*in Milit. Law*) It is usual to distinguish the men composing a regular belligerent army into combatants and non-combatants. On capture by the enemy both are entitled to the rights of prisoners of war

Combater. One who combats.

COMBATANT, CHAMPION A combatant fights for himself and for victory, a champion fights either for another, or in another's cause The word 'combatant' has always relation to some actual engagement, champion may be employed for one ready to be engaged, or in the habits of being engaged The combatants in the Olympic games used to contend for a prize, the Roman gladiators were combatants who fought for their lives when knight-errantry was in fashion there were champions of all descriptions, champions in behalf of distressed females, champions in behalf of the injured and oppressed, or champions in behalf of aggrieved princes The mere act of fighting constitutes a combatant, the act of standing up in another's defence at a personal risk constitutes the champion. There may be champions for cause as well as persons and for bad as well as good causes, as champions for liberty.

Combination—Combine Union of different elements, "to combine is to join together, to coalesce, to unite, to be united, to be joined in friendship or in design" (*Worcester*) Roget in his Thesaurus, classifies the word "combine" as synonymous with or belonging to the same class as "unite, incorporate, amalgamate, embody, absorb; reembody, blend, merge, fuse, melt into one; consolidate, coalesce, centralize impregnate to put together, to lump together." The word "combine" as used in an Act providing that no company formed to navigate the lakes and rivers shall combine with any other company formed under the Act for any purpose is not to be construed as only prohibiting combinations to prevent what is contrary to public policy or injurious to the public, but includes combinations for any purpose whatsoever The word "combination" also means a union of men for the purpose of violating the law, conspiracy (as) a combination for a strike or boycott (*Bouv.*)

In Patent law A patent may be taken out for a *new combination* of existing machines or appliances. (*Moody* v *Fiske*, Fed Cas. 9, 745, *Bouv.*)

COMBINATION, CABAL, PLOT, CONSPIRACY An association for a bad purpose is the idea common to all these terms,and peculiar to combination A *combination* may be either secret or open, but secrecy forms a necessary part in the signification of the other terms, a *cabal* is secret as to its end, *combination* is the close adherence of manyfor their mutual defence in obtaining their demands, or resisting the claims of others A *cabal* is the intrigue of a party or faction, formed by cunning practices in order to give a turn to the course of things to their own advantage A *plot* is a clandestine union of some persons for the purpose of mischief the ruling idea in a *plot* is that of a complicated enterprise formed in secret, by two or more persons A *conspiracy* is a general intelligence among persons united to effect some serious change the ruling and natural idea in this word is that of unanimity and concert in the prosecution of a plan.

A "COMBINATION OR CONTRACT IN RESTRAINT OF TRADE" may be not only not illegal, but praiseworthy, as where parties attempt to engross the market by furnishing the best goods, or goods of good quality at the cheapest price Hence, a mere combination in restraint of trade will not be illegal,unless the means are shown to be illegal, and therefore, it is ordinarily necessary to declare and prove the means by which it is intended to engross or monopolize the market. (55 Fed 605, 607, 638, Indian Contract Act, S 27.)

Combination pools A method of gambling on horse races

Combustio domorum (*Lat*) Burning of houses; arson (4 Bl Com 374.)

Combustion chamber. A well-understood term in the industrial arts In the description of a claim for a patent, the term 'CombustionChamber" necessarily implies an inclosed space in which the acts of combustion may be confined. (116 Fed. 186, 190)

Come Comes The word "comes" in S 33, Stamp Act (1899), is wide enough to include the production of documents under a search warrant (25 Mad 525)

In pleading, the word "comes" indicates the presence in Court of the defendant (as), defendant *comes* and defends.

In an entry of a judgment by default, the words "defendant *comes not*" merely imports a failure of

Come

Come.

the defendant to come and answer on the date fixed, and not that he has never appeared in the suit.

IN RESPECT OF INHERITANCE In an Act relating to descents and distributions, the words "where the estate shall have *come* to the intestate on he part of the father," or "mother" as the case may be, would include every case where the inheritance shall have come to the estate by gift, devise or descent from the parent referred to, or from any relative of the blood of such parent.

"COME AT ONCE" The phrase in a telegram announcing the sickness of a person is sufficient to require of the telegraph company active diligence in an effort to promptly deliver the message It is sufficient to justify or require an inference that the message was of importance

"COME BY THE FATHER" In respect of the descent of an estate, the words embra e not only the father, but all ancestors of the father, both paternal and maternal

"COME BY THE MOTHER" In a statute relative to descent of property, these words embrace not only the mother, but all the ancestors of the mother.

"Come of" To issue or proceed from, as a descendant, (as) to *come of* a noble family "*Of* Priam's Royal race my mother *came*" (*Dryden*)

"COME TO" To amount to (as) The taxes come to a large sum

"Come to his hands" These words in S 50, Civil Procedure Code, 1908, mean "come actually to his hands" and not "would or should have to his hands" (11 Bom 727, 12 C.W N 514)

Comedy A dramatic representation of the lighter faults, passions, actions, and follies of mankind, a dramatic composition of a light and amusing character, illustrative of the weakness of individuals, manners of society or ludicrous accidents of life

Comfort Support, solace, consolation, assistance, encouragement The words "*support and comfort*" in a will giving property to a wife for life, for her "support and comfort" merely express the purpose and motive of the gift and do not make the gift conditional The use of these words do not cut down the clearly expressed absolute gift to a qualified or conditional one A provision in a will requiring the testator's executors to set aside so much of the income of his estate as is necessary for the *comfort* of testator's wife is not satisfied by setting aside a sufficient sum to provide her with sufficient food and wearing apparel The word embraces whatever is required for mental and spiritual enjoyment also, happy and agreeable prospects.

COMFORT AND CONSOLATION Comfort signifies positive enjoyment (as) 'surrounded with comforts" Consolation points to some specific relief for the afflicted mind (as) consolations of religion Comfort supposes relief of pain as well as positive enjoyment

Comfortable home. A provision to furnish a "comfortable home" for the testator's wife or sister means something more than a shifting abode, with strange faces and strange surroundings, and requires a home for such person on the ancestral estate amidst the scenes of their earlier days"

Comity of Nations

Comitas. (*Lat*) Courtesy; comity.

Comitas inter gentes: the comity of nations, the courtesy by which one state recognises or follows the law of another

Comity, Reciprocity (*In re* McCoskey, 1 N Y. Suppl 782, 783), courtesy, complaisance, respect, a willingness to grant a privilege, not as a matter of right, but out of deference and good will (*Black L. Dict*)

COMITY The term "comity" is defined as "courtesy, a disposition to accommodate." Courts of justice in one Province or State will, out of comity, enforce the law of another state, when by such enforcement they will not violate their own laws. This rule enables intercourse between states and individuals and permits them to sue in each other's courts Comity means general reciprocity Under this rule a Court or State yields as a favour what cannot be claimed as a right The Court, out of favour and good will extends to foreign laws an effect which they would not otherwise have (92 Fed 90, 96) "Comity is not a rule of law, but one of practice, convenience and expediency It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision and discouraging repeated litigation of the same question But its obligation is not imperative Comity persuades, but it does not command It declares, not how a case shall be decided, but how it may with propriety be decided.

Comity of Nations It is the recognition which one state or nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens, who are under the protection of its laws (40 L Ed 95) It is the formal expression and ultimate result of that mutual respect accorded throughout the civilised world by the representatives of each sovereign power to those of every other in considering the effect of their official acts Its source is a sentiment of reciprocal regard, founded on identity of position and similarity of institutions (52 Am St Rep 270) It is neither a matter of absolute obligation on the one hand, nor of mere courtesy and goodwill on the other It is a matter of political necessity under modern conditions As the law of a State cannot be enforced beyond its territorial limits except by a favour of the State which, by its Courts of law, is asked to respect it, a voluntary recognition of foreign law is involved, and has been ascribed to a supposed "comity" or courtesy of nations towards each other (*Dicey's Conflict of Laws*)

COMITY AND PRIVATE INTERNATIONAL LAW "There is a difference between private international law and what is termed comity, though both originate in the goodwill, convenience, or policy of nations, deeming it advisable to grant to each other privileges which are not reciprocally due between States and thus not *stricti juris* Comity, in a stricter sense, is the reciprocal exercise of politeness between Governments of States, and has regard to matters of mere courtesy based on the general principle of the right of respect, or it comprehends some special voluntary acts not due by treaty, which may serve to facilitate the interests of international policy of either party. To the latter

Comma.

category belongs also any privilege granted regarding direct and special correspondence between the respective Governments, whilst private international law includes modes of legal proceedings in the application of foreign laws, as adopted by legislative jurisprudence or by the jurisdiction of the law Courts without any direct interference of the Executive Government, unless when established by special agreement between the respective State In this sense private international law may be called the *comity of law Courts*, whilst comity itself is the *droit de convenance* between Governments" (*Ency. of the Laws of England*)

Comma The smallest division of a sentence in language. The comma and semicolon are both used for the same purpose in punctuation,namely,to divide sentences and parts of sentences, the only difference being that the semicolon makes the division a little more prolonged than the comma (98 Fed 240, 242)

"Command" defined Act 5, 1869, Pt I, Cl (*e*) (16), (Ins Act 12, 1894, S 4, Act 6, 1923, S. 2; Act 2, 1924, S 2

COMMAND An authoritative order, mandate, injunction The word 'command' is used where a person having control over another, as a master over his servant, orders a thing to be done

IN MILITARY LAW. A body of troops or any naval or military force under the command of a particular officer. (*Webster*) The right or possession of authority, supreme power or control (as) *command* of an army

IN TESTAMENTARY LAW The words *"wish"*, *"desire"*, *"command"* or *"direct"* are all apt words to be used in a will to show testator's intent to make a will or dispose of his property. (28 Am. St Rep 495)

COMMAND, ORDER, INJUNCTION, PRECEPT. A *command* is an exercise of power or authority, it is imperative and must be obeyed an order serves to direct, it is instructive and must be executed. *Command* is properly the act of a superior or of one possessing power. *order* has more respect to the office than to the person A sovereign issues his *commands orders* may be given by a subordinate or by a body, as *orders in council*, or *orders of a court* A *command* may be divine or given from heaven, an order or *injunction* is given by men only. *Order* is applied to the common concerns of life, *injunction* and *precept* to the more important conduct or duties of men *Injunction* imposes a duty by virtue of the authority which enjoins the *precept* lays down or teaches such duties as already exist. (*See also* Precepts issued by Law Courts)

"Commandant" defined. Act 15, 1887, S 3 (4), Act 5, 1892, S 2 (1), Reg 2, 1888, S. 2 (2); Reg 4, 1890, S 3 (4).

COMMANDANT A commander, a commanding officer of a place or of a body of forces.

"Commandant" means a person appointed by the Local Government to be a Commandant of Military Police, and includes a District Superintendent of Police, and an Assistant District Superintendent of Police in charge of the police of a district or of a sub division [Bur. Act XV of 1887 (Military Police), S. 3, Cl. (4)]

Commencement of criminal proceedings

Commander. The chief officer of an army or a division of it.

"Commander in Chief" defined. 44-5 V, c. 58, S. 190(3).

COMMANDER-IN CHIFF. "Until the year 1793, the administration of the army was in the hands of the Sovereign in person; his orders in all matters relating to its internal discipline and regulations being communicated through the secretary at War, an office now abolished, and whose duties have been transferred to the Secretary of State for War To remove the army from the political influences with which its government was then associated, the executive office of general commander in-chief, or commander-in chief, was created, in the above-mentioned year, in order that military promotions and appointments might be in the hands of a soldier who would be influenced in making them by professional considerations alone" (*Ency of the Laws of England*, *see also* Clode, Military Forces of the Crown, Vol II, pp 335-338. Anson, Law and Custom of the Constitution, Part II, Ch VIII, Todd, Parliamentary Government in the Colonies, Ch XII)

"Commanding Officer" defined. Act 5, 1869, Pt I, Cl (*e*) (17) [am Act 12, 1894, S 4]. Act 14, 1882, S 465, *Expln*, Act 14, 1887, S. 2 (1) (*f*), Act 7, 1903, S 2 (*e*).

COMMANDING OFFICER In its military usage, the expression commanding officer includes an office in command of every species of military unit—a corps, a regiment, a battalion, a troop, and so on

Commence To begin, to originate, to cause to begin, perform the first act of, enter upon, to do the first act in anything, to take the first step

"Commencement" defined. 52-3 V, c 63, S 36 (1), Act 10, 1897, S 3 (12), Bom Act 1, 1899, S. 3; Bom Act 1, 1904, S 3, Mad. Act 1, 1891, S 3 (7), E B & A 1, 1909, S 5; P Act 1, 1898, S. 2, U P 1, 1904, S. 4.

COMMENCEMENT. The first existence of a thing; origin, beginning as, the commencement of our Emperor's reign

Commencement of Act or Regulation "Commencement," used with reference to an Act or Regulation shall mean the day on which the Act or Regulation comes into force. [Act X of 1897 (General Clauses), S 3 (12)]

Commencement of action or suit Institution of process in a Court of Justice.

Commencement of criminal proceedings. A complaint or preliminary oath before a Magistrate on which a warrant is issued (*Wharton*)

The commencement of an action, prosecution, or suit is the issuance of the summons, and not the filing of the petition.

COMMENCEMENT OF SUIT AND BRINGING ACTION. Chief Justice Waite said "A suit is brought when in law it is 'commenced' and we see no significance in the fact that, in legislation on the subject of limitations, the word 'commenced' is sometimes used and at other times the word 'brought'. In this connection the two words evidently mean the same thing and are used interchangeably"

Comm ncement of criminal proceedings.

COMMENCEMENT OF BUILDING is the doing of some act upon the ground on which the building is to be erected, which would make known to a person viewing the premises, from observation alone, that the erection of a building on that land had been commenced.

Commendatory letters are such as are written by one bishop to another in behalf of any of the clergy, or others of his diocese, travelling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessaries administered to others, etc, several forms of these letters may be seen in our historians, as Bede, lib 2,c 18. (*Tomlin's Law Dic*)

Commerce "Commerce" is a term of the largest import It comprehends intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of one country and the citizens or subjects of other countries, and between the citizens of different provinces in the same state or country. (*Walton* v *Missoury*, 91 U S 275, 23 L. Ed. 347.)

OTHER DFFINITIONS ARF "An interchange or mutual change of goods, wares, productions or property of any kind, between nations or individuals, either by barter or by purchase and sale, trade, traffic" (*Webster Dict*) "Interchange of goods, merchandise or property of any kind, trade, traffic, used more especially of trade on a large scale" "The exchange or buying and selling of commodities, especially the exchange of merchandise on a large scale between different places or communities, extended trade or traffic." "The interchange or mutual change of goods, productions, or property of any kind, between nations or individuals" "Traffic, trade, or merchandise in buying and selling of goods" (*Jacob L Dict*)

COMMERCE (*Interstate and international*) When applied to states, *commerce* means commercial intercourse as between them Commerce between nations and among states has several branches. It consists in selling the superfluity and in purchasing the articles of necessity, as well products as manufactures, in buying from one nation and selling to the other, and transporting the merchandise from the seller to the buyer to gain the freight (12 L Ed 702,)

In this sense "commerce is the interchange or mutual change of goods, productions or property of any kind between nations or individuals" (24 Am Rep. 773)

Commerce and trade. "There is a distinction between commerce and trade, the former relates to our dealings with foreign nations, or our colonies, etc, abroad the other to our mutual traffic and dealings among ourselves at home" (*Tomlin's Law Dic, Jacob Law Dic*) "The court does not feel at all embarrassed by the use of the words 'trade or commerce'. The word 'commerce' is undoubtedly, in its usual sense, a larger word than 'trade' in its usual sense Sometimes 'commerce' is used to embrace less than 'trade', and sometimes 'trade' is used to embrace as much as 'commerce' They are, in the judgment of the court, in this statute synonymous." (*U S.* v *Patterson*, 55 Fed 605, 639)

Commercia belli (*Lat*) Compacts of war, truces; contracts between hostile nations or their subjects.

Commercial insurance.

Commercial That an article is to be understood in its *commercial sense*, is to give it a comprehensive sense of how it is known in the general sales or traffic of the markets. (30 L Ed. 693.) It means not merely the sense in which merchants understand it, but also the idea which buyers and sellers in the market generally have of the article

Commercial agency. Mercantile agency. The business of such agency is to collect information relating to the credit, character, responsibility, reputation, and other matters affecting persons, firms, and corporations engaged in business, for the purpose of furnishing this information to its own customers for a specified remuneration. These agencies have become a recognised and permanent adjuncts to the modern world of trade.

Commercial agent or broker. One who negotiates the sale of merchandise without possession or control of it, commission agent.

Commercial cases Cases coming before commercial courts, cases arising between merchants in respect of their commercial transactions.

Commercial corporations Corporations engaged in commerce Railroad corporations are commercial corporations. (23 Fed Cas 530)

Commercial Court This term has, in English Practice, attached itself to the special arrangements made by the Judges of the Queen's Bench Division in 1895, for the dispatch of commercial business "in accordance with the existing rules and orders" No new Court was in fact established, nor was the assistance of either Parliament or the rule committee invoked The judges of the Queen's Bench Division merely made arrangements within their own power to make, which they expected would provide adequately for the expeditious and economical disposal of actions properly within the definition of "commercial causes," and would thereby restore the confidence of the commercial community in the power of the High Court to satisfactorily settle commercial disputes without unnecessary expense or delay (*Ency of the Laws of England*)

Commercial domicile Domicile acquired by the maintenance of a commercial establishment in a country (46 Bom, 857=25 Bom L R 116=1923 M W N 846=32 M L T 81=27 C W N 557=A.I R 1922 P C 371.)

Commercial fertilizers or manures This term is generally applied to certain chemical manures (*i e*) compounds and manufactured substances containing, among others, two or more of the following ingredients, namely, nitrogen, ammonia, potash and phosphoric acid

Commercial home A comparatively big merchantile concern "Princely *commercial houses* of which the names are held in honour throughout the world." (*Macaulay.*)

Commercial insurance has reference to "indemnity agreements, issued in the form of insurance bonds or policies, whereby parties to commercial contracts are to a protected against loss by reason of a breach of contractual obligations on the part of the other contracting party." The term would include "title insurance."

Commercial law.

Commercial law. That branch of the law which comprises and includes rules established for the Government of commercial transactions A law not peculiar to one state or dependent upon local authority, but one arising out of the usages of the commercial word (*Williams* v *Gold Hill Min Co.*, 96 Fed 454, 464), a phrase employed to denote that branch of the law which relates to the rights of property and the relations of persons engaged in commerce The term has come to be used occasionally as synonymous with "maritime law", but, in strictness, the phrase "commercial law" is wider, and includes many transactions or legal questions, which have nothing to do with shipping or its incidents (*Black L Dic*) "Persons engaged in commercial adventures, wherever they may have their domicile, have business relations throughout the civilised world from which it results that commercial law is less local and more international than any other system of law except the law of nations."

COMMERCIAL LAW AND LAW-MERCHANT No municipal laws can be sufficient to order and determine the very extensive and complicated affairs of traffic and merchandize neither can they have a proper authority for this purpose for as these are transactions carried on between subjects of independent states, the municipal laws of one will not be regarded as binding by the other For this reason the affairs of commerce are regulated by a law of their own, called the Law-merchant or *Lex mercantoria*, which all nations agree in and take notice of And in particular it is held to be part of the law of the land, which decide the causes of merchants by the general rules which obtain in all commercial counties (*Tomlin's Law Dic*)

Commercial mark trade mark commercial name. A trade mark is not a commercial mark The trade mark is specially or purely the mark of the manufacturer, or him, who creates the product or manufactures it, the commercial mark is that of the dealer, who receiving the product of the manufacturer, sells it in turn to the consumer The commercial name is the name of an individual, or any name which is the property of the merchant, without reference to its use as a mark or trade mark in any distinctive form

Commercial matters include an action by stock brokers on a balance of account rendered to their principal in respect of purchases and sales on his private speculative account [*Forget* v *Baxter*, (1900) App Cas 467.]

"**Commercial paper** is defined to be 'bills of exchange, promissory notes, bank cheques, and other negotiable instruments for the payment of money which, by their form and on their face, purport to be such instruments as are by the law merchant recognized as falling under the resignation of commercial paper'" (*Black L Dict*) Same as negotiable instrument

"Where obligations are issued to secure the payment of money at a specified time, and contain on their face an expression showing that they are expected to pass from one person to another, and thus to perform the office of bills and notes or of money as the words 'bearer' or 'assigns' or 'holder' or the like, the Courts have generally concurred in attaching to them the attributes of commercial paper."

Commission.

Commercial terms. Meaning [55 I A. 85=54 M. L.J 427 (P C).]

Commercial traveller An agent who simply exhibits samples of goods kept for sale by his principal and takes orders from purchasers for such goods, where the goods are afterward to be delivered by the principal to the purchasers and payment for the goods is to be made by the purchasers to the principal on such delivery. A commercial traveller is to be distinguished from a hawker, *peddler or merchant* (*Ame Cyc*)

Commercial travellers are not men of a like character with grocers, merchants, brokers, peddlers, and junk dealers They follow no independent business, they make no contracts for themselves, nor do they come, ordinarily, under any sort of personal obligation. They are merely solicitors for orders for others, and differ in no respect from clerk or salesman except that they are ambulatory in their operations, and do not usually carry or deliver the goods sold" (38 Am Rep. 336)

Commercial year. *See* 7 Lah. 223=26 I.C. 368= A I R 1926 Lah 421.

Commercium (*Lat*) Commerce, traffic.

Commercium jure gentium commune esse debet et non in monopolium et privatum paucorum quaestum convertendum A maxim meaning "Commerce, by the law of nations, ought to be common, and not perverted to monopoly and the private gain of a few" (*Morgan Leg. Max*)

Commingle To mix or unite together; to mix in one mass, to become blended. To say that a trustee *commingled* funds in his hands means that the funds were mixed and blended so as to become indistinguishable.

Commissary. An officer whose principal duties are to supply an army with provisions and stores. (*Black L Dict.*) *In ecclesiastical law*, the deputy of the Bishop (8 Cyc. 334.)

In Ex parte *Medwin*, E. & B 609, 615=17 Jur. 1178=22 L J Q.B 169=72 E C L 609, the court said, distinguishing a "commissary" from a "chancellor". The commissary is deputed specially his powers varying according to the limits of his commission as the subject-matter, time and place, and is purely the deputy of the Bishop."

COMMISSARY An officer whose principal duty is to supply an army or a portion thereof, with provisions *In Ecclesiastical Law* an official to whom the bishop of the diocese sometimes delegated in his consistory court over certain parts of the diocese "A title in the ecclesiastical law, belonging to one that exerciseth spiritual jurisdiction in places of a diocese which are so far from the episcopal city, that the chancellor, cannot call the people to the bishop's principal consistory court, without too great inconvenience This commissary was ordained to supply the bishop's jurisdiction and office in that out-places of the diocese, or in such places as are peculiar to the bishop, and exempted from the jurisdiction of the archdeacon" (*Tomlin's Law Dic*)

Commission. (*Commissio.*) The warrant which all persons exercising jurisdiction, either ordinary or extraordinary, have to authorize them to do certain acts of ministerial nature as to make enquiry or to

Commission

hear or determine any cause or action (*Tomlin's Law Dic*) An instrument issued by a court of justice or other competent tribunal to authorize a person to examine accounts, to take depositions, or to make local investigation (*See* C P Code, O 26, Rr 1-17) Any written appointment of a person to an office written authority issued or granted by the government to a person appointed to an office, or conferring public authority or jurisdiction upon him, also, in private affairs, the authority or instructions under which one person transacts business or negotiates for another

In Commercial law, commission is a compensation to a factor or other agent for services to be rendered in making a sale or otherwise, a sum allowed as compensation to a servant, factor or agent who manages the affairs of others, in recompense for his services It is an allowance, recompense or reward made to agents, factors, brokers and others for effecting sales or carrying out business transactions It is generally calculated as a certain percentage on the amount of the transactions or on the profit to the principal

The word "commission" is used occasionally to mean "discount" What is called 'commission,' is a percentage deducted in the case of goods which are consigned the ordinary invoice price [21 I. C 322 (327)]

In Criminal law, doing or perpetration, the performance of an act.

In army and other forces, the commission issued by the Crown to a person to serve as an officer in any of the land, sea or air forces of the state

To COMMISSION, AUTHORIZE, EMPOWER The idea of transferring some business to another is common to these terms, the circumstances under which this is performed constitute the difference. We *commission* in ordinary cases, we *authorize* and *empower* in extraordinary cases We *commission* in matters where our own will and convenience are concerned, we *authorize* in matters where our personal authority is requisite, and we *empower* in matters where the authority of the law is required. We are commissioned by persons only, we are authorized sometimes by circumstances, we are empowered by law

Commission agent, one who sells or buys goods for another, and receives by way of remuneration a commission or percentage upon the amount involved in each transaction

Commission del credere is an absolute engagement to the principal from an insurance broker in effecting an insurance, and makes him liable in the first instance, and at all events, though the principal may resort to the underwriter as a collateral security (1 T. R 112, *Tomlin's Law Dic*)

Commission merchant. A term which is synonymous with factor

Commission of lunacy A commission to enquire whether a person represented to be a lunatic be so or not, so that if he is found to be a lunatic the King may have the care of his estate, etc (*Tomlin's Law Dic*)

Commission of Oyer and Terminer A commission especially granted to some eminent persons of the hearing and determining one or more causes, and

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it was the first and largest of the five commissions, by which the English judges of Assize sat in their several circuits (*Scotch Dict., Tomlin's Law Dic.*)

Commissioned Officer A person in military service of a superior rank.

"Commissioner" defined. (*N B*—This word occurs in combination with other words as Municipal Commissioner, Sanitary Commissioner, etc, Act 23, 1850, S 14, Act 8, 1873, S 3 (5), Act 3, 1878, S 3, Act 15, 1879, S 2, Act 20, 1881, S 3, Act 21, 1881, S 3, Act 5, 1886, S 3 (3), Act 9, 1886, S 2 (1), Act 20, 1896, S 2 (4), Act 10, 1897, S 3 (13), Act 7, 1904, S 2, Act 11, 1922, S 2, Act 8, 1923, S 3, Ben Act 9, 1871, S 1, Ben 7, 1878, S 4, Ben Act 9, 1880, S. 4, Ben Act 5, 1883, S 1, Ben Act 1, 1885, S 5, Ben. Act 3, 1885, S 5, Ben Act 8, 1895, S 2 (*g*), Bom Act, 1873, S 3, Bom. Act 5, 1878, S 3, Bom Act, 7, 1886, S 4, Bom. Act 3, 1888, S 68, Bur Act 4, 1905, S 4 (1), Ben Act 5, 1876, S 6 (19), Ben Act 6, 1880, S 3, Ben Act 3, 1884, S. 6 (18), Ben Act 2, 1891, S 3 (5), Ben Act 1, 1893, S 3 (7), Bom. Act 2, 1887, S 2 (4), Bom Act 3, 1888, S 3 (*d*), Bom Act 2, 1890, S 3 (*a*), Bom Act 3, 1901, S 3 (3), Bom Act 1, 1904, S 3 (13), Bur Act 1, 1898, S 2 (15), Bur Act 2, 1898, S 3 (5), Bur Act 3, 1898, S 2 (1), Bur Act 4, 1905, S 4 (2), E. B. & A Act 1, 1909, S 5 (14), Mad Act 1, 1886, S. 3 (3), Mad Act 3, 1888, S. 3, Mad Act 4, 1889, S 3 (*l*), P Act 1, 1898, S 2 (12), P Act 3, 1905, S. 3 (*iv*), U P. Act 1, 1904, S 4 (11), Reg 4, 1872, S 1, Reg 2, 1886, S 2 (1), Reg 5, 1893, S 3 (1), Reg 1, 1900, S 2 (*b*), Reg 5, 1910, S 2 (*m*)

COMMISSIONER A title of office (*Abbott Law Dict*) A person to whom a commission is directed by the Governmnt or a Court. "He that hath a commission, or other lawful warrant to examine any matters, or to execute any public office, etc" (*Tomlin's Law Dic*)

"COMMISSIONER" AND "DEPUTY COMMISSIONER" in Bur Ferries Act, mean, respectively, the Commissioner of the division and the Deputy Commissioner of the district in which a ferry is deemed to be situate [Bur Act II of 1898 (Ferries), S 3, Cl (5)]

"COMMISSIONER" AND "JUDICIAL COMMISSIONER" include any person specially empowered by the Local Government to discharge the functions of the Commissioner or Judicial Commissioner, as the case may be, in any particular area [Ben Act VI of 1908 (Chota Nagpur Tenancy), S 3 6)]

"Commissioner for Oaths" defined 57 8 V, c 60, S 742

"Commissioner of Police" defined Act 5, 1898, S. 4 (*g*), Ben Act 1, 1893, S 3 (*b*), Ben Act 1, 1896, S 2 (*c*)

"COMMISSIONER OF POLICE" includes a Deputy Commissioner of Police (Cr P Code, S 4)

"Commissioner of Revenue" defined Act 12, 1896, S. 3 (*c*)

Commissioner of Works Eng Int Act, 1889 (c 63), S 12 (13)

Commissioners of Woods or of Woods and Forests Eng Int. Act, 1889 (c 63), S 12 (12).

CHARITY COMMISSIONERS Eng Int. Act, 1889 (c 63), S 12 (14)

DIVISION COMMISSIONER *"Commissioner"* means a Commissioner of a division, and includes any

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officer appointed under this Act to exercise all or any of the powers of a Commissioner [U. P. Act VIII of 1873, S 3, cl. (5)]

MUNICIPAL COMMISSIONER means a member of the Corporation. "Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under the Municipal Acts.

REVENUE COMMISSIONER means the chief officer in charge of the revenue administration of a division [Ben Act I of 1899, S. 3, Cl (10)]

PORT TRUST COMMISSIONERS "Commissioners" means "the Commissioners of the Port of Calcutta" or any other Port incorporated under Law [Ben Act III of 1890 (Calcutta Port), S. 3, Cl (1).]

Commit To perpetrate or enact (*Worcester Dict*), to perpetrate—to do a fault—to be guilty of a crime (*Johnson Dict*), to consign to custody by official warrant (*Century Dict*), to send to prison—to imprison—to be put in any place to be kept safe.

Commitment is the sending of a person to prison by warrant or order, who hath been guilty of any crime. (*Tomlin's Law Dic*) The act of sending to prison—an order for sending to prison, the warrant by which a court or magistrate directs an officer to take a person to prison, a document whereby one person is committed to the custody of another

Committed Sent to jail or other proper prison, to be there detained and held to answer for a criminal offence preferred, against a person "*Committed*" is to be taken as having a technical meaning, and necessarily implies a warrant or order by a court or magistrate directing a ministerial officer to take a person to prison. (*Com* v *Barker*, 133 Mass 399, 400.)

'COMMITTED" AND "DISCHARGED" "The terms 'committed' and 'discharged' are words of recognized legal meaning and refer only to the beginning and end of the term of imprisonment" (8 Cyc 337)

"COMMITTED" AND "IMPRISONED" 'The words 'imprisoned' and 'committed' may be used as synonymous terms, and both mean imprisonment within the gaol house, or within the prison walls—an actual confinement within the walls of the prison, by lawful authority" (*Skinner* v *White*, 9 N H. 204, 207)

COMMITTED, SENTENCED, PUNISHED "A person is '*committed*' to jail by a proper tribunal to answer for a criminal offence, upon conviction he is *sentenced* by the judgment of the court to be imprisoned in jail as a *punishment*, and when put in jail, it is done in *execution of the judgment*"

Committed for trial refers to any person committed to prison or admitted to bail by a court, judge, justice, or coroner, with a view to his being tried before a judge and jury. [Eng Int Act, 1889 (c 63), S. 27]

"Committed to prison". *See* 5 A L.J. 318=1908 A.W N. 133=30 A 354=7 Cr.L.J. 427=4 M L T 41 (F B)

COMMITTED TO PRISON, as used in 40 & 41 Vict., c 21, S 57, means "ordered to be kept in prison" [*Mullins* v. *Treasurer of Surrey*, (1881) 7 App Cas. 19.]

"Committee" defined Act 14, 1879, S. 2, Act 19, 1884, S 2 (6), Act 20, 1891, S. 3 (2); Act 16, 1903, S. 2 (*b*); Act 10, 1904, S. 2 (*b*), Act 2, 1912, S. 2,

Common.

Ben Act 9, 1880, S. 4, Bur Act 3, 1898, S. 2 (2); Reg. 5, 1886, S 2 (1); Reg 2, 1907, S 2 (*b*).

COMMITTEE. An assembly or board of persons to whom the consideration or management of any matter is committed (as) the executive committee of a board of directors of a company A body of persons authorized to act in a certain manner, a company of persons joined in the exercise of some duty or the charge of some trust (*WebsterDict*), an individual or a body to which others have committed or delegated a particular duty, or who have taken it on themselves to perform it in the expectation of their act being confirmed by the body they profess to represent or act for. (8 Cyc 337.)

"COMMITTEE" of co-operative society means the governing body of a registered society to whom the management of its affairs is entrusted [Act II of 1912 (Co-operative Societies), S 2, cl (*b*).]

In parliamentary law, a portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matter specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigations or recommending a course of action (*Black Law Dict.*)

Committee of inspection A committee of creditors appointed by the whole body of creditors to supervise the winding up of the affairs of a bankrupt or of an insolvent company

MUNICPIAL COMMITTEE A committee established by or under a Municipal Act [C P Act XVI of 1903 (Municipal), S 2, cl (*b*)]

Commodatum (*Latin*) Loan on condition that the actual things lent shall be returned

Commodity (*in commerce*) Goods of any kind. COMMODITY, GOODS, MERCHANDIZE, WARE Commodity is employed only for articles of the first necessity it is the source of comfort and object of industry, goods is applied to everything belonging to tradesmen, for which there is a stipulated value, they are sold retail, and are the proper objects of trade, merchandize applied to what belongs to merchants, it is the object of commerce, wares are manufactured, and may be either goods or merchandize, a country has its commodities, a shopkeeper his goods, a merchant his merchandize, a manufacturer his wares

Commodum ex injuria sua nemo habere debet. Convenience cannot accrue to a party from his own wrong "No person ought to have advantage of his own wrong"

Common The word "common", in its most usual legal acceptation, signifies common of pasture. This is a right of feeding one's beast on another's land (*Tomlin's Law Dic*)

"Common is a right or privilege which one or more persons have to take or use some part or portion of that which another person's land, waters, woods, etc, produce (Cruise 65) The most important right of this kind is common of pasture, other rights of the same nature are commons of estovers piscary, turbary and the right of taking sand, gravel, or clay, or of quarrying, for use within the manor [See *Health* v *Deane*, (1905) 2 Ch. 86, Elton, A Treatise on Commons and Waste Lands, 1868, Scrutton, Commons and Common Fields, 1887, Woolrych, The Law of Rights of Common, 1834, Cruise, A

Common.

Digest of the Laws of England, Vol III (Title 23), 1835; Joshwa Williams, Rights of Common.]

DISTINGUISHED FROM UNINCLOSED LANDS The word "common" as used in as statute has to be distinguished from the words "uninclosed lands" (*Ferguson* v. *Miami Powder Co*, 9 Ohio Cir. Ct 445.)

COMMONS COMMON LANDS, Commons or common lands in a strictly legal sense may be defined to be those lands in which rights of common exist (*Sweet L Dict.*) But in its popular sense the word "common" is used to denote pieces of ground left open for common or public use for the convenience and accommodation of the inhabitants of the town or municipality "A tract of ground, the use of which is not appropriated to an individual, but belongs to the public or to a number" (*Century Dict.*)

"COMMONS" is also used to mean the common people; the lower Home of Parliament, the House of Commons.

Common (*as an adjective*) means usual, accustomed, shared among several, owned by several jointly, (as, common property) belonging equally to more than one, or to many indefinitely, belonging to the public, general, universal, frequent, customary, habitual (*Worcester Dict.*) (as) right of common; of the ordinary quality, not exceptional or superior (as) common soldier as opposed to an officer of a higher rank, serving the public (as) common carrier or common goal

COMMON APPENDANT is a right belonging to a man's arable land, or putting beasts commonable into another's ground

COMMON APPURTENANT Right of feeding cattle commonable or not commonable on the land of another, in common with the owner or others, founded on grant or prescription (4 Rep 37, Plowd. 161, *Tomlin's Law Dic*)

"Common carrier" defined. Act 3, 1865, S. 2.

"COMMON CARRIER" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately. [Act III of 1865 (Carriers), S 2]

A "common carrier" is one who offers to carry goods for any person between certain termini and on a certain route He is bound to carry for all who tender to him goods and the price of carriage and insures the goods against all loss but that arising from the act of God or the public enemy and has a lien on the goods for the price of carriage A common carrier is entitled to demand and to be paid the full price of carriage and if this is not paid he may lawfully refuse to carry at all But the price demanded must be reasonable It is also essential to the character of a common carrier that he is bound to carry the goods of all persons applying to him (40 Bom. 529=18 Bom L R 126=33 I C 536)

RAILWAY COMPANIES are not common carriers of passengers. [28 C. 401=28 I.A. 144=5 C.W N 449 (P.C.).]

Common chase. A place where the right of hunting was common to all.

Common form. One of the two methods of obtaining probate.

Common Law.

"Common gaming-house" defined. Ben. Act 3, 1897, S. 4, Bom Act 3, 1866, S 14, Bom Act 4, 1887, S. 3, Mad Act 3, 1888, S 3, Bur. Act 1, 1899, S. 3 (1).

"Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever [Public Gambling Act (III of 1867), S 1.]

Common gaming-house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming It does not make any difference that the use of the house and the gaming therein are limited to the subscribers and members of the club and that it is not open to all persons who might be desirous of using the same [1 Weir 917, Ref] 46 M L J 309=47 Mad. 426=1924 M.W N 237=34 M L T. 195=77 I C 303=25 Cr.L.J 387=19 L.W 219=A.I.R. 1924 Mad 729.

The premises occupied and kept by a person are not "common gaming house" unless some fixed charge or profit accrues regularly to such person apart from any fluctuating profit which may occur from time to time between the gamblers themselves as a result of gambling (169 I C. 87=9 R C 895=38 Cr L J 706=A I.R 1937 Cal. 84)

Common informer. A common prosecutor, one who makes a business of giving information of the violation of penal statutes, with a view to the prosecution of the offender, and to whom the whole or a part of the forfeiture is given.

Common intention. The words "common intention" have not the same meaning as "common object" (of an unlawful assembly). The object of an assembly as a whole may not be the same as the intention which several persons may have when in pursuance of that intention they perform a criminal act and it may well be that the object of the assembly was lawful whereas the intention common to those of the assembly who jointly committed a criminal act was in itself criminal and the joint criminal act must be equally imputed to all of them (113 I C 676=30 Cr L J 205=A I R. 1929 Pat 11)

Narratives coming from two conspirators as to their past acts cannot be said to have a reference to their common intention (55 Bom 839=134 I C. 1238 =33 Bom L.R 1159=A I.R. 1932 Bom. 56)

COMMON IN GROSS is a liberty to have common alone, without any lands or tenements, in another person's land, granted by deed to a man and his heirs, or for life, etc (*Tomlin's Law Dic*)

Common Law. "Common Law is taken in three manner of ways First, it is taken as the law of the realm of England, dissevered from all other laws. And, under this manner taken, it is often times argued in the laws of England, what matters ought of right to be determined by the Common Law, and what by the Admiral's Court or by the spiritual Court, etc Secondly, the Common Law is taken as the King's Courts, or the Common Law Courts (as distinguished from the Chancery Courts). Thirdly, by the Common Law is understood such things as were law before any statute made in that point that is in question. . ." (Doctor and Student, Dial, 2, c 2.) The term, in its largest sense, now means the whole

Common Law.

body of legal principles and usages which is common to all parts of England, and now to all jurisdictions whose law is of English origin. But it has been and still is used with several meanings of different extent, and the choice among them has usually to be determined by the context which, however, is seldom a matter of difficulty It first appears as meaning the general law of England administered by the King's Superior Courts "That law by which proceedings and determinations in the King's ordinary Courts of Justice are guided and directed. (*Black Com* 1, 68.)

"The term 'common law' has been used in different senses In one sense it signifies the particular portion of the municipal law of England which was formerly administered exclusively by the common law tribunals, and is now administered by them concurrently with, and as modified by, equitable doctrines and in this sense the English Common law includes the statute law as well as the unwritten law Generally, however, when we speak of the English common law we mean the unwritten law as defined by Blackstone—that portion of the law of England which is based, not upon legislative enactment but upon immemorial usage and the general consent of the people. In 1 Bl. Comm 67-73, it is said "The authority of these maxims (and rules of the common law) rests entirely upon general reception and usage, and the only method of proving that this or that maxim is part of the common law, is by showing that it hath been always the custom to observe it"

Chancellor Kent defined the common law as "those principles, usages and rules of action applicable to the government and security of persons and property, which do not rest for their authority upon any express and positive declarations of the will of the legislature" (1 Kent Comm 469)

Common-law jurisdiction Jurisdiction as appertained to the common law of England as administered through her courts, jurisdiction to try and decide causes which were cognizable by the courts of law, under what is known as the common law of England. (This is to be distinguished from what is called chancery jurisdiction)

Common-law offence Any practice which has attendency to injure the public morals

Common law procedure Acts Acts of parliament, passed in the years 1852, 1854 and 1860, respectively, for the amendment of the procedure in the common-law courts

Common lawyer A Lawyer learned in the common law of England (*Burr*)

Common lodging-house. Lodging-house kept for the purpose of profit, and open to all customers, whether of a certain class or not

COMMON LODGING HOUSE, in 14 & 15 Vict, c 28, and 16 & 17 Vict, c. 41, means a common lodging-house kept for the purpose of profit, and open to all comers of whatever class *Langdon* v *Broadbent*, (1878) 37 L.T 436, and includes even charitable institutions, where persons of the poorest classes are allowed to sleep in a common room. [*Logsdon* v. *Booth*, (1900) 1 Q B 401, *Logsdon* v. *Trotter*, (1900) 1 Q B 617]

Common necessity and interest. An interest or political right, enjoyed by the state and pertaining to sovereignty, to appropriate the property of individuals to the great necessities of the whole community where suitable provision is however made for adequate compensation.

Common of estovers is the right to cut wood for purposes in another man's land" (Elph 564, Wms. on Settlements, 230, *Tomlin's Law Dic*)

Common pleas The name of a Court of record having general original jurisdiction in civil suits, such pleas or actions as are brought by private persons against private persons, or by the government where the cause of action is of a civil nature. (8 Cyc 391)

Common prayer The Anglican liturgy.

Common, right of. "A right or privilege, which one or more persons claim to take or use, in some part or portion of that which another man's lands, waters, woods, etc, do naturally produce, without having an absolute property in such land, waters, wood, etc" (*Tomlin's Law Dic*)

Common scold A quarrelsome woman, whose conduct is a public nuisance to her neighbourhood,

Common seal. Seal used by a company or corporation as the symbol of their incorporation.

Common sense. Sound practical judgment, good practical sense in every day matters; that degree of intelligence and reason as is exercised upon the relations of persons and things in the ordinary affairs of life, and which is possessed by the generality of mankind It has been said that "*common sense* is an important element in the administration of justice, and perhaps an indispensable element in its successful administration" (*Wright* v. *State*, 69 Ind 163, 165, 35 Am. Rep 212)

Common-weal General good; public welfare.

COMMON WEAL is understood in our law to be *bonum publicum* and is a thing much favoured and therefore the law doth tolerate many things to be done for common good, which otherwise might not be done. (*Tomlin's Law Dic.*)

HOUSE OF COMMONS The Lower House of Parliament in England

Commonwealth Independent community, a republic, a federation of states

Commoner Person below the rank of a peer, member of the House of Commons (the great *Commoner*, elder Pitt).

Commoners Persons having a right of common

Commoreints Persons dying together or simultaneously (*Sweet L Dict*) Persons dying together in the same place, or from the same cause (*Adams Gloss*, *Webs*)

Commotion, disturbance A *commotion* supposes a motion of all the feelings, a *disturbance* of the mind may amount to no more than an interruption of the quiet to an indefinite degree. So in regard to external circumstances a *commotion* in public is occasioned by extraordinary circumstances, and is accompanied with unusual bustle and movement, whatever interrupts the peace of a neighbourhood is a *disturbance* political events occasion a *commotion*, drunkenness is a common cause of *disturbance* in the streets or in families

Communal cases. It is desirable that a complaint by Mussalmans which accuses a Hindu of doing acts in a Mussalman graveyard with intent to injure their

Communal cases

feelings should, if possible, be tried by a European Magistrate (102 I.C. 556=28 Cr.L J. 588=A.I.R. 1927 Lah 520)

Commune · Communis. (*Lat*) Common.

Commune consilium regni. The common council of the realm. (*Parliament*)

Commune placitum. A common plea, a civil action.

Commune vinculum A mutual bond

Communia Common things

Communia piscariae, turbariae, pasturae Common of piscary, turbary, pasture

Communia placita Common pleas, as opposed to PLACITA CORNAE, criminal actions or pleas of the crown

Communibus annis. In common years, on an average of years.

Communicate and Communications. in Official Secrets Act, 1889 (52 & 53 Vict, c 52), S 8, "include any communication, whether in whole or in part, and whether the document, sketch, plan, model, or information itself, or the substance or effect thereof only be communicated."

Communication Imparting or exchange of information, sharing of knowledge by one with another, conference, consultation, preparatory to some business transaction also intercourse, connection (*Black L Dict*) Common door or passage, or road or rail or telegraph or other connection between two or more places (as) road communication, telegraph communication, etc

"Communication in official confidence" The words "Communication in official confidence" used in S. 124, Evidence Act (I of 1872), import no special degree of secrecy and no pledge or direction for its maintenance, but include generally all matters communicated by one officer to another in the performance of their duties The expression has the same meaning as "professional confidence" used in S 126 of the Act. (26 I C. 723)

"Communications" defined Act 15, 1889, S 2 (2) (*In Military law*), connexion between base and front

Communio bonorum (*Lat*) Community of goods

Communion (*Eccl.*) Fellowship on basis of religion between members of a church or between churches recognizing each other as branches of the Roman catholic church

Communis error facit jus A maxim meaning "Common error makes law" (*Black L Dict*)

Communism Communism of goods, a social system which makes the necessary provision for employment of capital, labour and distribution of profits

Communis rixatrix. A common scold

Communis strata A common way

Communist One who professes or practices the principles of communism

Communiter unum officium est excusatio alterius. A maxim meaning "The performance of one duty is commonly the excuse for the non-performance of another"

Community Joint ownership or common position in regard to something (as) community of goods or

Companies.

of interests; a society or body of people living in the same place, under the same laws and regulations, and who have common rights and privileges; a corporation or body politic. "*The community*" means the public generally

COMMUNITY, MUTUALITY, UNITY. A species of partnership interest arising upon marriage in property acquired during coverture,—legal when it arises by operation of law, conventional when created by express contract, a society having common political interests

Community, Society Community in anything constitutes a *community*, a common interest, a common language, a common government, is the basis of that *community* which is formed by any number of individuals, the coming together of many and keeping together under given laws and for given purposes constitutes a *society*, societies are either public or private according to the purpose friends form societies for pleasure, persons form societies for business The term *community* is appropriately applied to indefinite numbers, and *society* in cases where the number is restricted by the nature of the union

Commutation Alteration, change, exchange, substitution (*Burril L Dict*) A substitution of a less thing for a greater, especially a substitution of one form of payment for another, or one payment for many, or a specific sum of money for conditional payments or allowances, etc (*Webster Dict*) (as) commutation of rents (*See* Mad Est Land Act)

Commutation of tithes Conversion of tithes into a fixed payment in money.

Company Defined in XVIII of 1891, S. 2, VII of 1913, S 2, XI of 1922, S 2

Companies, Chartered (*See also* Company) English chartered companies in past times "played a great part in the development of foreign trade and imperial expansion, and have of late years been incorporated for similar purposes, but under largely altered conditions Such companies raise political and economic questions of great interest The origin of chartered companies is to be found in the *mediaeval* conditions which made it difficult, if not impossible, for the merchants of one country to carry on trade in another without some organisations of their own, recognized alike by their own government and the rulers of the country where the trade was carried on. In Tudor times the necessity for such organisations to open out and maintain new fields of trade with distant countries, where the Crown could afford little or no protection made itself even more strongly felt, and in the same period it was realised that by means of these companies private enterprise might be utilised to enlarge the dominions of the Crown by planting and settling British colonies in the unoccupied regions of other parts of the world." East India Company was a chartered company, so also were companies that originally went from England to found colonies in America In the recent creation of chartered companies the crown makes no grant of any such powers, but has confined itself to recognising or authorising the acquisition by the company of territory, power, and jurisdiction in places beyond the King's dominions from the native authorities, coupling this recognition and authority with conditions as to the

Companions.

way in which the powers so acquired should be exercised. (*Ency of the Laws of England*, Anderson Origin of English Commerce; Cunningham, Growth of English Industry and Commerce; Schanz, Chitty, Commercial Law, Cawston and Keane, Early Chartered Companies. As to modern English companies, Westlake, International Law; Hall, Foreign Jurisdiction of the British Crown; Jenkyns, British Rule and Jurisdiction Beyond the Seas, 1902; Lucas, Historical Geography of the British Colonies, Lawrence, Principles of International Law.)

Companions (Knights Companions) of the Garter. The Order of the Garter is the most ancient and illustrious of the Royal Orders of Knighthood existing in Great Britain or Europe *See* Nicolas, Orders of Knighthood, Ashmole Order of the Garter, Anstis, Order of the Garter, Burke, Knightage Orders of Knighthood, p. 97, and Selden, Titles of, Honor, p 362

"Company" defined (as to several clauses of companies, *see* Guaranteed Company, Insurance Company, Joint Stock Company, Indian Railway Company, Railway Company; Unregistered Company) 46-7 Vic, 30, S 2, Act 18 of 1885, S 16 (*b*), Act 2 of 1886, S. 3 (2), Act 18 of 1891, S. 2 (1); Act I of 1894, S 3 (*e*), Ben Act 9 of 1895, S 2 (*b*), Act 7 of 1913, S. 2 (2), Act 12 of 1922, S. 2 (6).

COMPANY An association of a number of individuals for the purpose of carrying on trade or other legitimate business, a number of persons united for the same purpose, or in a joint concern for profit, as a company of merchants, private partnerships, or incorporated bodies of men, firm, house, or partnership, or a corporation, (as) "Smith & Co" etc (*See* Lindley on Companies, Buckley on the Companies Act, Chadwick Healey, Joint Stock Companies, Palmer, Company Precedents, 9th ed, Palmer's Winding-up Forms, Manson, Law of Trading and other Companies, Thring, Joint Stock Companies, Brice on Ultra Vires, Hurrell and Hyde on Directors, 4th Ed; Hamilton Manual of Company Law.)

"COMPANY" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent (Act XVIII of 1891, *Banker's Books Evidence*, S. 2, cl 1.)

"COMPANY" means a company formed and registered under the Companies Act or an existing company (Act VII of 1913, *Companies Act*, S. 2, cl 2.)

COMPANY. This word, apart from special definition in a particular statute, has no strictly technical meaning. It involves the ideas: (1) an association of persons too numerous to be described as a firm, (2) power of a member to transfer his interest without the consent of the other members. [Re *Stanley*, (1906) 1 Ch. 131, 134, Buckley, J.]

COMPANY in the Railway Companies Act, 1867 (30 & 31 Vict., c. 127), Ss. 3, 4, includes a dock company which has a short line of railway attached, although the railway is ancillary to the dock. *G. N R.* v. *Tahourdin*, (1883) 13 Q. B. D. 320. And see *Public Company*.

Compelled to give.

COMPANY INCORPORATED BY ACT OF PARLIAMENT.—An insurance company incorporated by charter, in virtue of powers given by an Act of Parliament, is a company incorporated by Act of Parliament within the meaning of an investment clause. *Elve* v. *Boyton*, (1891) 1 Ch. 501.

COMPANY PUBLIC, in S 5 of the Apportionment Act, 1870 (33 & 34 Vict. c 35), held to include an unincorporated life assurance society established under a deed of settlement, and possessing power, etc, under a private Act. Re *Griffith*, (1879) 12 Ch. D. 655. See Re *Castlehaw*, (1903) 1 Ch. 352.

COMPANY WHETHER INCORPORATED OR NOT, in the Judgments Act, 1838 (1 & 2 Vict, c 110), S 14, is an expression not known to the law as a legal term with a definite legal meaning. *McIntyre* v *Connell*, (1851) 20 L. J Ch 284.

Company directors "The director is really a watch-dog, and the watch-dog has no right without the knowledge of his master to take a sop from a possible wolf"—Bowen, L.J, *In re North Australian Territory Co* (1891) L J Rep 61 C.D 135.

"Compartment" *Per* Jenkins, C J and Candy, J: —The term "compartment" in S 110, Indian Railways Act, 1890, means a division of a Railway carriage, separated from the other divisions by partitions right up to the roof of the carriage, each such division being completely screened off from its adjoining divisions (1 Bom L R 688=24 B 293)

Compass "An instrument used in navigation, by the direction and assistance whereof vessels are steered to the most distant parts of the world. It was invented soon after the close of the Holy War, and thereby navigation was rendered more secure as well as more adventurous, the communication between remote nations was facilitated, and they were brought nearer to each other" (*Tomlins Law Dic*)

Compassionate Allowance A "Compassionate Allowance" is a voluntary bounty, and not income. (*Stroude*)

Compel. To constrain, to oblige.

TO COMPEL, FORCE, OBLIGE, NECESSITATE *Compel*, *force*, and *oblige* are mostly the acts of person in the proper sense, and *necessitate*, which signifies to lay under a necessity, is properly the act of things We are *necessitated* by circumstances or by anything which puts it out of our power to do otherwise. (*Crabb*)

"Compelled to give" S. 132 of the Indian Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter cases only. The insertion of those words shows that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which is given when he has been so compelled by the Court to give. 12 B. 440; 16 Bom. 88.

Unless a person objects to any question the answer, to which is likely to criminate him, he cannot be said to have been compelled to give such answer within S 132 proviso of the Act. 59 I.C. 324 =22 Cr L.J. 68=22 Bom.L R. 1247.

Compensation.

Compensation Defined in VII of 1923, S. 4.

COMPENSATION. An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury, the consideration or price of a privilege purchased, something given or obtained as an equivalent, the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another, the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred, a recompense in value, a recompense given for a thing received recompense for the whole injury suffered, remuneration or satisfaction for injury or damage of every description, remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result, remuneration for the injury directly and proximately caused by a breach of contract or duty, remuneration or wages given to an employee or officer (*Black L. Dict,, Cyc. Law Dic Ame Cyc*)

The word "compensation" is the general term used also in the Indian Contract Act (S 73) to denote the payment which a party is entitled to claim on account of loss or damage arising from the breach of contract It is used in the same sense in Art 116 of the Limitation Act (3 Mad 76)

The word " compensation " in Art. 116, Limitation Act, need not be restricted to a claim for unliquidated damages, and can be held to include a claim for a sum certain [44 C 759 (P C), Foll.] 49 Bom 596= 27 B L R 637=89 I C 59=A I R 1925 Bom 440

" COMPENSATION, and not forfeiture, is a favourite maxim with courts of equity "

COMPENSATION—DAMAGES—DISTINCTION The expression compensation is not ordinarily used as an equivalent to damages, although compensation may often have to be measured by the same rule as damages in an action for a breach The term compensation as pointed out in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered, damages, on the other hand, constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, The value estimated in money, of something lost or withheld (27 C.W.N. 210=37 C L J 108=A.I R. 1923 Cal. 507.)

COMPENSATION, AMENDS, SATISFACTION, RECOMPENSE, REMUNERATION, REQUITAL, REWARD A *Compensation* is a return for a loss or damage sustained, justice requires that it should be equal in value, although not alike in kind *Amends* is a return for anything that is faulty in ourselves or towards others A person may make *amends* for idleness at one time by a double portion of diligence at another. A man may make another amends for any hardship done to him by showing him some extra favour another way. *Satisfaction* is that which satisfies the individual requiring it, it is given for personal injuries, and may be made either by a slight return or otherwise, according to the disposition of the person to be satisfied. A *recompense* is a voluntary return for a voluntary service; it is made from a generous feeling, and derives its value not so much from the magnitude of the service or return, as from the intentions of the parties towards each other, and it is received not so much as a matter of right as of courtesy. *Remuneration* is not so voluntary as recompense, but it is equally indefinite, being estimated rather according to the condition of the person and the dignity of the service, than its positive worth. Authors often receive a remuneration for their works according to the reputation they have previously acquired, and not according to the real merit of the work *Requital* is the return of a kindness, the making it is an act of gratitude A *reward* may be a bad return when it is inadequate to the merits of the person (*Carbb Syn*)

Compensation (*in respect of Land Acquisition*) is the word usually applied by lawyers to the satisfaction to be made to persons whose rights are interfered with or whose property is taken away in the exercise of statutory powers By the common law of England, as stated by Mr Ingram in the introduction to his book on the Law of Compensation, "no violation of the rights of private property is allowed even for the general good of the whole community The principle—that the good of the individual should yield to that of the community—has in this country never been received with favour And no tribunal of the judicature has ever been intrusted with the power of compelling a sale of land or dispossessing a citizen of his house or premises even for public purposes of great and manifest utility."

"COMPENSATION PAYABLE FOR THE LAND" The words "the compensation payable for the land" in S 11 of the Land Acquisition Act, cannot be paraphrased into compensation for those interests in the land which are not vested in the Government (10 Bom L R. 994. *See also* 34 Bom 618)

Compensatory damages Damages equivalent to the actual loss in respect to which they are allowed.

Competency Intelligence of one sufficient to understand the act he is performing, the property he possesses, the disposition he is making of it, and the persons or objects he makes the beneficiaries of his bounty The term also means a competency in respect of interest, and not in respect of the person.

Competent Answering to all requirements, adequate, sufficient suitable, capable, legally qualified as competent court, competent judge, competent witness, fit; fitness or capability of performing the duties of the office, reliable, permissible (as) it is competent to Parliament to make the law)

The term "competent" in Ss. 15, 24, Cr. P. Code, 1908, means "having jurisdiction—that is,with reference to the pecuniary value and nature of the suits which the Court has power to try." [7 All. 230 (239) F B , 5 A W.N 1]

Competent authority The expression "Competent authority" in R. 4 (2), O XXXII, C P. Code, does not include a Hindu father appointing a person to act as a guardian to his son after his death. (31 Bom 413=9 Bom.L.R. 553.)

Competent Court. 170 I.C 314=38 Cr.L J. 959= 13 R S. 57=A.I.R. 1937 Sind 179. *See* Cr. P. Code, S. 11.

COMPETENT COURT. A civil or other court having jurisdiction in the matter before it. (18 I.C. 122=16

Competent jurisdiction.

O.C. 36) In interpreting the meaning of "Competent Court" for the purposes of *res judicata* under it is essential to take notice of the pecuniary limit of jurisdiction, there being in India a great number of Courts, of various grades with different pecuniary limits. 14 B 206 (213).

COMPETENT COURT, in Debtors Act, 1869 (32 & 33 Vict.. c 62), S 5, "must be understood to mean a Court acting within the local limits of its existing jurisdiction" [*Washer* v. *Elliott*, (1876) 1 C P D. 174]

Competent jurisdiction. The term, in its usual signification, embraces the person as well as the cause. In considering the competency of the Court under S. 11, C P Code, which tried the former suit to try the subsequent suit, the powers of the Court where the suit was instituted should be looked to, and not the powers of the Court by which the matter was decided on appeal [5 Cal 832=6 C L R 305, 13 C L J 568, 30 Bom. 220=7 Bom. L.R 821, 29 M. 195=10 M.L J. 41 (F.B).

"Competent to contract" The use of the expression in S 11 of the Indian Contract Act, requiring that all contracting parties should be "competent to contract", has the effect of rendering the contracts entered into by incompetent persons not voidable but void [30 Cal 539=30 I.A. 114 (P.C.), 7 C W N 441, 5 Bom L R 421]

"Competent to investigate" (*in* S. 157, *Evidence Act I of* 1872) do not refer exclusively to the persons competent to hold the Police investigation into an alleged offence under Chapter XIV of the Criminal Procedure Code, and include an Inspector of the Provincial Criminal Investigation Department whose work is not confined to any particular district, but which was created "to assist in the investigation of crimes which are of such a special character that the local officers are unable to deal with them adequately without help and who was directed by the head of his own department (the Deputy Inspector-General) and by the local District Superintendent of Police to search certain houses in connection with the subject of the enquiry 14 I C 896 (906)=13 Cr L.J 352=(1912) 1 M.W N. 552=12 M L.T. 1.

Competent Tribunal. Regularly established Court of the country, Court competent to try the question and party before it, competent Court Where the statute requires that an oath must be taken before some "competent tribunal, officer, or person," it means that the oath must be permitted or required by at least the laws of the realm and be administered by some tribunal, officer, or person authorized by such laws to administer oaths in respect of the particular matters to which it relates

"Competent witness" defined. Act I of 1872, S. 120.

Competition. Rivalry; striving against each other for getting something desired or doing some act in the best manner possible, Acts or course of conduct which is the result of the free choice of the individual, and not of any legal or moral obligation or duty.

"COMPETITION is the life of trade." *People* v. *Sheldon*, 139 N Y. 251 where it is said: "The Courts have acted upon and adopted this maxim in passing upon the validity of agreements, the design of which was to prevent competition in trade, and have held such agreements to be invalid."

Complainant.

Complainant One who applies to the courts for legal redress; one who files complaint; statement that one is aggrieved.

COMPLAINT is an allegation that a wrong has been done or a grievance suffered. This term is most generally used in law with reference to criminal courts to describe the mode in which proceedings are to be instituted The complaint need not be either in writing or on oath, unless required to be so by the particular enactment upon which it is framed.

"Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer (Crim Pro Code, S 4) *See also* 17 C P L.R. 105; 6 S.L R 82=17 I C 64=13 Cr.L.J. 752 The essence of the complaint is the statement of facts relied upon as constituting the offence It is sufficient that the complainant shall state the true facts in his own language, and it is for the magistrate to apply the law to those facts 110 I C. 108= 1928 Lah 510, 6 C W N 926, 41 Cal 1013.

It is a form of legal process which consists of a formal allegation or charge against a party, made or presented to the appropriate court or officer, as for a wrong done or a crime committed, in the latter case generally under oath.

A "*complaint*" is an allegation that some person has committed an offence and "an offence" is an act or omission made punishable by any law for the time being in force An application under S 107, Cr. P. Code, is not a complaint where there is merely an allegation that a breach of the peace is likely 1 O. W N 359=81 I C. 973=11 O L J 732=28 O C 44= A I R 1925 Oudh 138

COMPLAINT DISTINGUISHED FROM "INFORMATION" (*See* per Hayes, J, *Re Dillon*, 11 Ir Com Law. Rep. 238)

A letter to a Magistrate informing him that a certain person used insulting language to the writer and asking the Magistrate to take action is a complaint 17 C W N 448=18 I C 412=14 Cr.L J 76

Deposition made to a Magistrate in course of a trial is not a complaint. *See* 14 Bom L.R 1166=18 I C 145

A statement made by a person at a Police enquiry, which results in the institution of criminal proceedings against another, is not a 'complaint' made by him within the meaning of S. 250, Criminal Procedure Code, when the case is not instituted either on his complaint or on information given by him as a result of enquiry by the Police. (35 I. C. 512= 1 Pat L.J 106)

COMPLAINT, ACCUSATION Both these terms are employed in regard to the conduct of others, but a *complaint* is mostly made in matters that personally affect the complainant, an *accusation* is made of matters in general but especially those of a moral nature. A *complaint* is made for the sake of obtaining redress, an *accusation* is made for the sake of ascertaining a fact or bringing to punishment. A *complaint* may be frivolous; an *accusation* false.

Completion.

People in subordinate stations should be careful to give no cause for *complaint*, the most guarded conduct will not protect any person from the unjust *accusations* of the malevolent

"**Completion**". *See* 19 B. 372

Compose. To make up, construct of several elements; constitute (*in printing*), set up (*as*) composing machine; composing stick

Composition A written or literary work invented and set in order, a mixture or chemical combination of materials (*Black L. Dict*), agreement or compromise between debtor and creditor

Composition with creditors is an agreement made by a debtor, either in insolvent or in embarrassed circumstances, or by some one in his behalf, with all or some of his creditors, by which it is agreed on the one side that each of the creditors who enters into the agreement shall be paid a specified amount or a certain percentage (in either case less than the whole) of their respective claims, or that all or a specified portion of the debtor's pooperty shall be applied toward the payment of those claims *pro rata*, while on the other side the creditors agree to accept in satisfaction of their claims whatever is thus proffered (28 Bom. 364, 2 Beav 470; *Stroud, Ame Cyc*)

Composition-deed The expression "Composition-deed" in S 17 (2) (*i*), Registration Act (XVI of 1908), denotes a transaction entered into by a debtor, insolvent or in embarrassed circumstances, with his creditors with the object of paying the latter a composition upon their claims (28 Bom 364)

A composition deed does not mean any deed composing differences but means a deed by which a debtor compounds with his creditors (46 I C 243)

Compound. Settle by mutual concession, to "*compound*" *a debt*, is to abate a part on receiving the residue (*Haskins* v *Newcomb*, 2 Johns 408, *Pennel* v. *Rhodes*, 9 Q B 129)

Compound a felony or offence Forbear from prosecution for consideration or on private motives.

To Compound, Compose *Compound* is used in the physical sense only, *compose* in the proper or the moral sense; a medicine is compounded of many ingredients, society is composed of various classes

Compound offence (*Noun*). Offence committed when more than one crime is committed in the same transaction (8 Cyc 497).

Compoundable. Capable of being compounded.

Compoundable offence (*See* Compounding felony or offence)

It is offence which the law allows to be compounded privately between the parties (*See* Crim. Pro. Code).

Compounding Arranging, coming to terms, condone for money, arranging with the creditor to his satisfaction

Compounding felony or offence Compounding an offence is defined to be "the offence of taking a reward for forbearing to prosecute a felony, as where the party robbed takes his goods again, or other amends upon an agreement not to prosecute." (*Burrill.*) *See* Crim. Pro Code as to compoundable and non-compoundable offences.

Compromise.

Other definitions. "An agreement with the criminal not to prosecute him." (*Bishop Crim. L.* 648) "The offence committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation or on receipt of a reward or bribe not to prosecute" (*Haskins* v. *Newcomb*, 2 Johns (N Y.) 405, 408) "*Compounding felony*, is where the party robbed, not only knows the Felon but also, takes his goods again, or other amends, upon agreement not to prosecute." (*Jacob*)

Compounding with Creditors, an agreement or compromise whereby creditors agree to accept, and a debtor undertakes to pay, or secure payment of, a certain sum in each rupee in full settlement of indebtedness.

Compound Interest. Interest on interest, (*i. e*) when the interest of a sum of money is added with the principal and then bears interest, which thus becomes a sort of secondary principal

Compromise. "A compromise takes place when there is a question of doubt, and the parties agree not to try it out, but to settle it between themselves by a give and take agreement" (*Per* Kay, L J., in *Huddersfield Banking Co* v *Lister*, (1895) 2 Ch. 273) "'Compromise,' is a mutual promise of two or more parties that are at controversy" (*Termes de la Ley*)

Compromise To adjust by mutual concession, to settle without resort to the law, to compound (*As noun*) An "adjustment of matters in dispute by mutual concessions" "An agreement between the parties to a controversy for a settlement of the same" (*Abbott*) "A settlement of differences by mutual concessions." "The mutual yielding of opposing claims, the surrender of some right or claimed right in consideration of a like surrender of some counter-claim" (*Anderson L Dict*) "An agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon" (*Bouvier*)

"Where the parties to a dispute dispose of it by agreement between themselves, whether legal proceedings have been commenced or not" (*Sweet L. Dict*) "An agreement between two or more persons who for preventing or putting an end to a law suit, adjust their differences by mutual consent, in the manner which they agree on and which every one of them prefers" to the risk or danger of losing in the case

Distinguished from tender A tender admits absolutely the amount tendered as due, while an offer to compromise admits nothing, except that there is a dispute and the party offering money by way of compromise may claim that nothing is due. (27 Kan 249, 8 Cyc 502)

"Compromise" agreement to refer to arbitration The word "compromise" in legal phraseology fully covers a case in which the parties agree to refer their disputes to arbitration and to be bound by the award of the arbitrators. In popular sense as well, it is no less a compromise than if the terms are fixed by direct settlement between the parties themselves In one case the terms of the compromise are found from the agreement In the other case the terms have to be found by reference to the agreement read with the award (*Wharton's Law Lexicon*

Compromise and Settlement.

13th Ed., p. 198, Rel. on.) 131 I.C. 443=8 O.W.N. 71 =14 O L.J. 184=1931 O. 127.

Compromise and Settlement. A *compromise* is an agreement made between two or more parties as a *settlement* of matters in dispute.

Comptroller (*Controller*). The term comptroller or controller signifies, in its widest and most general sense, one who examines and verifies the accounts of collectors of public money.

"Compulsory deposit" defined. Act 9 of 1897, S 2 (4). Act 19 of 1925, S 3.

"COMPULSORY DEPOSIT" (*Under the Provident Funds Act*) means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund, is not, until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance, and includes any contribution credited in respect of any such subscription or deposit and any interest or increment which has accrued under the rules of the Fund on any such subscription, deposit or contribution, and also any such subscription, deposit, contribution, interest or increment remaining to the credit of the subscriber or depositor after the happening of any such contingency [Act XIX of 1925(*Provident Funds*), S 2, Cl (*a*) *See also* 29 Bom 259=6 Bom L R 921.

The contribution of a railway servant to the Provident Fund is "compulsory deposit" within the meaning of S 4 of the Provident Funds Act, 1897. 29 B 259=6 Bom L R 921.

Compulsory Winding up Winding-up of a company's affairs by the order and under the supervision of the Court

Compurgator One that by oath justifies another's innocence Compurgators were introduced as evidence in the jurisprudence of the middle ages Their number varied according to the importance of the subject in dispute or the nature of the crime with which a person was charged (*Tomlin's Law Dic*)

TO CONCEAL, HIDE, SECRET *Concealing* has simply the idea of not letting come to observation, *hiding* that of putting under cover, *secreting* that of setting at a distance or in unfrequented places, whatever is not seen is *concealed*, but whatever is *hidden* or *secreted* is intentionally put out of sight A thief *conceals* himself behind a hedge, he *hides* his treasures in the earth, he *secrets* what he has stolen under his cloak.

Concealed Fraud. "Concealed fraud" "does not mean the case of a party entering wrongfully into possession, it means, a case of designed fraud by which a party, knowing to whom the right belongs, conceals the circumstances giving that right, and, by means of such concealment, enables himself to enter and hold" (*Per* Kindersley, V C, *Petre* v *Petre*, 1 Drew 397).

CONCEALED FRAUD in Statutes of Limitations. See *Lawrance* v *Lord Norreys*, (1890) 15 App. Cas. 210.

Concealment (*in Insurance Law*) is the suppression of, or neglect to communicate, a Material Fact within the knowledge of one of the parties which the other has not the means of knowing, or is not presumed to know. A 'Material Fact,' is one which is calculated, if communicated to the other of the parties, to induce him either to refrain altogether from the contract, or not to enter into it except on more favourable terms" (Arn. 658, citing *per* Tindal, C J., *Elton* v. *Larkins*, 5 C. and P. 392, *Stroude* 361.)

Concern. That which concerns one's affairs, that which relates or pertains to one; matter of concernment, business affair, firm or enterprise.

"The words '*concerns*' and '*accounts*' are mercantile terms and have an appropriate technical import." *Bruce* v. *Burdet*, 1 J J. Marsh (Ky) 80, 82.

Concerned. "Concerned as Officer to prosecute," does not mean bound to prosecute, those are "concerned to prosecute" "whose duty it is to do so, though the duty be only one of imperfect obligation" (*per* Campbell, C J, 15 Q B 106, Stroude, 361)

"Concerned in" "Being concerned in" is not a legal term or conclusion which needs a specification of facts for completeness of description. It is a colloquial expression, equivalent to "being engaged in," or "taking part in," and sufficiently informs the defendant of what the government intends to do *Ve U. S.* v *Scott*, 74 Fed 213 (217).

Concert. Combined state; to act in harmony, to plan together (as) concert of Europe (*i.e.*) chief European powers acting together on a common place.

TO CONCERT, CONTRIVE, MANAGE. There is a secret understanding in concerting, invention in contriving; execution in managing Measures are concerted, schemes are contrived, affairs are managed. Two parties at least are requisite in concerting, one is sufficient for contriving and managing. Concerting is always employed in all secret transactions, contrivance and management are used indifferently. Robbers who have determined on any scheme of plunder concert together the means of carrying their project into execution, they contrive various devices to elude the vigilance of the police, they manage everything in the dark

Concession. Concealing or thing conceded, a grant, ordinarily applied to a grant of specific privileges by government, a special privilege granted by a government, corporation or other authority.

Conciliate. Win by generality; Win over from hostility.

Conciliation Bringing of opposing parties or individuals into harmony (as), Court of conciliation, Conciliation Board.

Conciliator One who brings opponents into harmony, one who conciliates.

CONCILIATE, RECONCILE *Conciliate and reconcile* are both employed in the sense of uniting men's affections, but under different circumstances. The conciliator gets the good will and affections for himself, the reconciler unites the affections of two persons to each other. Conciliate is mostly employed for men in public stations; reconcile is indifferently employed for those in public or private stations.

Concise. Brief; in a few words (as) concise statement of pleadings.

Concise

Conclave.

Conclave. Cardinal's meeting place for papal election, any meeting for secret consultation.

Conclude: Bring about; make (as) conclude treaty, peace or bargain.

Conclusive. Final, finishing, ending (as) conclusive argument; Irritable (as) conclusive evidence. 'CONCLUSIVE', is sometimes used in a narrow sense *See* 25 N.L.R. 19=1929 N. 246

The term 'conclusive' is used in statutes with reference (1) TO JUDGMENTS AND ORDERS or decisions of a Court or a public department or authority, (2) to EVIDENCE. 1. Where a judgment or order of a Court is declared to be final or conclusive, it cannot be questioned by appeal or otherwise unless given with such disregard of the jurisdiction of the Court as not to be really a decision, in which case it may be treated as a nullity [*Waterhouse* v. *Gilbert*, (1885) 15 Q B D 569, *Bryant* v. *Reading*, (1886) 19 Q B D 128, *Lyon* v. *Morris*, (1887) 19 Q B.D 139] 2 Where a document or evidence is made conclusive it creates a presumption *juris et de jure* in favour of the truth and legality of the matter stated, and no evidence can be adduced to contradict it Thus where production of a copy of an order, proclamation or document printed by authority is made conclusive evidence of some fact, no further inquiry will be allowed as to the fact or the legality of the procedure by which the fact arose [*R.* v. *Levi*, (1865), 34 L.J M C 174] "Conclusive" evidence is distinguishable from evidence which is made "sufficient" [*Barraclough* v. *Greenhough*, (1867) L R 2 Q B 612, *Ency of the Laws of England*]

CONCLUSIVE, DECISIVE, CONVINCING. *Conclusive* applies either to practical or argumentative matters, *Decisive* to what is practical only, *Convincing* to what is argumentative only It is necessary to be *conclusive* when we deliberate, and *decisive* when we command What is *conclusive* puts an end to all discussion, and determines the judgment. what is *decisive* puts an end to all wavering, and determines the will. Negotiators have sometimes an interest in not speaking *conclusively*, commanders can never retain their authority without speaking *decisively Conclusive* when compared to *convincing* is general, the latter is particular · an argument is *convincing*, a chain of reasoning *conclusive* There may be much that is *convincing*, where there is nothing *conclusive* a proof may be *convincing* of a particular circumstance, but *conclusive* evidence will bear upon the main question

Conclusive Evidence. Absolute evidence of a fact for all purposes for which it is so made evidence (*R* v. *Levi*, 34 L J M C. 174)

CONCLUSIVE EVIDENCE, in s. 51 of the Companies Act, 1862 (25 & 26 Vict c 89) *Re Hadleigh Castle Gold Mines, Ltd*, (1900) 2 Ch 419 (C A)

"CONCLUSIVE EVIDENCE OF FACT" defined. Act 6, 1882, s 77

Conclusive and final evidence of the liability An entry in the Settlement Officer's Record referred to in S. 17 of the Khoti Act (I of 1880, Bombay) is conclusive as to the nature and amount of rent The words "Conclusive and final evidence of the liability" occurring in S. 17 must, in the ordinary and grammatical meaning, have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court. (18 B. 133=1893 P J. 42.)

"CONCLUSIVE PROOF" defined Act 1, 1872, s. 4.

Conclusive Proof is "Clear and Positive Proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. (Act I of 1872, *Evidence*, 1 s. 4.)

The expression "conclusive proof" in S. 2 of the Oaths Act is to be understood in the sense in which it is defined by S. 4 of the Evidence Act, 1872. (8 Bom L.R. 19=1 M.L T. 163)

Concoct. Fabricate, Scheming in concert (as) *concocted* evidence

Concomitant. Attendant, accompanying (as) concomitant circumstances.

Concord. Same as "Accord" (*Termes de la Ley.*)

Concordant Compact between church and State, especially between the Pope and the Secular Government.

Concordare leges legibus est optimus interpretandi modus A maxim meaning "To make laws agree with laws is the best mode of interpreting them."

Concubinage The cohabiting of a man and a woman who are not legally married, the state of being a concubine, the cohabitation of a man with a woman to whom he is not united by the marriage tie, the act or practice of cohabiting in sexual intercourse without the authority of a legal marriage, a comprehensive term covering any illicit intercourse. (*Wharton*)

Concubine A woman who cohabits with a man without being his wife, a kept mistress, a sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality. (*Black L. Dict., Ame Cyc , Webs*)

The word 'concubine' has long had a definite meaning, whether expressed in the language of India or of Europe The persons described by it had, and have still where it remains applicable, a recognised status below that of wife and above that of harlot (1926) 53 I A. 153=50 B 604=24 A.L J. 729=1926 M W N. 514=3 O W N. 599=44 C L J 53 =24 L W 309=28 Bom L R 1143=31 C W N 128= A.I.R (1926) P C 73=96 I C. 20=51 M L J. 577.

WHEN A WOMAN BECOMES A "CONCUBINE." When a single woman consents to unlawfully cohabit with a man generally, as though the marriage relation existed between them, without any limit as to the duration of such illicit intercourse, and actually commences cohabiting with him in pursuance of that understanding, she becomes his concubine, or, as it is usually expressed in modern times, "his kept mistress" which amounts to the same thing. · *Henderson* v. *People*, 124 III Cited in 8 Cyc. 552)

Concur. Agree, coincide; express agreement in opinion (as) concurring judgment.

Concurrent. Having the same authority; acting in conjunction; existing together agreeing in the same act; contributing to the same event; contemporaneous; running together; co-operating; contri-

Concurrent Findings.

buting to the same effect; accompanying; conjoined; associate; concomitant; joint and equal (as) concurrent sentences.

Concurrent Findings. It is a general rule of practice on appeals in the Privy Council not to reverse the concurrent findings of two Courts on a question of fact [*Hay* v. *Gordon*, (1872), L.R. 4 P.C. 337, 348]; and the question for the Privy Council is, not what conclusion their Lordships would have arrived at if the matter had for the first time come before them, but whether it has been established that the judgments of the Courts below were clearly wrong. (*Allen* v. *Queen Warehouse Co*, (1886), 12 App Cas 101; 56 L.T. 30=56 L.J.P.C. 6.)

"Concurrent remedies". Co-existing remedies' (*See* Ex P Thomas, Io. Mo. App 24, 26)

Concurrent Sentences. Sentences are said tobe concurrent when made to run from the same date in respect of convictions on several counts or indictments The term is used in opposition to "*consecutive or Cumulative Sentences*"

Concussion Violent shock. CONCUSSION OF THE BRAIN is injury to the brain caused by a heavy blow

Condemn Censure, blame; doom to punishment, to give judgment against a prisoner

Condemned Forfeited; pronounced unfit for use (as) condemned articles

Condemned cell. Cell for the confinement of condemned men.

Condictio rei furtivae, quia rei habet persecutionem, haeredem quoque furis obligat A maxim meaning "The appointment of an action on a certain day relating to stolen goods since it implies the production of the goods, binds the heir of the thief also" (*Morgan Leg. Max.*)

Conditio ad liberum tenementum auferendum non nisi ex facto placitari debet A maxim meaning "An argument for taking away a free tenure ought not to be pleaded except from the deed (*Black L. Dict*)

Conditio beneficialis, quoe statum construit, benigne secundum verborum intentionem, est Interpretandi odiosa autem quoe statum destruit, stricte secundum verborum proprietatem accipienda. A maxim meaning "A beneficial condition which creates an estate, ought to be construed favourably, according to the intention of the words, but a condition which destroys an estate is odious and ought to be construed strictly according to the letter of the words."

Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse confertur A maxim meaning "It is called a condition when something is given on an uncertain event, which may or may not come to pass. (*Morgan Leg Max*)

Conditio ex parte extincta ex toto extinguitur A maxim meaning "An agreement extinguished in part is wholly extinguished." (*Morgan Leg. Max.*)

Conditio illicita hebetur pro non adjecta. A maxim meaning "An unlawful condition is deemed as not annexed." (*Black L. Dict.*)

Conditioners Praecedentas.

Conditio liberum tenementum cassans non per nuda verba sine charta valebit. A maxim meaning "A condition making void a free tenement will be of no value by bare words without writing." (*Peloubet Leg. Max.*)

Condition. Thing on whose fulfilment another thing or act is made to depend. "'Condition' is a restraint or bridle annexed and joined to a thing, so that by the non-performance or not doing thereof the party to the condition shall receive prejudice and loose and; by the performance and doing of the same, profit and advantage" (*Termes de la Ley*). "A condition is a clause of restraint in a deed or a bridle annexed and joined to an estate,"—or transaction,—"staying and suspending the same, and making it uncertain whether it shall take effect or no." (*Touch.* 31, 117.)

Condition precedent (*in a will*) is a condition that must be fulfilled before a bequest becomes valid.

MAKE CONDITIONS. Stipulate for something (as) conditions of peace.

Condition and warranty Defined in Act III of 1930, S 12

"Conditional" defined. Act 16 of 1881, S. 5.

Conditional Advance Note Note given by the master of a ship to a seaman, undertaking to pay to the seaman's order, a certain sum after a certain time, on condition that the seaman goes with and serves on the ship.

Conditional attachment The expression "conditional attachment" might mean an attachment to be made conditionally on the security not being furnished nor cause shown by the prescribed day, or it might mean an immediate attachment of a provisional kind conditioned to become plenary if security should not be furnished, or cause shown according to the terms of the order The form at the end of the Civil Procedure Code for a provisional attachment shows that the latter was the intention of the Legislature (5 B 643)

Conditional legacy. "A bequest whose existence depends upon the happening, or not happening, of some uncertain event, by which it is either to take place or be defeated" (*Roper Law of Legacies*, 4th Ed, Vol I, p 748)

"Conditional sale". (*See* Mortgage by conditional sale.)

Conditionem testim tunc inspicere debemus cum signarem, non mortis tempore. A maxim meaning "The condition of witnesses when they sign, and not when they die, is to be considered." (*Morgan Leg Max*)

Conditio neninem juvabit nisi qui pars fuerit aut privus. A maxim meaning "An agreement shall avail no one unless he shall have been a party or privy to it" (*Morgan Leg. Max*)

Conditiones praecedentas ad norman legis severe exigendae aliter de subsequentibus ubi aequitati licet damnum rei infectae pensare. A maxim meaning "preceding agreements must be rigorously executed according to the rules of law; but it is otherwise concerning subsequent agreements

Conditiones quaelibet.

where equity is allowed to make up for the loss incurred by the failure." (*Morgan Leg. Max.*)

Conditiones quaelibet odise maxime autem contra matrimonium et commercium A maxim meaning "Any conditions are odious, but especially those which are against (in restraint of) marriage and commerce. (*Black L Dict.*)

Conditions of sale, the regulations under which lands, houses, or goods are put up for sale by public auction, and by which purchasers are bound. It is usual for "particulars and conditions of sale" to be printed and distributed prior to or at the sale in hand-bills or advertisements.

Conditio praecedens adimpleri debet priusquam sequatur effectus. A maxim meaning "A condition precedent must be fulfilled before the effect can follow"

Condonation A pardon or forgiveness of a past wrong or fault, forgiveness, either express or implied by a husband of his wife, or by a wife of her husband for a breach of marital duty, as adultery, remission or pardon of an offence, forgiveness legally releasing the injury, connubial intercourse with full knowledge of all the facts "Condonation" is a conclusion of fact, not of law; and means the complete forgiveness and blotting out (even to the extent of surrendering all claim for damages against the adulterer), of a conjugal offence, followed by co-habitation,—the whole being done with the full knowledge of all the circumstances of the particular offence forgiven (*Peacock* v. *Peacock*, 27 L J P & M. 71)

"CONDONATION," is not an absolute term, which can be applied alike to all circumstances Its application will vary as the offence said to have been condoned may vary If the offence be adultery then knowledge of the fact of the defendant, followed by co-habitation, is *ipso facto* condonation Husband and wife sleeping together in the same bed is strong evidence of, but of itself does not constitute, Condonation; the real fact to be got at is, Forgiveness,—which may be absent although the parties sleep together. (*Hall* v. *Hall*, 1891 P 302)

Conduce. Tend to produce, effect "According to the received meaning of the word 'conduce,' I think that what has conduced an effect must in some sense have caused it, or contributed to it, and the conducing cause must be such as, if not directly at least indirectly might at the time be contemplated as likely somehow to contribute to" that effect (per *Campbell, C J*, *Cummington* v *Cummington*, 28 L J P. & M 102)

"Conduct" defined Act I of 1872, S. 8, Explanation 1 *See also* 22 Bom 715

Conduct. Management, conducting of an affair (as) conduct of business, conduct of a campaign, conduct of sale

TO CONDUCT, MANAGE, DIRECT. *Conducting* requires most wisdom and knowledge; *managing* most action; *direction* most authority A lawyer *conducts* the cause entrusted to him, a steward *manages* the mercantile concerns for his employer; a *superintendent* direct the movements of all the subordinate agents. A *conductor* conceives, plans, arranges and disposes; a *manager* acts or executes a *director* commands It is necessary to *conduct*, with wisdom, to *manage* with diligence, attention, and skill, to *direct* with promptitude, precision, and clearness A minister of state requires peculiar talents to *conduct* with success the various and complicated concerns which are connected with his office, he must exercise much skill in *managing* the various characters and clashing interests with which he becomes connected; and possess much influence to *direct* the multiplied operations by which the grand machine of government is kept in motion. When a general undertakes to *conduct* a campaign, he will entrust the *management* of minor concerns to persons on whom he can rely; but he will *direct* in person whatever is likely to have any serious influence on his success.

Conduct and affairs of bankrupt, in S 28 (2) of the Bankruptcy Act, 1883, means conduct arising out of or connected with the bankruptcy, but is not confined to the matters specified in S. 28 (3). Re *Jones*, (1890) 24 Q B D 589.

"Conduct the search in person," S 165(2), Cr.P.C., does not mean that an officer-in-charge of a Police Station (*i e*) investigating officer personally conducting a search must himself make the search, *e.g*, ransack boxes, examine the roof, dig up the floor, or otherwise seek for the property Nor is it necessary that all these processes must take place under his eye The meaning of the section is that the officer should be present on the spot and exercise a general supervision over the search, in contradistinction to the cases where he is unable to go to the spot, and deputes a subordinate by a written order to conduct the search in his place (23 M L J. 445=1912 M W. N 111=13 Cr.L.J. 763=17 I.C. 75)

"Conducting the Sale" The expression "officer conducting the sale" in Civil Procedure Code relates to the action of the officer conducting the sale, and not to anything done before the sale or any proceedings unconnected with the actual carrying out of the sale (7 A 641=5 A.W.N. 190; 10 I A. 25)

Conductor. Official in charge of passengers or goods in a tramway or omnibus.

Confederacy is when two or more combine together to do any damages or injury to another, or to do any unlawful act. (*Tomlins Law Dic*)

Confederation. Permanent union of several independent states for common external action

Confederate. A member of a confederation, one of several persons who have leagued together.

CONFEDERATE, ACCOMPLICE. *Confederate* and *Accomplice* both imply a partner in some proceedings, but they differ as to the nature of the proceeding in the former case it may be lawful or unlawful; in the latter unlawful only. In this latter sense a *confederate* is a partner in a plot or secret association · an *accomplice* is a partner in some active violation of the laws Guy Fawkers retained his resolution till the last extremity, not to reveal the names of his *confederates*; it is the common refuge of all robbers

and desperate characters to betray their *accomplices* in order to screen themselves from punishment.

Confer To meet together, to take counsel; also to give (as) conferring titles.

To CONFER, BESTOW. *Conferring* is an act of authority, *bestowing* that of charity or generosity Princes and men in power *confer*, people in a private station *bestow* Honours, dignities, privileges, and rank, are the things *conferred*, favours, kindness, and pecuniary relief, are the things *bestowed*. Merit, favour, interest, caprice, or intrigue, gives rise to *conferring*, necessity, solicitation, and private affection, lead to *bestowing*

Conference (*in Litigation*) A Conference is a meeting between a counsel and the solicitor instructing him in a case for the purpose of considering or advising upon it, or any stage or development of it

Generally, it refers to a meeting of several persons or bodies of persons for the interchange of opinions, or for the removal of doubts, differences or disputes.

Confers Admit or acknowledge (as) one's guilt or crime (*In Ecc's Law*) conferring of sins by a penitent to the confessor

Confessio, facta in judicio, omni probatione major est A maxim meaning "A confession made in court is of greater effect than any proof"

"**Confession**, Is where a prisoner is indicated of an offence and brought to the bar to be arraigned, and his indictment being read to him, the court demands what he can say thereto, then he either *confesses the offence*, and the indictment to be true, or *pleads not guilty etc*" (*Tomlins Law Dic*) *Confession* is a direct admission or acknowledgment of his guilt by a person who has committed a crime. It may be judicial or extra-judicial (*See* 2 Hale, P C. 225, Archbold, 23rd ed 330, Russ. Crimes 6th ed, vol III, p 477, Mayne, Crim Law of India. 1896, p 918) '*Confession*' does not mean necessarily a *complete* confession of guilt, but means and includes any incriminating statement 115 I C 1= 1929 Lah 338

CONFESSION in section 25 of the Indian Evidence Act, I of 1872, means, as in section 24, a 'confession made by an accused person' which it is proposed to prove against him to establish an offence." 14 I C 849 (861)=(1912) 1 M W.N. 207=13 Cr.L J 305 =22 M.L.J 490=11 M.L.T 1=35 M 247. *See also* 7 A. 646

Confession and avoidance. Pleas are so termed which impliedly admit the facts alleged in the declaration, but aver more facts which obviate their legal effect.

Confessor is one who hears confessor, prescribes penance or gives absolution. "*Confessor*, hath relation to private confession of sins, in order to absolution; and the priest who received a uricular confession, had the title of confessor, though improperly; for he is rather the confessee, being the person to whom the confession is made." (*Tomlins Law Dic.*)

Confessus in judicio pro judicato habetur, et quo dammodo sua sententia damnatur. A maxim meaning "A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were condemned by his own sentence."

Confide, To have trust in.

To CONFIDE, TRUST *Confidence* is an extraordinary trust, but *trust* is always ordinary unless the term be otherwise qualified *Confidence* involves communication of a man's mind to another, but *trust* is confined to matters of action A *breach of trust* evince a want of that common principle which keeps human society together, but a *breach of confidence* betrays a more than ordinary share of baseness and depravity

Confidential Imparted in confidence, confiding of secrets or in trust (as) confidential .communications between husband and wife being privileged communications under the Evidence Act

Confine. Imprison, hold in custody.

Confinement Imprisonment, civil or criminal, also means child birth

CONFINEMENT, IMPRISONMENT, CAPTIVITY. *Confinement* is the generic, the other two are specific terms. *Confinement and imprisonment* both imply the abridgement of one's personal freedom, but the former specifies no cause, which the latter does. We may be *confined* in a room by ill health, but we are never *imprisoned* but in some specific place appointed for the confinement of offenders, and always on some supposed offence We are *captives* by the rights of war, when we fall into the hands of enemy Confinement is so general a term as to be applied to animals and even inanimate objects; imprisonment and captivity are applied in the proper sense to persons only, but they admit of a figurative application. Poor stray animals, which are found trespassing on unlawful ground are doomed to a wretched confinement, rendered still more hard and intolerable by the want of food, the confinement of plants within too narrow a space will stop their growth for want of air. There is many a poor captive in cage who, like Sterne's starling, would say, if it could, "I want to get out"

Confirm Make stronger, further establish, make secure, corroborate.

Sometimes, "confirm" means merely 'verify' it is commonly used in that sense at the meetings of public bodies who 'confirm' the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate" (*per* Campbell, C J., *R* v *York*, 1 E & B. 594).

TO CONFIRM, TO CORROBORATE. The idea of strengthening is common to these terms, but under different circumstances, *confirm* is used generally, *corroborate* only in particular instances. What *confirms* serves to confirm the mind, what *corroborates* gives weight to the thing An opinion is *confirmed*, an evidence is *corroborated*. What *confirms* removes all doubt, what *corroborates* only gives more strength than the thing had before. When the truth of a thing is confirmed, nothing more is necessary

the testimony of an accomplice may be so little credited that it wants frequent corroboration.

CONFIRM, ESTABLISH. To *confirm* is applied to what is partial, if not temporary, to *establish* to that which is permanent and of importance, as to *confirm* a report, to *establish* a reputation, to *confirm* a treaty or alliance, to *establish* a trade or a government.

Confirmare est id firmum facere quod prius infirmum fuit A maxim meaning "To confirm is to make firm that which was before infirm" (*Black L. Dict.*)

Confirmatio est nulla ubi donum proecedens est invalidum A maxim meaning "Confirmation is void where the preceding gift is invalid."

Confirmatio est possessionis jure defective per eos quorum jus est rathabitio. A maxim meaning "The confirmation of a possession defective in law is a ratification by means of those whose right it is." (*Morgan Leg Max*)

Confirmation A note appended to or accompanying an order A contract by which that which was infirm, imperfect or subject to be avoided is made firm and unavoidable

"CONFIRMATION (*in Ecc Law*) is the Rite of the Church whereby the faith of the baptized person is confirmed, and grace given to him to remain steadfast in that faith" (*Phil Ecc Law*, 515).

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit A maxim meaning "confirmation supplies all defects, though that which had been done was not valid at the beginning." (*Warton L. Lex*)

Confirmat usum qui tollit abusum. A maxim meaning "He confirms the use (of a thing) who removes its abuse"

"Confirmed credit" Meaning. *See* 27 L.W. 582 (P.C)

Confiscare. (*Lat*) To confiscate.

Confiscation in the Roman Law meant seizing or taking into the hands of the emperor, and transfer to the Imperial fiscus or Treasury It appears to have been applied equally to land and goods (3 Co Inst 227) In English law, forfeiture is the term ordinarily applied to the exercise of this right. Coke (3 Inst. 227, *Jacob, Law Lex*," Vin Abr Bac Abr) "Confiscation must be an act done in some way on the part of the Government of the country where it takes place, and in some way beneficial to that government; though the proceeds may not, strictly speaking, be brought into its treasury" (*per* Ellenborough, C.J, *Levin* v. *Allnutt*, 15 East 269).

CONFISCATION. The word *"confiscation"* does not *per se*, necessarily import that the appropriation is to be made as penalty for a crime; and, even when used in that sense, it does not necessarily imply that the forfeiture has accrued upon conviction, but may also be properly used as applicable to appropriations by Government as an act of State of the property of a public enemy, or of a subdued or deposed ruler. (1872) Sup.I.A. 119 (125)=12 B L.R. 167=18 W.R. 389=3 Sar. 191=2 P.R. 1872=2 Suth. 726.

Conflict, in s. 56 of the Settled Land Act. 1882 (45 & 46 Vict c. 39), explained. *Earl of Lonsdale* v. *Lowther*, (1900) 2 Ch 687.

CONFLICT, COMBAT, CONTEST. A striving for the mastery is the common idea in the signification of these terms. A *conflict* has more of violence in it than a *combat*; and a *combat* than a *contest*. A *conflict* supposes a violent collision, a meeting of force against force; a *combat* supposes a contending together in fighting or battle. A *conflict* may be the unpremeditated meeting of one or more persons in a violent or hostile manner; a combat is frequently a concerted engagement between two or more particular individuals

Conflict of Laws A short title to describe that branch of the private law of nations which deals with cases in which differing laws of different communities come into collision. (*Ency*) (Dicey, Conflict of Laws; Story, Conflict of Laws, Holland, Jurisprudence.)

Conform (*Conforming to orders and directions.*) The word "conform" used in connection with the duty of workmen to conform to the orders and directions of the employer, "Means that the relative position of the parties was such that the one owed obedience to the other, and that the order was such that it could not be declined without contumacy" (*per* Ld Young, *McManus* v *Hay*, 9 Rettie 429).

Confusion of goods. Intermixture of goods owned by different persons so that the property of each can no longer be distinguished As for instance a mixture of liquids, as wine and wine, or wine and honey, or melted silver and gold (*Woods Inst.* 158)

Confusion of rights. Union of debtor and creditor in the same person.

Congenital Born with the person, dating from birth.

Congenital Idiocy Idiocy which arises from a malformation of the cerebral organ

Congregate Collect or flock together, form into a croud or mass.

Congregation The act of congregating, the act of bringing together or assembling; aggregation In ecclesiastical affairs, an assemblage or union of persons in society for some religious purpose, to unite in public worship, an assembly met or a body of persons who usually meet in some stated place for the worship of God and religious instruction and may or may not include a church or spiritual body. (*Cyc.*)

"Congregationalists" are said 'to be a denomination of protestants, who maintain that each particular church has authority from Christ for exercising church Government, and enjoying the ordinances of worship within itself.'" (*Adams Dict.*)

Congress A meeting of the representatives of the people to discuss and regulate common interests. *The term* "conference" is used where the matters upon which the persons are called to deliberate are of a more or less technical character, or do not involve general policy. This distinction has not always been followed in practice.

Conjecture.

See Rivier, Principes du Droit des gens, Peris 1896, Vol II, pp. 8, *et seq*, Twiss, Law of Nations in Time of Peace, Oxford 1884; Phillimore, International Law.

Conjecture. Guess work, induction on scanty grounds conjecture should not be the basis for the conviction of an accused charged with a grave criminal offence.

CONJECTURE, SUPPOSITION, SURMISE. All these terms convey an idea of something in the mind independent of the reality, but *conjecture* is founded less on rational inference than supposition; and *surmise* less than either: any circumstance, however trivial, may give rise to a *conjecture*; some reasons are requisite to produce a *supposition*, a particular state of feeling or train of thinking may of itself create a *surmise*. Although the same epithets are generally applicable to all these terms, yet we may with propriety say that a conjecture is idle a supposition false, a surmise fanciful The secret measures of government give rise to various *conjectures* all the *suppositions* which are formed respecting comets seem at present to fall short of the truth the behaviour of a person will often occasion a *surmise* respecting his intentions and proceedings, let them be ever so disguised

"Conjointly" "The word 'conjointly' used in a will is not inapplicable to a gift of property in equal shares so long as the property remains undivided. When applied in the phrase "conjointly and in the equal shares" the word cannot neutralize or control the plain meaning of the words 'in equal shares' by which it is immediately followed" (*per* Ld Macnaghten in delivering judgment of P C, *De Hertel* v. *Goddard*, 66 L J P C 90)

Conjugal Between married people (as) conjugal society.

Conjugal rights A suit for restitution of conjugal rights, is one of the species of matrimonial causes and is brought when either the husband or wife lives separate from the other without any sufficient reason, in which case the Court will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other (3 Comm 94, *Tomlin's Law Dic.*, Cooly on *Husband and Wife*).

Conjunctio mariti et feminae est de jure naturae A maxim meaning "The union of husband and wife is of the law of nature."

Conjuncture. Position of affairs at a particular moment.

Conjuration. (*Conjuratio.*) Signifies a plot or compact made by persons combining by oath, to do any public harm: but was more especially used for the having (as was supposed) personal conference with the devil, or some evil spirit, to know any secret, or effect any purpose.

The *difference between conjuration and witchcraft* was said to be, that a person using the one, endeavoured by prayers and invocations to compel the devil to say or do what he commanded him, the other rather by friendly and voluntary conference, or agreement with the devil to have his desires served, in lieu of blood or other gift offered. Both differed from

Conquer.

enchantment or sorcery, because the latter were supposed to be personal conferences with the devil, and the former were but medicines and ceremonial forms of words usually called charms, without apparition. (*Cowel. Tomlin's Law Dic. Termes*; *de la Ley*)

Conjurors, Witches and Sorcerers Hawkins, in his Pleas of the Crown, lib. I, c 3, says that conjurors are those who, by force of certain magic words, endeavour to raise the devil, and oblige him to execute their commands (*Tomlins Law Dic.*, *Jacob.*) *Witches* are such who, by way of conference, bargain with an evil spirit, to do what they desire of him, and *Sorcerers* are those, who by the use of certain superstitious words, or by the means of images, etc, are said to produce strange effects, above the ordinary course of nature (*Tomlin's Law Dic.*)

Connection. Act of uniting, State of being united

CONNECTION (CONNEXION), RELATION These words are applied to two or more things to denote the manner in which they stand in regard to each other A connexion denotes that which binds two objects, or the situation of being so bound by some tie, but relation denotes the situation of two or more objects in regard to each other, yet without defining what it is, a connexion is therefore a species of relation, but a relation may be something which does not amount to a connexion Families are connected with each other by ties of blood or marriage; persons are connected with each other in the way of trade or business

Connivance "A figurative expression, meaning voluntary blindness to some present act or conduct, to something going on before the eyes, and is inapplicable to anything past or future, an agreement or consent, directly or indirectly given that something unlawful shall be done by another, consent, passive consent, voluntary oversight, the corrupt consenting of a married party to that conduct of the other of which afterwards complaint is made." (*Ame Cyc*)

"Connivance," in *Matrimonial Law* is the willing consent to a conjugal offence or by way of acquiescence in a course of conduct reasonably likely to lead to the offence being committed. (*Phillips* v *Phillips*, 1 Rob. Ecc. 157 164)

Connubium (*Lat*) A lawful marriage.

Conquer. To gain or acquire by force; to obtain success.

CONQUER, VANQUISH, SUBDUE, OVERCOME, SURMOUNT. The leading idea in the word *conquer* is that of getting; the leading idea in *vanquish* and *subdue* is that of getting the better of, the former partially the latter thoroughly, so as to prevent any future resistance: a country is *conquered*; an enemy is *vanquished*; in the field of battle a people is *subdued* To *overcome* is applied to objections, prejudices, difficulties, and the like, *surmount* to difficulties, obstacles, impediments, etc. What is *overcome* requires less exertion than that which is *surmounted*.

CONQUEROR, VICTOR. A Conqueror is always supposed to add something to his possessions; a Victor gains nothing but the superiority: there is no conquest where there is not something gotten; there is no

Conquest

victory where there is no contest all conquerors are not victors, nor all victors conquerors, those who take possession,of other men's lands by force of arms make a conquest, those who excel in any trial of skill are the victors *Monarchs* when they wage a successful war are mostly *conquerors*, combatants who compel their adversaries to yield are *victors*

Conquest Is the forcible appropriation by one power of territory belonging to another The completion of the act of appropriation followed by a declaration of annexation, vesting the title of sovereignty in the conquering power, but until some such definite announcement or proclamation has been made of an intention to keep the conquered territory, the conquering power, (perhaps) has only the rights of occupation, and not of sovereignty (*Ency of the Laws of England.*)

CONQUEST. As a verb has a wide and flexible signification. Where a lady, by ante-nuptial settlement, had conveyed to trustees whatever she might "conquest or acquire" during her marriage, held, that those words passed property of every kind which came to her during the marriage by succession. (*Diggens* v *Gordon*, L R 1 H L Sc 136, (*Stroude*).

Consanguineus est quasi eodem sanguine natus A maxim meaning "A person related by consanguinity is, as it were, sprung from the same blood

"CONSANGUINITY" defined. *See also* Collateral Consanguinity, Lineal Consanguinity Act 10 of 1865, S. 20, Act XXXIX of 1925

Consanguinity (*Consanguinitas*) Is a kindred by blood or birth as *affinity* is a kindred by marriage (*Tomlins Law Dic.*) It is synonymous with. "Kindred" (*Leigh* v *Leigh*, 15 *ves.* 107)

CONSANGUINITY Is the having the blood of some common ancestor, the connection or relation of persons descended from the same stock or common ancestor, the basis of the laws which regulate the degrees between which marriage is forbidden the rules of succession and inheritance, etc

CONSANGUINITY LINEAL AND COLLATERAL. Consanguinity, or relationship, by blood, is of two kinds: (1) Lineal, as between ancestors and descendants in a direct line, and (2) Collateral, as between the stocks descended from a common ancestor (*Ency of the Laws of England.*)

See Gibs. Cod. 1; 412, Pollock and Maitland, History of English Law, ii, 183 Hammick, Marriage Law of England, 30, Bishop, Marriage and Divorce, *i.* s. 262, (*Ind. Suc. Act*, 1925).

Conscience clause. In an Act, etc, is a clause exempting persons whose conscience will be outraged

Conscience Money. Sums sent to the Government treasury by a repentant evader of tax. (*Oxf. Dic.*)

Conscientia legalise lege fundatur A maxim meaning "Legal conscience is founded upon the law," *Morgan Leg. Max., Broom.*

Conscientia legi nunquam contravenit A maxim meaning "Conscience never contravenes the law," (*Morgan Leg. Max.*)

Consent

Conscientia legis ex lege pendet. A maxim meaning "The conscience of the law depends upon the law (*Morgan Leg Max*)

Conscientiously. In a conscientious manner, as a matter of conscience, faithfully; accurately (*Webster*)

Conscionable. In accord with strict honesty and justice.

Conscription Compulsory enlistment for military or naval service. Drafting into the military service of the state, compulsory service falling upon all male subjects evenly within or under certain specified ages (*Black L Dict.*)

Conscription of wealth Taxation or confiscation of property for war purposes to impose equality of sacrifice on non-conscripts. (*Oxford Dict*)

Conscript Conscribed man.

Conscript fathers Title of ancient Roman Sanators assembled.

Consecratio est periodus electionis, electio est proeambula consecrationis A maxim meaning "Consecration is the termination of election, election is the preamble of consecration" (*Morgan Leg. Max*)

Consecration Dedication to some pious object, term applied to both persons and things, and means, the setting apart for sacred purposes" (3 Ency. 275)

Consensus. Agreement of opinion on the part of all concerned.

Consensus est voluntas pluruim ad quos res pertinet, simul juncta A maxim meaning "Consent is the conjoint will of many persons to whom the thing belongs" (*Morgan Leg. Max*)

Consensus facit jus A maxim meaning "Consent makes law" (*Morgan Leg Max*)

Consensus non concubitus, facit matrimonium. A maxim meaning "It is the consent of the parties, not their concubinage, which constitutes a valid marriage." (*Morgan Leg. Max., Broom Leg. Max.*)

Consensus tollit errorem. A maxim meaning "Consent removes a mistake or the acquiescence of a party who might take advantage of an error obviates its effect.; (*Broom Leg Max, U. P Mitra's Leg. Max. Morgan Law Lex.*)

"Consent" defined. (*See also* FREE CONSENT) 37-8 V, c. 77, S 14. Act 45 of 1860, S. 90. Act 9 of 1872, S 13

(In the Contract Act) "Two or more persons are said to consent when they agree upon the same thing in the same sense." (Act IX of 1872, S. 13.)

"Consent" is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side." (*Story*, S. 222). "Where a consent is given substantially, the Court does not look very minutely into the form in which it is given" (Per *Stirling, J.*, Re *Smith*, 59 L. J. Ch. 284.)

The "consent' referred to in section R. 10, O. 1, C. P. C, 1908, means an express consent. (10 I.C. 515= 46 P. R 1911 (Civil)=103 P W R. 1911=179 P. L R. 1911.)

Age of Consent.

"You cannot consent to a thing unless you have knowledge of it" *Jessel, M.R*, Ex parte *Ford*, In re *Caughey*, (1876) L.R. 1 C. D 528

"If a client be present in Court, and stand by and see his solicitor enter into terms of an agreement, and makes no objection whatever to it, he is deemed to have consented to it and is not at liberty afterwards to repudiate it" Sir J. Romilly, M.R., *Swinfen* v. *Swinfen*, (1857), 24 Beav 559.

Age of consent Age at which consent, especially to reduction, is recognized by law as valid consent

To CONSENT, PERMIT, ALLOW The idea of determining the conduct of others by some authorised act of one's own is common to these terms, but under various circumstances We *consent* to that in which we have common interest with others, we *permit* or *allow* what is for the accommodation of others, we *allow* by abstaining to oppose, we *permit* by a direct expression of our will, *contracts* are formed by the consent of the parties who are interested The proprietor of an estate *permits* his friends to sport on his grounds, he *allows* of a passage through his premises It is sometimes prudent to *consent*

Public measures are *permitted* and *allowed*, but never *consented* to. The law *permits* or *allows*, or the person who is authorised *permits* or *allows*. Government *permits* individuals to fit out privateers in time of war, when magistrates are not vigilant, many things will be done which are not *allowed*. A judge is not *permitted* to pass any sentence but what is strictly conformable to law Every man who is accused is *allowed* to plead his own cause, or intrust it to another, as he thinks fit.

Consent and approbation Approbation in Matrimonial Law, subsequent to a marriage is not, in general, a sufficient compliance with a condition requiring 'Consent' (*Ld Hardwicke* in *Burleton* v. *Humfrey*, Amb 256 See also *Clarke* v *Parker*, 19 Ver 21, 2 Jarm 55)

Consent free and voluntary. "Free and Voluntary Consent" is active consent, as distinguished from that consent which is said to be implied by silence (*Dewhurst* v. *Pearson*, 2 L J. Ex. 143.)

Consent and Submission or Surrender. "Every 'Consent' to an act, involves a Submission, but it by no means follows that a mere Submission involves Consent," *e.g*, the mere submission or surrender of a girl to a carnal assault, she being in the power of a strong man, is not Consent (*Per* Coleridge, J., *R.* v. *Day*, 9 C. & P. 724)

Consent of the father or guardian.—The formal consent of the uncle and tacit consent of the father are enough to meet the requirements of S 3 of the Parsi Marriage and Divorce Act (XV of 1865), which requires the previous "consent of the father or guardian" to the marriage. (13 Bom. 302.)

Consent Order. A consent order is not itself a contract, although there is the element consent in such order It is subject to the incidents of a contract to which is superadded the command of a judge [*Wentworth* v. *Bullen*, (1829), 9 Barn. & Cress, 840; 33 R R. 353; *Lievesley* v. *Gilmore*, (1866), L.R. 1 C. P. 570, *Conolan* v *Leyland*, (1884) 27 Ch. D. 632] Such an order is binding on all parties to the suit.

Conservancy Authorities.

(*Standard* v. *Harrison*, 1871, 19 W R 811; *Moss* v. *Leatham*, (1837), 2 Moore P. C. 73, 12 E. R. 930 Annual Practice, Seton, Judgments and Orders, 6th ed, pp 124-127, 39 Sol. Jour, pp 260, 279, 294

CONSENT ORDER AS TO COSTS. *See* 13 Cal 193.

Consentientes et agentes pari poena plactentur A maxim meaning "Those consenting and those perpetrating are embraced in the same punishment" (*Morgan Leg Max.*)

Consentire est facere A maxim meaning "To consent to a thing is to do a thing" (*Morgan Leg. Max*)

Consentire matrimonio non possunt infra annos nubiles A maxim meaning "Consent to a marriage is not possible in the parties before marriageable years" (*Morgan Leg Max*)

Consequentiae non est consequentia A maxim meaning "The consequence of a consequence does not exist" (*Morgan. Leg. Max. Broom Leg. Max*)

Consequence. What comes by causation, what follows. In "Marine Insurance" the words "Warranted free from all consequences" refers only direct consequences and not to remote consequences (*Iomides* v *Universal Marine Insurance*, 32 L. J. C. P. 170)

The word consequence in *Criminal Procedure Code* (*Act V of* 1898), *S.* 179, means a consequence which forms a part and parcel of the offence and does not mean a consequence which is not such a direct result of the act of the offender as to form no part of that offence. (10 A.L.J. 45=34 A 487=13 Cr L.J 479=15 I C 319, 38 Cr L.J 512=31 S L.R. 123=168 I C 89= A I R. 1937 Sind 68 (F B.).

Consequence, Result, Issue, Event. A *consequence* may be particular or follow from a part; a *result* is general, following from a whole, there may be many *consequences* from the same thing, and but one *result* only. We speak of the *issue* of a negotiation or a battle, and the *event* of a war The fate of a nation sometimes hangs on the *issue* of a battle The measures of government are often unjustly praised or blamed according to the *event*.

"Consequent" That results; logically consistent; following as a consequence "Damage consequent upon collision," in a Marine Policy, means damage immediately consequent upon collision, or leakage caused by collision, therefore, the damage occasioned by delay in transit and by an unloading and reloading necessitated by a collision is not *"Consequent"* upon the collision, because the collision is not the proximate cause of the damage. (*Pink* v. *Fleming*, 59 L. J. Q. B. 559)

Consequential damages. Damages following an act, but not the direct and immediate result of it

Consequential losses. It is a fundamental principle in law and reason, that he who does the first wrong shall answer for all consequential damages. (12 Mod. 639, *Tomlin's Law Dic.*)

"Consequtive Months" Mode of Computing. 49 M. 563=96 I C. 912=1926 Mad. 877

Conservancy Authorities. Officers or Board controlling river or port. In Merchant Shipping Act, "Conservancy Authority' includes all persons or bodies or persons, corporate or unincorporate,

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intrusted with the duty, or invested with the power, of conserving, maintaining, or improving, the navigation of a Tidal Water." (See *Eng Mer. Ship Act S.* 742)

Conservative Of conserving tendency, opposed to change, moderate, member of the conservative party "A gift for the furtherance of Conservative Principles and Religious and Mental Improvement" is a good charity (Re *Scowcroft* Stroude 377)

Conservator (*Lat.*) A person who secures the conserving of a thing (as) conservator of Forest. A protector, preserver, or maintainer, or a standing arbitrator, chosen and appointed as a guarantee to compose and adjust differences that should arise between two parties, etc (*Paro* v. *Antiq p.* 513, *Tomlin's Law Dic.*)

Conservator of the Peace. "Is he that hath an especial charge to see the king's peace kept" (*Tomlins Law Dic*)

"**Consideration**" defined. Act IX of 1872, S 2 (*d*).

CONSIDERATION, is the material cause, of any contract, without which it will not generally be effectual or binding (*Tomlins Law Dic*) It may take the form of a money payment, a delivery of goods a promise of money payment The definition of consideration in S 2 (*d*), Contract Act, shows that consideration means an act, abstinence or promise made by the promisee or some other person at the desire of the promisor. (20 M L J 144=7 M L.T 85= 5 Ind. Cas 757) Surrender of a disputed title is a good consideration for a contract 104 P L.R 1915= 40 P W R. 1915=28 I C 550 The term "consideration" as defined in the Indian Contract Act is wider in its signification than the requirements of the English Law (17 C.W N. 1143)

EXPRESS OR IMPLIED "'Consideration' is the material cause of a Contract, without which no contract can bind the parties This consideration is either expressed, as when a man bargaineth to give 20s. for a horse,—or, is implied, as when the law itself enforceth a consideration, as if a man comes into a Common Inn, and there staying some time, takes meat or lodging or either for himself or for his horse, the law presumeth that he intendeth to pay for both, notwithstanding that nothing be further covenanted between him and his host" (*Termes de la Ley.*)

Consideration for promise Defined in Act IX of 1872, S 2

Consideration, Valuable "A Valuable *consideration* may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other.—Com Dig (per *Lush, J*, *Currie* v *Misa*, 44 L J. Ex 99)

Consign, is a word used by merchants, where goods are assigned, delivered over, or transmitted from beyond sea or elsewhere to a factor etc. (*Tomlins Law Dic.*)

To CONSIGN, COMMIT, ENTRUST. The idea of transferring from one's self to the care of another is

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common to these terms, differing in the nature and object of the action To *consign* is a more formal act, a more absolute giving from ourselves to another, than to *commit*, a merchant *consigns* his goods to another to dispose of them for his advantage, he *commits* the management of his business to his clerk. a child is *consigned* to another, for him to take the whole charge of his education, maintenance, and the like, but when he is *committed* to the charge of another, it is mostly with limitations. To *entrust* refers to the degree of trust or confidence which is reposed in the individual; a child may be *entrusted* to the care of a servant for a short time, a person may be *entrusted* with the property or secrets of another, or individuals may be *entrusted* with power.

Consigned to the record room. Where by an order execution proceedings are 'consigned to the record room,' the order is tantamount to 'a dismissal' of the application concerned and a subsisting attachment may come to an end 39 P L R. 967

Consignee, defined, Act IX of 1874, S. 32.

CONSIGNEE One to whom a consignment is made, the person to whom goods are shipped for sale A consignee of Cargo, "is a person residing at the Port of delivery to whom the goods are to be delivered when they arrive there" (per *Buller, J*, *Wolff* v. *Horncastle*, 1 B & P. 322)

Consignment The act or process of consigning goods, the transportation of goods consigned It is a species of "Mercantile Conveyance operating upon the particular effects consigned, which, though it may be defeasible, may operate in the meantime and enable the consignee by his acts to bind the consignor" (per *Chambre, J*, *Lucena* v. *Craufurd*. 2 B. & P. N S 299).

Consignment Note. A document to be filled up before despatching of goods by rail or through other common carrier

Consignor and consignee signify among merchants, the shipper of merchandise, and the person to whom they are addressed (*Tomlins Law Dic.*)

Consilia multorum quaeruntur in magnis A maxim meaning "the counsels of many are required in great things" (*Black L. Dict*)

Consilii non fraudulentia nulla obligatio est; coeterum si dolus et calliditas intercessit, de dolo actio competit A maxim meaning "There is no obligation not to give fraudulent counsel, but if fraud and cunning intervene, an action is competent concerning the craft" (*Morgan Leg Max.*)

Consistent Compatable, not contradictory (as) Rules *consistent* with the provisions of a Code.

"CONSISIENT WITH THE CODE —The words "consistent with the Code" in S 157 of the Civil Procedure Code, Act V of 1908 mean only consistent with the sections of the Code and not with the rules in the first schedule which can be altered by the High Court (24 M.L J. 637=20 Ind. Cas. 775.)

Consolidated annuities Consols.

Consolidated Fund. (*In England.*) A fund for the payment of the public debt.

Consolidation. making strong by coherence of organization, combination (as) consolidation or companies, consolidation of statutes or of debts.

Consolidation of Actions. Consolidation of actions may be defined generally as the union of two or more actions in one (*Burrill*)

The object of consolidating two or more actions is to avoid a multiplicity of suits, to guard against oppression or abuse, to prevent delay, and especially to save unnecessary cost or expense, in short, the attainment of justice with the least expense and vexation to the parties litigant.

Consolidation of Corporation. The union or merger into one corporate body of two or more corporations which have been separately created for similar or connected purposes. Same as amalgamation of companies or corporations.

Consols. Government securities consolidated into a single stock.

Consol Certificates are issued by the Bank of England and certify that the holder is entitled to pounds 50 or some multiple of pound 50 in Consolidated Three per cent Annuities.

Consort Spouse

QUEEN CONSORT is king's wife.

KING OR PRINCE CONSORT is Queen's husband

"Conspicuous place" *See* 142 I C 397=36 C.W. N 888=1933 Cal 54

Conspiracy. "When two or more persons agree to commit any crime, they are guilty of conspiracy whether the crime is committed or not" (*Steph. Cr.* 37.)

It has been said that there is perhaps no crime an exact definition of which it is more difficult to give than the offence of conspiracy. The essentials of a conspiracy, whether viewed with regard to its importance in a criminal prosecution or its significance in a civil action for damages, are commonly described in this general language, it is a combination between two or more persons to do a criminal or an unlawful act or a lawful act by criminal or unlawful means This definition perhaps is not perfectly accurate, but is sufficient as a general description of the offence (*Ame Cyc*) In conspiracy the concert or agreement of the two minds is the offence, the overt act is but the outward and visible evidence of it (1908) 35 I A 98 (103)=35 C 551 (559)=4 M.L. T. 12=7 C L.J 528=12 C W.N 562=10 Bom.L.R. 590=5 A L J 290=14 Bur L R 108=4 L.B.R. 266=18 M L J 277 (P.C) *Wright on Criminal Conspiracies*, 3 Com. Inst. 174, *Haw*, P.C, bk. c. 72, *Russ. on Crimes*, 6th Ed., Vol. I, pp. 492-552, Archbold Cr.Pl 23rd ed 1276.)

Conspirator. Person taking part on a conspiracy.

"Constable" defined. 44-5 V, c 58, S. 190 (38). 44-5 V, c 69, S. 39, Bom Act 7 of 1867, S. 1, Bom. Act 4 of 1890, S. 3 (*c*).

CONSTABLE. Policeman belonging to one of the lower ranks of the police.

The origin of the word Constable, is to be found in the *comes stabuli* of the Eastern Empire, who was at first, as his title imports no more than superintendent of the imperial stables; or, in other words, the emperor's master of the horse. but having in process of time obtained the command of the army, his name began to signify a commander; and with this signification appears to have been introduced into England at the Norman Conquest, or perhaps sooner.

The Constable of England, or Lord High Constable, was anciently an officer of the highest dignity and importance in the realm. He was the leader of the king's armies and had the cognizance of all contracts and other matters touching arms of war. This Constable has been repeatedly acknowledged by the law to be "one of the most ancient officers in the realm for the conservation of the peace." (4 Inst 265) A mandate of King Henry III provided that in every village or township, there should be constituted a constable or two, according to the number of the inhabitants We find the Constable beginning to be familiarly known by that name, in the time of King Edward I: but not previously (*Tomlin's Law Dic.*)

POLICE CONSTABLE. Constable belonging to the Police Department.

Constabulary. The police force

Constituency Body electing representative for a legislative assembly,—especially as a member of parliament, place so represented

Constitute. To appoint, depute, elect, to establish.

TO CONSTITUTE, APPOINT, DEPUTE. The act of choosing some person or persons for an office is comprehended under all these terms, *constitute* is a more solemn act than *appoint*, and this than *depute* to *constitute* is the act of a body, to *appoint* and *depute*, either of a body or an individual a community *constitutes* any one their leader, a monarch *appoints* his ministers, an assembly *deputes* some of its members To *constitute* implies the act of making as well as choosing, the office as well as the person is new in *appointing*, the person, but not the office, is new. A person may be *constituted* arbiter or judge as circumstances may require, a *successor* is appointed, but not constituted According to the doctrine of the Roman Catholic Church, the Pope is *constituted* supreme head of the Christian Church throughout the whole of the world, governors are *appointed* to distant provinces, persons are *deputed* to present petitions or make representations to government.

Constituent Electing a representative (as constituent body), charged with making or changing a constitution (*as constituent assembly*) It is a word used as a correlative to "attorney", to denote one who constitutes another his agent or invests the other with authority to act for him. It is also used in the language of politics, as a correlative to "representative," the constitutes of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district (*Black L. Dict*)

Constituents. Members of a constituent body who have the right to elect a person for the legislature.

Constitution Form in which a state is organized; principles regulating the relations of state authorities to each other and to the governed, an ordinance.

Constitutional Law. Constitutional Law is a branch of public law containing so much of the political constitution as is laid down in positive legal

rules, and as including such subjects as the formation, powers, and privileges of the legislature, the executive functions and powers of the Crown, the existence and composition of the judicial establishment, the legal position of the clergy, the army, the navy, and the various departments of the public service in relation to the Crown and the executive and the legislatures and the machinery of local government (*Ency. of the Laws of England.*)

Constructio ad principia refertur rei. A maxim meaning "Construction is referred to the principles of a thing" (*Morgan Leg. Max*)

Constructio legis non facit injuriam A maxim meaning "The construction of the law (a construction made by the Law) works no injury" (*Black L. Dict*)

Construction Thing constructed (as) construction of a building Interpretation of or way of understanding particular words used in an Act or other document (as) construction of Acts, of deeds or of wills

"CONSTRUCTION," as applied to a written constitution, means to determine from its known elements its true meaning or the intent of its framers and the people who have adopted it, in the application of its provisions to cases or emergencies arising and not specifically provided for in the text of the instrument, by drawing conclusions beyond the direct expressions used in the text

Definition, founded upon etymology, is not satisfactory, etymology being often in itself unsettled *Wood* v *C Forbes* v. *Forbes* (1854) 23 Law J. Rep Part 2 (N S) Ch 726

If once we go upon niceties of construction, we shall not know where to stop. For one nicety is made a foundation for another, and that other for a third, and so on, without end—Wilmot, J, *Rex* v *Inhabitants of Caverswall*, (1758) Burrow Settlement Cases) 465.

"Construction" and "Construct" (*in the Minor Canals Act*) include any alteration which would materially extend the area irrigable by a canal or any other alteration of material importance or the renewal of a canal after disuse for six years, but do not include the re-excavation of a canal-head which has been temporarily abandoned owing to a change in the river, the excavation of a new head necessitated by a change in the river or a change of water-courses to render existing irrigation more efficient. [Prov Act III of 1905 (*Minor Canals*) S. 3, Cl 5.]

Construction and erection (of building, etc) "Erection" and 'Construction" seem to be synonymous in their meaning, and in common acceptation, when applied to a house they mean the building of it by putting together the necessary material and raising it The terms include "alterations or repairs".

Construction and Interpretation "Interpretation" as applied to a written *constitution* means to determine the true sense of the words used in the text. In practice *construction includes interpretation*, and both terms are frequently used synonymously. (*Bouvier L Dic.*)

Construction, Court of (*in respect of wills*) A Court is called the Court of Construction with regard

to wills, as opposed to the Court of Probate, whose duty is to decide whether an instrument be a will at all (*Whorton L. Lex.*)

Constructive Derivative; inferential That which has not the character assigned to it in its own nature, but acquires such character in consequence of the way in which it is regarded by a rule of policy of law, implied, by inference, made out by legal interpretation, "that which is established by the operation of the law in its act "construing facts, conduct, circumstances, or instruments," It also means, tending towards construction of a positive kind, as opposed to destructive or negative (as) constructive proposal, constructive criticism.

Constructive annexation an annexation by inference of law, as of a fixture to the land

Constructive assent Implied assent, an assent or consent imputed to a party from a construction or interpretation of his conduct, as distinguished from one which he actually expresses.

Constructive authority is authority inferred or assumed to have been given, because of the grant of some other antecedent authority

Constructive contempt a contempt which, without open insult or direct opposition, tends to induce a general disregard of the authority of a Court.

Constructive conversion A conversion inferred in law from an exercise of dominion over property inconsistent with and in defiance of the rights of the owner or of the person entitled to possession.

Constructive Crime—Constructive Offence 1. According to Blackstone (1 Com 88) "the law of England does not allow of offences by construction, and no case shall be holden to be reached by penal laws but as are both within the spirit and the letter of the law." By this statement he means no more than that, in constructing a statute creating an offence or imposing a penalty, judges are careful not to stretch or strain the words of the Act so as to include cases not clearly and definitely included, and that even where the words are wide enough to include the case, they will, before deciding that it is to do so, consider the mischief and scope of the Act (*Ency. of the Laws of England* Maxwell on Statutes, 4th ed., Hardcastle on Statutes, 4th ed, 429, 432, Arch, Cr Pl 23rd ed, 447, 797)

Constructive delivery a delivery not actually made, but in the law regarded as made; symbolical delivery

Constructive fraud, fraud inferred by law, fraud in law, as distinguished from fraud in fact.

S 18, Cl (2) of the Contract Act is probably intended to meet all those cases which are called cases of "constructive fraud" Where there is no intention to deceive, but the circumstances are such as to make the party, who derives a benefit from the transaction, equally answerable in effect, as if he had been actuated by motives of fraud and deceit is a case of constructive fraud. (3 B. 242)

Constructive loss. (In Marine Insurance) an injury to insured property so great that the assured may abandon to the insurer.

Constructive malice · malice imputed in law,

Constructive notice.

Constructive notice: notice inferred by law, as distinguished from actual or formal notice, that which is held by law to amount to notice.

Constructive possession, possession in contemplation of law By 'constructive possession' is generally meant possession, as distinguished from actual possession, through a tenant or agent It has also been used in connection with property which is incapable of actual possession and is said to be in the constructive possession of the owner as waste lands or lands under water If the person is the owner of a property but does not use it for some time, it cannot be said that he is in constructive possession of it He is in actual possession so long as he has the power to bring it into use whenever he likes 138 I C 349=36 C.W N. 326=A I R 1932 Cal. 504

CONSTRUCTIVE POSSESSION by receipt of rent is not "physical possession." [20 A. 315 (320) (F B)]

Constructive presence, being so near to, or in such relation with, another, as in law to be considered as in the same place

Constructive res judicata In order to invoke in aid the doctrine of constructive *res judicata*, there must be a decision by the Court either in express terms or by necessary implication 39 P L R 680= A I R 1937 Lah. 404. *See also* Civ. Pro Code, S 11

Constructive Total Loss. (In Marine Insurance) Loss entitling the insurer to payment of the Full amount for which he is insured on abandonment of his ship and its contents

Constructive trust a trust raised by construction of law or arising by operation of law, as distinguished from an express trust

"A CONSTRUCTIVE TRUST" is raised by a Court of Equity wherever a person clothed with a fiduciary character, gains some personal advantage by availing himself of his situation as Trustee" (*Lewin, ch* 10, Ind Trust Act, S 90)

Consuetudo, contra rationem introducto, potius userpatio quam consuetudo appellari debet A maxim meaning "A custom introduced against reason ought rather to be called a 'usurpation' than a "custom" (*Black L Dict*).

Consuetudo debet esse certa, nam incerta pro nulla habetur A maxim meaning "A custom should be certain, for an uncertain custom is considered null" (*Broom*)

Consuetudo est altera lex A maxim meaning "Custom is another law" (*Black*)

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis, et interpretatur legem scriptam, si lex sit generalis A maxim meaning "Custom and common usage overcome the unwritten law, if it be special, and interpret the written law, if the law be general" (*Black*)

Consuetudo ex certa causa rationabili usitata privat communem legem. A maxim meaning "A custom, grounded on a certain and reasonable cause, supersedes the common law" (*Black L. Dict*).

Consuetudo licet sit magnoe auctoritatis, nunquam tamen proejudicat manifestae veritati A maxim meaning "A custom, though it be of great authority, should never prejudice manifest truth."

Consular officer

Consuetudo loci est observanda A maxim meaning "The custom of a place is to be observed"

Consuetudo mercatorum. The custom of merchants, the same with Lex mercatoria

Consuetudo neque injuria oriri neque tolli potest. A maxim meaning "Custom can neither arise from nor be taken away by injury."

Consuetudo non trahitur in consequentiam A maxim meaning "custom is not drawn into consequence"

Consuetudo praescriptiva et legitima vincit legem A maxim meaning 'A prescriptive and lawful custom overcomes the law"

Consuetudo regni angliae est lex angliae. A maxim meaning "The custom of the kingdom of England is the law of England"

Consuetudo semel reprobata non potest amplius induci A maxim meaning "A custom once disallowed cannot be again brought forward (*or relied on*)"

Consuetudo tollit communem legem A maxim meaning "Custom takes away the common law."

Consuetudo volentes ducit, lex nolentes trahit. A maxim meaning "Custom leads the willing, law compels the unwilling" (*Black L Dic, Ame Cyc*)

Consul A consul is an official appointed by his Government to reside at a definite place abroad, and there fulfil certain duties in the interest of his country and fellow subjects

As to the powers, functions and duties of consuls *See* Hall, Foreign Jurisdiction of the British Crown, Tarring, British Consular Jurisdiction in East; Inglis Consular Formulary, River, Principes du Droit des Gens, Twiss, Law of Nations in Time of Peace, Phillimore, International Law, Vol III., Jenkins, British Rule and Jurisdiction Beyond the Seas, Tuson, British Consuls' Manual, Warden, Origin and Progress of Consular Establishments. (*Ency of the Laws of England*)

" 'Consul,' in English Statutes means a Consul-General, Consul, Vice-Consul, Pro-Consul or Consular Agent" (*Stroude*, 382)

Consular Agent, in the 1st Schedule to the Fisheries Act, 1868(31 & 32 Vict C 45), is equivalent to "Consular Officer" as defined in that Act, S 5 The definition of 1868 is slightly affected by that in the Int Act, 1889(52 & 53 Vict. C 63) S 12 (20), *post* Appendix C

Consular Invoices. Invoices of goods requiring to be declared before and certified by the consul of a country to which they are being exported.

"Consular officer" defined 52-3 V. c. 63, s 12 (20), 57-8 V c 60, s 742, Act X of 1897, S. 3 (14).

"CONSULAR OFFICER" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent: Ben. Act I of 1899 (*General Clauses*) S 3, cl 11

"Consular Officer," when used in relation to a Foreign Country, means, the officer recognized by the government as a Consular Officer of that

Consulate.

Foreign Country". (*See* Eng. Mer Ship. Act. 1894, S. 742, Army Act. (44 & 45 Vic. C. 58, S. 94).

Consulate Consul's office or tenure of office; Consul's Official residence.

Consultation (*in Litigation*). This term signifies a meeting of two or more counsel with the solicitor who is instructing them in a case (the client often being present) for the purpose of advising or deliberating upon it. It is a conference between the counsel engaged in a case, to discuss its questions or arrange the method of conducting it. In French law, the opinion of counsel upon a point of law submitted to them

To CONSULT, DELIBERATE *Consultations* always require two persons at least, *deliberations* may be carried on either with a man's self or with numbers, an individual may *consult* with one or many, assemblies commonly *deliberate* advice and information are given and received in *consultations*, doubts, difficulties, and objections are started and removed in *deliberations* Those who have to cooperate must frequently *consult* together, those who have serious measures to decide upon must coolly *deliberate*

Consummate. Of high perfection, complete (as) consummate skill in forgery.

Consummation. Putting finishing to a thing, Perfection, completion.

CONSUMMATION OF MARRIAGE, is done by sexual union between husband and wife

CONSUMMATION, COMPLETION The arrival at a conclusion is comprehended in both these terms, but they differ principally in application; wishes are *consummated*, plans are *completed* we often flatter ourselves that the *completion* of all our plans will be the *consummation* of all our wishes, and thus expose ourselves to grievous disappointments

Consumer. Defined in Act IX of 1910, S 2

In order to hold that a person is a "consumer" as defined by S 2 (*c*) of the Electricity Act, it would *prima facie* be enough to prove either that energy was supplied for the use of that person, or that that person was the owner or occupier of premises connected up with the licensee's electric system If either of these is proved that person is a consumer under R 106 of the rules 18 Pat L T 986. *See also* 1938 P W N. 182=19 Pat L T 141; 1938 Pat. 15.

Contagious Disease A disease communicated by contact or touch

"Contagious Disease," includes, Venereal Disease, including Gonorrhoea."

CONTAGIOUS, EPIDEMICAL, PESTILENTIAL. The *contagious* applies to that which is capable of being caught, and ought not, therefore, to be touched, the *epidemical* to that which is already caught or circulated, and requires, therefore, to be stopped, the *pestilential* to that which may breed an evil, and is, therefore, to be removed *diseases* are *contagious* or *epidemical*, the air or breath is *pestilential*.

CONTAGION, INFECTION Both these terms imply the power of communicating something bad. We consider *contagion* as to the manner of spreading from one body to another, we consider *infection* as

Contemporanea.

to the act of its working itself into the system. Whatever acts by *contagion* acts immediately by direct personal contact, whatever acts by *infection* acts gradually and indirectly, or through the medium of a third body, as clothes, or the air when infected.

Containing. Enclose, include the word "'containing' may easily admit of being construed as meaning 'inclusive of', and not as in diminution of a general bequest" (*Henfrey* v. *Henfrey*, 6 Jur. 356.)

TO CONTAIN, HOLD These terms agree in sense, but differ in application, *hold* is employed only for the material contents of hollow bodies *contain* is employed for moral or spiritual contents: a cask is said to hold, but in more polished language it is said to contain a certain number of gallons A stage coach holds or contains a given number of persons, a room holds a given quantity of furniture, a house or city contains its inhabitants.

Contango. A Stock Exchange Term denoting the charge made for carrying over a transaction from one settling day to the next, the commission recovered for carrying over or putting off the time of execution of a contract to deliver stocks or pay for them at a certain time. (*Wharton*)

Contango Day "Continuation day" or "making up day" The second day before settling day when arrangements are made as to carrying over transactions

Contemn Feel contempt for, disregard with scorn

Contemplation "A Settlement in '*Contemplation of marriage*, is obviously an ante-nuptial settlement.' (*Per* Selborne, C, Re *Sampson and Wall*, 53 L J Ch 460)

Contemplation of bankruptcy Contemplation of an act of bankruptcy, or of an application by the debtor to be adjudged a bankrupt.

Contemporanea consuetudo optimus interpres A maxim meaning "Contemporary custom is the best interpretator." (*Broom.*)

Contemporanea expositio (*Lat.*) Contemporaneous exposition, or construction

CONTEMPORANEA EXPOSITIO as a guide to the interpretation of documents is often accompanied with danger, and great care must be taken in its application But in the present case their Lordships do not feel themselves able to reject the assistance which it affords The sanad upon which these important rights are founded is a document of a general and informal character It admittedly is capable of a variety of constructions. The extreme literal construction is adopted by neither party And when the ambiguity covers the geographical and pecuniary extent of an admittedly ambiguous grant, their Lordships think it legitimate to observe what was the footing upon which the grantors from the date of the grant and for a long period of time proceeded (*Lord Shaw.*) (1912) 39 I.A. 202=36 B 639 (656)= 16 C.W.N. 1058=12 M.L.T. 472=(1912) M W N. 1140=14 Bom.L R. 1226=17 C L.J 17=16 I.C. 239= 23 M.L.J. 383 (P.C.).

Contemporanea expositio est optima et fortissima in lege. A maxim meaning "Contemporaneous exposition is the best and strongest in the law." (*Black L. Dict.*; *Broom.*)

Contempt of Court.

"CONTEMPT" defined. Act I of 1845, S 32; Act II of 1859, S. 57.

A contempt is a wilful disregard or disobedience of a public authority. (*Bouvier L Dict.*)

Contempt of Court. Contempt, in the legal acceptation of the term, primarily signifies disrespect to that which is entitled to legal regard. In its origin all legal contempt will be found to consist of an offence more or less direct against the Sovereign himself as the fountain head of law and justice, or against his palace where justice was administered. It is not, however, in its primary meaning of contempt of the King, his person, government, or prerogative, but in its secondary or derivative meaning of an offence against Courts or persons to whom the judicial functions of the Crown are delegated that the word contempt is understood when used in the technical or legal expression Contempt of Court (*Ency. of the Laws of England.*)

Contempt of Court (which has been irreverently termed "a legal thumbscrew") is so manifold in its aspect that it is difficult to lay down any exact definition of the offence. In Viner's Abridgment (tit. "Contempt," A) it is defined or described to be a "disobedience to the Court, an opposing or a despising the authority, justice, or dignity thereof. It commonly consists in a party doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order, or decree of the Court [*See per* Williams, J, in *Miller* v *Knox*, (1838) 4 Bing. N.C. at p 588, 44 R.R. 771] Defined shortly (as it was by Sir William Blackstine), "Contempt is a disobedience to the rules, orders, or process of a Court, or against the king's prerogative." These short definitions (good so far as they go) are scarcely sufficient. Lord Chancellor Hardwicke, in the case of the printer of the St Jame's Evening Post (1742) 2 Atk p 471, 26 E R 684, said "There are three different sorts of contempt, one kind of contempt is scandalising the Court itself There may be also a contempt of this Court in abusing parties who are concerned in cases here There may be also a contempt of this Court in prejudicing its proceedings against persons before the cause is heard", and he adds. "There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters"

Other definitions are "Disobedience or disregard of authority of the Court" (*Burrill*) "Disobedience to, or interruption of, the orders or proceedings of a Court or legislative body" (*Abbott.*) "An offence against the court as an organ of justice" "Any wilful disregard of the authority of the Court, rightfully exercised."

"The phrase 'contempt of Court' often misleads persons not lawyers, and causes them to misapprehend its meaning, and to suppose that a proceeding for contempt of Court amounts to some process taken for the purpose of vindicating that personal dignity of the Judges, and protecting them from personal insults as individuals Very often it happens that contempt is committed by a personal attack on a Judge or an insult offered to him; but as far as their dignity as individuals is concerned, it is of very subordinate importance compared with the vindication of the dignity of the Court itself; and there would be

Contempt of Court.

scarcely a case, I think, in which any Judge would consider that, as far as his personal dignity goes, it would be worthwhile to take any steps" Blackburn, J., *Skipworth's Case*, (1873), L.R. 9 Q B Ca. 232.

"There are many ways of obstructing the Court and committing contempt wanting either to disturb the Judge or to influence the jury, or to keep back or pervert the testimony of witnesses, or by other methods, according to the emergency of the occasion, to obstruct the course of justice. These powers are given to the Judges to keep the course of justice free, powers of great importance to society, for by the exercise of them law and order prevail, those who are interested in wrong are shown that the law is irresistible It is this obstruction which is called in law contempt, and it has nothing to do with the personal feeling of the Judge, and no Judge would allow his personal feelings to have any weight in the matter According to my experience, the personal feelings of the Judges have never had the slightest influence in the exercise of these powers entrusted to them for the purpose of supporting the dignity of their important office, and so far as my observation goes, they have uniformly exercised for the good of the people" Erle, C,J, Ex parte *Fernandez* (1861), L J C P 312.

CONTEMPT OF COURT—CLASSIFICATION OF A contempt of court is disobedience to the court, by acting in opposition to the authority, justice, and dignity thereof Contempts may be *direct* or *constructive*, *criminal* or *civil* (*Ame. Cyc*)

A DIRECT CONTEMPT is an open insult in the presence of the Court to the person of the presiding Judge, or defiance in his presence to his powers or authority.

A CONSTRUCTIVE CONTEMPT is an act done not in the presence of the Court, but at a distance which tends to belittle, to degrade, or to obstruct, interrupt, prevent, or embarrass the administration of justice

A CRIMINAL CONTEMPT is conduct that is directed against the dignity and authority of the Court Acts punishable as criminal contempts are in the nature of crimes, in that they involve the idea of punishment as a penalty for the commission of unauthorized acts.

CIVIL CONTEMPT consists in failing to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein.

EXAMPLES OF CONTEMPT *Contempt may be shown either by language or manner* Language not in itself contemptuous may become so if uttered in an insolent or defiant manner.

Abstracting papers and substituting others therefor or taking papers from Court files and refusing or neglecting to return them, is punishable as a contempt.

Wilful abuse of legal process, such as instituting, or procuring the institution of, *unauthorized or fictitious proceedings* or suits, *obtaining Court orders by fraud or deceit*, or knowingly interposing false pleadings is contempt, where such acts obstruct or tend to impede the due administration of justice.

It is contempt to wilfully destroy, remove, conceal, or *dispose of, the subject-matter of the litigation* pending the proceedings.

Disobedience or resistance to, or an attempt to *prevent the execution of, a lawful order, judgment*

decree, or mandate of aCourt is an interference with, or an attempt to obstruct, the due administration of justice, and is therefore a contempt.

TO BE IN CONTEMPT is to be in the condition of one who has committed a contempt of Court and has not purged himself of such contempt.

TO CONTEND, CONTEST, DISPUTE To *contend* and *contest* may be both applied to that which is claimed and striven for, but *contending* is the act of the individual without reference to others, where success depends upon personal efforts, as when one *contends* at games. To *contest* is to set up rival pretensions to be determined by the suffrages of others, as to *contest* an *election*, to *contest a prize* To dispute according to its original meaning applies to opinions only, and is distinguished from contend in this, that the latter signifies to maintain one's own opinion, and the former to call in question the opinion of another

"Contention" defined, Act 10 of 1865, S 253-A, Expln. (Ad. Act 6 of 1881, S. 7). Act 5 of 1881, S. 73, Expln.

Contentious Contested, adversary, involving a contention; litigated between adverse and contending parties, a judicial proceeding which is not *ex parte*

The word 'contentious' in S 52 of the Transfer of Property Act (IV of 1882), S 52—is used in distinction to such non-contentious proceedings as unopposed applications for probate [8 I. C. 288 (289)=6 N L R. 140]

"Contentious suit" The word "contentious" in S 52, T P Act, means that "the suit is real and not collusive" The word is apt for this purpose, and its use in this meaning brings the section into conformity with the law as established on principle (31 B 393 =9 Bom L.R. 530, *See also* 20 I C 976.)

A suit otherwise contentious does not cease to be so, because the plaintiff may have been unable to serve the summons on the defendant. (31 B 393=9 Bom L R 530)

The mere fact that an *ex parte* decree was passed in the suit, cannot render the suit non-contentious (31 B 393=9 Bom L R 53)

A "contentious" suit is a suit involving contention and it is perhaps difficult to predicate of any suit, at the moment of its inception, whether or not it is likely to be contentious, but if, in point of fact, it turns out to be a suit which was contested, the suit is "contentious." The expression is used in contradistinction to a friendly suit in which there is no contest, and the parties bring the suit only to obtain the decree of a Court of justice, declaring their rights as to which they are themselves in perfect agreement [27 Cal 77 (84)=4 C.W N. 254]

It is an error to hold that a suit contentious in its nature and origin is not contentious within the meaning of S 52 of the Transfer of Property Act, until the summons is served on the opposite party 29 A 339=11 C W N. 561=34 I A 102=17 M.L J. 263 (P.C.).

"Contents unknown" (occurring in a Bill of Lading). "When there is a closed package and a representation as to its contents, the shipowner may accept the Bill of Lading, or may alter it, and if he

adds, 'Contents unknown,' then the meaning is, that he declines to accept the representation, and merely accepts the package as it appears on the outside, but not the statement as to what is inside,—and he contracts to carry what really is inside" (per *Brett, J Lebeau* v. *Gen Steam Nav*, 42 L J. C P. 1). *See also* Parsons on Shipping, p. 198.

"Contested election" defined Bom. Act, 3 of 1888, S 26 (2) (*j*). "When a poll is demanded, the election commences with it,as being the regular mode of popular election, the show of hands being only a rude and imperfect declaration of the sentiments of the electors" (per *Sir Wm Scott,Anthony* v *Seger*, 1 Hagg Con 13)

Context What precedes and follows a word or passage as throwing light on its meaning "It is a well-established rule of construction common to law and literature, and applicable alike to statutes and all other writings that the meaning of a word employed is to be determined not by taking the word in isolation but by taking it with its *context*, *i.e.*, as a component part of the compound expressions which make up the clause, or even the whole document, to be interpreted [*Colquhoun* v *Brooks*, (1889) 14 App Cas 493] This rule, like all of construction, is not absolute, nor a rule of law. It is recognised in the modern statutory definitions, which provide for the interpretation of specified terms in a particular way, "unless repugnant to subject or context," or "unless a contrary intention appears." [*See* Interpretation Act, 1889 (52 & 53 Vict, c 63; *see* the Indian General Clauses Act, Elphinstone, Conveyancing, 4th ed, 27, Maxwell on Statutes, 3rd ed, 40, Hardcastle on Statutes].

CONTEXT is not limited to the context of the particular section in which the definition occurs, but means the context of the whole Act. Esher, M R, In re *Evans*, (1891) 1 Q B 144.

Contiguous Adjoining, adjacent "What is contiguous must be fitted to touch entirely on one side fields are adjoining to each other ,houses contiguous to each other." (*Crabbe Synonyms.*)

Two houses opposite to one another and a street going between them would be strictly speaking "contiguous," because each would include the soil of the street *ad medium filum* [*Haynes* v *King*, (1892), 3 Ch 439]

Continence. Exercise of self-restraint in sexual matters, chastity

Contingent That which may happen or not, conditional, dependant. The quality of being contingent or casual, the possibility of coming to pass, an event which may occur, a casualty, a possibility, a fortutous event which comes without design, foresight or expectation "Contingent" is used to denote a thing which is liable to failure on the happening or non-happening of a specified event, condition, or state of things. (*Theobald on Wills*, 576.)

Contingent Claim. A claim which may never accrue.

Contingent Class. A class which can only be ascertained on the happening of a specified contingency *e g*, a gift to children who may attain twenty-one is a gift to a contingent class, which, in general, will only

Contingent contract

vest in those children who attain that age. (See *Theobald on Wills*)

Contingent Contract. Defined in IX of 1872, s 31.

"CONTINGENT CONTRACT" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen (Act IX of 1872, Contract, S. 31)

Contingent Debt, is one the time for the payment of which may or may not arrive, a debt payable after notice, is not contingent, for it is to be supposed that it will be payable at some time (per *Abbott, C J, Clayton* v *Gesling*, 5 B. & C. 362, *Stroude* 385). Contingent debt is not a demand whose existence depended on a contingency, but an existing demand, the cause of action upon which depends on a contingency (9 Ame Cyc. 73) "A 'Contingent Debt' refers to a case where there is a doubt if there will be any debt at all" (per *Mellish, L J*, Exparte *Ruffle*, 8 Ch. 1001)

Contingent Demand Claim when there is no claim *in praesenti*, and when it is uncertain whether any in fact will ever arise

Contingent Events are anticipated future events which are not certain to occur

Contingent Expenses. Sums reserved to meet some contingency A round sum appropriated by the Legislature to meet certain disbursements of the public service. Used in connection with municipal, public improvements, expenses which the commissioners could not ascertain—expenses which were known, and were uncertain, and which might or might not be incurred thereafter

Contingent-fees. Fees made to depend on a contingency (as) contingent medical fees made to depend on cure of the patient, contingent legal fees made to depend on the success of the litigation

Contingent Gift. A gift to take effect on the happening of some contingency

"Contingent Interest" defined Act 4 of 1882, S 21

CONTINGENT INTEREST is a future interest that is to depend upon an event that is uncertain, *e g*, a contingent remainder

The term "Contingent" in S 17, sub-s. 1, cl. (b), Registration Act (XVI of 1908), includes a reversioner's interest (214 P L R. 1911=135 P W.R. 1911 =11 I.C. 211)

Contingent Legacy A legacy given contingently on the happening of a certain event A common illustration is found in the case of a legacy given to a person provided he attains twenty-one In such a case, if the legatee dies before attaining twenty-one the legacy lapses, a contingent legacy is thus distinguished from a vested legacy (*i.e*) where a present interest is given to the legatee although the time of its payment may be postponed (*See* Williams, Executors and Administrators)

Contingent Liability. That which is not now fixed and absolute, but which may become so in case of the occurrence of some future event; a liability which may be discharged without any liability accruing.

Continuance of Trust.

Contingent Remainder. Contingent or executory remainders (whereby no present interest passes) are where the estate in remainder is limited to take effect, either to a dubious and uncertain person, or upon dubious and uncertain event, so that the particular estate may chance to be determined, and the remainder never take effect. (3 Rep. 20, 2 Comm. 169, and *see* 10 Rep. 85 *Tomlin's Law Dic*) "A Contingent Remainder, is a Remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate" (*Fearne*, Cont Rem.; Jarm on Wills, Cray on Rule against Perpetuities).

Contingent right. Defined in XXVII of 1866, S 2

"CONTINGENT RIGHT" defined. Act 27 of 1866, S 3.

"CONTINGENT RIGHT" as applied to immovable property shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent [Act XXVII of 1866 (*Trustees*) S 2].

Contingent rights are rights which are only to come into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting

Contingent Use Is a use limited in a conveyance of land, which may or may not happen to vest, according to the contingency expressed in the limitation of such use a use in contingency is such which by possibility may happen in possession reversion, or remainder (1 Rep 121, *Tomlin's Law Dic*)

Continuance "The adjournment or postponement of an action pending in a Court to a subsequent day of the same or another term." (*Black L Dict.*) A continuance is "the adjournment of a cause from one day to another of the same or a subsequent term (*Bouvier*, 3 Bl Comm 316)

Where the Court conceives it to be necessary for the more perfect attainment of justice it has the power, upon the application, of any party or on its own motion, to continue a case from one day to another

A party charged with a crime has no natural or inalienable right to a continuance, and in the absence of a statute is not entitled to the same as a mere matter of right or law Such applications are generally granted at the sound discretion of the Court.

Now the rule is well established that the trial Court acts within its own discretion in granting or refusing an application for a continuance in a criminal case, whether it be on behalf of the accused or of the state; which act will not be disturbed in the absence of a clear abuse of discretion. (*See* Crim. Pro Code, S 344.)

DISTINGUISHED FROM POSTPONEMENT Properly speaking, the word postponement is preferable when the purpose is to obtain a continuance to another day during the term at which the case is fixed rather than a future term.

Continuance of trust. "If a power be given to trustees to be exercised *'during the continuance of the trust,'* it cannot be exercised after the time when the trust ought to have been completed, though,

Continued in occupation.

from the delay of the trustees, it happens that the trust has not in fact been executed." (*Lewin*, 719, citing *Wood* v. *White*, 2 Keen 664)

"**Continued in occupation.** In the Ajmere Land Revenue Regulation, S. 41 means lawfully continued in occupation. (7 A L.J. 370=5 I C. 503)

"**Continue in office.**" An officer "continues in office," if his functions and duties are continued, though the tenure by which he holds office may be changed (*Swald* v. *Berwick-upon-Tweed*, 5 H. L Ca. 856)

Continuing Act. In those cases in which the law prescribes a period within which legal proceedings for an offence or an infraction of a civil right must be instituted, it is often necessary, for the purpose of ascertaining whether the remedy is statute-barred, to consider where the act or default in respect of which it is claimed was completed at a given date or is a continuing act or an act repeated from time to time, so that the time for pursuing the remedy can be computed from the last day on which the act or default took place, and not from the day on which a complete offence was committed or a right of action first accrued, that being the date from which a Statute of Limitation ordinarily runs (*See* Limitation Act, S 23, *Ency of the Laws of England*)

"**Continuing guarantee**" defined. Act IX of 1872, S 129

A guarantee which extends to a series of transactions is called a "*continuing guarantee.*" (Act IX of 1872, S. 129)

"**Continuing offence**" defined. Bengal Act II of 1891, S 56 (2)

CONTINUING OFFENCE A transaction or a series of acts constituting an offence set on foot by a single impulse, and operated by an unintermittent force, no matter how long a time may occupy

The expressions "*continuing offence*" and "*continuing contravention*" must mean the same thing since in each case the offence consists of contravention of certain rules. 127 I C 181=31 Cr L J 1159=32 Bom L.R. 768=1930 Bom 340. See *Welsh* v *West Ham Corporation*, (1900) 1 Q B 324

"**Continuing trustee**" defined Act XXVIII of 1866, S. 34.

"CONTINUING TRUSTEE" is not confined to one who remains after another as retired; but includes one who has made up his mind to retire, but who has not, as yet, formally effected his retirement (Re *Glenny*, 53 L J. Ch. 417, per *Bacon*, *V C*)

Continuous Recurring at repeated intervals so as to be of repeated occurrence, without interval or interruption

Continuous adverse use is uninterrupted adverse use or possession

Continuous crime A crime which endures after the period of first consummation.

"**Continuous easement**" defined. Act V of 1882, S. 5.

An easement, to use the water of a river to flow, by means of bunds erected on the claimant's land, across the servient tenement, on to the dominant tenement may be established by twenty years' user

Contraband of War.

during the periods of draught, when it could be taken advantage of, although the exercise of the right may not be "continuous." (30 C. 1077)

"**Continuous possession**" defined. Act II of 1876, S. 7, Expl. 1.

CONTINUOUS POSSESSION (*in the Mad. Pro Est. Village Act*). The principle adopted appears to be that, in order that Government may have the right of resumption, the right to the land must either have, in the first instance, emanated from Government, or the continuance of the right must have been due to an act of Government At any rate, there must have been recognition by Government of the right which could be set up by the holder in support of his possession Mere sufferance by Government, or forbearance from taking steps which it might have been open to the Government to take, will not amount to a 'continuance" by the Government of the land in respect of the office Mere collateral expressions of opinions which were not intended to be a recognition or confirmation of the right of the holder would equally be insufficient to amount to a continuance. (17 I C. 373, 374)

Continuous residence "When a person is physically absent from his place of residence for time, if he has *animus revertendi*, his residence continues" (per *Blackburn*, *J*, *R* v *Abingdon*, L R. 5 Q B 409).

Continuous uninterrupted use Use not interrupted by the act of the owner of the land, or by a voluntary abandonment by the party claiming an easement (9 Ame Cyc 211)

Continuously With continuity or continuation without interruption in space or time, unbrokenly, without break or interruption. It is almost, but not exactly, synonymous with "uninterruptedly" *Alta Land, etc, Co.* v *Hancock*, 20 Am. St. Rep 217)

"**Contra**" Thing that may be urged against a course, counter in operation, in opposition to, contrary to, on the opposite side, the contrary It is a term constantly used in the reports, to denote the opposition of counsel in a cause, the disallowance by the Court of a point in argument; and the opposition of cases cited as establishing opposite doctrines In some other older books, *contra* is used instead of *versus*, in the titles of causes (*Burrill*)

Contraband. Against law or treaty, prohibited, goods exported from or imported into a country against its laws, smuggling

Contraband Goods, are those which are prohibited by law to be imported into, or exported out of, the realm to any other country (*Tomlin's Law Dic, Cowell.*)

Contraband of War Munitions or other goods forbidden to be supplied by neutrals to belligerents. By the law of nations, neutrals in time of war are forbidden to give material help to either belligerent, generally speaking, any articles supplied by a neutral for the purpose of giving such help are contraband of war.

"There are still disputes," says Grotious (De Jure Belliet Pacis lib. iii. c 1, s. 5), "as to what may lawfully be done to those who are not enemies with supplies. This is a point which has been sharply contested, both in ancient and modern times, some-

Contraband salt.

maintaining the extreme right of war, other the freedom of commerce. In arriving at a solution we must distinguish between the things themselves; for there are some things which are of use only in war, as arms, others which are of no use war, but serve only for pleasure, others which are useful both in war and in peace, as money, provisions, ships, and their appurtenances."

(*See* Hall, *International Law*, 5th Ed, 1904, Smith and Silley, *International Law* as interpreted during the Russo-Japanese War, 1905, Twiss, *Law of Nations in Time of War.*)

"**Contraband salt**" defined, Act II of 1890, S. 3 (*m*), Act IV of 1889, S. 3

Contra bonos mores (*Lat*) against good morals

Contra domini regis (*Lat.*) against the peace of the lord the king.

"Contract" defined (*See also* Contingent contract, Labour contract, Void contract, Voidable contract) Act XIII of 1859, S. 4, Act IX of 1872, S 2 (*h*)

CONTRACT. Defined in IX of 1872, S. 2.

CONTRACT. An enforceable covenant or agreement between two or more persons, with a lawful consideration or cause (*Tomlin's Law Dic*) "A deliberate engagement between competent parties, upon a legal consideration, to do or to abstain from doing some act." (*Story on Contracts*) Contract, in 30 & 31 Vict. c 131, S 25, means a " contract binding in law, which of course imports a consideration " Per *Thesiger, L J*, in *Anderson's case*, (1877) 7 Ch D 113

Every promise enforceable by law is a contract, and all contracts are regarded in the modern law as founded on promises express or implied, that is to say, either framed in express words or implied from the promisor's acts or conduct The obligation of contract is distinguished from other kinds of obligation in this, that its contents are wholly determined by the ascertained will of the parties The law may restrain the effect of a promise for paramount reasons of convenience, but it will impose nothing that is not contained in the promise, or by construction of law deemed so to be. Rules of interpretation may supplement imperfect expression, in some classes of cases this process has been carried very far, nevertheless every such rule is only a guide to be followed where actual proof of the parties' intention is wanting (Addison, Anson, Chitty on Contracts, Keener Quasi-Contracts, Leake.) A bargain or agreement voluntarily made upon good consideration between two or more persons capable of contracting to do or forbear to do some lawful act. 1 Comyn Contr. 2.

A contract requires two parties to it, and a man in one character can, with difficulty, contract with himself in another character.—*Sir John Romilly, M R, Collinson* v *Lister*, (1855) 20 Beav. 370; 24 L J Ch 766.

The word "contract" in Art. 113 of the Limitation Act is used in its ordinary sense and does not include an award. (23 Mad. 593=10 M L J 208, *see also* 33 Cal. 881=4 C.L.J. 162; 19 I.C. 376=6 S.L.R 148)

The word "contract" itself primarily means a transaction which creates personal obligations, but it may, though less exactly, refer to transactions which

Contract for hire.

create real rights (1918) 45 I A. 162=46 C. 173 (181-2)=25 M L.T. 8=23 C.W.N. 198=16 A.L.J. 964=21 Bom L.R 506=10 L.W 83=29 C.L.J 193=45 I.C. 265=35 M.L J. 728 (P.C).

The word "contract" in S. 6, Provincial Small Cause Courts Act, includes claims to enforce obligation *quasi ex contractu*. (9 Mad. 150; 18 W.R. 104; 4 Mad 236)

A licence granted to a company on certain conditions does not create contractual relationship. A I R. 1937 Lah. 915.

BILATERAL AND UNILATERAL CONTRACTS. A bilateral contract is a contract in which there are reciprocal promises, so that there is something to be done or forborne on both sides, while a unilateral contract is one in which there is a promise on one side only, the consideration on the other side being executed.

COMMUTATIVE CONTRACTS "Commutative contract" is a term used in the civil law to designate a contract in which each of the contracting parties give and receives some equivalent.

CONSTRUCTIVE CONTRACTS. *See* "Quasi or constructive Contracts" *infra.*

EXECUTORY AND EXECUTED CONTRACTS An executed contract is a contract which has been fully performed since it was made, or which was performed at the time it was made, so that nothing remains to be done on either side, and an executory contract is one which is either wholly unperformed, or in which there remains something to be done on both sides, or on one side A contract may be executed on one side and executory on the other An executed contract of sale is a bargain and sale which has passed the property in the thing sold while executory contracts of sale are contracts as opposed to conveyances and create rights *in personam* to a fulfilment of their terms instead of rights *in rem* to an enjoyment of the property passed

EXPRESS CONTRACTS An express contract is one where the intention of the parties and terms of the agreement are declared or expressed by the parties, in writing or orally, at the time it is entered into It is an express contract, although some of its terms are dependent upon the happening of a future event.

IMPLIED CONTRACTS An implied contract, in the proper sense, is where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, as, in the case where a person performs services for another, who accepts the same, the services not being performed under such circumstances as to show that they were intended to be gratuitous, or where a person performs services for another on request

QUASI OR CONSTRUCTIVE CONTRACTS. The term "implied contract" has also been applied to a class of obligations which are imposed or created by law without regard to the assent of the party bound, on the ground that they are dictated by reason and justice, and which are allowed to be enforced by an action *ex contractu*, for there is no agreement, but they are clothed with the semblance of contract for the purpose of remedy. They are described by the term "*Quasi*" or "*constructive*" *contracts.*

Contract for hire. A contract for hire is one whereby "one person grants to another the enjoy-

Contract for valuable consideration

ment of a thing, or the use of the labor and industry, either himself or servant, during a certain time for a stipulated compensation."

Contract for valuable consideration A contract would be one for valuable consideration if it is for marriage, for money, for work done, or for other reciprocal contracts (*Tomlin's Law Dic*)

Contract in restraint of trade It is to be remembered that contracts in restraint of trade are in themselves, if nothing more appears to show them reasonable, bad in the eye of the law [Tindal, C J., *Horner* v. *Graves*, (1831) 7 Bing 744]

"Contract in writing" In Art 116 of the Limitation Act, 1877, the words "contract in writing" contemplate an agreement in writing signed by both the parties affected thereby. An agreement signed by only one of the parties to it does not satisfy the requirements of the law, unless the assent of the other party appears in any way from the agreement itself. [3 Bom L R 667 But *see* 35 C 683 (*contra*)]

"Contract in writing registered" A contract which has, in fact, been registered is no less a "contract in writing registered" within the meaning of Art 116, Limitation Act, because it bears the signature of only one of the parties, in the absence of any statutory provision regarding the signatures of both parties. (35 C 677=7 C.L J 407=1 I C 438 (440) But *see also* 3 Bom.L R 667)

Where a contract is in writing registered, all terms which the law implies or reads as part of the contract should be regarded as part of the registered writing So, a covenant of title not expressly embodied in the sale-deed should be taken to amount to a "contract in writing registered" within the meaning of Art 116 of the Limitation Act, for the purpose of the limitation to a suit for the breach of such covenant (21 M 8, *see also* 25 Mad 587=15 M L J 396)

Contracting party Defined in XIX of 1929, S 2

"Contract of carriage" (in the Carriage of Goods by Sea Act) applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between carrier and a holder of the same [Act XXVI of 1925, Art 1 (*b*)

"Contract of guarantee" defined Act 9 of 1872, S. 126

A *"contract of guarantee"* is a contract to perform the promise, or discharge the liability, of a third person in case of his default The person who gives the guarantee is called the *"surety"*, the person in respect of whose default the guarantee is given is called the *"principal debtor"*, and the person to whom the guarantee is given is called the *"creditor"* A guarantee may be either oral or written (Act IX of 1872, S. 126.)

"Contract of indemnity" defined Act 9 of 1872, S. 126.

Contractus legem

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a *"contract of indemnity."* (Act IX of 1872, S 124.)

"Contract of Sale", includes an agreement to sell as well as a sale"

"Contract to the contrary" The statement in the sale-deed, that a part of the consideration is reserved with the vendee in order that he may execute a hypothecation bond for the amount in favour of the vendor, does not amount to a "contract to the contrary" within the meaning of S 55, T P Act (13 M.L T. 364=18 I.C. 199.) As to the meaning of this expression, *see also* 16 I C. 635, 630=10 A L J. 124, 24 M 85, 27 I.C 688, 694=17 M L T. 129 =28 M L J 81

Contracted A debt is "Contracted" when the liability thereto is undertaken, though the actual obligation therefor arises at a subsequent time Thus the liability to a Call on a Share is not "contract" when the Call is made, but when the Contract for the Share is completed (*Williams* v. *Harding* L R 1 H L 9)

"Contractor" defined, Act 6 of 1901, S. 2 (1) (*c*)

CONTRACTOR Person who makes a contract, especially a builder who works by contract A "Contractor" is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the detail of the work (*Iron Co* v *Dodson*, 7 Lea 373)

"Contractor" "Independent Contractor" The principle—respondent superior—upon which a master is held responsible for the unlawful acts of his servant, done in the course of the servant's employment, does not extend to make an employer responsible for the unlawful act of a person, not in his service, with whom he has contracted to do the work, in the course of which the default occurred Such a person is commonly described in this connection as "an independent contractor" He is also called a "contractor" simply (*Ency of the Laws of England, Work Com Act*)

Contractus ad mentem partium verbis notatum intelligendus A maxim meaning "A contract is to be understood according to the intention of the parties, expressed in words" (*Morgan Leg. Max*)

Contractus est quasi actus contra actum A maxim meaning "A contract is, as it were, act against act" (*Wharton*)

Contractus ex turpi causa vel contra bonos mores, est nullus. A maxim meaning "Contracts arising from a base consideration or against morality are void." (*Morgan Leg. Max Broom.*)

Contractus infantis invalidus, si in damnum sui spectet. A maxim meaning "The contract of a minor is invalid, if it tend to his loss."

Contractus legem ex contione accipient. A maxim meaning "Contracts take their law from the agreement of their parties."

Contra fictionem.

Contra fictionem non admittitur probatio, quid enim efficerit probatio veritatis, ubi fictio adversus veritatem fuigit? Nam fictio nihil aliud est, quam legis adversus veritatem in re possibili ex justa causa dispositio A maxim meaning "Proof is not admitted against fiction, for what could the evidence of truth effect, where fiction supposes against truth? For fiction is no other than an arrangement of the law against truth, in a possible matter, arising from a just cause" (*Tayler L. Gloss.*)

Contra jus (*Lat*) against the law.

Contra jus civilis regulas pacta conventa rata non habentur. A maxim meaning "Agreements made contrary to the civil law are not to be construed as valid" (*Morgan Leg. Max*)

Contra legem (*Lat*) against the law of the land

Contra legem facit, qui id facit, quod lex prohibet; in fraudem vero, qui, salvis verbis legis, sententiam ejus circumvenit A maxim meaning "He does contrary to the law who does what the law prohibits, he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention" (*Adams Gloss Black. Burrill*)

Contra negantem principia non est disputandum A maxim meaning "There is no disputing against one who denies first principles." (*Black*)

Contra non valentem agere nulla currit praescriptio A maxim meaning "Contrary to one unable to act, no prescription runs." (*Broom*)

Contrariorum contraria est ratio. A maxim meaning 'The reason of contrary things is contrary" (*Morgan Leg Max*)

"Contrary Intention" In many statutes provisions are made respecting the effect or construction of documents "unless a contrary intention is shown or expressed" (For decisions as to what constitutes a contrary intention in particular cases *see Stroud's Judicial Dictionary* and *Ency of the Laws of England.*)

"Contrary to law" Violating or not conforming to the provisions of law. The circumstances that a finding of a lower appellate Court is based mainly upon evidence which is explicitly referred to and avowedly reproduced in the judgment, but is not to be found anywhere in the record, vitiates the decision and renders it "contrary to law" within the meaning of S. 100, C P. Code. (17 C W N. 37, 15 I.C. 515)

Contra spoliatorem omnia praesumuntur A maxim meaning 'All things are to be presumed in disfavour of the spoliator."

Contravention. 'In contravention of' sometimes means 'otherwise than in accordance with.' 13 R D 426.

Contravening Equity Conflicting equities, "A right or equity, in another person, which is inconsistent with and opposed to the equity sought to be enforced or recognised." (*Black L. Dic*)

Contra veritatem lex nunquam aliquid permittit. A maxim meaning "The law never suffers anything contrary to truth." (*Wharton. Morgan Leg. Max.*)

Contraxisse unusquisque in eo loco intelligitur, in quo ut solverit se obligavit. A maxim meaning "Every one is understood to have contracted in that place where he has bound himself to pay" (*Tayler L. Gloss*)

Contrectatio rei alienae, animo furandi, est furtum A maxim meaning "The touching another's property with intent to steal is theft." (*Stimson.*)

Contribute. To give as contribution, to give or grant in common with others; give to a common stock or for a common purpose, furnish as a share or constituent part of anything, (as) contribute to a charitable fund, contribute articles to a news paper

Contribution. Defined in XI of 1922, S. 58-A, XIX of 1925, S 2.

CONTRIBUTION. "Is where every one pays his share, or contributes, his part to anything. One parcener shall have contribution against another, one heir shall have contribution against another heir, in equal degree, and one purchaser shall have contribution against another. (*Tomlin's Law Dic*)

In a popular sense it is "the act of giving to a common stock, or in common with others, that which is given to common stock or purpose."

"The principle is universal, that the right and duty of contribution is founded in doctrines of equity, it does not depend upon contract. If several persons are indebted and one makes the payment, the creditor is bound, in conscience if not by contract, to give to the party paying the debt all his remedies against the other debtors" [*S S Co* v. *London Assrce.*, (1900) A C 11, 12] The right to contribution has its foundation in, and is controlled by, principles of equity and natural justice and does not arise from contract, but, although the doctrine so originated, it is now almost universally enforced in courts of law on the theory of an implied contract of contribution existing between parties jointly liable *ex contractu.* (*Ame Cyc.*)

"The equitable doctrine of contribution rests upon the principle, that where all are equally liable for the payment of a debt, all are bound equally to contribute to that purpose." Usually the word *contribution* means and has reference only to the amount payable by a member as such and does not include debts payable to the society. It is in other words the unpaid portion of the liability of a member. 18 Lah. 649= A I R 1932 Lah 931 Generally there is no right of *Contribution* between wrong-doers. (*Merryweather* v. *Nixan*, 8 T.R 186.)

"Contribution" (*on the Provident Funds Act*) means any amount credited in a Provident Fund, by any authority administering the fund by way of addition to, or otherwise in respect of a subscription to, or deposit in, the Fund, and "Contributory Provident Fund" means a Provident Fund the rules of which provide for the crediting of contributions; Act XIX of 1925 [Provident Funds, S 2, cl (*b*).]

"INHABITANTS CONTRIBUTING" to a rate, "does not mean only those who have contributed or already are assessed to a rate already made, but includes all who are liable to be assessed to a rate if one were now made" (*Per* Campbell, CJ, *R* v *Kershaw*, 6 E. and B, 1005, *Stroude*)

Contributory.

"Contributory" defined. Act 6 of 1882, S. 124, Act 7 of 1913, S. 158.

CONTRIBUTORY. Casually sharing in some act, every member of a company, and also every other person liable to contribute to the debts and liabilities thereof, a person liable to contribute to the assets of a joint stock company, every person liable to contribute to the assets of the company, in the event of the same being wound up, every member of a company, and also every other person liable to contribute to the payment of any of the debts, liabilities, or losses thereof, any member of the concern The term *"contributory"* (in the Companies Act) means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory Act VII of 1913 (Companies), S 158

"Contributory Provident Fund" *See* Provident Funds Act (XIX of 1925), S 2, cl (*b*)

Contrive To make devices, to plan, to scheme, to invent

TO CONTRIVE, DEVISE, INVENT To *contrive* and *devise* do not express so much as to invent, we *contrive* and *devise* in small matters, we *invent* in those of greater moment *Contriving* and *devising* respect the manner of doing things, *inventing* comprehends the action and the thing itself; the former are but the new fashioning of things that already exist, the latter is, as it were, the creation of something new.

Control *As a noun*, power to check or restrain, superintendence, management. *As a verb*, to restrain, to check, to regulate, to govern, to keep under check, to hold in restraint, to dominate, to rule and direct, to counteract, to exercise a directing, restraining or governing influence over, to govern with reference thereto, to subject to authority, to have under command, and authority over, to have authority over the particular matter (*Ame Cyc.*)

Controller. Defined in II of 1911, S 2

CONTROLLER "An overseer or officer relating to public accounts, etc And we have divers officers of this name, as Controller of the King's Household, of the Navy, of the Customs, of the Excise, of the Mint, of Patents etc." (*Tomlin's Law Dic.*)

"CONTROLLER" in the Patents and Designs Act means the Controller of Patents and Designs appointed under that Act (Act II of 1911, S. 2, cl 3)

Controller of Patents and Designs Defined in II of 1911, S 2.

Controversy A dispute, a disputed question, a dispute arising between two or more persons, a lawsuit The term implies not only a suit, but a suit in which something is affirmed upon the one side and denied upon the other, in which there is a dispute, an issue to be tried. (*Cent Dict Webster, Burrill*)

TO CONTROVERT, DISPUTE. To *controvert* has regard to speculative points; to *dispute* respects matters of fact; there is more of opposition in *controversy*, more of doubt in *disputing*, a sophist *controverts*, a sceptic *disputes*.

Conversation

Convene. Summon an assembly or meeting; convention

"Convene" and "Summon". "There is an obvious difference between 'convened' and 'summoned' . . . 'convened' is applied, properly, not to individuals but to aggregate bodies A Board is 'convened', an Assembly is 'convened', a Senate is 'convened', but A is not 'convened,' he is 'summoned, warned, or noticed'" (*R* v *Smith*, 1 Jebb. & Sy 634.)

Convenience Suitability of a thing A contract to pay at a person's "Convenience," means that the obligation to pay arises when he or his representatives are reasonably able to pay, the phrase is not equivalent to "at his will" or "pleasure" (*Crayshay* v *Hornstedt*, 3 Times Rep 426)

A power to do things which are "necessary and convenient" or which are "necessary or convenient" for a stated object, is well exercised if done in such a way as a person of reasonable and ordinary skill might have chosen, though it be not the ideally best way (*Abson* v *Fenton*, 1 B & C 195)

"Convenient Speed" Trustees for sale are allowed a reasonable time for selling the property "and though the instrument creating the trust, direct them to sell 'with all convenient speed,' that is no more than is implied by law, and does not render an immediate sale imperative" (Lewin, *Burton* v *Buxton*, 1 My & C 80)

Convent. Fraternity of an abbey or priory (Bract Lib 2, c 35 *Tomlin's Law Dic*) The word convent signifies a place set apart for the habitation of persons leading a religious life It is more generally perhaps used in relation to the habitations of women devoted to a religious life than of men

Conventicle A private assembly or meeting for the exercise of religion, first used as a term of disgrace for the meetings of Wickliffee in England, and now applied to the illegal meetings of the Non-conformists. (*Tomlin's Law Dic*)

Convention Convening of assembly for transaction of business; a somewhat general term, inclusive of agreements, compacts, and mutual engagements of various kinds (*Abbott L. Dict*)

CONVENTION "A Parliament or assembly assembled, but in which no act is passed, or bill signed" (*Tomlin's Law Dic*)

Conventional. Depending on convention; not spontaneous, that which is produced by, or depends upon the agreement or mutual arrangement of parties (*Burrill L Dict*)

Conventio privatorum non potest publico juri derogare A maxim meaning "A private agreement cannot derogate from public law." (*Trayne Leg. Max, Broom*)

Conventio vincit legem A maxim meaning "The express agreement of parties overcomes the law" (*Abbott*)

Conversation. Communication of thoughts, familiar intercourse; an exchange of thoughts or sentiments The word has also been construed to mean manner of living, habits of life; conduct. (*Ame. Cyc*)

Conversion,

Conversion "The transformation of one species of property into another, as money into land, or land into money, or, more particularly, a fiction of law, by which equity assumes that such a transformation has taken place (contrary to the fact) when it is rendered necessary by the equities of the case,—as to carry into effect the directions of a will or settlement,—and by which the property so dealt with becomes invested with the properties, and attributes of that into which it is supposed to have been converted" (*Black*, 9 Ame Cyc 285)

CONVERSION is where a person finding or having the goods of another in his possession, converts them to his own use, without the consent of the owner, and for which the proprietor may maintain an action of Trover and Conversion against him (*Tomlin's Law Dic*)

The appropriation of an article held in bailment, to a different use from that agreed upon with the owner of the article, amounts to conversion. (5 A.W N 200)

Conversion, Action of This was originally an action for the recovery of damages against a person who had found goods and refused to deliver them upon demand to the owner, and converted them to his own use (1 Chitty on Pleading, 7th Ed, p. 163.) This form of action has subsequently been extended to all conversions of goods To constitute a conversion there must be a wrongful taking or using or destroying of the goods, or an exercise of dominion over them inconsistent with the title of the owner [2 Wms Saund (1871) ed] p 108; Bullen and Leake, 5th ed , p 382, White and Tuder, L Cas in Eq, Lewin on Trusts, Watson, Compendium of Equity, Snell, Principles of Equity, Smith, Principles of Equity)

Conversion (from caste) Whether the son of a Hindu by a Mahomedan woman (not married to him) can become a Hindu by adopting Hindu forms and observances or by being otherwise treated as Hindu 39 All 101=26 M L J 291=22 I C 293=41 I A 1 (P C).

Conversion, doctrine of. In equity conversion is the exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as to give effect to directions in a will or statement or to stipulations in a contract, although no such change has actually taken place (*Bouvier L. Dict*) The doctrine of *conversion* is based on the principle that equity regards things directed or agreed to be done as having been actually performed, where nothing has intervened which ought to prevent a performance.

EQUITABLE CONVERSION arises where owing to the binding directions of a will it becomes proper and legal for a court to treat real estate as having been converted into personal property, although there has been no exchange

"Conversion and Exchange" In S. 517, Cr. P. Code (Act V of 1898) (*See* 12 I C 81, 82.)

Convert. To change one thing into another. It is stated that "a covenant not 'to convert' a Dwelling-house into a Shop, means a structural conversion, and not merely exposing goods for sale," (Woodf 708, 709, citing *Wilkinsin* v. *Rogers*, 2 D. G. J, & S 62.) "The premises may be 'converted' either by user, or by an alteration of structure." (*Ibid.*)

CONVERT (*Noun*). Person converted from one religion to another.

Convert Proselyte. *Convert* is more extensive in its sense and application than *proselyte convert* in its full sense include every change of opinion, without respect to the subject, *proselyte*, in its original application, denoted changes only from one religious belief to another, *Convert* is always taken in a good sense, it bears on the face of it the stamp of sincerity, *proselyte* is a term of more ambiguous meaning, the proselyte is often the creature and tool of a party, there may be many proselytes where there are few converts.

Convertible Paper Currency One that can be converted into cash on demand, as a Bank of England note in England, Government Currency Notes in India.

Convertible Securities Securities that are marketable and convertible into money (as) Consols, Railway Stock, Exchequer Bills, etc

"Convey" defined. Act 27 of 1866, S. 2.

CONVEY To carry, to bear, to conduct, to import, to take to or from, to transport, to carry or transport the thing to another person or place, to assure, to grant, to pass, to pass a thing from one person to another as by deed, assignment or otherwise, to transfer, to transfer title to property

"Convey and conveyance." Act XXVII of 1866 (Trustees), S. 2.

"Conveyance" defined. Act 27 of 1866, S 2, Act 2 of 1899, S 2 (10).

CONVEYANCE. A deed which passes or conveys land or thing from one man to another (*Tomlin's Law Dic*) The transfer of land or other estate or any interest therein from one person or class of persons to another (*See* 16 Cal 330)

"There is no magical meaning in the word "conveyance", it denotes an instrument which carries from one person to another an interest in land" [Lord Cairns, L C, *Credland* v *Potter*, (1874) L R. 10 Ch Ap. 12.]

CONVLYANCE, in 47 & 48 Vict, c 54, S 3 includes any assignment, appointment, lease or settlement made by deed on a sale, mortgage, demise, or settlement of any land or appointment of a new trustee in respect thereof, which has been executed by one or more of the parties by whom any interest in such land is thereby conveyed." [*Cf. Credland* v *Potter*, (1874) 10 Ch App 8, 12, per Lord Cairns]

Conveyance or assignment, in the Bankruptcy Act, 1883 (46 & 47 Vict, c 52), S. 4, sub S. 1 (*a*) is limited to those particular modes of disposition of property, and means a formal conveyance or assignment properly so called of the whole, or substantially the whole, of the debtor's property [Re *Spackman*, (1890) 24 Q B D. 741, Fry, L J] "Conveyance or assignment in an instrument under seal actually transferring the legal and equitable interest in the property, so as to take it out of the assignor and vest it in the assignees," Lopes, L.J.

Conveyance or sale, in the Stamp Act, 1891 (54 & 55 Vict, c 39), Ss. 54, 57 See *Inland Revenue*

Conveyance or sale.

Conveyancer.

Commissioners v. *Tod*, (1898) App. Cas. 399; *Chesterfield Brewery Co* v *Inland Revenue Commissioners*, (1898) 2 Q. B 7, *Swayne* v *Inland Revenue Commissioners*, (1899) 1 Q B 335, (1900) 1 Q B 172 (C A), *G N R* v *Inland Revenue Commissioners*, (1901) 1 K.B. 416

Conveyancer. One whose business it is to draw deeds, etc, or other legal papers.

Conveyancing The science and act of transferring titles to real estate from one person to another, the framing of legal documents intended to create define, transfer or extinguish rights

Conveyancing Practice Conveyancing is the art of transferring legal rights to property from one person to another by means of documents. It is largely occupied with the preparation of conveyances on sales of land, of mortgages, and of marriage settlements Speaking more generally, it relates to all documents of a non-contentious character affecting proprietary rights, such as wills, partnership deeds, deeds of appointment, disentailing deeds, and others of a like nature In the preparation of these documents, and especially where the transaction is between parties having several interests, a settled practice is followed by the solicitors concerned This practice has risen from its mutual convenience, and has become recognised by judicial decisions (*Ency of the Laws of England*, Preston, Conveyancing, Greenwood, Practice of Conveyancing, Gover, Advising on Title, *Bullen and Leake*)

The law of conveyance in England depends on special and complicated considerations. (1920) 47 I. A 239=48 C 1 (21)=25 C W N 49=32 C L.J 479=13 L W 161=(1920) M W N 591=28 M.L T 224=18 A L J 1074=2 P L.T 101=22 Bom L R 1319=57 I C. 465=39 M.L.J 243 (P C)

In India the art of conveyancing has been and is of a very simple character (1884) 11 I A 126=10 C 1035 (1045-6)=5 Sar 543 (P.C))

The art of conveyancing is but little understood in the country parts of India (1913) 40 I A 117 (125) =40 C 784 (797)=17 C L J 619=15 Bom L R 613=17 C W N 918=(1913) M.W N 542=14 M L T 55=19 I C 521=9 N.L R. 117=25 M L J 179 (P C)

In India there is no uniform or accurate system of conveyancing, and deeds and wills are as a rule most inartificially drawn up, frequently by persons not possessed of legal knowledge (1922) 49 I A. 195 (207-8)=44 A 301 (313-4)=25 O C 95=31 M L T 21 =9 O L J 369=27 C W N 53=24 Bom L R. 1268=20 A L J 994=A I.R 1922 P C. 281=37 C L J 1=68 I C 254=43 M L J 453 (P C.)

In *Rambux* v. *Seochand* (11 I.A. 126), this Board observed that "In India the art of conveyancing has been and is of a very simple character." What this Board said in 1884 as to the art of conveyancing in India, and the practice in such cases, is true as to the art of conveyancing and the practice in such cases at the present day. (1912) 39 I A 68 (81)=39 C 527 (555)=(1912) 1 M W N 367=11 M L.T. 265=9 A L J. 332=14 Bom L R 280=16 C W.N. 505=15 C L J 411=14 I.C. 496=22 M L J 468.

Common words of style used in conveyances of any sort may be, and often are, words of surplusage, but when they are not words of surplusage, they must be given the proper effect of their own meaning (1924) 52 I A. 109=4 P 244=6 P L T. 42=21 L W 289=29 C W N 725=27 Bom L R 753=23 A L J. 712=A I R. 1925 P C. 42=86 I C. 289=48 M L J 328 (P C)

Conviction.

"Conveyed in Trust." The words 'conveyed in trust' in Art 134 of the Limitation Act are equivalent to the words 'vested in trust" in S. 10 of the Act. (1 B. 269)

Convicia si irascaris tua divulgas, spreta exolescunt. A maxim meaning "If you be moved to anger by insults, you publish them, if despised, they are forgotten" (*Bacon, Morgan Leg. Max*, *Black*)

"Convict" (as a verb) To condemn, to find guilty of an offence (usually) by a judgment of Court or by the verdict of a jury, to prove or find guilty of an offence or crime charged, to pronounce guilty as by legal decision A rare use is "to find against a defendant in a civil case" (*Black. L Dict*)

CONVICT (as a noun) is one that is found guilty of an offence by verdict of a jury (*Tomlin's Law Dic*) A convict is one who has been condemned by a competent Court, one who has been convicted of a crime or misdemeanour And a person committed to prison upon a summary conviction or in default of payment of a penalty or fine adjudged to be paid upon such conviction is to be regarded as a criminal prisoner

TO CONVICT, DETECT A person is *convicted* by means of evidence, he is *detected* by means of ocular demonstration. One is *convicted* of having been the perpetrator of a crime, one is detected in the very act of committing the deed

CONVICT AND "FOUND GUILTY." There is no difference between these two expressions 58 Bom. 37=35 Bom.L.R 1018=1933 Bom. 461 (F.B)

Convicted Found guilty of the crime whereof one stands indicted. The word "convicted" is sometimes used to mean that a judgment of final condemnation has been pronounced against the accused 1932 A L J 624=139 I C. 141=33 Cr L J 731=1932 All. 680.

"Convicted Criminal Prisoner" defined Act 9 of 1894, S 3 (3).

CONVICTED OF FFLONY, in 33 & 34 Vict., c. 29, S. 14 (Licensing), does not apply to a person who after conviction for felony has received a free pardon. *Hay* v *Tower Justices*, (1890) 24 Q. B. D. 561.

"Conviction" defined. 33-4 Vict c 52, S 26. Mad. Act 3 of 1888, S. 3.

CONVICTION Condemnation; finding of guilt; the finding of a person guilty of an offence, the judgment of guilty pronounced against the accused by the proper tribunal, and the mode prescribed by law.

CONVICTION may mean the verdict of the jury or the sentence of the Court. What the term as used in S 439 (6) of the Cr. P. Code means in a particular case, depends on the particular facts of the case 49 C L.J. 432=33 C.W N 599=56 Cal. 1145=30 Cr L J. 1038=119 I C. 301=A.I.R. 1929 Cal 747

"Conviction—Conviction." These terms are in strictness correlative By conviction at common law was meant a verdict or plea of guilty followed by a

Convince.

judgment awarding punishment for the offence duly entered of record [see *Burgess* v. *Boelfeur*, 1844, 7 M & G 481]

Though a convict would naturally be taken to mean a person against whom a conviction is made and recorded, the term is in practice applied only to persons imprisoned after conviction on indictment under sentence of imprisonment or penal servitude, when relegated to a convict prison (*Ency of the Laws of England*)

Convince To satisfy the mind by proof; to bring to a belief, to produce conviction or belief.

Convincing Proof. That degree of certainty required to sustain a judgment.

Convocation Provincial synod of clergy, the assembly of the representatives of the clergy, to consult of ecclesiastical matters in time of parliament. As there are two houses of parliament, so there are two houses of convocation the one called the Higher or Upper House, where the Archbishops and all the Bishops sit severally by themselves and the other, the Lower House of Convocation, where all the rest of the clergy sit, *i e*, all Deans and Archdeacons, one proctor for every chapter, and two proctors for all the clergy of each diocese (*Tomlin's Law Dic*, *Termes de la Ley.*)

Convoy. Escort "A Convoy is a naval force, appointed by the Government, or by the commander of a station, to escort and protect merchant ships proceeding to certain parts" (1 Maude & P 502)

Co-obligor A joint obligor, one who is jointly bound with another in a bond or obligations.

"Co-occupant having a right of pre-emption" (in Berar Land Rev Code). 8 N L R. 62=15 I C 570 (571).

Coodemaramut. Repairs performed at the expense of the tenants themselves, to the small channels and to the banks or borders of the rice fields (*Fifth report*)

Cooderopad. (*Mal*) *See* Nilamuri.

Coodewarum. The share of the tenants and of their labourers, in the net produce of land (*Fifth report*)

Coodiyirippu (*Mal*) Lease for building purposes. (*Sund. Iyer's Mal Law*)

Cooll Gootah Shrotrium In the Ceded Districts, lands let at a low rent to learned Brahmans

Coolwar or Culwar. A statement of the ryots holding land; or a settlement made with the ryots individually.

"Cooly Sirdar or recruiter" is not an artificer, workman or labourer. 6 C L.J. 180=6 Cr.L J. 191.

Co-operate To make joint effort, to act or operate jointly with another or others, to concur in action, effort or effect.

Co-operation. The combined action of numbers; working together; acting together or simultaneously unitedly, to a common end a unitary result, production or distribution by co-operators who share the profits between them It also signifies the union of persons, of small means for the purpose of combining their resources in business for mutual profit.

Co operative Promoting the same end, helping; acting together to accomplish the same end, working on the basis of co-operation.

Co-operative Society Is a union of individuals, commonly labourers, farmers, businessmen, or small capitalists, formed for the prosecution in common of productive enterprise, the profits being shared in accordance with the amount of capital or labour contributed by each member. (*Century Dict*, see also *Co op. Soc Acts*)

Coorambiyattiri (*Mal*) Title of Calicut Zamorin's family (*Sund Iyer's Mal Law*)

Coorvuzhcha (*Mal*) Share of Governm nt entrusted to a subordinate prince (*Sund Iyer's Mal Law*)

Coottichom (*Mal*) A rent-free tenure to a Nayar on military service (*Sund Iyer's Mal Law*)

Cooz kur (*Mal.*) Improvement, such as planting fruit trees (*Sund Iyer's Mal Law*)

Coparceners Otherwise called Parceners, are such as have equal portion in the inheritance of an ancestor, or who come in equality to the lands of their ancestors. (*Bract lib 2 cap 30*, *Tomlin's Law Dic*)

Coparcenary Land is held in coparcenary when there is "unity of title, possession and interest".

Copartner. A member of a partnership.

Co-partnership In 31 & 32 Vict, c 116, S 1, was not used in the sense of co ownership, as the modern usage confines the meaning of the word to societies formed for gain *R.* v. *Robson*, (1886) 16 Q B D. 140.

Co-partnership Association with others in something, set of people sharing something "Lord Hale and older writers use 'Co-partnership' in the sense of 'Co-ownership', but this is no longer customary" (*Lindley, p* 25.)

Copper "'Copper' applied to coin, includes bronze or mixed metal, and every other kind of coin inferior in value to silver" (*Steph Cr* 310.)

Copper coin Copper money, generally, and not a single coin, nor any specific number or kind of coins. (*Ame Cyc*)

Copulatio verborum indicat acceptationem in eodem sensu. A maxim meaning "The coupling of words together shows that they are to be understood in the same sense" (*Broom*)

Copy In a legal sense the transcript of an original writing, as the copy of a patent, of a charter, deed, etc. (*Tomlin's Law Dic*) Reproduction of a something; a writing like another writing, a document which is taken or written from another, as opposed to an original, that which comes so near to the original as to give to every person seeing it the idea created by the original, a reproduction or limitation, as of a writing, printing, drawing painting or

Copy.

other work of art, so as to have another or others similar to the original, a completed reproduction, or one of a set or number of reproductions containing the same matter or having the same form or appearance, (as) carbon copy of type-written document, an individual book, as a copy of the Bible, a single book or sets of books, or a sheet reproducing any literary composition, a single book or sets of books, containing a composition resembling the original work (*Webster Dict*, *Imp Dict*, *Stand Dict*, *Cent Dict*, *Ame Cyc*)

As a verb, to make copy or copies of, to write, print, engrave, or paint after an original; to duplicate, to reproduce, to transcribe; as to copy a manuscript, inscription, design, painting, etc (*Webster Dict*)

Copy, in the Copyright Act, 1842 (5 & 6 Vict, c 45), includes matter contained in a newspaper registered as a serial publication *Cate* v *Devon Newspaper Co*, (1889) 40 Ch. D. 500; but not perforated music sheets for use on a mechanical organ *Boosey* v *Wright*, (1900) 1 Ch 122, in Fine Arts Copyright Act, 1862 (25 & 26 Vict, c 68), S. 11 *Hanfstaengl* v *W. H Smith & Son*, (1905) 1 Ch 519.

COPY, MODEL, PATTERN, SPECIMEN A *copy* and a *model*, imply either that which is copied or taken from something, as when we speak of a *copy* in distinction from an original, and of making a model of anything Or, they imply that from which any thing is copied or taken, as to follow a *copy*, to choose a *model*

Pattern and *specimen* serve, like the *model*, to guide or regulate, but differ in the nature of the objects, the *pattern* regards solely the outward form or colour of any thing that is made or manufactured as the *pattern* of a carpet, the *specimen* is any portion of a material which serves to show the quality of that of which it forms a part, as the *specimen* of a printed work, the value of things is estimated by the *specimen*.

To COPY, TRANSCRIBE. To copy respects the matter, to transcribe respects simply the act of writing What is copied must be taken immediately from the original, with which it must exactly correspond, what is transcribed may be taken from the copy, but not necessarily in an entire state Things are copied for the sake of getting the contents, they are often transcribed for the sake of clearness and fair writing A copier should be very exact; a transcriber should be a good writer *Lawyers* copy deeds, and have them afterwards frequently *transcribed* as occasion requires

"COPY OF ANY ORDER FOR THE EXECUTION OF THE DECREE." In S 224, cl (*c*) of C P C, 1882, mean a copy of any subsisting order (13 B 371)

"Copy of judgment" Generally refers to certified copy 11 L L J 363=1929 L. 771.

Copyhold (*in English Law*). A tenure for which the tenant hath nothing to shew but the copy of the rolls, made by the steward of the lord's court, on such tenants being admitted to any parcel of land or tenement belonging to the manor. (4 *Rep.* 25.) It is called base tenure because, held at the will of the lord (*Tomlin's Law Dic*)

"COPYRIGHT" defined 5-6 Vict., c 45, S. 2 Act 5 of 1888, S. 50 (2). Act 3 of 1914, S. 2 Act 2 of 1911, S. 2.

Copyright, assignment of.

Copyright Is the exclusive right of printing and publishing copies of any literary performance, extended also to music, engravings, etc (*Tomlin's Law Dict*) The right of literary property as recognized and sanctioned by law, the right of ownership in a literary or art production vested in an author or producer or his assigns for a period fixed by law. The copyright of a work is the exclusive right to multiply copies of the work, not merely a right to do so in common with others (*Sims* v *Marryat*, 17 C. B 281, 20 L J Q B 454, 79 E C L 281) Copyright as defined by the English Act, means the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is applied (*Hole* v *Bradbury*, 12 Ch D 806, 48 L J Ch. 673 41 L T Rep N S 153, 250, 28 Wkly Rep 39)

Any book, map, chart, dramatic, or musical composition, engraving, cut, print, photograph or negative thereof, painting, drawing, chromo, statue, statutary, and models or designs intended to be perfected as works of the fine arts are entitled to the provisions of the Copyright Act The right of public performance or representation of dramatic or musical compositions, or of causing them to be performed or represented, is also protected, and authors may reserve the right to dramatize or to translate their own works

S 31 of the Copyright Act, 1911, provides that no person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this statute or any other statutory enactment for the time being in force Copyright is therefore a statutory right (1923) 51 I A 109 (118)=48 B 308=A I R 1924 P. C 75=19 L.W 299 (P.C).

"COPYRIGHT" "does not extend to ideas, or schemes, or systems, or methods, it is confined to their expression" [*per* Lindley, L J, *Hollinrake* v *Truswell*, (1894) 3 Ch. 420], not to *bona fide* abridgments. An abridgment of an author's work means a statement designed to be complete and accurate exposition of the thoughts, opinions and ideas by him expressed therein, but set forth much more concisely in the compressed language of the abridger. 48 Bom. 308=19 L W 299=(1924) M W N 308=83 I C 101=28 C W N 613=2 Pat L.R 137=A.I.R. 1924 P C 75=46 M L J 637 (P C) Mere selection of passages from a work is not an original work and is not protected 65 I C 187=23 Bom L R 1299=51 I.A. 109 (P C) *See* Maugham, 1828, Lowndes (History), 1840, Turner, 1851, Blaine (Artistic), 1853, Fraser, 1860, Chappel and Shoard, 1863; Phillips, 1863; Underdown, 1863, Marshall 1863, Coryton, (Dramatic) 1873, Purday, 1877, Macfie, 1879, Jerrold, 1881, Short (Literature and Art), 2nd ed, 1884, Cutler (Musical and Dramatic), 1890, Bewes, 1891, Copinger on Copyright, 4th Ed., 1904; Scrutton on Copyright Briggs (International) 1906

"Copyright" (*in the Patents and Designs Act*) means the exclusive right to apply a design to any article in any class in which the design is registered. (Act II of 1911, S 2, cl. 4)

Copyright Act. Defined Act III of 1914, S. 2.

Copyright, assignment of. 62 Cal. 57=157 I.C. 790=39 C.W.N 224=1935 Cal. 508.

Co-respondent.

Co-respondent. A person summoned to answer a petition, together with another respondent. Now chiefly used in matrimonial causes to designate the person charged with adultery with the respondent in suit for divorce.

Corn In English law, Grain, including wheat, rye oats and barley.

Corn rents Rents reserved in corn, that is, in rise, wheat or malt, etc

Corner, (*in Mercantile law*). A monopolistic buying up of the whole available stock of a commodity A combination among the dealers in a specific commodity, or outside capitalists, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally (*Black L Dict*)

Corody (*in old English law*) Signifies a sum of money or allowance of meat, drink, and clothing due to the King from an abbey,or other house of religion, whereof he was founder, towards the sustentation of such a one of his servants as he thought fit to bestow it upon (*Tomlin's Law Dic*)

Corookums (In Dindigul spots of land in the hill fields) cultivated by labourers and paid for by usage rent.

Coronation. Formal ceremony of crowning a King.

Coronation Oath The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty

It is a solemn oath to govern rightly and religiously has for many centuries been taken by the Sovereigns of England at their coronation [The present form of the coronation oath, which is sent out in Phillimore's Eccl Law, 2nd ed, and Maskell's Monumenta Ritualia, is prescribed by Stat. 1 Will & Mary st. 1, c 6 (1689); *Belkstone Com, Vol I*]

Coroners. Coroners are ancient officers by the common law, so called because they deal principally with the pleas of the Crown, and were of old time the principal conservators of the peace within their county In modern times they are county or municipal officers whose main duty is to hold inquests on the bodies of those who are supposed to have died violent deaths. The status and principal functions of the modern coroner are well and briefly defined by Lord Chancellor Campbell "This is a very ancient and important office in the realm of England The coroner next to the sheriff is the most important civil officer in the county, and he performs the duty of the sheriff when the sheriff is disabled from doing so; and there are peculiar duties ascribed to him, more particularly to inquire into the manner in which persons have to come to their deaths where there is any reason to suppose that may not have been by natural means. [In re *Ward*, (1861) 30 L J Ch. 775; Jervis on Coroners, (1898 6th ed), Wellington's King's Coroner (1905 ed); Seldon Society, Vol. ix, Cor. Rolls (1265-1413); Reports Cor. Soc Proceedings]

Corporalis injuria non recipit aestimationem de futuro. A maxim meaning "A personal injury

Corporation

does not receive satisfaction from a future course of proceeding.

Corporal oath An oath taken by the party laying his hand upon the gospels while the oath is administered to him, more generally, a solemn oath (so called from the ancient usage of touching the corporale, or cloth that covered the consecrated elements)

Corporal Punishment. In its primary and restricted meaning, punishment upon the body, such as whipping, as distinguished from punishment of the body, such as imprisonment In its enlarged meaning, all kinds of punishment of, are inflicted upon, the body, including imprisonment

Corporate. Belonging to a corporation, as a corporate name, incorporated, as a corporate body (*Burrill*)

"Corporation" defined Act 6 of 1890, S 3 (2); Ben Act 1 of 1880, S. 28, Sch, Bom Act 3 of 1888, S 3 (*b*)

CORPORATION. Artificial persons established for prescribing in perpetual succession certain rights, which, if conferred on natural persons, would fail in process of time The following definition of a corporation was given by Chief Justice Marshall in the celebrated Dartmouth College case A corporation is an artificial being, invisible, intangible and existing only in contemplation of law Being, the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence These are such as are supposed best calculated to effect the object for which it was created. Among the most important ones, immortality, and if the expression may be allowed, individuality, properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand It is chiefly for the purpose of clothing bodies of men, in succession with these qualities and capacities, that corporations were invented and are in use By these means a perpetual succession of individuals are capable, of acting for the promotion of the particular object, like one immortal being" *Corporation* is a Body of Politic or Incorporate, so called as the person composing it are made into a body, and of capacity to take and grant, etc Or, it is an assembly and joining together of many into one fellowship and brotherhood, whereof, one is head and chief, and the rest are the body, and this head and body knit together, make the Corporation, also it is constituted of several members, like unto the natural body, and framed, by fiction of law, to endure in perpetual succession (*Tomlin's Law Dic*)

"A corporation can have no legal existence out of the boundaries of the sovereignty by which it is created"—*Taney, C J, Bank of Augusta v Earle*, 13 Peters' Sup Court Rep. (U S) 588 A corporation cannot well suffer damage in mind or body 51 Cal 250=28 C W N. 160=84 I.C. 554=A I R. 1924 Cal. 495

PROMOTER (OF CORPORATION) A *promoter* is one who takes it upon himself to organize a corporation;

Corporation aggregate.

to procure the necessary legislation, where that is necessary, to procure the necessary subscribers to the articles of incorporation, where the corporation is organized under general laws; to see that the necessary document is presented to the proper officer of the state to be recorded and the certificate of incorporation issued, and generally to 'float the company'.

Corporation aggregate A corporation consisting of several persons united into one body

Corporation Sole A corporation consisting of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and especially that of perpetuity which as an individual person he could not have.

INSTANCES OF CORPORATION SOLE The sovereign of England (*Burrill*) A Bishop, dean, parson and vicar (2 Kent Com. 27)

DISTINGUISHED FROM CORPORATION AGGREGATE. The distinction established by law, between a sole and an aggregate corporation, is that a corporation aggregate has a perpetual existence without change so that an estate once vested in it, continues vested without interruption. Whereas when a Bishop or parson holding estate as a sole corporation, dies, or resigns his office, the fee is in abeyance, until a successor is appointed.

MUNICIPAL CORPORATION "The corporation" means the Municipal Corporation of the city (Bom. Act III of 1888, S. 3, cl *b*.)

CORPORATE BY-LAW. A by-law of a corporation is a rule or regulation established by a corporation as one of the incidents of its existence, for its internal Government or for the Government of its officers and members in the management of its affairs as among themselves.

CORPORATION *The by-law of a corporation is distinguished from a resolution*, which is directed to the attainment of a particular object in a given case. A resolution, it has been said, is not necessarily a by-law, although a by-law, may be in the form of a resolution Where the governing statute prescribes that the corporation shall act in a given particular through a by-law, it cannot act through a mere resolution of its board of directors Again a corporate *by-law is distinguished from those rules and regulations* which a corporation may establish for the government of the public, or of those doing business with it, in the prosecution of its intercourse or business with it.

Corporator A member of a corporation, a member of a corporation aggregate, one of the stockholders or constituents of the body corporate, an organizer or first stock-holder of a corporation.

Corporeal Things which may be seen and touched, material (as) corporeal hereditaments.

CORPOREAL DISTINGUISHED FROM CORPORAL. Corporeal means possessing a body, that is tangible, physical, material; corporal means relating to or affecting a body, that is bodily external Corporeal denotes the nature or physical existence of a body; corporeal denotes it exterior or the co-ordination of it with some other. Hence we speak of 'corporeal hereditaments' but of corporal punishment.

Correct.

"'CORPOREAL HEREDITAMENTS,' consist wholly of substantial and permanent objects, all which may be comprehended under the general denomination of land only" (2 Bl Com 17)

"Corps" defined 44-5 Vict, c. 58, S 190 (15) Act 5 of 1869, Pt I, cl. (*e*) (10)

Corpus. A body, human body, an artificial body created by law, as a corporation, a body or collection of laws, a material substance, something visible and tangible, as the subject of a right, something having local position as distinguished from an incorporeal physical substance as distinguished from intellectual conception, the body of an estate, or the capital of an estate

Corpus corporatum ex uno potest consistere A maxim meaning "One person may constitute a corporation"

Corpus corporatum nequ e in lite sisti Neque utla ari' neque bona forisfacere neque atrinctum pati attorn atum face re neque excommunicari potest A maxim meaning "A corporation can neither be brought into Court nor outlawed, nor can it forfeit goods, suffer attainder, take *power-of-attorney*, nor is it liable to excommunication

Corpus corporatum non habet haereds neque executores neque mori potest A maxim meaning "A corporation has neither heirs nor executors, nor can it die"

Corpus corporatum (*Lat*) a corporation, a corporate body other than municipal

Corpus delicti The body of a crime, the body, substance or foundation of an offence

Corpus humanum non recepit aestimationem. A maxim meaning 'A human body is not susceptible of appraisement' The human body does not admit of valuation.

Corpus juris A body of law, a term used to signify a book comprehending several collections of law

"Correct" (meter) defined Act 9 of 1910, S 26, Expln

"CORRECT" *See* U B. R 1908, 3rd Qr, Penal Code, 17=9 Cr.L J 415.

CORRECT. (*As an adjective*), in accordance or agreement with a certain standard model, or original, conformable to truth, rectitude or propriety, not faulty, free from error accurate

CORRECT (*As a verb*), to make straight or right, remove error from, bring into accordance with a standard, point out errors in

'CORRECT AND SATISFACTORY'. A statement that "the accounts are correct and satisfactory" means that the several items are properly set out and the sums charged in respect of specific items satisfactory.' (L.R. 4 Q.B. 1, 38 L.J. Q.B 1)

Correct, True and 'True and correct is synonymous with 'true and complete.' The statement that 'a transcript contains a correct statement' of certain proceedings is the practical equivalent of a certificate that the transcript is a true and complete copy of such proceedings.

Correction.

Correction The act of noting and pointing out for removal or amendment, errors, defects, mistakes or faults of any kind, discipline (as, House of correction, correction of youthful offenders)

CORRECTION, DISCIPLINE We remove an evil by *correction*, we prevent it by *discipline*. *Correction* extends no further than to the correcting of particular faults, but *discipline* serves to train, guide, and instruct generally.

Correctness. The use of the word "Correctness" in S 105 (2), Civ Pro Code, 1908, precludes the questioning of all material decisions in the judgment equally with the questioning of the decree itself. 23 I C. 238=10 N L R 28.

Correspond. To harmonize with, have points of correspondence with, or be suitable to, used in reference to written instruments, the word means adapted to each other See *Sackrulle* v *Holmesdale*, (39 L J Ch 520)

Correspondence Identity, adaptation, making things agree, also means the inter change of written communications

Corresponds and appertains (in S 14, Agra Tenancy Act), do not mean the same thing 15 R D 733=12 L R 394 (Rev).

Corroborate To strengthen, to give support to give additional strength; to make more certain, to add weight or credibility to a thing *See* 14 I.C 896 (902)=13 Cr.L J 352=12 M L T 1

Corroboration The act of corroborating or strengthening or confirming, addition of strength, confirmation As a general rule evidence of an accomplice is not acted upon by Courts without corroboration in material particulars

Corrody "Corrody" is not a very happy translation of the Sanskrit word "Nibandha" Corrody is a word of mediæval origin, properly signifying a peculiar right, *viz*, the grant by the royal or other founder of an abbey of certain allowances out of the revenues of the abbey in favour of a defendant or servant. (1873) 1 I A 34=21 W R 175=10 B H C R 281=13 B L R. 254=3 Sar 306.

Corrupt, Corruptly Tainted with vice, relating to bribery "To corrupt" a voter means to do an act of bribery which was completed by acceptance of the bribe, whether subsequently the voter voted or not (*Henslow* v. *Fawcett*, 3 A & E 51).

Corrupt. (*As an adjective*), unlawful, dishonest, without integrity, guilty of dishonesty, involving bribery

Corrupt Practices Corrupt practices are defined by the Elections Act as meaning bribery, treating and undue influence, or any such election offences, as defined by Act of Parliament or recognised by the law of the land The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict c 51, has effected considerable changes in the law relating to the prevention of corrupt and illegal practices at parliamentary elections The expression "corrupt practice," as used in that Act means (*see* S 3) any one of the following offences:—(1) Bribery; (2) treating (3) undue influence, (4) personation and aiding, abetting, counselling, and procuring the commission of the offence of personation; and (5) knowingly

Costs

making a false declaration as to election expenses (*See* Rogers on Elections, O'Malley and Hardcastle's Reports of Election Petitions, Returns of Controverted Elections, printed by order of the House of Commons)

Corruption Something against law, something forbidden by law, as certain acts by arbitrators, election or other officers, trustees, an act done with intent to gain an advantage not consistent with official duty and the rights of others

Corruption of blood (*In English law*) The extinguishment of the inheritable quality of a person's blood by attainder.

Corruptio optima est pessima. A maxim meaning 'Corruption of the best is worst'

Corsned A species of ancient ordeal in use among the Saxons performed by eating a piece of barley bread over which the priest had pronounced a certain imprecation

Cosen Cozen (*old English law*) To cheat

Cosin, cosyn cosen In old English law, a collateral relative by blood, as a brother, sister, uncle, etc, any relative in the ascending line, above a great grand father

Co-sharer A person who shares property jointly with others The term "co-sharer" used in the N W P Act XIX of 1873 (Land Revenue), in connection with the partition of mahals, means a co-sharer and not a representative of the co-sharer, such as a mortgagee 9 A W N 169 *See* 1935 A I J 973=A I R. 1935 P C 169 (P C)

"KNOWN CO-SHARES The term "known co-shares" in S 12 of the Guzarat Talukdars Act (Bom Act VI of 1888), covers all who are known to have an interest in the property and is not limited to those co-sharers whose names are recorded under the Act *Chudasama Sursangji* v *Partapsang Khengarji*, 28 B 209=5 Bom L R 937.

CO-SHARING (IN CULTIVATION) It is necessary for co-sharing in cultivation, that there should be pooling of one's own cattle and the implements of cultivation 1937 A W.R 869=1937 A W R 1028.

Cost, Costs The amount paid, Price charged, or engaged to be paid for any thing bought, charge, expense, loss, detriment legal expenses It is a word capable of a large or narrower construction according to the subject-matter, and the circumstances of the particular case Signifies the total sum necessary to be paid to cover the expenses of making, producing and remunerating services, in respect of any article or commodity, the cost of production of an article In commerce, the word is used as meaning "to fix" "to estimate" the cost of production of goods (as) the *costing* department.

Costs as meaning legal expenses In the prosecution and defence of actions, the parties are necessarily put to certain expenses, or as they are commonly called costs, consisting of money paid to the Government for stamp duties to the officers of the courts; and to the counsel and attornies for their fees, etc. (*Tomlin's Law Dic*)

Costs are certain allowances authorized by statute to reimburse the successful party for expenses incurred in prosecuting or defending an action or

Costs.

special proceeding There are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in Court. The theory upon which they are allowed to a plaintiff is that the default of the defendant made it necessary to sue him, and to a defendant, that the plaintiff sued him without cause Thus the party to blame pays costs to the party without a fault.

In the phrase *"Costs, Charges and Expenses,"* "Charges and Expenses" are obviously wider than technical "Costs" Re *Smith*, (1891), 3 Ch 65 The word "Cost" is of limited significance and much narrower than "damages".

COST, EXPENSES, PRICE, CHARGE. We speak of *costs* awarded by a Court to cover the *expenses* of a successful litigation, which, after all, may be the *price* of our folly in not enforcing our just demands in time A great part of the litigation *expenses* may be covered by attorney's *charges*

'COSTS FOLLOWING THE EVENT,' 26 M.L J. 356.

"Costs will follow the event" 141 I C 262=29 N.L R 8=1933 Nag 49

COST, FREIGHT AND INSURANCE "The terms at a price 'to cover Cost, Freight and Insurance,' payment by acceptance 'on receiving shipping documents,' are very usual, and are perfectly well understood in practice The invoice is made out debiting the consignee with the agreed price (or the actual cost and commission, with the premiums of insurance, and the freight, as the case may be) and giving him credit for the amount of the freight which he will have to pay to the shipowner on actual delivery, and, for the balance, a draft is drawn on the consignee, which he is bound to accept (if the shipment be in conformity with his contract) on having handed to him the charter party, bill of lading and policy of insurance Should the ship arrive with the goods on board he will have to pay the freight, which will make up the amount he has engaged to pay Should the goods not be delivered in consequence of a Peril of the sea, he is not called on to pay the freight and he will recover the amount of his interest in the goods under policy If the non-delivery is, in consequence of some misconduct on the part of the master or mariners, not covered by the policy, he will recover it from the shipowner In substance, therefore, the consignee pays, though in a different manner, the same price as if the goods had been brought and shipped to him in the ordinary way" (per *Blackburn, J., Ireland* v *Livingston*, L R 5 H L 406)

"COSTS IN THE CAUSE," meaning of *See* 11 A L J 975=22 I C. 42

"Costs in the cause,' properly so called, are those costs only which the successful party in the suit would be entitled to on taxation in the absence of an order to the contrary in the particular proceeding, and this, necessarily, excludes costs incurred subsequently to final judgment." (*Thompson* v *Parish*, 5 C B.N S. 691 n)

"COSTS OF CONVEYANCES," include the costs of registering.

Crown costs. By the rule of law, the King neither receives nor pays costs Lord *Mansfield, King* v *Jenkinson*, (1785) T R. 83

The Crown was always an unequal match for the subjects: but if the weight of costs were thrown into the scale, this would become such an addition as would make its prosecutions heavier than they would be able to bear *Parker, C J., Reg* v *Ballivos, etc., de Bewdley*, (1712) 1 P Wms. 226

"COST OF MAINTENANCE" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum [together with any other charges specified in this behalf by the Governor General in Council, in exercise of any power conferred upon him by this Act] Lunacy Act (IV of 1912), S 3

COSTS OF PROCESS The only items which can be deemed as costs of process within the meaning of Sale of Under-Tenures Act (VIII of 1865), S. 6 are costs for the issue of the writ of attachment and the sale proclamation (20 I.C 337)

COSTS OF RELIEF, in 31 and 32 Vict., c. 122 (Poor Law), S 33 *Dinning* v *South Shields Union*, (1884) 13 Q B D 25 (C A)

COST OF SUIT 22 I C 42 (44)

COSTS OF THE DAY. Costs which are incurred in preparing for the trial of a cause on a specified 'day' consisting of witnesses fees, and other fees of attendance

"COST OF THE LAND" Bom Act IV of 1898 (City of Bom Improvement), S. 40 (footnote)

COST PRICE The price paid for goods by a purchaser, what is actually paid for an article, the sum which the seller himself paid for the article

"COSTS TO ABIDE THE RESULT" 24 I C 96.

"COSTS WOULD ABIDE THE RESULT". The words "costs would abide the result", do not mean costs will follow the result The discretion ordinarily vested in Subordinate Court to decide how the costs shall be borne is not deprived by the use of the words "costs would abide the result" of an appellate court 4 C W N 313, dist Where the language of a will is the cause of litigation the costs should properly be borne by the estate of the testator. (24 I C 96)

Coterie A fashionable association, or a knot of persons forming a particular circle, a secret circle

Cottage A small house, a hut, a mean habitation, a little house, a small dwelling house Cottage as defined by Coke, meant a little house without land to it but it seems that the term is often used to also include some land.

COTTAGE "By the grant of a *cottage*, doth pass a little Dwelling-house that hath no land belonging to it". (*Touch* 94)

"Cottage garden" means, "An Allotment attached to a Cottage"

"Cotton" defined. Ben. Act 1 of 1893, S. 3 (2)

Cotton cloth factory means "Any room, shed, or workshop, or any part thereof, in which the *weaving* of cotton cloth is carried on" Cotton Cloth Factories Act, 1889 (52 and 53 Vict., c 62), S 4.

"Cotton goods" defined. Act 2 of 1896, S. 3 (5).

"Cotton yarn" defined. Act 2 of 1896, S. 3 (4).

Coucher.

Coucher A factor who continues abroad for traffic, also the general book wherein any corporation, etc, register their acts

"Council" defined Act 27 of 1933, S 3, Ben. Act 3, 1866, S 6, Bom Act 13 of 1866, S. 6

COUNCIL An assembly of persons for the purpose of concerting measures of state or municipal policy "Council" is defined in statutes according to the subject-matter of the Act (as) Municipal Council, Legislature Council, Privy Council, King in Council.

Council chamber. Room or chamber in which a council or deliberative or administrative body sits

Council Draft A negotiable instrument drawn by the Secretary of State for India upon the India Council and payable at the Bank of England

"Council of Elders" defined Reg. 3 of 1892, S 4 Reg 3 of 1901, S 2 (*a*)

Council of war Meeting of officers called in a special emergency

ARMY COUNCIL Upon the abolition of the office of Commander-in-Chief in England in 1904 a new body was created, called the Army Council, to which was entrusted the duty of advising the Crown in military matters, and of initiating military policy The method of appointment to the Council is by Letters Patent under the Great Seal, and the members of the first council were so appointed in February, 1904 Subsequently an Order in Council of August 10, 1904, was issued, defining the duties of the Army Council The general effect of its provisions is to apportion various departments of military organisation and among a number of officers, each responsible to the Secretary of State for War for his own department, while leaving the Secretary of State solely responsible to the Crown and to Parliament

"Councillor" defined Bom Act 3 of 1888, S 3 (*c*), Bom Act 3 of 1901, S 3 (2)

Counsel (*As a noun*) advice, purpose, design, information, or pleader, the counsellor who is associated in the management of a particular cause or who acts as the legal advisor in reference to any matter requiring legal knowledge and judgment, one who assists his client with advice and pleads for him in open Court, '*Counsel*" would also include Attorneys in all cases where attorneys are allowed by law, or by the practice of any Court, to appear as advocates" This word has no plural, and is used to denote either one or more counsel "A gentleman of Lincoln's Inn"—*Holt, C J, Butler's Case,* (1699) 13 How St Tr 1259. "A gentleman at the Bar" *Lord Mansfield, Windham* v *Chetwynd,* (1757) 1 Burr, Part IV, 427.

(*As a verb*) to give advice to, to admonish, to recommend

A counsel's position is one of the utmost difficulty. He is not to speak of that which he knows, he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do, is to argue as best he can, without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of his argument to consider whether

Count.

what he says is true or false, whether what he says is relevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform For, more than a Judge, infinitely more than a witness, he wants protection on the ground of benefit to the public The rule of law is that which is said in the course of the administration of the law is privileged, and the reason of that rule covers a counsel even more than a Judge or a witness *Brett, M R, Munster* v. *Lamb,* (1833) L R Q B 603

COUNSEL "DISTINGUISHED FROM BARRISTER AND COUNSELLOR" Counsel is not used as a title of office, like barrister, and Serjeant in England, and counsellor in the United States but as a general professional designation, and is particularly applied to a client's professional advisor or advocate in a particular matter of suit To a certain extent, however the terms are synonymous (*Burrill*)

"A BET COUNSEL AND PROCURE" meaning of. (*Per* Channell, B, *Smith,* 3 H & N 238)

Counsel or Procure "Fagin (ch 47, *Oliver Twist*) after getting Sikes to say he would murder any one who should betray him, wakes up Noah Claypole and makes him tell Sikes that the girl Nancy had betrayed him, and, as Sikes rushes out in a passion, says, 'You won't be too violent, Bill, I mean not too violent for safety.' I think that the whole conversation taken together would be evidence to go to a jury, that Fagin did 'Counsel' or 'procure' the murder committed by Sikes, which would make him an Accessory before the Fact, but if he had confined himself to merely telling Sikes what Claypole said he had heard, it would not have been enough," (*Steph* Cr 152, n, *Stroude* 419.)

Counsellor. A person retained by a client to plead his cause in a court of judicature (*Tomlin's Law Dic*)

Counsellor, Counselor, *Counselor at Law Advocate,* or *barrister, attorney* Terms distinguish *See* 11 Ame Cye 297

Counsel fees Fees paid to an advocate When there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim from his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party (38 I C 210, Foll. 7 C W.N 300, Not foll) 9 Pat 866=131 I C. 542=13 Pat L.T 200=A I R 1931 Pat. 137

Counsellor, nest, destre oye que parle enver le presidents. A maxim meaning "A counsel ought not to be heard who speaks against precedent"

Count (*As a noun*) reckoning, the act of numbering, also in pleading in an action; a declaration particularly in a real action, a statement of everything which is necessary to constitute a declaration, a part a section or division of a declaration embracing a distinct statement of a cause of action

(*As a verb*). In pleading, to declare; to recite, to state a case, to narrate the facts constituting a plaintiff's cause of action, and in a special sense to set out the claim or counts of the defendant in an action.

Countenance.

Countenance. (*As a noun*) credit, estimation

(*As a verb*) to encourage by a favouring aspect, to sanction, to favour, to approve, to aid, to support, to abet

Counter. A bench on which goods are exposed for sale

COUNTER (*in old English practice*) An advocate or professional pleader, one who counted for his client, that is related his case, recited his count, or orally pleaded is cause

(*As an adverb*) contrary to, contrary way, opposition to

Counter-affidavit An affidavit in opposition or contradictory to another affidavit

Counter-bond In old practice, a bond of indemnity

Counter-deed A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one (*Ame Cyc*)

"COUNTERFEIT" defined. Act 45 of 1860, S 328

Counterfeit Counterfeiting. *As a noun*, a counterfeit is a likeness or resemblance, intended to deceive, and to be taken for that which is original and genuine (*As a verb*) to counterfeit is to make something falsely and fraudulently in imitation or the semblance of that which is true

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised (*Penal Code*, S 28)

If a person makes coins to resemble genuine coins and his intention is merely to use them in order to foist a false case upon his enemies, the coins made by him are not counterfeit coins, and he does not *counterfeit* within the meaning of S 28, I P Code 1937 M.W.N 551=46 L W 141=171 I C 951=A I R 1937 Mad 711=(1937) 2 M L J 232

Under S 28, I P Code, "counterfeit" does not connote an exact reproduction of the original counterfeited; the difference between the original and the counterfeit is not limited to a difference existing only by reason of faulty reproduction A person who counterfeits cannot, for instance, escape conviction on the ground that he has deliberately made a small alteration in the design or omitted a letter from the superscription surrounding the design or distinguishing figure If the designs are practically identical, the mere substitution of a different word in the spurious mark to that in the original, cannot take the spurious mark out of the category of a counterfeit trade mark and bring it within the category of a false trade mark only, especially when the object of person manufacturing the spurious article bearing the counterfeit trade mark is to deceive unwary purchasers into the belief that they are purchasing the real article. 20 N.L J 183=A.I R 1937 Nag 341

Counterfeit coin "'Counterfeit Coin' means coin not genuine, but resembling or apparently intended to resemble, or pass for genuine coin, and includes genuine coin prepared or altered so as to resemble or pass for a coin of a higher denomination" (*Steph. Cr.* 310.)

Countersign.

A genuine coin, fraudulently reduced in weight by the removal of the milling and which has received a new milling in order to restore its appearance, is a counterfeit coin (*R* v *Herman*, 48 L J. M C 106).

Counterfeiter In legal parlance a counterfeiter is one who unlawfully makes base coins in limitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon mankind

"COUNTERFEITING COIN" defined. Act 45 of 1860, S 231, Expln

"COUNTERFEITING A GOVERNMENT STAMP" defined Act 45 of 1860, S 255, Expln

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of different denomination See *Penal Code*, S 255.

Countermand In practice, a new or opposite direction, an order made contrary to a former one, for the purpose of avoiding, or suspending it, the revocation of a thing before done, or directed to be done

Countermark A sign put upon goods already marked, also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

Counterpart In conveyancing, the corresponding part of an instrument, a duplicate or copy Where an instrument of conveyance, as a lease, is executed in parts, that is by having several copies or duplicates made and interchangeable that which is executed by the grantor is usually called the original and the rest are counterparts, although where all the parties execute every part this renders them all originals (*Burrill*)

Counterpart distinguished from duplicates "A counterpart is not strictly the same as a duplicate."

A *Counterpart* is properly, executed by the grantee only If the instrument is executed by both parties, it is either the only document that exists or a duplicate but to use it as a duplicate, you must show that there was an original, properly stamped".

Countersign. *As a noun*, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it, also a military watchword

As a verb to sign what has already been signed by a superior, to authenticate by an additional signature

In the case of most orders issuing from the Crown countersignature by a minister is necessary. The result of affixing such countersignature is to make the minister doing so responsible for the particular

Countervailing Equity.

act of the Crown (*See* Dicey, Law of the Constitution, 6th Ed., Ch xi, Anson, Law and Custom of the Constitution, Part II, 2nd Ed, pp. 49 *et seq*).

The word usually has reference to the signature of a subordinate in addition to that of his superior by way of authentication of the execution of the writing to which it is affixed, and it denotes the complete execution of the paper ((*New York Fifth Nat Bank* v *Forty-Second St*, *etc*, 33 Am. St Rep 712)

Countervailing Equity. A contrary and balancing equity an equity or right opposed to that which is sought to be enforced or recognized, and which ought not to be sacrificed or subordinated to the latter, because it is of equal, strength and justice and equally deserving of consideration

Counties. County Originally the term "County" designated the district or portion of a country under the immediate government of a count or earl In modern use the word denotes a distinct portion of the country organised by itself for judicial and political purposes "It may denote either the territory marked off to form a county or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers or an organized rural society invested with specific rights and duties."

Counting-House. A part of a house devoted for purposes of commerce, a part of a house which is devoted to the purposes of commercial business "A '*Counting-House*,' need not be an entire building, or be structurally severed from the rest of the building of which it forms part" (*Piercy* v *Maclean*, L R 5 C. P. 252, *Stroude*)

Country In its primary meaning, signifies place, and in a larger sense the territory or dominions occupied by a community or even waste and unpeopled sections or regions of the earth

The term country seems to be well understood by every body. However as it is taken in different senses, it may not be unuseful to give it here an exact definition It commonly signifies the state of which one is a member. In a more confined sense, this term signifies the state or even more particularly the town or place of our birth.' *Vattel Law Nat*. bk 1, c. 9, 122

"Country damaged" used in reference to a cargo of wheat, means damaged by being wet, or from some other cause before shipment (*Alexander* v *McNaer*, 28 Fed. 403)

"Country-liquor" defined Ben. Act V of 1909, S. 4, Bom Act V of 1878, S 3 (8), E B. & A Act I of 1910, S. 4, Mad Act I of 1886, S. 3 (11), U P Act IV of 1910, S. 4 (2).

Country Notes. (*In England*) the bank note of a bank of issue other than the Bank of England.

Country Spirit. In any case in which doubt arises, the Local Government may decide what, for the purposes of this Act, shall be deemed to be "*country spirit*," "*country fermented liquor*," "foreign spirit," and "foreign fermented liquor" and such decision shall be binding on the Courts. Excise Act (XII of 1896), S. 3.

Coupon note.

"County [*see* Counties] signifies the same with shire, the one coming from the French, the other from the Saxon It contains a circuit or portion of the realm, into which the whole land is divided for the better government of it, and the more easy administration of justice, so that there is no part of this kingdom that lies not within some county, and every county is governed by elected officers and the sheriff" (*Fortesque*, cap. 24 *Tomlin's Law Dic*)

County Council Elected governing body of a council for administrative purposes

County Court (*Curia Comitatus*) All administration of justice was at first in the King's hands, but afterwards when by the increase of the people the burden grew too great for him, as the kingdom was divided into counties, hundreds, etc., so the administration of justice was distributed amongst divers courts, of which the sheriff had the County-Court for government of the county, and lords of liberties had their leets and law-days, for the speedier and easier administering justice therein, etc. (*Tomlin's Law Dic*) At present it is a Court in England for civil actions, especially for recovery of small debts (*See* Eng Intr Act of 1889, S 63)

In modern Acts *"County Court"* is defined to mean the modern Co, including also the City of London Court, and the Judge and Registrar of the Court (V Co Co. Act, of 1888, S. 186)

County town. The capital of a county.

Coup Successful stroke or move.

Coup de grace A flashing stroke

Coup de main A Sudden vigorous attack.

Coup d'etat A violent or illegal change of government

Coup de theatre. A theatrical or dramatically sudden sensational act

Coupable (*Fr*) Guilty

Couple. To come together as male and female; to form sexual union

COUPLE, PAIR *Couple* is applied to persons of different sex who are bound to each other by the ties of affection or by the marriage, tie *Pair* is also applied to persons similarly situated, but refers more to the moral tie from similarity of feeling, whence the *newly-married couple* is in ordinary discourse called the *happy pair*,

"Coupled with an interest." As applied to a licence, the term means that where a party obtains a licence to do a thing, as he also acquires a right to do it *See* Easements Act.

Coupon. Detachable ticket entitling holder to something, inter and dividend certificates, in banking and business, a warrant or certificate for the payment of interest or dividends, in travelling, one of a series of tickets issued to cover separate portions of a journey.

Coupon Bonds. Instrument payable to bearer, and provided with interest warrants called "coupons" for each instalment of interest

Coupon note. A promissory note with coupons attached.

Coupons

Coupons Written contracts for the payment of a definite sum of money on a given day, and being drawn and executed in a form and mode for the very purpose that they may be separated from the bonds, promises to pay money, interest and dividend certificates.

DISTINGUISHED FROM PROMISSORY NOTE "The coupon is not an independent instrument, like a promissory note for a sum of money, but is given for interest thereafter to become due upon the bond, which interest is parcel of the bond and partakes of its nature" (*Kenosha* v *Lamson*, 9 Wall (U S), 19 L. ed 725)

FUNCTIONS OF COUPONS "Coupons are substantially, but copies from the body of the bond in respect to the interest and, as is well known or given to the holder of the bond for the purpose first of enabling him to collect the interest at the time and place mentioned without the trouble of presenting the bond every time it becomes due, and second to enable the holder to realize the interest due, or to become due, by negotiating the coupons to the bearer in business transactions on whom the duty of collecting them devolves"

Coupon Bonds Bonds to which are attached coupons for the several successive instalments of interest on maturity

Coupon Notes Promissory notes with coupons attached, the coupons being notes for interest written at the bottom of the principal note and designed to be cut off severally and issued for payment as they mature

Coupon Tickets Complete tickets fastened together, issued by carriers of passengers to be detached and given up in payment of a fare

Course Line of progress, direction, going on in space or time, progress from point to point without change of direction, any part of the progress from one place to another, which is in a straight line or in one direction, succession of one to another in office property, dignity, duty, etc As used in higher institutions of learning the word means curriculum In practice the word signifies progressive action in a suit or proceeding not yet determined

Course of business The usual custom in business or a particular line of business.

Course of employment Whatever may be incident to the employment

Course of Exchange The price given in one country for a specified sum in the currency of another country

Course of Nature (*i e*) in natural course, in ordinary sequence or order

Course of River. A line parallel with its banks

Course of trade What is customarily or ordinarily done in the management of trade or business.

Course of Voyage The regular and customary track, if such there be, which long usage has proved to be the safest and the best [This word occurs in combination with other words (as) *see* Admiralty Court; British Court; City Court, Civil Court, Colonial Court of Admiralty, Criminal Court,

Court

District Court, Foreign Court, High Court, Revenue Court, Small Cause Court, Special Court; Subordinate Court, Superior Court, Vice-Admiralty Court, Village Court, etc] 57-8 V., c 60, S 742, Act XV of 1865, S 2, Act VI of 1882, Ss. 3, 130 and 218, Act XXII of 1886, S. 3 (1); Act VIII of 1890, S. 4 (5); Act XVIII of 1891, S 2 (5), Act I of 1894, S 3 (*d*), Ben. Act IV of 1870, S. 1, Ben Act III of 1876, S 3 (6).

Court. A Court is defined in Coke on Littleton as a place wherein justice is judicially administered "In every Court, there must be at least three constituent parts—the *actor*, *reus* and *judex* the *actor*, or plaintiff, who complains of an injury done, the *reus*, or defendant, who is called upon to make satisfaction for it, and the *judex*, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy" (3 Steph. Comm, 6th Ed, pp 383, 385) *See also* 30 M 326=2 M L T 267. Court is a body in the government to which the public administration of justice is delegated, an organized body, with defined powers, meeting at certain times, and places, for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, *viz*, attorneys and counsel, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure order in its proceedings.

"The word 'Court' has not been defined in any Act of the Legislature, but it may be presumed that an officer, to be a 'Court' must be competent to make a judicial decision" 73 I C 354=25 Bom L R 398=47 Bom 699=A I R 1923 Bom. 290 *See also* 38 Cal 230=8 I C 107=4 Bur L T 246=12 I C. 289

Court is "a tribunal empowered to hear and determine issues between parties Upon pleadings either oral or written, and upon evidence to be adduced under well-defined and established rules, according to settled principles of law"

"The word *court* in the statutes is used in its generic sense and *includes both judge and jury* in a case where a jury is present 4 C. 483 (F B.)=3 C L R 270

"COURT", means, the Court, *Judge*, *Arbitrator*, Persons or Person, before whom a legal proceeding is held or taken" But *see* S 3, Ind Evidence Act (I of 1872) which excludes 'arbitrators' from the definition of 'Court'

"Court" in Prisons Act includes a *Coroner* and any officer lawfully exercising Civil, Criminal or Revenue jurisdiction (Act II of 1900, S 2.)

Any person empowered to deal with a particular matter and authorized to receive evidence bearing on that matter in order to enable him to arrive at a determination is a 'Court.' 23 M L J 393=(1912) M W N. 1012=13 Cr L J 723=16 I C. 755 (762) (per *Sundara Aiyar*, *J*)

"Court" includes a Income-tax Collector when engaged in hearing objections to an assessment under Income tax Act 3 I C 886 (890)=3 S L R. 66.

The word "Court" in C P. Code, O 22, R 3 (2) includes an appellate Court. 8 Cal. 440. So also the

Court.

word in O 23, R. 1 (2), C P Code. 8 All 82; 11 I. C. 22.

The word "Court" used in S 14, Limitation Act, does not include a foreign Court 35 Bom. 139=12 Bom L R 977.

The term "Court" as used in S. 10, Oaths Act, does not include a commissioner authorized to take evidence 89 P R 1909

The Collector holding an enquiry and making an award under S. 11 of the Land Acquisition Act, is not a "Court" within the meaning of S 115, C P. Code. 12 C L.J. 505.

A District Registrar is not a Court within the meaning of S 115, C P Code (1908) 30 M 326=17 M L.J 313=2 M L T. 267 As to other meanings, *see* 34 Cal 551=11 C.W.N 568, 5 C L J 176=5 Cr.L J. 186

"Every Court is the guardian of its own records, and master of its own practice" Tindal, C.J, *Scales* v. *Cheese*, (1844) 12 M & W 687

Court or Judge "It is well recognised that this phrase always includes a *judge at chambers*, unless there is some express enactment limiting the meaning of the phrase" [per Brett, *M R*, *Dallow* v *Garrold*, (1884) 54 L J Q.B 78] "The case of a single Judge sitting in Court is included under the term 'Court', and 'judge' can only mean a Judge sitting in chambers" [per *Huddleston, B*, *Salm Kyburg* v *Posnanski*, (1884) 13 Q B D 222] "When the rules say 'the Court or a judge,' it is understood that 'the Court' means a judge or Judges in open Court and 'a judge' means a judge sitting in chambers" [per *Kay, L J*, In re *B*, (1892) 1 Ch 463] The effect of the phrase "Court or a judge" is that, wherever it is used, a judge can dispose of the application either in Court or in chambers, whilst the omission of the words "or a judge" expressly confines the jurisdiction to the Court [per *Brett, J A*, *Baker* v *Oakes*, (1877) 2 Q B 173; and see *Smeeton* v *Collier*, (1847) 1 Ex 457, 4 *Ency of the Laws of England* 163]

COURT, COURT OF JUSTICE The word *"Court"* in the Cr P. Code has a wider meaning than the words *"court of justice"* in the Penal Code 37 Bom 365=15 Bom L R 45=18 I C 408=14 Cr L.J. 72.

COURTS AND CROWN OFFICERS It is the duty of the Crown and of every branch of the Executive to abide by and obey the law If there is any difficulty in ascertaining it the Courts are open to the Crown to sue, and it is the duty of the Executive in cases of doubt to ascertain the law, in order to obey it, not to disregard it Officers of the Crown ought to throw no difficulty in the way of any proceeding for the purpose of bringing matters before a Court of Justice where any real point of difficulty that requires judicial decision has occurred (1915) 20 C W N 457 (461-2)=35 I C 378=84 L.J.P.C. 152.

"COURT" AND "MAGISTRATE". The Cr P. Code (1898) uses the terms "Court" and "Magistrate" generally, if not always, as convertible terms 39 Cal 953=23 M L J 32=(1912) M W.N 760=12 M L T. 171=10 A L J. 193=16 C L.J 231=16 C.W.N. 865 =14 Bom L R 717=16 I C. 501=13 Cr. L J 693=39 I A 163 (P.C) on appeal from 36 Cal. 433.

Court-Baron. An ancient inferior court of civil jurisdiction in England attached to a Manor, being an inseperable incident thereto, and holden by the Steward within the Manor.

Courts of Assize.

"Court before which such objection is raised" The expression "Court before which such objection is raised" in S 167, Evidence Act I of 1872, includes the reviewing on appellate Court. 2 Bom. 61 (65)

Court established by Royal Charter. The High Courts of India, though Courts established by Royal Charter in the broad and general sense of the term, are not, when exercising their appellate jurisdiction from the moffusil Courts, such Courts within the meaning of the Limitation Act, 1859 (17 W.R C R. 292.)

"Court for relief of insolvent debtors" defined 11-12 Vic, 21, S. 92

Court for the relief of Insolvent debtors is a Court exercising Insolvency jurisdiction

Court Hand. A peculiar kind of handwriting characterised by great strength, compactness and uniformity on which the records of English Courts were written down to the reign of Geo II

"Court having admiralty jurisdiction" defined Act 16 of 1891, S 3.

Court immediately below A single Judge of a High Court, sitting alone, is not a "Court immediately below" the Court of a Division Bench of two Judges of the High Court hearing an appeal, under Cl. 15 of the Letters Patent, from the judgment of the single Judge In such a case, the "Court immediately below" within the meaning of S. 110, C P. Code, is the Court of the first appeal 33 I C. 745.

"Court of Admiralty" defined (*See also* Admiralty Court) 33-4 V, c 90, S. 30

Court of Appeals An appellate tribunal which may often be the Court of last resort.

The term "Court of Appeal" in S 14, Act IX of 1908 (Limitation), should be taken in the broad sense of a Court which has the power to bring under review the decision of an inferior Court, whatever may be the extent of the jurisdiction which the superior Court may possess in reviewing the decision of the inferior Court. (17 I C 593)

THE PHRASE "COURT OF APPEAL, CONFIRMATION, REFERENCE OR REVISION" in S 520, Cr P Code, designates the Courts which can "modify, alter or annul" an order of a Subordinate Court, and does not specify the nature of the application which has to be made to them *See also* Eng Int. Act, 1889, S. 13 (2).

Court of Arbitration. A Court of arbitrators created, voluntarily by merchants and traders, or under the provisions of law, to decide in an inexpensive and speedy manner disputes arising among those people.

Courts of Assize and nisi prius Courts in England, composed of two or more commissioners, called judges of Assize, who were sent by the Queen's special commission, on circuits all round the kingdom, to try by a jury, of the respective counties, the truth of such matters of fact as were then under dispute in the Courts of Westminster Hall Eng Int Act (1889), S. 13 (4).

Court of Audience

Court of Audience. Ecclesiastical Courts in which the primates exercised in person a considerable part of their jurisdiction.

Court of Bankruptcy or Insolvency. Court exercising jurisdiction in Insolvency matters.

Courts of Cinque Ports (*In old English law*) courts of limited jurisdiction formerly held before the Mayor and *jurats* of the Cinque Ports

"COURTS OF CIVIL AND CRIMINAL JUDICATURE" 5 I.A. 178=4 C 172 (176)=3 C L R 197=3 Sar. 834=3 Suth 556 (P C.).

"Courts of common law jurisdiction" or common Law Courts were such as exercised their powers according to the course of the common law Courts which administer justice according to the principles and forms of the common law." (*Anderson*)

Court of Common Pleas One of the three superior Courts of common law at Westminster

Court of Competent Jurisdiction It is the competency of the original court which decided the former suit that must be looked to, and not that of the appellate Court in which the suit was ultimately decided on appeal for purposes of S. 11, C P Code (34 C. 353=12 C W N 359=7 C L.J 470, 10 Cal 697, 29 M 195 *See also* Cr P Code, S 11 and Notes in M L J Edition)

The term "*Court of competent jurisdiction*" is wide enough to include a competent foreign Court In adopting this form of expression, the Legislature did not intend to restrict the application of the section in any way 13 Bom 24

Court of Convocation. An ecclesiastical synod, in the nature of an ecclesiastical Parliament

Courts of Equity and Courts of Law Courts of Equity were those which had jurisdiction in cases where the parties had only equitable rights Courts of Law were Courts having jurisdiction in respect of actions and suits at law as distinguished from Courts of Equity.

Court of Error An expression applied especially to the Appellate Court or the House of Lords, as taking cognizance of errors brought before it

Court of Exchequer A superior Court of record in England administering justice on question of Law and Revenue.

Courts of general and Courts of limited or special jurisdiction Courts of general jurisdiction are courts which can take cognizance of all causes of a particular nature Courts of limited or special jurisdictions are those which can take cognizance of a few specified matters only

The words "*Court of highest civil jurisdiction in any province*" in Act II of 1863, had reference to the general jurisdiction of the Courts, and not to the finality of their decisions in particular cases A particular Court is not the Court of highest civil jurisdiction in the province, within the meaning of S. 1 of that Act, merely because an appeal from its decision in the particular case did not lie to a higher Court in the province. Otherwise a Court of Small Causes would be equally a Court of highest civil jurisdiction in a case in which its decision is final 4 I.A. 178=3 C 522 (527-8)=3 Sar 701=Bald. 218=R & J's No 45=3 Suth. 427 (P.C.).

Court of Reference.

Court of Inquiry. A Court to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, which is provided for both in the army and navy.

"Court of Justice" defined. Act 45 of 1860, S 20.

The words "*Court of Justice*" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act, judicially as a body, when such Judge or body of Judges is acting judicially (Penal Code, S. 20. *See also* 89 P.R. 1906=90 P L R 1907, 10 N.L R. 161)

"Court of law" defined, 44-5 V. c. 58, S 190 (36).

"Court of Parliament" is a Court, although many of its functions are not judicial There are other Courts which are not Courts of Justice, but which are rather Courts of Investigation, *e g*, a Coroner's Court [Per *Fry, L J, Royal Aquarium* v. *Parkinson*, (1892), 1 Q B. 431.

Court of Original and Court of Appellate Jurisdiction Courts of original jurisdiction are those in which an action has its first source or existence, and which do not take jurisdiction of it by appeal Courts of appellate jurisdiction are those which review causes removed by appeal or error from another Court

Court of Oyer and Terminer. A Court of criminal jurisdiction for the trial of cases of treason and felony *See* Eng. Int Act, 1889, S 13.

Court of Probate. A Court on which the testamentary jurisdiction is conferred.

Court of Record. A Court of record is "a Court where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority, a Court that is bound to keep a record of its proceedings, and that may fine or imprison, a judicial body organized by law, to decide upon all actions and disputes between persons, in their private capacity, whether such matters relate to the persons of the parties, or to their personal or real property "Recordum is a memorial or remembrance in rolls of parchment, of the proceedings and acts of a court of justice which hath power to hold plea according to the course of the common law, of real or mixt actions or of personal actions whereof the damage amounts to 40 shillings or above, which we call courts of record and are created by Parliament, Letters Patent or prescription. But legally records are restricted to the rolls of such only as are courts of record, and not the rolls of inferior courts. (*Coke. Litt* 260 a.)

All *courts of record* are the King's courts, in right of his Crown and Royal dignity. In *Groenvelt* v *Burwell*, Salk. 200, Holt, C J., said. "Wherever a power is given to examine, hear and punish, it is a judicial power, and they in whom it is reposed act as judges. and wherever there is a jurisdiction erected with power to fine and imprison, that is a court of record, and what is there done is matter of record."

"A court of record necessarily requires some duly authorized person to record the proceedings. Ex." parte *Cregg*, 6 Fed. Cas. No. 3, 380 2 Curt 98.

Court of Reference. *See* C. P. Code, 1908, S. 113, O. 46.

Court of Review.

Court of Review. A superior Court with jurisdiction to correct errors of trial Court, Court of appeal. *See* C P. Code, 1908, S. 114, O. 47.

Court of Revision. *See* C. P. Code, 1908, S. 115

Court of Small Causes. In this Act, unless there is something repugnant in the subject or context, "*Court of Small Causes*" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court. Act IX of 1887 (Provincial Small Cause Courts), S 4. *See also* 31 Cal. 1057; 23 B. 382; 5 All 274, 13 All 324.

Court of Star Chamber. A Court of very ancient origin, which once existed in England, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of the jury.

"**Court of Summary Jurisdiction**" *See* Act XVIII of 1921 (Maintenance Orders Enforcement), S. 2.

"**Court of the Resident**" defined. Act 2 of 1864, S. 1.

Courts of Westminster Hall The superior courts in England, both of law and equity, which for centuries were fixed at Westminster, an ancient palace of the monarchs of England

Court Commissioners A Court Commissioner is an officer possessing certain minor judicial or *quasi* judicial powers. He is a subordinate officer of the Court of which he is Commissioner.

"**Court Martial**" defined. Act 5 of 1869, Pt. I, cl. (*e*) (19) (Am. Act 12 of 1894, S. 4.)

COURT-MARTIAL A Court for trying and punishing the military offences of Officers and Soldiers. (*Tomlin's Law Dic*) A tribunal for the administration of the military and naval law by which the army and navy are governed.

Courts-martial are Courts constituted under statutory authority with jurisdiction to try offences committed by persons subject to military law; and these offences may be either crimes under the ordinary law, or purely military offences against the law established for the government and discipline of the army and navy.

"**Court subordinate to that Court**" *See* 17 M. 377=3 M.L.J. 97.

Court subordinate to the High Court. A Judge of a High Court, sitting alone, is not a Court subordinate to the High Court within the meaning of S. 115, C. P. Code. 33 I.C. 745.

"**Court which passed a decee**" defined. Act 14 of 1882, S. 649. C. P. Code, O. 21, R. 16.

A Court did not cease to be "the Court which passed the decree," so as to be deprived of jurisdiction to entertain an application for execution, merely by reason of the head quarters having been moved to another place, or of the local limits of the jurisdiction of such Court having been altered. 6 C. 513=7 C.L.R. 521. *See also* 35 Cal. 974=12 C.W.N. 859.

Courts, jurisdiction of. The power conferred by law to determine causes concerning certain subjects, and between parties legally before the Court, by process and notice, actual or constructive · a power conferred by law upon a judge or magistrate to take cognizance of and determine causes according to law, and to carry his sentence into execution; the power and authority to expound and interpret the law, the right of administering justice through the laws, authority to judge or declare the law between parties brought into Court, the power to hear and determine the subject-matter in controversy between parties to the suit, to adjudicate or exercise any judicial power over them

Cousins.

LOCAL COURTS, those which have jurisdiction of causes occurring in certain places only, usually the limits of a town or borough, or in England, of a barony.

SUPERIOR AND INFERIOR COURTS. A superior Court is a Court with controlling authority over some other Court or courts, and with certain original jurisdiction of its own. An inferior Court is one which is subordinate to other Court or Courts or is one of a very limited jurisdiction.

ACT OF COURT. A Judge should always be vigilant not to allow the act of the Court itself to do wrong to the suitor. (1871) 14 M.I A 40=7 B.L R. 186=2 Suth. 434=2 Sar 656=R & J.'s No. 10 (Oudh).

The Court must at any rate not fall below the standard of honesty which it exacts from those on whom it has to pass judgment. (1908) 36 I.A. 32 (37)=36 C. 323 (334)=5 M L T. 126=9 C L.J. 165= 13 C W N. 249=11 Bom.L.R 227=6 A.L.J. 34=5 L. B.R. 25=1 I C 122=19 M.L.J. 115 (P.C).

ARM OF COURT The arm of the Court is long enough to reach the offender, whatever his position may be (1898) 26 I A. 16 (29)=22 M. 270 (283)=3 C W N. 161=7 Sar. 459.

Court Yard. A Court or an enclosure about a house or adjacent to it, space enclosed by buildings.

Courtier. Frequenter of the Royal Court.

Courtship. Courting, especially of an intended wife.

"**Cousin**" defined. (*See also* Cousin-german; First Cousin; First Cousin once removed, Second Cousin) Act 10 of 1865, S. 86, Act 39 of 1925, S. 99(*d*).

COUSIN. "Cousin," without a controlling context, means First Cousin (*Stoddart* v. *Nelson*, 25 L J. Ch. 116) It imports consanguinity. Yet, in a secondary sense "Cousin" is often used to designate the husband or wife of a cousin. (Re *Taylor*, *Cloak* v. *Hammond*, 56 L.J. Ch. 173.)

In *Caldecott* v. *Harrison*, (9 L J. Ch. 331), V.C., said: "I am quite willing to admit that the word 'Cousins' is sufficiently extensive to comprehend cousins of every description, whether they are first cousins of any degree, or second cousins, or third cousins. That is the general meaning of the word 'Cousin'."

According to the context, "Cousins" may include those illegitimate as well as legitimate; (*Stroude*, 429.)

Cousins. The words "cousins," or "first cousins" or "cousins-german," apply only to children of brothers or of sisters of the father or mother of

Cousins

the person whose "cousins," or "first cousins," or "cousins-german" are spoken of · Act XXXIX of 1925 (Succession), S 99 (*d*).

Cousins, first. The words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of, Act XXXIX of 1925 (Succession), S 99 (*c*)

Cousins, second. The words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of, Act XXXIX of 1925 (Succession), S. 99 (*f*)

'Cousin-german" defined Act 10 of 1865, S. 86, Act 39 of 1925, S 99 (*Saunderson* v *Bailey*, 8 L J Ch 18)

Covenant A "Covenant" is an Agreement by Deed between two or more persons to do one or more thing or things, or to do, or give, or to prevent, or refrain from something, and it is either, (1) a Covenant in Law implied from the terms employed, or, (2) a Covenant in Fact, *i e.*, that which is expressly agreed between the parties (*Termes de la Ley*)

Covenanted Bound or secured by a covenant.

Covenant against incumbrances A covenant that property conveyed is not incumbered

Covenant alternative or disjunctive. A covenant for the performance of one or more of several things at the election of the covenantor or the covenantee.

Covenant dependent A covenant which depends on some prior act or condition

Covenant in deed or in fact A covenant expressed in words, or inserted in a deed in specific terms.

Covenant in gross A covenant that does not run with the land

Covenant in law A covenant implied by law from words in a deed which do not express it

Covenant in title Covenant against incumbrances, for further assurance, of quiet enjoyment or, of warranty

Covenant of non-claim A covenant that neither the covenantor nor any other person shall claim title to the property conveyed

Covenant of warranty A covenant of assurance that the grantee shall enjoy the estate conveyed undisturbed by the assertion of a paramount title.

Covenant running with land. A covenant which goes with the land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it.

Covenant to stand seized to uses A species of conveyance under the statute of uses by which a man seized of lands covenants, in consideration of blood or marriage that he will stand seized to the use of his wife, kinsman, for life, in tail or in fee.

Covenantee. The party to whom a covenant is made

Covenantor. The party who makes a covenant.

Cowardice.

Cover An envelope; a lid; anything which veils or conceals; a screen disguise; cloak, that which is laid over something else; a covering, also according to one of its usually accepted meanings, a deposit made with a broker to secure him from being out of pocket in the event of the stocks falling against his client and the client not paying the difference. As a verb to counterbalance, compensate for loss

COVER "Cover" (in Stock Exchange dealings) "is a deposit made with a broker to secure him from being out of pocket in the event of the stocks falling against his client and the client not paying the difference" (per *Smith, L J.*, Re *Crommire*, 67 L J. Q B. 623).

"Covering" defined, Act IV of 1889, S. 5 (3)

In the Merchandise Marks Act, "'Covering,' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper." [S 5, sub-s. (2)]

Covert Not open, vield, protected, sheltered, implied, inferred, under the disability of marriage, married "By marriage the husband and wife are one person in law, that is the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover she performs everything, and is therefore called in our law, a *feme covert*" (1 *Blackstone*, Com 442)

Covert Baron A married woman

Covert Baron or Covert de Baron The status of a woman under the protection and influence of her husband, her baron, or lord.

Coverture. In general, a covering, state of being covered or protected or according to Lord Coke, a state of subjection or dependence. In domestic affairs, a personal disability, springing from the conjugal relation, the condition or state of a woman while under the protection of her husband " 'Coverture' is when a man and a woman are married together, now whatsoever is done concerning the wife in the time of the continuance of this marriage between them is said to be done 'during the Coverture,' and the wife is called, a *Woman Covert*" (*Termes de la Ley*).

Covin. A secret contrivance between two to defraud or cheat a third, a contrivance between two or more persons to defraud and prejudice another of his rights

Cow. The female of the bovine genus of animals —female ox; chief source of milk. The term may include a "heifer" and by statutes it is sometimes in terms so provided that the word shall include "heifer." (*Ame. Cyc. Oxford Dic*). (*As a verb*). To terrorize into submissiveness.

Cowardice. Want of courage to face danger, conduct of one who has not the courage of his convictions, dread of exposure to harm or pain of any kind, fear of consequences; dishonourable fear; misbehaviour through fear in relation to some duty to be performed before an enemy.

By both the army and the navy regulations of the United States, *cowardice* is an offence punishable in officers or privates with death or such other

Cow-house.

punishment as may be inflicted by court matial. (*Bouvier.*)

Cow-house House, building, shed, yard or other enclosed place or premises in which bulls, cows, heifers, oxen, or calves are kept or intended to be kept

Cow-keeper One whose business is to keep cows, a dairyman, a herdsman.

"COW-KEEPER" does not include a farmer who sells surplus milk Where a farmer kept cows for the purpose of consuming the produce of the land, and sold the surplus not consumed on the premises, it was held that he was not a cow-keeper (*Bell* v. *Young*, 15 C B. 524, 531).

Cowl Promise, agreement, contract, engagement An engagement or lease of land to a Zemindar or large farmer Agreement under which Government introduced cultivators into waste lands. (*Sun. Mal Law*) "Cowle" ordinarily denoted a lease and not a mortgage) 156 I C 873=41 L.W 271=1935 M.W N 515=A.I R. 1935 Mad 320=69 M.L J. 115) *Cowle.* May be used as a lease but it may be used for other transactions also. 30 L.W. 1010=57 M.L.J. 800

Cowl-namah An agreement in writing A proclamation to ryots, announcing the rules and principles by which the demands of Government, on the lands in their occupation are to be regulated.

Cowris Cowris are instruments of gaming 5 Cr. R 256

Craft. Some mechanic art in which the person practising may acquire and exhibit dexterity and skill, the occupation or employment itself, manual art, trade, a guild; also cunning art, skill or dexterity applied to bad purposes, subtlety, vessel of any kind for carriage by water or air (as) small crafts, air craft, coasting craft

Craftsman. The professor of any craft or art.

Craftsmanship. Skill in any handicraft or art

Crafty. Dexterous, skilful, cunning.

Cramp. A painful affection of the muscles, and frequently associated with an acute disease of the stomach or bowels, a sudden involuntary and highly painful contraction of a muscle or muscles

Cranage. A liberty to use a crane for drawing up of goods and wares of burden from ships and vessels, at any creek of the sea or wharf, unto the land, and to make profit of it. it also signifies the money paid and taken for the same. (Stat. 22 Car. 2 c. 11 *Tomlins Law Dic.*)

Crank. Some strange action caused by a twist of judgment, an eccentric notion, a caprice; a whim, a crotchet; a vagary. Violent of temper; subject to sudden cranks.

Craps. A game of chance which is played with dice.

Crash. Sudden downfall, collapse (as) crash of a Government; crash of a commercial firm, Suffer fatal fall to the ground (as) crash of an aeroplane.

Crassa ignorantia. (*Lat.*) Gross ignorance.

Crassa Negligentia. (*Lat.*) Gross negligence.

Credit.

"Crave Leave to Refer" (*to document*) This is a phrase which is still frequently used in pleadings Under the rules of Court, and in modern practice, any party to an action is now entitled to inspect and copy any document to which his opponent refers in his pleading. Hence it is wholly unnecessary for him to "crave leave" to refer to that which he is entitled as of right to inspect at once (*Ency. of the Laws of England*).

"Craves leave to refer to the deeds" as used in a pleading See *Barnard* v *Wieland*, 30 Wkly. Rep 947. A Pleading which "craves leave to refer" to a document when produced does not admit the document. (*Ibid*).

Crazy Insane, madly eager, in its popular sense the term imports a broken shattered or deranged mind rather than one enfeebled by age or disease

"Create" To bring into existence, to give rise to (as) to create a peer or baronet An Instrument may "*create*" *a Trust* without conveying the corpus of the trust to the trustee (*R* v. *Fletcher*, *L & C* 193, 199, 205)

Compared with "renew" and "extend" Where the constitution provided that no corporation shall be hereafter *created, renewed or extended*, the Court said, "to *create* a charter is to make one which never existed before To *renew* a charter is to give a new existence to one which has been forfeited, or which has lost its validity by lapse of time. To *extend* a charter is to give one which now exists greater or longer time to operate in than was originally intended I do not say that these words have no other meaning in the English language. They are not free from ambiguity Their signification like that of other words, must depend much upon the context But the definition here given are consistent with the sense in which they are if not always, at least very often used, both in popular and legal phraseology." (11 *Ame Cyc* 1188)

Credibility Worthiness of belief

Credible. Worthy of credit

"The epithet "*credible*" has a clear precise meaning. It is not a term of art appropriated only to legal notions, but has a signification universally received." (Per *Lord Mansfield*, in *Wyndham* v *Chetwynd*, 1 Bur. 414, 417).

"Credible information," meaning of. *See* 1905 A.W.N. 257=28 A. 210.

CREDIBLE INFORMATION. Need not be sworn information. 116 I.C. 455 (1)=1929 L. 720.

"CREDIBLE INFORMATION" AND "REASONABLE SUSPICION" distinguished. *See* 28 S.L.R. 205=1934 Sind 197.

Credible person. In *Thomas* v. *State*, 14 Tax. App. 70, 72, the Court said "We construe the words *credible person* as used in a statue to mean a competent as well as a credible witness

Credit. In a commercial sense, a good reputation and the confidence of the business community, in the borrower. confidence or trust reposed in one's ability to say what he may promise, the ability to borrow the capacity of being trusted, the confidence reposed in the ability and intention of a purchaser or borrower to make payment at some future time (*In Book-*

Credit Insurance.

Keeping) the side of an account in which payments are entered is called the credit side as distinguished from the debit side. As a verb to enter upon the credit side of an account, give credit for.

CREDIT, FAVOUR, INFLUENCE. These terms mark the state we stand in with regard to others as flowing out of their sentiments towards ourselves, *credit* arises out of esteem, *favour* out of goodwill or affection, *influence* out of either credit or favour, or external circumstances, *credit* depends altogether on personal merit, real or supposed, *favour* may depend on the caprice of him who bestows it. Men of talents are ambitious to gain *credit* with their sovereigns by the superiority of their counsel weak men or men of ordinary powers are contented with the *favours* of princes, and enjoying their patronage and protection The opposite of debits, that which is due to any person as contradistinguished from what he owes; a term which is nearly synonymous with payments

Credit insurance A contract of insurance which provides for an indemnity to merchants or traders against the insolvency of customers to whom they extend credit, a contract of insurance or indemnity with traders and others to protect them from loss in their business by reason of the failure or insolvency of the customers

Credit, Letter of An open or sealed letter from a bank, authorising payment to a person named of a specified sum, for which the sender assumes responsibility.

Credit man An employee of a commercial house whose special business it is to enquire in reference to the merit of all persons applying to purchase on credit, and who determines to whom credit shall be given and the amount

Credit note. A note showing that an allowance is to be made for shortage or defects in goods supplied and returned to sender, or for overcharge in price, etc.

Credit of government. Confidence founded on a belief of its ability to comply with its engagements, and a confidence in its honor, that it will do that voluntarily which it cannot be compelled to do.

Credit of individual or firm The trust reposed in him or the firm by the dealers that the individual or firm is of ability to meet the engagements.

Creditable witnesses. Witnesses competent to testify and whose evidence is worthy of credit

"Creditor" defined Act 9 of 1872, S. 126; Act 3 of 1909, S. 2, Act 5 of 1920, S 2

CREDITOR. Person or body to whom one owes money, one who has a right to require of another the fulfilment of a contract or obligation; one to whom another owes the performance of an obligation; one in whose favour an obligation exists, by reason of which he is or may become entitled to the payment of money. 'Creditor' signifies him that trusts another with any debt, be it money, wares or other things." (*Termes de la Ley*)

CREDITOR is a person to whom money is owed, whether he can claim immediate payment of the debt or whether his right to demand payment is deferred by agreement to a future time. (4 I. C. 591=11 Bom.L.R. 1302.)

Creek.

The word includes a surety before he has been called upon to pay as a surety. (21 I.C. 5)

In Bankruptcy, "*Creditor*," generally, means a person entitled to prove in the bankruptcy. (*Grace* v. *Bishop*, 25 L.J Ex. 58, *see also* 21 I.C. 5, 7 N. L R 44) No man can be regarded as a creditor under the Insolvent Debtors Act, 11 and 12 Vic., C. 21, until his name is admitted to the schedule or until he establishes it there. (29 C. 503.)

"CREDITOR" includes a decree-holder, "debt" includes a judgment-debt and "debtor" includes a judgment-debtor. (Act V of 1920; Act III of 1909, S 2.)

The term "creditors" in S. 53 of the T. P. Act, 1882, includes not only the creditors of the transferor at the time or prior to the time of the assignment complained of, but also the subsequent creditors of the transferor. 5 Bom.L R. 255, *see also* 33 Mad. 205=19 M L J 747, 27 Bom 146=5 Bom L.R. 19. Whether word includes an assignee of a creditor, *see* 11 M L.T. 144=13 I C. 659.

Creditor qui permittit rem venire pignus dimittit A maxim meaning "The creditor who allows property to be sold gives up the pledge" (11 *Cyc.* 1197)

"Creditors' bill" Bill by which a creditor seeks to satisfy his debt out of some equitable estate of the debtor which is not liable to levy and sale under execution at law, or out of some property which has been put beyond the reach of the ordinary process. (12 *Ame Cyc* 5). The words "creditors' bills" are commonly used in the English Chancery to describe bills brought by the creditors of the estates of deceased persons for the administration of the estate, or by creditors and claimants of a trust fund for the distribution of the fund So also the term has been often applied to proceedings by creditors of insolvent corporations. Although thus loosely applied to the above mentioned proceedings, a creditor's bill in the strict-sense of the term, may be defined as a bill brought by a creditor who has obtained a judgment at law, and has in vain attempted at law to obtain satisfaction and who sues for the purpose of reaching property which cannot be taken on execution at law.

CREDITORS WHOM THE COURT THINKS ENTITLED TO BE HEARD includes outside creditors in the case of a scheme of an arrangement of the affairs of a liquidating railway company. [Re *East and West India Dock Co.* (1890), 44 Ch D. 38.]

Creed. A system of religious belief; articles of faith, what a man believes, the common belief of a sect.

"Creek" (inlet on sea coast or arm of a river) means any channel of a river other than the main channel through which the water of the river would, unless obstructed by deposit of silt, naturally flow at some period of the year [Pun. Act III of 1905, S. 3, Cl. (6)].

"*A Creek is of two kinds*, viz., Creeks of the Sea, and Creeks of Ports. The former sort are such little inlets of the Sea, whether within the precinct or extent of a Port or without, which are narrow little passages, and have Shore of either side of

Cremation.

them. Creeks of Ports are such that, though possibly for their extent and situation they might be Ports, yet, they are either members of, or dependent upon, other Ports" (*Hale, de Portibus Maris, ch 2*).

Cremation. Burning as a method of disposing corpses.

Cremation in English law. "This method of disposing of dead bodies has always been much used in the East, but in Europe it seems to be opposed to the instincts of most people, and has never been generally adopted There is, however, no doubt that, apart from sentimental considerations, it is, from a purely sanitary point of view, preferable to interment. Sanitary reformers have for some time advocated its adoption in the western countries but the general opinion was that it was illegal, and consequently cremations seldom or never took place. A case, however, came before Mr Justice Stephen, who decided that, if conducted in such a way as not to offend public feeling or prevent proper investigation being made as to the cause of death, cremation is not illegal [*R* v *Price*, (1883) 12 Q B D 247] Since that decision crematories have been started, and those who desire to set an example of disposing of the dead in such a manner as to prevent the danger of their poisoning the living can cremate them. In 1902 an Act was passed to legalise and regulate cremations" (2 Ed VII, c 8, *Ency of the Laws of England*).

Crew The "crew" of a ship generally means the whole ship's company except the master, *i e*, the mate who is next in authority after the master, the carpenter, carpenter's mate, boatswain, sailmaker, steward, cook, and the ordinary seamen and boys, and, in the case of a steamship, the engineers and firemen (*Maude and Pollock Shipping, I* 162, *Kay, Shipping* 465, *Abbot, Shipping, Maclachlan, Shipping* "The Crew" does not always mean the whole crew (*Frazer* v. *Hatton*, 2 C B N. S. 512)

Crew list A list of the crew of a vessel, one of a ship's papers.

Crier. An officer of Court, whose duty is to make proclamation of opening and adjournment, to call parties, jurors and witnesses, to assist in the administration of oath, to impose silence, etc.

Crime. A crime is an act or omission which is prohibited by law as injurious to the public and punished by the state. "Disobedience to a command or prohibition made with reference to a matter affecting public peace, order, or good Government to which a sanction is attached, by way of punishment or pecuniary penalty, in the interest of the State by way of punishment or as a whole, and not by way of compensation for the injury which the act or omission may have caused to an individual."

"CRIME" is an offence against the Crown punishable by fine or imprisonment. Thus, a power to a Colonial Governor to pardon any offenders "Convicted of any Crime," enables him to pardon Contempt of Court and to remit its punishment [Re *Moseley*, (1893) A.C. 138].

CRIME. Certain kinds of wrongs are considered as of a public character because they possess elements of evil which affect the public as a whole and not merely the person whose rights of property or person

Crime.

have been invaded. Such a wrong is called a crime. It can best be defined as any act of omission which is forbidden by law, to which a punishment is annexed, and which the state prosecutes in its own name.

CLASSIFICATION OF CRIMES IN ENGLISH LAW—TREASON—FELONY AND MISDEMEANOR Apart from legislation, "*crime*" *and indictable offence* are in England synonymous The common law and the legislature draw a distinction between Treason, Felony, and Misdemeanor, three terms which, roughly speaking, cover what in continental codes are distinguished as "crimes" and "delicts" Treason and felony have always stood apart from misdemeanor, because of the difference in the procedure before and during trial and in the consequences of conviction When legislation began to add to the common law category of offences, every new offence, unless otherwise qualified by statute, was held to be a misdemeanor which was happily described by Dr Johnson to Boswell as "a kind of indefinite crime, not capital, but punishable at the discretion of the Court" (*Boswell's Life, Hill's edition*, Vol III p. 214, *Ency. of the Laws of England*, Vol. IV, 231)

CRIME, MISDEMEANOR The former of these terms is to the latter as the genus to the species. a misdemeanor is in the technical sense a minor crime House breaking is under all circumstances a crime, but shoplifting or pilfering amounts only to a misdemeanor Corporal punishments are most commonly annexed to crimes, pecuniary punishments frequently to misdemeanors. "A crime is an act committed, or omitted in violation of a public law either forbidding or commanding it. In common usage, the word 'Crimes' is made to denote such offences are of a deeper and more atrocious character while smaller faults and omissions of less consequence are comprised under the gentler names of 'Misdemeanors' only." (4 Bl. Com. 5)

CRIME, VICE, SIN A *crime* is a social offence, a *vice* is a personal offence every action which does injury to others, either individually or collectively, is a *crime*, that which does injury to ourselves is a *vice*. *Crime* consists in a violation of the human laws, *vice* in a violation of the moral laws, *sin* in a violation of the Divine law, *sin*, therefore, comprehends both crime and vice, but there are many *sins* which are not *crimes* nor *vices*, *crimes* are tried before a human court, and punished agreeably to the sentence of the judge, *vices* and *sins* are brought before the tribunal of the conscience, the former are punished in this world to come, by the sentence of Almighty treason is one of the most atrocious *crimes*, drunkenness one of the most dreadful *vices*, religious hyprocrisy one of the most heinous *sins*.

CRIME, TORT. A tort or private wrong is "an infringement or privation of the civil rights which belong to individuals, considered merely as individuals" while crime or public wrong is a breach and violation of the public rights and duties due to the whole community, considered as a community, in its social aggregate capacity "

An offence however which is punishable as a crime may also cause special injury to individuals, and give rise to a civil action if they can show that the injury suffered by them is distinct from that suffered by the general public. The real distinction between a tort and a crime lies in the method in which the remedy for the wrong is pursued

Crimen.

CRIMES, MALA IN SE and MALA PROHIBITA. Crimes have been divided according to their nature into crime mala in se and crimes mala prohibita. The former class comprises those acts which are immoral or wrong in themselves, such as murder, rape, arson, burglary, and larceny, breach of the peace, forgery and the like, while the latter class comprises those acts to which in the absence of statutes, no moral turpitude attaches, and which are crimes only because they have been prohibited by statute

MERGER OF CRIMES OR OFFENCES The merger is one offence in another occurs when the same criminal acts constitutes both a felony and a misdemeanor In such a case at common law, the misdemeanor is merged in the felony, and the latter only is punishable. The doctrine applies only where the same criminal act constitutes both offences, and where the offences are of different grades. The modern tendency has been to reject the doctrine of merger of offences altogether.

VIOLATION OF MUNICIPAL ORDINANCE OR MILITARY CODE AS CRIME At common law and independent of statutory enactments, punishments for the violation of municipal ordinances were treated as civil actions, the imprisonment, after the non-compliance with the order of the court imposing the payment of a fine, being looked on not in the light of a punishment but as a means of compelling a compliance with the order of the Court and of enforcing payment, and such is the general view at the present time. Whether or not they are to be so regarded depends to a great extent on whether such offences are made punishable by the general law as crimes If such violations are not made crimes by the general law the proceedings to enforce or for a violation of such ordinances are civil in their nature If such offences are made crimes or misdemeanors by the general law of the state, the proceedings must be considered as criminal in their nature The distinction appears to be correct, for many of the offences which are punishable under municipal ordinances are not offences against the state, either by the common or the statute law, and are made so only by the ordinance in the particular case in question, and for this reason they have been termed *quasi-criminal*. The rules and regulations of the military code are merely disciplinary in their nature, designed to secure higher efficiency in the military service, and a violation of them does not constitute a criminal offence (*Rul. C L*)

Crimen. (*Lat*) A crime.

Crimen falsi (*Lat*) Forgery, perjury or an offence of kindred character.

CRIMEN FALSI (*Lat*) The making of a false charter, false money, etc

Crimen incendi. (*Lat.*) The crime of burning, including not only arson but the burning of a man, beast or other chattel

Crimen laesae majestatis, (*Lat.*) The crime of injuring majesty, high treason

Crimen laesae majestatis omnia alia crimina excedit quoad poenam. A maxim "meaning the crime of treason exceeds all other crimes, in its punishment."

Crimen expost facto non diluitur. A maxim meaning a "crime cannot be expiated by after acts"

Criminal Action.

Crimen omnia ex se nata vitiat. A maxim meaning "a crime vitiates all things proceeding from it."

Crimen raptus. (*Lat.*) Rape.

Crimen vel poena paterna nullam masculam filio infligere potest The crime of punishment of a father inflicts no stain upon his son

Criminal The term "criminal" is generally employed as a correlative to crime. It is also used in particular statutes, with a special connotation, *e g*, "criminal lunatics" and "criminal prisoners" and "fugitive criminals" that which pertains to or is connected with the law of crimes, or the administration of penal justice (as) criminal law When used in reference to judicial proceedings it is opposed to civil (criminal action). *As a noun* a person who has committed a crime.

Criminal, Guilty. *Criminal* respects the character of the offence, *guilty* respects the fact of committing the offence The *criminality* of a person is estimated by all the circumstances of his conduct which present themselves to observation, his *guilt* requires to be proved by evidence The *criminality* is not a matter of inquiry, but of judgment; the *guilt* is often doubtful, if not positively concealed The higher the rank of a person, the greater his *criminality* if he does not observe an upright and irreproachable conduct where a number of individuals are concerned in any unlawful proceeding, the difficulty of attaching the *guilt* to the real offender is greatly increased *Criminal* may be applied as an epithet either to the person or *his action*, *guilty* is properly applied to the person, a person, or his action, looks, thoughts, intentions, may be *criminal*, the person himself is *guilty* of whatever he actually commits.

Criminal, culprit, malefactor, felon, convict When we wish to speak in general of those who by offences against the laws or regulations of society have exposed themselves to punishment, we denominate them *criminals*. when we consider them as already brought before a tribunal, we call them *culprits* when we consider them in regard to the moral turpitude of their character, as the promoters of evil rather than of good, we entitle them *malefactors* when we consider them as offending by the grosser violations of the law, they are termed *felons* when we consider them as already under the sentence of the law, we denominate them *convicts* The punishments inflicted on *criminals* vary according to the nature of their crimes and the spirit of the laws by which they are judged a guilty conscience will give a man the air of a *culprit* in the presence of those who have authority to be either his accusers or judges; it gratified the malice of the Jews to cause our blessed Saviour to be crucified between two *malefactors* it is an important regulation in the internal economy of a prison to have *felons* kept distinct from each other, particularly if their crimes are of an atrocious nature: it has not unfrequently happened, then the sentence of the law has placed *convicts* in the lowest state of degradation, their characters have undergone so entire a reformation as to enable them to attain a higher pitch of elevation than they had ever enjoyed before.

Criminal action. Opposed to civil action; action prosecuted by or in the name of the state against a

Criminal appeal.

person charged with a public offence for the punishment thereof.

Criminal appeal. Appeal from a judgment in a criminal case.

"Criminal breach of trust" defined. Act 45 of 1860, S 405.

"Criminal case" The phrase in Criminal Procedure Code (Act V of 1898), S 526, does not mean only a "criminal case" arising out of an offence which has already been committed It includes proceedings taken under S 145 for the prevention of a crime (10 A L J 27=4 A 533=13 Cr L J 452=15 I C 84 (85), 34 All 533=10 A L J 27=15 I C 84, 154 P L R 1914=24 I C 971, 41 I C 719; 25 B 179=2 Bom L R 755, 28 C 709=5 C.W.N 749)

A proceeding under S. 107 (relating to security proceedings) is "a criminal case" [22 I C 747 (748)]

Criminal cause or matter, in the Judicature Act, 1873, S. 47, does not include any question arising out of the committal of a clergyman for contumacy to an order of the Ecclesiastical Court [*Cox* v *Hakes*, (1890) 15 App Cas 506], nor an order striking a solicitor off the rolls. [Re *Eade*, (1890), 25 Q B.D 228], and refusal of bail on an indictment [*R.* v *Foote* (1883) 10 Q B D. 378]

The term includes decision on a *habeas corpus* under the Extradition Acts, 1870 and 1873 [Re *Alice Woodhall*, (1889) 20 Q B D 832] It also includes a proceeding to compel a magistrate to state a case upon a point of law arising in a criminal cause or matter [Re *Schofield*, (1891) 2 Q B 428]

The term includes proceedings for penalties before a magistrate under the London Buildings Acts [*Payne* v. *Wright*, (1892) 1 Q. B 104, 66 L T. 148], and proceedings for penalties under the Companies Act, 1862, S 27 [*R* v *Tyler*, (1891) 2 Q B 588], or proceedings to enforce payment of rates which might end in imprisonment [*Seaman* v *Burley*, (1896) 2 Q B 344 and see *Raydon* v. *South Met. Tramways Co*, (1893) 2 Q B 304]

A judgment in a "Criminal Cause or Matter," means "any decision by way of judicial determination of any question with regard to proceedings the subject-matter of which is criminal, at whatever stage it arises" [per *Esher*, M R., Re *Woodhall* (1889) 20 Q B D 832] The expression is much wider than "crime" (*R* v *Barnardo*, (1889) [23 Q.B D 305] In substance, the result of the decisions is that every cause or matter is criminal which is a proceeding for penalty by way of punishment and not by way of compensation [*R.* v. *Kerswill*, (1895) 1 Q B D. 1.] Contempt of Court is a *criminal cause or matter* (whether the punitive method adopted is by attachment or committal) [*O'Shea* v *O'Shea*, (1890) 15 P. D. 59, *Lewis* v. *Owen*, (1894) 1 Q B. 102]

Criminal conspiracy When two or more persons agree to do, or cause to be done,—(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. (Penal Code, S. 120-A.)

Criminal Justice.

Criminal conversation. Illegal sexual intercourse

"Criminal Court" defined Act 5 of 1869, Pt. I, cl (*e*) (20) Am Act 12, 1894, S. 4; Act 14 of 1866, S 2; Act 4 of 1871, S 17, Act 14 of 1887, S 2 (1) (*i*).

"CRIMINAL COURT" means a Court having ordinary criminal jurisdiction in British India or such a Court established elsewhere by the authority of the Governor-General in Council Marine Act (XIV of 1887), S 2.

"Criminal force" defined Act 45, 1860, S. 350, Act 15, 1887, S. 3 (6), Act 5, 1892, S. 2 (6), Reg 3, 1881, S 2, Reg 2, 1888, S 3 (4), Reg 4, 1890, S. 3 (5) *See also* 5 C W.N. 250

"Whoever intentionally uses force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to "use criminal force" to that other, (Penal Code, S 350)

Criminal information A complaint against a person for some criminal offence.

Criminal intent Intention to commit a crime.

Criminal intimidation Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. (Penal Code, S. 503)

Criminal jurisdiction That which exists for the punishment of crimes.

Criminal justice "There is no difference between civil and criminal cases as to evidence, whatever is proper evidence in one case is in the other. With respect to criminal cases, if there is any doubt, one would lean in favour of a defendant, for the reason mentioned by my lord yesterday, because that is not to be set right afterwards" [*Laurence J., Stone's Case* (1796), 25 How St, Tr 1314]

"Really I wish I was more acquainted than I am, with the course of criminal jurisdiction—if the question had never been decided, I should have extreme doubts upon it and those extreme doubts which I should have would lead me in a criminal case to do otherwise than I should do in a civil case—in every civil case (I speak in the hearing of a great many professional gentlemen) wherever I have serious doubts, I follow the doctrine which I have collected to be laid down by Lord Hardwicke, I receive the evidence, giving the jury the best instruction I can upon the effect of it; and I do it in the risk of doing any hurt, because if I receive it improperly, a season will come when the Court can correct my error". (*Ibid*)

"The natural leaning of our minds is in favour of prisoners; and in the mild manner in which the laws of this country are executed, it has rather been a subject of complaint by some that the Judges have given way too easily to mere formal objections on

behalf of prisoners, and have been too ready on slight grounds to make favourable representations of their cases. Lord Hale, himself, one of the greatest and best men who ever sat in judgment, considered this extreme facility as a great blemish, owing to which more offenders escaped than by the manifestation of their innocence We must, however, take care not to carry this disposition too far, least we loosen the bands of society, which is kept together by the hope of reward, and the fear of punishment. It has been always considered, that the Judges in our foreign possessions abroad were not bound by the rules of proceeding in our Courts here. Their laws are often altogether distinct from our own. Such is the case in *India* and other places On appeals to the Privy Council from our colonies, no formal objections are attended to, if the substance of the matter or the *corpus delicti* sufficiently appear to enable them to get at the truth and justice of the case. [Lord Kenyon, C J, *King* v *Suddis*, (1800) 1 East 314]

Criminal Law Is that part of the law which deals with the definition, and punishment of crime, and with the procedure for the trial of persons suspected or accused of crime. that branch or division of law which defines crimes, treats of their nature, and provides for their punishment. The term "criminal law" is sufficiently comprehensive to cover all of that branch of jurisprudence which deals in any way with crimes and punishments

"CRIMINAL LUNATIC" defined. 47-8 V. c 31, s. 18, Act 14, 1912, S. 3.

"Criminal lunatic" means any person for whose detention in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of S 466 or S. 471 of the Code of Criminal Procedure, 1898, or of S. 30 of the Prisoners Act, 1900 or of S. 103-A of the Indian Army Act, 1911. (Lunacy Act IV of 1912, S 3.) *Criminal negligence* The amount of negligence that would make a man criminally responsible cannot be defined The question is one entirely of fact in each case (18 S L R 199=A I R. 1925 Sind 233.)

"Criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial (Prisons Act IX of 1894, S. 3.).

Criminal proceeding. An action or proceeding instituted and prosecuted by the state in its own name against a person who is accused of a crime to punish him therefor

Criminal process Process issued to compel a person to answer for a crime, where punishment of some kind or other must be the consequence of conviction.

Criminal prosecution A prosecution in a Court of justice, in the name of the Government, against one accused of a crime

Criminal side. The criminal jurisdiction of a Court having both civil and criminal jurisdiction.

"Criminal trespass". Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass." (Penal Code, S. 441.)

Crimina morte extinguuntur A maxim meaning "Crimes are extinguished by death".

Criminate. Impute crime to, incriminate.

Criminology Study of crimes, their nature, the causes, detection and prevention of crimes.

Criterion Means of judging, standard of judgment.

Criterion, Standard The *criterion* is employed only in matters of judgment; the *standard* is used in the ordinary concerns of life The former serves for determining the characters and qualities of things, the latter for defining quantity and measure The language and manners of a person are the best *criterion* for forming an estimate of his station and education. In order to produce a uniformity in the mercantile transactions of mankind one with another, it is the custom of government to fix a certain *standard* for the regulation of coins, weights and measures.

Criticism Judging of merit, fault finding; a discussion, or as applicable in libel cases, a censure of the conduct or character or utterances of the person criticised. (*See* Penal Code.)

Croft A close adjacent to a dwelling house. small piece of arable land close to a house.

"A croft is a little close adjoining to a house, used either for pasture or arable, as the owner pleases In many places such close is called a Ham" (*Touch*)

Crop, Crops Yield of any cultivated plant A crop is some product of the soil gathered during a single year Crops which are obtained by the labor and cultivation of man are termed *fructus industrials*. Those which are produced by the powers of nature alone or are denominated *fructus naturales*

CROPS DENOTES. *'Ungathered crops'*, includes rose plants. (27 A.L J. 267=A I.R. 1929 A 341)

"CROPS AND OTHER PRODUCE OF LAND" *See* 1905 A. W.N 278=28 A. 266=3 A L'J 13; 30 C. 110=6 C.W.N. 881.

CROPS; EMBLEMENTS; GROWING CROPS, CUT AND STORED CROPS. The word crop is derived from the old English "Croppe" signifying the top of a plant It is primarily some product of the soil and has been defined as everything produced from the earth by annual planting, cultivation and labour; and it may mean either a gathered or a growing crop. As thus limited the word is practically synonymous with emblements and hence does not include the fruits of perennial trees, but taken in its most comprehensive sense it includes grasses and the fruits of trees. A crop is considered as "growing" from the time the seed is planted in the ground, and it is usually classed as such until it is gathered.

The word "crops" in S. 145 (2), Cr.P. Code, means not only standing crops but also includes cut and stored crops. (22 S.L.R. 151=105 I.C. 813=28 Cr.L.J. 989=A.I.R. 1928 Sind 68.)

Crore.

Crore. Ten millions. (*Fifth report.*)

Cross. *As an adjective*, in the inverse order, made by the opposite party. *As a noun*, a mark instead of a name made by a person who cannot write or is disabled from writing. (Signature by mark of an illiterate person); *As a preposition*, over from side to side, *As a verb* to pass from side to side; to pass or move over; *As an emblem* (†) cross represents Christianity or Christendom in general.

Cross action. An action by a defendant in an action, against the plaintiff in the same action upon the same contract, or for the same tort.

Cross appeal An appeal therefrom by both parties to a judgment

Cross Bench. Any of the benches left to members of Parliament or other Legislative Assembly who are of neither party.

Cross-check. A check crossed with two lines between which are either the name of a bank or the words "and company" in full or abbreviated.

Cross claims under a decree. [17 L W 643=32 M.L.T (H C) 341=1923 M W N 474=72 I C. 865 =A.I.R. 1923 Mad. 638=44 M.L J 590]

Cross complaint One filed by the accused against the person starting the prosecution or co-accused in respect of same subject-matter.

"Cross examination" defined. Act 1 of 1872 S. 137.

CROSS-EXAMINATION The examination of a witness by the party opposed to the party who has first examined him, in order to test the truth of such first or direct examination, which is called examination in chief.

"Opportunity to Cross-examine" includes the method of cross interrogatories, *Q-E* v. *Ramachandra*, 19 Bom 749. *See also* 5 C W N ccxxx (journal part).

Cross reference Reference to another passage in or portion of the same book

Cross remainders. "When lands are given, in undivided shares to two or more, for particular estates, so as that, upon the determination of the particular estates in any of those shares, they remain over to the other grantees, and the reversioner or the remainderman is not let in till the determination of all the particular estates, the grantees take their original shares as tenants in common, and the remainders limited among them on the failure of the particular estates are known by the appellation of *cross remainders*". (*Butler's note* (1) to Co Litt 195 (*b*): *Theobald on Wills, Norton on Deeds.*)

Cross road A road that crosses another road or that joins two other roads.

Cross rules. Rules where each of the opposite litigants obtained a rule nisi, as the plaintiff to increase the damages, and the defendant to enter a *nonsuit.*

Cross voting. Voting by members of a party for the other side or against its own motion.

"Crossing" defined. Act 66 of 1881, Ss. 123, 124. Crossing is an intersection of roads or railways,

Crown, Prerogative of.

Crown, defined. *See* Interpretation Act, 1889, S. 30.

Crown King, emperor, sovereign for the time being, the royal power, also that which concerns or pertains to the ruling power—the king or queen. The term is also commonly made use of to designate an ornamental badge of regal power worn on the head by sovereign princes The Crown is not bound by any Act unless expressly or by necessary implication referred to therein and for this purpose the Crown not only means King but also Officers of State in discharge of their executive duties. (45 Bom. 725=60 I C. 571=23 Bom.L.R 35)

Crown cases. *In English law*, criminal prosecutions

"Crown cases reserved" means, "such questions of law reserved in criminal trials as are mentioned in" 11 and 12 V, c. 78, (Jud. Act, 1873, S. 100).

Crown colony Colony subject to control by the Home Government in England.

Crown contracts. Defined in Act 10 of 1897, S. 3

Crown debts. Defined in Act 10 of 1897, S. 3.

CROWN DEBTS Debts due to the state or the king, debts which a prerogative entitles the Crown to claim priority for before all other creditors. (159 I C 972=A I.R 1935 Sind 232)

Crowned heads Kings or Queens.

To CROWN a person is to invest him with the Regal office.

Crown grants Their Lordships are not prepared to affirm that all the considerations applicable to grants from private persons apply to grants from the state [(1878) 6 I A 54=3 B 186 (192)=3 Sar. 889.]

Crown lands The demesne lands of the crown, which it now usual for the sovereign to surrender at the commencement of his reign for its whole duration, in consideration of the civil list settled upon him.

Crown law Criminal law in England is so named, the crown being always said to be the prosecutor in criminal proceedings.

Crown Lawyer An advocate in the service of the Crown.

Crown liabilities. Defined in Act 10 of 1897, S. 3.

Crown office A department belonging to the Court of King's Bench, commonly called the Crown Side of the Court, which takes cognizance of all criminal causes.

Crown office in Chancery. One of the offices of the High Court of Chancery now transferred to the High Court of justice

Crown paper. A paper containing the list of criminal cases which await the hearing or decision of the Court.

Crown, Prerogative of. The prerogative is that remnant of the power of the Crown which remains to the Crown to interfere with Tribunals of Justice which does not exist in this country at all; it has passed away in the historic development of the constitution, it used to exist, and it does exist to

Crown Prince

some extent in the case of the Crown colonies, because they are managed directly by the Crown through ministers, but when one comes to self-governing dominions I should be very sorry to say that even the principles of Dillet's case could be applied to the constitution of Canada The constitution of Canada and of Australia, taking those as illustrations, have so developed that they are virtually self-governing dominions, and it is a question as to whether the principles of Dillet's case apply in the case of self-governing dominions India is not yet in that state, but it has been publicly said that India is recognised by the Imperial Parliament as being on the way to becoming now a self-governing dominion, and, therefore, even with regard to India, it is with the utmost care that it should be pronounced that that disappearing fragment of the prerogative remains [(1924) 49 B 455=27 Bom L.R. 704=26 Cr L J. 1419=1926 M W.N 32=89 I C 843 =A I R 1925 P C 180]

It is only when claims of the Crown and claims of "common persons" (to use an old expression) "concur" or come into competition that the Crown is preferred [(1912) 39 I A 62 (67-8)=34 A 223 (233)=14 Bom L R 212=15 C L J 327=16 C W N. 433=9 A L J 401=15 I C 177=22 M L J. 457.]

The Crown has no more right than a "common person" to seize *A's* property and apply it in or towards the discharge of a debt due from *B* That is not a question of law It is a matter of common justice, and, it may be added, of common honesty [(1912) 39 I A 62 (67-8)=34 A 223 (233)=14 Bom L R. 212=15 C L J 327=16 C W N 433=9 A L J 401=15 I C 177=22 M L J 457]

The Crown may abandon a prerogative, however high and essential to public justice, and valuable to the subject, if it is authorised by statute to abandon it [(1847) 3 M I A 488=5 Moo P C 296=1 Sar 310=Per Or Ca 551]

It may be argued that the Crown could not, even by charter, part with its prerogative But it must be recollected that this is a case in which the Crown grants a charter by virtue of an Act of Parliament and that charter must be considered as granted in the execution of the powers which were granted by that Act of Parliament The charter being granted in pursuance of an Act of Parliament, if by the true construction of the charter the prerogative of the Crown is in any way limited, it must be said to be limited, not by the Act of the Crown itself, but by the Act of the Crown acting under the authority of Parliament. [(1846) 3 M I A 468=5 Moo. P C. 276=1 Sar. 305]

Crown Prince The heir apparent to the throne.

Crown Princess The wife of a Crown Prince

Crown Property Defined in Act 10 of 1897, S. 3.

Crown representative Defined in Act 10 of 1897, S 3.

Crown Revenues Defined in Act 10 of 1897, S. 3

Crown side The criminal department of the King's Bench.

Crown Solicitor The solicitor in England who acts in state prosecutions, as solicitor to the Crown in preparing the prosecution attached to each circuit, whose duty it is to get up every case for the Crown in criminal prosecutions.

Cruelty

Cruciatus legibus invisi. A maxim meaning "Physical tortures are refused or denied in the laws"

Crucible A chemists melting pot, made of earth; a pot for melting metals

Crucifix. Image of Christ on the cross.

Cruel, inhuman, barbarous brutal, savage. *Cruel* is the most familiar and the least powerful epithet of all these terms, it designates the ordinary propensity which, if not overpowered by a better principle, will invariably show itself by the desire of inflicting positive pain on others, or abridging their comfort *inhuman* and *barbarous* are higher degrees of cruelty, *brutal* and *savage* rise so much in degree above the rest as almost to partake of another nature. A person is *cruel* who neglect the creature he should protect and take care of. he is *inhuman* if he withhold from him the common marks of tenderness or kindness which are to be expected from one human being to another, he is *barbarous* if he find amusement in inflicting pain, he is *brutal* or *savage* according to the circumstances of aggravation which accompany the act of torturing

Cruelty (*In Matrimonial law.*) "Lord Stowell refused to give any strict definition of cruelty. The causes which warrant separation 'must be grave and weighty, and such as show an absolute impossibility that the duties of the married life can be discharged. In a state of personal danger no duties can be discharged, for the duties of self-preservation must take place before the duties of marriage What merely wounds the mental feelings is in few cases to be admitted, where it is not accompanied with bodily injury, either actual or menaced.

Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty, they are high moral offences in the marriage state undoubtedly, not innocent surely in any state of life, but still they are not that cruelty against which the law can relieve and grant a divorce Under such misconduct of either of the parties, for it may exist on one side as well as on the other, the suffering party must bear in some degree the consequences of an injudicious connection, must subdue by decent resistance, or by prudent conciliation, and if this cannot be done, both must suffer in silence In the older cases of this sort, which I have had an opportunity of looking into, I have observed that the danger of life, limb, or health is usually inserted as the ground upon which the Court has proceeded to a separation The Court has never been driven off this ground, it has always been jealous of the inconvenience of departing from it, and I have heard no one case cited in which the Court has granted a divorce without proof given of a reasonable apprehension of bodily hurt. I say an apprehension, because (assuredly the Court is not to wait till the hurt is actually done, but the apprehension must be reasonable, it must not be an apprehension arising merely from an exquisite or diseased sensibility of mind.' Danger of life, limb, or health has continued in substance the rule upon which the Courts have acted, the phrase has sometimes been varied. Sir John Nicholl has used the expression, injury to person or to health'; which I am inclined to take in

Cubical Contents.

conjunction with Lord Stowell's expression, for there might be a great deal of suffering and brutal usage without coming strictly) within the terms of the latter. There must, however, be bodily hurt (not trifling or temporary pain), or a reasonable apprehension of bodily hurt" [per *Cresswell, J O , Tomkins* v. *Tomkins,* 1 Sw. & Tr 170, *Russell* v *Russell,* (1897) App. Cas. 395; 7 Bom L.R 608]

"Cubical contents" "'Cubical extent,' applied to the measurement of a building, means, the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest storey." (*Stroude,* 445)

Cubit Cubit is anything between seventeen and nineteen inches, and might even occasionally be still less or still more (71 I.C. 942=A.I R 1924 Nag. 56.)

Cuicunque aliquis quid concedit, concedere videtur et id, sine quo res ipsa esse non potuit A maxim meaning (The) Grantor of any thing to another grants that also without which the thing granted would be useless. "Who ever grants a thing is supposed also tacitly to grant that without which the grant itself would be of no effect.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest A maxim meaning "To whomsoever a jurisdiction is given, those things are also supposed to be granted, without which the jurisdiction cannot be exercised

Cui jus est donandi, eidem et vendendi et concedendi jus est A maxim meaning "He who has a right to give has also a right to sell and to grant"

Cuilibet in sua arte perito est credendum A maxim meaning "Credence should be given to one skilled in his peculiar profession"

Cuilibet licet juri pro se introducto renunciare A maxim meaning "Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection"

Cui licet quod majus non debet quod minus est non licere A maxim meaning "He who has authority to do the more important act shall not be debarred from doing that of less importance"

Cui pater est populus non habet ille patrem A maxim meaning "He to whom the people is father has not a father"

Cui plus licet quam par est plus vult quam licet A maxim meaning "He to whom more is granted than is just, wants more than is granted."

Cuique in sua arte credendum est. A maxim meaning "Every one is to be believed in his own art."

Cujus est commodum ejus debet esse incommodum. A maxim meaning "Whose is the advantage, his also should be the disadvantage"

Cujus est commodum ejus est onus. A maxim meaning "He who has the benefit has also the burden."

Cujus est dare ejus est disponere. A maxim meaning "The giver of a gift has the right to regulate its disposal."

Culpable homicide.

Cujus est divisio alterius est electio A maxim meaning "Which ever has the division, the choice is the others."

Cujus est dominium ejus est periculum A maxim meaning "The risk lies upon the owner of the subject"

Cujus est instituere ejus est abrogare. A maxim meaning "Whose right is to institute, his right it is to abrogate."

Cujus est solum ejus est uque ad coelum. A maxim meaning "He who possesses land possesses also that which is above it."

Cujus est solum ejus est usque ad coelum et ad inferos A maxim meaning "To whomsoever the soil belongs, he owns also to the sky and to the depths.

Cujus juris est principali ejusdem juris erit accessorium. A maxim meaning "An accessory matter is subject to the same jurisdiction as its principal"

Cujus per errorem dati repetitio est ejus consulto dati donatio est A maxim meaning "That which when given through mistake cnn be recovered back, when given with knowledge of the facts, it is a gift.

Cujus que rei potissima pars est principium. A maxim meaning "The chiefest part of everything is the beginning"

Cul An abbreviation of the word guilty.

Cul de sac. Blind alley, a way open only at one end, a street or road closed at one end, which only communicates with a public street or road at the other, a cul-de-sac in a busy city which has for seventy or eighty years been open to the rate-payers may be a public highway [*Rugby* v *Merryweather,* (1790), 11 East 375, 10 R R 528, *Souch* v *East London Railway Co*, 1873, L R. 16 Eq 108, *Vernon* v. *Vestry of St James, Westminster,* (1880), 16 Ch D 449].

Culpa An act of neglect causing damage, but not implying an intent to injure.

Culpability. Blameworthiness, possibility of being pronounced guilty of an offence

Culpable Criminal, censurable, blamable, blameworthy.

Culpable, Faulty We are *culpable* from the commission of one fault, we are *faulty* from the number of faults we are *culpable* with regard to a superior whose intention we have not fulfilled; we are *faulty* whenever we commit any faults. A master pronounces his servant as *culpable* for not having attended to his commands, an indifferent person pronounces another as *faulty* whose faults have come under his notice. It is possible, therefore, to be *faulty* without being *culpable,* but not *vice versa*

"Culpable homicide" defined, Act 45, 1860 (Penal Code), S 299 *See also* 3 Co. Inst.; Hawk. P C bk. I, c 30; Foster Cr Law.; East, P.C., 3 Steph, Hist. Cr. Law, 1-107; Steph Dig Cr. Law; Archb Cr. Pl., Russel, on Crimes, 6th ed., vol. III, pp 171-204

"Culpable homicide not amounting to murder' defined. Act 45 of 1860 (Penal Code), S 300

Culpa caret.

Culpa caret qui scit sed prohibere non potest. A maxim meaning "He is clear of blame who knows, but cannot prevent."

Culpa est immiscere se rei ad se non pertimenti. A maxim meaning "It is a fault for any one to meddle in a matter not pertaining to him."

Culpae poena par esto A maxim meaning "Let the punishment be proportioned to the offence."

Culpa lata dolo aequiparatur A maxim meaning "Gross neglect is equivalent to fraud"

Culpa tenet suos auctores A maxim meaning "A fault binds its own authors."

Culpa vel poena ex equitate non intenditur. A maxim meaning "Blame or punishment does not proceed from equity"

Culprit A mild term imputing crime, applied to one accused, but not yet convicted, or to one doubtless guilty, but of an offence not heinous.

CULPRIT. A prisoner accused for trial. (*Tomlins Law Dic*)

CULPRIT. Offender, person guilty of offence

Cultivable land Madras Estates Land Act (I of 1908), S 3, cl. 16 means land permanently cultivable for all practical purposes and not land which might be occasionally cultivated [*Rajah of Venkatagiri* v. *Jayampu Ayappa Reddy*, 21 I C 532 (533), per *Sadasiva Aiyer and Tyabji, JJ*]

Cultivable lands The words "cultivable lands" in S. 3, cl 16 of the Madras Estates Land Act, mean lands permanently cultivable for all practicable purposes, and not lands which might be occasionally cultivated [*Rajah of Venkatagiri* v *Jayampu Ayappa Reddy*, 21 I C 532=14 M L T 405=1913 M W.N 919=25 M L J. 578 *See also* 34 I C. 730 (*Ravu Sheshayya* v *Raja of Pittapur*)

Cultivate To improve the product of the earth by manual industry, to till or husband the ground to forward the product of the earth by general industry

"Cultivating raiyat" defined Ben Act, 9, 1880, S. 4, Ben. Act, 8, 1895, S. 2 (*a*).

CULTIVATING RAIYAT. [*See* 6 Pat 13, 32 C W N 610=47 C L J. 546=A I R 1928 Cal 508] In order to claim the privileges of a cultivating *raiyat* under the Bengal Cess Act, a person must be an actual cultivator of the soil, although a *raiyat* may be a tenure-holder under the Act [161 I C 210 (2)=62 C.L J. 541=40 C.W N. 630=A.I.R. 1936 Cal 70]

Cultivation Flowers and grass are as much the produce of the soil as rice, and the upkeep of a garden or a grass lawn is *cultivation* [30 Bom.L R 992=118 I.C. 244=A.I.R. 1928 B 457]

CULTIVATION. Ploughing and preparing land for crops, or the raising of something that grows from the ground besides grass.

Cultivation and pasturage. Pasturage is something different from cultivation Cultivation implies some kind of labour on the land generally consisting of breaking up the soil, whereas pasturage has reference to a particular mode of using the natural growth on the land without its being cultivated. [*Raja of Venkatagiri v. Jayampu Ayappa Reddy*, 21 I. C. 532 (536) per *Sadasiva Aiyar and Tyabji, JJ*]

Cum du jura

Cultivator. The "cultivator" in No. 13, Sch. II of the Stamp Act, connotes only those persons who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock, in other words, the class of husbandmen or actual agriculturists, but not farmers, middlemen or lessees, even though cultivation may be carried on to some extent by such persons in an area covered by their lease. (5 A 360=3 A.W.N. 113, 15 Bom. 73.)

A person who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator" (15 B 73)

Culvert A water-way or water passage, whether of wood or stone, square or arched; a covered drain under a road, designated for the passage of water, and arched drain to carry water under a road from one side to the other, an arched drain for the passage of water under a road or canal, an arched passage or drain for water beneath a road, canal or railway.

Cum. As a preposition with. As an adverb when, whereas.

Cum actio fuerit mere criminalis institui poterit ab initio criminaliter vel civiliter. A maxim meaning "When an action is merely criminal, it can be instituted from the beginning either criminally or civilly.

Cum adsunt testimonia rerum quid opus est verbis A maxim meaning "When the proofs of facts are present, what need is there of words.

Cum aliquid impeditur propter unum eo remoto tollitur impedimentum. A maxim meaning "When anything is imposed by any single cause, if that be removed the impediment is removed.

Cum aliquis renunciaverit societati solvitur societas A maxim meaning "When any partner renounces the partnership, the partnership is dissolved."

Cumber. To hinder by obstruction, to hamper in movement

Cum confitente sponte mitius est agendum. A maxim meaning "Once confessing willingly should be dealt with more leniently"

Cum de lucro duorum quaeritur melior est causa possidentis A maxim meaning "When the question is as to the gain of two persons, the cause of him who is in possession is the better"

Cum dividend A transaction that carries with it the right of any profit to accrue from the ensuing drawing.

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est. A maxim meaning "When two clauses are found in a will, contradictory of, or inconsistent with, each other, the last is confirmed.

Cum du jura concurrunt in una persona aequm est ac si essent in duo duobus. A maxim meaning "When two rights meet in one person, it is the same as if they were in two persons.

Cum in corpre

Cum in corpre dissentitur appare tenullam esse acceptionem. A maxim meaning "Where there is a disagreement in the substance, it appears that there is no acceptance.

Cum legitimae nuptiae factae sunt patrem liberi sequuntur. A maxim meaning "Children born under the legitimate marriage follow the condition of the father."

Cum licet fugere ne quaere litem A maxim meaning "Enter not into law if you can avoid it."

Cum new. The right is sometimes accorded to shareholders of a company to have allotted to them new shares that are issued on more favourable terms than they are offered at to the general public. Shares sold at this period are said to be "cum new" carrying the right of the special terms of purchase.

Cum onere. With the burden or charge; subject to a charge or incumbrance.

Cum par delictum est duorum semper oneratur petitor et malior habetur possessoris causa A maxim meaning "When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred."

Cum princi palis causa non existit ne ea quidem quae sequuntur locum habent. A maxim meaning "When the main cause is not consistent for the most part not even the things which follow have a place."

Cum quod ago non valet ut ago valeat quantum valere potest. A maxim meaning "When that which I do is of no effect as I do it shall have as much effect as it can."

Cum testamento annexo With the will annexed.

Cumulative That arguments by addition, that is added to something else, in law the arguments as evidence, facts or arguments of the same kind.

CUMULATIVE. Preference dividend is, *prima facie*, cumulative, so that failure of profits where with to pay it in any one year will be made good out of any profits that may be made in a subsequent year.

CUMULATIVE. Additional, increasing forming an aggregate (as) cumulative dividend

Cumulative evidence. Additional evidence of the same kind to the same point, additional evidence to support the same point, and which is of the same character with the evidence already given; additional evidance offered to establish a fact as which witnesses have already testified additional evidence of the same general character to the same fact or point which was the subject of proof before, evidence which is additional to the other evidence already obtained.

Cumulative legacy. A legacy in addition to one already given.

CUMULATIVE PREFERENCE SHARES are shares the dividend on which is a fixed rate and in default of payment at the fixed period the amount accumulates until payment can be made. Such dividends take priority over several other dividends.

Cumulative punishment. A punishment adjudged to be inflicted after the expiration of a prior punishment.

Currency by weight.

Cumulative remedy. A remedy created by statute in addition to one which still remains in force.

Cumulative sentences An expression occasionally used as an equivalent for consecutive or successive sentences.

Cumulative vote A system of allowing a voter as many votes as there are candidates with right of giving all for one. The mode by which the voter concentrates his ballots on one or more candidates, instead of voting for the full number to be elected

Curate A Curate is "he who represents the Incumbent of a Church, Parson, or vicar, and takes care of Divine Service in his stead" (*Jacob.*). (*Phil. Ecc.*)

CURATE CURATOR He who presents the incumbent of a church, person or vicar, and takes care of divine service in his stead. in case of pluralities of livings, or where a clergymen is old and infirm, it is requisite there should be a curate to perform the cure of the church (*Tomlins Law Dic*)

"CURATE" means the Rector, or Vicar, who has the Cure of Souls (*Phil. Ecc Law*, 109)

Curia advisari vult. Literally "the Court wishes to be advised." These words, which are usually abbreviated into "cur adv vult," or "c a.v" when placed after the statement of facts and the arguments in the report of a case, signify that the Court did not give a decision at once, but took time to consider its judgment.

Curia ecclesiastica locum non habet super ii Squae juria Sunt communs A maxim meaning "An ecclesiastical court has no jurisdiction over matters of common law," or "An ecclesiastical Court has no power over matters in common law.

Curia Parliamenti Suis Propriis Ligibus Subsistit. A maxim meaning "The Court of parliament is governed by its own peculiar laws."

Curiosa et captiosa interpretatio in lege reprobatur. A maxim meaning "A curious and captious interpretation of the law is to be reproved"

Curnum or Karnam Accountant of a village who registers everything connected with its cultivation and produce.

Currat Lex (*Lat.*) The law must take its course.

Currency Anything which is used as a circulating medium and is generally accepted in trade as a representative of values of property. Whatever circulates conventionally on its own credit as a medium of exchange, whether it be bank notes, bills of exchange, or government securities, the circulating medium, the aggregate of coin, bills, note etc., in circulation; money current by law or paper equivalent in value circulating in the business community at par; money—coined money and paper money equally.

Currency Bonds. Bonds issued by the government guaranteeing the payment of the money in the currency of the country of their issue.

Currency by weight. The ancient form of paying by weight of metal, before the introduction of coinage.

Currency note

"Currency note" defined, Act 20 of 1882, S. 3 (2).

Currency principle. The method adopted by some banks of maintaining an exact.

Current. Running, now passing or present in its progress

CURRENT 'Current' applied to coin, means, coin coined in any of Her Majesty's mints, or lawfully current by virtue of any proclamation or otherwise, in any part of the county (*Steph Cr* 310)

Current account Account of money which a person has deposited at a bank, and on which he can draw from or add to as may be desired.

Current bank notes. Bank notes which circulate currently as money, such bank notes as are convertible into gold and silver at par

Current Bank paper. Bank paper which passes from hand to hand as money

Current expenses Ordinary expenses, expenses incurred within a reasonable time.

Current funds Current money, money circulating without any discount; funds which are current by law as money.

Current money Whatever is intended to, and does actually circulate as money, lawful money, every species of coin or currency constitute coin, currency of the country

Current notes Notes considered as cash.

Current price The present market price

Current rate of exchange. The rate of exchange at which drafts are negotiated

Current value. The present market value

Current wages Such compensation or wages for personal services as are to be paid periodically, or from time to time, as the services are rendered, as where the services are to be paid for by the hour, day week, month or year

Current year The expression "current year" in S 5 of the Revenue Sale Law means the official year and not the calendar year. (34 C 381=5 C L J 425 *See also* 7 C W.N. 377)

Curriculum The year, of the course of a year; the set of studies for a particular period, appointed by a University.

Currit quatuor pedibus. (*lat*) It runs upon four feet; or as sometimes expressed, it runs upon all fours

Currit tempus contra desides et sui juris contemptores A maxim meaning "Time runs against the slothful, and those who slight their own rights;" a maxim on which the equitable doctrine of *laches* is based.

Curse An invocation of harm or injury, imprecation of evil upon another.

Cursing. Using blasphemous or profane language, swearing.

Cursus curiae est lex curiae. A maxim meaning "The Practice of the Court is the law of the Court."

Custom.

Curtsy. "Tenant by the Curtsy" of England, is where a man marries a woman seized of an estate of inheritance, *i e*, lands or tenements in fee simple or fee tail,—and has by her issue born alive which was capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands or tenements for his life as tenant by the Curtsy of England" (*2 Bl. Com* 125, *Stroude*, 4 *Ency of the Laws of England* 268).

Curtilage. A court yard, back side, or piece of ground lying near, and belonging to a dwelling house, the court yard or piece of ground with the common enclosure belonging to a dwelling house (*Burrill*) The word originally signified the lands with the castles and outhouses enclosed often with high stone walls, and where the old barons sometimes held their court in the open air

Custodia Legis Property vested in Official Assignee not in *custodia legis* 24 M L J. 350=13 M.L. T 303=1913 M.W N 287=18 I.C 722.

'Custodian" The Burmese word translated "custodian" literally means the person in whose hands the estate was left, and that which is translated "partition' connotes merely the idea of division or separation 5 Rang 785=108 I C 809=A I R. 1928 Rang 73 "A garden, yard, field, or piece of void ground, lying near and belonging to the messuage" (*Termes de la Ley*).

"Custody" defined (*See* Military Custody) Act 14 of 1887, S 72 (2),

CUSTODY. Care keeping, charge (as parent or guardian having custody of children and minors), imprisonment, judicial or penal safe keeping (as custody of prisoner), defence from an enemy, preservation (as a fleet stationed for the *custody* of the narrow seas). 18 Lah. 106=171 I C 377=38 Cr. L.J. 1082=A I R 1937 Lah 620

Custody of law. That custody which an officer has the right to assume over property by virtue of legal process.

Custody of property The keeping of property by one who is charged with or assumes responsibility for its safety

"CUSTODY AND POSSESSION". In respect of offences relating to the custody of instruments or other materials for making counterfeit coins "*Custody or Possession*" of any matter, "includes, not only the having of it by himself in his personal custody or possession but also, the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling-house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person"

Custom. Is a law not written, established by long usage, and the consent of our ancesters. No law can oblige a free people without their consent. so wherever they consent and use a certain rule or method as a law, such rule etc., gives it the power of a law; and if it is universal, then it is common law: if particular to this or that place, then it is custom. (3 Salk. 112; *Tomlins Law Dic.*) Custom is one

of the main triangles of the laws of England, those laws being divided into Common Law, Statute Law, and Custom" (*Co Litt* 110 *b*, 115 *b*) India is a land where there are very many customs appropriate to certain areas of territory, families or castes. [48 I A 539 (546)=44 M 740 (747)=1921 M.W N 687 =30 M.L.T. 208=26 C W N 417=15 L W 521=4 U. P.L R. (P C) 21=1922 P.C. 228=64 I.C. 439.]

"A CUSTOM IS LOCAL COMMON LAW It is Common Law because it is not Statute Law, it is Local Law because it is the law of a particular place, as distinguished from the general Common Law Local Common Law is the law of the country (*i e*, particular place) as it existed before the time of legal memory" (per *Jessel, M. R*, *Hammerton* v. *Honey*, 24 W.R 603).

Custom in the legal sense means a long established practice considered as unwritten law and resting for authority on long consent, for instance the custom of free grazing in the village waste 14 N L J 37 (Rev). 'Custom' in one sense means simply a usual practice In another sense it means an established practice or usage having the force of law. [134 I C 21=1931 A L.J 757=A I.R 1931 All 499 (S B.)]

"CUSTOM" implies, not that in a given contingency a certain course would probably be followed, but that that contingency has arisen in the past and that a certain course has been followed, and it is not at all within the province of Courts to extend custom by the process of deduction from the principles which seem to underlie customs which have been definitely established. (4 Lah L J. 336)

CUSTOM, FASHION, MANNER, PRACTICE. *Custom* is authoritative, it stands in the place of law, and regulates the conduct of men in the most important concerns of life *fashion* is arbitrary and capricious, it decides in matters of trifling import *manners* are rational, they are the expressions of moral feelings *Customs* have most force in a simple state of society, *fashions* rule most where luxury has made the greatest progress, *manners* are most distinguishable in a civilized state of society, *customs* are in their nature as unchangeable as, *fashions* are variable, *manners* depend on cultivation and collateral circumstances, *customs* die away or are abolished, *fashions* pass away, and new ones take their place, *manners* are altered either for the better or the worse.

A *practice* may be defined as frequent or unfrequent, regular or irregular, but a *custom* does not require to be qualified by any such epithets it may be the practice of a person to do acts of charity, as the occasion requires, but, when he uniformly does a particular act of charity at any given period of the year, it is properly denominated his *custom*.

Both *practice* and *custom* are general or particular but the former is absolute, the latter relative; a *practice* may be adopted by a number of persons without reference to each other, but a *custom* is always followed either by imitation or prescription: the *practice* of gaming has always been followed by the vicious part of society, but it is to be hoped for the honour of man that it will never become a *custom*.

CUSTOM, HABIT *Custom* is a frequent repetition of the same act; *habit* the effect of such repetition: *Custom* supposes an act of the will; *habit* implies an involuntary movement: a *custom* is followed; a

habit is acquired *Custom* is applicable to bodies of men, *habit* is confined to the individual: every nation has *customs* peculiar to itself, and every *individual* has habits peculiar to his age, station and circumstances.

Customary and *habitual*, the epithets derived from these words, admit of a similar distinction, the *customary action* is that which is repeated after the manner of a *custom*, the *habitual action* is that which is done by the force of *habit*.

CUSTOM, GENERAL AND PARTICULAR General customs are such as prevail throughout a country, and become the law of that country, particular customs are such as prevail in some district, city, town, or place The general customs of a country constitute a part of the common law.

CUSTOM was not used in 5 & 6 Will. 4, c. 76, s 2, in the technical sense of the word, but was only equivalent to "usage" (*Prestney* v *Mayor of Colchester*, (1882) 21 Ch D 120

"CUSTOM OF THE COUNTRY". "The word 'Custom' used in the above phrase does not mean a Custom in the strict legal signification of it, for that must be taken with reference to some defined limit or space * * * What shall be considered in farming as a good and husbandlike manner must vary exceedingly according to soil, climate and situation And, therefore, the 'Custom of the Country' with reference to good husbandry, must be applied to the approved habits of husbandry in the neighbourhood, under circumstances of the like nature" (*2 Platt, 279*, citing *Legh* v. *Hewitt*, 4 *East* 154).

CUSTOM OF MERCHANTS. A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which under the name of *law merchant*, has been ingrafted into and made a part of the common law It is a "particular system of customs used only among one set of the King's subjects, which, however different from the rules of the Common Law, is yet ingrafted into it, and made part of it, being allowed for the benefit of trade, to be of the utmost validity in all commercial transactions." (1 *Comm* 75, *Tomlins Law Dic*).

"CUSTOM OF THE PORT" Used in a charter-party. means the settled Practice of the Port (*Stroude*, 450).

"CUSTOM OF THE REALM" is only a paraphrase for the Common Law" (*per* Brett, J, *Nugent* v. *Smith*, 1 C P D. 23)

CUSTOM OF TRADERS OR TRADE CUSTOM must be notorious to traders generally

CUSTOM AND PRESCRIPTION. A custom is a law established by long usage and differs from prescription in the fact that prescription is the making of a right while custom is the making of the law.

CUSTOM, USAGE, PRESCRIPTION. A usage in its most extensive meaning includes both custom and prescription; but in its narrower signification it refers to a general habit, mode or course of procedure The words "custom" and "usage" are not synonymous A usage need not possess the same degree of antiquity as a custom. 34 L.W. 276=1931 M.W. N. 807=A.I.R. 1931 M. 723=61 M.L.J. 357.

Usage should never be used as synonym for custom. It has two distinct legitimate meanings but

Customary easement.

neither of them should be confused with custom. It is used to denote what is done by people uniformly and consistently. Used in this sense usage has not the force of law. It would only obtain the force of law when it is proved to be reasonable, invariable, ancient, etc, in which case it becomes what is known as custom It is also used to denote what is done uniformly and has been so done in a certain locality or by a certain trade or profession, etc., for a period sufficient to make it probable that people in their contract and in their contractual relationships adopt it as an implied term or condition. There is no sound authority for holding that custom in India need not be proved to be ancient. Special usages modifying the ordinary law of succession should be established by clear and unambiguous evidence to be ancient and invariable. (9 O.L J. 552=A.I R. 1923 Oudh 61)

Customary easement. What may suffice to establish a customary easement may be wholly insufficient to establish an easement by prescription and *vice versa*. The two rights are different although the result may be the same Consequently where a claim of easement is based on a prescriptive title it is not open to the appellate Court to treat the case as one based on custom (A I R. 1924 Lah 275)

"CUSTOMARY EASEMENTS" defined. Act 5 of 1882, s. 18.

Customary Court Baron. (*In old English law*) A Court Baron at which copyholders might transfer their estates, and where other matters relating to their tenures were transacted

Customary rent A rent established by long usage and which entitles the occupier to hold, so long as he pays the rent 'Customary rent' means, a rent which, by force of legal custom, enables the tenant to hold the land at a fixed rent (*per* Fry, J., *Vivian* v. *Moat*, 50 L J. Ch 332).

"Customary rights". The phrase has got a definite well understood meaning in law. A reservation in an agreement for a lease of "all Customary Rights and Reservations" does not render the agreement void for uncertainty (*Parker* v. *Taswell*, 2 D G. & J. 559)

Customary rights and easements A customary right is not an easement properly so called. An easement proper belongs to a determinate person or persons in respect of his or their land. A congeries of persons like the inhabitants of a locality, unless incorporated as a determinate juridical person, cannot claim an easement. A customary right belongs to no individual in particular. Easements are, so to speak, private rights belonging to particular persons, while customary rights are public rights annexed to the place in general. (66 C.L.J. 270=A.I.R. 1938 Cal. 202.)

Customed debenture. A certificate in respect of exported goods entitled to draw back, for duty already paid

Customer A person with whom a business house or a business man, has regular or repeated dealings; a purchaser of goods one who frequents any place of sale for the sake of purchasing or ordering goods (as, a good customer) A business "Customer" is one who has the use and habit of resorting to the same person or place to do business; therefore, a stranger who goes into a Bank to get a cheque collected, is not a "Customer" of the Bank. (*Stroude.*) The

Cutcha adatia.

word is also used in the sense of a toll-gatherer or one who collects customs or duties (*Rare use*).

Customer of a bank. A person who has habitual or consecutive business relation with a bank.

CUSTOMER, OF A BANKER, in s 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict c 61), see *G.W.R.* v. *London and County Banking Co*, (1899) 2 Q. B. 172, (1900) 2 Q. B. 645, *Mathews* v. *Brown* (1894), 63 L J.Q B. 494.

Custome serra prise Stricte. A maxim meaning "Custom must be taken strictly."

Customs. custom duties Customs are duties charged upon commodities on their being imported into or exported from a country.

"CUSTOMS-AUTHORITY" defined. Act 8 of 1878, S. 3

Customs Bills of Entry. A daily list issued by the customs authorities to subscribers, including a full list of ships coming inwards and sailing outwards.

"Customs-Collector" defined, Act 8 of 1878, S. 3 (*c*), Act 9 of 1879, S. 3.

Customs Declaration A form to be filled up and signed by one who sends goods abroad, stating the nature, description, weight, and value of the goods.

Customs (Duties). Duties payable on imported goods

"Customs-port" defined, Act 8 of 1878, S 3 (*d*); Act 2 of 1896, S. 3 (8)

Custos corporis cujusque infantis est in esto ad quem haereditas nequeat pervenire. A maxim meaning "Let him be the guardian of the body of the infant to whom the inheritance cannot come"

Custos magni Sigilli. Keeper of the great seal.

Custos Maris In old English law, Warden of the sea.

Custos Statum haeredis in custodia existentis meliorem non deteriorem facere potest. A maxim meaning "A guardian can make the estate of an heir living under his guardianship better, not worse."

Cut. *As a noun* the term is used to designate a wound made with a sharp instrument; a wound with an instrument having an edge. *As a verb* to make a cut with an edged tool or instrument; to make an incision wound with something having a sharp edge; incise.

Cutcha adatia. When a *cutcha adatia* enters into transactions under instructions from and on behalf of his up-country constituent with a third party in Bombay, he makes privity of contract between the third party and the constituent, so that each becomes liable to the other, but also he renders himself responsible on the contract to the third party. He does not ordinarily communicate the name of his constituent to the third party, but he informs the constituent of the name of the third party. The position, therefore, as between himself and the third party is that he is agent for an unnamed principal with personal liability on himself. His remuneration consists solely of commission, and he is in no way interested

Cutcherry.

in the profits or losses made by his constituent on the contracts entered into by him on his constituent's behalf. Hence a contract of *cutcha adatia* agency is not a wagering contract [*Forget* v *Ostigny* (1895) A. C 318 Ref.) 28 Bom.L R 1376=98 I.C 338=A I.R. 1926 P.C. 119=51 M.L J. 809 (P.C.).]

Cutcherry. Court of justice; also the public office where the rents are paid, and other business, respecting the revenue, transacted (*Fifth report*), a hall, office, or place where any public business is transacted.

Cutchi Memons In respect of succession and inheritances only and no further, the Cutchi Memons are governed by the Hindu Law. (47 Bom. 369 and 41 Bom 181, Foll., 10 Mys L.J 33)

Cutlery Edged or cutting tools in general, all cutting tools made of steel, such as knives, forks, scissors, razors, shears, etc.

Cutwal (*H.*) The chief officer of police or superintendent of markets in a large town or city in Northern India. (*Fifth Report.*)

Cuy kanam patam In Malabar, tenure by labour, usufructuary tenure.

Cuy kanumkar In Malabar a tenant who holds a piece of land under a lease called Cuy Kanum Patam.

Cwt An abbreviation for "hundred weight" one hundred and twelve pounds

Cyclone insurance A form of indemnity against loss or damage to property through the action of violent storms or high winds.

Cypres (*Literally as near to*). A rule in equity which may be stated thus When a definite function or duty is to be performed, and it cannot be done in exact conformity with the scheme of the person or persons who have provided for it, the duty may be performed with as close an approximation to that scheme as is reasonably practicable. "The Courts will not decree execution of a trust to a charity in a manner different from that intended by the author of the trust except so far as they see that the intention cannot be executed literally. In such a case another mode may be adopted, consistent with the general intention of the author If the mode prescribed by the instrument of trust becomes, by subsequent circumstances, impossible, the general object is not to be defeated if it can be attained" by other means consistent with the intention of the author [per *Arden, M. R., A G.* v. *Boultbee*, 2 Ves. 387; 39 Bom L.R 1012=1937 M.W.N. 1297=1937 A.L J. 1378=41 C.W N. 1072=A.I.R. 1937 P.C. 240 (P.C).]

The principle on which the doctrine of *cypres* rests appears to be, that the Court treats charity in the abstract as the substance of the gift, and the particular disposition as the mode, so that in the eye of the Court the gift notwithstanding the particular disposition may not be capable of execution subsists as a legacy which never fails and cannot lapse. [(1876) 3 I A. 32=1 C. 303 (318)=26 W.R 1=3 Sar. 561=3 Suth. 244.]

Daggers-drawing

D

D B. E. De Bene esse.

D. B N. De bonis non

D. C. District Court.

D. C. L. Doctor of Laws.

D. D Days after date.

D P. The House of Lords.

D S. B. Debet sine breve.

D V. N. Devis avit vel non.

"Da" L.B R. (1893-1900), 416

Dabanya (*Bo*), A revenue free tenure of lands forcibly 'annexed' by powerful revenue farmers, etc, (*Bad. Pow* III 302)

Dabbi. A small box, a cash box, the treasury of a temple

Dabri (**C.P.**). Land in the bed of a tank cult, when the water has run off (Bad Pow II. 428.)

"Dacoity" defined, Act 45 of 1860, S 391.

Dada-illahi (=*divine gift*) (N W.P), refers to a man's holding in a village, when it is not an ancestral share, but a *de facto* holding on basis of possession as the measure of right, *Bad Pow.* II 109)

Daddi (*Local, Pt Gandapur tribe*), name for a share in land, *Bad. Pow* II. 654)

Dadha (*C.P*), land on a slope (Bad. Pow II, 430.)

Dafadar (*Persian*). The head of a number of persons, whether soldiers, police, peons, or labourers In the native cavalry, the dafadar corresponds to the English sergeant, and the kote dafadar to the troop sergeant-major.

Daftar (*Persian*). A record, a register, the whole body of papers pertaining to an office, the record of a case. (*Afghan tribes*), the tribal location or holding of land; *Bad. Pow.* II 635, 647.)

Daftardar (*Persian*). A record-keeper.

Daftar, (1) Secretary of a Rajput state, (2) in modern use, an office-keeper who supplies pens, stationery, & etc *Bad. Pow.* I, 262 An office servant who prepares writing materials, arranges books, etc.

Daftarkhanah (*Persian*). A house or room in which records are kept, an office.

Dag A lot or portion of an estate which has been measured, and of which the measurement is recorded in the order of time at which it was made, a tract of land, same as *chak*.

Dagchitta. One of the Land records (*Assam*) (*Bad. Pow.* III. 421, 23)

Dagger, a pointed weapon for thursting usually shorter than the sword. A dagger is a "deadly weapon". A "dagger", as used in the American Penal Code, means any knife intended to be worn on the person, which is capable of inflicting death, and not commonly known as a "pocketknife". (*Pen. Code Tex.* 1895, Art. 606)

Daggers-drawing. Readiness to fight, state of contest.

Dahia.

Dahia. The name of a tribe of Jats in the Delhi district.

Dahlan. The name of a tribe of Tagas in the Upper Doab.

"Dahmyaung" *See* L B R. (1893-1900), 320

Dahya (*Dhya*) Shifting cultivation (C P.)

Daily. Everyday, day by day, every day in the week, (according to context) every day in the week except one A newspaper published six days in each week, whether Sunday or Monday be the day omitted, is held to be a "daily newspaper" (45 *Minn* 27)

DAILY, DIURNAL These adjectives are the same in meaning, and only differ as a colloquial term differs from a more scientific one So we speak of Daily occurrences or daily newspapers, and of the Diurnal motion of the earth upon its axis. (*Smith. Syn Dis*)

DAILY is the colloquial term which is applicable to whatever passes in the day time, *diurnal* is the scientific term, which applies to what passes within or belongs to the astronomical day· the physician makes daily visits to his patients, the earth is said by astronomers to have a *diurnal* motion on its own axis. (*Crabb*)

"Daily fine" defined. Act 9 of 1910, S 2 (*d*)

Daily penalty "Daily Penalty' in Municipal Acts and Sanitary Regulations, means, a penalty for each day on which any offence is continued after conviction therefor [S 11 (3), 53 & 54 V, c 59]

Daimi means "relating to what is perpetual, the perpetual settlement of the revenue," and so conveys the notion of fixity of rent (117 I C 675=A I R. 1928 Cal. 531)

"Daing" *See* 4 L B R 47=6 Cr L J. 285

Dairah (*Arabic.*) A circle, a round enclosure, a monastery.

Dairahdar The head of a Muhammadan monastery

Dairy. Defined in 2 of 1924, S 2

DAIRY "includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is kept, for purposes of sale" (*Eng. Infec Diseases Prevention Act*, 1893, S. 2)

Dairy farm A farm, the principal business of which is the production of milk or milk-products.

Dairying Business of a dairyman

Dairymaid A female servant whose business is to milk cows and work in the dairy.

Dairyman. Defined in 2 of 1924, S 2

DAIRYMAN includes cowkeeper, purveyor of milk, or keeper of a dairy. A farmer who keeps cows as incidental to his farming business, is not a "Cowkeeper." (*Umfreville* v *London Co Co*, 66 L J. Q, B. 177)

Dajjal (*Arabic*) The Shiah anti-christ, a power that is to appear and work for evil for forty years till the re-appearance of the Mahdi, by whom it is supposed, that he will be slain.

Dakar. (*North India*), a clay soil. (*Bad. Pow.*)

Dam.

Dakhalapalli (*Tel.*). A small village within the lands of a larger village.

Dakhal Kharj (See *Dakhil*) Mutation of names.

Dakhalnama A *dakhalnama* is a public document and its copy is admissible without proof 13 A L J 935=30 I.C. 830)

"Dakhal Sadharan" "Dakhal Sadharan" does not include the right of fishery (109 I C 229=29 Cr L J 501)

Dakhil Entrance, taking possession, entry of an item, in a deed or register, a receipt for money, annexation of lands, inclusion of a minor in a major parcel of land

Dakhila A receipt for land revenue

Dakhil dafter. Entered upon the record, which is equivalent to being laid on the table, or postponed indefinitely, struck off the Judge's or Magistrate's file.

Dakhil-dar An occupant, either in his own right, or as a manager or trustee

Dakilkar. It was contended that the word "dakilkar" applied to one holding by virtue of his own title, and not to a possession held on behalf of another as an executor or trustee The ordinary meaning of the word is "occupant" In order to find out the meaning of the word when used in a will, the context must be looked at [16 I A 166=17 C 122 (129)=5 Sar 379]

'Dakhilkas' A I R 1931 Pat 361.

Dakhil-kharij (*P entering and putting out*) In revenue language (*Upper India chiefly*) the process of recording a transfer of land, by inheritance, gift, sale, etc. so as to secure the title, but (directly) to secure the liability of the land revenue being duly put down to the right person [(*Bad Pow* (*Ben*) 1, 686, (*N W P and Oudh*) II, 290 (P.J), 565, 757 (C P), II, 521 (M), III 103

DAKHIL-KHARIJ Entering and ejecting, erasure of an entry, in Bengal especially, the removal of the name of one proprietor and insertion of that of another, on occasion of a transfer of the property

Dakhil Kharih. Register of mutations.

Dakhili-nakla An additional or supplementary subordinate village, or sub-division of a Mauza

Daksha. A great Hindu Sage and writer of an important smriti that bears his name.

Dalai(Dollol) (*Assam, etc*) a chief (an executive headman), (*Bad. Pow.* III. 453, 456)

Dam a small coin (*Moghul Empire*) said to have been counted forty to the rupee. (*Bad Pow* I. 256)

DAM. Work construction or structure, made of wood, stone or other materials raised to obstruct the flow of the water, in a river or other streams, an obstruction to the natural flow of water in the river Sometimes used to denote the pond of water created by this obstruction. (*Black*) In Fisheries Acts, "Dam," means "all weirs, and other fixed obstructions, used for the purpose of damming up water." (S. 4, 24 and 25 V, c 109.)

Damage.

Damage. Loss, or injury which results from an unlawful act, injury, or deterioration, caused by the negligence, design, or accident of one person to another; depreciation in value, whether such depreciation is caused by a wrongful or lawful act, "any hurt or hindrance that a man receives in his person or property or estate." (*Tomlin's Law Dic*)

"By a damage we understand every loss or diminution of what is a man's own, occasioned by the fault of another The definition of damage extends the notion of it beyond a man's goods His life, his limbs his liberty, an exemption from pain, his character or reputation, are all of them his own in a strict and proper sense, so that the loss or diminution of any of them gives him a right to demand reparation from those by whose fault they have been lost or diminished" (*Black L Dict*, 16 *Ame Rep* 270)

"DAMAGE" AND "DAMAGES" The word Damage is to be distinguished from its plural "damages," which means a compensation in money for a loss or damage caused by another's act

Damageable Susceptible of hurt or damage.

"Damage by fire" defined *See* Policy of Insurance Act 20, 1891, S 173 (3), Bom Act 3, 1888, S 363, Mad Act 3, 1888, S 61

Damage-Feasant is when a stranger's beasts are found in another person's ground without his leave or licence, and without the fault of the possessor of the close (which may happen from his not repairing his fences) and there doing damage, by feeding, or otherwise on the grass, corn woods, etc In which case, the tenant whom they damage, may distrain and impound them, as well by night as in the day, lest the beasts escape before being taken (*Tomlin's Law Dic*, *Termes de la Ley.*)

Damage to Cargo Defined, S 3 (3), 32 & 33 V., c. 51

Damages Compensation for legal injury As a general rule the theory upon which the law allows damages for the violation of a civil right is based upon the doctrine that where a civil injury has been sustained the law provides a remedy that should be commensurate to the injury sustained The term "damages" in clause (*c*) and S 630, C P. Code, includes "mesne profits" (9 Cal 695)

Damages and injury distinguished. There is a material distinction between "damages" and "injury" Injury is the wrongful act or tort which causes loss or harm to another. Damages are allowed as an indemnity to the person who suffers loss or harm from the injury. The word "injury" denotes the illegal act. The term "damages" means the sum recoverable as amends for the wrong

Damage and Loss. A synonym of 'damage' when applied to a person sustaining an injury, is 'loss'. Loss is the generic term. Damage is a species of loss. 'Damage' signifies the thing taken away—the lost thing which a party is entitled to have restored to him, so that he may be made whole again.

Damage ex contractu and damage ex delicto Mr. Justice Spofford, in *Kohn* v. *Town of Carrollton*, 10 La Ann 719, distinguished between damages *ex delicto* and damages *ex contractu* by saying that "the former flow from the violation of a general duty; the latter, from the breach of a special obligation". (*State* v. *Fourchy*, 31 South 325, 331, 106 La. 743)

Damage.

COMPENSATORY DAMAGES Those allowed as a recompense for injury actually received.

CONSEQUENTIAL DAMAGES. Those though directly, are not immediately, consequential upon the act or default complained of

DOUBLE OR TREBLE DAMAGES. In special cases the law gives the injured party double or treble damages (*See* Brooke. Abr pl 70, Bouvier Tit., Measure of Damages)

EXEMPLARY DAMAGES Those allowed for torts committed by fraud, deliberate malice, violence or oppression This is avoided as a punishment to the defendant and as a warning to other wrongdoers. (*See* 69 M L J. 98)

GENERAL DAMAGES are such as the law implies and presumes to have occurred from the wrong complained of

GENERAL AND SPECIAL DAMAGES Special damages must be specially pleaded General damages have to be claimed as a separate and distinct item, but it is enough to claim them in a lump sum without any particulars General damages are defined as 'matters which cannot be stated in money or money by worth' and include such things as bodily or mental suffering, loss of reputation in the like Special damages have to be specifically proved, general do not. (141 I C. 58 =28 N L R 320=A I.R. 1933 Nag 29)

LIQUIDATED DAMAGES Measure of damages which has been previously ascertained and fixed by agreement of parties, damages, the amount of which has been determined by anticipatory agreement of the parties

NOMINAL DAMAGES. Where a legal right has been invaded the plaintiff may recover nominal damages, although there may be no evidence of actual damages sustained, for a damage is not merely pecuniary, but an injury imports a damage where a man is thereby hindered of his right.

"Nominal damages are in effect, only a peg to hang costs on" [*Maule J*, *Beaumont* v. *Greathead*, (1846) 3 D & L 636]

NOMINAL DAMAGES AND SMALL DAMAGES. "Nominal damages," is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed But the term "nominal damages" does not mean small damages. The extent to which a person has a right to recover what is called by the compendious phrase damages, but may be also represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances, and it certainly does not in the smallest degree suggest that because they are small they are necessarily nominal damages. Of course, the whole region of inquiry into damages, is one of extreme difficulty You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act." [*Earl of*

Daman-i-koh

Halsbury, L.C , in Owners of Steamship. "Mediana" v Owners, Master and Crew of Lightship "Commet," (1900) L. R. App. Cas. 113 (H L.)]

PUNITIVE DAMAGES. Damages intended to act as a deterrent punishment on the wrongdoer, same as exemplary damages.

SPECIAL DAMAGES are such as actually result from the commission of the wrong, but are not such as necessary result that they will be implied by law It is often a very difficult matter to distinguish general from special damages (*See* General and special damages *supra*)

ULTRA DAMAGES *Damages ultra*, additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant (*Wharton*)

VINDICTIVE DAMAGES. This has more or less the same meaning as exemplary damages.

"Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself [*Lord Mansfield, Case of John Wilkes*, (1764) 19 How St. Tr 1167, Lofft 's Rep 19]

"I wish to know, in a case where a man disregards every principle which actuates the conduct of gentleman, what is to restrain him except large damages?" [*Gibbs C J , Merest* v *Harvey*, (1813) 5 Taunton 443]

"DAMAGES, COMPENSATION AND MESNE PROFIT" The use of the words "damages, compensation and mesne profit" in S 144, Civil Procedure Code, 1908, indicates that possession may be wrongful even though taken in execution of a decree or order. (17 M.L T. 168)

Daman-i-koh (*P skirt of the hill.*) A tract in the Santal Pergunnahs (*Bad Pow I*, 497), allowance made to chiefs, etc , (*Bad. Pow I*, 589)

Damdupat The Hindu rule of damdupat, *viz*, that no greater arrear of interest can be recovered at any one time than what will amount to the principal, is not a mere moral precept and is not limited in its application to other than stipulated interest. That rule applies as between the Hindus on the original side of the High Court, as a part of the Hindu Law of Contract, in the absence of any legislative enactment to the contrary [14 C 781. *Also* 1 C L J 182 (187) , 27 N L R 312=134 I C. 274=1931 N 161]

Dame. The wife of a knight or baronet.

Dammu. (*Tel.*) Mud, miry ground, land prepared for receiving young rice plants

Damn. *As a noun*, a curse, an oath *As a verb*, to deem, think or judge any one, to be guilty, to condemn; to censure, to give judgment, or sentence, or doom of guilt, to adjudge or declare the penalty or punishment (*In Eccles. Laws*) to condemn to punishment in a future world; to consign to perdition

DAMN A curse, oath. To *damn a bond or deed* is to cancel it (*Cent Dict.*)

Damnable. Odious; detestable; liable to damnation.

Damnification. That which causes damage or loss; causing hurt, injury or loss to person, property or interest of any individual.

Dandakattu

Damnify. To cause hurt or injury, to cause loss.

Damni injuriae actio (*Lat.*) An action against one for an intentional injury to a beast of another

Damnosa haereditas. (*Lat.*) A burdensome inheritance.

Damnum absque injuria. A loss without a wrong, loss or hurt without injury in law (*i e*) without such injury as would give rise to an action for damages against the offending party If one man keeps a school in such a place, another may do so likewise in the same place, though he draw away the scholars from the other school, and this is *damnum absque injuria*, a loss without an injury, but he must not do any thing to disturb the other school (3 Salk. 10, *Tomlins Law Dic*)

Blackstone says "If I can prove the tradesman a bankrupt, the physician a quack, the lawyer a knave, and the divine a heretic, this will destroy their respective actions, for though there may be damage sufficient accruing from it, yet, if the fact be true, it is *damnum absque injuria* (damage without injury) and where there is no injury, the law gives no remedy And this is agreeable to the reasoning of the civil law" (3 Bl Comm 125)

Damnum absque injuria esse potest A maxim meaning "There is such a thing as damage without injury." (*Morgan Leg Max.*)

Damnum sine injuria esse potest A maxim meaning "There may be damage or injury inflicted without any act of injustice" (*Cyclopaedic Law Dic., Ame Cyc : Black, Morgan Broom.*)

"Damodarpur Lakhwar" When the question was whether under a grant of "Damodarpur Lakhwar" only one village was conveyed or three villages bearing the common designation of Lakhwar were conveyed, *held*, that the words "Damodarpur Lakhwar" denoted all the three villages [(1923) 50 I A 183 (191)=2 P. 676=21 A L.J. 554=A I R 1923 P C 128=4 Pat L T 447=1 Pat L R 345=33 M L T 233 =18 L W 728=25 Bom L.R 1259=28 C.W N 277= 39 C.L J 318=74 I C 747=45 M L J. 578]

Damsel A young single gentlewoman, a young unmarried woman

DAMSEL, GIRL, MAID, LASS The damsel is of some pretension to birth and distinction The girl is no more than the correlative of boy, the Maid is the chaste or unmarried girl, and the lass, like lad, has no pretension of rank. (*Smith Syn. Dis*)

Danabandi. Process of assessing revenue in kind by estimating the state share without actual weighing and measuring, (*Bad Pow.* III, 341)

Danamar. (*Karn*) A tax on the transfer of cattle from one ryot to another.

Dancing house. A house kept for the purpose of dancing by persons resorting thereto, and to which persons are admitted for money. Such a house falls within the licensing provisions of the Disorderly Houses Act. [*Clarke* v. *Searle*, (1793) 1 Esp. 25.]

Dandakattu. (*Tel*) A wisp of straw bound round the bottom of a heap of grain. Area within which the corn is threshed.

Dandasulu

Dandasulu. (*Tel.*) Village watchers.

Dandibele (*Karn.*) A plentiful crop.

Dandidar A mere dandidar or a *weighman* is neither a seller nor a buyer nor an agent of either, within R 4 of U. P Municipalities Act (I of 1900) [13 Cr L J. 797=11 A.L.J. 39=17 I. C. 541 (542).]

Dandidari. The term '*dandidari*' literally means measurer and signifies a broker who negotiates the sale of paddy and other produce in a market-place and receives from sellers and buyers remuneration if they chose to employ him Such a right is not a monopoly restrictive of any person's right to exercise his trade or calling There is nothing illegal or contrary to public policy in Government allowing a market to be held on its land and taking measures to restrict the admission of brokers. Such a right is not personal to the grantee and can be transferred even without a registered instrument [18 C.W N 1194=19 C L.J 313=24 I C 387]

Dandikala. (*Karn.*) Harvest time.

Dandupat (See *Damdupat*) Dandupat is a rule of Hindu Law, which is that no greater arrear of interest can be recovered at any one time than what will amount to the principal sum (1 B H C R. 47)

Dang A "dang" is the same thing as a "*lathi*" and it is not a deadly weapon within the meaning of S 397, I P Code. [99 I C. 49=28 Cr.L.J 17=A I R. 1927 Lah 149]

Danger. Danger means risk, hazard, peril or exposure to pain or injury and the degree of danger is proportional to the time required for the oncoming of the apprehended injury. The different degrees of danger do not justify the same remedy but the remedy should also be different (33 B. 334=10 Bom L R 821=3 I C 361) It means "jeopardy," "exposure to loss or injury". *Danger* means peril, risk, hazard, exposure to injury from pain or other evil and can vary in degree according as the apprehended injury is expected to occur at once or at some future time [*See also* 13 P.R. 1906 (Cr)=5 Cr L J 81=59 P.L R 1907

DANGER, PERIL, HAZARD, RISK, JEOPARDY, VENTURE, *Danger* is the liability or exposure to evil of any kind. Danger is general and contingent, and may be remote. It is the generic term. *Peril* is always immediate and personal A man is in danger of his property and in peril of his life. *Hazard* is the risk of entire deprivation of the thing hazarded, and applies only to things, not persons Hence people hazard their lives, their property, their reputation, but they do not hazard, but endanger or imperil, themselves. *Risk* is hazard of loss only We run the risk of losing, but we never speak of the risk, but of the chance of winning. *Jeopardy* may include all voluntary agency, which is implied in hazard and risk, and, unlike peril is applicable to things of value as well as to persons. A man's property, or life, or himself, may be in jeopardy. *Venture* is purely voluntary, and denotes a meeting of hazard, peril, jeopardy, or risk, with the hope that chance may be in one's favour. "Wise venturing is the most commendable part of human providence."—Halifax. (*Smith. Syn. Dis.*).

DANGER, PERIL, HAZARD, RISK, JEOPARDY. It is *dangerous* for a youth to act without the advice of his friends; it is *perilous* for a traveller to explore the wilds of Africa, it is *hazardous* for a merchant to speculate in time of war. experiments in matters of policy or government are always *dangerous*, a journey through deserts that are infested with beasts of prey is *perilous*, a military expedition, conducted with inadequate means, is *hazardous* We speak of "*danger* of a contageous disease", "*perils* of the sea", "*hazards* of speculation", "*risk* of a daring enterprise" "a life brought into *jeopardy*" (*Crabb*)

Dangers of the seas

Dangers of navigation. Same as dangers of the sea, latent dangers, and not such as are, or ought to be patent, which can be avoided by skill, judgment and foresight

Dangers of river navigation Natural accidents peculiar to navigation in a river, which do not happen at the intervention of man In *Hayes* v. *Kennedy*, 2 Pittsb (Pa) 262, 267, it is said. "*Dangers of the river navigation* is a phrase of larger import than *dangers of the river.*

Dangers of the river. Accidents incident to river navigation, and not such as skill and foresight could avoid, hidden obstructions in the river, as rocks, logs, and the like which could not be foreseen or avoided by human prudence

DANGERS OF THE RIVER, UNAVOIDABLE In *Gordon* v *Little*, 11 Am. Dec 632, *Gibson J*, said 'The words unavoidable dangers of the river' seem to me equivalent to the words 'perils of the sea' in a policy of insurance, and these are well understood to mean those dangers which arise from tempests, storms, rocks and sands, they are, in fact, 'the unavoidable dangers' of the seas," and *Duncan, J*, observed "that 'inevitable dangers of the river,' is not more definite or certain than 'perils of the sea".

'Dangers of roads' may refer according to context, to Marine Road, where vessels lie at anchor, and when they are made to extend to roads on land, they could apply to such dangers only as were immediately caused by the condition of the roads, such, for instance, as the over-turning of carriages (1 Maude & P 353, citing *Rothschild* v *Royal Mail Steam Packet Co.*, 7 Ex. 734)

Dangers of the seas (*In Marine Insurance*) Perils of the seas, those perils which are peculiar to the sea, inevitable perils, or accidents, in the sea In *Airey* v *Merrill*, 1 Fed Cas No 115, 2 Curt. 8, 9 (Citing 3 Kent Comm 275, Story Bailm. 512) it is said: "it would not be practicable to fix any definition of the phrase which would be justly applicable to it in all contracts. The words have a strict sense, in which they include only the natural accidents peculiar to the sea. They have also a more extended sense in which they import accidents occurring upon the sea" This phrase, whether understood in its most limited sense as importing only a loss by natural accidents peculiar to that element, or whether understood in its more extended sense as including inevitable accidents upon that element must still in either case, be clearly understood to include only such losses as are of an extraordinary nature, or arise from some irresistible force, or some overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. (*The Reeside*, 20 Fed. Cas. No. 11, 657. 2, Sumn 567, 571.) The term is wider in scope than

Dangerous.

'*act of God*", see *Stephens, etc, Transp Co* v. *Tuckeram*, 33 N L.J 543, 551)

" 'DANGERS OI THE SEAS' are synonymous with Perils of the Seas" (per *Esher, M. R., Pandorf* v *Hamilton*, 55 L J Q B 548)

" 'DANGERS AND ACCIDENTS OF THE SEA' cannot have a narrower interpretation than 'Perils of the Sea' " (per *Ld Herschell, Wilson* v. *The Xantho*, 56 L J.P D. & A. 118)

Dangerous Attended with danger, perilous, risky (as) "Dangerous parts of machinery", "Dangerous place" "Dangerous thing" "Dangerous weapon" "Dangerous trade or business", "Combustible and dangerous materials", attended or beset with danger, full of risk, perilous, hazardous, deadly, unsafe The word "dangerous" is the opposite of the word "safe" When a given place in a highway ceases to be safe, it becomes dangerous

DANGEROUS, PERILOUS Both terms denote exposure to evil, with this difference —Dangerous expresses what evidently exposes to ill without modification, or any alternative but that of escape, perilous what exposes to peril, that is, to danger which is great of its kind, but not certain, and which may even lead to the gaining of some great success or good In proportion to the dangerous the evil augments, in proportion to the perilous the chances multiply (*Smith Syn Dis*)

Dangerous animals A person who keeps a dangerous animal does so at his peril The law on the subject was concisely stated by *Lord Denman, C J*, in *May* v *Burdett*, (1846) 9 Q B 101, *72* E R. 189 (an action for injuries caused by the bite of a monkey where he said "Whoever keeps an animal accustomed to attack and bite mankind, with knowledge that it is so accustomed, is *prima facie* liable in an action on the case at the suit of any person attacked and injured by the animal, without any averment of negligence or default in the securing or taking care of it The gist of the action is the keeping the animal after knowledge of its mischievous propensities." The owner of such an animal is not, however, liable to a person who brings the damage on himself [*Marlor* v. *Ball*, (1900), 16 T L R 239]

Dangerous building The word "*Dangerous Building*", applies to all structures which are in a dangerous state, the word is not confined to structures which are dangerous to passengers using a public way (*R* v *Herring*, 63 L. J. M. C 230)

"Dangerous disease" defined Ben. Act 3, 1899, S 3 (12), Bom Act 3, 1888, S 3 (*aa*). Bom Act 3, 1901, S 3 (16), Mad. Act 3, 1904, S 3 (7).

"DANGEROUS DISEASE" includes cholera and endemic, epidemic or infectious disease by which the life of man is endangered [Bom Act III of 1888 (City Bombay Municipal), S 3, cl. (*aa*)]

Dangerous goods In Merchant Shipping Act, 1894 (S 446) '*Dangerous Goods*,' is defined to mean "*aqua fortis*, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitroglycerine, petroleum, any explosives within the meaning of the Explosives Act, 1875, and any other goods which are of a dangerous nature".

Dangerous instrument. Dangerous instruments are instruments and articles in their nature calculated to do injury to mankind, and generally intended to accomplish that purpose. They are such as are essentially and in their elements instruments of danger. The flywheel cannot be called a dangerous instrument

"Dangerous parts of the machinery". The phrase "All dangerous parts of the machinery," as used in a statute is to be read unrestrictedly, and not *ejusdem generis* with what precedes. [*Redgrave* v. *Lloyd*, (1895) 1 Q B 876] It is not confined to parts which are in themselves dangerous, but applies to all machinery from which, in the ordinary course of working it, danger may be reasonably anticipated, although such danger may arise only through careless working or external causes, [*Butlwhistle* v. *Hindle*, (1897) 1 Q B 192, Stroude 460).]

"Dangerous petroleum" defined Act 8, 1899, S. 2 (*b*).

"Dangerous trade" defined, Mad. Act 3, 1904, S 3 (8).

Dangerous weapon (*See also* "deadly weapon ") A weapon likely to produce death or great bodily harm, a weapon capable of producing death or danger to life, one by which a fatal wound may be given.

"OFFENSIVE AND DANGEROUS WEAPONS" would seem to be synonymous terms " [*McMillan, J* in *State* v *Dineen*, 10 Minn 407 *citing*, 1 Bishop Cr L. 200, 1 Russell Crime 118).

Dans et retinens, nihal dat One who gives yet retains [possession] gives nothing.

Dans un pays libre, on crie beaucoup, quipu,on souffre pet, dans un pays de tyrannie, on se plaint peu quoiqu,on soufire beaucoup. A maxim meaning "In a free country there is much clamour, with little suffering, in a despotic state, there is little complaint but much grievance." (*Tayler L. Gloss*)

Danka. (*Tel*) A path between two fields for cattle

Dant A very minute land measure (N W P) (*Bad-Pow* II, 128)

Dar. (P holder) Any name of a tenure, etc , may have this as a suffix to indicate 'holder' of some interest in land thus taluq-dar; patni-dar, istimrar; *i e*, holder of the estate called taluk, of the forming interest called patni of the perpetual lease or grant, etc. (*Bad. Pow*)

Dara (*S*) means wife.

Darbar A court of a king or chief, ceremonial assembly for state purposes, justice, etc., the court (thus we say the Sikh Darbar, the Jaipur Darbar'— did this or that), the members of the Taluqdar chiefs family collectively (*Bad Pow* III 253) A levee in an Indian State, a state levee.

Darbar-kharch. Political and diplomatic expenditure, court charges, charge for presents and gratuities made to princes and public functionaries, bribes, etc. In many places under the old *regime*, an addition made to the assessment by Government Officers or the Zamindars, on the plea of providing for gratuities exacted by their superiors or the State on their payment of the revenue

Darchadavu.

Darchadavu. (*Karn*) Disposing of the Government share of the crop to farmers at an advanced rate.

Dare (**Venture.**) We dare as against danger; we venture as against risk. The bold man dares, the hopeful man ventures, the rash man may do either (*Smith Syn. Dis*) We speak of a *daring* expedition, a *venturesome* enterprise.

Dare ad remanentiam To give away a remainder in fee or for ever.

Dares (H) A road, margin, any line very straight.

Dargah (*Persian.*) A royal court In India it is more usually applied to a Mohammadan shrine or the tomb of some reputed holy person, and the object of worship and pilgrimage A Darga which is a place of pilgrimage and for the maintenance of which and for the performance of religious exercises in connection with which certain property has been devoted, is a religious institution within the meaning of Act XX of 1863. (2 M. 197.)

Darjasti (*Karn*) An extra assessment by making the cultivators buy the Government share of the crop at a rate above the market price

Darkhast (*Hindustani*) An application, a proposal, especially an application to a Court as distinguished from the filing of a suit, such as an application for the execution of a decree, application for assignment of Government land In Madras the word is used for all official requests for transfer and relinquishment, or for revenue petitions generally. Rules for disposal of such, are called the "Darkhwast-rules" Darkh-wast appeals are also spoken of —meaning an appeal from the order passed on a petition. (*Bad Pow*, III, 104, 128)

Darkhast ijara. Dharkhast ijara is a contract or lease granted upon application to the Revenue Department [31 I A 83=27 M 291 (296)=8 C.W.N. 545=8 Sar. 587=14 M L J. 209.]

Darkhwast-malguzari (*N.W P.*) The formal document tendering acceptance of the terms of service of tenant and formerly in the (Punjab) but not now in use there (*Bad Pow* II, 81).

Darkness Without light, and sometimes defined as an absence of light. In *Boyse* v. *Rossborough*, 6 H L. Cas 2, 45 it is said, "There is no possibility for mistaking midnight for noon; but at what precise moment twilight becomes darkness is hard to determine."

"Darmilla Inam lands". 47 M L J 393=20 L W 387=35 M L J. 70=1924 M.W N 779=82 I C 929= 47 Mad. 942=A.I R 1924 Mad 782

"Darobust zemindari hakook" These words in a Patni lease, mean all zemindari rights whatsoever and include everything which might be considered as belonging to the zemindari right. [16 C.L.J. 7=16 I. C. 441 (442).]

Daroga (*Persian.*) A manager, a superintendent, an overseer, particularly the head of a custom or excise station, or of a distillery. (*See* Police-daroga.)

Dasi

Dar-patni. A patni of a patni. (*Bad Pow.* I, 545) The word *Darputni*, also the word, Putni, has acquired a technical meaning, and means a permanent tenure with fixity of rent. (62 C L J 67)

Dar-ul-harb (*Arabic*) A country under a Government that is not Muhammadan.

Dar-ul-islam (*Arabic*) A country under a Muhammadan Government

Darumam (*Tam*) The word Darumam in the clause is a Tamil adaptation of the Sanskrit word Dharma The word denotes objects indicated by the term Ishta and Poorta. It is a compendious term referring to certain prescribed classes of pious gifts and is not a mere vague and uncertain expression.(30 M, 340=17 M L J. 379=2 M L.T 198)

Daruvu (*Tel*) An embankment for irrigation.

Darvesh. (*Persian*) A Muhammadan religious mendicant, a fakir

Darwaza-bund. (*Hindustani*) Literally doors closed, an expression equivalent to 'not at home'.

Daryabadi (*Assam.*) A supplementary measurement of alluvial lands cultivable on subsidence of the floods (*Bad Pow* III, 422)

Daryabanna The rule under which the deep stream or main channel for the time being forms the boundary of estates on opposite sides of a river.

Darya-burdi (*P. river-borne away*) Alluvion and diluvion, operations in connection with the annual inspection, measurements and, etc., of land affected by river action (N W P and Pj). (*Bad Pow*)

Dasabandham (*M*) Grants of land free of revenue to support irrigation works (*Bad. Pow.* III. 81.)

Dasam. (*Mal.*) Sub-division of an Amsam (*See* Desam, *Moore's Mal law*)

Dasaundh A right to *dasaundh* does not carry with it any under-proprietary rights in the lands held by the dasaundh-holder as an ordinary tenant (14 O. C 335, ref. 2 O L J 191=28 I.C. 847, *see also* 2 O L J 156=28 I.C 929)

A right to receive *dahayak* or *dasaundh* does not connote any right to possession of land either as under-proprietor or as thekadar (2 O L J 154=28 I C 919)

Dashye Upyat Whether an arm (*See* 3 Bur.L.T 91=5 L B R 207=8 I C. 972.)

Dasi (*Hindu Law*) The word "Dasi" under the Hindu Law as administered now is not understood literally as meaning a female slave, but a woman who lives as dependent in the family. (47 Bom. 401=24 Bom.L.R. 1009=A I.R 1923 Bom. 130) A woman of Mohammedan faith cannot invoke Hindu Law to her assistance nor does she come within the description of the expression *dasi* or *avarudh stree* (in Hindu Law.) (3 O W.N 284=93 I C. 677=1926 Oudh 294) A woman entitled to maintenance under the Hindu Law as *dasi* (female slave) or as an *avarudh stree* (permanent concubine) must be a woman with whom the connection of the man must have been an open one and who must have resided openly with him as a member of his family. Where, therefore, the con-

Dasi and Devadasi.

nection between a Mohammedan woman and a deceased Hindu was not of a permanent nature and the woman was not allowed to live in the house in which the deceased had his own married wife living with him with her legitimate children, and she was never treated as a member of the family either by his own wife or by his sons, she does not come under the description of the word *dasi* (female slave) *or avaruḍh stree* (permanent concubine) as understood in Hindu Law. (3 O.W.N. 284=93 I C. 677=1926 Oudh 294.)

DASI. (*Mal*) A non-brahman female attendant upon a Nambudri woman. (*Moore's Mal Law.*)

Dasi and Devadasi. A female slave; Devadasi is a woman dedicated to a temple. (*N B.*—Dasis or Devadasis have lands attached to their services in the temple, and they are called Devadasi inams.)

DASI AND DASIPUTRA Although the primary meaning of the word 'dasi' in Hindu Law, is a slave, it includes also a concubine or a woman of the servile class in a secondary sense, and an unmarried Sudra woman kept as a continuous concubine comes within its scope. The off-spring of such a woman is a dasiputra. (7 M 407 *See also* 28 Cal. 194)

Dasnami Gossains are a sect of Sanyasis Custom as to entry into their order is as follows —Every aspirant for entrance into the order of the sanyasis has to pass through a period of probation. Upon his first arrival at the monastery his habits and character are closely watched for some days, and enquiries are made into his caste, for the sanyasis admit into their order ordinarily members of the twice-born classes and very rarely take members of the fourth class. If the notice is approved, his head is shaved, his name is changed and upon the performance of this preliminary ceremony he is regarded as a probationer for entrance into the order. The final ceremony, however, which is called the Biraja home ceremony, is not performed for many months, and sometimes for many years During this period of apprenticeship it is open to the chela to return to his natural family, but after the performance of the final ceremony his connection with the world is deemed to have been finally severed. [2 I C 385 (393)] The following is the note of the Warden on the Customs of Gossains printed as appendix to Steel's 'Law and Custom of Hindu Castes.'"The head of the candidate is first shaved, when he immediately becomes a Gossain in a state of probation, and that, after he has remained so for a year or two and made himself familiar with the usages of the order, the ceremony of biraja home is celebrated, when he becomes a perfect Gossain. In paragraph 28 it is further stated that during the noviciate of the candidate his parents are at liberty to withdraw him, but that, after the solemnization of the biraja home " He is irrevocably attached to the Gossain sect and as much alienated from his family by birth as if he had never belonged to it. [Quoted in *Ramdhan Puri* v. *Dalmir Puri*, 2 I. C 385 (393-394.)

BIRAJA HOME is the final ceremony by which a noviciate is confirmed as a Sanyasi. An essential part of the ceremonial of Biraj Home is for the probationer to offer pindah to himself (which indicates that he has suffered civil death and determines his civil status) devouring the burnt betelnut with a betel leaf, and to have the tuft of his hair burnt and mixed with clarified butter. The root (moola)

Daswa Padshahka Granth.

Mantra is whispered into the ears of the Chela at the time of this ceremony. A chela who has merely become a probationer and whose biraj home has not been performed, has not attained the status of a valid Sanyasi and is not entitled to take by inheritance the estate of his guru. [2 I. C. 385 (394)]

Dast In khoti villages applied to the former government assessment one nominally in grain, but really paid by a (curiously adjusted) cash equivalent. (*Bad. Pow.* III 289.)

Dast-ba-dast. Ready money transaction.

Dast-baki Balance in hand, money collected but not brought to account, whether referring to balances in the hands of the native collectors, or to collections made and embezzled by them (*See* Dasta-Bakki)

Dasta Bakki (*Mal*) A balance of revenue collected frem the person due, but not brought to the public credit by the Revenue Officers (*Log Mal. Man*)

Dastak Writ of demand for payment of land revenue.

Dastakana Free or remuneration to the officer who serves a writ or summons.

Dastak-i-talb i-zar Warrant issued against defaulters of revenue demanding payment, and subjecting them to the expense of maintaining the officer who serves it until the amount is paid

Dastauvej A voucher, a document, any legal paper, a note of hand, a bond, a title deed, and the like. Anything in writing producible in evidence, or by which a person may be bound in law. A certificate of any kind

Dastauves-i-hibba. A deed of gift or bequest.

Dastauvez i-hissa. A deed of partition.

Dastbardarnamah Where a widow executed and registered a deed styled a *dastbardarnamah* by which she renounced all her rights as widow in the estate of her husband in favour of the next male reversioner in consideration of his agreeing to pay her certain amount which in fact was never paid, *held* that the deed was a deed of release by which the widow surrendered her life-estate to the reversioner and that the agreement was unenforceable for want of consideration (70 P R 1915=10 P L.R. 1916=95 P.W.R 1915=29 I.C. 253)

Dastur (*P custom*). A group of districts or division of territory in Mughal times, intermediate between the 'Sirkar' and the 'pargana'. (*Bad. Pow.* I, 256) Custom, usage; also a customary fee, a commission.

Dasturat. The term comprehends a variety of articles which are found enumerated in Mr Shore's Minute of the 18th September 1789 (para. 147). It includes malikana

Dasturi. A customary fee, a commission, a perquisite.

Daswa Padshahka Granth (*Punjabi.*) The book of the tenth king, the name of the second of the two books composing the Sikh Scriptures.

Data

Data. Grounds whereon to proceed, facts from which to draw a conclusion, things known or assumed as a basis for inference or reckoning. (*Wharton L Lex*)

Date. As a noun, the point of time at which a transaction or event takes place, time given or specified, time in some way ascertained and fixed, *in a deed*, that part of the deed or writing which expresses the day of the month and year in which it was made. (2 Bl. Commn 304, *Tomlins*) In *Bement* v. *Trenton Locomotive, etc, Mfg. Co*, 32 N L J 513 (515) it is said: "The primary signification of the word date, is not time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed, this is the sense in which the word is commonly used When we speak of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself

DATE, PERIOD, ERA, EPOCH, TIME AGE, GENERATION Of these, the most general is Time which means unmeasured duration, or any specific measure or point of it

DATE is a point, and not a duration of time. A *Period* is, as it were, an expanded point of time, or a stage in history, which may itself be included among other stages *Era* is used both for a fixed point of time, and for a succession of years dating from that point It is conventional, and indicates a mode of computing time peculiar to some community or body of persons

Epoch is an era constituted by the inherent importance of an event, while an era may be arbitrary Epoch is less formal than era The capture of Constantinople is an epoch in the history of Mahomedanism, but the Flight of Mahomet is its era. *Age* and generation have nearly the same meaning, but Age is taken broadly for such periods as coincide with the joint lives of human beings, and so is extended to mean a century, while *Generation* rather refers to the average duration of individual life, and frequently means thirty years (*Smith Syn. Dis*)

DATE—NATIVE AND ENGLISH DATES Conflict between, in Patwari's report as to date of death in mutation proceedings—Which prevails [*See* (1902) 30 I.A 27 (31)=25 A. 143 (151)]

"DATE FIXED FOR THE HEARING." means the day on which the hearing commences, and includes both that day and the day to which the hearing may be adjourned. [11 B. 698. But *see* 4 All. 248 (F B)]

OUT OF DATE Antiquated, obsolete

UP TO DATE. Brought up to the latest date, meeting the latest requirements of knowledge.

Dated. Marked with a date (as, letter *dated* Calcutta the 1st day of March, 1937)

Dating, having origin; referring to (as, church *dating* from 14th century A D)

Dateless Undated (*Rare.*).

"Date of application to a proper Court." Signifies the date of presentation of the application, and not the date on which the application is considered and disposed of by the Court. [10 C.L J. 479=3 I. C. 336, 1 All 580 (F.B.).]

Date of Realisation.

"Date of applying." The words "The date of applying to the Court" means the particular date on which the application is actually presented, and not the last day or any other day on which the application was pending. [1 All. 580 (F B.).]

"Date" of a Bill of Exchange or Note is the date expressed on its face; not the time when it is actually issued. (*Williams* v *Jarret*, 5 B & Ad 32.)

Date of Deed Is the description of the time, *viz*, the day, month, year, etc, in which the deed was made. (1 Inst 6) But "the ancient deeds had no dates, only of the month and the year, to signify that they were not made in haste, or in the space of a day, but upon longer and more mature deliberation." (*Blount. Tomlins Law Dic*)

"Date of a deed" and "date of delivery." "If no date of a deed be set forth, it shall be intended that it had none, and in such case it is good from the date of delivery, for every deed or writing hath a date in law, and that is the day in which it is delivered and a deed is no deed till the delivery, and that is the date of it" (Mod. Ca 244, 1 Nels Abr. 525, *Tomlins Law Dict*)

"Date of decree" The words "date of the decree" mean the date the decree ought to bear under C P Code (*i e*) the date of the judgment [25 C 109, (13 C 104, R., 23 Bom 442; 25 Cal 109] These words mean the date when the decree is pronounced, and not the date when the decree is reduced to writing and signed. (14 C W.N. 420=5 I C 844.) Where the decree of the original Court was not executed pending the appeal to the Higher Court, the words "date of the decree" ought to be read as the date of the final decree. The decree of the appellate Court is the final decree and the only decree capable of execution [22 Cal 467 (13 C. 13, 11 A 346, 11 B 172, F.), 22 Cal 644]

"Date of institution of a suit". Date on which the plaint is filed in the Court having jurisdiction to try it. 17 C W N. 515.

Date of judgment. The date of the judgment is the date on which it is delivered [7 C 127=8 C L R. 409, but *see also* 9 Cal 711 (F.B.)]

Date of Payment. Where a mortgage decree provides for interest to be recovered from the date of the decree till the date of payment, the words "date of payment" mean the date of actual payment and not the last day fixed for payment in the decree [5 C W, N. 653 (26 C 39=2 C W.N 633, 21 A 361 R)]

"Date of publication of the notice." 9 I C. 621.

Date of Realisation. Where a mortgage decree provides for payment of interest up to the date of realisation, the mortgagee is entitled to interest up to the date of the cofirmation of the sale and not simply up to the date of sale. Date of realisation means the time when the mortgagee becomes entitled to actually handle the cash. [33 C. 846. *See also* 9 C L J. 288]

DATE OF SALE is the date on which the sale is held and not the date of its confirmation (28 Bom L R 510=95 I.C. 549=A I R 1926 Bom. 330 (1). But *see* 18 C.W.N. 349 *infra.*) The words 'date of sale' mean the date of confirmation of sale (18 C.W N 349=18 C L.J. 170=21 I C. 419 *See also* 16 C L.J 131=15 I C. 430, 29 Cal. 626=6 C W N. 776, 23 Cal 775, 26 Cal. 449, 17 C.W.N. 440.)

Dattaka.

Dattaka (*Son*), is one given in adoption by father or mother

Dattaka Chandrika and Dattaka Mimamsa There are works of authority on the Hindu Laws of adoption. It is not known who was the author of the Dattaka Chandrika, and the doubt as to its authorship makes it impossible to fix with any certainty the date when it was written, but it is believed to be an earlier work than the Dattaka Mimamsa, which was written by Nanda Pandita, who is known to have lived about 300 years ago When the Dattaka Chandrika was first accepted in southern India as an authority on the law of adoption, it would probably be impossible now to ascertain [48 I A 280=44 M 656 (667-8)=1921 M W N. 541=34 C L J 56=23 Bom.L R 920=14 L W 270=26 C W N 1=19 A L J 621=61 I C 690=41 M L J 33] "The Chief Justice denies that the Dattaka Chandrika and the Dattaka Mimamsa have been recognised as any authority at all in the Benares School of Law But their authority has been affirmed as part of the general Hindu Law, founded on the smritis as the source from whence all schools of Hindu law derive their precepts Both works have been received in Courts of law, including this Board, as high authority Both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law" [26 I.A 153 (161)=21 A. 412 (418-9)=3 C W N. 454=1 Bom L R 311=7 Sar. 474.] The Dattaka Mimamsa is not older than the 17th century A.D, and does not claim any but human origin It was written during Mahomedan rule and cannot be the work of law-giver or judge The date of the Dattaka Chandrika is not certain, but it is at all events very much later than the Smritis, and it stands only on the footing of a work by a learned man. Both works have had a high place in the estimation of Hindu lawyers in all parts of India, and having had the advantage of being translated into English at a comparatively early period, have increased their authority during the British rule Their Lordships cannot concur in the view that their authority is open to examination, explanation, criticism, adoption, or rejection like any scientific treatises on European jurisprudence Such treatment would not allow for the effect which long acceptance of written opinions has upon social customs, and it would probably disturb recognised law and settled arrangements But, their Lordships agree that caution is required in accepting their glosses where they deviate from or add to the Smritis [26 I A 113 (131-2)=21 A 460=22 M 398 (411-2)=6 C W N 427=1 Bom.L R 226=7 Sar 330=9 M L.J 67 *See also* 48 I.A 282 (292)=44 M 656 (667-8)]

Dattaka putra (*S*) A son taken in adoption is called *Dattaka putra* or adopted son He who is given by his mother with her husband's consent or who is given by his father, or by both being of the same class with the person to whom he is given, becomes his given son. (*Dattaka*)

Dattrima son He is called a son given Dattrima whom his father or mother affectionately gives as a son being alike (by Class) and in time of distress, confirming the gift with water. (*Mitakshara*)

Da tua dum tua sunt, post mortem tunc tua non sunt (3 Buls. 19.) A maxim meaning "Give the things which are yours while they are yours, after death they are not yours."

Datuli. A minute fraction in land division (N.W.P.). (*Bad. Pow* II, 128)

Datura (*Hindustani*) The plant *datura stramonium*, it is very common in India and is often used as an instrument of poisoning

"Daughter" defined. Act 10, 1865, S. 87, Act 1, 1869, S 21

"Daughters." One's female child The word generally means legitimate daughters. In *Kelly* v. *Hammond*, 20 Beav 36, 37, it is said "The gift is to 'daughters' as a class, and daughters *prima facie* mean legitimate daughters.' "It cannot be said that the word 'Daughters' is at all more appropriate to describe illegitimate daughters, than the word 'Children' would be to describe illegitimate children" (per *Wood, V C*, *Re Herbert*, 29 L J Ch. 870) In *Laker* v *Hordern*, 45 L J Ch 315 *Bacon, V C*, held that a gift to "my daughters" (on the context) meant existing illegitimate daughters, the testator in that case having treated them as his daughters and had no legitimate children

"Daughter-in-law" defined, Act 21, 1870, S. 6, means son's wife.

Dauhitra means daughter's son Also includes the son of a Putrika or appointed daughter.

'Dawami' The word 'dawami' does not connote perpetuity. [3 U P L R (B R) 2, 3 O W N. 213=93 I C. 927=7 L R. 84 (Rev)=A.I.R. 1926 Oudh 260.]

"Dawami" in Pottah Whether the use of the word "dawami" in a pottah necessarily imports a perpetual hereditary interest, or whether, notwithstanding the use of that word, it may be held, that upon a consideration of the provisions and object of the pottah as well as the surrounding circumstances, the intention was to grant a perpetual lease, does not sufficiently appear, is a question of some difficulty and remains undecided. 27 C. 156 =26 I A 216=4 C W N 274 (P C)]

"Dawan" *See* 1935 All 492

Dawani and hamesh. The words "*Dawani*" and "*hamesh*" do not themselves create heritable rights when used in a lease or grant, other circumstances and conduct of the parties have to be looked to. L. R 2 A 97 (Rev).

Dawn First light; day break

"Day" "Days" defined. *See* Prescribed day, Working day, Act 25, 1934, S. 2.

DAY. The space of time which elapses while the earth makes a comptete revolution upon its axis, twenty-four hours, twenty-four hours, generally beginning and ending at midnight. A certain space of time, containing twenty-four hours. The natural day consist of twenty-four hours, and contains the solar day and the night: and the artificial day begins from the rising of the sun, and ends when it sets. (*See* 1 Inst. 135. *Tomlins Law Dic.*) "The Jewes, the Chaldeans, and Babylonians, begin the day at rising of the sun, the Athenians at the fall, the Umbri in Italy begin at midday; the Egyptians and Romans from midnight, and so doth the law of England in

Day.

many cases." [(*Co. Litt* 135, *Fox* v. *Ahel*, 2 Comm. 541 (546)] In *State* v *Padgett*, 18 S C 317, 322 citing *Coke Litt.* 135, it is said: "The division of time which most strikes us, is that into day and night. One rotation of the earth in twenty-four hours produces a period of light and a period of darkness of about equal length, and it is entirely conventional at what point of the circle we begin to make the court, but of the two periods, that of light, the artificial day, is the most important to us, and from this or some other cause we habitually, in common parlance, speak of the night which succeeds a day as the night 'of' that day—that is to say, the night that follows, that belong to that day A day is a period from midnight to midnight, the law admits no fractions of time except in cases of necessity. (3 S L R 237=6 I C. 886) *Day* in England begins as soon as the clock begins to strike twelve P M. of the preceding day (*Williams* v *Nash*, 28 L.J Ch. 886). "Our law," said Sir W. Grant in *Lester* v. *Garland*, (1808) 15 Ves 248, "rejects fractions of a day more generally than the civil law does, the effect of which is to render the day a sort of indivisible point, so that any act, done in the compass of it, is no more referable to any one than to any other portion of it, but the act and the day are co-extensive, and therefore the act cannot properly be said to be passed until the day is passed." "It is a well-known maxim that the law takes no notice of the fractions of a day . . . except where there are conflicting rights between subject and subject" [*Tomlinson* v. *Bullack*, (1879) 4 Q.B.D 230, 232 and see *Re Railway Sleepers Supply Co*, (1885) 29 Ch D 204, *Galdsmiths' Co.* v. *West Metrop Rail Co*, (1904) 1 K.B. 1]. But if a statute enacts that "a licence shall commence on the day on which the same shall be granted," it "does not" [*Campbell* v *Strangeways*, (1878) 3 C P D 107] "necessarily mean that it shall begin at the first moment of the day," therefore, if a person does the thing requiring a licence without having previously taken out a licence, the taking out a licence later in the day will not exonerate him from the penalty to which he became liable for doing the thing without having previously taken out a licence For 'though" [*Combe* v *Pitt*, (1763) 3 Burr 1434] "the law does not in general allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And I do not see why the very hour may not be so too, where it is necessary and can be done, for it is not like a mathematical point which cannot be divided." In *Chick* v. *Smith*, (1840) 8 Dowl 340, *Patterson, J.*, said. 'The good sense of the matter is that, where it is necessary to show which was the first of two acts, the Court is at liberty to consider fractions of a day. The rule of law would be otherwise absurd" Vide *Clarke* v *Bradlaugh*, (1881) 7 Q.B D. 151, *Craies. St.* The day on which a legal instrument is dated, begins and ends at midnight It is not necessary to consult a calendar to ascertain when a day commences and ends" (*Anderson L. Dict*)

"DAYS" (IN A BILL OF LADING) means working days, not running days. (*Cockran* v. *Retherg*, 3 Esp. 121 123)

DAY (IN THE MADRAS DISTRICT MUNICIPALITIES ACT). "Day" must, in the absence of anything to the contrary in the text, be taken to mean a duration of 24 hours and not 12 hours. (29 M. 326=16 M.L J. 101.)

Day by Day.

DAY (IN ELECTION MATTERS) "We have no doubt that the court were right that the word 'day' as used in speaking of the time "Election day" includes the whole twenty-four hours of the day upon which an election is held." [*Kane* v *Com*, 33 Am. Rep. 787 (Per *Sharswood*, C.J)]

DAY (IN RAILWAY TIME). "Day," as used in the Regulations of the Railway, is a period of 24 hours ending at midnight (25 I C 810).

(DAY) IN THE HOUSING OF THE ENGLISH WORKING CLASSES ACT, 1885, means the period between 6 A M. and the succeeding 9 P M." (*Stroude*, 461)

DAY, DISTINGUISHED FROM NIGHT Blackstone says "As to what is reckoned night, and what day, for this purpose: anciently the day was accounted to begin only at sunrising and to end immediately upon sunset, but the better opinion seems to be, that if there be day light enough, left to discern a man's face withal, it is no night."

"DAYS" "CLEAR DAYS." In any case in which any particular number of days not expressed to be clear days is prescribed by the Rules of the Supreme Court the same shall be reckoned exclusively of the first day" and inclusively of the last day R S C. 1883, Ord. LXIII. R. 12, *Williams* v *Burgess*, (1840) 12 A. & E 635 and *Radchiffe* v *Bartholomew*, (1892) 1 Q. B. 161, Re *North*, (1895) 2 Q.B. 264. In the County Court Rules, 1903, "clear days" means that in all cases in which any particular number of days is prescribed for the doing of any act or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day." "Not less than fourteen days" has been read to mean fourteen clear days in *Re Railway Sleepers Supply Co* (1885) 29 Ch.D. 204, see *Mc Queen* v. *Jackson*, (1903) 2 K.B. 163; *R.* v *Shropshire JJ.* (1838) 8 A & E 173, *Chambers* v. *Smith*, (1843) 12 M & W 2 as to "days" in marine insurance policies (see *Cornfoot* v *Royal Exchange Assurance Corporation*, (1904) 1 K.B 40 (C A.)) There is no absolute rule,—except where the phrase is "Clear Days,"—in computing time from an act or event that the day is to be inclusive or exclusive, it depends on the reason of the thing according to circumstances. (*Lester* v *Garland*, 15 Ves 248)

Day boarder. School boy fed but not lodged in the school

Day book. A book kept by tradesmen and merchants in which sales and other transactions are noted then and there for later transfer to the ledger.

Day break The period of time when night passes into day.

Day by Day A charter party providing for demurrage for "every day, day by day," is to be construed as referring to running days, and not working days, and all days are to be counted, including rainy days Sunday and other holidays.

"DAYS CONSECUTIVE". *Consecutive days* In *Matthews* v. *Arthur* 61, Kan. 455, the Court said 'We have no doubt that the word days when used in a statute which does not express a contrary definition, means consecutive days." (*See also* Consecutive) "The general rule of law is, that 'Days' mean, consecutive days, except where Sunday is the first or last day; but, in mercantile cases, it is sometimes used

Days in Bank

in a different sense, because, mercantile contracts are to be construed with reference to mercantile usage" (per *Alderson, B., Frown* v *Johnson*, C. & M. 444)

Days in bank. Days set by law for appearance in court after service of summons

Day in Court An opportunity to appear and to be heard in Court. (76 Ame. St. Rep. 787, *Ballantine L. Dic*)

DAY, NATURAL AND SOLAR "Though the natural day consists of twenty-four hours, yet, as it comprehends the solar day and the night, we speak of day and night within the period of the natural day to distinguish the different parts of the day. Hence, the propriety of the expression, the evening of a day, or, the evening following a day, and they have both the same import in common understanding and are used with equal propriety in reference to the solar day, and the night, as comprehended in the natural day We make use of language appropriate to the solar day, not because we adopt in it, but for the purpose of distinguishing certain portions of the natural day" (*Fox* v *Abel*, 2 Conn 541, 543)

DAY LABORER. One whose engagement to labour is but a day long, one whose wages are calculated according to the day or days on which he works

DAY LEGAL *A legal day* sometimes comprehends several natural days, *e g*, an Assize Day, Quarter Sessions Day, Session Day of Parliament (*Doe d Wrangham* v *Hersey*, 3 Wils 274)

DAYLIGHT "That portion of time before sunrise, and after sunset, which is accounted part of the day." But, where a marine insurance policy contain the words "Privileged to use kerosene oil for lights, lamps to be filled and trimmed by daylight only," the court said "The words 'by daylight are intended, not to denote day-time as opposed to night-time, but to prevent the use of any artificial light from which the oil might catch fire" (*"Gunther* v *Liverpool, etc, Ins Co*, 134 U. S 110, 115, 10 S. Ct. 448, 33 L. Ed 857)

Day of judgment End of the world

DAY OF TRIAL The day appointed by law for the trial of a cause

DAY SCHOOL is opposed to night school, intended for day-pupils only

"DAY SPECIFIED FOR PAYMENT" Where under a bond power is given to the creditor to demand the whole of the money due under the bond whenever default is made in payment of the interest for any two years consecutively it is impossible to predicate of the bond that there is any certain "day specified for payment," within Art 66 of the Limitation Act 9 O L J 416=4 U P L.R. (O C) 103=26 O.C. 121= A I.R. 1928 Oudh 19]

DAYTIME. That portion of the twenty-four hours in which a man's person and countenance are distinguishable, generally the period of time between sunrise and sunset. "Daytime . . . means the time from the rising to the setting of the sun, and that portion of the time after the setting of sun, or before its rising, during which there is sufficient natural light, other than moonlight, so that the countenance of a man may be distinguished." (13 Cyc. 264.) For effecting a distress for rent "*Daytime*, is from Sunrise to Sunset (*Tutton* v. *Darke*, 5 H. & N. 647).

D. C.

Daysman. An arbiter.

Days of grace. Defined in 26 of 1881, S. 22

Three days, called days of grace, are, according to mercantile law and usage, in every case where the bill itself does not otherwise provide, added to the time of payment of exchange or promissory note as fixed by the bill, and the bill is due and payable on the last day of grace. (Engl. Bills of Ex. Act. Ss. 17 and 89).

The days of grace, strictly so called, are clearly days before the expiry of which there is no right of action for the party giving the days of grace. (1927 M W N 305=108 I.C. 273=A.I R 1928 Mad. 250)

Day to day. Adjournment from day to day means adjournment from one day to the next and so on.

DAY'S WORK. The number of hours of actual work constituting a day's labor, which may be governed by contract, custom, or statute "As the common law does not define what shall be regarded as a day's work, the parties are left 'to such regulations in that respect as are fixed by the custom of the trade or business to which the contract relates" If the Courts find a universal usage in any particular business to call ten hours labour a day's work, they would be justified in holding that to be the true meaning of the word "day," as used in a contract.

ASTRONOMICAL DAY. Same as solar day.

CIVIL DAY 24 hours reckoned from midnight

SOLAR DAY. 24 hours reckoned from noon.

"SO MANY DAYS." In calculating a period of time allowed in a submission clause for the nomination of an arbitrator, "so many days" referred to in clause mean so many clear days commencing from midnight to midnight (99 I C 554=A I R. 1927 Sind 126)

"THIS DAY WEEK, OR MONTH" means before or after to day by a week or month.

Day to day loans Money borrowed for a day at a specified rate of interest, and renewable by agreement from day to day The interest may vary from day to day.

Dayabagha A digest on ancient Hindu Law written by Jimutavahana; a work of paramount authority in Bengal (*See* 12 M.I.A. 397, 14 I A. 76)

Dayadi A relative The plural embraces every member of the family however remote. (*Moore's Malabar Law*)

The word *'Dayadi'* is equivalent to agnatic heir (Ghose. Hindu Law, referred to, 1 Mad 69 (P C), Foll) 55 Mad. 40=139 I C. 684=1932 M W.N. 31= 35 L W. 73=A.I.R. 1932 M. 198=62 M L.J. 116)

Dayanandis. Dayanandis are Hindus forming a set of the Arya Samajists. They believe in the supremacy of the Vedas. (3 P L.T. 551=1922 P H. C.C. 235=1 P. 706=A.I R. 1922 P. 378)

Daya Vibhaga. A digest on ancient Hindu Law written by Madhava.

D B.E. An abbreviation of the words *De Bene Esse.*

D.B.N. An abbreviation of the words *De Bonis Non.*

D C. An abbreviation of the words "district court.". (*English L. Dict.*)

D. D.

D.D An abbreviation of the words divinitatis doctor, "doctor of divinity", also, "days after date."

De (*Lat.*) Of, from, about, out of, concerning, among, for.

De acquitate In Equity. 'De jure stricto, nihil possum vendicare, de acquitate tamen, nullomodo hoc obtinet' In strict law two can claim nothing, but in equity this by no means obtains.

De bene esse Conditionally, provisionally. A technical phrase applied to certain acts deemed for the time being well done, but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature

De bene memorie. Of good memory; of sound mind.

De bonis asportatis. The action (brought for goods carried away) of trespass to personal property.

De bonis non Of the goods not (administered).

De consilio Of counsel.

De consilio curiae. By the advice or direction of the Court

De corpore. Of the body.

De coste. On the side, collateral.

De cry en avant From now henceforth.

De defaute de droit. For failure of right.

De die claro (*by clear day*). By day light.

De die in diem From day to day.

De dolo malo. Concerning fraud.

De domo reparanda A writ to compel a man to repair his house when dangerous to the neighbours.

De donis conditionalibus. Of conditional gifts.

De droit. De jure.

De et super praemissis Of and upon the premises.

De exitibus terrae. Out of the profits of the land.

De facto director Those who usurp the office of directors and exercise the functions of the board of directors under color of election or appointment in itself not legal become directors de facto.

De facto Government. A government de facto, in the proper legal sense, is the government that unlawfully gets the possession and control of the rightful legal government, and maintains itself there by force and arms against the will of the rightful legal government, and claims to exercise the powers thereof. (*Chisholm* v *Coleman*, 94 Am. Dec 677.) De facto governments are of two kinds. One of them is such as exists after it has expelled the regularly constituted authorities and established its own functionaries in their places, so as to represent in fact the sovereignty of the nation. Such was the government of England under the Commonwealth. As a rule, the rights acquired under such a government are respected after the restoration of the authorities which were expelled. The other kind of de facto government is such as exists where a portion of the inhabitants of a country have separated themselves from the parent state and established an independent government. If it succeeds, the validity of its acts from the commencement of its existence are upheld as those of an independent nation If it fails, its acts are of no effect. (*Words and Phrases Jud. Dep*)

De facto Judge. Where the conditions on which a temporary judge might have been appointed existed, and one was duly appointed and took possession of the office, but without filing the official oath required he was a de facto judge, and the proceedings of the Court could not afterwards be questioned collaterally.

De facto officer An "officer de facto" is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interest of the public and third persons, where the duties of the office are exercised, first, without a known appointment, but under such circumstances of reputation or acquiescence as were calculated to induce people to submit to or invoke his action, supposing him to be the officer he assumed to be, second, under color of a known and valid appointment, but where the officer had failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like; third, under color of a known appointment, void because the officer was not eligible, or because there was a want, of power in the appointing body, or by reason of some defect or irregularity, want of power or defect being unknown to the public, fourth, under color of election or appointment by or pursuant to a public unconstitutional law before the same is adjudged to be such (*Stat* v *Carroll*, 9Am. Rep 409).

De facto officer and officer de jure distinguished An officer de facto is one who exercises the duties of an office under color of an appointment or election to that office, and he differs, on the one hand, from a mere usurper of an office, who undertakes to act as an officer, from an officer de jure, who is in all respects legally appointed and qualified to exercise the office. (44 Am. Dec. 574)

De facto road. A "de facto road" means a road actually used by the public.

De fine force. Of pure necessity.

De furto. Of theft.

De futuro. For the future; regarding the future.

De gratia. Of grace, by favor.

De haut en bas Of high and low.

De incremento. Of increase

De infirmitate. Of infirmity.

De injuria. Of his own wrong without such cause.

De integro. Anew; a second time, as it was before.

De intrusione. A writ of intrusion.

De jure. Of right, by law. "De jure" means of right; legitimate; lawful; by right and just title. In this sense, it is the contrary of "de facto". It may also be contrasted with "de gratia", in which case it means "as a matter of right", as de gratia means "by

De Jure Communi.

grace or favor". Again, it may be contrasted with "de aequitate", here meaning "by equity". (*Black Dict*)

De jure communi At common law.

De jure officer "A de jure officer is one who is regularly and lawfully elected or appointed and inducted into office, and exercises the duties as his right" (*People* v *Staton*, 21 Am Rep 479) An officer de jure is one who has the lawful right to the office, but who has either been ousted from, or never actually taken possession of the office (*Hamlin* v *Kassafer*, 3 Am St Rep 176)

De latere. From the side, collaterally.

De minimis non curat lex. The law concerns not itself about trifles

DE MINIMIS NON CURAT LEX. *Applicability* The maxim de minimis non curat lex which applies to computations of time has not been extended to legal questions Thus where a settlement deed provided that the sale of the lands conveyed in trust should be effected only on the approval of three-fourths of the body of trustees and there were two trustees who gave their consent, *held*, that the consent of two out of the three trustees was not sufficient as the number was less than three-fourths of the total number of trustees (51 Bom 247=101 I.C 229=29 Bom L R 19=A I R 1927 Bom 195)

DE MINIMUS NON CURAT LEX. Applicability of—Rent sale—Setting aside—Deposit of full amount—Mistake in challan as to trifling amount—If ground for refusal to set aside sale *See* Bihar Tenancy Act, S 174 (1) (18 P.L.T 314)

De novo. Anew, a second time.

De novo trial. It is not expedient in the interests of justice to have a de novo trial in petty cases. (151 I C. 913=A I R 1934 Lah 415)

De pace et legalitate tuenda For keeping the peace and good behaviour

De pace infracta Of breach of the peace.

De placito Of a plea, in an action

De plano Summarily, clearly, by covin, forthwith.

De ques en ca. From which time until now.

De quodam ignoto. From a certain person unknown

De quoy. Of which, where with.

De raptu virginum. Of the rape of maids; a kind of criminal appeal.

De recto deficere To fail of right.

De rien culpable. Guilty of naught

De rigore juris. By strict law.

De sa vie For his life, not *pour auter vie*.

De se bene gerendo For his good behaviour.

De servito regis. For the King's service

De son done. By his gift

De son gree. Of his own accord.

Dead body.

De son tort demesne sans tiel cause. Of his own wrong without such cause.

De tempore in tempus et ad omnia tempora From time to time and at all times.

De temps dont memorise ne court, etc From time of which memory runneth not (to the contrary), *see* a Tempore.

De terra sancta Of the holy land.

De ultra mare Of beyond sea.

De una parte Unilateral, a deed where one party only binds himself.

De verbo in verbum. Word for word.

De vicineto. From the neighbourhood

Deacon Signifies a member of the third order in the clergy in the Christian Church (*See* Bigham, Antiquities of the Christian Church Watson, Clergyman's Law, Gibs. Cod Phillimore, Eccl. Law, Blunt, Annotated Book of Common Prayer) "It appertaineth to the office of a Deacon (in the Church where he shall be appointed to serve) to assist the Priest in Divine Service, and specially when he ministereth the Holy Communion and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the Church, and to instruct the youth in the Catechism, in the absence of the Priest, to baptize infants, and to preach if he be admitted thereto by the Bishop. And furthermore, it is his office (where provision is so made) to search for the sick, poor and impotent people of the parish, and to intimate their estates, names, and places where they dwell unto the Curate, that by his exhortation they may be relieved with the alms of the parishioners or others" (Church of Eng. Ordination Service cited in Stroude 464.)

Dead. Lifeless

DEAD, LIFELESS, INANIMATE, DEFUNCT *Dead* denotes the absence of life from bodies, both capable and incapable of it, as a dead man, dead matter. *Lifeless* means departure of life from bodies capable of it, as a "lifeless corpse".

INANIMATE is a term that is applied bodies incapable of animation, as, "Trees and rocks, and other portions of the inanimate creation."

DEFUNCT is, by its inherent signification, one who has discharged the offices of life, and is applicable to those only in whom the endowment of life exists in its higher forms (*Smith Syn. Dis.*)

Dead account. Account of a person deceased, an account that has ceased to be operative.

Dead animal. "The ownership of a domestic animal is not divested by its death, and the owner can maintain his rights against persons appropriating the carcass by action of trover, or by indictment for larceny, even, it would seem, when the animal is dead and buried." [*R.* v. *Edwards*, (1877) 13 Cox. C.C. 384.]

Dead blocks. Things placed on railway cars, to receive the concussion and the shock when moving cars come in contact with stationary cars.

Dead body. A corpse; corpse has been defined to be the *dead body* of a human being. Although the dead body of a person is not property and therefore

Dead Freight.

cannot be said to be owned by any one, yet in all ages and in all countries it has been deemed the right of certain near relatives of the dead to take possession of the corpse for the purpose of interring or making such other disposition of it as custom may prescribe Though it has been said that there is a quasi property in a dead body, and undoubtedly there are certain rights respecting it which the courts recognize and protect, yet it is not property in any proper commercial sense The custodian of it has a legal right to its possession for the purpose of preservation and burial, and any interference with that right by mutilating or otherwise disturbing the body is an actionable wrong The person having charge of a body cannot be considered the owner of it, he holds it only as a trust for the benefit of those who may from family relationship or friendship have an interest in it

In *Meads* v *Dougherty County*, 98 Ga 697 (700) it is said "We do not think a few bleached remnants of a human being fall under the descriptive words '*dead bodies*'.

"SECRET DISPOSITION OF DEAD BODY" Leaving a living child in a secret place to die from exposure or want, is not a "Secret disposition of the dead body" of the child. (*R.* v *May*, 31 J P 356)

Dead freight. Amount charged for empty space in a vessel chartered to load a full cargo and which falls short of requirement, an agreed sum to be paid "in respect of space not filled according to charter, or damages provided for by a charter, in the event of the freighter not loading a full cargo (1 Maude & P. 889, citing *Birley* v. *Gladstone*, 3 M. & S 205.)

Dead head. "The term 'dead head' is applied to persons other than the president, directors, officers, or employees of a railroad company who are permitted by the company to travel on the road without paying any fare therefor"

Dead letter Law no longer observed, also letter not claimed and not deliverable by the Post Office.

Dead letter office. Office of the Postal department where undelivered and undeliverable letters are sent before the same are returned to the sender.

Dead loans. Loans unpaid at the specified date

Dead lock. State of affairs in which it is impossible to advance or recede; a state of suspended animation in business affairs.

Dead loss. Loss with no compensation, absolute loss

Dead reckoning. A nautical term used in calculating a ship's position at sea from the distance shown by the log or compass only, with allowances for leeway, etc, without astronomical observations

Dead rent (In mining) applied to a lease of mining rights, the rent of which is stipulated to be paid whether or not mining operations are carried out.

Dead security Industrial securities on which there can be no realisation unless the properties are operated.

Dead weight. Cargo that pays freightage according to weight, irrespective of measurements.

Deal

Deadly Causing fatal injury

DEADLY, MORTAL, FATAL *Deadly* is applied to what is productive of death, *mortal* to what terminates in or is liable to death; *fatal* applies not only to death, but everything which may be of great mischief. A poison is *deadly*, a wound or a wounded part is *mortal*, a step in walking or step in one's conduct, may be *fatal* Things only are *deadly*, creatures are *mortal*, blunders may prove *fatal* (*Crabb*)

DEADLY means capable of producing death *Mortal* denotes that which is liable to produce or suffer death. A mortal hatred is literally one which would kill its object *Fatal* means actually productive of death A poisoned arrow is a deadly weapon, even while it remains in its quiver. Men are mortal, or receive mortal wounds A blow is fatal on which death follows inevitable (*Smith Syn Dis*)

Deadly weapon [*See* Dangerous weapon] Any weapon likely to produce death, a weapon dangerous to life, or likely to produce serious bodily injury, a weapon likely to make a wounding which is capable of causing death.

Deadly weapons distinguished from dangerous weapon" In *State* v *Lynch*, 88 Me 195, 197, the court said —Deadly and dangerous are not equivalents. A dangerous weapon may possibly not be deadly, but a deadly weapon, one which is capable of causing death, must be dangerous" And so it is said· "What is a dangerous and deadly weapon depends not so much on the article itself, as upon surrounding circumstances the intent with which it is carried, and the manner in which it is used, it is necessarily, to some extent, a question of fact not of law"

Deadly weapon may include an axe, a club, a knife, a gun, sword, large knife, bar of iron, and any "other heavy instrument by a blow' from which a grievous hurt would probably be inflicted a pistol, and a sledge hammer (*See* 3 Cyc 1029), embraces any deadly weapon with which a person may be wounded by cutting or stabbing.

There are some weapons which are not considered "*deadly*" as a pocket knife

Deaf Wholly or partially without power of hearing, defective in ability to perceive or discriminate sounds, dull of hearing.

Deaf, dumb and blind 'A man who is born deaf, dumb, and blind, is looked upon by the law in the same state as an idiot he being supposed incapable of any understanding as wanting all those senses which furnish the human mind with ideas" (1 Comm 304. *See* F.N B. 233)

Deal. *As a noun*, as applied to intercourse *inter partes*, any transaction of any kind between them. *As a verb*, to traffic, to transact business, to trade, to attempt to come to terms, to conduct transactions with a customer.

"The plain meaning of the word deal unquestionably extends to buying as well as selling, there must be two parties to what is selling; there must be two parties to what is called a '*deal*', a man cannot deal with himself; there must be some one else for him to deal with." [*McKenzie v. Day*, (1893)1 Q B 289 (291), 17 Cox. C.C. 604]

Deal with his security

"To *deal in the selling of a thing* is to traffic, to trade in the selling of it, to make a business of it. A single act of selling, will not constitute a person a merchant, he must deal in the business to be one."

"**Deal with his security**". Ths words "deal with his security" in S 17, Presidency Towns Insolvency Act (III of 1909), refer to the rights which the mortgagees and pledgees may have of transferring or assigning the debt due to, and the security in the possession or at the disposal of, the said creditors [15 Bom L R. 944 (note)=21 I C. 689]

Dealer. Seller of a specified articles (as, dealer in cotton) A person who buys to sell again and not one who buys to keep, one who trades, buys or sells, one whose business it is to buy and sell, one who buys to sell to others at a profit, one who acts between man and man to have transactions of any kind with, one who distributes, a trader, one who makes successive sales as a business This is a term which implies an habitual course of dealing A dealer is not one who buys to keep or makes to sell but one who buys to sell again He stands intermediate between the purchaser and the consumer and depends for his profits not on the labor he bestows on his commodities, but on the skill and foresight with which he watches the market A practising physician who "keeps on hand intoxicating drinks or liquors for the purpose of sale or profit" may be deemed a "*dealer*" in such drinks. (13 Cyc 286)

"**Dealer" and "Merchant" distinguished** In *Kansas City* v. *Ferd Heim Brewing Co*, 98 Mo. App. 590, 594. 73 S.W. 302, the court in construing the term 'merchant' as used in a city charter and in a statute said "It does not follow that because a merchant is a dealer, a dealer is also a merchant. A merchant must have a store, stand, or other place where he sells his goods. A dealer need not have such store, stand, or place to keep and sell his goods He may buy and sell without such aids to his business A merchant is not required to be a purchaser, but the dealer, at common law, is both a buyer and seller"

"**Dealer" and "Trader**" In *State* v *Barnes*, 126 N C 1063,1064: 35 S E 605,it is said.—"Our Revenue Acts appear to have used the words '*dealer*' and '*trader*' as synonymous." *See also* 33 Am. Rep. 694.

"**Dealer in second-hand goods**" does not embrace a dealer in second-hand books. (*Eastman* v *Chicago*, 79, III 178, 179.)

Dealer in spirits, in S 2 of the Excise Licence Act, 1825 (6 Geo. 4, c. 81) *Tinwell* v. *Mayhook*, (1904) 2 K B. 790

"**Dealer in wood**" *See* 4 A.W.R. 782=153 I C. 131=1934 All. 987.

Dealer's talk. Commendatory expressions, such as men habitually use to induce others to enter into a bargain (*Cyc.*) Tiffany sales 114. See also *Kimball* v. *Bangs*, 144 Mass 321, 324, II N. E. 113, where it is said. "We are of opinion that all the representations alleged in the declaration, which are material, fall within what is known as 'dealers talk,' and are not sufficient foundation for an action of deceit. The law recognizes the fact that men will naturally overstate the value and qualities of the articles which they have to sell"; *Jackson* v *Collins*, 39 M. 561 (where it is said: "how far the talk which dealers and purchasers exchange on such occasions should be treated as banter or held to be serious must usually be rather matter of fact than of law. A very large allowance must usually be made for customary exaggerations.")

Dealing A person's conduct in business on his transaction "I take it that the strict definition of 'dealing' is distributing' A dealer is one who distributes" (Per *Alderson, B*, in *Allen* v *Sharp*, (1848) 17 L.J. Ex. 212) *Dealings*, in S. 17 of Bankruptcy Act, 1883 (46 and 47 Vict, c. 52), refers to matters particularly connected with the bankruptcy as distinguished from conduct, *i e*, the bankrupt's general conduct Per *Lord Coleridge, C.J*, in In re *A Solicitor*, (1890) 25 Q.B.D. 17, 25.

"DEALING, TRADING AND TRAFFICKING, within the meaning of a statute providing that no person shall trade, deal and traffic as a peddler, hawker or petty chapman in any foreign goods, wares and merchandise characterizes the act of carrying about and offering such goods for sale."

"ILLEGAL DEALING" includes purchasing as well as selling (*M'Kenzie* v. *Day*, (1893) 1 Q.B. 289)

Dean. Head of a Chapter in a Cathedral. A dean is one who holds dignity in the church without Cure of Souls, and also assists the bishop with advice in the affairs of religion as well as in the temporal concerns of the sea (See *Stroud, Phil. Eccl Law*, Part 2, Ch 4), and may sometimes be a Corporation sole. (1 Bl Com. 382 and 469)

A *Dean* is an ecclesiastical dignitary next in rank to the bishop.

"**Dean" and "Chapter**" In every diocese in England, except a few, there is attached to the cathedral church an incorporate body of clergy known as the dean and chapter, consisting of a dean as head and a varying numbers styled canons, or in some cases prebendaries. Godolphin, Rep. Can 51, Ayliffee, Parergon, 199; Gibs Codex, i. 169, ii 1446, Stephens, Laws relating to Clergy, i. 403, Grant on Corporations, 581, Phillimore, Eccl. Law, 2nd ed, i. 122, Cripps, Church Law, 6th ed., 98 Freeman, "Case of Deanery of Exeter," Law Quarterly Review, iii. 280). Dean is an ecclesiastical governor or dignity, "so called, as he presides over ten Canons or Prebendaries at the least. And we call him a dean, that is next under the bishop, and chief of the chapter, ordinarily in a cathedral church; the rest of the society being called *capitulum*, the chapter." (*Tomlin's Law Dic*)

Dean of Arches. The chief judicial officer or "official principal" of the Archbishop of Canterbury. (*Sweet L Dict.*)

Deanery. Dean's house or office.

"**Dear sir.**" "Dear sir," at the commencement of a letter to a contracting party enclosed in an envelope addressed by name to such party and sent to him would be read as addressed to such person by name. (*Stroude*)

"**Dear wife**" A devise by a husband to his "dear wife", but which does not mention her name, means the individual who answers the description at the date of the will, and not a subsequent wife. "The words 'my dear wife' point to a person then existing,

Dear wife

Death

the qualifying adjective necessarily implying affection for an individual; such an affection being inconceivable of a person not then occupying the designated relation." *Johnson* v *Johnson*, 1 Tenn. Ch. 621, 623.

"Death" defined. Act 45 of 1860, S 46.

"DEATH" has been defined as the end or termination of life

The word "death" denotes the death of a human being, unless the contrary appears from the context. (Penal Code, S. 46)

In *Evans* v. *People*. 49 N.Y. 86, 90, the court said "Death cannot be caused when there is no life."

DEATH, DEPARTURE, DECEASE, DEMISE. "*Death* is a general or a particular term: it marks, in the abstract sense, the extinction of life, and is applicable to men or animals, to one or many. *Departure*, *decease*, and *demise*, are particular expressions suited only to the condition of human beings *Departure* is a Christian term, which carries with it an idea of a passage from one life to another *Death* of itself has always something terrific in it, but the Gospel has divested it of its terrors. the hour of *departure*, therefore, for Christian, is often the happiest period of his mortal existence. *Decease* presents only the idea of leaving life to the survivors It is either a technical term in law for death, or it is used in common discourse for the falling off from the number of the living Property is in perpetual occupancy, at the *decease* of one possessor it passes into the hands of another *Demise* signifies properly a putting off, and in this acceptation the putting off mortality, it is therefore appropriately used for princes, to denote that they at the same time put off or resign an earthly crown. (*Crabb*)

"So tender is the law of supposing even a possibility of the King's death, that his natural dissolution is generally called his *demise* ' (*Blackstone*)

DEATH, DEPARTURE, DECEASE, DEMISE *Death* is the simplest and broadest, being applicable to the extinction of life both in animals and plants, to which the others are inapplicable. It may be calm or violent, natural or self-inflicted. *Departure* is a term under which lies the idea of social life, and in spirits of the highest faith, indicates the hope of re-union, as well as a point of arrival, or future state beyond the grave. The aged, or the sick calmly awaiting their end, depart; not those who die on the scaffold or in battle. *Decease* is the term we use when we think of the death of another as an epoch of his existence, or of our own, and in connexion with personal events proceeding, accompanying, or following it, yet a violent death is not called a decease. *Demise* is employed of the death of illustrious persons, as peculiarity of royalty, or in reference to the bequeathing of titles or estates to successors and heirs. (*Smith Syn. Dis.*)

CIVIL DEATH. Civil death imports a deprivation of all rights whose exercise or enjoyment depends on some provision of positive law, and has been very appropriately defined as the state of person who, though possessing natural life, has lost all his civil rights, and as to them is considered as dead. The common law incident of civil death attached in the case of persons entering into religion or abjuring or banished from the realm.

"Death-bed" A state of serious illness, sickness which ends in death.

Death duties.

Death-bed or Dying Declarations are constantly admitted in evidence. "The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest in a person on the verge of the next world, which dispenses with the necessity of cross-examination But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of recovery, and this may be collected from the nature and circumstances of the case, although the declarant did not express such an apprehension It is not essential that the party should apprehend immediate dissolution; it is sufficient if he apprehend it to be impending. Much consideration should be given to the state of the mind of the person whose declarations are received. Strongly as his situation is calculated to induce the sense of obligation, it must also be recollected that it has often a tendency to obliterate the distinctness of his memory and perceptions, and therefore, whenever the accounts received from him are introduced, the degree of his observation and recollection is a circumstance which it is of the highest importance to ascertain Sometimes the declaration is of a matter of judgment, of inference, and conclusion, which, however sincere may be fatally erroneous The circumstances of confusion and surprise connected with the object of the declaration are to be considered with the most minute and scrupulous attention, the accordance and consistency of the fact related with the other facts established in evidence should be examined with peculiar circumspection, and the awful consequences of mistake must add their weight to all the other motives for declining to allow an implicit credit to the narrative on the sole consideration of its being free from the suspicion of wilful misrepresentation." (*Pothier by Evans*, ii 293)

"As the declarations of a dying man are admitted on a supposition that in his awful situation on the confines of a future world, he had no motive to misrepresent, but, on the contrary, the strongest motive to speak without disguise and without malice, it necessarily follows that the party against whom they are produced in evidence may enter into the particulars of his state of mind, and of his behaviour in his last moments, or may be allowed to show that the deceased was one not likely to be impressed by a religious sense of his approaching dissolution". (*Phil Evid.*, *Starkie's Evid.*, *Taylor on Evidence*).

"Death by accident" Death from any unexpected event which happens, as by chance, or which does not take place according to the usual course of things. (*Lovelace* v. *Travellers' Protective Assoc.* 47 Am. St. Rep. 638).

Death duties The expression *"Death Duties"* is used as the most compendious term for describing the taxation levied on the estates of deceased persons, or on persons to whom benefits accrue by the death of other persons It comprises the following duties (1) Estate Duty; (2) Legacy Duty; (3) Succession Duty; (4) Probate Duty; (5) Account Duty etc. All these taxes have one point in common, that they are levied in respect of the transmission or de-

Death of Persons.

volution of property on death. (*Ency. of the Laws of England*) (Freeth Estate Duty Acts, E. Harris Death Duties, Norman, Digest of Death Duties, Seward, Estate Duty, Austen-Cartmell, Finance Acts, Harman, Finance Act)

Death of Persons There is a natural death of a man, and a civil death natural, where nature itself expires, and extinguishes, and civil, is where a man is not actually dead, but is adjudged so by law as where he enters into religion' &c. (*Tomlins Law Dic*).

Death-rate Yearly number of deaths to 1000 of population

Death-warrant Magistrate's warrant for the execution of a criminal sentenced to capital punishment.

Deathsman The executioner, hangman, he that executes the extreme penalty of the law. (*Black L Dict*)

Deaths-head Skull as emblem of mortality.

Debacle Utter collapse or disorganization

Debar. Excludes from admission or right, preclude from doing certain acts (as) to debar a barrister from practice for misconduct.

Debar, Deprive, Hinder, Prohibit, Disqualify, Exclude, Preclude, Forbid, Disallow, Inhibit, Interdict. *Debar* applies only to persons in reference to things rightful, desirable, or desired, as, to be debarred from privileges, possessions, rights. *Deprive* denotes the coercive taking away of what one possesses either in fact or in prospect To *Hinder* is to debar either temporarily or entirely from some act or occupation to which one was seeking to devote one's self *Prohibit* and *Forbid* have the force of interdiction by authority, or debarring by the use of words of command *Forbid* is less formal than *Prohibit*, is used in the commoner matters of life, and is more direct *Disqualify* is to debar by attaching personal and inherent prohibition from some privilege, office, or dignity. *Exclude* is formally to shut out, and may be an act of law and regulation by arbitrary power or inherent conditions *Preclude* is to exclude by indirect means. It is to shut out by anticipation, or to prevent by necessary consequence *Interdict* is commonly employed of formal or public kinds of prohibition. An *interdict* in the ecclesiastical sense involved a stopping of the grace and benefits of the ordinances of the Church. To *inhibit* is coercively to prohibit While prohibition lies in words only, inhibition is backed up by a power to enforce restraint. To *hinder* may be the effect of circumstances, and is only partial, to *inhibit* is the act of authority, and is total In *disallow* is involved a formal expression of judgment. It is to refuse to allow, permit, sanction, authorise. (*Smith Syn Dis*)

Debare. To render lower in quality or value, adulterate metal of coinage.

Debate. Fight for, contend, discuss (as) parliamentary debates.

To DEBATE, DELIBERATE Where many persons have the liberty of offering their opinions, it is natural to expect that there will be *debating*, when any subject offers that is complicated and questionable, it calls for mature *deliberation*.

Debauch To seduce, spoil and violate a woman; to ravish, deflower; to pervert from virtue.

"Debauched". Distinguished from "seduced" Where a statute provided that, "if any person shall, under promise of marriage, seduce and debauch any unmarried female of good repute," etc, the court after defining the words "seduce" and "debauch", said "that a female may be seduced without being debauched, or debauched without being seduced" (*State* v *Reeves*, 97 Mo. 668 (675).

"Debauched" A female may be "seduced" without being "debauched", or "debauched" without being "seduced." *State* v *Reeves*, 10 Am St. Rep. 349

De Bene Esse. Formally, conditionally, provisionally. A technical phrase applied to certain acts deemed at the time to be well done, or until an exception or other avoidance, To take or do any thing *de bene esse*, is to accept or allow it as well done for the present, but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its nature (*Tomlins Law Dic*) "To take or do anything *de bene esse* is to accept or allow it as well done for the present, but, when it come to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature" (*Jacob Law Dict*) In modern times, it has been used chiefly with reference to the examination of old, infirm, etc, witnesses out of Court

Debenture Defined in VII of 1913, S. 2 In Skeats Dict it is said. "Etymologically debenture is but debt 'writ large'. At first during the Protectorate, when the term seems to have originated, it was spelled "Debenture", that being the Latin word with which the instrument began. (38 *Vict Ch.* 47)".

Debenture is a Document, or certificate, signed by the officer of a corporation, or company, acknowledging indebtedness for money lent and guaranteeing repayment with interest, a security for a loan of money issued by a public company, usually creating a charge on the whole or a part of the company's stock and property, though not necessarily in the form of a mortgage. S 137 of the T P. Act regards debentures as the subject-matter of a transfer and not as constituting a transfer by itself. 57 Cal 328= I R 1930 Cal. 883=127 I.C 760=34 C W.N 605=A.I. R. 1930 Cal. 536

DEBENTURE "is a word which has somehow crept into the English language, and does not appear to admit of any accurate definition, but it is recognised by the statute as something different from a promissory note." [*British India &c. Co.* v. *Commissioners of Inland Revenue* (1881) 7 Q B D. 165, 170]. "A debenture means a document which either creates a debt or acknowledges it, and any document which fulfils either of these conditions is a debenture." [*Levy* v *Abercorris Slate, &c Co*, (1887) 37 Ch. D. 260, 264, Chitty, J., where the derivation and history of the word is discussed. See Ind. Com. Act, 1913, the Stamp Act, 1891 (54 & 55 Vict, c. 39, sched)] Debenture Stock. [See *Attree* v *Hawe*, (1878) 9 Ch. D. 349 (C.A); Re *Crossley*, (1897) 1 Ch. 928] Although the instruments called debentures may be described with comparative ease, a judicial defini-

Debenture Bonds.

tion of a debenture—or at any rate an accurate one —has not been obtained and is perhaps not urgently required. [*See* Companies Act (VII of 1913), S. 2 (4).] Of course, the word "debenture" imports an acknowledgment of a debt. But a mere acknowledgment of a debt does not satisfy a lawyer's or a commercial man's idea of what a debenture is He associates the term with a company of some kind, and most debentures are securities given by companies; but debentures are often granted by clubs, and occasionally by individuals In *Emonds* v. *Blaina Furnaces Co*, 36 Ch. D. 215, 218, Chitty, J, said. "The term 'debenture' has not, so far as I am aware, ever received any precise legal definition It is comparatively speaking, a new term. I do not mean a new term in the English language, because there is a passage in Swift which has been mentioned to me where the term 'debenture' is used...But although it is not a term with any legal definition, it is a term which has been used by lawyers frequently with reference to instruments under Acts of Parliament" Lindley, J., said "Now what the exact meaning of 'debenture' is I do not know. I do not find any particular definition of it, and we know that there are various classes of instruments called 'debentures.' You may have mortgage debentures, which are charges of some kind on property, you may have debentures which are bonds, you may have a debenture which is nothing more than an acknowledgment of debt, you may have an instrument which is something more—it is a statement by two directors that a company will pay I think any instrument of that sort may be debentures." "And any document which fulfils either of these conditions is a 'debenture.' I cannot find any precise legal definition of the term, it is not either in law or commerce a strictly technical term, or what is called a term of art It must be 'issued', but 'issued' is not a technical term; it is a mercantile term well understood, issue here means the delivery over by the company to the person who has the charge" (*Ibid*)

DISTINGUISHED FROM "PROMISSORY NOTE." In *British India Steam Nav Co.* v *Inland Revenue Com'rs*, 7 Q B D 165, Grove, J., said "Now it seems to me that there is a real difference here between what the company themselves call a 'debenture' and a promissory note The statute contemplates in a debenture something different from a promissory note, because in the former case it imposes a higher duty. The document may be promissory note in one sense of the word, but it may also be something more, for there are matters attached to it which have a purpose in them and which may not be attached to a promissory note, and yet make it none the less a promissory note" [See also *Brown* v. *Inland Revenue Com'rs*, 64 L J M C. 209].

Debenture bonds Bonds of a company engaging to repay a specified borrowed sum, with interest.

"DEBENTURES" — "MORTGAGE DEBENTURES"—"BONDS." Jessel, M R, said· "I do not feel myself bound to put a different meaning on the words 'debentures' and 'mortgage debentures.' I do not know what the difference can be if you get 'bonds' 'debentures,' and 'mortgage debentures,' and 'I do not feel myself concerned to inquire." In re *Florence Land etc., Co.*, 10 Ch. D 530, 539).

"DEBENTURE" AND "DEBENTURE STOCK" in the Indian Companies Act includes debenture stock. [Act VII of 1913 (Companies), S. 2, cl (4).]

Debt

Debenture stock. A stock or fund representing money borrowed by a company or public body and charged on the whole of its property It differs from debenture bonds in that it is usually irredeemable The principal sum is registered in the owner's name, and the interest, which takes priority over dividends, is paid by warrant or coupons to the owner on owner's order

Debet esse finis litium A maxim meaning "There ought to be an end of law suits"

Debet quis juris subjacere ubi delinquit A maxim meaning "Every one ought to be subject to the law of the place where he offends"

Debet sua cuique domus esse perfugium tutissimum. A maxim meaning "Every man's house should be a perfectly safe refuge"

Debile fundamentum fallit opus A maxim meaning "Where the foundation fails all goes to the ground"

Debility. Weakness and relaxation of the muscular fibres and general depreciation of vitality

Debit The left hand page of a ledger, to which all items are carried that are charged to an account, that which is charged as due or owing

Debita (*Lat*) Debts.

Debita non praesumitur donre. A maxim meaning "A debtor is not presumed to give."

Debita sequuntur personam debitoris A maxim meaning "Debts follow the person of the debtor."

Debitor A debtor

Debitor non praesumitur donare A maxim meaning "A debtor is not presumed to give."

Debitorum pactionibus creditorum petitio nec tolli nec minui potest. A maxim meaning "The right of a creditor to sue cannot be taken away or lessened by the contracts of their debtors"

Debitrix A female debtor

Debitum. A debt.

Debitum et contractus sunt nullius loci. (See the Note to *Mostyn* v *Fabrigas*, 1 Smith, L.C., 5th ed., 635, Story, Confl. Laws, tit "*Contracts*") A maxim meaning "Debt and contract are of no particular place"

Debitum in presenti solvendum in futuro. A. latin term meaning "A debt due at present to be paid in future" [*Abbot L. Dict*] Cited in *Webb* v. *Stanton*, 11 Q.B.D 518 (524).

De bonis non administratis. Of the goods not administered. Where, in consequence of the death or removal of an administrator, a new administrator is appointed, the latter is termed an administrator *de bonis non, i.e*, of the goods not administered by the former.

Debra is generally used to describe cremation place or death place. A birth place is never described as debra. (145 I.C. 427=A.I.R. 1933 Lah. 475)

"Debt" defined. (*See also* Private debt, Public debt.) Act 6, 1882, S 130, Act 7, 1889, S, 4 (2), Act

3, 1907, S 2 (2); Act 9, 1908, S. 20, *expln* Act 3, 1909, S. 2 (*b*), Act 5, 1920, S 2, Bom. Act 7, 1866, S. 7.

DEBT. A sum of money due under an express or implied agreement (as) a bond or bill or note, amount due or payable from one person to another in return for money, services, goods, or other obligation (*See* 42 C 10=23 I C 556). A debt is a sum payable in respect of a money demand recoverable by action. [(22 Mad 139, Foll) 13 Lah 448=I R. 1932 Lah 145=135 I C 673=33 P L R 42=A I R 1932 Lah 212.] In common parlance it is a sum of money due from one person to another (*Tomlins Law Dic*) The word debt is of large import, including not only debts of record or judgment, and debts by specialty, but also obligations arising under simple contract, to a very wide extent, and in its popular sense includes all that is due to a man under any form of obligation of promise (*Burrill*) A dividend declared by a Company is, after its due date, a debt from the Company to the shareholder. [Re *Severn &c. Ry*, (1896) 1 Ch 559] A dividend is not a debt until it has been declared. The word 'debts' as used in S 60, C P. Code, must be confined to a debt in ordinary sense of the word, that is to say, an existing debt. It involves (*a*) an obligation incurred by the debtor, (*b*) a liability on the part of the debtor to pay for that obligation at a certain date Until that obligation has been fully incurred there is no debt. *Held*, that rent in respect of a period still in existence is no debt at all as the obligation is not complete and is not attachable as a debt or actionable claim [50 All 507=20 A L J 253=12 R D 104 =9 L.R 47 (Rev.)=108 I.C. 229=A I.R 1928 All. 193] The word "debt," as defined in section 130, Companies Act, 1882, is not limited to a debt actually due (34 Bom. 533=11 Bom L R. 1302) Rent in arrears is a debt [38 Cal. 270 (P C.)] Arrears of Government Revenue are not a debt within the meaning of S 59, Indian Contract Act [33 C. 1193=10 C.W N 948, 2 M I A. 23 But *see* 15 C W N. 443 =35 Cal 63 (P C.)] "Debts" include unliquidated damages for a breach of covenant (*Birmingham* v *Burke*, 9 Ir. Eq Re. 86)

Moneys due from an Insurance Company under a policy of insurance are "debts" within the meaning of S. 4 of the Succession Certificate Act and a succession certificate may be granted in respect of such moneys [(13 Bom.L R. 590, followed) 50 Mad. 412=1927 M W N. 113=38 M L T. (H C) 47=100 I C 484 *See also* 39 Bom L.R. 493=A I R 1937 Bom 382] "Debt" includes any liability for a cash payment on account of net cash and compensation for equalization of shares under partition decree. (165 I.C 412 =9 R N. 77=A I R. 1936 Nag. 145)

The term "*debts*," as used in the *Bombay Hindu Heirs Relief Act*, shall be construed to include all liabilities arising out of any claims which could or might be enforced against a deceased Hindu himself if living, and for which a suit would lie against his representative (Bombay Act VII of 1866 (*Hindu Heirs Relief*), S. 7).

The term "debt" used *in R.* 46 (1) (*c*) (*i*), *O XXI, C. P. Code*, 1908, means a debt either due or accruing due, and does not include an annuity which has not yet fallen due. (14 C L.J 127. *See also* 38 Cal. 13= 6 C.L.R. 19; 31 All. 304, 21 M. 393) The word

"debt" in S 25 (3) of the *Contract Act* includes a judgment-debt as well (14 B. 390. *See also* 3 All. 781, 4 Cal 500). "Debt" occurring in *S 20 of the Limitation Act* if judgment-debts [*See* 6 C W N 706, 8 C.W.N. 470 (472); 27 Mad. 608, 4 Cal 708, 26 All 36=1903 A W.N. 179 (see *now Amended*, S. 20)] The word "debt" in *S 17, Presidency Banks Act* (*XI of* 1876), refers to debts which are presently payable (3 Cal. 392) "Debt" *in the Presidency Towns Insolvency Act* includes a judgment-debt, and "debtor" includes a judgment debtor, [Act III of 1909 (*Presidency Towns Insolvency*), S 2(*b*)]. "Debt" (*in Succession Act*) is a sum of money which is now payable or will become payable in future by reason of a present obligation. A debt existing in the lifetime of the creditor, but falling due after his death, is a "debt" within the meaning of S 4 *of the Act*. [36 Cal. 936=3 C.W N. 966=10 C L J. 180=3 I C. 492 (F B). The word "debt" in S 4, *Act VII of* 1889 (*Succession Certificate*) means all money which the diseased was entitled to receive as certain liability on bonds and other contracts [32 C 418 *See also* 22 Mad 139, 18 Cal. 86, 22 Mad 144 (N). The word "debt" in S 4 (1) *of Act VII of 1889* includes any debt except rent (17 M L J 257) It includes a present debt though payable in future and even after the death of the creditor [13 C W N 966, 3 I C, 492(493)] The amount in respect of which a personal decree is sought under S 90 of the T. P Act is a debt within the meaning of S. 4 of the Succession Certificate Act, though the amount cannot be ascertained before the procedure by sale of the security is finished. (7 C L J 658=12 C W N. 145) The claim for an account of the partnership and for the payment of the share of a deceased partner, is not a debt within the meaning of S 4 of the Act (22 Mad 139). The dower of Muhammadan wife is "debt" within the meaning of S 4 of the Act. (30 All 315=5 A L J 598=1908 A W N. 113) Though, to constitute a "debt" in S 4, Sub-S (2) of Act VII of 1889, it is not necessary that there should be a loan, still, there should be a certain sum of money due by the debtor to the deceased (18 Mad. 457=5 M L J. 61.) A suit to enforce a charge against immoveable property is one to recover an interest in the immoveable property and consequently the liability of the property to be sold in satisfaction of mortgage-money is not a debt within S 4 (19 C. 336. *See also* 22 Cal. 143, 26 Cal 839, 28 Bom. 630, 29 Mad 77, 16 All 259 (F B)] The word "debt" in *S. 8, Cl.* (5), *Transfer of Property Act* (*IV of* 1882), could not be taken to be used in the widest possible sense. It is confined to such debts as fall within the category of actionable claims. [30 Mad. 235=17 M.L. J. 87 (18 All. 265, F.)]

DEBT (*in English Acts*) *in* 9 *Geo.* 4, *c* 14, S 5, means "actionable debt." [*Rawley* v. *Rawley*, (1876), 1 Q B D. 463] Debt claim or demand, *in the Poor Law Payment of Debts Act*, 1859 (22 & 23 Vict, c. 49) [See *West Ham Guardians* v *Bethnal Green Churchwardens, &c.*, (1896) App. Cas. 477] Debt *in* 30 & 31 *Vict., c* 69 (*Mortgages*), S. 1, does not include mortgage debt. [*Newmarch* v. *Storr*, (1878) 9 Ch. D. 12] Debt within the *Bankruptcy Act*, 1883, S 18 (3), means everything which might mature into a debt, including all liabilities from which a bankrupt would be relieved by an order of discharge. [*Flint* v. *Barnard*, (1888) 22 Q.B.D. 90. See *Spence* v. *Coleman*, (1901) 2 K.B. 199.]

Debt.

IMPRISONMENT FOR debt *in 32 & 33 Vict. c. 62 (Debtors)*, does not include imprisonment under a committal order [*Mitchell* v. *Simpson*, (1889) 23 Q. B D 373, *Stonor* v. *Fowle*, (1887) 13 App Cas 20].

"DEBT" DISTINGUISHED FROM "DEMAND".—"In ordinary legal usage the words 'debt' and 'demand' are of kindred meaning, but the latter word is a term of much more comprehensive signification than the former. The word 'debt' imports a sum of money owing upon a contract, express or implied, while the term 'demand' embraces rightful claims, whether founded upon a contract, a tort, or a superior right of property." (*U. S Rolling Stock Co* v *Clark*, 95 Ala 322, 13 Cyc 397.)

DEBT, DUE *Debt* is commonly applied to that which is owing from the person spoken of, *due* is always applied to that which is owing to the person, to pay one's debts, and receive one's due (*Crabb*)

"DEBT, DUTY OR DEMAND" —Where a Bankrupt Act contained the words "debt" "duty or demand", the Court said. "A debt may be created by the unjust appropriation of the chattel of another The word demand is the most comprehensive in its import that technical language affords as to debts or duties, and for the purpose of promoting substantial justice, there can be no insurmountable restraint to extend it so far as to embrace real estate and to consider an inequitable appropriation of it as creating an equitable demand, equivalent to a debt by implication of law" (*Sands* v. *Codwise*, 4 Johns (N Y) 536, 557, 4 Am Dec 305)

DEBT AND LOAN DISTINGUISHED A debt is something quite different from a loan. A loan contracted creates a debt, but there may be a debt created without contracting a loan A debt may be contracted without resorting to a loan

DEBT, ACCRUING. In *Webb* v. *Stenton*, 11 Q.B D 518, 524 the Court said A learned judge construed the words 'accruing debt' to mean a debt *debitum in presenti, solvendum in futuro* (i e, a debt due at present to be paid in future Now that is a debt known to the law and which the law has always recognised. The law has always recognised as a debt, two kinds of debt—a debt payable at the time and a debt payable in the future, and unless the legislature intended to invent a new kind of debt not known to the law 'accruing debt' can only be what the judges have so stated." (See also *Abbott L Dict.*, *Bouvier L. Dict*)

DEBT, ACTION FOR The appropriate action upon any contract, express or implied, for the payment of a sum certain in money, or which can be reduced to certainty (i e.) for the recovery of a debt, as contradistinguished from damages." *Gregory* v. *Bewly*, 5, Ark 318, 319) An action at law to recover a specified sum of money alleged to be due (*Burrill L. Dict*) The three distinguishing points in the action of debt are that the contract must be, Firstly for money, secondly, for a sum certain, thirdly specifically recoverable

"DEBTS AND COSTS." *See* 26 I.C. 273=1914 M.W.N 873.

DEBTS AND LIABILITIES. The expression "debts and liabilities" of the Chota Nagpur Encumbered Estates Act mean "all debts and liabilities other than debts or liabilities incurred to Government."(7 C L J. 578.)

"DEBT OR LIABILITY." Alimony is not a "Debt or Liability" within the Bankruptcy Act. (*Linton* v. *Linton*, 54 L.J Q.B. 529).

Debtor.

Debt by specialty. Debt evidenced by a deed or instrument under seal.

"DEBTS DUE" includes all demands which can be proved against a bankrupt's estate, although some of them may not be strictly debts at all [per *Mellish*, L J, Exp *Kempe*, 43 L J Bank 52; 11 L B R. 354= 68 I.C. 885 (1)=1 Bur L J. 239=A I R. 1923 Rang. 21]

Debt, Judgment A judgment debt "is the highest of all debts" (per *Watson, B*, *Hodsoll* v. *Baxter*, E B. & E 885) It is debt for recovery of which a judgment has been passed

Debt includes judgment debt [26 All 36 (39)=23 A.W.N. 179, *See* Limitation Act, S. 20]

Debt note. Notes sent by a merchant for goods supplied or for charges on goods sent.

Debt of honour. Debt not legally recoverable; especially sums lost in bets.

Debt of record A sum which appears to be due by the evidence of a court of record, a contract of the highest nature, being established by the order of a court of judicature, any specific sum of money adjudged to be due from the defendant to the plaintiff in an action

"DEBT OWING" DISTINGUISHED FROM "DEBT DUE" "Standing alone the word 'debt' is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a *debt owing*, and of the latter that it is a *debt due* Whether a claim or demand is a debt or not, is in no respect determined by a reference to the time of payment A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened" (13 *Ame Cyc* 394.)

"DEBT SECURED BY MORTGAGE. The expression "The debt occurred by mortgage" in R 3 (1) O 34 C P Code, is wide enough to include costs of a foreclosure suit [2 C P L R 94. But *see also* 14 Cal. 185, 10 All 179, 8 A W N. 18]

FUNDED DEBT. Part of national debt converted into unrepayable fund bearing fixed interest.

"JUST DEBTS." "The expression in a Will, 'all my *just debts*,' includes all the testator's debts whenever and wherever contracted, and therefore includes a debt contracted by him after the making of the will, and contracted in a country other than that of his domicil, and secured upon property in that country" (Wms Exs. 1584, citing *Maxwell* v. *Maxwell*, L.R. 4 H L.. 506)

NATIONAL DEBT. Sum owned by the State for money advanced to it.

"Debtor" defined (*See also* judgment-debtor, principal debtor), Act 3, 1907, S. 2 (*b*); Act 3, 1909, S. 2 (*b*); Act 5, 1920, S 2. [I L.R. 1937 All. 514=168 I.C. 655=1937 A.L.J. 363=A.I.R. 1937 All. 297.]

Debtor, in the Bankruptcy Act, 1883 (46 & 47 Vic., c. 52), see *Re A B. & Co*, (1900) 1 Q.B. 541, (1901) A.C. 102, meaning of, in the Succession Certificate Act (1860) (15 C. 54)

Debtor's Act.

DEBTOR. A person who owes another anything, or is under obligation, arising from express agreement, implication of law, or from the principles of natural justice, to render and pay a sum of money to another one who by reason of an existing obligation is or may become liable to pay money to another whether such liability is certain or contingent, every one who owes to another the performance of an obligation, the person who has engaged to perform some obligation; one who owes a debt, he who may be constrained to pay what he owes, one who owes anything to another, as money, goods or services (*Ame Cyc*) "The word '*debtor*' (in an insolvent law) includes partnerships and corporations" "The term 'debtor' is a broad one, and must include corporations likewise with individuals and partnerships We know of no principle of construction which would justify this court in holding that the word 'debtor' as here used, does not include corporations." (13 *Ame Cyc.* 425)

"DEBTOR" AND "INSOLVENT". The lax use of the word "debtor" throughout the Provincial Insolvency Act has given rises to difficulties In many sections it is used as meaning the debtor, while in others it is used as meaning the debtor Strictly speaking, a debtor and an insolvent are different persons. An insolvent under the Act means a person against whom an order of adjudication has been made, a debtor is a person who has made himself amenable to adjudication but who has not yet been adjudicated. [1938 M W N. 201=(1938) 1 M L J 471]

Debtors' Act, 1869 (*English*) An English Statute abolishing imprisonment for debt.

Debuttar. (*Ben, Assam &c*) rent or revenue free grant to support a temple of Devi or Siva [*Bad Pow* I, 542, (*Sylhet*) *Bad. Pow* III, 448]

Debuttar Property is property dedicated to God or Gods (33 C 511=3 C L J 306=10 C.W N. 738.)

Decalogue. The ten commandments given by God to Moses. The Jews called them the ten words, hence the name.

Decapitation Beheading

Deccan (*literally the south*) A term employed by Mahomedan writers to denote the country between the rivers Nerbuddah and Krishna (*Wharton.*) Southern part of the Indian peninsula.

Decease. Death

Deceased. Departed from life, dead.

"DECEASED PERSON" AND "THE DECEASED" as used in a statute imposing estate duty and settlement duty, mean "the same thing namely, a person dying after the commencement of that Act" (In re *Gibbs*, 46 Wkly. Rep 477, 478.)

"DECEASE OF PROPRIETOR" The "decease of proprietor" referred to in S 14, Curator's Act, 1841, includes the decease of a female who held the property as a life-estate, because such a female, between the death of her husband and her own decease, is the proprietor of the property which is claimed, and it is claimed in succession to her, that is to say, the claimant claimed to succeed her in the possession of the property. (34 Bom[c] 115=11 Bom.L.R. 1308=4 I.C. 594.)

Deceive.

Decedent. A deceased person. Decedent means a deceased person—that is, one dead, departed from this life. Hence one, though civilly dead, by reason of imprisonment for life, is not a decedent. The word "decedent" means either a testator or a person dying intestate

Deceit. Fraud, false representation made with intent to deceive; "Deceit, 'deception or fraud' is a subtle, wily shift or device, having no other name. In this may be included all manner of craft, subtlety, guile, fraud, wiliness, slight, cunning, covin, collusion, practice and offence used to deceive another man by any means, which hath none other proper or particular name but offence" (*Cowel Jacob, Tomlins*)

DECEIT, DECEPTION, DISSIMULATION. *Deceit* is always a personal act, and if there be an habitual propensity to deceiving, the deceit is then a characteristic of the person. "He often made use of *dissimulation*, seldom of *deceit*, for he knew how to conceal without counterfeiting virtues" (*Guthrie*) *Deceitful* and *deceptive* are employed with this distinction a person is said to be *deceitful*, and a thing *deceptive.*

DECEIT, DUPLICITY, DOUBLE-DEALING There may be much *deceit* or *duplicity* in a person's character or in his proceedings there is double-dealing only where dealing goes forward The *deceit* may be more or less veiled, the *duplicity* lies very deep, and is always studied whenever it is put into practice. *Duplicity* in reference to actions, is mostly employed for a course of conduct; *double-dealing* is but another term for duplicity on particular occasions. Children of reserved characters are frequently prone to *deceit*, which grows into consummate *duplicity* in riper years the wealthy are often exposed to much *duplicity* when they choose their favourites among the low and ignorant.

DECEIT, FRAUD, GUILE *Deceit* is indeterminate when compared with *fraud*, which is a specific mode of deceiving, *deceit* is practised only in private transactions, *fraud* is practised towards bodies as well as individuals, in public as well as private a child practises *deceit* towards its parents, *frauds* are practised upon government, on the public at large, or on tradesmen *deceit* involves the violation of moral law, *fraud* that of the criminal law A servant may *deceive* his master as to the time of his coming or going, but he *defrauds* him of his property if he obtains it by any false means.

Deceive. Mislead, persuade in what is false. It is hardly possible for any one now-a-days, to tell fortunes for money, without also intending "to deceive or impose," within S 4 [5 Geo 4, c. 83 (*Penny* v *Hansen*, 18 Q B D. 478)]

DECEIVE, DELUDE, MISLEAD, BEGUILE, BETRAY, DUPE *Deceive* is generally to lead into error by causing to believe what is false, or to disbelieve what is true. To *delude* is to deceive in the particular matters of the desirable or good *Delusion* combines disappointment with deceit. I *mislead* a person when I draw him off from the line of right judgment or action. To delude, when used of persons, implies an intention to deceive; but mislead may be unintentional, as when I give my neighbour what I believed at the time to be true information, but which I have since discovered to be erroneous. We are *deceived*

Deceiver.

in our judgment, *deluded* in our desires, *misled* in our actions. *Beguile* is to place another in a false position, to induce him to believe something to be true, and to leave him to the consequences of his error, especially by seductive arts.

BETRAY is more than to deceive. It is to deceive another, or treacherously to lead him to harm, in return for some confidence reposed in us, to make use of the relation in which we stand to another as the means of his injury and the promotion of our own ends. To *dupe* is to deceive another by imposing upon his credulity, being so far a kind of minor treachery but having neither its malignant aims nor its disastrous consequences (*Smith. Syn. Dis*)

Deceiver. One who deceives or practises deception upon another

DECEIVER, IMPOSTER The *deceiver* practises deception on individuals or the public, the *imposter* most commonly on the public at large The false friend and the faithless lover are *deceivers*, the assumed nobleman who practises frauds under his disguise, and the pretended prince who lays claim to a crown to which he was never born, are *imposters*.

Decency The recognized code of social propriety, opposite of indecency

DECENCY, DECORUM *Decency* respects a man's conduct, *decorum* his behaviour, a person conducts himself with decency, he behaves with decorum *Indecency* is a vice, it is the violation of public or private morals, *indecorum* is a fault, it offends the feelings of those who witness it

Decennary (*in old English Law*) Another term for a tithing Originally in Old English law it seems to have been used to denote the association of ten freemen for the conservation of peace and execution of justice, afterwards the term was applied to the territorial division which was protected by the ten men The decennary was a subdivision of the hundred as the hundred was of the shire. (*Ency of the Laws of England.*)

Deception Act of deceiving or misleading.

DECEPTION, DECEIT, ILLUSION, DELUSION *Deception* is used of individual instances or acts of one who deceives, *Deceit*, rather of the acts as appertaining to habit or quality of minds, as "a course of deceit," "an act of deception"

A fanatic, either religious or political, is the object of strong *delusions*, while the term *illusion* is applied solely to the visions of an uncontrolled imagination, the chimerical ideas of one blinded by hope passion, or credulity, or, lastly, to spectral and other optical deceptions, to which the word delusion is never applied. (*Whatly ; Smith. Syn Dis.*)

Decet tamen principem servare leges, quibus ipse servatus est. A maxim meaning "It behoves indeed the prince to keep the laws by which he himself is preserved"

Decide. To determine; to form a definite opinion, to render judgment; to give judgment for or against a party to suit or other proceeding in Court.

AS APPLIED TO FUNCTIONS OF A JURY. "To decide includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate and to be governed by that preponderance."

Decided.

TO DECIDE, DETERMINE, CONCLUDE UPON. Points of law are *decided* by the judge, points of fact are *determined* by the jury. To decide is therefore properly applied to all matters of dispute where more or less power or force is required to bring it to an end; to determine to all matters of conduct which may more easily be brought to an end. To *determine* and *decide* are applied to practical matters, to *conclude upon* applies to speculative as well as practical matters, as, to *decide* the fate of persons, to *determine* anything that interests one, to *conclude* that a thing is right or wrong, just or unjust, and the like. To *conclude* on is properly to come to a final determination (*Crabb.*)

DECIDE, DETERMINE, RESOLVE. *Resolution* betokens a choice made between action and inaction, and is opposed to doubt, reluctance or inaction. *Determination* betokens a choice made between motives and is opposed to vacillation, uncertainty. *Decision* is a final and irrevocable act of the will or judgment, and is opposed to indecision or hesitation. (*Smith. Syn. Dis.*)

DECIDE, JUDGE, DETERMINE One *decides* a contest or a question, one *judges* a person, an act, a performance, a work, a Judge is more authoritative than decide Private persons, and umpires *decide*, magistrates *judge*. It is only the mind of man that *judges*. Circumstances sometimes *decide* persons to adopt one course rather than another, or action rather than inaction. To *judge* is speculative, to *decide* practical. We often *judge* for another, we decide for ourselves.

To *determine*, is to decide by limitation or conclusion A matter is *decided* when it is practically settled, it is *determined* when it has been shown what it theoretically amounts to *Decision* stops further argument, *determination* renders it superfluous. *Judgment* often precedes *decision* in which case *decision is judgment put into action*. We *judge* which of two courses is better to be adopted before *deciding* on adopting it (*Smith Syn Dis*)

"DECIDING" AND "DISPOSING" CASE. There is a distinction between "*disposing of a case*" and "*deciding a case.*" Returning a plaint under S 23 of the Provincial Small CauseCourts Act for being presented to the proper Court is not "*deciding*" a case. (20 C W N. 1080=29 I C. 17)

"DECIDE ON THE MERITS" means an adjudication on material questions of fact after the due consideration of evidence [6 I. C. 851 (852)] In some cases "decided" does not mean "decided on the merits" It simply means "disposed of" (*See* 25 I C 643=16 M L.T 502)

"DECIDE THE SUIT FORTHWITH". The words, '*decide the suit forthwith*,' in R 3, O. XVII of C. P. Code pre-suppose and imply the presence before the Court of materials of some kind on which to base its decision. It is not the mere equivalent, in the case of a plaintiff who has adduced no evidence, of a *dismissal of the suit* (20 B. 736, rel., 29 A. 194, ref) 3 S.L.R. 208=6 I C. 851.

Decided Determined, ended, concluded, rendered judgment.

DECIDED, DECISIVE. *Decided* marks that which is actually decided. *Decisive* that which appertains to decision. *Decided* is employed for persons or things; *decisive* only for things. A person's aversion or attachment is *decided*, a sentence, a judgment, or a

victory, is *decisive* A man of a *decided* character always adopts *decisive* measures. In every popular commotion it is the duty of a good subject to take a *decided* part in favour of law and order Such is the nature of law, that if it were not *decisive* it would be of no value.

"A politic caution, a guarded circumspection, were among the ruling principles of our forefathers in their most *decided* conduct" (*Burke*)

"The sentence of superior judges is final, *decisive* and irrevocable." (*Blackstone*)

DECIDED, DETERMINED, RESOLUTE. A *decided* character is at all times essential for a prince or a minister, but particularly so in an unsettled period; a *determined* character is essential for a commander or any one who has to exercise authority, a *resolute* character is essential for one who is engaged in dangerous enterprises.

Decimal System. A system of calculation by tens, proceeding by tens. In Mathematics it is based on a unit of 10, and for purposes of calculation is much simpler than the English system. It is adopted in France and other European countries.

Decipi quam fallere est tutius A maxim meaning "It is safer to be deceived than to deceive."

Decision. A word which has been used as signifying the judgment of the court; a judgment given by a competent tribunal; the findings of fact, the finding by the Court upon which a decree or judgment may be entered, the result of the deliberations of a tribunal,. *See* 18 C. L J. 128=20 I C 1, 32 Cal 162; 13 Bom L R 113=35 Bom 231, 25 All 109=30 I.A. 35 (P C), 5 Bom.L.R. 100, 4 O C 66. The word 'decision,' unless otherwise qualified by the context, may possibly embrace matters both of civil and criminal law 123 I C 731=A I.R 1930 P C, 291 (P C.) "The refusal of the judge to do a *ministerial act* can hardly, with propriety, be called a 'ruling' or 'decsion.' "*Cruse* v. *McQueen*," (Tex. Civ App, 1894).

Decision, Judgment, Sentence These terms though very different in their original meaning, are now employed so that the two latter are species of the former a final conclusion of any business is comprehended in them all but *decision* conveys none of the collateral ideas which is expressed by *judgment* and *sentence*. a decision has no respect to the agent, it may be said of one or many, it may be the *decision* of the court, of the nation, of the public, of a particular body of men or of a private individual but a *judgment* is given in a public court, or among private individuals: a *sentence* is passed in a court of law, or at the bar of the public. A *decision* specifies none of the circumstances of the action. it may be a legal or an arbitrary decision, it may be a decision according to one's caprice, or after mature deliberation, a *judgment* is always passed either in a court of law, and consequently by virtue of authority, or it is passed by an individual by the authority of his own judgment: a sentence is passed either by the authority of law. (*Crabb*).

"Mr. De Gruyther says that "decision" in S. 596 of C. P. Code of 1882, does not mean the decision of the Court, or the decree made by the Court, but means the reasons given by the Court for their decree, although the decision in each case may be

different. Mr. De Gruyther appears to wish to give the word "decision' the same meaning as the word "judgment." Their Lordships cannot come to that conclusion. They think that the natural, obvious, and *prima facie*, meaning of the word "decision" is decision of the suit by the Court, and that that meaning should be given to it in the section" 30 I.A. 35=25 A. 109 (113)=7 C W.N. 177=5 Bom.L R. 100 =8 Sar. 337 (P.C.).

"DECISION" DISTINGUISHED FROM "OPINION" A decision of the Court is its judgment, the opinion is the reasons given for that judgment." (*Houston* v *Williams*, 73 Am Dec 565) "The terms 'opinion' and 'decision' are often confounded, yet there is a wide difference between them. A decision of the Court is its judgment; the opinion is the reasons given for that judgment. The former is entered of record immediately upon its rendition, and can only be changed through a regular application to the Court upon a petition for rehearing or a modification. The latter is the property of the judges, subject to their revision, correction, and modification in any particular deemed advisable, until, with the approbation of the writer, it is transcribed in the records" The term "opinion", in a legal sense, so far as it applies to judges and courts, has a well-defined meaning as "the expression of views of the judges" A "decision" embraces the findings of the court upon which a decree or judgment may be entered It differs from an "opinion," which contains the views of a judge in relation to a given subject

DISTINGUISHED FROM "VERDICT." The term 'verdict' signifies the finding by the jury, and the term 'decision' the finding by the court. "The judgment or decree is not the decision, but follows and is based upon the verdict of the jury or the decision of the court"

SYNONYMOUS WITH "JUDGMENT" Where a statute provided that an application for a new trial must be made at the term at which the verdict or decision is rendered, the court said. "Decision," as used in that section, has the same meaning as the word "judgment" [*Board of Education* v *State*, 7 Kan. App. 620 *See also* 30 I A 35 (P.C)]

DECISION OF COURT DISTINGUISHED FROM STATUTE LAW The decision of a court ought not to be treated as if it were a statute which imposed law for the first time It is nothing of the sort It is declaratory of the law as it had existed. 47 I A. 213=48 C. 30 (42)=25 C.W.N. 243=18 A L J 1049=(1920) M. W.N. 483=28 M L T. 157=12 L W 679=22 Bom L R. 1070=57 I.C. 545=39 M.L.J. 166 (P C).

The decisions of courts are not the law. They are only evidences of the law, and this evidence is stronger or weaker according to the number and uniformity of adjudications, the unanimity or dissension of the judges, the solidity of the reasons on which the decisions are founded, and the perspicuity and precision with which those reasons are expressed The weight and authority of judicial decisions depend also on the character and temper of the times in which they are pronounced. An adjudication at a moment when turbulent passions or revolutionary frenzies prevail deserves much less respect than if it were made at a season propitious to impartial inquiry and calm deliberation. The

Decision settling rent.

term "law" includes decisions of the Courts. *Miller* v. *Dunn*, 1 Am. St Rep 67.

DECISION "CONTRARY TO LAW". Where the finding of a judge is based mainly upon evidence which is explicitly referred to and avowedly reproduced in the judgment but is not to be found anywhere in the record, this circumstance vitiates the decision and renders it "contrary to law" within S 100, Code of Civil Procedure (Act V of 1908) 17 C W N 37= 15 I C. 515 (516).

"DECISION" ON POINT OF LAW. *Held* (by the majority). The word 'decision' cannot be read so as to cover cases where the Judge has never applied his mind to the matter and has not pronounced an opinion on it The expression 'point of law' in Cl. 26 of the Letters Patent means a point of law submitted to and decided by the Trial Judge or any direction as to the law given by him in the course of his summing up to the jury 58 Mad. 523=158 I C 662 =A.I R. 1935 Mad. 486=68 M.L J. (Supp) 1 (F B.)

"DECISION OF A COURT OF COMPETENT JURISDICTION" defined. U. P. Act 3 of 1892, S. 13, *expln.*

"Decision settling rent." The words "not being a decision settling a rent" refer not only to a decision by which existing rents are varied, but also to a decision by which existing rents are maintained as fair and equitable 33 C. 837=4 C L J 138. *See also* 1 P.L.J. 409, 31 Cal 380, 25 Cal 34.

Decision upon the merits is a decision upon the justice of the cause as opposed to one upon technical grounds only.

Decisive oath An oath upon which the cause rested where a party elected to leave the issue to the oath of his adversary. (*See* Indian Oaths Act)

Deck Platform in ship covering the whole or part of a hull's area at any level.

"UPPER PASSENGER DECK" (*See* Eng Mer. Ship Act, 1894, sub-ss 268, Ss 5-6.)

" 'LOWER PASSENGER DECK." Merch. Ship Act, 1894 (S. 268, sub-ss 5, 6.)

Deck Cargo Cargo carried on deck in regard to which no liabilities to damage generally attaches.

"Deck-Lines" defined. 57-8 Vct , c. 60, S. 437 (1).

Declarant. One who makes an evidentiary declaration.

"Declaration" defined. Act 45, 1860, S. 200, *expln.*

DECLARATION: A formal announcement, a deliberate statement. The order of the District Court acknowledging a person as the guardian of a minor is a declaration of such guardianship within the meaning of S 7 of the Guardians and Wards Act of 1890. (9 M L J. 24)

Declaration of dividend. Disposition *pro tanto* of the property of a corporation, according to the shares held by each member. A "declaration of dividend" is one of the most important acts of a corporation. It is an assignment *pro tanto* of its property. It clearly implies corporate action to that effect.

Declaration of insolvency. *See* 24 & 25 Vict., c. 134, S. 72.

Declaratory Law.

Declaration of Paris, a state paper agreed upon at the conclusion of the Crimean war, by the representatives of Great Britain, France, Austria, Russia, Sardinia, and Turkey, (Feb. 26, 1856), in which the following agreements on maritime law were come to.—(1) Privateering is abolished. (2) The neutral flag covers enemy's goods save contraband of war. (3) Neutral goods save contraband of war are not liable to capture under enemy's flag. (4) Blockades to be binding must be real. *See also* Letters of Marque and Paper Blockades.

Declaration of rights A clause in the constitution specifically reserving certain rights to the people. (Found in the American constitution)

"Declaration of Trust," "is usually taken to include any form of words,—whether spoken or written, and, whereby an intention is effectually manifested, by the person or persons entitled to give effect to such intention, that certain specified property, shall be held and used or applied by the person or persons in whom the title thereto at Law is vested, for the benefit,—either simply and absolutely, or in a specified and restricted manner, of some other person or persons." (4 Encyc. 443, *Stroude.*)

Declaration of war. A manifesto, or proclamation, issued by the sovereign power of a nation, making known that war exists between it and another nation named. (*Abbott L. Dict*). "A solemn declaration of war seems to have been considered by the people of antiquity and especially by the Romans, as a measure of international propriety; and this extension to the conduct of states of what men in private life considered and still consider fair and honourable, was still the practice down to comparatively recent times." (*See* Hall International Law, Lieutenant-Colonel Maurice, Hostilities without declaration of war, Feraud-Giraud Des Hostilities sans Declaration de Guerre, Paris, 1885, Lawrence, Principles of International Law, Smith and Sibley, International Law as Interpreted during the Russo-Japanese War, 1905)

DECLARATION, STATUTORY, *see* English Int. Act 1889, S. 21

Declaratory. Explanatory, clear; designed to fix or elucidate what before was uncertain or doubtful (*Black Law Dic*)

Declaratory Act Act which, by profession at least, declares no new law, but only the formerly existing law, removing certain doubts which have arisen on the subject. (*Ame. Cyc*)

Declaratory Actions. "Are those wherein the right of the pursuer is craved to be declared: but nothing claimed to be done by the defender." (*Tomlin's Law Dic.*)

Declaratory decree A declaration which is of no practical use to plaintiff ought not to be granted (46 P R 1911=108 P.W.R. 1911=179 P.L R. 1911=10 I C 515)

Declaratory judgment. A judgment which simply declares the rights of the parties, or expresses the opinion of the Court on a question of law (or also of fact) without ordering anything to be done.

Declaratory law. One whereby the rights to be observed and the wrongs to be eschewed are clearly defined and laid down.

Declaratory part of a decree

Declaratory part of a decree That part of a decree which declares the rights of the parties, as distinct from recitals, etc

Declaratory statutes Statutes which are expressive of the common law, which only lay down the law as previously existing

DECLARATORY STATUTE or Act is an Act passed to remove doubts existing as to the common law, or the meaning or effect of any statute, or to codify the rules of equity and the common law as established by judicial decisions (*See* Hardcastle, Statute, 4th ed, by Craies, 1907, Maxwell, Interpretation of Statutes, Beal on Interpretation, Banerjee, Interpretation of Statutes) Blackstone says —"Statutes are either declaratory of the common law, or remedial of some defects therein. Declaratory, where the old custom of the kingdom is almost fallen into disuse, or become disputable, in which case the parliament has thought proper, *in perpetuum rei testimonium* (as a lasting testimony of the thing), and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been." (1 Blackstone Comm 86)

Declare Announce formally, reveal one's intention or contemplated action (as) declare war, declare neutrality, declare dividend To state, to assert, to publish, to announce clearly some opinion or resolution, to make known, to assert to others In pleading, to set forth in a formal writing, the cause of action and claim which plaintiff alleges against defendant (*Abbott L Dict See also* 5 Bom. 232, 20 Bom 553, 6 I C 651)

DECLARE, PUBLISH, PROCLAIM The idea of making known is common to all these terms this is simply the signification of *declare*, but the other two include accessory ideas The word *declare* does not express any particular mode or circumstance of making known, as is implied by the others we may *declare* publicly or privately, we *publish* and *proclaim* only in a public manner we may *declare* by word of mouth, or by writing, we publish or proclaim by any means that will render the thing most generally known In *declaring*, the leading idea is that of speaking out that which passes in the mind in *publishing* the leading idea is that of making public or common, in *proclaiming*, the leading idea is that of crying aloud we may, therefore, often *declare* by *publishing* and *proclaiming* Facts and opinions are *declared*, events and circumstances are *published*, the measures of government are *proclaimed* In cases of war or peace, princes are expected to declare themselves on one side or the other, in the political world intelligence is quickly published through the medium of the public papers, in private life domestic occurrences are published with equal celerity through the medium of tale bearers, proclaiming is not confined to political matters, whatever is made known after the manner of a proclamation is said to be proclaimed joyful news is proclaimed.

"Declared" "covenanted", "agreed" In *Richardson* v *Jenkins*, (1853), 1 Drew 477; 61 E R. 534, one of the questions for decision was whether a deed by which "it was declared" that the person executing it should stand possessed of certain trust funds, amounted to a contract by him, or whether, in order to constitute a contract, he should have "covenanted" or "agreed" to execute the trusts Kinderley, V.C, said that when the parties to a deed frame it in the terms of declaring that such and such things shall be done, the term "declare" is sufficient to constitute a contract [See also *Holland* v *Holland*, (1869,) L.R. 4 Ch. 449, *Stroud Jud Dict*, 4 Ency of the Laws of England 454]

Decree.

"Declare the law." Used in reference to the duty of a judge to charge the law arising upon the evidence, (as) judge's declaration of the law to the jury.

Declared provisions. Defined, Act 16 of 1931, S 2

Decoction. A product obtained by steeping or boiling in water any substance employed medically.

"Decoration" defined. *See* Military decoration.

Decoy The word "decoy" means to entice, tempt, lure or allure There can be no such thing as "forcibly decoying" a person from his place of residence.

Decree. "Decree," as defined in the Civil Procedure Code, means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within S. 47 or S 144, but shall not include—(*a*) any adjudication from which an appeal lies as an appeal from an order, or (*b*) any order of dismissal for default *Explanation.*—A decree is *preliminary* when further proceedings have to be taken before the suit can be completely disposed of. It is *final* when such adjudication completely disposes of the suit. It may be partly preliminary and partly final. [Act V of 1908 S 2, cl 2. *See also* 6 Bom 54, 3 All 141, 6 All 269, 20 C W N. 738, 8 Cal 51, 7 All 102, 34 Bom. 158=4 I C 583, 23 I C 407.] The words "the decree" mean the whole decree made in the suit. (25 C 155=1 C. W N 652) The word "decree" must be deemed to include the judgment on which the decree is based [I L R 1937 Bom 236=168 I C 73=38 Bom L R 1308 =A I R. 1937 Bom 121) *Agha Haidar, J*—Decrees, as a rule, should not be drawn up on the model of a steel frame and it is always desirable that the Court, under its inherent powers and in order to give full effect to its decision, should frame its decree in such an elastic form as would define the respective rights and liabilities of the several parties to the suit and thus to do substantial justice between all those who are concerned with the result of litigation [A.I R 1928 Lah 572 (F B).] 'Decree' test of—Order must conclusively determine rights of parties. (41 Cal. 160 =20 I C 72.)

DECREE containing several adjudication—Each adjudication is a decree. 55 All 672=1933 A.L.J. 1425 =1933 All 473.

DECREE, JUDGMENT. A Decree is the final order of a Court in a suit It closely resembles, but is not identical with "Judgment." "The final decision in a proceeding is termed a 'Decree'; the proceeding itself is usually styled a 'Cause,' or 'Suit.'" (*Stroude.*) "In strict language the decree is not called a 'Judgment,' nor is the suit called an 'Action'" (per *Kay, L J*, Re *Binstead*, cited Final (Judgment.)

Decree in absence.

DECREE AND ORDER The essence of the distinction between a decree and order seems to be in the nature of the decision, whether it is an adjudication of a particular kind or not, rather than in the manner of its expression. (169 I C 359=18 Pat L.T 321=A I R. 1937 Pat 349=3 B R. 558)

The Code of Civil Procedure makes no provision for something which is neither a decree nor an order nor for anything which is both, neither does it provide that one adjudication by the Court can be resolved into divers elements, some of which are decrees and some orders. An adjudication does not cease to be decree because a subordinate part of it, if correctly made, might have been made separately as an order. [42 I.A. 91=42 C 914 (924)=19 C W N. 449=21 C L.J. 419=17 M.L T 312=21 W 377=1915 M W N 485=13 A L J 540=17 Bom L R. 432=28 I C 710=29 M.L.J. 70]

DECREE, EDICT, PROCLAMATION, LAW, STATUTE, REGULATION, RULE *Decree* may come from one or more, from a sovereign, or a senate, or a court or council It is commonly an authoritative order addressed to persons under jurisdiction.

An *edict* does not issue from a body of men It is the public expression of a will of an individual in political power. In decree, the leading idea is absolute obligation, in edict, absolute authority. Hence decree is used largely of binding power, as, the decrees of faith. Where the decree is constitutional it is subject to, and dependent upon, law for its verification It is also most commonly the result of law, that is, the particular enforcement of some principle already recognized by the law.

Proclamation is a published order emanating from the sovereign or supreme magistrate, and bears reference to specific occasions, as determined upon in council. An *edict* savours of despotic government, a *proclamation* of more constitutional power.

Law in its wider sense, is the authoritative expression of will on the part of any rightful governing power, and, in its political sense, permanently controls every department of the State

Statute is commonly applied to the acts of a legislative body composed of representatives of the people, and is to be distinguished from civil law, canon law and common law.

Regulation is a governing direction of a state, department, institution, or an association, for a specific purpose, and may be only of a temporary character Such, for instance, are the arrangements for preserving order on great occasions of public interest, and the rules by which voluntary societies are managed We often find *"rules and regulations"* combined In such cases the difference is slight. Rule, however, points rather to authoritative enactments as such; Regulation to the place of such rules in the working of the system or institution. (*Smith Syn Dis.*)

Decree in absence (*Scotch*) A default judgment.

Decree on appeal. In this country (England) the nature and effect of a decree on appeal would seem to vary according to the nature of the decree under appeal, the constitution of the appellate tribunal, the proceedings in appeal, and the fact whether the record or merely a transcript is brought up.

Decree dative.

[(1872) 14 M I.A. 465=17 W R. 292=10 B.L.R. 101=2 Suth. 564]

DECREE also means authoritative order having the force of law.

DECREE, EDICT, PROCLAMATION A *decree* is a more solemn and deliberative act than an *edict*, on the other hand an *edict* is more authoritative than a *decree* A *decree* is the decision of one or many; an *edict* speaks the will of an individual councils and senates, as well as princes, make *decrees*, despotic rulers issue *edicts* *Decrees* are passed for the regulation of public and private matters they are made known as occasion requires, but are not always public, *edicts and proclamations* contain the commands of the sovereign authority, and are directly addressed by the prince to his people An *edict* is peculiar to a despotic government, a *proclamation* is common to a monarchical or aristocratic form of government

Decree absolvitor (*Lat*) A decree for defendant.

DECREE AGAINST A DEBTOR A decree passed by consent would also be a "decree against a debtor" within the meaning of S 4, Succession Certificate Act, and the production of a certificate would be a condition precedent to the passing of such a decree. (15 Bom 105)

Decree condemnator (*Lat*) A decree for plaintiff

Decree dative (*Scotch*) A decree appointing one as executor not nominated in the will.

'DECREE FOR MONEY' and 'a decree for payment of money' as used in Ss. 230, 295, C P Code, include a mortgage decree directing the sale of mortgage property [15 M L J 126=28 M. 473 (F B), 28 M 224, *See also* 1937 M W N 341=169 I.C 698=10 R M 87=45 L W 563=A I R 1937 Mad 604=(1937) 1 M L. J 640] A mortgage decree is not a decree for payment of money. (49 Mad 508=1926 M W N. 224=93 I C 58=23 L W 515=A I R 1926 Mad 623=51 M L J 139) Arrears of rent are "money" The expression "decree for money" applies to a case where a decree has been made for payment of arrears of rent (25 C 322)

"DECREE FOR MONEY AGAINST SEVERAL PERSONS" means a personal decree for the payment of money by two or more defendants jointly [31 B 308=9 Bom L R 409; 12 I C. 70 (71)]

DECREE FOR PAYMENT OF MONEY The decree for interest after the time allowed for redemption is a decree for payment of money (6 C.W N. 769)

"DECREE FOR RENT". 6 C.W N. 129=29 Cal 219.

DECREE FOR SALE. The words of O. 21, R 20, C. P. Code, "decree for sale in enforcement of a mortgage or charge"—cannot be restricted to personal judgments such as may be given under O 34, R 6. [64 I. A. 67=1937 A L J 553=16 Pat 127=166 I C. 653=A I R. 1937 P C. 39=(1937) 1 M L J 254 (P C)]

"DECREE-HOLDER" as defined in the Civil Procedure Code means any person in whose favour a decree has been passed or an order capable of execution has been made (Act V of 1908, S 2, Cl 3. *See also* 37 Bom 387=19 I.C 475=15 Bom.L.R. 244, 29 Cal 548.

Decree nisi.

"DECREE INVOLVING DIRECTLY OR INDIRECTLY,..... TEN THOUSAND RUPEES OR UPWARDS" (in respect of P C. appeal) *See* 24 A. 236=22 A W N. 46.

"DECREE OF COURT", defined, Act 22 of 1886, S. 71

The words "decree of Court" mean the decree or formal expression of an adjudication upon the question of title or right made by a court legally competent (subject to appeal) to decide it finally (13 A. W N. 3)

Decree nisi A decree to be made final unless a contingency happens

DECREE NISI, the order made by the court for divorce on satisfactory proof being given in support of a petition for dissolution of marriage, it remains imperfect for a specified period, and then, unless some one appears to show cause, it becomes absolute on motion, and the dissolution takes effect, subject to appeal. (See *Ind Divorce Act*)

"DECREE PASSED AGAINST AGRICULTURISTS." The words "decree passed against an agriculturist," in S 20 of the Dekkan Agriculturists' Relief Act (XVII of 1879), mean a decree passed against an agriculturist personally, and do not include a decree for the recovery of money by the sale of mortgaged property. (5 B 604)

Decrepit person One who is disabled, incapable or incompetent, from either physical or mental weakness or defects whether produced by age or other causes, to such an extent as to render the individual comparatively helpless in a personal conflict with one possessed of ordinary health and strength (*Ame. Cyc*)

Decreta conciliorum non ligant Reges nostros. A maxim meaning "The decrees of councils bind not our kings'."

Decretal order An order in the nature of a decree, such an order as finally determines some right between the parties.

Decretals Canonical opinions of the popes, a volume of the canon law, containing the decrees of sundry popes, or a digest of the canons of all the councils that pertained to one matter under one head.

Decretum. A decree, a law.

Decretum est sententia lata super legem A decree is a sentence made upon the law

Dedication "An appropriation of land to some public use, made by the owner and accepted for such use by or on behalf of the public" [*Angell on Highways* (3rd ed.) 132] "Appropriation of land by its owners for any general and public use." "The act of giving or devoting property to some public use, an appropriation of realty by the owner to the use of the public, and the adoption thereof by the public" (*Anderson L Dict*) "The deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights in the soil than such as are perfectly compatible with the full exercise and enjoyment of the public uses to which he has devoted his property"

"In common law dedication, no particular formality is necessary. It may be made (except in cases where a statute has otherwise provided) either with or without writing, by any act of the owner, such as throwing, open his land to public travel, or an acquiescence in the use of his land for a highway; or his declared assent to such use, will be sufficient the dedications being proved in most, if not all of the cases by matter *in pais*, and not by deed The vital principle of the dedication is the intention to dedicate, and whenever this is unequivocally manifested, the dedication, so far as the owner of the soil is concerned, has been made. Time, therefore, though often a very material ingredient in the evidence, is not an indispensable ingredient in the act of dedication If accepted and used by the public in the manner intended, the dedication is complete, precluding the owner and all claiming in his right from asserting any ownership inconsistent with such use Dedication, therefore, is a conclusion of a fact to be drawn by the jury from the circumstances of each particular case, the whole question as against the owner of the soil, being whether there is sufficient evidence of an intention on his part to dedicate the land to the public use as a highway." (14 Cal 642)

TO DEDICATE, DEVOTE, CONSECRATE, HALLOW. There is something more solemn in the act of *dedicating* than in that of *devoting*, but less so than in that of *consecrating* To *dedicate* and *devote* may be employed in both temporal and spiritual matters, to *consecrate* and *hallow* only in the spiritual sense We *dedicate* a house to the service of God, or we *devote* our time to the benefit of our friends, or the relief of the poor. To *consecrate* is a species of formal dedication by virtue of a religious observance, it is applicable mostly to places and things connected with religious works, *hallow* is a species of informal consecration applied to the same objects: the church is *consecrated*; particular days are *hallowed*

De die in diem From day today (*Burrill L. Dict.*)

Deducing title "When you speak of deducing a Title," as meaning to express either the delivery of the abstract of the title deeds or showing the deeds, it is not altogether an appropriate expression or strictly correct The deducing the title, the appropriate use of that expression would be this. I deduce my title from my great-grandfather, I do not deduce my title by sending you a document or by showing you the deeds By sending you the abstract of the title deeds and showing you the deeds, I show you how I deduce my title, but according to the strict meaning of the words 'Deducing the title, it is stating from whom or from what source the party draws forth his title" (per *Kindersley, V.C, Oakden* v. *Pike*, 34 L J Ch 622) The term is however generally used in the sense of showing the Title by an abstract, and to prove the abstract by reference to the documents (*Southby* v. *Hutt*, 2 My & C. 213.)

Deduct. To take away; withhold, not to be taken into account, not reckon (as, 5 per cent to be *deducted* for working expenses)

TO DEDUCT, SUBTRACT. He who makes an estimate is obliged to *deduct*, he who makes a calculation is obliged to *subtract*. The tradesman *deducts* what has been paid from what remains due, the accountant *subtracts* small sums from the gross amount.

"The popish clergy took to themselves the whole residue of the intestate's estate, after the two-thirds of the wife and children were *deducted*. (*Blackstone.*)

Deduction.

"A codicil is a supplement to a will, being for its explanation or alteration, or to make some additions to or else some *subtraction* from the former dispositions of the testator" (*Blackstone*)

Deduction. Act of deducting, amount deducted, deducing; inference from the general to the particular.

DEDUCTION, ABATEMENT. A person may make a *deduction* in an account for various reasons, but he makes an *abatement* in a demand when it is objected to as excessive, so an abatement may be made in a calculation when it is supposed to be higher than it ought to be.

DEDUCTION, SUBTRACTION, ABATEMENT. *Deduction* is such subtraction as is performed with the purpose, or result, of lowering the aggregate or capital sum or quantity A tradesman *subtracts* a certain sum from the total of his account, in consequence of my representations to him that he ought, in fairness, to make certain *deductions* So *subtraction* may be theoretical, *deduction* has always a practical purpose *Abatement* refers not, like deduction and subtraction to the parts, but to the whole, of which the amount is in any way diminished, as to make an abatement of a claim (*Smith Syn Dis*)

Deed. A written or printed document between parties able to contract under the hand (and sometimes also seal) of the obliger.

DEED (*Factum*) is an instrument in parchment, or paper, comprehending a contract or bargain between party and party, or an agreement of the parties thereto, for the matters therein contained. and it consists (in English law) of three principal points, writing, sealing and delivery, writing to express the contents, sealing, to testify the consent of the parties, and delivery, to make it binding and perfect (*Termes de la Ley*, *Tomlins Law Dic*) Something which passes a pecuniary interest or creates an obligation. [*R* v. *Morton*, (1873) L R 2 C.C R. 27, *Blackburn, J*]

"This word (Deed) in the understanding of the English Common Law is an instrument written in parchment or paper, whereunto ten things are necessarily incident, *viz*, First, writing. Secondly, in parchment or paper. Thirdly, a person able to contract. Fourthly, by a sufficient name Fifthly, a person able to be contracted with Sixthly, by a sufficient name Seventhly, a thing to be contracted for Eighthly, apt words (if any) required by law Ninthly, sealing, and Tenthly, delivery. A deed cannot be written upon wood, leather, cloth, or the like, but only upon parchment or paper, for the writing upon them can be least vitiated, altered or corrupted" (*Co Litt.* 35 b; *Stroude*)

DEED DISTINGUISHED FROM WILL. If the instrument passes a present interest, although the right to its possession and enjoyment may not occur till some future time, it is a deed or contract; but if the instrument does not pass an interest or right till the death of the maker it is a will or testamentary paper The question is to be determined by the intention of the parties derived from the whole instrument.

An instrument, which was called a deed of assignment (tamliknamah) by its executant, was nevertheless, *held*, on its true construction, to be a will and not to be a transfer operating *inter vivos*. [11 I A. 135 =10 C. 792 (801)=13 C L.R. 418=4 Sar. 528=R. & J.'s No. 79 (Oudh).]

DEED IS DISTINGUISHED FROM AN INDENTURE by having the edge of the parchment or paper on which it is written cut even (or polled, as it was anciently termed), that is, in a straight line, or plain, without being indented This distinction, however, although once peculiar and essential, has in modern times become of comparative insignificance, in consequence of the disuse of the formality of indenting the other description of deeds. (*Burrill L Dic*)

DEED AND CONVEYANCE. At common law a deed is defined as a writing, sealed and delivered by the parties, and a conveyance as a deed which passes land from one man to another, but in its ordinary acceptation a deed is an instrument conveying a real property.

DEED, LEASE, MORTGAGE, BOND, EXECUTORY CONTRACT Though a lease is in a sense a conveyance, such is neither the commonly accepted nor the accurate meaning of the term. It has been said that in a strict sense a mortgage is not a conveyance, but how far a mortgage operates as a deed, and as to whether and how far a deed absolute in form may be regarded as merely a mortgage, because given as security, depends on the construction of the document and the intention of the parties as expressed therein. The giving of a bond, as a bond on appeal, is not strictly a conveyance of property, though it may be said to amount to a disposition *pro tanto* To determine whether an instrument is to operate as an immediate conveyance or only as an executory contract, the court will look to the intention of the parties, which is to be sought for in every part of the contract, and also from the surrounding circumstances, where the face of the instrument, leaves it in doubt, or from the instrument itself, read in the light of a contemporaneous agreement.

Deed in Blank. Two conditions are essential to make a deed executed in blank operate as a conveyance of the property described in it The blank must be filled by the parties authorised to fill it, and this must be done before or at the time of the delivery of the deed to the grantee named (*Allen* v. *Whitrow*, 28 L. Ed 90)

Deed indented or Indenture is a deed executed or purporting to be executed in parts between two or more parties and distinguished by knowing the edge of the paper of parchment on which it is written or cut at the top or side or in a waving line in a particular manner. "An indenture, in the language of the law, is a deed, that is, a writing sealed and delivered." It is "a writing containing a conveyance, bargain, contract, covenant or agreement between two or more." It takes its name from its being indented, or cut, on the top, or on the side, either by a living or a line of indenture, so as to fit or aptly join its counterpart from which it is supposed to have been separated. The practice is now obsolete.

Deed of Arrangement (*In Insolvency Law*) A deed of assignment or composition, whereby a debtor conveys his property, to a trustee for realisation and distribution among his creditors on terms specified.

Deed of Covenant. A deed whereby one party covenants or contracts with another to do certain things. As a general rule, covenants appear in a deed as incidental to other matters, but sometimes they are embodied in a separate deed of covenant.

Deed of Inspectorship Deed providing for the realisation and distribution of an insolvent debtor's assets by trustees or inspectors

"**Deed of Settlement**" defined. Act 12, 1895, S. 3 (1).

Deed Poll Deed of one part or executed by one party only, instead of between parties and in two or more parts A deed poll properly is made in the first person, and commences with that formula of address to all mankind so common in ancient written instruments "Know all men, etc, that I, etc., have given," etc (*Burrill L. Dict*)

Deemed The word "deemed" is used in various senses Sometimes it means "generally regarded" At other time it signifies "taken *prima facie* to be," while in other cases it means "taken conclusively to be." Its various meanings are,—To deem is to hold in belief, estimation, or opinion, to judge, adjudge, decide, consider to be, to have or to be of an opinion, to esteem; to suppose, to think, decide or believe on consideration, to account, to regard, to adjudge or decide, to conclude upon consideration. (*Worcester Dict*)

APPLIED TO A MEMBER OF A MUTUAL INSURANCE SOCIETY In *Russell* v *Russell*, 14 Ch D 471, 478, (citing *Wood* v *Wood*, L R 9 Exch 190), Jessel, M R., in speaking of "a rule which allowed a committee of a mutual insurance society to expel a member, (on) the ground ..that if the committee shall at any time *deem* the conduct of any member suspicious," etc, said. "I have to say a word as to the use of the word 'deem' That word has more than one meaning but one of its meanings is to adjudge or decide In fact, the old word 'deemster' or 'dempster' was the name for judge To 'deem' at one time meant to decide judicially. Consequently, taking that meaning, what they had to do was to *deem*' that the member's conduct was suspicious and such as made him unworthy That was in fact a decision not merely depending upon opinion, but depending on inquiry"

APPLIED TO AN ASSESSMENT ON REAL PROPERTY. Where the resolution of a common council directed an assessment upon "the property *deemed* benefited", the court said · ' the use of the word 'deem' in the connection in which it appears, must be construed to mean a direction to investigate, consider, and determine, from which they may pronounce a proper judgment" (*Broesel* v *Buffalo*, 6 N. Y. Suppl. 723, 726)

APPLIED UNDER CUSTOMS AND ADMINISTRATIVE ACTS. Where a statute provided that "the decision of the appraiser shall be final and conclusive as to the dutiable value of such merchandise, unless the Collector shall *deem* the appraisement of the merchandise too low," etc., the court said: "The word '*deem*', used in this connection, necessarily involves the exercise of discretion on the part of the Collector" *U. S.* v. *Loeb*, 99 Fed. 723, 733) And where a statute authorized the appraisers of merchandise "to examine any person on oath touching any matter or thing which they may *deem* material in ascertaining the

value", of commodities, the court said that the provision "necessarily implies that the inquiry be limited (to subjects which) the appraiser must '*deem*' the inquiry material. To deem, here means to judge; to determine upon consideration" (*U. S.* v. *Doherty*, 27 Fed 730, 734)

Deemed to be When a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were 121 I C 532=1930 A L.J 73=34 C W N 230=32 Bom L.R. 361=31 M L W. 582=57 I.A. 49=1930 M W N 564=54 Bom. 216=A.I.R 1930 P C 54=58 M L J 197 (P.C).

"No doubt the phrase 'deemed to be' is commonly used in statutes to extend the application of a provision of law to a class not otherwise amenable to it. But one cannot apply to a moffusil document rules of construction that would be appropriate in the case of a statute". 32 M L.W. 704=1930 M.W N. 1165= 59 M L J. 782.

In *Leonard* v. *Grant*, 5 Fed. 11, 16, it is said · Whatever an Act requires to be '*deemed*' or '*taken*' as true of any person or thing, must, in law, be considered as having been duly adjudged or established concerning such person or thing and have force and effect accordingly"

When, by statute, certain acts are "deemed" to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offence

When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else (per *Cave, J, R* v *Norfolk Co Co*, 60 L J Q. B 380)

"When a statute enacts that something should be '*deemed*' to have been done which in fact and truth, was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to" (per *James, L J, Ex p Walton*, 50 L J Ch. 662)

"**Deface**", defined, Act 3, 1906, s. 2 (*a*).

"DEFACE", In respect of coins, with its grammatical variations and cognate expressions, includes clipping, filing, stamping, or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear. (Act III of 1906), s 2, cl (*a*).

DEFACE, DISFIGURE, DEFORM. A building may be *defaced* by scrawling upon its walls, *disfigured* by a roof, of which the colour is out of harmony with the walls, *deformed* by an unsightly cupola surmounting it. (*Smith Syn Dis*)

Defacing Impairing or effacing; blotting out; making illegible, erasing, obliterating, cancelling.

DISTINGUISHED FROM "ALTERING" OR "OBLITERATING". In speaking of the offence of "altering" a cow brand contrary to statute, the court said. "The words 'altering' or 'defacing' are not synonymous terms. Defacing would be the obliterating; altering would be changing from what it was before into a different brand." (*Linney* v. *State*, 55 Am. Dec. 756)

De facto. Of fact; founded in fact; in deed, in point of fact, actually, really. *De facto* signifies a thing actually done, that is done in deed. A King

Defalcation.

de facto (in fact) is one that is in actual possession of a crown, and hath no lawful right to the same, in which sense it is opposed to a king *de jure* (of right), who hath right to a crown, but is out of possession. (3 Inst. 7. *Tomlins Law Dic*)

Defalcation The act of a defaulter: Embezzlement or misappropriation of public or trust funds; Diminution, abatement, excision of any part of a customary allowance; a cutting off, a diminution by way of deficit. (*Burrill*)

The word "defalcation" means, according to Johnson, "diminution, abatement, excision of any part of a customary allowance" He derives the verb "defalcate" from the Latin "defalco".—"I mow or cut off with a scythe".

DEFALCATION, EMBEZZLEMENT, PECULATION, MAIVERSATION These are all terms of official dishonesty. *Defalcation* is a diminution or deduction in regard to a sum of money *Embezzlement* is primarily to squander, now to filch from a sum or an account It is in its present use essentially fraudulent.

As *embezzlement* is fraudulent, so *peculation* may be repacious also, and may be the result of false claims and pretences, without the secrecy of embezzlement.

Malversation is literally ill conversation or behaviour in office, of which fraudulent dealing may or may not be the distinctive feature, and which may also consist in violence and corruption, or iniquitous practices of any kind. (*Smith. Syn. Dis*)

Defalk. "Defalk" means the act of a debtor in taking a debt due him, or portion thereof, from the fund in his hands belonging to a creditor. (*Johnson* v. *Johnson R. Signal Co*, 57 N J. Eq 79)

"Defamation" defined (Penal Code) Act 45, 1860, s. 499.

Defamation The taking from another's reputation, a false publication calculated to bring one in disrepute. Defamation, is when a person speaks scandalous words of others, whereby they are injured in their reputation. (*Tomlins Law Dic*)

"Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases excepted, to defame that person" (*See* Penal Code, s. 499 and exceptions)

The words "the British Government themselves, and the superior officers, including from the District Magistrate down to the daroga and chowkidars were all beasts, etc," are too wide to admit of the construction that any particular police officer was defamed. 29 C.W N 904=42 C L.J. 178=90 I.C 387=26 Cr.L.J. 1539=A.I.R. 1925 Cal. 1121.

Defamatory. Containing defamation. tending to defame, calumnious, slanderous; libellous: injurious to reputation "The word '*defamatory*', does not, in its ordinary and proper signification, include, the element of malice."

Defamatory Words. Words which injure the reputation of any one, which make people think worse of him, are defamatory. Yet no general rule

Default

can be laid down defining absolutely and once for all what words are defamatory, and what are not. Words which would serious injure *A's* reputation might do *B* no harm. Each case must be decided mainly on its own facts, and in each case the test is this. Have the defendant's words appreciably injured the plaintiff's reputation?

It is necessary, however, that, in order to be actionable, the defamatory words should be, in some way, made public, "otherwise the reputation of the plaintiff cannot be impaired Thoughts are not actionable till they take bodily form Merely composing, or even writing down, defamatory words is not a tort, unless they be subsequently published. And no cause of action arises if the words be only communicated to the person defamed, for, that does not injure his reputation though it may wound his self-esteem A man's reputation is the estimate in which others hold him, not the good opinion which he has of himself".

DEFAMATORY WORDS, if they be merely spoken, they may amount to *slander* But if they be written, printed, or otherwise permanently recorded, they constitute a *libel* A libel must be to some extent permanent, not transient, as are spoken words. (4 *Ency of the Laws of England*, 463)

INNUENDO Whenever it is not obvious from the defamatory words themselves who is the person referred to, or what is the imputation cast upon him, the plaintiff should insert in his pleading an averment (which is called an innuendo) stating what he understands the words to mean and to whom he supposes them to refer Thus, if the defendants said of a stock broker, "he is a lame duck", the plaintiff should plead that he was a stock-broker, and that "the defendant falsely and maliciously spoke and published of him the words 'he (meaning the plaintiff is a lame duck" (meaning thereby that the plaintiff had not fulfilled his contracts in respect of certain stocks and shares which he had bought in the course of his business as a stockbroker" (*Morris* v *Landale*, 1800, 2 Bos & Paul. 284 Odgers on Libel and Slander, 4th ed, Folkland on Libel and Slander, Fraser on Libel and Slander, 3rd ed, *Pollock on Torts*, *Addison on Torts*.)

Default Is commonly taken for non-appearance in court, at a day assigned, though it extends to any omission of that which we ought to do (Bract. lib. 5 tract 3 Co. Lit 259 *Tomlins Law Dic See also* 155 I C 332=1934 Lah. 697, 150 I C. 1053=1934 Lah. 395) *Default* means omission, neglect or failure; a failure or omission to do something required, omission to do that which ought to have been done by one of the parties, non-performance of duty; a failure in the performance of an obligation, neglect or omission of a legal requirement; fault, transgression; not doing what is reasonable under the circumstances. "Default is a French word, and in the legal sense means non-appearance in Court" (*Co. Litt.* 259-*b*) 'Default' means omission to do something which the person concerned is legally bound to do. (7 O.L.J. 337=23 O.C. 166=57 I.C 509) "Default, is a purely relative term, just like Negligence. It means nothing-more, nothing less, than not doing what is reasonable under the circumstances—not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in

Default in payment.

the transaction (per *Bowen, L J.*, Re *Young and Harston* 31 Ch D. 174) "I do not know a larger or looser word than 'Default,' abstracted from other words, what does it mean? In the expressions 'Judgment by default' and 'a Juror making default,' we understand it differently. In its largest and most general sense it seems to mean, 'Failing'" (per *Eyre, C J, Doed Dacre* v *Dacre*, 1 B & P 258)

"'Default' would seem to embrace every failure by the defendant to perform his contract unless prevented by superior force over which he had no control" (per *Fitzgerald, J, Caffarini* v. *Walker*, 9 Ir. Rep C L 437) or unless hindered by the plaintiff's non-performance of some condition precedent [*Randall* v. *Thorn*, W N 78 (150)], or unless there has been a waiver of performance, which waiver (in the case of an obligation to pay money) may be by parol though the obligation be in writing and under seal (*Albert* v. *Grosvenor Investment Co.*, 37 L J Q. B. 24, *Stroude*, 488).

"DEFAULT," means, default in the performance of a present or future duty, whether contractual or otherwise. "Even if there was a contract with reference to a future liability, that would come under the word 'Default'" (per *Willes, J, Mount-stephen* v *Lakeman*, L R 7 Q B. 202)

The word does not necessarily imply any moral obligation or any breach of contractual obligation It simply means non-payment, failure, or omission to do what one is bound to do [6 Bom L.R 741=3 I C 901=8 C W N. 721=31 I.A. 195=1 A L J. 420(P C), 57 I C. 509]

Omission to issue or serve a notice under O. 21, R 66, C P Code, upon the judgment-debtor is a *"default"* within the meaning of O 21, R. 57. There is no reason for giving a restricted meaning to the word "default" in O. 21, R. 57, and confining it to default in appearance, in the payment of process fees or in the production of documents. (15 C.W.N. 428= 13 C L J 621=9 I C 558.)

The term *'default'* in S. 10 of the Madras Rent Recovery Act, means *'wilful default'* and not one which may have been unavoidable. (4 M 167, *see also* 7 M 572, 22 M. 167)

DEFAULT DISTINGUISHED FROM "ABSENCE". "There is a plain difference in meaning between 'default' and 'absence' 'default' signifying that there has not been an appearance at any stage of the action by the party in default, while 'absence' means that the party was not present at a particular time (*Covart* v. *Haskins*, 39 Kan. 571; 13 *Ame. Cyc.* 759)

DEFAULT, DEBT, MISCARRIAGE. "The word 'Miscarriage' has not the same meaning as the word 'Debt' or 'Default', it seems to me to comprehend that species of wrongful act for the consequence of which the law would make the party civilly responsible. The wrongful riding the horse of another without his leave and thereby causing its death, is clearly an act for which the party is responsible in damages; and, therefore, in my judgment falls within the meaning of 'Miscarriage,'" (per *Abbott, C. J* in *Kirkham* v. *Marter*)

DEFAULT, NEGLIGENCE The word 'default' is of stronger import than negligence. (1931 A L J 961).

Default in payment, means, non-payment at the due time and place. (*Williams* v. *Stern*, 49 L. J. Q. B. 663.)

Defeasance.

"DEFAULT" IN PAYMENT does not necessarily imply any moral obliquity or any breach of contractual obligation It simply means non-payment, failure or omission to pay [31 I A 195=31 C. 901 (908)=8 C W N. 721=6 Bom L R. 741=1 A.L J. 420.]

Default in proceedings in court. The word "default" in relation to proceedings in Courts is generally used to signify the failure of one party or the other to take some step in the action on other proceeding at the proper time, whereby the party so failing becomes liable to certain consequences. Formerly the meaning of the word appears to have been restricted to non-appearance in Court. (*Co Litt.* 259-*b*), but it has of late been used with a wider significance. [*Ency of the Laws of England. See also* 31 I A 195=31 Cal 901=6 Bom L R. 74 (P.C.)]

Default of issue An indefinite failure of issue. (*Ame Cyc*)

OWNER IN DEFAULT (*in Public Health Act*) means "one who has not performed his share of the works requisited" So much of the work specified in the notice under the section as applies to him. [*Sincox* v. *Handsworth*, (1881) 8 Q. B D 39]

"Defaulter" defined (*See also* Revenue-defaulter. Act 2 of 1876, s 44 Act 18 of 1881, S. 91, Act 2 of 1886, S. 3 (8), Act 17 of 1887, S. 3 (8), Act 1 of 1890, S. 2(3), Bom Act 5 of 1879, S. 147, Reg 2 of 1877, S 74 Reg. 1 of 1889, S. 6 (2). Reg. 3 of 1889, S. 38 (3).

DEFAULTER One who makes the default, who fails to perform a duty, who fails to account for public money intrusted to his care, a delinquent. (*Ame. Cyc*)

"DEFAULTER" in the Revenue Recovery Act means a person from whom an arrear of land-revenue or a sum recoverable, as an arrear of land-revenue is due, and includes a person who is responsible as surety for the payment of any such arrear or sum. [Act I of 1890 (Revenue Recovery), S 2, Cl. 3 *See also* 9 I. C. 761, 19 M.L J. 627; 3 I.C. 624 (625), 7 I C. 2=14 C W.N 1031.]

The term "defaulter" in S 35 of the Madras Revenue Recovery Act applies only to the registered pattadar, and not to the real owner [19 M.L.J. 627= 33 M 41=6 M.L.T 198=3 I C. 624 (F B.). *Defaulter* means a registered pattadar or his heir or one whom the overlord has become bound to recognise as such. 40 M L J 213=44 M. 534=29 M.L.T. 185=62 I C. 337=13 L W. 387.

"DEFAULTER" in the Punjab Land Revenue Act means a person liable for an arrear of land-revenue, and includes a person who is responsible as surety for the payment of the arrear. [Punjab Act XVII of 1887, Land Revenue), S. 3, Cl. 8].

Defaulting Proprietor. The expression "defaulting proprietor" in Revenue Sale Law (Act XI of 1859), S. 9, means, where there is more than one proprietor, the entire body of such proprietors. [17 I.C. 46 (47)=16 C.L.J. 148.]

Defeasance. A 'defeasance' is an instrument which avoids or defeats the force and operation of some other deed. *Defeasance* is a collateral deed, made at the same time with a conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or

Defeasance.

totally undone; an instrument which avoids or defeats the force or operation of some other deed; a condition defeating the title of the grantee, something which defeats the operation of a deed or document. (*Burrill*; *Ame Cyc.*, *Terms de la Ley.*)

"Defeasance,' comes from the French word Defaire, *i e*, to defeat or undo" (*Co Litt* 236-*b*) "A defeasance is a condition relating to a deed or to an obligation, recognizance, statute, or the like, which being performed by the obligor, or recognisor, the act is disabled and made void as if it had never been done, which differeth from a condition only in this, that this (a condition) is always made at the same time and annexed to or inserted in the same deed, but that (a defeasance) is always made in a deed by itself, and for the most part made after the deed whereunto it hath relation." (Touch, 396, 2 Bl Com 327, 342 *Termes de la Ley*; *Tomlins Law Dic*)

DEFEASANCE CONDITION. A '*Defeasance*' is something which defeats the operation of a deed or document If it is contained in the same deed, it is called a 'Condition" (per *Jessel, M R*, Re *Storey, Exp Popplewell*, 52 L J Ch 42).

Defeasible that which may be annulled, abrogated, cancelled or made void, Capable of defeating, destroying or impairing (*English L Dict*)

Defeasible fee One where the devisee becomes invested with the fee-simple title, subject to be divested upon the happening of some contingency provided by the will

Defeasible title One that is capable of being annulled or made void—not one that is already void or is an absolute nullity.

Defeat *As a noun*, frustration losing a contest a rendering null and void. *As a verb*, to resist with success, frustrate, baffle.

"THE WORDS 'DEFEAT OR OBSTRUCT,' as used in the phrase defeating or obstructing the institution of suit import resistance and obstruction to one's rights, and unless the acts complained of are, in point of fact, such as would hinder and prevent him from bringing the suit, notwithstanding his desire to do so, they cannot properly be said' 'to defeat or obstruct' such suit". *Colmean* v. *Walker*, 77 *Am Dec* 163)

Defeated Party. "The defeated party is generally the one who has been unsuccessful in the lower court and who takes the appeal

Defect. A want of absence of something necessary or essential for completeness or perfection, short coming; blemish. It includes the idea of a fault or want of perfection. It means a lack or absence of something essential to completeness" (per *Bruce, J. Tate* v *Latham*, 66 L.J.Q B. 351).

DEFECT OR INACCURACY, in S 7 of the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), as applied to notice of action, includes the omission of the date in the notice of action required by the section. *Carter* v. *Drysdale* (1883), 12 Q.B.D. 91.

DEFECT IN CONDITION OF MACHINERY means unfitness for the purpose for which the machine is supplied. *Heske* v. *Samuelson* (1883), 12 Q B.D. 30. Even if each part is sufficient, yet if the whole arrangement is defective it is a defect within the Act. *Cripps* v. *Judge* (1884) 13 Q.B.D. 583.

Defective.

AS APPLIED TO PUBLIC WAYS "The words '*any defect in the condition* of any bridge street, sidewalk, or thoroughfare,' refer to defects in such public ways or structures as such, and with regard to their usefulness and safety for the purposes of travel."

AS APPLIED TO WAYS, WORKS OR MACHINERY. Where a statute rendered an employer liable for injury to an employee, "by reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer," the court said "An unsuitableness of ways, works, or machinery for work intended to be done and actually done by means of them, is a defect within the meaning of (the statute)"

Defects in the property in S 55, T. P Act includes not only defects in the property itself, but also defects in the title to the property. (20 B 522)

"DEFECT OF CHARACTER" The expression "defect of character" in a pleader must be taken to include not only moral turpitude but also such defect in his character which renders him unfit to be a member of the honourable profession to which he belongs. 60 Cal. 1453=145 I C. 316=38 C W N. 278=A I R. 1933 Cal 731

Defect of jurisdiction The words "defect of jurisdiction" in S 14 of the Limitation Act (IX of 1908) mean a defect of jurisdiction peculiar to the Court in which the proceedings were taken, and do not cover such mistakes as the presentation and prosecution of an appeal, which did not lie at all in any Court. 11 I.C 880 (881)=163 P.W.R. 1911.

Defect of parties A defect of parties arises where from the statement of the cause of action, it appears that there are parties omitted who should have been made parties plaintiff or defendant. "A defect of parties to an action" means the absence of one or more of the necessary parties and not merely the absence of proper parties.

"A defect of parties is founded on the notion or fact that there are other persons interested in the controversy who should be brought before the court, and whom the court will order to be brought in where the objection is taken in time"

The phrase "defect of parties" does not include joinder of an improper party

DEFECTS—LATENT AND PATENT "*Defects in an Estate may be either—Patent*,—that is, such as may be discovered by ordinary vigilance on the part of a purchaser, *e g*, the existence of an open footpath over the property (*Bowles* v *Round*, 5 *Ves.* 508), or the ruinous state of buildings (*Grant* v *Munt*, *Cooper*, G. 177: *Keates* v *Cadogan*, 10 C B. 591; 20 L.J. C. P. 76, 16 L.T.O S. 367), or, *Latent*,—that is, such as the greatest attention (Sug 333) would not enable him to discover; *e g*, the existence of defects in a ship's bottom when sold afloat (*Mellish* v. *Motteux*, *Peake*, 156)." (*Dart*, 101, 102, *Stroude*, 491.)

Defective. Incomplete; faulty, wanting in some essential particulars.

In *State* v. *Lavelley*, 9 Mo. 834, 836, the court said: "The words 'defective' and 'insufficient,' although differing somewhat in signification, are frequently used indifferently by the Legislature as meaning the same thing; and as applied to recognizances, there can scarcely be said to be any distinction in fact,"

Defence.

In *Tate* v. *Latham*, (1897) 1 Q B. 502, 506 *Bruce, J.*, said. "A machine may be in its nature and character a perfect machine and may yet be in an imperfect or defective condition"

DEFECTIVE, DEFICIENT. *Deficient* is employed with regard to the thing itself that is wanting. A book may be *defective*, in consequence of some leaves being deficient A *deficiency* is therefore often what constitutes a *defect* Many things however may be *defective* without having any deficiency, and *vice versa* (*Crabb*)

Defective is specific. It presupposes some standard of sufficiency, or some definite aggregate of parts constituting a whole, which in the present case is not reached or forthcoming *Deficient* is general indefiniteness, supposing an undefined standard of sufficiency in force or operation (*Smith. Syn. Dis*)

Defence. *See* Defense

DEFENCE "'Defence' is derived from the word "*defendo*" and means a denial" (*Co Litt* 127 *b*, 3 *Bl Com* 296) In its true legal sense, the word signifies not a justification, protection, or guard, which is its popular signification, but merely an opposing or denial by the defendant of the truth or validity of the plaintiff's complaint It is a general assertion that the plaintiff hath no ground of action, which assertion is afterwards extended and maintained in the defendant's plea (*Tomlins Law Dic*) Matter of defence are susceptible of two divisions, *viz.*, (1) into those which are dilatory, which merely delay or suspend, or obstruct the suit without touching the merits, until the impediment or obstacle insisted on is removed, and (2) into those which are peremptory and permanent, and go to the entire merits of the suit.

Defence to an action A right possessed by the defendant, arising out of the facts alleged in his pleadings, which either partially or wholly defeats the plaintiff's claim.

Defence of oneself or self defence The defence of one's self, and the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant, is a right which belongs to every person. If a man, or one standing in any of these relations to him, be forcibly attacked in his person or property, it is lawful for him to repel force by force, and the breach of the peace which happens is chargeable upon him only who began the affray *Self-defence*, therefore is justly called the primary law of nature, and it is not, neither can it be, in fact, taken away by the law of society In the English law it is held an excuse for breaches of the peace, nay, even for homicide itself, but care must be taken that the resistance does not exceed the bounds of mere defence and prevention, for then the defender would himself become an aggressor

Defend "'Defend,' signifies, as much as to forbid and prohibit" (*Cowl*) To defend in legal phraseology is to contest and endeavour to defeat a claim or demand made against one in a court of justice.

Defend. Protect. To *Defend* implies an active repelling of some adverse influence or power, *Protect* a passive placing of something between the object and the power. A fortress is *defended* by its guns, and *protected* by its walls A *defence* is successful or unsuccessful A *protection* is adequate or inadequate

One *defends* what is attacked, one *protects* what is weak *Defence* therefore supposes an actual and pressing danger, *protection* only that feebleness which exposes to it (*Smith Syn. Dis.*)

TO DEFEND, PROTECT, VINDICATE. Persons may *defend* others without distinction of rank or station none but superiors or persons having power can *protect* others *Defence* is an occasional action, *protection* is a permanent action A person may be *defended* in any particular case of actual danger or difficulty, he is *protected* from what may happen as well as what does happen

"A master may justify an assault in defence of his servant, and a servant in *defence* of his master." (*Blackstone.*) "They who protected the weakness of our infancy are entitled to our protection in their old age" (*Blackstone*)

Defence requires some active exertion either of body or mind; *protection* may consist only of the extension of power in behalf of any particular individual. A *defence* is successful or unsuccessful, a *protection* weak or strong. A soldier *defends* his country, a *counsellor* defends his client, a *prince* protects his subjects. To *vindicate* is a species of defence, only in the moral sense of the world. Acts of importance are *defended* those of trifling import are commonly *vindicated* Cicero *defended* Milo against the charge of murder, in which he was implicated by the death of Clodius, a child or a servant *vindicates* himself when any blame is attached to him. (*Crabb*)

Defendant

"Defendant" defined, Act 9 of 1908, S. 2 (4), Bom. Act 2 of 1906, S 3 (*b*). *See* 7 I.C. 784, 25 Bom. 528 (532), 17 Bom. 662

DEFENDANT (*defendens*) The party sued in an action. (*Tomlin's Law Dic.*) One who is sued (or prosecuted) The title "defendant" is more generally applied to a party in civil than in a criminal suit or proceeding. In the Limitation Act "defendant" includes any person from or through whom a defendant derives his liability to be sued. [Act IX of 1908 (Limitation), S 2 (4)]

The word "defendant" may include a respondent, whether a plaintiff or a defendant in the suit [7 A 693=5 A W.N. 169 (F B)]

DEFENDANT, DEFENDER We are *defendants* when any claim or charge is brought against us which we wish to refute. We are *defenders* when we undertake to rebute or refute the charge brought against any person or thing.

Defender. One who defends.

Defender, advocate, pleader. A *defender* exerts himself in favour of one that wants support; and *advocate* signifies one who is called speak in favour of another, a *pleader* from plea or excuse, signifies him who pleads in behalf of one who is accused or a party in a civil suit. A *defender* attempts to keep off a threatened injury by rebutting the attack of another; an *advocate* states that which is to the advantage of the person or thing advocated; a *pleader* throws in pleas and extenuations. "So fair a pleader any cause may gain." (*Dryden.*)

Defender of the Faith.

Defender of the Faith A peculiar title, belonging to the Sovereign of England This title was originally given by the Pope of Rome The Pope, however, on King Henry's suppressing the houses of religion at the time of the Reformation, not only sentenced him to be deprived of this title, but to be deposed also from his crown, but in the thirty-fifth year of his reign, this title was confirmed by Parliament, and has continued to be used by all succeeding sovereigns to this day. (*Ency. Lond.*)

Defense In its legal sense, the term signifies not a justification or protection which is its popular signification, but merely an opposing or denial of the truth or validity of the plaintiff's allegation or complaint

In law, defense is that which is offered and alleged by the party proceeded against in an action or suit as a reason, in law or fact, why the plaintiff shouldnot recover or establish what he seeks-what is put forward to defeat an action And it has also been defined as the denial of the truth or the validity of the complaint—a general assertion that the plaintiff has no ground of action A defense, in legal language, is a full answer to the whole or to some part of plaintiff's demand.

DEFENSE AND COUNTER-CLAIM DISTINGUISHED A defense denies the right to recover, and shows that plaintiff never had a cause of action, or that it has been discharged as by payment, but a counter-claim does not deny the cause of action, or plaintiff's right to recover thereon. A counter-claim will not prevent plaintiff from obtaining full credit for the amount due to him, yet, if established, it affects his right to judgment

DEFENSE AND SET-OFF. Set-off is a mode of defense by which the existence of a demand sued upon is in a certain sense admitted, but at the same time the defendant sets up a demand against the plaintiff to counter-balance it in whole or in part Set-off is a defense which goes not to the justice of plaintiff's demand, but sets up a demand against the plaintiff to counter-balance it in whole or in part.

DEFENSIBLE, DEFENSIVE. *Defensible* is employed for the thing that is to be defended, *defensive* for the thing that defends. An opinion or a line of conduct is *defensible*, a weapon or a military operation is *defensive*. The *defensible* is opposed to the indefensible, and the *defensive* to the offensive. It is the height of folly to attempt to defend that which is *indefensible*, it is sometimes prudent to act on the *defensive*, when we are not in a condition to commence the *offensive*.

Defensive war In the law of nations, a war commenced or carried on in defence or for the protection of national rights. (*Burrill*)

Deferred. Delayed, put off, postponed to a future time (as) deferred stock.

DEFER, DELAY, POSTPONE. PROCRASTINATE, R PROLONG, PROTRACT. I may *delay* to do that which I have no will to do, and would fain see left undone I *defer* that which I desire to be done, but not at the present moment. Hence defer is often followed by some term specifying a point of time, such as "till" or "to". *Postpone* implies more strongly what *defer*, implies less strongly, and *delay* hardly implies at all namely, a definite intention to resume what for the present is put off. Hence it is more formal, and

Define.

applies better to official meetings for business. "The meeting," we might say, "was *postponed* for a month, and, when it met, the consideration of that question was *deferred*. Some regarded this as an unseemly and unnecessary *delay*" *Procrastinate* is, literally, to put off till tomorrow what might better have been done to-day It is to delay, defer, or postpone through indolence or general unwillingness to commence action *Prolong* and *protract* differ from the former in implying something actually commenced, as a period or a transaction. There is very little difference between them, but we commonly use *protract* in the sense of contriving to lengthen So to *prolong* a speech is simply to extend it, to *protract* it would be to talk against time. *Prolong* applies better to what is begun but not concluded, *protract* better to what is not yet begun, as I *prolong* my stay, I *protract* my departure (*Smith. Syn Dis.*)

Deferred bonds. Bonds issued by a government or corporation, or company entitling the holder to a gradually increasing rate of dividend or interest, until a fixed maximum rate is reached, when they become converted into ordinary bonds.

Deferred life annuities, are annuities for the life of the purchaser but which do not come into effect until such a specified later period as agreed upon

Deferred payments Payments postponed, or not made when due (*English L. Dict.*)

Deferred stock or shares Stock as does not rank for dividend until after the ordinary, preference and guaranteed dividends have been paid off.

Defiance The act of one who defies.

"By *defiance*, is meant, of course, an act or possession unequivocally adverse" (*Ame Cyc*)

Deficiency The lack of a part. (*Worcester Dict*) A lack, shortage or insufficiency, the allowance for shrinkage, by evaporation or otherwise in dutiable goods during their storage in ware-house

Deficiency bills Temporary loans made by the Bank of England to the British Government.

Deficiente uno non potest esse haeres A maxim meaning "one blood being wanted, one cannot be heir."

Deficit Want deficiency in an account or a number

De fide et officio judicis non recipitur quaestio sed de scientia sive sit error juris sive facti. A maxim meaning "The *bona fide* and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or of fact."

"Defile" defined. Bur. Act, 8, 1907, S. 2 (1).

Defile. To pollute, to corrupt the chastity of, to debauch or to violate. (1 Weir 253, 256), also to make impure, foul or unclean.

Defilement. The act of defiling or the state of being defiled; foulness; making unclean or impure

Define. To determine the end or limit, to mark out; to fix the boundary of a thing, to establish or prescribe authoritatively the limits of anything.

Define Synonymous with declare.

DEFINE, in 18 & 19 Vict, c 55, s. 35, which empowers the Victorian Parliament to define its privileges, etc, means "declare," and not merely "specify" or "enumerate". [*Dill* v. *Murphy*, (1864) 1 Moore P. C. N. S. 487.]

"Define", as used in the title of an act "to define the county line of E county", was used in its enlarged and not restricted sense, and the word would permit the abandonment of an uncertain boundary line, and change it altogether. Numerous acts are passed by every legislature "defining" the jurisdiction of courts, "defining" the power of authorities, or "defining" boundary lines, and in all these cases the powers may be either enlarged or restricted

"DEFINE" in S 4 (2) of the Cantonments Act means "to define by way of extension as well as by way of retrenchment." Consequently the power to "*define*" includes the power to extend the limits of a cantonment by the inclusion of areas clearly outside the limits already fixed (24 P R. 1910=209 P.L.R 1910=37 P.W.R 1910=5 I C. 905.)

Define synonymous with "declare". Where a statute enacted that "it shall be lawful for this legislature....to *define* the privileges, immunities and powers to be held, enjoyed, and exercised by the council and assembly," etc, Lord Cranworth said "Now looking at the context, we cannot entertain the least doubt that (though it is, perhaps carelessly employed) the word '*define*' means in this section, nothing more than '*declare*' ["*Dill* v. *Murphy*, 10 Jur N S 549, 10 L T. Rep N S. 170, 1 Moore P C N.S 487.]

"Defined channel" Underground currents of water, which flow in channels, the course of which can be distinctly traced, are "defined" and known, within the meaning of the law, and governed by the same rules of law as streams flowing beneath the surface The word "defined", as used in the phrase "defined channel", as applied to a subterraneanstream of water, means a contracted and bounded channel.

Defining Determining the limits of a thing.

Definite Having fixed limits, bounded with precision, determinate (*Century Dict*)

DEFINITE, POSITIVE *Definite* signifies that which is defined or has the limits drawn or marked out; *positive* that which is placed or fixed in a particular manner, *definite* is said of things as they present themselves or are presented to the mind, as a *definite* idea, a *definite* proposal, *positive* assertion. A *definite* account of a thing given by a witness would be one that was clear and sufficient, a *positive* account one which was given with plainness of speech, and with an air of conviction and assurance by the speaker (*Smith Syn Dis*)

DEFINITE AND CERTAIN, in the Stamp Act, 1870 (33 & 34 Vict, c 97), applied, not to the interest or the nature of the interest of the settlor, but to the amount of the stock put into settlement *Onslow* v. *Commissioners of Inland Revenue*, (1891) 1 Q B. 239.

The words "*definite share*" mentioned in the Court Fees Act do not mean a definite share separately assessed with revenue. (12 C.W N. 990)

Definitely. In a definite manner.

Definition. [*See* construction; Interpretation.] An explanation of the signification of a word, statement of the precise meaning of a word, or of what a word is understood to express. It is now usual in statutes to insert, in an interpretation clause or definition clause, a statement of the meaning intended by the legal advise to be applied to certain words when used in the Act.

LEGAL DEFINITIONS are for the most part inductive generalizations derived from judicial experience, and, in order to be complete and adequate, they must sum up the results of all that experience, as they are to be found in the special cases that belong to the class to be defined The definition of a crime is an enumeration of the particular acts which are included by or under the name of such crimes

When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning alone which must be given to it in interpreting a section of the Act unless there be anything repugnant to the context. (9 Lah. 649=110 I.C. 164=A.I.R. 1928 Lah. 325.)

DEFINITION, EXPLANATION. *Definition* in its strict sense is that which gives the logical essence of a thing, as its genus and specific difference, or, less scientifically, enumerates its accidents and properties.

Explanation is a more popular process, consisting in bringing home something to the understanding of nature difficult to comprehend, by the media of other things with which the mind of the person is more familiar *Definition* rather belongs to words and ideas, *explanation* to facts and statements.

"*Definition* being nothing but making another understand by words what idea the term defined stands for, a definition is best made by enumerating those simple ideas that are combined in the signification of the term defined."—Locke. (*Smith Syn Dis*)

A *definition* is correct or precise, an *explanation* is general or ample. The *definition* of a word defines or limits the extent of its signification The *explanation* of a word may include both definition and illustration the former admits of no more words than will include the leading features in the meaning of any term; the latter admits of an unlimited scope for diffuseness on the part of the explainer (*Crabb*)

Deflower. To deprive of virginity of a woman, to ravage.

Defloration. Seduction or debauching, the act by which a woman is deprived of her virginity.

Deforce To withhold lands or tenements from the rightful owner. (*Co Litt.* 331-b; *Jacob*, *Cowell*, 3 *Black Comm.* Vol III, 172.)

Deforcement. "Deforciare is a word of Art, and cannot be expressed by any other word; for it signifieth, to withhold lands or tenements from the right owner" (*Co Litt.* 331 b, *Jacob*, 3 *Bl Comm.* 172; 3 *Step. Com.* 502.)

Deforcer. He that overcomes and casts out by force (*Blount*) (an archaic expression).

Deforciant (an archaic expression) the person against whom the fictitious action of fine was brought (abolished by 3 and 4 Will. IV, c. 74).

Defossion. The punishment of being buried alive. (*Ash.*)

Defraud.

Defraud. To deprive of some right, interest, or property by deceitful devices, to withhold from wrongfully; to injure by embezzlement; to cheat; to overreach, to withhold from another that which is justly due to him, or to deprive him of a right by deception or artifice, to deprive of a right by withholding from another, by indirection or device, that which he has a right to claim or obtain; to deprive of something dishonestly (*Standard Dict.*) "Defraud" always denotes some form of dishonesty (158 I C. 1069=1935 Bom 162 *See also* 32 C 775=9 C W.N 807=2 Cr L J. 368=1 C.L J. 469.)

Defraud, Intent to in S. 2 of the Merchandise Marks Act, 1887 (50 & 51 Vict, c. 28), means to make the purchaser take something which he did not know he was taking, not putting off a bad article in order to get money unfairly [*Starey* v. *Chilworth Gunpowder Co.*, (1890) 24 Q B D 96.] It means more than an intent to cheat a customer, and means more than to induce the buyer to accept goods which might otherwise be rejected. (*Ibid.*)

Defraudacion. (*Spanish*) Fraudulent evasion of taxes

Defteri. A term used to distinguish the regular Afghan troops from the unorganized fighting men.

Defunct Dead, a decedent (as, a defunct company)

"Degi chur", "Doba chur", "Nutan chur". The terms "Degi chur," Doba chur," "Nota chur" precisely mean much the same thing, namely a chur which emerges only at ebb tide and remains under water at flow tide. (A I R 1930 Cal 764=129 I.C. 416=53 C.L J 229)

Degradation. A deprivation of dignity or dismissal from an office An ecclesiastical censure, whereby a clergyman is divested of his holy orders. (*Seldon's Titles of Hon* 787, *Tomlin's Law Dic*)

De gratia speciali, certa scientia, et mero motu, talis clausula non valet in his in quibus praesumitur principem esse ignorantem A maxim meaning The clause "of our special grace, certain knowledge, and mere motion" is of no avail in those things in which it is presumed that the prince was ignorant. (*Cyc Law Dic*)

Degree In common parlance a person's rank in life, social or official rank, also a mark of distinction conferred upon a student for proficiency in some art or science, University diploma of specified proficiency (*Rapalje & L L. Dict.*)

IN THE LAW OF DESCENT a remove or step in the line of descent or consanguinity. (*Bouvier.*) A term used in measuring the proximity of relationship between persons.

IN CRIMINAL LAW, the term denotes a particular grade of crime more or less culpable than another grade of the same offence. Accused persons may be principals in the first or second *degree*; a principal in the first degree being one who is the actor or actual perpetrator of the fact, a principal in the second degree being one present aiding and abetting. (*See* Archbold Criminal Law, 23rd ed., pp. 12 *et seq*)

DEGREE CONFERRED BY AN UNIVERSITY. An honourable state or condition to which a student is advanced in testimony of proficiency in arts and sciences. They

Del credere.

are of potential origin. (See 1 *Schmidt, Thesaurus*, 144, *Vicat, Doctores*, *Minshew, Dict. "Bacheler"*; *Merlin, Report*)

Dehors. Out of, without, beyond; foreign to; unconnected with A word used in ancient pleading when a thing is without the land, etc, or out of the point in question. (*Tomlin's Law Dic*)

Deity. Divine station or nature, divine being.

DEITY, DIVINITY. *Deity* signifies a divine person. *Divinity* signifies the divine essence or power, the *deities* of the heathens had little of divinity in them, the *divinity* of our Saviour is a fundamental article in the Christian faith.

De jure. Of right; legitimate; lawful; by right and just title.

De jure decimerum, originem ducens de jure patronatus, eune cognitio spectat ad legem civilem, i e, communem. A maxim meaning "With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law, that is, the common law."

De jure judiceis, de facto juratoreis, respondent. A maxim meaning: 'The judges answer to the law, the jury to the fact." (*Wharton L Lex*) "It is of the greatest consequence" said Lord Hardwicke "to the law of England, and also to the subject that the power of the judge and jury be kept distinct, that the Judge determine the law, and the jury the fact, if ever they come to be confounded, it will prove the confusion and destruction of the law of England."

Dekha-bhali (H *seeing welfare*), mode of periodical estimate of general value for fixing rents (*N W P, Lalitpur, Bad Pow II.* 190

Delay. To hinder; detain, keep back or retard, to arrest progress, lack of dispatch, hindrance.

TO DELAY, DEFER, POSTPONE, PROCRASTINATE, PROLONG, PROTRACT, RETARD To *delay* is simply not to commence action, to *defer* and *postpone* are to fix its commencement at a more distant period, we may *delay* a thing for days, hours, and minutes, we *defer* or *postpone* it for months or weeks *Delays* mostly arise from the fault of the person delaying, *deferring* and *postponing* are discretionary acts, which are justified by the circumstances. *Procrastination* is a culpable delay arising solely from the fault of the procrastinator We *delay* the execution of a thing, we *prolong* or *protract* the continuation of a thing; we *retard* the termination of a thing; we may *delay* answering a letter, *prolong* a contest, *protract* a lawsuit, and *retard* a publication.

"Delay defeats equity". The maxim that delay defeats equities should not be applied to a case where want of fair dealing and inequality have been proved to exist. [35 I C. 243 (251)]

Del credere. Of trust, credit.

DEL CREDERE. In a confined sense, a commission *del credere* is an undertaking by an insurance broker, for an additional premium, to insure his principal against the contingency of the failure of the underwriter. (See *Grove* v. *Dubois*, 1 Term. Rep 112, *Bigs* v. *Dickoson*, Id. 285. *Tomlins Law Dic.*)

DEL CREDERE AGENTS. The certified brokers of the Bombay Native Stock and Share Brokers Association are del credere agents of their constituents.

Del credere agent

Their duties are strictly to adhere to the position of agents, diligently act for the principals and to make *enforceable* bargains for them and keep them open. (23 Bom L.R 1144=46 Bom 489=66 I.C. 726=A.I R 1922 Bom 303).

Del credere agent, del credere commission. A del credere agent is a mercantile agent who, in consideration of the payment of an extra remuneration, which is called a *del credere commission*, undertakes to be answerable to the principal for the due performance of the contracts made by him on his behalf Such an agent is said to act on a *del credere commission* He is not liable to the principal in the first instance, but only on the default of the parties with whom he contracts, and in effect guarantees the principal against losses through their bankruptcy or insolvency (*Morris* v *Clasby*, (1816) M & S 566, 14 R. R. 531, *Hornby* v *Lacy*, (1817) 6 M & S. 166, 18 R R. 345, not following Lord Mansfield's dictum in *Grove* v. *Dubois*, (1786) 1 T R 112 See *Story on Agency*, *Smith's Merc Law*)

"A del credere agent, like any other agent, is to sell according to the instructions of his principal, and to make such contracts as he is authorised to make for his principal, and he is distinguished from other agents simply in this,—that he guarantees that those persons to whom he sells shall perform the contracts which he makes with them, and, therefore, if he sells at the price at which he is authorised by his principal to give, and the customer pays him according to his contract, then, no doubt, he is bound, like any other agent, as soon as he receives the money, to hand it over to the principal" (per *Mellish, L.J.*, Ex. P *White, Re Nvill*, 6 Ch 403)

Del credere commission An additional commission received by a factor in consideration of his engaging to insure to his principal not only the solvency of the debtor, but the punctual discharge of the debt.

DEL CREDERE FACTOR A factor who has general orders to dispose of goods for his constituent to the best advantage is, like all factors, liable only to that degree of diligence which a prudent man uses in his own affairs (*Tomlins Law Dic*)

Delectus personae Every partnership is founded in a "delectus personae," which implies confidence and knowledge of the character, skill, and ability of the other associates, and their personal co-operation, advice, and aid in the management of the business.

Delegata potestas non potest delegari. A maxim meaning "A delegated authority cannot be redelegated" (*Broom*, *Morgan*)

Delegate A person sent and empowered to act for another, one deputed to represent another, one sent as a representative of another or others to a council, assembly or conference. To "delegate" to another, is not to denude yourself "In my opinion the words, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon some one else." (per *Wills, J.*, *Huth* v. *Clarke*, 25 Q B D. 391)

"DELEGATES" defined See District Delegates. (*See* Parsi Marriage Act.)

Deliberate use of a deadly weapon.

TO DELEGATE, DEPUTE, DEPUTY To *delegate* is applied to the power or office which is given, *depute* to the person employed.

As nouns, *delegate* and *deputy* are applied only to persons. The *delegate* is the person commissioned, who is bound to act according to his commission, the *deputy* is the person deputed, who acts in the place of another, but may act according to his discretion or otherwise circumstances require. A *delegate* is mostly chosen, in public matters and on particular occasions: as *delegates* sent from a besiegers, *deputies* are those who are deputed to act officially and regularly for others, as *deputies* sent to any public assembly

"Every member (of Parliament) though chosen by one particular district, when elected and returned serves for the whole realm, and therefore he is not bound, like a deputy in the United Provinces, to consult with his constituents on any particular point." (*Blackstone*)

Delegatio (*Lat*) A Substitution of debtors

"Delegation" defined, Act 2, 1882, S 47, *Expln.*

DELEGATION is the act of making or commissioning a delegate, a substitution of debtors, an appointment

Delegation of power. The transfer of authority by one person to another

Delegatus debitor est odiosus in lege A maxim meaning "A deligate debtor is hateful in the law."

Delegatus non potest delegare A maxim meaning "Delegation cannot be made by a delegate." (*Broom*)

Deliberandum est diu quod statuendum est semel. A maxim meaning "That which is to be resolved once for all should long be deliberated upon" (*Morgan Leg. Max*)

Deliberate. *As an Adjective*, premeditated, formed with deliberation, not sudden or rash, carefully considering the probable consequences of a step, an act done after reflecting and weighing the matter well.

"DELIBERATE" means to weigh in the mind; to consider the risks for and against, to consider maturely.

AS A VERB, to weigh in the mind, to consider and examine the reasons for and against, to consider maturely, to reflect upon, to reflect, with a view to make a choice.

Deliberate conviction A fixed opinion, one formed on close and careful consideration.

"Deliberate killing" In *People* v. *Pool*, 27 Cal. 572, 585, *Sawyer J.*, in speaking of the terms "wilful killing" "deliberate killing" and "premeditated killing" as used in a statute in relation to murder said. "There is a deliberate killing wherever such intent or purpose is formed upon deliberation, or consideration, and the deliberation or consideration need not be for any particular period of time; a moment is as effectual as an hour or a day"

Deliberate use of a deadly weapon. An intentional use, a use that is the result of a resolution, purpose or design, formed in the mind and reflected upon and not done in self-defence. (13 Ame. Cyc. 770.)

Deliberately.

"**Deliberately**" is a generic term including 'premeditately,' and premeditation is included in the words 'malice aforethought.'

DELIBERATELY done in a cool state of the blood and not in sudden passion; engendered by a lawful or some just cause of provocation, done from a formed design and fixed purpose, and not in what the law calls a heat of passion, with cool purpose; thought of beforehand, with careful consideration or deliberation, with full intent, not hastily or carelessly.

"DELIBERATELY" means with careful consideration and deliberation, with full intent, not hastily or carelessly—as a "deliberately" formed purpose

Deliberating The act of weighing and examining the reasons for and against a choice of measures, careful discussion and examinations of the reasons for and against a proposition

Deliberation. The act of deliberating, or of weighing and examining the reasons for and against a choice or measure, mature reflection, that act of the mind which examines and considers whether a contemplated act should or should not be done.

"DELIBERATION" is not synonymous with "*premeditation*" "Deliberation is prolonged premeditation" (74 Mo. 247)

IN LEGISLATION The council which is held touching some business in an assembly having the power to act in relation to it

DELIBERATION AND PREMEDITATION. In an indictment charging murder, both the words, "deliberation" and "premeditation" involve a prior purpose to do the act charged.

The words "deliberate and premeditated," as applied to murder in the statutes, are used in their natural and ordinary sense, intending to exclude from the operation of the death penalty murder committed on the impulse of the moment, without actual deliberation and premeditation They were meant to distinguish between an act done with a murderous intent, with a purpose of mind to kill, and an act done upon sudden impulse, without meditation or murderous intent.

"With deliberation" means, not hastily or rashly, but coolly and with careful consideration.

Deliberative body The term "deliberative body" as applied to a constituted body of individuals is properly applied to a meeting which "acts as such in determining all matters that may lawfully be determined by it"

Delimit. Assign boundaries, to mark or lay out the limits or boundary line of a territory or country.

Delineate. Portray by drawing or description.

Delineated, in the Pontypool Railway Act, 1865, S 23, does not mean "surrounded in every part by lines," but "sketched or represented or so shown that landowners would have notice that the land might be taken." [*Dowling* v. *Pontypool Rail Co.*, (1874), L R. 18 Eq. 740 See hereon *Protheroe* v. *Tottenham, &c., Rail Co.*, (1891), 3 Ch. 278, *Cripps on Compensation* (4th ed.), p. 16]

Delivered.

Delineation. The act of representing, portraying or depicting.

Delinquency. "Delinquency," when applied to a merchant, cannot mean anything less than that he has proved to be dishonest and attempted to evade the payment of his debts.

Delinquent. A person who fails to do his duty or commits an offence

Delirium. A condition in which the sufferer has confused ideas of the past and present circumstances.

Delirium tremens. Disorder with paroxysms of terror due to heavy drinking, a violent delirium induced by the excessive and prolonged use of intoxicating liquors, a disorder of the brain arising from inordinate and protracted use of ardent spirits, and therefore almost peculiar to drunkards; one of the forms of insanity consequent on excessive drinking.

Deliver To give or transfer, to hand over possession of; to hand over to another, to give forth in action to discharge, to solemnly announce (as) to deliver an award "An award may be 'Delivered' without being in writing" (*Blundell* v. *Brettargh*, 14 Ves 240) "A man is said to deliver a message as well as a letter, and there is an oral, as well as a manual tradition." (*Oates* v *Bromil*, 1 Salk 75)

The word "delivers" in S. 58, Transfer of Property Act (IV of 1882), does not necessarily mean "delivers immediately" and where the mortgagor is not in a position to give immediate delivery of possession, it is sufficient if he gives the right to possession though he cannot give delivery of possession. [17 I. C 329 (331).]

DELIVER, PRONOUNCE, UTTER. Of these *utter* is the simplest. To utter a speech is simply to sound it with the voice, as so many words. So the word *utterance* is applied to mere inarticulate sound, as to utter a sign or a moan

Pronounce is syllabically, distinctly, and in some cases with formality and solemnity, to utter, as to pronounce judgment

To *deliver* denotes careful and sustained pronouncing of what requires to be conveyed in many words. To deliver a judgment or order would imply not only the words, but the manner of it. (*Smith. Syn Dis.*)

"**Deliver up**" When a passenger has to "deliver up" his ticket on demand, or pay his fare, he is not released from that duty by having inadvertently torn up his ticket (*Hanks* v. *Bridgman*, (1896) 1 Q B 253)

Deliverable state. Defined in Act 3, 1930, S. 2.

DELIVERABLE STATE. "Goods would be in a 'Deliverable State,' when they are in such a state that the buyer would, under the contract, be bound to take delivery of them" *see* English Sale of Goods Act [sub-s.(4), S. 62.]

Deliverance. The act of giving or transferring from one to another, setting free.

Delivered. "An abstract of title is *delivered* whenever a number of sheets of paper (call it what you will) is delivered to the purchaser, which con-

tains, with sufficient clearness and sufficient fulness, the effect of every instrument which constitutes part of the title of the vendor" (per *Kindersley, V C, Oakden* v. *Pike*, 34 L J. Ch 622).

Delivered of (*a child*) Give birth to a child.

"Delivered out of the Press", meaning of. 49 All. 315=25 A.L J 105=1927 All 237

Delivery Defined, Copyright Act, S. 35 (VI of 1898), S 3, (III of 1930), S 2.

DELIVERY The transfer of the possession of a thing from one person to another, transmitting the possession of a thing from one person into the power or possession of another, the transferring of the thing sold into the power and possession of the buyer.

"DELIVERY" IN INDIAN RAILWAYS ACT IX OF 1880 refers to a physical event, an important element of which is that whatever is delivered passes from the physical custody of one to another (3 I C. 951=8 C W.N. 725.)

"DELIVERY," IN RELATION TO A LECTURE, includes delivery by means of any mechanical instrument. (Copyright Act, S 35)

DELIVERY (IN RESPECT OF POSTAL LETTERS) Any of the periodical distributions of letters or goods by post office or firm.

DELIVERY INTO POSSESSION (OF ARMS). The delivery into possession contemplated by S. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it [1 U B.R (1897-01), 1; 15 A. 27, 24 A 454, *ref.*, 5 L B R 83=3 I C 712=10 Cr.L.J. 361 *See also* 8 L R. 166 (Cr)]

DELIVERY BOND A bond that goods or their value will be delivered up at a certain time or upon certain conditions; an order drawn by the owner on the bailee of goods for their delivery to a third party.

DELIVERY OF ARMS means such a delivery as gives the person into whose possession the arm is delivered control over the arm and the authority to use it as an arm. [3 I C 712 (713) (*per* Moore, J)]

Delivery of a deed as an escrow, is where a deed is delivered on a condition, if the condition is performed, the deed becomes absolute, but until then it is an escrow, *i e*, in suspense. (*Watkins* v *Nash*, 44 L J Ch. 505)

Delivery of a part. In a Contract for sale of goods the "Delivery of a part may be a delivery of the whole, if it is so intended, but it is not such a delivery unless it is so intended, and the onus is upon those who say it was so intended" (per *Lord Blackburn, Kemp* v *Falk*, 7 App. Cas. 586)

Delivery of award is making the award and not necessarily filing it in Court. [22 M 22=8 M L.J 287. *See also* 27 All. 459 (461), 89 P.R. 1907.]

"Delivery," of bill or note. Transfer of possession, actual or constructive, of Bills or Notes, from one person to another. [English Bills of Exchange Act (1882), S. 2]

"Delivery (of goods sold)" defined. Act 9, 1872, S. 20.

Delivery of possession. The essence of delivery of possession is that the deliverer, by some apt and manifest act, puts the deliveree in the same possession of control over the thing, either directly through a custodian, which he held himself immediately before the act. (*Pollock and Wright on Possession in the Common Law*, p 46)

Delivery Order. The name is used to describe both a written order by the bailor of goods, directing the warehousemen or other bailee to deliver them to the deliveree and a written undertaking by the person in possession of goods that he himself will deliver them [See *Grice* v *Richardsan*, (1877) 3 App. Cas. 319] In practice such orders are documents of title and are often treated as if they were negotiable instruments passing by mere delivery, the title to the goods (*Blackburn on Sales, 2nd ed*, p. 415)

Delivery to market. These words mean 'arrival at the place of destination" (*Farrington* v. *Meek*, 77 Am Dec. 627).

"DELIVERY WHICH IS ESSENTIAL TO A PLEDGE" This may be effected "without a physical change of possession" [per *Kekewich*, J., *Crigg* v. *National Guardian Co*, (1891) 3 Ch 206]

Delusion A false belief, hallucination; a diseased state of the mind in which persons believe things to exist, which exist only in their own imagination, with the persuasion so fixed and firm, that neither evidence nor argument can convince them to the contrary." "The conception of the existence of something extravagant, which has no existence whatever, but of which the person entertaining it is incapable of becoming permanently disabused by argument, reason or proofs"

"The mind's spontaneous conception and acceptance of that, as a fact, which has no real existence except in its imagination, and its persistent adherence to it against all evidence, conceptions that originate spontaneously in the mind without evidence of any kind to support them"

"A belief in something impossible in the nature of things or circumstances of the case, a belief in a state or condition of things the existence of which no rational person would believe, a pertinacious adherence to some delusive idea, in opposition to plain evidence of its falsity, where a person pertinaciously believes something to exist which does not exist, and acts upon that belief" (13 Cyc. 776.)

DELUSION AND IMPRESSION DISTINGUISHED The term "delusion," refers to the state of the mind, while "impression" signified the results of that state.

DELUSION AND MISTAKE OF FACT. The term "delusion," as applied to insanity, is not a mere mistake of fact, or the being misled by false testimonial statements to believe that a fact exists which does not exist.

Demagogue. A democratic orator or agitator.

De majori et minori non variant jura. A maxim meaning "concerning greater and less laws do not vary." Whether the matter be great or small, the laws do not vary.

"Demand" defined, Ben. Act 6, 1870, s. 53; Ben. Act 9, 1879, S. 29.

DEMAND. A claim or request made as of right; a legal obligation, a requisition of request to do a particular thing specified under a claim of right on

Demandant.

the part of the person requesting, a thing or amount claimed to be due; a calling for a thing due or claimed to be due. (*Tomlin's Law Dict*) Purchaser's call for a commodity (as, demand and supply in Economics.)

"DEMAND" is a word of art, and in the understanding of the Common Law is of so large an extent, as no other one word in the law is, unless it be claim." (*Co. Litt*, 291 B) "If a man release to another all manner of demands, this is the best release to him to whom the release is made, that he can have." (*Litt.* S. 508)

TO DEMAND, REQUIRE. We *demand* that which is owing and ought to be given, we *require* that which we wish and expect to have done A *demand* is more positive than a *requisition*. The creditor makes a *demand* on the debtor, the master *requires* a certain portion of duty from his servant it is unjust to *demand* of a person what he has no right to give, it is unreasonable to *require* of him what it is not in his power to do.

PAYABLE ON DEMAND Payable immediately; payable as soon as asked for [*See* 6 M I A. 211 (219)]

Demandant (*Old English Law*) A plaintiff.

Demand Draft. Bill of exchange payable on demand.

Demandress A female plaintiff.

Demarcation Division between adjacent areas. Demarcation may be inferred from the preparation of the maps which shows that the land must have been measured Demarcation is a necessary and implied operation in the settlement work and there is a presumption that steps were duly taken according to law. [A.I R 1937 Nag. 407]

Demeanour One's hearing (as, demeanour of witness in giving evidence)

THE DEMEANOUR OF AN ACCUSED person is entirely irrelevant for deciding the question of the guilt or innocence of the accused. (1937 M.W N 876)

Dementi. Official denial of rumour.

Dementia. In medical jurisprudence, that form of insanity which is characterized by mental weakness and decrepitude, and by total inability to reason, where the mental derangement is accompanied with a general derangement of the faculties, an extremely low condition of the mental function, profound general mental incapacity.

Demesne. Possession of land with unrestricted right of use; lands of the lord himself, his own

Demesne lands. Land reserved by the lord for his own use.

Demesne lands of the Crown The share of the land reserved to the Crown at the original distribution, or such as came to it by forfeiture. (1 *Bl. Comm.* 286.)

Demi. Half.

Demi god. Half divine, half human; a worshipped person.

De minimis non curat lex. A maxim meaning "Diminutives are not noticed by law" (*i.e.*) "The law cares not for small things."

Demolish

DEMINIMIS NON CURT IEX. The law does not concern itself with a disturbance which is trivial or immaterial. Where the plaintiff comes into Court at once when the disturbance is threatened and the defendant completes his structures pending the suit, he does so at his own peril. (13 A.L J 385=28 I.C. 962)

This maxim has no application to prohibitory statute. (A I R 1929 C 658)

De minimis non curat praetor. A maxim meaning "The praetor does not concern himself about trifles" or "The praetor does not apply his equitable remedies in matters of small moment" (*Trayner Leg Max*)

Demi-official Partly official or authorized, having color of official right.

Demise *As a noun*, a lease for a term of years, a conveyance for life or for years; the conveyance or transfer of an estate by will or lease *As a verb*, to lease out for a term of years "The strict technical import of 'Demise,' from the verb 'Dimitto,' is any transfer or conveyance, though by habit it is generally used to denote a partial transfer by way of lease." (*Greenway* v. *Adams*, 2 Ves. 397)

Demise of the Crown Sovereign's death or abdication (*Oxford Dic*)

Demobilization In military law, the dismissal of an army or body of troops from active service. (*Rapalje & L.L Dict*)

Democracy. One of the three forms of government; that in which the sovereign power is neither lodged in one man, as in a monarchy, nor in the nobles, as in an oligarchy, but in the collective body of the people, government by the people, state in which such a government prevails, the principle that all citizens have equal political rights.

Democrat. Advocate of democracy, member of a democratic state or party.

Democratic Advocating or practising principles of democracy (as, democratic party or state)

De molendino de novo erecto non jacet prohibitio A maxim meaning "A prohibition lies not against a newly-erected mill"

Demolish To throw or pull down, overthrow, crush to pieces, destroy the structural character of, as a building or wall, reduce to ruins.

DEMOLISH, DESTROY *Demolish* is the specific destruction of an organized body or a structural mass. To this latter it is most commonly applied; as to demolish the walls of a castle *Demolition* is opposed to construction. *Destroy* may or may not involve violence, as a noxious vapour or a violent blow might destroy life; *demolish* involves violence. *Destruction* may be sudden or gradual; *demolition* is commonly rapid and decisive. *Destroy* is equally applicable to things moral and physical, as to *destroy* hope, beauty, effect. *Demolish* could not be so employed, except in the way of formal metaphor *Demolish* does not convey so strongly as *destroy* the idea of *hostile* operation. The walls of a fortification are *destroyed* by the enemy's artillery. They may be *demolished* for the simple purpose of rebuilding and making them stronger. (*Smith Syn Dis*)

Demonetisation.

TO DEMOLISH, RAZE, DISMANTLE, DESTROY A fabric is *demolished* by scattering all its component parts, it is *razed* by way of punishment,as a mark of public vengeance, a fortress is *dismantled* from motives of prudence, in order to render it defenceless, places are *destroyed* by various means and from various motives, that they may not exist any longer Individuals may *demolish*, public authority causes an edifice to be *razed* with the ground, a general order towers to be *dismantled* and fortifications to be *destroyed* (*Crabb*)

Demonetisation Act of depriving a coin of its quality of legal tender

Demonstrative Pointing out specifically, designating particularly (*Anderson L Dict*), conclusive

Demonstrative evidence That which establishes a fact beyond doubt, conclusive evidence

"Demonstrative legacy" defined, Act 10 of 1865, S. 137, Act 5 of 1881, S 3, Act 39 of 1925, S 150

DEMONSTRATIVE LEGACY, is general in its phrase but specific in its fund (Wms Exs 1021, *Theobald* 15)

De morte huminis nulla est cunctatio longa A maxim meaning "When the death of a human being is concerned, no delay is long." (*Burrill*)

Demur In pleading, to rest or pause, to interpose an objection which raises an issue of law.

DEMUR, DOUBT, HESITATION, OBJECTION *Demurs* often occur in matters of deliberation, *doubt* in regard to matters of fact, *hesitation* in matters of ordinary conduct, and *objection* in matters of common consideration

A *demur* stops the adjustment of any plan or the determination of any question A *doubt* interrupts the progress of the mind in coming to a state of satisfaction and certainty *Hesitation* lies mostly in the state of the will, *objection* is rather the offspring of the understanding (*Crabb*)

DEMUR, HESITATE, SCRUPLE, WAVER, OBJECT To *hesitate* is literally to stick at doing something It may proceed from a variety of causes, as, prudence, fear, doubt, generosity, cowardice

To *demur* is a specific kind of hesitation. It is to suspend action or judgment in view of a doubt or difficulty When we say, "I demur to that statement of yours," we mean to arrest the argument of the speaker on a point to which we are prepared to make objection

Scruple is a kind of internal demur, that is, when the process of thought or action arrested is not that of another but our own, and this in consequence of a doubt or difficulty suggested either by some other, or by our own minds or feelings A scruple is dictated by a sense of impropriety, intellectual or moral

Waver refers to an antecedent opinion or resolution of our own, which we have actually formed and distrust As demur and scruple are applicable to that which is proposed to be said or done, so waver applies to what has been said or done

Object is to offer in opposition. We object to what we believe erroneous, unjust, undesirable, and in some cases to what is personally displeasing to ourselves. (*Smith Syn Dis*)

Dengue.

Demurrage. As extended freight, or reward to the vessel in compensation of the earnings she is caused to lose improperly, an allowance or compensation for the delay or detention of a vessel; compensation for undue detention (*Ame. Cyc*); also applied to payment made on account of delay in railroad equipment (*Cyc. Law Dic.*) Charge for delay in clearing goods at place of destination. *Demurrage* is an allowance made to the master of a ship or other carriers by his freightors, for staying longer in a place than the time first appointed for his departure. The amount it generally inserted in the charter-party to be paid daily as it become die, the days are always limited, so that on the expiration thereof, and protests duly made, the master is at liberty to proceed. (*Spirit of Marine Laws, Tomlins Law Dic* See *Carver, Carriage by Sea, 4th ed.*, 1905, *ch xvii, Scrutton, Charter-parties, 5th ed*, 1904)

DEMURRAGE, FREIGHT, AVERAGE *"Demurrage* is not paid for the carriage of the goods but for delay in loading, nor is average, yet, by the bill of lading, demurrage and average may have to be paid for the goods" *Average* is the sum paid to a master for caring for a cargo (*Gray v Carr*, L R 6 Q B 522.)

Demurrage days Certain days sometimes allowed to charterer of a vessel as a favor

Demurrant One who demurs, the party who, in pleading, interposes a demurrer.

Demurrer Demurrer was the term formerly applied to the mode of disputing the sufficiency in law of the pleading of the other side (*Bullen and Leake. Precedents of Pleading, 6th ed, p* 561) This term is derived from the Latin *demorari*, or the French *demorrer*, to wait or stay, because it imported that the party pleading it would go no further, but would wait the judgment of the Court as to whether he was bound to answer his opponent's pleading. (*Stephen on Pleading, 7th ed, p* 43, *Tomlins Law. Dict*) A demurrer, is an issue upon matter of law It confesses (or rather supposes for argument) the facts to be true as stated by the opposite party, but denies that by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a lawful excuse (*Tomlin's Law Dic*)

"I never did approve, when at the Bar, and I do not approve now, when on the Bench, of the practice of not deciding a substantial question when it is fairly raised between the parties and argued, simply because it is raised by demurrer It is a great benefit to all parties to have the question in the case speedily and cheaply determined, and the practice of demurring ought, "if possible, to be encouraged." [*Sir G. Jessel, M R, Fothergill* v. *Rowland*, (1873) L.R 17 Eq Cas. 139]

Demurrer in law. The tender of an issue in law upon the facts established by the pleading.

Denaturalize To deprive of citizenship.

"Denatured". To have the essential nature of a thing changed, "Denatured" is defined to mean "effectually and permanently rendered unfit for human consumption." [22 I.C. 425 (426) Ben. Excise Act, 1909, S. 2 (6).]

Dengue. A form of malarial fever or epidemic rheumatism, sometimes styled "Dandy fever".

Denial.

Denial. Act of denying or refusing, a term which implies a contradiction of an assertion Also a traverse in the pleading of one party of an allegation of fact set up by the other.

Denization. The act of making one a denizen, the conferring of the privileges of citizenship upon an alien born, formal admission of an alien to the status of a subject.

Denize To make a man a denizen or citizen

Denizen A person in a middle state between an alien and a natural born citizen. At common law, a person who has received letters of denization, " 'Denizen,' is where an alien born becometh the King's subject, and obtaineth the King's Letters Patent for to enjoy all privileges as a citizen". (*Termes de la Ley* See *Stephen's Commentaries*, 14*th ed., Vol. II, p* 440, *Bacon's Abridgment, title "Alien"* (b), *Cockburn on Nationality, p* 28, *Cutler, The Law of Naturalisation, Hall, Foreign Jurisdiction of the British Crown, Oxford*, 1894, *Westlake, Private International Law*)

Denominatio est a digniore. A maxim meaning "Denomination is from the more worthy" (*Burrill*)

Denominatio fieri debet a dignioribus. A maxim meaning "denomination should be deduced from the more worthy" (*Wharton L. Lex*)

Denomination. A class or collection of individuals called by the same name, a sect, a class of units in money (coins of small denomination), a distinctively named church or sect (as, clergy of all denominations).

Denomine proprio non est curandum cum in substantia non erretur quia nomina mutabilia sunt res autem immobiles A maxim meaning "As to the proper name, it is not to be regarded when one errs not in substance, because names are changeable, but things are immutable" (*Bouvier L Dict, Ame. Cyc*)

De non apparentibus, et non existentibus eadem est ratio. A maxim meaning "As to things not apparant, and those not existing, the rule is the same" (5 Rep 6) (*i.e*) "Where the court cannot take judicial notice of a fact, it is the same as if the fact had not existed."

De non sane memorie Of unsound mind or memory

Denote. To mean, to indicate, to stand for.

To DENOTE, SIGNIFY Denote is employed with regard to things and their characters, signify with regard to the thoughts or movements Among the ancient Egyptians hieroglyphics were very much employed to *denote* certain moral qualities, in many cases looks or actions will signify more than *words*

Denounce. To make formal or public accusation against; inform against; accuse, give notice of intention to withdraw from (as, treaty, etc). An act or thing is "denounced" when the law declares it a crime and provides a punishment for it.

De novo. Anew; a second time; again, afresh.

De novo trial. A *de novo* trial is not strictly speaking a new or fresh trial. All that it means is that the accused shall have the right to have all or

Departing from the Kingdom.

any of the witnesses re-summoned and re-heard by the new Magistrate. [45 L W 240=168 I C 291=1937 1 W N 173=38 Cr L.J 537=A I.R. 1937 Mad. 448= (1937) 1 M.L J. 338]

Dentist. A dental surgeon, one who practices dentistry; one whose profession is to clean and extract teeth, repair them when diseased, and replace them when necessary, by artificial ones, one who performs manual or mechanical operations to preserve teeth, to cleanse, extract, insert or repair them, one who practices dental surgery and mechanical dentistry A "dentist" is a dental surgeon. He performs surgical operations upon the teeth and jaw, and, as incidental thereto, upon the flesh connected therewith His sphere of operations is included in the larger one of the physician and surgeon.

A MECHANICAL OR LEARNED PROFESSION. In *Mavon v Perrott*, 97 Am Dec 191, the Court said, "A dentist, in one sense is a professional man, but in another sense his calling is mainly mechanical and the tools which he employs are used in mechanical operations Indeed, dentistry was formerly purely mechanical, and instruction in it scarcely went beyond manual dexterity in the use of tools, and a knowledge of the human system generally, and of the diseases which might affect the teeth and render an operation important, was by no means considered necessary. Of late, however, as the physiology of the human system has become better understood, and the relations of its various parts and their mutual dependance are more clearly recognized, dentistry has made great progress as a science, and its practitioners claim, with much justice, to be classed among the learned professions"

De nullo quod est sua natura indivisible, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam A maxim meaning "A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent" (*Morgan Leg Max., Co. Litt* 32)

Deny To contradict, to gainsay, disavow, repudiate (as, defendant *denies* plaintiff's allegations).

Deodand. Any instrument causing death, forfeited to the Crown

De office Of office, officially in virtue of office, officially in the discharge of ordinary duty

Deora The name of a branch of the chauhans, descended from Deoraj, a descendant of Prithi Raj, the King of Delhi.

Depart Go away from a place or person; be appointed to start at a time or from a station.

(*In Marine Insurance Law*) the use of the words "To depart" in respect of a ship means that "The ship should not only have broken ground on the day named, but that she should then be out of the port, or at sea." (1 Maude & P. 502, citing *Muir v Royal Exchange Assrce*, 4 Camp. 84.)

Departed, past (as *departed* glory), dead (the *departed* worthies).

Departing from the Kingdom. Does not apply to a temporary absence abroad. (Re *Moravian Socy.*, 26 Bea. 101)

Department

"**Department**" defined Act 5 of 1869, Pt. I, cl. (*c*) (11); (Ins. Act 12, 1894, S. 4

DEPARTMENT. A branch of public business, assigned to a particular person, a division of the executive branch of Government, affairs and officials supervised by a minister of state

"**Department of Paper Currency**" defined. Act 20, 1882, S. 3.

Department of State A branch of the Government The various departments of State are classified and their powers and procedure described in the various statutes regulating the government of the country.

Departure. (In pleading) is when a party deserts the ground that he took in his last antecedent pleading, and resorts to another "A departure in pleading is said to be when the second plea containeth matter not pursuant to the former, and which fortifieth not the same, and thereupon it is called departing from his former plea". (*Co Litt* 304 *a*, *Termes de la Ley*)

Depasture To pasture, to graze, to strip.

Dependence The state of deriving existence, support or direction from another, the state of being subject to the power and operation of extraneous force, being contingent on the happening of some other event.

DEPENDENCE, RELIANCE *Dependence* is the general term, *reliance* is a species of dependence we *depend* either on persons or things, we *rely* on persons only *dependance* serves for that which is immediate or remote, *reliance* serves for the future only We *depend* upon God for all that we have or shall have, we *rely* upon the word of man for that which he has promised to perform The fate of the prisoner *depends* on the verdict of the jury, the legal position taken by his counsel *depends* on the *reliance* that can be placed on the authorities cited by him.

Dependency Country, state or Province controlled by another sovereign, A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe The state of being dependent for support. (*So used in Workmen's Compensation Acts*)

DEPENDENCY, COLONY, POSSESSION It differs from a "colony' because it is not settled by the citizens of the sovereign or mother state, and from "possession," because it is held by other title than that of mere conquest

Dependent *As a noun*, a person who depends on or looks to another for support or favor, a retainer, one who relies for support on another in some way or other for his maintenance or livelihood

Dependents (*in the Workmen's Compensation Act*, 1897) See *Main Colliery Co* v. *Davies* (1900) App. Cas. 358.

In the Workmen's Comp. Act, "'Dependents,' means such members of the workman's family, specified by Statutes as were wholly, or in part, dependent upon the earnings of the workman at the time of his death *See* Act 19, 1925, S. 2.

Per *Stuart, C.J.*—A married sister is not a 'dependent' within the meaning of S. 2 (*c*) of the Provident

Dependent Relative.

Funds Act, and having married, she cannot return to the status of an unmarried sister on widowhood so as to come within the meaning of the word "dependent". 7 O.W.N 324=122 I C. 322=A I R. 1930 Oudh 145 (F.B.).

"DEPENDENT" (*in the Emigration Act.*) Means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant. (*Emigration Act* (VII of 1922), S 2)

"DEPENDENT" (*in the Provident Funds Act.*) Means any of the following relatives of a deceased subscriber to, or a depositor in, a Provident Fund, namely, a wife, husband, parent, child, minor brother, unmarried sister and a deceased son's widow and child, and, where no parent of the subscriber or depositor is alive, a paternal grandparent, Act XIX of 1925. (*Provident Funds.*) S 2, Cl. (*c*)

"DEPENDENTS" (*in the Maintenance Orders Enforcement Act*) Means such person as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Majesty's Dominions in which the maintenance order is made, Act XVIII of 1921. (*Maintenance Orders Enforcement*) S. 2.

AS AN ADJECTIVE, it means, not to be performed until a connected thing is done by another, depending upon something else, contingent on some other event

"**Dependent (of emigrant)**' defined. Act, 1,1882, S 3 [Am Act 7, 1893, S 3 (3)] Act 21, 1883, S. 6 (3) Ben Act 1, 1889, S 2

Dependent contract, Contingent contract, One which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party.

Dependent covenants Covenants in which the performance of one depends on the performance of the other, mutual covenants, a covenant which need not be performed unless another upon which it depends is performed

Dependent Member. The expression "dependent member" in Hindu law does not necessarily mean "resident member" 29 C. 557=6 C W.N 530

Dependent Relative Revocation (of wills.) "The doctrine of Dependent Relative Revocation (of a will) is based on the principle that all acts by which a Testator may physically destroy or mutilate a Testamentary Instrument are, in their nature, equivocal. They may be the result of accident or, if intentional, of various intentions It is therefore, necessary in each case to study the act done by the light of the circumstances under which it occurred and the declarations of the testator with which it may have been accompanied; for, unless it be done *animo revocandi*, it is no Revocation. What, then, if the act of destruction be done with the sole intention of setting up and establishing some other Testamentary Paper for which the destruction of the Paper in question was only designed to make way. It is clear that, in such a case, the *animus revocandi* had only a conditional existence, the condition being the validity of the Paper intended to be substituted". (per *Wilde, J.O., Powell* v. *Powell*).

Dependent Taluk.

"Dependent taluk" defined. Ben Reg. 19, 1793, S. 6

Depending. In practice, pending or undetermined, in progress See *Suit depending.*

Deponent One who deposes; One who gives evidence, or makes a deposition, one who bears witness or testimony; one who gives information on oath or affirmation respecting some fact known to him, before a Court or magistrate

Deponent, evidence, witness All these words are properly applied to judicial proceedings, the *deponent* deposes generally to facts either in causes or otherwise *evidence* consists either of persons or things, which are brought before the Court for the purpose of making a doubtful matter clear, *witness* is always a person who bears witness to any fact for or against another

Depopulation. In old English law A species of waste, by which the population of the kingdom was diminished. (12 *Coke*, 30, 31)., Reducing the population of a tract or country

Deport. To convey into exile, to remove from the state or country The Legislature often confers power to deport, *i e*, to remove and exclude from a particular territory subjects or aliens whose absence from the territory is from one cause or another desirable (Hall, Foreign Jurisdiction of the Crown, 174-180) Such deportation is usually of an administrative character, enabling the officials to remove persons whose presence menaces the public peace or order of the state or a foreign territory In this form the power is exercised in substitution for the power of expulsion which would ordinarily be exercisable as an incident of territorial sovereignty by the power within whose dominions jurisdiction is exercised (*See* Piggott, Exterritoriality, p. 101).

In British India a power to deport without trial still exists (33 Geo III c, 52, Ss. 45, 46 v. sup, Ry. III of 1818)

Deportation The removal of an alien or other undesirable person out of the country.

DEPORTATION, TRANSPORTATION, EXTRADITION. Strictly speaking, "transportation, extradition, and deportation," although each has the effect of removing a person from a country, are different things and for different purposes Transportation is by way of punishment of one convicted of offence against the laws of the country extradition is the surrender to another country of one accused of an offence against its laws, there to be tried, and, if found guilty, punished; deportation is the removing of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or under those of the country to which he is taken.

Depose To give evidence, bear witness or testimony; to state or affirm some matter of fact in an affidavit or deposition; also to lay down, to lodge; to degrade from a throne or high station.

"**Deposit**" defined. (*See also* Compulsory Deposit.) Act 5, 1873, S. 3.

Deposits.

DEPOSIT. Thing stored or entrusted for safe keeping, An act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind, a naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it, the delivery of a thing for custody, to be redelivered on demand, without compensation

The word 'deposit' does not cover a transaction of the nature of a loan which can be more appropriately described as a contract of bailment. 126 I C 682=7 O W N 769=A I R 1930 Oudh 395

Deposits. (In Commerce) The term is used to indicate a variety of transactions according to circumstances, as deposits of money for employment in business, deposits of valuable property or negotiable securities with a banker for safe custody, deposits of title deeds and similar documents as security for loans, deposits of money or bills in a bank in the ordinary course of business on current account, and deposit of sums at interest, as fixed deposits in a bank.

(IN BANKING), a sum of money left with a bank for safe-keeping subject to order, and payable, not in the specific money deposited, but in an equal sum, and sometimes with interest added to it Sums paid to the credit of a customer with his banker, though usually called "deposit", are in truth, loans to the banker [6 C L J 535 (541)] Whether a particular transaction is a loan or a deposit is clearly a question of fact to be decided upon the evidence. [15 C P.L.R. 147 (149), 16 C 25] The term "deposit" in Art 60 of the Limitation Act must be construed in its ordinary or popular sense and money paid to a man's credit with his banker should be held to be a deposit within the meaning of the article. [15 C P.L R 147 (149).]

DEPOSIT The use of the word 'deposit' in contract implies an agreement that the sum deposited may be forfeited in case of breach by the depositor. (A I R 1937 Lah 842)

DEPOSIT DEPOSITARY Although the term "deposit" ordinarily implies the deposit of specific property returnable *in specie* it has a wider meaning If a Government security or a sum of money is delivered to be held as security for the performance of some engagement, and upon the express or implied understanding that the thing deposited is to be restored as soon as the engagement has been fulfilled, the person with whom the deposit has been made may rightly be treated as a depositary within the meaning of Art 145 of Sch I of the Limitation Act [6 C L.J. 535 (30 C. 519, 12 C 113, F.). *See also* 16 Cal. 25.]

DEPOSIT, PLEDGE, SECURITY. The term *deposit* has most regard to the confidence we place in another, *pledge* has most regard to the security we give for ourselves; *security* is a species of pledge. A *deposit* is voluntarily placed in the hands of an indifferent person, a *pledge* and *security* are required from the parties who are interested. Money is *deposited* in the hands of a friend or bank in order to execute a commission: a *pledge* is given as an equivalent for that which has been received a *security* is given by way of security for the performance of some agreement. A *deposit* must consist of something movable, as money, papers, or jewels, and which can be deposited or placed in the hands of another It may sometimes serve as a *pledge* or *security* where it is intend-

Deposit Account.

ed to bind the party depositing to anything A *security* is whatever makes a person secure against a loss, and in the ordinary acceptation consists of any instrument or written document which legally binds a person.

"DEPOSIT" AND "TRUST'." The term "Deposit" in Art 60 of the Limitation Act cannot be taken to mean trust." The dictum of White, J. in 6 C L R 470 that "the word 'deposit' in the Limitation Act, as distinct from 'loan' points to cases where money is lodged with another under an express trust, or under circumstances from which a trust may be implied," dissented from 16 Cal. 25.

Deposit Account. Accounts of deposits of money with bankers withdrawable only on giving a specified previous notice, an account of sums lodged with a bank not to be drawn upon by cheques, and usually not to be withdrawn except after a fixed notice.

Deposit Company A company whose business is the safe keeping of securities or other valuables deposited in boxes or safes in its building

"Deposit in Court" If a specific fund in the possession of a party to a cause is the subject of conflicting claims, the Court may in certain cases either allow or compel him to pay it into Court subject to further orders of the Court in the cause, this is termed "deposit in Court." The grounds which justify or require a payment into Court of a fund in dispute are various Those deposits generally fall, however, under two general heads, namely. (1) A desire on the part of the party in possession of the fund to be relieved of the burden of caring for it, (*vide* Interpleader suit) and (2) a danger of loss or depletion of the fund

"Thus, if a party to a cause in possession of a fund to which there are conflicting claims desires to be relieved from the burden of caring for it and from the burden of the litigation, the Court may authorize him to pay the fund into Court to be disposed of as the rights of the parties interested may appear

So also, if a party to a cause is in possession of a fund to which there are conflicting claims, and it appears to the Court that the fund is in danger of loss or depletion or that the rights of the parties in interest may be endangered if the fund is allowed to remain in possession of the party holding it, that party may be compelled to pay the fund into Court to abide its further order" (13 Ame. Cyc 1032)

"Deposit" into Court. *See* 149 I.C. 628=1933 Nag 349

Deposit (in Hindu Law). The various kinds of deposits in Hindu Law are (1) Nyasa or common deposit (2) Aupanidhika—sealed deposit. (3) Yachitaka—loans for use. (4) Anvahitika deposits for delivery. (5) Silpihastagata bailments in the hands of an artisan (6) Pogandadhana—property of a minor.

Deposit of title deeds. A method of pledging immoveable property as security for a loan by keeping the title deeds in the keeping of the lender as pledgee; equitable mortgage by deposit of title deeds.

Deposit receipt. Receipt by a banker for moneys deposited with him specifying the terms of the deposit.

Deposition distinguished from affidavit.

DEPOSIT (VOLUNTARY) "VOLUNTARY DEPOSIT" is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former or of a third party The person giving is called the "depositor", and the person receiving the "depositary."

Deposit warrants. Instruments or documents acknowledging deposit of articles as security for loans

Depositarius. (*Lat*) "One who receives a deposit, a trustee" (*Ulpian Dig.* XVI, 3 Fr. I, 7, S. 236)

Depositary. "The party receiving deposit, one with whom anything is lodged in trust, as deposit, *depositary* is the bailee in a contract of deposit, which is a bare, naked bailment of goods delivered by one man to another to be kept for the use of the bailor and to be restored to him either upon demand or otherwise in accordance with the terms upon which the deposit was made.

DEPOSITARY TRUSTEE A depositary is not a trustee, as a trustee, is given title and active management of the property while a depositary has at best only a special property for a specified purpose.

Deposited is not synonymous with "filed' Where a statute provided a punishment against "A person who wilfully....mutilates, destroys, a record paper, document or other thing *filed or deposited* in a public office," etc, Herrick, J, said: "The words 'filed' and 'deposited' are evidently not used as synonymous or as the equivalents of each other but as words having a different signification" And, after defining the word *"filed"* as placed on file, with the idea of permanent preservation, the Judge proceeded "*Deposit* does not carry with it the same meaning it may or may not mean a permanent disposition of the thing placed or deposited. It may mean a mere temporary disposition or placing of the thing And the words of the statute being coupled together, or rather disjoined by the conjunction "or" the same meaning is not to be given to each, but that meaning or signification which distinguishes it from the other, and thus each word given full force and effect" [*People* v *Peck*, 67 Hun. (N.Y.) 560, 569, 570, 22 N.Y Suppl. 576; (Citing) *Bouvier L. Dict*]

"The words 'INTRUSTED OR DEPOSITED' imply in their ordinary signification, something more than mere possession" [*Stanels* v *Raymony*, 4. Cush. (Mass) 314, 316.]

"Deposition" defined, 44-5 V., c. 69, S. 39.

DEPOSITION SWORN EVIDENCE. It is the testimony of a witness put or taken down in writing under oath or affirmation, before a judicial officer, in answer to interrogatories. It is "Evidence put down in writing by way of answer to questions." Testimony of a witness, reduced to writing, in due form of law, by virtue of the authority of a competent tribunal or according to the provision of law, to be used on the trial of a question of fact in a Court of justice."

DEPOSITION is also used in the sense of depriving a person of a dignity, etc.

Deposition distinguished from affidavit. The distinction between an affidavit and a deposition is that the former is *ex parte* and voluntary, and the latter is made after notice and is compulsory. A

Depositor.

deposition differs from an affidavit, in that the opposite party has an opportunity to cross-examine the witness who makes the former. "A *deposition* is evidence given by a witness under interrogatories, oral or written, and usually written down by an official person, while an affidavit is the mere voluntary act of the party making the oath, and may be, and generally is, taken without the cognizance of the one against whom it is to be used" (*Stimpson* v *Brooks*, 23 Fed Cas No. 13, 454.)

DEPOSITION DISTINGUISHED FROM AN OATH. "There is an obvious distinction between an *oath* and a *deposition*. The ordinary and usual meaning of the word 'deposition' is confined to written testimony, at least in legal proceedings" The oath is that which is administered to the witness before the deposition is taken. (*U S* v. *Clark*, 25 Fed. Cas No 14, 804)

"Depositor" defined Act 5, 1873, S 3

DEPOSITOR is one who makes a deposit, a person who pays money into a bank to be placed to his credit and to be subject to his orders A "depositor" has been defined as a beneficiary of a fund held by the bank as trustee (*Kimball* v *Norton*, 47 Am Rep 171) "A *depositor* is a beneficiary of a fund held by the bank as trustee."

(In the Government Savings Banks) *"depositor"* means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank, and "deposit" means money so deposited [Act V of 1873 (Government Savings Banks), S 3]

Depository. Storehouse (*Oxford Dict*)

Depositum (*Lat*) A naked bailment without reward and without any special undertaking"

"Depot" defined Ben Act 2, 1888, S. 3.

DEPOT. A place of deposit for storing goods, a warehouse, a storehouse, a place where any kind of goods is deposited, "Depot" is generally understood to be the place where a carrier is accustomed to receive merchandise, deposit it, and keep it ready for transportation or delivery

AS APPLIED TO RAILROADS, a "depot" is a place where passengers are received and deposited, and more generally applied to the place where freight is deposited for delivery. (*Maghee* v. *Camden & A. R Transp. Co*, 45 N.Y. 514, 520) Depot "does not necessarily mean a single building, but means the entire grounds used by a railroad company for its business purposes with the public at that station" (*Pittsburg Ft. W. & C R. Co.* v. *Rose*, 24 Ohio, St. 219, 229.)

"Depot", *as used in a contract with the government* to transport supplies from certain posts, *depots*, and stations, is to be construed as meaning "a place where military stores or supplies are kept, or troops assembled." (*United States* v. *Caldwell*, 22 L. Ed 114.)

"A WAREHOUSE OR OTHER BUILDING". May include a depot.

"WAREHOUSES OR DEPOTS" Is sufficiently broad to embrace within its meaning a 'pass-way' used for the convenient and safe egress and ingress of passengers. It is not restricted in its signification to the 'house' or structure only (*Galveston etc., R. Co.*, v. *Thornsberry*, (tex. Sup. 1891) 17 S.W. 521-523 (*Quoting Webster Dict.*)

Deprivation.

Depravity. State of being depraved, corruption; wickedness.

DEPRAVITY CORRUPTION *Corruption* relates to the source of action, *Depravity* to the actions themselves A *corrupt* judge is not a person of depravity of character necessarily in any other way than that of the principle of integrity, which is wanting or has been destroyed in him. (*Smith, Syn Dis.*)

Depreciate To fall in value, to become of less worth, to sink in estimation (as) Depreciated currency Depreciation in value.

Depreciation Allowance made in valuation for wear and tear (as, allowance made for depreciation in the value of property for purposes of taxation)

DEPRECIATION (*of building*) contemplated by the Municipal Acts is that due to the age of the building and the consequent wear and tear and other like causes It cannot apply to a deduction on the ground of the building situate in an undeveloped or not fully developed area 58 Cal. 793=133 I.C. 332=35 C.W. N. 283=1931 Cal 506

Depredation Spoliation, rariage, plunder.

DEPREDATION, ROBBERY Both these words denote the taking of what belongs to another, but differ in the circumstances of the action *Depredation* is not so lawless an act as *robbery*, it may be excused if not justified by the laws of war or the hostile situation of parties to each other The borderers on the confines of England and Scotland used to commit *depredations* on each other *Robbery* is in direct violation of every law, it is committed only by those who set all laws at defiance *Depredations* may be committed in any manner short of direct violence, those who commit *depredations* do so mostly in the absence of those on whom they are committed *robberies* are commonly committed on the person, and mostly accompanied with violence.

Depression Lowness of spirits, a condition generally due to debility or interference with the nervous or bodily health.

Deprive To take away, dispossess, strip one of office or dignity, injure or destroy, to take something from; to keep from acquiring, using or enjoying something "Deprive" conveys the idea of taking away that which one has, or withholding that which one may have

TO DEPRIVE, DEBAR, ABRIDGE *Deprive* conveys the idea of either taking away that which one has, or withholding that which one may have, *debar* conveys the idea only of withholding, *abridge* conveys that of taking away *Depriving* is a coercive measure, *debar* and *abridge* are merely acts of authority. We are *deprived* of that which is of the first necessity, we are *debarred* of privileges, enjoyments, opportunities &c, we are *abridged* of comforts, pleasures, conveniences, &c. Criminals are *deprived* of their liberty, their friends are in extraordinary cases *debarred* the privilege of seeing them; thus men are often *abridged* of their comforts in consequence of their own faults.

"Deprive of life" is equivalent to the word "kill".

Deprivation A wrongful deprivation or taking of property includes anything that affects or limits

Deputy.

the free use and enjoyment of one's property, or of the easements or appurtenances thereto.

Deputy. One appointed as the substitute of another; one empowered to act for another in his name or on his behalf, one authorized by an officer to exercise the office or right which the officer possesses, for and in place of the latter; The term "deputy" means "one who is appointed, designated, or deputed to act for another" "'Deputy', is he that occupieth in another man's right, whether it be office or any other thing, and his forfeiture or misdemeanour shall cause the Officer or him whose Deputy he is, to lose his Office, or thing" (*Termes de la Ley Cowel Jacob Tomlins Law Dic*).

"Deputy is used in composition with the names of various executive officers to denote an assistant empowered to act in their name, as deputy collector, deputy marshall, deputy sheriff"

"Deputy Collector" defined Ben Act 5, 1875, S 2. Ben Act 8, 1826, S. 4 (*vii*) Ben Act 1, 1879, S 2. Ben. Act 6, 1908, S. 3 (*7*), Bom Act 2, 1890, S. 3 (*b*).

"DEPUTY COLLECTOR"(in the Chota Nagpur Tenancy Act) includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under that Act Ben Act VI of 1908 (Chota Nagpur Tenancy), S 3 (7)

"Deputy Collectorate" defined Act 6, 1853, S 5

A *Deputy Collectorate* is the district within which an independent Deputy Collector is directed by Government to act Ben Act VI of 1853 (Rent Recovery), S 5

"Deputy Commissioner" defined Act 20 of 1883, S 3 (9) Act 9, 1886, S. 2 (1) Act 15, 1887, S. 3 (3). Act 3, 1893, S 2 Ben. Act 5, 1887, S 2 Bom Act 3, 1888, S 3 (e) Bur Act 1, 1898, S 2 Bur Act 3, 1898, S. 2 Bur Act 4, 1902, S 3 E B & A 1, 1909, S 5. P. Act 1, 1898, S 2 P. Act 2, 1900, S 2. P Act 1, 1902, S. 2 6 of 1908, S 3, 4, 1912, S. 2. Reg 2, 1886, S. 2(2). Reg 4, 1890, S 3 (3). Reg 5, 1890, S 2 (1) Reg 5, 1893 S 3 (2) Reg 6, 1893, S. 2 (1). Reg 8, 1893, S 2 Reg 1, 1894, S 10 (d) Reg 3, 1901, S. 2. Reg. 4, 1910, S 3 (2), Reg. 5, 1910, S 2 (iii).

Deputy Constable. A 'deputy constable" possesses the whole power of his principal, and, of right, acts in his name (*Simpson* v. *Morris* (*pa*) *S. Yeates*, 104, 107)

Deputy Consul. "Deputy consul" and "consular agent" denote consular officers subordinate to the principal officers exercising the powers and performing the duties within the limits of their consulates or commercial agencies respectively.

"Deputy Inspector-General" defined Bom. Act, 4, 1890, S 3 (*a*)

'Deputy Magistrate' Deputy Magistrate and General Deputy Magistrate are titles unknown to the Code of Criminal Procedure. 23 M.L J 670=12 M. L.T. 601=17 I C. 786=13 Cr. L.J. 850.

Deputy Secretary. Defined. Act 47 of 1920, S 2

Deputy sheriff is one appointed to act for the sheriff, and not in his own name, person, or right. He cannot legally act, as in serving an execution, in his own name, but such acts must be in the name and

Derelict lands

by the authority of the sheriff, in whose stead he acts.

'Deputy Superintendent" (in the Bur Ferris Act) means any person appointed by the Superintendent under S 14, clause (*j*) of that Act. Bur. Act II of 1898 (*Ferries*), S. 3, cl 3.

Derajat. (*Arabic*) The name given to the strip of territory which lies on the western bank of the Indus, and contains the two towns called Dera, distinguished as Ismail Khan and Ghazi Khan.

Deranged. Insane, mad all kinds of lunatics except the natural born idiot

Derelict. Abandoned; deserted; cast away Applied to shipping boats or other vessels forsaken or found on the seas without any person in them, also goods which have been voluntarily abandoned and given up as worthless. Vessel abandoned by crew, and in respect of which salvage accrues to those who save it, or its contents [See *Kennedy, Civil Salvage*] A "derelict" is defined by Judge Story to be a "boat or vessel found deserted or abandoned on the seas, whether it arose from accident or necessity or voluntary dereliction." [*The Hyderabad*, (U. S)] 11 Fed 749, 754, *Rowe* v *The Brig*, (U S) 20 Fed Cas 1281] The term also signifies dry land "*Derelict* becomes Wreck of the Sea when it is cast by the sea upon the land" (*Maclachlan on Merchant Shipping*, 3 ed., 640)

Derelict lands Blackstone. (2 Com. p 261) says of these "As to lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make *terra firma*, or by dereliction, as when the sea shrinks back below the usual water mark, in these cases the law is held to be, that if gain be by little and little by small and imperceptible degrees, it shall go to the owner of the land adjoining But if the alluvion or dereliction be sudden and considerable, it belongs to the king." [*Hale De Jure maris, p* 14, *Callis on Sewers, p.* 50, *R* v *Lord Yarborough* (1824) 3 Barn & Cress 91; 5 Bing 163; 2 Bligh N S 147, 4 E R. 1087; *27* R R. *292*, *Scratton* v *Brown*, (1825) 4 Barn & Cress 485, cp. *Hindson* v. *Ashby*, (1896) *2* Ch. 1.]

Dereliction as the voluntary abandonment of goods by the owner, without the hope or purpose of returning to the possession. *Jones' Admirs* v. *Munn*, 12 Ga 469, 473 (citing 1 Bro Civ. Law, 239; Wood's Civ. Law, 156) Dereliction or renunciation of property requires both the intention to abandon and external action Thus the casting overboard of articles in a tempest to lighten the ship is not dereliction, as there is no intention of abandoning the property in case of salvage, nor does the mere intention of abandonment constitute dereliction without a throwing away or some external act. (*Livermore* v. *White*, 43 Am. Rep. 600.)

The term is also used to signify a recession of the waters of the sea, a navigable river, or other stream, by which land that was before covered with water is left dry; when the sea shrank back below the usual water mark and remained there; land added to a front tract by the permanent uncovering of the waters; the laying bare of the botton by the retirement of the waters as contradistinguished from the building up of the bottom by deposits causing the waters to recede. (13 Ame. Cyc. 1044.) Dereliction

Derivatia protestas.

is land gained from the sea when the sea shrinks, back below the usual high water mark. (*Lmthicum* v. *Coan*, 54 Am. Rep. 775.)

Derivatia protestas non potest esse major primitiva A maxim meaning. "Derived power cannot be greater than that from which it is derived" (*Broom*) "The derivative power cannot be greater than the primitive"

Derivative Coming from another, taken from something preceding, secondary; source to which a thing's origin is traced.

Derivative mortgage The term "derivative mortgage" is used in text-books and decided cases as synonymous with "sub-mortgage". (20 M. 35=6 M.L J. 235.)

Derive. To draw or receive, or obtain as from a source or origin, or by regular transmission.

A vendor is not a predecessor from whom the interest of the purchaser "is derived" Jessel, M.R said: "How can you say that the interest of the purchaser is 'Derived from' the vendor? He does not derive his interest from the vendor, he derives it from his own money which bought the property. You would not say, if you were talking of a horse you had bought, that you derived your interest in that horse from the horse dealer. You would say you bought it with your money" (*Fryer* v. *Morland*, 45 L.J Ch 820)

DERIVED, when used with reference to profits of a trade or business, held equivalent to "arising" or "accruing" (*Commissioners of Taxes* v. *Kirk*, (1900) App. Cas. 588, 592.)

TO DERIVE, TRACE, DEDUCE. The idea of drawing one thing from another is included in all the actions designated by these terms The act of *deriving* is immediate and direct, that of *tracing* a gradual process, that of *deducing* a ratiocinative process A person *derives* his name from a given source, he *traces* his family up to a given period, principles or powers are *deduced* from circumstances or observations. The Trojans *derived* the name of their city from Tros, a king of Phrygia, they *traced* the line of their kings up to Dardanus.

Derogate. To lessen in estimation, to invalidate, degenerate, degrade

DEROGATION. The act of annulling or breaking a law, or some part of it, impairment, partial surrender of a right (as a statute in *derogation* of common law must not be enlarged by construction) That "man shall not derogate from his own grant," is a rule of the common law of frequent application (*Brown Legal Maxims, 6th ed, p.* 166.) "A grantor cannot defeat his own grant, and therefore, if a man grant twenty of his best trees to be taken in ten years the grantor cannot cut down trees without consent of the grantee" (*Com. Dig. "Grant"*.)

DEROGATE, DETRACT. *Derogate* is a term of legislation. *Derogation* is partial and indirect abrogation. When a subsequent law lessens the force and application of an older law, the character of the former is technically said to be *derogatory*. *Derogation* takes place when a thing that is estimable suffers deterioration; *detraction* when a thing that is esteemed, or is capable of being esteemed, is lessened or cheapened in the estimation of others.

Descend.

Hence *derogate* belongs to the influence of circumstances, while *detraction* is exclusively the act of persons. (*Smith Syn. Dis*)

Derogatory Detracting, tending to lessen effect or estimation (as, *derogatory* clause in a testament) (*Cent. Dict*) "His language was severely censured by some of his brother peers as *derogatory* of their order" (*Macaulay and Hist of Engl*)

De similibus ad similia eadem ratione procedendum est. From like we are to proceed by the same rule

Des. (*H.*) A 'district' under the old Hindu (Aryan) organization. (*See* Bad. Pow. III, 202.)

Desabandam inam 68 M.L.J 46.

Des-adhikari. The old term for a headman in an ancient district, the officer who kept the public accounts in a 'nad' [(Malabar) Bad. Pow. III, 178.]

Desadhipatyam (*Mal*) From Desam (q v.) and Sanskrit adhipatyam-supreme authority. *Desadhipatyam* is the office held by *Desadhipati* or *Desavali*, which is the political ruler or representative of government in the Desam, of the Desam and Desadhipatyam an individual may be possessed of the one or the other separately The Desavali was not necessarily proprietor of all the lands of the village. But a person enjoying these four dignities collectively and in the same Desam is esteemed as one who has reached the summit of honor. All the dignities were saleable, either separately or collectively except the Urayma and the Ambalappadi which went always together, and generally the Desam and Desadhipatyam (*Log. Mal. Man*)

Desai=desmukh. (Bad-Pow)

Desakoyma. (*Mal.*) Same as Desavali. This word denotes the functions of a Desavali.

Desam. (*Mal.*) A village (*Sund. Iyer's Mal Law*) A village, the same as Tara in the Malabar province. In the ancient Hindu histories, a kingdom, of which there were 56 in India.

Desapramani. (*Mal*) Head of a village, also Desamukyasthan.

Desavali (*id*) The head of a desam. (Bad Pow. III, 178) Hereditary heads of villages Before Hyder's conquest some had one, some two or more villages; their places are now supplied by Mukhyastanmar. The number of Nayars or fighting men attached to a Desavali was from 25 to 100, if it exceeded the latter number, he ranked as a Naduvali. He was the military chief, not the civil chief, of the Desam.

Descend. The word ordinarily denotes the vesting of the estate by operation of law in the heirs immediately upon the death of the ancestor (as) succession by descent.

DESCEND. But applying the general rules for the interpretation of words and phrases; having especial reference to the context and to the intention of the parties, the term, as used sometimes in a statutory provision and at other times in a will or other instrument in writing has been variously construed as meaning: To belong to, to go, to go to; to go down; to pass down from the elder to be derived by the younger; to go over to, to pass, to pass or be

transferred, to pass by descent or inheritance, or be inherited by, to pass from, to vest in, to be vested with. (*Ame Cyc.*)

The words "DESCEND," "INHERIT" AND "INHERITANCE", ordinarily relate to real estate, but while this is true, it is in the power of the Legislature to give them a different inflection and expand their meaning The words "descend," "inherit," and "inheritance" in their broad meaning, are also frequently applied to personal property. [*Rountree* v *Pursell*, 11 Ind. App. 522 (*Ame*)]

"DESCEND" "ASCEND". The word "descend" means ordinarily to go down, but in the law relating to the devolution of property rights "descend" may mean "ascend," as descending in the ascending line."

"DESCEND" 'TO GO TO' "BE VESTED IN". The word 'descend," in a will devising testator's property to certain persons, but, if he left no child or children, then directing that the property was to descend to others, was construed to have been used in the sense of the words "go to' "Descend" as used in an ante-nuptial contract providing that certain property shall remain in the wife, but if there be issue of the marriage then said property shall descend to such child or children, share and share alike, is not used in its technical sense, but means shall "go to" or "be vested" in such child or children, share and share alike, or equally

"Descendant" defined, Act 30, 1839, S 1, Act 10, 1865, S. 86, Act 1, 1869, S. 21, Act 29, 1925, S 99.

DESCENDANT. Person descended from another, one who descends, as offspring, however remotely, correlative to ancestor or an ascendant, one who has issued from an individual, including children, grandchildren and their children to the remotest degree, issue of the body of the person named of every degree; issue of any degree, the issue of a deceased person, any person proceeding from an ancestor, in any degree. "Descendants mean children and their children and their children to any degree, and it is difficult to conceive any context by which the word 'Descendants' could be limited to mean children only" (per *James, L. J., Ralph* v *Carrick*, 48 L.J Ch 808) Brett, J said, "The *prima facie* meaning of '*Descendants*,' in ordinary parlance, is all descendants of any degree, and not only children, and I know of no authority for saying that in any legal document the word 'Descendants' is, merely because it is in collocation with the word 'parent,' to have any other meaning than it has in ordinary parlance.' [(*Ibid*) See also *Jarman*] The expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor. [Act XXX of 1839(Inheritance, S 1). *See* 1930 A L J 109=123 I C 369=1930 All 169]

DESCENDANT does not mean *next of kin* or *heirs at law* generally as these terms comprehend those as well in the ascending as in the descending line, and collaterals In construing a statute relative to devises, the Court said, "We are of opinion, however, that the word 'descendant,' as used in a statute does not apply to a brother of a testator. It refers, we think, exclusively to a lineal descendant, as a child or a grandchild." The word "descendants" means children and grandchildren living at the time of the death of the persons specified in the Will and not such person's widow or brother (1 M.H C.R 400) The broad important of the term "descendants" is sometimes narrowed where there is ground for judging that it was intended in a restricted sense. Thus, the word "issue," which is coextensive, with "descendants," and includes every degree has been restricted to the sense of "children" The term does not mean any relative to whom in some possible contingency property might descend, but lineal descendants—issue of the body, and as used in its natural and ordinary sense, as a definite description of all those persons living at a particular time, it means those who can trace their origin, immediately or remotely, to a given person, as an ancestor "The descendants are from what is called the direct descending line The term is opposed to that of ascendants."

DISTINGUISHED FROM "HEIRS OF THE BODY" The word 'descendants' has not the same precise technical signification as the words "heirs of the body" The word "descendants" in Regulation S 2, Reg. XXIX of 1814 (Bengal) is not meant to be confined to the heirs of the body but it includes heirs generally according to the particular law applicable to the case (*e g*, the widow of a deceased ghatwal) (22 C. 156)

Descendible Devisable. The words "descendible" and "devisable" are convertible terms, so that where a contingent remainder is descendible it is also devisable.

"Descent" defined Act 30, 1839, S 1

DESCENT, or Hereditary Succession is the title whereby a man, on the death of his ancestor, obtains the estate of such ancestor, by right of representation, as his heir-at-law. It is otherwise defined, the order or means whereby lands or tenements are derived unto any man from his ancestor An heir is he upon whom the law casts the estate immediately on the death of his ancestor, and the estate so descending is in Law called the Inheritance. (*See* 2 Comm 200, lib 2, c 14; *Tomlins Law Dic*) *"Descent"* is not always used in its strict legal sense, it may mean "a single step in the scale of genealogy" (*Bickley* v. *Bickley*, L.R. 4 Eq. 216) The word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue. [Act XXX of 1839 (Inheritance), S 1]

DESCENTS, COLLATERAL AND LINEAL. Descents are of two sorts as from father or grandfather to son and grandson and collateral as from brother to brother, and cousin to cousin, etc.

DESCENT DISTINGUISHED FROM ALIENATION. 'Alienation differs from *descent*' in this that alienation is effected by the voluntary act of the owner of the property, while descent is the legal consequence of the disease of the owner, and is not changed by any previous act or volition of the owner.' (*Burbank* v. *Rockingham Mut. Fins Co.*, 57 Am Dec 300.)

'DESCENT IS DISTINGUISHED FROM PURCHASE'. In that title is by descent acquired by mere operation of law, while title by purchase is acquired by the conveyance or other act of the owner.

'DESCENT' AND 'DEVISE OR BEQUEST' DISTINGUISHED Transmission of real estate by devise or of personal property by bequest under a will is to be distinguished from transmission by descent. Persons taking by descent take by mere operation of law while persons taking by devise or bequest are regarded as taking

Descent and distribution.

not by descent, but by purchase' "*Descent* is frequently used to distinguish the vesting of title in any one, by mere operation of law, from *purchase*, which may be either devise or grant. In the former case the person is said to take by descent or as heir, while a grantee or devisee is said to take by purchase or as a purchaser" (*Abbott, Law Dict*)

Descent and distribution Apart from the operation of prescription and the bar of the statute of limitations, the law has long since recognized only two ways of transferring property, *viz*, by descent and by purchase, the latter, otherwise termed alienation, differing from the former in that alienation is effected by the voluntary act of the owner of the property, while descent is the legal consequence of the decease of the owner, and is not changed by any previous act of violation on his part. The word "descend" ordinarily denotes the vesting of the estate by operation of law immediately on the death of the ancestor, and cannot with propriety be construed as referring to the passing of title to an executor or administrator. One must die either testate or intestate If the former, his will must be probated according to law. If the latter, then the law points out the mode of distribution, and his wishes have nothing to do with it. And if one from infancy lunacy or other disability, has not capacity in the law to make a will, he cannot select the class to which he will belong, and is thus forced into the class of intestates, and the disposition of his estate is necessarily controlled by the statutes of descent and distribution (*Rul. 'Case Law.*)

Strictly speaking, as used in English law, descent is the devolution of real estate to, and distribution is the division of personal estate among the heirs of an intestate; but the terms are now used interchangeably (*Bow Law Dict*)

"Describing a way," means a statement of the places where the way is desired to commence and terminate, and its general course between them.

Description 'Description,' is a representation that gives to another a view of the thing intended to be represented" (per *Miller, J, Fitzpatrick*, 19 L.R Ir 210) A description is a sketch or account of anything in words, a portraiture or representation in language It is a representation by visible lines, marks, colors, etc, the act of representing a thing by words or signs, or the account of writing containing such representation, and, as used in conveyances of real estate and in legal instruments in writing, it is the language which depicts the thing under consideration

The *"Description"* of a person is that which tells what he is.

Desert. Defined in 3 of 1936, S. 2.

DESERT. To abandon; cease to frequent, withdraw one's help or attendance.

DESERT Is also used to denote conduct or quality deserving reward or punishment, etc.

DESERT, MERIT, WORTH. A labourer is deserving on account of his industry; an artist is *meritorious* on account of his professional abilities; a citizen is *worthy* on account of his benevolence and uprightness.

"DESERT", "ABANDON", "FORSAKE." Dr. Johnson says that to "desert" is to abandon to forsake. Crabb, in his book on Synonyms, says that the words "desert", "abandon", and "forsake' are synonymous, and continues We 'abandon' those who are entirely dependent for protection and support, they are left in a helpless state, exposed to every danger A child is 'abandoned' by his parent We 'desert' those with whom we have entered into coalition, they are left to their own resources We 'forsake' those with whom we have been in habits of intimacy; they are deprived of the pleasures and comforts of society. To 'abandon' is totally to withdraw ourselves from an object, to lay aside all care for it, to leave it altogether to itself To 'desert' is to withdraw ourselves at certain times, when our assistance and cooperation are required, or to separate ourselves from that to which we ought to be attached."

Desertion in Matrimonial Law.

"Desertion" defined, Act 4, 1869, S 3 (9), Act 14, 1887, Ss. 19, 82 (7)

Desertion In general, the act by which a person abandons and forsakes, without justification, a station or condition of public or social life, renouncing its responsibilities and evading its duties

Desertion in Matrimonial Law In *Matrimonial Law* Desertion means continual absence from cohabitation contrary to the will, or without the consent, of the party charging it, and without reasonable Cause (*Ward* v *Ward*, 27 L J P. & M 63) As to *Desertion*, in the Matrimonial Causes Acts. See *Mahony* v. *M'Carthy* (1892), P 21, *R* v *Le Resche* (1891), 2 Q B 418, *Wynne* v *Wynne* (1898), P 18; *Bradshaw* v *Bradshaw* (1897), P 24, *De Laubenque* v. *De Laubenque* (1899), P 42, *Sickert* v *Sickert* (1899), P 278, *Synge* v *Synge* (1900), P. 180 "*'Desertion'* is not to be tested by merely ascertaining which party left the matrimonial home first. The party who intends to bring the Cohabitation to an end and whose conduct in reality caused its termination, commits the act of Desertion, *e g.* there is no substantial difference between the case of a husband who intends to put an end to the state of Cohabitation and does so by leaving his wife to separate from him" (per *Barnes, J, Sickert*, 1899, P. 278).

DESERTED, in 24 & 25 Vict. c. 55. s 3, is not used "in the ordinary acceptation of the word, but the statute must be taken to mean that, where the husband permanently gives up the society of his wife and continues to live in different place apart from her, she shall be looked up to as a different person from what she would otherwise be, for she resides where she does for her own, and not for any marital purpose." Per Cockburn, C J, in *R.* v. *Maidstone* (1880), 5 Q. B D 33

When husband and wife are *living separate under an agreement to separate*, there is no Desertion (*Crabb* v. *Crabb, Buckmaster* v. *Buckmaster*, 38 L. J. P. & M. 73). Desertion, by the Indian Divorce Act, implies "an abandonment against the wish of the person charging it," which in effect, introduces into the Indian Statute the view of the English Courts in their construction of the English Act The abandonment, in desertion, must be against an actively expressed wish of the person charging and, notwithstanding the resistance or opposition of such a person. (4 C. 260=3 C.L.R. 484.) *Nonsupport* alone is not sufficient to constitute desertion. *Refusal of sexual intercourse* does not constitute desertion. (*Frits* v. *Frits*, 14 L.R. A. 685, 32 Am. St Rep 156.) *Non-compliance with*

In law Maritime

decree for Restitution of Conjugal Rights constitutes Desertion. (*Bigwood* v. *Bigwood*, 57 L.J.P D. & A. 80). As to *Desertion in Matrimonial Law* See Browne and Powles, Law and Practice in Divorce Causes, Hall, Divorce Practice, Dixon on Divorce, Oakley, Divorce Practice, Lushington Summary jurisdiction Married Women Property Act

DESERTION IN MARITIME LAW. To "desert" a ship means abandoning the service without sufficient cause" (per *Crompton, J*, *Edward* v *Trevellick*, 24 L J Q B. 12).

In law maritime Desertion is an unlawful and wilful abandonment of a vessel, during her voyage by her crew, without an intention of returning to their duty, a quitting of the ship and her service, not only without leave, and against the duty of the party, but with an intent not again to return to the ships duty

Desertion in Military Law See Manual of Military Law (War Office), 1899, Manual of Naval Law by Stephens, Gifford and Smith 1901 A soldier is said to desert his post, a sailor his ship an apprentice his master, when they depart from the service to which they are bound, without permission or contrary to orders'

"Deserving." A bequest to "Deserving" objects is too indefinite, but one to "Charitable and Deserving" objects is good, (Re *Sutton*, 54 L. J. Ch. 613)

Deshghat Vatan In the Bombay Presidency, where there is a grant of *Deshghat Vatan* lands for personal services, it cannot be presumed that the grantor has the option to determine the services and to resume the lands. The right, when claimed, must be made to appear from the terms of the grant or the proved circumstances of the case. 39 Bom. 68=17 Bom.L.R. 128=28 I.C. 12.

Deshmukhi. *See* 75 I.C 999=A.I.R. 1923 Nag. 329

DESHMUKHS. The functions of the Deshmukhs were those of a Collector of Revenue of the Government. They were authorised to retain out of what they received from the ryots, a certain percentage upon that which was fixed as the Government revenue for themselves, paying the balance to the Government. It is difficult to see how the Government could impose upon the ryots the obligation of paying these allowances to their officers, except by the exercise of their sovereign right of imposing and receiving a revenue from all lands which were not in their nature rent-free. 4 I. A. 119=2 B 99 (108)=3 Sar. 701=3 Suth. 391.

Deshpande allowance is an inam governed by the Berar Inam Rules 75 I C 932=A I R 1924 Nag 234.

"Desperate and dangerous character 157 I.C 413 =36 Cr L.J 1142=1935 All 638, 133 I.C. 535=1931 All. 437

"DESIGN" defined. (*See also* New and original design. Act 5 of 1888, s. 50 (1). Act 2 of 1911, S. 2

Design Purpose or intention, combined with plan in the mind, aim, purpose; object, end in view, scheme, intention to be carried into effect The words *premeditate* and *design* both import forethought, careful reflection, deliberately arranged purpose.

"PREMEDITATION," "DELIBERATION," "DESIGN" "DETERMINATION," all imply the absence of overpowering passion. "Design" means "intent," and both words essentially imply premeditation.

Design.

DESIGN, PLAN, SCHEME, PROJECT. Arrangement is the idea common to these terms, the *design* includes the thing that is to be brought about, the *plan* includes the means by which it is to be brought about. a *design* was formed in the time of James I for everturning the government of the country, the *plan* by which this was to have been realized, consisted in placing gunpowder under the parliament-house and blowing up the assembly *Scheme* and *project* respect both the end and the means, the *scheme* and *project* consist most in speculation No man takes any step without a *design* a general forms the *plan* of his campaign, adventurous men are always forming *schemes* for gaining money, ambitious monarchs are full of *projects* for increasing their dominions

IN ARCHITECTURE DESIGN means something in the nature of a drawing, picture or diagram, applicable to the ornamentation of some article of manufacture, such as potteryware, linen or woollen fabricks, paper hangings, carpets etc When we look at a picture or drawing, we can say whether it is an original design or the same as one which has been already painted or drawn (*Harrison* v *Taylor*, 4 H and N 815, 820 5 Jur N S. 1219 29 L J Exch 3, per *Crompton, J*)

AS APPLIED TO A BUILDING PLAN. In the phrase design of buildings to be approved by directors, "design" is not used in its strictly technical sense, such as architects might understand it, but it only refers to the general plan, and not to the details of construction of the building.

IN COPYRIGHT LAW. "design," in the view of the patent law, is that characteristic of a physical substance which by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer. The essence of a design resides, not in the elements individually, nor in their method of arrangement, but in the total impression. In that indefinable whole that awakens some sensation in the observer's mind. Impressions thus imparted may be complex or simple But whatever the impression, there is attached in the mind of the observer, to the object observed, a sense of uniqueness and character. Pelouze (*Scale & Mfg Co* v. *American Cutlery Co* (U S.) 102 Fed 916, 918, 43 C.C. A 52.)

IN PATENT LAW Design is the characteristic of a physical substance which by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer In Patents, Designs, and Trade Marks Act, 1883, " 'Design' means, any Design applicable to any article of manufacture, or to any substance (artificial or natural, or partly artificial and partly natural). In S 60 *of the Patents, Designs, and Trade Marks Act*, 1883 46 & 47 *Vict. c.* 57), is not used in a technical sense, as excluding anything that would ordinarily fall within it. *Heath* v. *Rollason* (1898), App Cas 499 It refers only to the shape or visible form of the object represented, and not to the object which the design has in view in adopting the shape or the particular purpose which the shape is intended to serve *Hecla Foundry Co.* v. *Walker & Co.* (1889), 14 App. Cas. 550, and see *Holsworth* v. *McCrea* (1867), L. R 2 H L. at p 388; *Walker* v. *Falkirk Iron Co.* (1887), 14 Rettie (Sc.) 1081.

Design (*verb*) To produce a scheme or plan for the making of anything.

Design.

Design, Purpose, Intend. To *Design* denotes an object of attainment placed before the mind, with a calculation of the steps necessary for it. It is a complicated intention carried into action, or *proposed* for it

The *intention* is a movement or inclination of the mind in regard to a distant object, which causes it to stretch forward toward that object. The *design* is an idea chosen and adopted, which implies method and meditation An *intention* is pure or otherwise, a design is suddenly or deliberately formed, and may be good or bad, but is seldom entirely good One may be mistaken in one's *intentions*, and thwarted in one's *design* (*Smith Syn. Dis*)

As to *Designs in Trade mark law* See Edmunds on the Law of Copyright in Designs, Copinger on Copyright. Sortt on Copyright, Lawson on Patents, etc, Fulton, Practical Treatise on Patents, Trade Marks, and Designs, 4 *Ency of the Laws of England 439.*

IN THE LAW OF EVIDENCE Design denotes purpose, or intention, combined with plan, or implying a plan in the mind.

Designate. To call by a distinctive title, to point out a thing by distinguishing it from others, to express or declare, to indicate by description or by something known and determinate, to point out, or mark by some particular token, to specify. The word "designate", when used by the appointing power in making an appointment to office, is equivalent to the word "appointment".

Designatio justiciariorum est a rege: Jurisdictio vero ordinaria a lege A maxim meaning "The appointment of justices is by the king, but their ordinary jurisdiction by the law"

Designatio unius est exclusio alterius, et expressum facit cessare tacitum A maxim meaning "The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease"

Designatio unius personae est exclusio alterius. A maxim meaning "The specification of one person is the exclusion of another"

Designation That which designates, distinctive title, appellation, that which serves to distinguish, selection and appointment for a purpose the act of designating or pointing out Also the expression used by a testator to denote a person or thing, instead of the name itself. The meaning of "designation" as found in the dictionary, includes "appellation" It, according to Webster, is that which designates distinctive title, appellation. According to Worcester, its meaning is "that which serves to distinguish". As used in a statute requiring ballots to be on plain white paper, clear and plain cut, without any ornaments, "designation", mutillation, symbol or mark of any kind whatsoever except the name or names of the person or persons voted for and the office for which such persons are intended to be chosen, it is, on account of its associate words, to be construed to intend only designations in the nature of ornamentations, mutillations, symbols, or marks, as distinct from words or writings. *State* v. *Saxon*, 18 L.R.A. 721, 32 Am. St. Rep. 46)

De similibus ad similia eadem ratione procedendum est. A maxim meaning "Concerning things

Desperate.

to like things, we are to proceed by the same rule or reason"

De similibus idem est judicium A maxim meaning "In like cases or matters the judgment is to be the same." (*Ame Cyc*) Decisions of the contemporaneous or superior Courts should be respected (Mitra's Leg. Maxims.)

Desire To wish or long for, be solicitous for, have a wish for the possession, enjoyment, or being of, crave or covet.

Either of the words *"wish" "desire", 'command",* or *"direct"* is an apt word to be used in a will to show testators intent to make a will (*Barney* v. *Hayes*, 28 Am St Rep 495.)

Desivandam enam A grant or remission made for the repairs of tanks. (Fifth report.)

Desk. Includes bureau. *Re* Robson (7 Times Rep. 512)

Deskoyma (*Mal*) (Desa. province, Koyma. Rulership) which denoted 5 things, (1) Desam, *i e.*, the jenmiship of the Desa, (2) Desadhi pathyom, *i e*, Supreme authority over Desam, (3) Ambalappadi, a place of precedence in public place, (4) Uraima, *i e*, official authority, (5) Melkoymaie, Superintendence over temples (*Sun. Iyer Mal. Law*)

Des-lekhak. Des pandya.

Desmook. Headman of a district. Collector of a district or portion of a country, an officer corresponding with Zemindar, but more ancient. (Fifth report.)

Des-mukh [*See* Deshmukhs] chief of a des in the Hindu kingdom Bad-Pow i 179; iii 202.

De son tort. Of his own wrong.

Despande (*Tel*) The hereditary revenue accountant of a district or certain number of villages holding office by hereditary tenure, and paid by lands.

Des-pandya (or pande), (Bo), the *accountant* of a des, in the Hindu State, became the Qanungo of the Mughal Empire The des-mukh and the despandya were to the des or pargana what the headman and patwari (lekhak) were to the village. Bad-Pow i. 179, 257, iii. 202.

Despatch. Note sent by the Customs with dutiable goods and necessary to be produced at the place of destination.

Despatch Money is the opposite of demurrage. It is money allowed by a ship-owner when a charterer loads or unloads the goods in less than the time originally specified.

Desperate. Hopelessly bad, difficult, dangerous.

DESPERATE, HOPELESS. *Desperate* is applicable to persons or things; *hopeless* to things only, a person makes a *desperate* effort, he undertakes a *hopeless* task, *hopeless* case. *Desperate*, when applied to things, expresses more than *hopeless*; the latter marks the absence of hope as to the attainment of good, the former marks the absence of hope as to the removal of an evil.

Despoil. Plunder, strip, A word which involves in its signification, violence, or clandestine means, by which one is deprived of that which he possesses.

Despot an absolute prince one who governs with unlimited authority

Despotism, absolute power.

Destination Place to which person or thing is bound, (as, the destination of a vessel or ship)

A bill of lading providing against liability for articles of freight after their arrival at their "place of destination" and unloading at the company's warehouse, and providing that articles arriving at their "place of destination" must be taken away within 24 hours after being unladen, means the place of ultimate destination of the goods, and does not include an intermediate point where the goods were to be delivered from one carrier to a connecting carrier (*Ayers* v. *Western R Crop* (*U S*) 2 Fed. Cas 274, 277.)

Destine A grant of land made by the Governor was in the following words "Exercising the authority which the King has granted to us, we *destine* and appropriate, in his royal name, the aforesaid twelve leagues" These words are of strong and decisive import, and, it is believed, show the intent of granter as fully as any that could have been adopted. To "*destine*" is to set, or appoint to a use, purpose, estate, or place We are all destined to a future state. To fix unalterably by a divine decree, to appoint unalterably The word 'appropriate", in the sense used, signifies to set apart for or assign to a particular use in exclusion of all other uses, to claim or use by an exclusive right No words of a more determinate character to convey or complete title could have been found in any language The words as used in the original grant mean to grant and deliver as property (*United States* v *Philadelphia and New Orleans*, 52 U S (11 How) 609, 660, 13 L Ed 834)

'DESTINED FOR ENEMY COUNTRY.' *See* 19 C.W.N 1239=33 I.C. 289.

Destiny The power that foreordains.

DESTINY, FATE, LOT, DOOM *Destiny* is used in regard to one's station and walk in life, *fate* in regard to what one suffers, *lot* in regard to what one gets or possesses, and *doom* is the final destiny which terminates unhappily, and depends mostly upon the will of another *destiny* is marked out, *fate* is fixed, a *lot* is assigned, a *doom* is passed It is the *destiny* of some men to be always changing their plan of life, it is but too frequently the *fate* of authors to labour for the benefit of mankind, and to reap nothing for themselves but poverty and neglect, it is the *lot* but of very few to enjoy what they themselves consider a competency, a man sometimes seals his own *doom* by his imprudence or vice

Destitute In great need, especially of food, clothing and lodging A man is not "destitute," simply because he has no food or money, if he is able bodied and physically well and can get a sufficiency of work for his maintenance—but will not work because he is on strike (case for relief under poor law *A-g.* v. *Merthyr Tydvil*, *Stroude* 519)

The words "DESTITUTE PERSONS," within the meaning of a statute, providing that the overseers are to relieve destitute persons found in their towns and

having no settlement therein, includes a person found in distress, although he may have property of his own not available for immediate relief. A person in jail on execution and actually destitute is entitled to relief, although he refuses to make oath that he is unable to support himself in jail and has not sufficient property to furnish security for his support. *Inhabitants of Norridgewock* v. *Inhabitants of Solon*, 49 Me 385.)

The words "DESTITUTE OF PROPERTY" or means of comfortable subsistence" may be used to characterize minor children who have no property although they earn their own living. (*Woods* v. *Perkins*, 9 South, 48, 43 La Ann 347)

Destroy. To pull down, unbuild, demolish, to make away with, to reduce to nothing; to kill, slay

The word "destroy" has on more than one occasion been construed to describe the act which, while rendering useless for the purpose for which it was intended, did not literally demolish or annihilate the thing

IN RELATION TO WILLS "Destroy," within an act relating to wills, includes burning, cancelling, and tearing up A will burned, cancelled, or, torn *animo revocandi* is destroyed *Johnson* v *Brailsford* 10 Am. Dec. 601)

COMPARED WITH 'DAMAGE.' Where a contract of lease, contained a stipulation If damage be done to company's property, the subscriber shall pay to the company the value of the property so *damaged or destroyed*, or the cost of repairing the same; Greenbaum, J, in a dissenting opinion said. The word destroyed was evidently merely intended as an amplification of the word 'damaged' and should be construed in conjunction with the preceding words (*cited in Ame Cyc*)

MORE COMPREHENSIVE THAN 'DISABLE' In *Tully* v *People*, 67 N Y. 15, 20, the Court said: "the word destroy is more comprehensive than the word disable and includes what is signified by it."

TO DESTROY, CONSUME, WASTE To *destroy* is to reduce to nothing that which has been artificially raised or formed, as to destroy a town or a house to *consume* is to use up; as to consume food, or to consume articles of manufacture· to *destroy* is an immediate act mostly of violence, *consume* is a gradual and natural process, as oil is consumed in a lamp To *waste* is to consume by a misuse, waste by a life tenant of the estate to the prejudice of the reversioner.

DESTROYED, WHOLLY. 'What is the meaning of the words' wholly destroyed, when applied to a building. The words when applied to a building mean totally destroyed as a building, that is, that the walls, although standing, are unsafe to use for the purpose of rebuilding: and must be torn down and a new building erected throughout. *German Ins. Co* v. *Eddy*, 19 L R A. 707)

Destroyer. Small swift warship meant to destroy torpedo-boats and submarines.

Destruction. A pulling down (as, of a building) waste (as, of growing crops), extinction. "We are unable to go to the extent of holding that the word destruction must necessarily be construed as synonymous with demolition, 'breaking up in parts' 'pulling down.'" The "*destruction*" *of property*, within the

Destructive.

meaning of the law of fire insurance, is shown by evidence that the insured building was so damaged as to render it useless for the purpose for which the property was used. If what remained of the property so insured was of any value, the insurer would be entitled to it."

DESTRUCTION, RUIN. *Destruction* is an act of immediate violence, *ruin* is a gradual process, a thing is *destroyed* by some external action upon it, a thing falls to *ruin* of itself: we witness *destruction* wherever war or the adverse elements rage, we witness *ruin* whenever the works of man are exposed to the effects of time The property of a man may be *destroyed* to a greater or less extent, without necessarily involving his *ruin* The *ruin* of a whole family is oftentimes the consequence of *destruction* by fire. The happiness of a family is *destroyed* by broils and discord; the morals of a young man are *ruined* by a continued intercourse with vicious companions.

Destructive Causing destruction, prone to destruction, merely negative (as, destructive criticism).

"**Destructive matter,**" as used in a statute prescribing the punishment for any person who shall cast or throw on or otherwise apply to any person any corrosive fluid or other destructive matter with intent to burn, disfigure, or disable such person, would include *boiling water* (*Regina* v *Crawford*, 2 C & K 129)

DESTRUCTIVE, RUINOUS, PERNICIOUS *Destructive* and *ruinous*, have a distinction in their sense and application, fire and sword are *destructive* things, a poison is *destructive* intestine commotions are *ruinous* to the prosperity of a state *Pernicious* approaches nearer to *destructive* than to *ruinous*, certain food is *pernicious* to the body, certain books are *pernicious* to the youthful mind.

Desuetude State of disuse, abrogation of a law by long nonuser. "The instances are numerous of statutes being repealed in fact—a kind of silent legislation As to the abrogation of statutes by nonuser, there may rest some doubt, for myself, I own, my opinion is that nonuser may be such as to render them obsolete, when their objects vanish or their reason ceases .....The long desuetude of any law amounts to its repeal Mr Woodeson in his second lecture (volume 1, 63) of civil, positive and institutive laws observes, 'that the last consideration is the period of their existence' A statute may be repealed either expressly or by implication founded on disuse..... . .It certainly requires very strong grounds to presume a law obsolete A total disuse of any civil institution for ages past may afford just and rational objections against disrespected and superannuated ordinances" [*James* v. *Commonwealth*, (Pa.) 12 Serg. & R 220, 227.]

Detail. *As a verb* to set apart for a particular service, relate circumstantially *As a noun* a minute account; a narrative or report of particulars. *In military law*, one who belongs to the army, but is only detached, or set apart, for the time, to some particular duty or service, and who is liable at any time, to be recalled to his place in the ranks. A "detail" is distinguished from an "exempt" (in military law) (*i.e*) one who is one free from any charge, burden, or duty,—who is not liable to any service. (In re *Strawbridge*, 39 Ala. 367, 375.)

Deterioration.

The words 'detail and particulars' are synonymous, and in ordinary parlance, convey the same meaning *City Pass R Co* v *Knee*, 83 (Md 77.)

DETAILED REPORT A detailed report in writing of financial transactions during a particular year, is a report that states faithfully the several sources of income and expenditure and the sums paid on account of each, although it does not state specially each item of the sum thus expended (*State* v *Washington County Commissioners*, 47 N.E 565, 568; 56 Ohio, St. 631.)

Detain To stop, to delay, to restrain from proceeding, keep in temporary custody *'Detain'* is susceptible of many shades of meaning. The idea of force or even duress, threat or menace, can all be easily excluded, and the word still be pregnant of meaning. (*State* v *Maloney*, 105 Mo. 10, 17) To make the crutch of a crippled girl, or to hold her by the hand, while pleading with her for carnal knowledge, is a "detention," within the meaning of a statute creating the offence of detaining a woman against her will with intent to have carnal knowledge of her. [*Paynter* v *Commonwealth* (Ky.) 55 S.W. 687, 688.]

'DETAIN AND WITHHOLDING, are substantially omnibus terms applied to real estate. [*Merritt* v. *Carpenter*, 3 Abb Dec (N. Y) 285]

"**Detained in safe custody**" (in S. 471, Cr P. C). (48 C L J. 148=111 I C 399=A I.R. 1928 Cal. 653)

Detect, discover the existence, presence or nature of a thing (as,to detect strychnine in suspected food; to detect a thief)

TO DETECT, DISCOVER *Detect* is always taken in a bad sense *discover* in an indifferent sense. *Thieves* are detected in picking pockets, a lost child is *discovered* in a wood *Detection* is the act of the moment, it relates to that which is passing a *discovery* is either a gradual or an immediate act, and may be made of that which has long since passed. A *plot* is detected by any one who communicates what he has seen and heard, many *murders* have been discovered after a lapse of years by ways the most extraordinary

"**Detention**" of judgment-debtor means detention in civil prison (39 P L R 471=A I.R 1937 Lah. 253.)

Deter Abstain from action

TO DETER, DISCOURAGE, DISHEARTEN. A variety of motives may *deter* any one from an undertaking, but a person is *discouraged* or *disheartened* mostly by the want of success or the hopelessness of the case The prudent and the fearful are alike easily to be *deterred*; impatient people are most apt to be *discouraged*, faint-hearted people are easiest *disheartened*.

Deterioration (*in Railways Act*). The word "Deterioration" does not cover the fall in the market value of the goods which is due to the delay in delivery [(21 Mad 172, 233 P L R 1912, not *Foll*., A.I. R. 1929 Lah. 255, *Ref*.) 119 I C. 95=51 A 895=1929 A L.J. 859=A.I R. 1929 All. 597.]

DETERIORATION AND DEPRECIATION The deterioration of a thing, whether it be in quality or in value, implies in ordinary parlance a change for the worse in the thing itself. If a thing is worthless than it was before only because the market rate has gone down it would be correct to say that it has depreciated in value, but not that it has deteriorated [21 M.

Determinable.

172 and 2 L. 133 (F B.), *Expl.*) 5 Lah 523=85 I.C. 404=A I.R. 1925 Lah. 255]

Determinable The word "determinable" in S. 8 of the Suits Valuation Act applies as much to the final and exact and judicial determination made under S 11 of the Court-Fees Act as it does to the inexact and *ex parte* valuation in the plaint. [20 B 265, but *see* 22 Bom. 963 (965)]

Determination The "Determination" of lease for a term or estate is the same thing as its "Termination", and does not only mean premature extinction, but the coming to an end in any way whatever (*St. Aubyn* v. *St Aubyn*, 30 L.J. Ch. 920)

Determination of tenancy.—In Agricultural Holdings Act, 1883, S 7, construed [Re *Paul*, (1890) 24 Q.B.D. 247, *Black* v. *Clay*, (1894) App Cas. 368, *Morley* v *Carter*, (1898) 1 Q B 8 See now Agricultural Holdings Act, 1900 (63 & 64 Vict c 50)]

Determinative The word *"determinative,"* occurring in S. 121 of the Bombay Land Revenue Code is to be understood as meaning *"conclusive"* as between the parties to the dispute wherever the boundary of the holdings come in question. 10 B 456.To ascertain and fix with precision (as, to determine the meaning of a word used in a statute), be the deciding factor (as, this determines the question one way or other, terminate or make terminable) (as, determination of a lease.)

To DETERMINE, RESOLVE We *determine* how or what we shall do, this requires examination and choice: we *resolve* that we will do what we have *determined* upon, this requires a firm spirit Our *determinations* should be prudent, that they may not cause repentance, our *resolutions* should be fixed, in order to prevent variation A master *determines* to dismiss his servant, the servant *resolves* on becoming more diligence We *determine* points of question; we *resolve* difficulties. Every point is not proved which is *determined*, nor is every difficulty *resolved* which is answered.

Determine To fix all boundaries of, to mark off, to separate, to fix the determination of, to limit, to bound to bring to an end, to fix the form or character of, to shape; to regulate, to settle, to prescribe imperatively, to ascertain definitely, to bring to a conclusion, to settle by judicial sentence, to decide.

Determined Construed as "finally determined" (*See* 16 Bom. 708)

Deterrent punishments. Severe punishment, intended to prevent the offender from again committing the crime. The theory of deterrent punishments should be loosely put into force. (2 Pat L.T. 596=63 I.C. 615=22 Cr L.J. 679=1922 P.H.C C. 14)

Dethrone Deposing a sovereign or king.

Detinue *Detinue*, is a writ which lies against him, who having goods or chattels delivered to keep, refuseth to re-deliver them. In this action of detinue it is necessary to ascertain the thing detained in such a manner as that it may be specifically known and recovered. Therefore it cannot be brought for money, corn or the like, for that cannot be known from other money or corn, unless it be in a bag or a sack, for then it may be distinguishably marked. (*Tomlin's Law Dic., Termes de la Ley.*)

Detritus.

"Detinue" is a mode of action given for the recovery of a specific thing and damages for its detention Though judgment is also rendered in favour of the plaintiff for the alternate value, the thing itself is the main object and inducement to the allowing of the action The action is not adapted to the recovery alone of the value of the thing detained, nor can it be maintained therefor.

"In order to ground an action of detinue, these points are necessary; first, that the defendant came lawfully into possession of the goods, as either by delivery to him or by finding them, second, that the plaintiff have a property in them, third, that the goods themselves be of some value, fourth, that they be ascertained in point of identity. (*Jac Law Dict. Titl "Detinue"*) This form of action, and the mode of pleading adapted to it, no longer exist, but the remedy is afforded under a modified form. The thing must also be identified with reasonable certainty.

DETINUE AND REPLEVIN DISTINGUISHED Detinue is an action *ex.delicto*,and is for the most part superseded by replevin It is preferable to replevin where the plaintiff is indifferent whether he recover the goods or the value.

DETINUE AND TROVER DISTINGUISHED The action of detinue lies for the recovery of the property itself, with damages for the wrongful detention of it, while the action of trover lies for the recovery of damages for the wrongful conversion of the property.

An action to recover damages for the conversion by the defendants of a large quantity of logs of timber belonging to the plaintiff is not either in form or in substance, an action of detinue, in which the plaintiff seeks to recover a specific chattel which the defendant detained from him, and in which the judgment would be that the defendant do deliver the chattel or pay the value of it The action more resembles what used to be called an action of trover. The subject-matter of the action is timber, an ordinary article of commerce, which, according to the evidence of the usage of trade, is disposed of in the same year in which it arrives at Rangoon (the market for the timber), either by sale or by being cut up, or in various ways The plaintiff could not claim four years afterwards the restitution of the particular logs His claim is, and must be, to the damages which he has sustained by the conversion of the logs by the defendants at that date [5 I A. 130=4 C. 116 (119-20)=3 Sar. 622=3 Suth. 525.]

Detract To depreciate the merit of a person or thing.

Detraction Disparagement

Detractor. One who detracts.

Detrain. Alight, make (troops) alight from train

Detriment. Harm done, loss or harm suffered in person or property.

Detrimental. Harmful, undesirable. Business which is "Detrimental to surrounding occupiers" is not the same thing as a dangerous business (per *Hawkins, J., Lepla* v. *Rogers*, 37 S.J. 11).

Detritus. The word "detritus" is used in the mining law to designate that superficial deposit on

Detur dignior.

the earth's surface which is moveable, and constructed with the immoveable mass that lies below (*Stevens* v. *Williams* (U S) 23 Fed Cas 44), worn-out matter, such as gravel or rock debris.

Detur digniori A maxim meaning 'Let it be given by the more worthy'

Deus solus haeredem facere potest, non homo A maxim meaning. "Deity alone is able to make an heir." "God alone and not man, can make an heir."

Deuterogamy. Re-marriage after a spouse's death.

Devadayam or Devadyem or Davadayem What is due to the gods. Grants of land for religious purposes. (Fifth report) 27 L.W. 101

Though the word "*Devadayam*" used in the revenue records to describe the lands attached to a temple may not be conclusive, the use of the words "*Perumal koil inam*" tends to show that the inam was regarded as an *inam* belonging to the temple 125 I C 250 (Mad). *See also* 27 L W 101

The use of the word "devadayam" in a grant does not necessarily import that the grant is made to the temple. Where a grant contains the clause that it is to be confirmed to party so long as he continues the performance of the service, it is a grant to the party burdened with service and not the deity even though the word "devadayam" is used 150 I.C 156=6 R.M 703=39 L.W. 513=A I R 1934 Mad 381

Devadayam inam lands are inalienable (45 Mad. 620 *Foll*) (22 L W 225=A I R. 1925 Mad 1046)

Devala A great Hindu Sage and writer of an important Smriti that bears his name

Devamatrika (*Mar*) **Devamatruka** (*Tel*) Watered by rain, fields, lands, etc, as opposed to those dependent upon artificial irrigation

Devant. Before

Devant le roy Before the King.

Devarayavatta (*Karn*) A tax formerly levied in Mysore on the lands of rebellious subjects, rated at so much for each temple on them

Devarakadu (*Coorg*), a sacred grove, *see* Bad. Pow. III. 478.

Devasam. (*Mal.*) Temple property; a temple (*Sun. Iyer's Mal Law*)

Devastate. Lay waste any tract or territory.

Devastation. Act of devastating, waste.

Devasthan (or Dewasthan). Land granted for support of a temple (Bo) (Bad. Pow)

Devasthana-pudi vatta, (*Karn*) A tax of two-and a-half fanams per kandi of land levied upon the ryots on behalf of the temple or temples of a district (*Mysore.*)

Devatavuttara. (*Karn*) Lands allotted rent-free for the support of a temple.

Devastavit. Is a loss suffered to the state of a deceased person by the negligence of the executor or administrator. (5 *Rawle* 266, 282; *Lomax. Exors.* p. 475; *Wil. Exors*) It is the mismanagement of the estate of a deceased person in squandering and misapplying assets contrary to the duty imposed on the executor or administrator. It may result from the improper payment of claims which, by the exercise

Device.

of due diligence, the administrator might have ascertained to be unjust and illegal. It may also result where an administrator purchases the property of the estate of which he is administrator, for himself. So also, a neglect to collect a debt due on an estate, which might with proper exertion be collected, is a devastavit.

Devaswom (Deva· God: swom· property) Temple; temple property; property dedicated to temple. (*Sun Iyer's Mal. Law*)

Develop (*in respect of business*) A power of attorney, which, in consideration of a prescribed royalty, appointed a party sole agent to "word and develop" the business of such patents, does not give the agent power to grant an exclusive license which would transfer substantially the entire interest in the patent, but it does authorize him to grant non-exclusive licences to manufacture and sell [*Union Switch & Signal Co* v *Johnson R Signal Co* (*U.S*), 61 Fed 940, 943, *Johnson R. Signal Co* v. *Union Switch & Signal Co.* (*U.S.*), 59 Fed 20, 23] The word "developed," *as used in an indictment* alleging that it had been "developed" before the grand jury, which was investigating a charge of bribery, signifies an unfolding of the crime. (*State* v *Faulkner*, 175 Mo 546)

Development commission. A public body created to aid in town improvement schemes.

Devest or Divest (devestire) Is opposite to invest As to invest signifies to deliver the possession of anything to another, so to devest signifieth to take it away (*Tomlins Law Dic*)

Deviation (*in Marine Insurance*). Alteration of course from that set down in marine policy, such a departure, unless it is made for avoiding sea perils, annuls the risk of the underwriters

This is a technical term in commercial law, meaning the departure of a ship from the course of navigation which is either usual and proper, or one expressly agreed to be followed on the voyage, with reference to which the contract is made.

Deviation in the course of a ship under a contract of affreightment may be justified either by express permission in the contract or by necessity (as) to avoid danger as capture by hostile ships in time of war, to avoid other peculiar damages or risks to ship, cargo or persons, in order to save life in another ship in distress, etc.

Deviation, in special Acts, means shifting the authorised work in its integrity from one site to another which may be deemed more suitable. It does not imply a right not only to ship the situation, but to dispense with half or two-thirds the work. (*Herron, Arnold, Marine Insurance*; *Carver, Sea Carriage*)

COMPULSORY DEVIATION. Where a vessel was by compulsion forced from the direct course of her voyage, there is no deviation. (*Savage* v *Pleasants*, 6 Am. Dec. 424) There is no deviation of a vessel when she is driven out of her course by strong air currents. (*Petapsco Ins Co.* v. *Coulter*, 7 L Ed. 659.)

Device. That which is devised or formed by design; a contrivance; an artificial contrivance So also the term has been variously defined as meaning an invention, a stratagem; a project; a scheme-often

Devil on the neck.

a scheme to deceive, an artifice, also, used to denote hearing or emblematic representation or motto.

Devil on the neck. An old instrument of torture, in England, formerly used to extort confessions, etc It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back (*Cowel*)

"Deviling," as used by a witness in a prosecution for murder, stating that the defendants were deviling the deceased, was explained to mean such acts as taking his cap from the deceased, placing their hands on his person, threatening to put him in the lock-up, and raising the foot as if to strike him, so as to drive him into a store for protection, etc (*State* v *Jimmerson*, 24 S.E 494, 118 N C 1173)

Devil's Advocate Person appointed to state the disqualifications of one whom it is proposed to make into a saint, person who sees only the dark side of things

Devilry Black magic, powers of evil, reckless daring spirit.

Devisable The words "devisable" and "descendible" are convertible terms, so that, where a contingent remainder is descendible, it is also devisable (*Varick* v *Jackson* (*N Y*), 19 Am. Dec 571)

Devise. (Primarily, a dividing or division) *In the law of wills as a noun* a gift of real property by will, a disposition by will, an instrument by which lands are conveyed by will, the direction of a testator of sound mind as to the disposition of his property after his death *As a verb* to give or dispose of land or hereditaments by will, sometimes as a verb, to draw an instrument A "'*Devise*' is where a man in his testament giveth or bequeatheth his goods or his lands to another after his decease." (*Termes de la Ley*) The word was formerly particularly applied to bequests of land, but is now generally used for the gift of any legacies whatever (*Tomlin's Law Dic.*)

DEVISE, in S 6 of the Statute of Frauds (29 Chas 2 c 3), means "that group or collection of words reduced into writing which operates as a disposition, of the testator's land." [*Swinton* v *Bailey*, (1878) 4 App Cas 70, 79, Lord Penzance] In the Wills Act (7 Will 4 & 1 Vict c. 26), "includes unless a contrary intention appears by the will, a devise by way of appointment under a special or general power conferred on the testator as to property not his own" [*Preme* v. *Clement* (1881) 18 Ch. D 515, Jessel, M R]

TO DEVISE, BEQUEATH In the technical sense, to device is to give lands by a will duly attested according to law, to bequeath is to give personality after one's death by a less formal instrument

DEVISE, BEQUEATH, POWER OF APPOINTMENT. "The words 'Devise' and 'Bequeath' are terms of known use in our law In their ordinary sense they signify the declaration of a man's will concerning the succession to his own property after his death Such a 'devise' or 'bequest' operates by virtue of the will, and of that alone. On the other hand, an appointment under a limited power operates by virtue of the instrument creating the power, the execution, when valid, is read into, and derives its force from, that instrument." (1 Sug. Pow. 6 Ed. 385)

Devout.

DEVISE, DEVISOR, DEVISEE *Devise* is to divide or sort into parcels, a gift of lands, etc. by a last will and testament The giver is called the *deviser*, and he to whom the lands are given, the *devisee*. (*Tomlin's Law Dic*)

"Devisee", defined Act 27, 1866, S. 2

DEVISEE. One who takes by will, he to whom property is given by will In its technical sense, one to whom lands or other real estate are devised.

Devisee and legatee A devisee is one to whom immoveable property is given by will, and legatee is one whom moveable property is so given.

Devisor A giver of lands of real estate by will, the maker of a will of lands, a testator.

Devolution The act of transferring or transmitting to another. In ecclesiastical law, the forfeiture of a right by a non-user, as a right of presentation.

Devolution of interest The phrase "devolution of interest" in O. 22, R 10(P.C) is not confined in its meaning to devolutions by death The Legislature intended by this section to provide for all cases not falling within the foregoing sections as to devolution by assignment, marriage or death. (30 Bom. 250 (258)=6 Bom L R 995 *following* 28 C. 171=5 C W N 307)

Devolve. A term used where an estate devolves upon another by operation of law, and without any voluntary act of the previous owner, passes from one person to another ''Devolve' means to pass from a person dying to a person living, the etymology of the word shews its meaning" (per *Leach, M R*, *Parr* v *Parr*, 1 My & K 648) An estate is said to "devolve" on another when, by operation of law, and without any voluntary act of the previous owner, it passes from one person to another, but it does not devolve from one person as the result of some positive act are agreement between them The word is itself of intransitive signification, and does not include the result of an act which is intended to produce a particular effect. It implies a result without the intervention of any voluntary actor (*Francisco* v *Aguirre*, 29 Pac 495, 497, 94 Calif 180)

"SHALL DEVOLVE." *See* 13 R D 188.

'DEVOLVING BY INHERITANCE" 57 Bom 488=145 I C. 262=35 Bom.L.R. 418=1933 Bom 287.

Devout Devoted to religion, religious feelings or religious exercises.

DEVOUT, PIOUS, RELIGIOUS, HOLY. The *Devout* man is he whose mind is given to religious feeling, and is engaged in the exercise of prayer, divine praise, and spiritual meditation. The *Pious* man has reverence and love toward the Supreme being. As *Devout* points to the external observances of religion, so *Pious* points to its moral sentiments.

Religious is a wider term, and denotes one who in a general sense, is under the influence of religion, and is opposed to irreligious or worldly, as the *pious* man is opposed to the impious or profane, and the *devout* to the indifferent or irreverent.

Holy, when used of person, is employed to denote men of especial saintliness or purity and integrity of life, the result of the continued influence of religion upon their nature (*Smith. Syn. Dis.*)

Dewadaya

Dewadaya. Lands or allowances for the support of a temple.

"Dewali shoukthu" The term "dewali shoukthu" may mean petitioning-creditor as well as insolvent 5 Rang. 768=107 I C. 172=A I R 1928 Rang 60.

Dewan. Place of assembly. Native Minister of the Revenue Department, and Chief Justice in Civil causes within his jurisdiction. The term has also, by abuse, been used to designate the principal revenue servant under an European Collector, and even of a Zemindar. By this title the East India Company claimed to be receivers-general, in perpetuity, of the revenues of Bengal, Behar and Orissa, under a grant from the great Mogul *See* Dewanny. (*Fifth report*)

Dewanny. The office or jurisdiction of a Dewan

Dewanny Court of Adawlut An ancient court for trying revenue and other civil causes (*Fifth report*)

Dewastaun, Dewustan or Devasthanam Place or situation of the Gods, a temple. Lands granted for the support of temples and other religious purposes

Dhada-vantap (*Bo*) (*Bad. Pow* III 294)

"Dhadhwai". A Custom of "*Dhadhwai*" or sole right to weigh and measure and procure customers for commodities imported into a market is not unreasonable or opposed to public policy 98 I C 759 (2)=A.I R. 1927 Nag 89.

Dhal Bachh Distribution of revenue over holdings.

Dhalboom Estate Dhalboom family The Dhalboom family is one of a group of families whose ancestors originally came from the north-west part of India and established themselves by conquest in that part of Bengal which is known as the Jungle Mehals. Some of these families, like the Dhalboom family, are now governed by the Mithakshara law, and others by the Dayabhaga But there are intermarriages between them In all the Raj descends on a single heir These families, or, at any rate, the more important of them, keep up a sort of semi-royal state, and dignify the heir-apparent and those in immediate succession with titles of honour which denote precedence Thus in the Dhalboom family the eldest son of the ruling Raja takes the title of Jubraj, the second that of Hikim, the third that of Bara Thakoor, the fourth that of Koer, the fifth that of Musib and the remaining sons that of Babu [29 I A. 62 (67)=29 C. 343 (353)=6 C.W N 459=4 Bom. L.R 372=8 Sar 238]

Dhangar-Manyam (*Karn*) Taxes on Shepherds. Charge for pasturage

Dhani The word "dhani" is not equivalent to bearer in the language of the Bombay Presidency; and so a document making a sum of money payable to "dhani" or "owner" on demand is not negotiable by mere delivery and is not within the words or intent of S. 25 of the Paper Currency Act. 16 B 689.

'Dhanijoh' Hundis The hundis which are known in the Indian Commercial Circles as "*Dhanijoh*" hundis and payable to bearer, are negotiable instruments (111 I C. 686=A.I.R 1928 All. 549.)

Dhar-bachh.

Dhanmadi (*Tel.*) A rice field.

Dhanyadayam (*Tam*) Receipt of revenue, etc, in grain

Dhanyadulu (*Tel.*) All sorts of grains

Dhanyam Grain or grains generally.

Dhanya-saramu (*Tel.*) Grain after threshing

Dhanyavarddhanam (*Mal*) Lending grain at interest, receiving a usurious return for seed corn supplied to the cultivators

Dhar, the entire cultivation as reckoned up for the division of grain (Pj D I Khan) (*Bad Pow*, II. 650)

Dhar, Dhardari. Fued, faction, party spirit, especially used in the northern villages of the Punjab. (*Bad Pow* II, 625.)

Dhar, dhara (*C. P and Bo*), the distribution of the assessment, schedule of rates to be paid by each landholder (*Bad. Pow.* II. 376)

Dhara (*Bo*), the custom or standard rates of division of crop or of the revenue payment. III 283, 289.

Dhara-chadao (*Tel*) The former custom of making the cultivators pay a premium on the market price for the share of the crop relinquished by the Government.

"Dhara Land" defined. Bom. Act I of 1880, S 3(9).

"DHARA LAND" means land held by a dharekari, or by a quasi-dhare Kari (Bom. Act I of 1880, S. 3, cl 9.)

Dharam Dharam is defined in Wilson's Dictionary to be law, virtue, legal or moral duty (26 I.A. 71 (81)=23 B 725 (735)=3 C.W N. 621=1 Bom. L.R. 607=7 Sar. 543)

The word "dharam," when used in connection with gifts of property by a Hindu, has a perfectly well settled meaning and connotes "ishta" and 'poorta" donations The word is a compendious term referring to certain classes of pious gifts, and is not a mere vague and uncertain expression 30 M. 340 (341)=3 M L T. 379=17 M.L J. 379. (*Per* Subramania Aiyar, J.), *following* 23 Bom. 725 (P C). *But see* 31 Cal. 895, *infra* A devise or bequest to "dharam" (which is translated as "religious purposes" is void for uncertainty 31 C 895 (897)=8 C. W N 653, 26 I A. 71 (81)=23 B. 725=3 C W.N. 621 =1 Bom L R 607 (P C.) *But see* 30 Mad 340, *supra.*)

Dharam Dharmam. In Wilson's Glossary, "dharam" is defined to be "law," 'virtue," "legal or moral duty" (Dharmam.) (5 A L.J. 23 (27), referring to 23 B 725 (P C), *See also* 30 Mad 340=17 M L J. 879, 8 C W N. 653, 31 Cal. 895; 10 C L.J. 355 (367)=14 C W.N. 18)

Dharamsala. The word *Dharamsala* indicates a place wherein a certain section of the public have got a right of residence without any payment A public boarding house is not a *Dharamsala.* 78 I C 320=A.I R. 1925 Oudh 202.

Dhar-bachh (*see* bachh), expresses the case where tenants, and proprietary co-sharers, all pay alike in sharing the burden of the L R ; payment by an all round rate on land (N.W.P.). (*Bad. Pow*)

Dhardhura.

'Dhardhura'. Dhardhura is not a term of art, signifying necessarily always and under all conditions that the deep stream continues to be a permanent boundary between two estates on the opposite banks of a river. There are many variations in the sense of the word, 9 O L J 518=A.I R 1923 Oudh 102. *'Custom of Dhardura'*, generally means that a stream shall be the boundary. 116 I.C 300=1929 A. 233

Dharekar (*Bo , Konkan*), now a privileged tenant under a Khot proprietor, one who pays no rent beyond the dhara or established rate of L R payment. see (*Bad Pow.* III. 289.)

'QUASI-DHARKAR', term invented and used in the Khot Act, 1880, for another kind of privileged tenant of a lower grade than the dharekar, i e dharekars who had, in process of time, lost something of their privileges (*Bad Pow*.)

"Dharekari" defined Bom Act, I of 1880, S. 3 (6)

"DHAREKARI" means a land-holder who holds on the "dhara' tenure (Bom Act I of 1880, S 3, cl 6)

"Dharjya". *"A badharita" and "Dharjya"— Meaning of* If indicate tenancy with rent fixed in perpetuity or *mokurari* 39 C W N 1244

Dhar Kalan The main channel of a river

Dharkhast When a land is granted on *darkhast* it cannot be said that it is given to a man *benami* for some other individual The onus would be heavily on the party setting up such a case to make out his case. 22 L W 352=A I R 1925 Mad 973

Dharma (*S*) is characterized by right conduct prescribed in the vedas and Smritis and the conduct of the good (*Narada*) (17 M L J 379=30 Mad 340.) Law, right conduct, legal or moral duty

Dharmadaya. Where the grant made was Inam *Dharmadaya* and was to be hereditary *Held* the signification of such a grant is that it was made on grounds of religion, and not on political grounds. The mere fact that in occasional correspondence the grant is referred to as "jagir" or "saranjam," i e, political, cannot derogate from the effect of the language of the grant itself [33 M L T 378=50 I A. 308=(1923) M W N 638=48 Bom 1=26 Bom L R 252=77 I C. 100=28 C.W N 906=A I R 1923 P C 194 (P.C).]

Dharma-dev, Dharm-mal, grants to institutions or for pious (dharma) purposes (rent or revenue-free). (*Bad Pow*.)

"Dharmakriya". The Gujarati word *"Dharmakriya"* means religious ceremonies 32 Bom L.R 215=A I R 1930 Bom. 191.

'Dharmarth' meaning of *See* 78 P R. 1912=14 I. C. 247.

Dharmasala (*Hindi*) A building for the object of any dharma, a place of religious assembly. But the word is most commonly used to denote a rest house, the establishment of such houses having been a favourite form of charity among Hindus A Hindu or Sikh religious building. A place in which charity is exercised from religious motives. Dharmasala connotes both Hindu and Sikh place of worship. (142 I C. 606=13 Lah. 6=33 P L R 395=A.I.R. 1932 Lah. 268, 102 I.C. 893=9 Lah.L.J 276) The word *Dharmsala* indicates a place wherein a certain section of the public have got a right of residence without any payment A public boarding house is not a *Dharmsala* [78 I C. 320=1925 Oudh 202. (See *Dharmasala.*)]

Dharmasala and Gurudwara are often used as synonyms in old documents. (140 I C. 604=13 Lah. 677=33 P L R 1035=A.I R 1933 Lah 25)

Dharmila Dharmila Inam. "Dharmila" means "granted subsequent to permanent settlement." An inam granted subsequent to the settlement is a *dharmila inam* as opposed to inams granted prior to the settlement and excluded from the assets of a permanently settled estate and afterwards enfranchised by the inam rules in 1861 to 1864 (A.I R 1927 Mad. 988=105 I C. 864=50 M. 961=53 M L J. 868.)

A licensee under a dharmila inamdar in a Zamindari, for a period of ten years with a right to tap date trees is not a "tenant" (47 M L.J. 383=35 M.L. T 67=82 I C 391=1924 M W N. 769=20 L.W. 453= A I R 1924 Mad 818).

Dharna (*Hindi*) The sitting at the door of a house in order to enforce the performance of an engagement on the part of the resident—as the payment of a debt or the like The person who sits dharna neither eats nor drinks, and the notion is that if he dies there the guilt of his death is on the head of the man who failed to fulfil his engagement This practice is made an offence by the Penal law of India

Dharmidhar A writer on ancient Hindu Law—who wrote commentary on Manu Dharma Sastra.

Dharwai (*N W.P , Pj Sindh*), The village weighman, a person of (formerly) considerable importance when revenue and rent were taken in kind. Now he assists at ordinary grainsales, and especially where tenant-rent is paid in kind as in Punjab (Bad Pow III 341.)

Dhatu The term "Dhatu" does include coal. (118 I C 603=A.I.R. 1929 Pat. 190)

Dhenkli, dhenkuli, A lever arrangement by which an earthen vessel, or a leather bag, is lowered into a well and raised again, for irrigation [(N W.P) Bad. Pow II 9, (C P): II. 371, 2.]

Dheri thok (*Pj.*) A small sub division in a coparcenary village (Bad. Pow. II. 676.)

Dhirmadev. What is due to religion Land held by Brahmins for religious purposes.

Dhirmali (*Punjabi.*) The name of a sect of Sikh dissenters, followers of Prithi Chand or Dhirmal, the brother and opponent of Arjun the fifth Guru.

Dhobi Washerman, one of the village servants.

Dhurwa kavulu. (*Tel.*) A permanent lease.

Dhurwa-pairu (*Tel*) Garden produce, permanent crop A tax levied on garden trees after a due period of their plantation.

Dhuli batta. A cess on rice-lands (*Coorg*), see (Bad. Pow. III. 481.)

Dhuligutta. (*Tel*) A rent levied on a field before any seed is sown, a dust rent.

Dhuligutta.

Dhusar caste.

Dhusar caste. The members of the *Dhusar caste* claim to be Brahmins, but that claim is not admitted, nor is it proved in this suit. [48 I A. 405=49 C. 120 (124-5)=20 A L.J 857=15 L.W. 144=1922 M.W.N. 125=30 M L.T 144=26 C.W N 881=A.I.R. 1922 P.C 2=64 I.C 782=42 M L J 80]

It has been found by the Courts below that the Dhusars are not an agricultural class, although many of them are owners of land. (*Ibid*)

Diabetes A kind of urinary disease.

Diabolism Sovery, devil worship.

Diadem Crown as a badge of Sovereignty.

DIADEM, CROWN CORONET. The *Crown* is the simplest and most comprehensive of these terms It is applicable to almost anything that encircles the head, being of a solid and ornamental character. The *Diadem* was, as its name expresses, an ornamental head-band or fillet worn as an emblem of royalty. The *Coronet* is a slighter kind of crown The *crown* is the symbol of royal authority and dignity, the *diadem* of imperial splendour, the *coronet* of titled nobility. (*Smith Syn Dis*)

Diagnosis The art and act of distinguishing diseases by their symptoms, and so determining the necessary remedial treatment. Art or act of inferring from symptoms the cause and nature of an illness. A "diagnosis" is said to be little more than a guess enlightened by experience (*Swan* v. *Long Island R. Co* , 29 N. Y Supp 337, 338, citing *Eriswold* v. *New York Cent, & H R. Co* 12 Am. St. Rep. 775.)

Diana Good horsewoman, a woman bent on remaining single

Diaphragm or Midriff The thin muscular partition between the chest and abdomen, attached to the spine, the lower ribs and the sternum, or breast bone. Its contraction and expansion are the principal agents in the action of respiration *Diaphragmitis* signifies inflammation of the diaphragm or its peritoneal coats.

Diarchy Government by two independent authorities.

Diarchical Pertaining or relating to diarchy.

Diary Daily record kept of events. Case dairy is a book in which are entered the cases posted for a particular day, their disposal and other important matters connected therewith. "A man's diary is a record in youth of his sentiments, in middle age of his actions, in old age of his reflections." (*J Q. Adams.*)

Diatim. (*Lat.*) Daily

Dibba or Dibba-bhumi. (*Tel.*) High land, a height.

Dicast An officer in ancient Greece answering nearly to our juryman, an Athenian Judge chosen by popular lot.

Dictate, Dictation. In a technical sense, "dictation" means to pronounce orally what is destined to be written at the same time by another. (*Prendergast* v. *Prendergast*, 79 Am Dec 575)

To "dictate" (in respect of a will dictated by the testator and written down by another) as defined by 5 Foultier, 350, is to present, word by word, what is designed to be written by another; hence he concludes that a will cannot be made by signs or interrogations This able writer does not say what, or whether any, variance is fatal. We know that there have been decisions in some Courts of France requiring the utmost precision in this respect but we may not adopt this doctrine in its utmost extent It is desirable to have, as much as possible every word taken down from the testator's mouth, but we cannot adopt the unqualified proposition that the slighest variance is fatal, as, for example, the substitution of the pronoun "which" instead of "that" [*Hamilton* v *Hamilton* (*La.*) 6 Mart (N S) 143, 145]

Dictionary.

A person cannot be said to have written a will at the dictation of another when he did not understand the language of such other, but receives his instructions from the testator through an interpreter *Bordelon's Heirs* v *Baron's Heirs*, 11 La. Ann. 676, 679. To "dictate to" is to tell another what to write, to indict, to teach, to show another something with authority to declare with confidence, and a "dictator" is one whose credit or authority enables him to direct the opinion or conduct of another.

DICTATE PRESCRIBE SUGGEST. *Dictation* depends on the power of the person dictating, *prescription* on the wisdom of the thing prescribed, and *suggestion* on the sense of the person to whom the suggestion is made (*Smith Syn Dis.*)

Dictator. Person in the position of supreme irresponsible authority, statesman or soldier invested with absolute power to deal with a crisis.

Dictatorial. Despotic, absolute or free from all checks

Dictatorship. The office or dignity of a dictator, a form of Government in which the supreme authority in the State is vested in one person, called the dictator

Dictionary A lexicon, a vocabulary, a word book with meanings and explanations.

DICTIONARY, ENCYCLOPAEDIA. The definition of words, with their various changes, modifications, uses, acceptations and applications, are the proper subjects of a *dictionary*, the nature and properties of things, with their construction, uses, powers, etc,, are the proper subjects of an *encyclopaedia.*

DICTIONARY, LEXICON, VOCABULARY, GLOSSARY, NOMENCLATURE. *Lexicon* is a species of dictionary most appropriately applied to the dead languages. A *vocabulary* is a partial kind of dictionary which may comprehend a simple list of words, with or without explanation, arranged in order or otherwise. A *glossary* is an explanatory vocabulary, which commonly serves to explain the obsolete terms employed in any old author A *nomenclature* is literally a list of names, and, in particular, with reference to proper names. (*Crabb.*)

Dictionary is a list of words commonly arranged in alphabetical order, or which belong to a system, whether of language or any other, as a dictionary of botany, medicine, biography. It admits of every degree of copiousness in explanation of the terms from a line to an article. *Lexicon* is only a list of terms, like dictionary, connected with some system, but not professing to be exhaustive; A *Glossary* is an explanatory *vocabulary*, in which certain words are selected and arranged for consideration in detail. It commonly consists of peculiar words, unfamiliar or unknown. An *Encyclopaedia* unlike the preceding

Dictum.

is not restricted to any system or province, but embraces the whole sphere of human knowledge, and explains not merely the meaning of words, but the branches of knowledge which they represent. (*Smith Syn Dis*)

The dictionary definition of a term is frequently not suited for legal definition. The variations of meanings in the dictionary, are so luxuriant and ingenius that for a Judge, in his charge to jury, to read it over from the bench is but little assistance to the jury in following the real significance. "It is easier for an offender to baffle the dictionary than the Penal Code, for the former is perplexed with verbal niceties and shades of meaning while the latter grasps, in a broad practical way, at the substantial transactions of men" (*Minor* v. *State*, 100 Ga 511, 14 Cyc. 288)

Dictum An opinion expressed by a Court, but which not being necessarily involved in the case, lacks the force of an adjudication, an opinion of a Judge which does not embody the determination of the court, and made without argument, or full consideration of the point The word is generally used as an abbreviated form of *obiter dictum*, a remark by the way

OBITER DICTA are such opinions uttered by the way, not upon the point in question pending, as if turning aside for the time from the main topic of the case to collateral subjects (*Rohrbach* v *Germania Fire Ins Co*, 20 Am Rep 451) Where a Judge who writes the opinion of the court expresses a view upon any point or principle which he is not required to decide, his opinion as to such point or principle is *obiter dictum*. [*Bucki & Son Lumber Co.* v *Fidelity and Deposit Co.* (*U S*) 109 Fed 393]

DICTUM, DECISION AND STATUTE "I never allow my construction of a plain enactment to be biassed in the slightest decree by any number of judicial decisions or *dicta* as to its meaning, when those decisions or *dicta* are not actually binding upon me I read the Act for myself. If I think it clear I express my opinion about its meaning, as I consider I am bound to do. Of course, if other Judges have expressed different views as to the construction, and their decisions are binding on this Court, this Court has simply to bow and submit, whatever its own opinion may be But when there is no such binding decision, in my view a Judge ought not to allow himself to be biassed in the construction of a plain Act of Parliament (for it appears to me to be plain) by any number of *dicta* or decisions which are not binding on him. The Judge ought with all due respect to examine into them, but he must not allow any number of *dicta*, or even decisions which are not binding on him, to affect his judgment, except in one particular case That case is peculiar, and therefore I will mention it. Where a series of decisions in inferior Courts have put a construction on an Act of Parliament, and thus have made a law which men follow in their daily dealings, it has been held, even by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischief which would result from such a proceeding Of course, that requires two things, antiquity of decision, and the practice of mankind in conducting their affairs." Jessel, M R., Ex parte *Wiliey*; [In re *Wright*, (1883) L.R. 23 C D. 127.]

Die by his own hands.

Die. Cease to live, quit life.

TO DIE, EXPIRE There are beings, such as trees and plants, which are said to live, although they have not breath, these *die*, but do not *expire*: there are other beings which absorb and emit air, but do not live, such as the flame of a lamp, which does not *die*, but it expires. By a natural metaphor, the time of being is put for the life of objects, and hence we speak of the date *expiring*, the term *expiring*, and the like

"Die by his own hands." A contract of insurance, providing that the policy should be void in case the assured should die by his own hands, should be so construed as to excuse any such cases as accident or delirium, and to cases in which the self-destruction is clearly shown to have been accidental or involuntary (*Van Zandt* v. *Mutual Ben. Life Ins. Co.*, 14 Am Rep 915) The phrase "die by his own hand," as used in a policy of life insurance providing that in case the insured should die by his own hand the policy should be void is synonymous with "suicide", and does not include suicide by an insane man in a fit of insanity It means a felonious death, a case of *felo de se*, and not a case of death without legal or moral blame—the result of accident, mistake or disease. The madman, who in a fit of delirium commits suicide as much dies by his own hand as does the individual who accidentally and unintentionally takes his own life. They each die by their own hands, but without moral responsibility or legal blame One is no more within the conditions of the policy than the other The phrase "die by his own hand" may include all cases of death by the person on whose life the policy if effected, or it may receive limitations. The authorities concur in this that the expression does not embrace all cases of death by one's own hand If the insured kill himself by drinking poison, not being aware that it was poison, or by snapping a loaded pistol, ignorant that it was loaded, or by leaping from a window in the delirium of a fever, it is conceded that he did not die by his own hand within the meaning of the clause under consideration, though he might literally die by his own hand, that is, by his own act. (*Eastabrook* v *Union Mut. Life Ins Co*, 89 Am. Dec 743) In an action on a life policy which provided that the policy should be void "if the assured shall die by his own hand or act," he having hanged himself, the court said "It is now too well settled to admit of question that this clause is not to be construed as comprehending ever a possible case in which life is taken by the party's own act For instance, all the authorities concur in the view that an unintentional or accidental taking of life is not within the meaning and intention of the clause Thus, if, by inadvertence or accident a party shoots himself with a gun or pistol, or takes poison by mistake, or in a sudden frenzy or delusion tears a bandage from a wound and bleeds to death, in the literal sense of the term he "dies by his own act", yet all the decisions agree that a reasonable construction of the proviso, according to the plain and obvious intention of the parties would exclude such cases from its operation..... (*Knickerbocker Life Ins Co.* v. *Peters*, 42 Md. 414, 417, 421.) In a case where the assured under a Life policy threw himself into a river and was drowned and it is was found that he intended to destroy his life but that, at the time of committing the act, he

Die by his own hands.

was not capable of judging between right and wrong, *held*, that he had died by his own hands," under a provision in the policy of assurance, and that the policy was consequently avoided (*Borrodaile* v *Hunter*, 12 L J.C.P 225)

ACCIDENTAL OR UNINTENTIONAL SELF-KILLING is not within a condition forfeiting a policy for taking one's own life [*Keels* v *Mutual Reserve Fund Life. Ass'n* (*U S*) 29 Fed 198, 201]

SELF-DESTRUCTION WHILE INSANE. A life insurance policy providing that there should be no liability in case assured should "die by his own hand" means an intentional suicide while assured is in full possession of his mental faculties, and a person who ends his life under the influence of an insane impulse which he has not the power to resist, or commits the act without a knowledge at the time of its moral character and its consequences and effect , does not "die by his own hand" within the meaning of the policy [*Waters* v *Connecticut Mut. Life Ins. Co* (U. S), 2 Fed 892]

SUICIDE SYNONYMOUS "The authorities uniformly treat the terms 'suicide' and dying by one's own hand' in policies of life insurance as synonymous,and the popular understanding accords with this interpretation Chief Justice Tindall in *Borradaile* v. *Hunter*, 5 Man & G 668, says the expression 'dying by his own hand' is in fact no more than the translation into English of the word of Latin origin 'suicide.' Life insurance companies indiscriminately use either phrase as conveying the same idea If the words 'shall commit suicide,' standing alone in the policy, import self-murder so do the words 'shall die by his own hand' "

"DIE BY HIS OWN HAND OR ACT, SANE OR INSANE." Where a life policy provides that it shall be void if the insured "die by his own hand, sane or insane," it covers all cases of self-destruction, and relieves the company from liability, though the suicide is the result of insanity, or in itself an insane act (*Streeter* v. *Western Union Mut Life & Accident Soc of the United States*, 8 Am St Rep 882)

In an action on a life policy providing that if insured should die by his own hand or act, sane or insane, the policy should be void, the Court said (65 N.Y. 242) "We are to say from these words what the parties must have intended and we cannot properly say that additional words having no meaning were inserted in the contract, and if they mean anything it is just what the words commonly import, and that is, if death ensues from any physical movement of the hand or body of the assured, proceeding from a partial or total eclipse of the mind, the insurer may go free."

"Die by the Hand of Justice" Is a well-known phrase, denoting an execution, of a person convicted of crime, in any form allowed by law. The moral guilt of the party executed has nothing to do with the definition. Socrates, though he took the poison from his own hand, died by the hands of justice "Justice" 'in this sense of the term' (*Breasted Farmers' Loan & Trust Co*, 59 Am Dec 482.) To "die by the hands of justice" is dying by the execution of the sentence of the law.

Die Intestate. "Dying intestate " means dying without making a valid and operative disposition of one's property by will.

Dies non.

"Die leaving issue". The words "leaving issue" in a will, when used in reference to realty, mean leaving issue at the time of death. (*Downing* v. *Wherrin*, 49 Am Dec 139)

"Die without children". A devise to one, but, in case he should "die without children," then over, means "die without children living at the time of his death" [*Morgan* v *Morgan* (*Conn*), 5 Day 517, 523]

"Die without children or issue" This phrase in wills is some times construed as in In re *Hambleton. Hamilton* v *Hamilton*. (1884) W.N 157 as signifying "die without having had a child or issue " and at other times as in In re *Booth Pickard* v *Booth*, (1900) 1 Ch 768, as meaning without child or children living at her death The context of the will in question should be referred to (*Hawkin's Construction of Wills*, 214, 215, *Jarman, Wills*, 5*th ed* , Chs XL and XLI. where the subject is fully treated; *Theobald on Wills*, 1905 ed)

"Die without heirs" The terms "die without issue", "die without leaving issue" and "die without heirs" lawfully begotten are synonymous (*Moody* v. *Walker*, 3 Ark 147, 198)

A will providing that, in case the daughter of the testatrix should "die without heirs,"the estate devised should vest in others named, should be construed to mean without issue

"Die without issue," defined Act 25, 1838, S. 24.

Dies (*Lat*) A day

Dies a quo The day from which.

Dies ad quem. The day to which.

Dies dominicus non est juridicus A maxim meaning "Sunday is not a day for legal or judicial proceedings". (*Broom*)

Dies fasti. Business days

Dies feriati Holidays

Dies gratiae Day of grace.

Dies inceptus pro completo habetur A maxim meaning "A day begun is held as complete". (*Cyc. Law Dict*)

Dies incertus pro conditione habetur. A maxim meaning "An uncertain day is held as a condition."

Dies interpellat pro homine A maxim meaning 'The arrival of the day of payment is a sufficient demand for the person owing'.

Dies juridicus (*Lat.*) Days for legal purposes or judicial proceedings, a Court day.

Dies legitimus A lawful day, a term day.

Dies non. An abbreviation of the phrase "*dies non juridicus*", non-judicial days—days during which the Courts do not transact any business—as Sunday or the legal holidays. (*Havens* v. *Stiles* 56 L.R. A. 736). It is frequently said that Sunday is "*dies non juridicus*", but this means only that process cannot ordinarily issue or be executed or returned, and courts do not usually sit, on that day. It does not mean that no judicial action be had on that day. On the contrary, it is laid down in books of

Dies Solaris

authority that warrants for treason, felony and breach of the peace may be issued and executed on that day. (*State* v. *Ricketts*, 74 N.C. 187, 193.)

Dies solaris. A solar day

Dies solis. Sunday.

Dies utiles. An available day.

Diet. A legislative assembly, a meeting of delegates.

Dieu son acte Act of God

Differ To be unlike; to be distinguishable, to have a different opinion

TO DIFFER, VARY, DISAGREE, DISSENT. Differ, vary, and disagree are applicable to persons only. To differ is the most general and indefinite term, the rest are but modes of difference we may *differ* from any cause, or in any degree, we *vary* only in small matters: thus persons may differ or vary in their statements. There must be two at least to *differ*, and there may be an indefinite number one may *vary*, or an indefinite number may *vary*, thus two or more may differ in an account which they give one person may vary at different times in the account which he gives. Politicians may *differ* as to the conduct of public affairs, people may *disagree* who have to act together. They may *vary* in the reasons they assign for not acting together. A Judge may *dissent* from any opinion recorded by other Judges sitting on the same Bench.

Difference. The act of distinguishing, discrimination, distinction, disagreement, dispute In an agreement for submission to arbitration "difference" means "disagreement" or "dispute".

DIFFERENCE, DISTINCTION *Difference* lies in the thing; *Distinction* is the act of the person: the former is, therefore, to the latter as the cause to the effect, the *distinction* rests on the difference those are equally bad logicians who make a *distinction* were there is a difference.

"I trust no real ground of distinction can be made between civil and criminal cases". (*State Trials*)

DIFFERENCE, DISPUTE, ALTERCATION, QUARREL. A *difference* may sometimes arise from a misunderstanding, which may be easily rectified, *difference* seldom grow to *disputes* but by the fault of both parties; *altercations* arise mostly from pertinacious adherence to and obstinate defence of, one's opinions, *quarrels* mostly spring from injuries real or supposed *differences* subsist between men in an individual or public capacity, *disputes* and *altercations* are mostly conducted in a direct manner between individuals; *quarrels* may arise betwixt nations or individuals, and be carried on by acts of offence directly or indirectly.

"Ought lesser differences altogether to divide and estrange those from one another whom such ancient and sacred bands unite?" (*Blair.*)

"I have often been pleased to hear *disputes* on the Exchange adjusted between an inhabitant of Japan and an alderman of London". (*Addison*)

"In the House of Peers the bill passes through the same forms as in the other house, and if rejected no more notice is taken, but it passes *sub silentio* to prevent unbecoming *altercation*) (*Blackstone.*)

Difficulty.

"Unvex'd with *quarrels*, undisturb'd with noise, The country king his peaceful realm enjoys". (*Dryden*)

"DIFFERENCE IN JUDICIAL OPINION" is not synonymous with "abuse of judicial discretion". (*Day* v. *Donotue*, 62 N.J Law 380)

A *difference of opinion* prevailing upon the Bench, in accordance with the usual custom the Judges holding the view of the minority will deliver judgment first [24 A L J 825=96 I C. 1039=A.I.R. 1926 All 369 (F.B).]

Differences. Payments representing the difference between contract prices and market prices. They occur between speculators who buy and sell in the market and have no intention to possess the goods.

Different Exhibiting differences, dissimilar.

DIFFERENT, DISTINCT, SEPARATE What is *separate* must in its nature be generally *distinct*, but everything is not *separate* which is *distinct* when houses are *separate* they are obviously distinct; but they may frequently be *distinct* when they are not positively *separated* We speak of having a *distinct* house hold, but of living in separate *apartments*, of dividing one's subject into distinct heads, or of making things into *separate* parcels.

Difficile est ut unus homo vicem duorum sustineat A maxim meaning "It is difficult that one man should sustain the place of two"

Difficilem oportet aurum habere ad crimina. A maxim meaning "One should not lend an easy ear to criminal charges".

"Difficult and extraordinary case". The term 'difficult and extraordinary case," in a statute providing for an allowance of extra costs in a difficult and extraordinary case, includes all cases of a difficult or extraordinary character The term, as so used, should be construed as synonymous with "litigated," and hence all litigated cases are difficult. It should not mean simply a case where a party's debt was doubtful or unfounded, and that, by the skill or ingenuity or the smartness of his counsel, he had performed, the difficult task of obtaining a verdict contrary to evidence, for, while this would establish a difficult as well as an extraordinary case, in the literal acceptation of the term, it would not be such in a legal acceptation thereof, which is that defendant has forced plaintiff, the owner of a claim plainly and clearly just to resort to trouble and expense in order to enforce payment thereof, and it is for the reimbursement of such expenses that he is entitled to an extra allowance It means the opposite of "common and ordinary". Each case must be determined according to its own peculiar circumstances "Difficult" should probably be applied to questions of law involved in the action, while "extraordinary" may apply to any other feature or circumstances distinguishing the case from ordinary litigations. [*Fox* v. *Gould* (*N.Y.*), 5 How. Prac. 278, 279.]

Difficulty. A difficult point or situation; embarrassed state.

DIFFICULTY, OBSTACLE, IMPEDIMENT. *Difficulty* lies most in the nature and circumstances of the thing itself; the *obstacle* and *impediment* consist of that which is external or foreign: a *difficulty* interferes

Dig

with the completion of any work, an *obstacle* interferes with the attainment of any end an *impediment* interrupts progress We speak of encountering a *difficulty*, surmounting an *obstacle*, and removing an *impediment* the disposition of the mind often occasions more *difficulties* in negotiations than the subjects themselves, the eloquence of Demosthenes was the greatest *obstacle* which Philip of Macedon experienced in his political career, ignorance of the language is the greatest *impediment* which a foreigner experiences in the conduct of business in any country

Dig, Digging A deed giving the liberty and privilege to dig a canal across the grantor's land does not give to the grantee a right to the soil or tree dug up in the course of the work (*Lyman* v *Arnold* (*U S*) 15 Fed Cas. 1143, 1145)

In a contract for the excavation of a certain trench, and providing that, for executing the *digging*, the contractor should receive a certain sum per cubic foot, "*digging*" is synonymous with the term "excavation" (*Sherman* v *City of N Y* 1, *N Y* (1 *Comst*) 316, 320.)

"Digar daweda" 111 I. R. 1908

Digest A compendium, especially of laws, a collection or compilation, embodying the chief matter of numerous books on cases in one, disposed under proper heads, or titles, and usually by an alphabetical arrangement, for facility in reference

Digestion implies the conversion of food into chyme and chyle, and the consequent formation of blood and nutrition of the body.

Dignitary. One who holds an exalted rank or office,—especially an ecclesiastic who ranks higher than a priest or canon.

Dignitas supponit officium et curam, et non est partibilis A maxim meaning 'Dignity supposes office and charge, and is not divisible'

Dignitates Rex dat, virtus conservat, delicta auferunt. A maxim meaning 'The king confers honours, virtue preserves them, transgressions take them away'

Dignity Claim to respect, title giving dignity Dignity means, "Honour and Authority reputation, &c Titles of Duke, Earl, Baron, &c, are the highest names of dignity, and those of Baronet, Knight, Serjeant at Law, &c, the lowest" (*Jacob.*)

Dignus mercede operarius A maxim meaning 'The labourer is worthy of his hire'

Digress Diverge temporarily from the main track, especially in discourse or argument.

To DIGRESS, DEVIATE *Digress* is mostly taken in a good or indifferent sense, *deviate* in an indifferent or bad sense. Although frequent *digressions* in legal arguments are faulty, yet occasionally it is necessary to *digress* for the purposes of explanations, every *deviation* is bad, which is not sanctioned by the necessity of the circumstances

Digwari tenure. *Digwari tenure* is similar to Ghatwali tenure. It was granted originally in consideration of the performance of military service, to which police duties were attached. The tenure is hereditary and inalienable. The digwar is appointed

Dilatory Plea.

by the Government and liable to be dismissed by the Government for misconduct On dismissal the next male heir, if fit for the office, is appointed (39 I A 133 (140)=39 C 696=16 C W N 482=(1912) M W. N 425=11 M L T. 337=9 A L J 462=15 C L J 461=14 Bom L R. 445=15 I C 219=23 M L J. 26, *See also* 42 Cal. 35=18 C W N 1036=22 C L J. 419)

Dih (*P=village*), a village, both the land and the houses, but oftener of the latter, as in the terms abadi-dih, the village site, gorha dih, the waste-land around a village where the cattle stand, &c. (*Bad-Pow* i 21)

Dihdar (*=village holder*), (*Sindh*), the headman (*Bad Pow. iii* 321)

Dihdari (*or didari*), (*Oudh*), a sub-tenure, *see Bad Pow ii* 238

Dih-kharch, or Raj-Kharch (Bo), and impost or cess to meet (real or supposed) 'expenses' of the village, the kingdom, &c (*Bad-Pow iii.* 327)

Diksha (*Mal*) Mourning and ceremonies for a deceased person (*Moore's Mal Law*) Ceremonies attending the mourning for a deceased person. (*Sund, Iyer's Mal Law*)

Dilapidation. State of bad repair, falling into decay "A wasteful destroying, or letting of Building run to ruin and decay, for want of reparation." (*Cowel*)

Dilatation The process of enlargement or expansion, as of the chest in respiration or the heart in effecting the circulation of the blood

Dilationes in lege sunt odiosae. A maxim meaning 'Delays in law are odious'

Dilatio quae pro justitiafaciat acceptissima, quaecontra justitiam maxime invisa. A maxim meaning 'Delay or suspension for justices' sake is very acceptable, but delay contrary to justice is very odious

Dilatory defence A defence intended to defeat or delay a pending action without touching the merits of the case.

Dilatory plea Dilatory pleas are distinguished from pleas to the action, and are defined to be such as tend merely to delay or put off the suit by questioning the propriety of the remedy, rather than by denying the injury, whereas pleas to the action are such as dispute the cause of action

DILIGENCE is such care and prudence as is usually exercised by persons of common or average care and prudence "Diligence, when the law imposes it as a duty, implies that we shall do those things we ought to do, and leave undone those things we ought not to do It requires action, as well as forbearance to act" Diligence is defined to be a steady application to business of any kind, constant effort to accomplish any undertaking. The law does not require any unusual or extraordinary efforts, but only that which is usual, ordinary and reasonable, (*Ophir Silver Min. Co* v *Carpenter* 97 *Am Dec.* 550.) But the diligence to be exacted from a specialist is the diligence which good specialists in his department are accustomed to bestow (*Diamond* v. *Northern Pac R. Co* 13 Pac 367, 372, 6 Mont 580, *citing Whart, Neg.* 872.)

Dilatory Plea.

Diligence is in all cases a relative term, and what is due diligence must be determined by the circumstances of each case

Diligence is a relative term, and must be proportionate to the danger against which it is required to guard More active diligence is required to conduct a locomotive through the streets of a populous town than is necessary to guide a sled drawn by oxen in an untrequented place The degree of ordinary care implies a higher state of mental activity in one case than in the other It demands more skill and science to guide a ship on the ocean than a mud scow in a harbour. With regard to the degree of care or diligence which are recognized in the law Sir Wm Jones says "There are infinite shades, from the slightest momentary thought or transient glance of attention to the most vigilant anxiety and solicitude" (*Brand* v *Schenectady & T.R. Co*, 8 Barb 368, 378)

Diligence, or care, admits of infinite shares, from the slightest momentary thought to the most vigilant anxiety, but the law recognises only three degrees of diligence (1) Common or ordinary, which men, in general, exert in respect of their own concerns, (2) High or great which is extraordinary diligence, or that which very prudent persons take of their own concerns (3) Low or slight which is that which persons, of less than common prudence, take of their own concerns

Ordinary diligence has been defined by Judge Story to be "that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live" These last words are quite material quite important, in this case "In the country and in the age in which they lived" Thus what might be ordinary diligence in one country and in one age may, at another time and in another country, be negligence, even gross negligence (*Erie Bank* v *Smith* v (*Pa*) 3 Brewst 9, 14)

"It is a reasonable presumption that a man who sleeps upon his rights has not got much right." Bown L.J, *Ex parte* Hall, (*In re* Wood (1883) L R 23 C D 653.)

"A Court of equity which is never always active in relief against conscience, or public convenience, has always refused its aid to stale demands where the party has slept upon his right, and acquiesced for a great length of time Nothing can call forth this Court into activity, but *conscience, good faith and reasonable diligence*, where these are wanting the Court is passive and does nothing" *Lord Camden* (*Smith* v *Clay* (1767), 3 Bro Ch Ca 639)

DILIGENT, EXPEDITIOUS, PROMPT It is necessary to be *diligent* in the concerns which belong to us, to be *expeditious* in any business that requires to be terminated, to be *prompt* in the execution of orders that are given to us

DILIGENT, INDUSTRIOUS, LABORIOUS. *Diligence* signifies the attention we pay to any particular object out of preference to others *Industry* is the habit of laying up for ourselves a store, whether of knowledge or worldly goods *Laborious* is employed both of the agent and the work, and is a stronger form of *Industrious* as applied to persons The *laborious* man does not grudge hard effort where needed, especially in compensating for his own deficiences (*Smith. Syn. Dis*)

Diphtheria.

DILIGENCE AND GOOD FAITH Good faith and diligence are not always the same. Lack of diligence does not necessarily involve absence of good faith, so that failure to discover fraud in the sale of bank stock within a short time is not proof of lack of good faith (*Stufflebeam* v *De Lashmutt*, 101 Fed. 367, 370)

Diligent Search As used in the return of an officer on an execution, reciting diligent search for the judgment-debtor, means reasonable effort to find him (In re *Bayley*, 132 Mass 457, 461.)

Dilute To reduce to strength or vigour of a substance by addition of some qualifying matter To "dilute" applied to a drink means to make it less strong, whether by adding thereto a weaker drink of the same or similar kind or by adding water; (*Crofts* v *Taylor* 19 Q.B D 524)

Dimat. (Berar), said to be, or to have been, used to signify a major division of family land, the share of a major branch (*Bad—Pow.* III 364)

Diminish To lessen The power of increasing or *diminishing* the number of judicial districts and judges, given to the Legislature is not a power to entirely deprive a district of any judge To "diminish" means to make less, not to utterly wipe out. Therefore, the authority to diminish the number of judges does not apply where a district has but one judge (*State* v *Kinkead*, 14 Nev. 117, 123.)

Dinarchy, A Government by two rulers.

Diocesan courts. In English law the consistorial courts of each diocese, exercising general jurisdiction in all matters arising locally within their respective limits, with the exception of places subject to peculiar jurisdiction, deciding all matters of spiritual discipline suspending or depriving clergymen and administering the other branches of the ecclesiastical law

Diocese. A Diocese is the limited territorial jurisdiction assigned to a Bishop, The circuit or extent of a bishop's jurisdiction, the district in which a bishop exercises his ecclesiastical authority. "This realm hath two sorts of divisions (in old England), one into shires or counties, in respect to the temporal state, and another into dioceses, in regard to the ecclesiastical state" (Co lit. 94 *Tomlin's Law Dic*) "The primary reason why a Diocese,—in other words, a limited territorial space,—was originally assigned to a Bishop was, not because his functions or duties were confined to that space but, because as the superintendence of the Bishop was found to be more effectual when exercised principally over a limited extent, a territorial district (termed a Diocese) was assigned to him as the limits within which he should principally exercise his authority" (per *Romilly, M. R., Natal Bp.* v. *Gladstone*, L.R 3 Eq. 30)

Dip Go below the surface or level.

Dip (in Mining Law.) Dip is the direction of vien as it goes downward into the earth, the dip in different viens and in the same vien varying from a perpendicular to the earth's surface to an angle perhaps only a few degrees below the horizon

Diphtheria is a dreadful disease, generally caused by insanitary conditions.

"Diploma" defined 49-50 V. c. 48, S. 27

DIPLOMA. "A document or writing bearing record of a degree conferred by a university, college, literary society or educational institution, in short, a statement in writing under the seal of the institution, setting forth that the student therein named has attained a certain rank, grade,or degree in the studies he has pursued." (*State* v *Gregory* 53 *Am Rep* 565) It is an instrument, or official certificate "conferring some privilege, honor, or authority, now almost wholly restricted to certificate of degrees conferred by universities and colleges"

THE WORDS "LICENSE, DIPLOMA, OR CERTIFICATE OF QUALIFICATION," in a statute making it criminal to practise medicine without having first obtained a license or diploma or certificate of qualification does not refer to and mean the same thing (*Nelson* v *State*, 12 *South*, 421, 422)

Diplomacy Management of International relations, Skill in negotiation of affairs with a foreign state or country, tactful and adroit dealing—especially in international affairs, a knowledge of the interests of different states, and the policy of foreign courts, &c. obtained by means of ambassadors, envoys, consuls &c

Diplomatic Agents Diplomatic agents are the official representatives of a sovereign or government at the court or seat of government of another country

DIPLOMATIC AGENTS are divided into three classes—That of *Ambassadors, Legates,*, that of *Envoys, Ministers* or other persons accredited to Sovereigns, that *of Charge d' Affaires* accredited to Ministers for Foreign Affairs Ambassadors and Legates only have the representative character. Diplomatic agents on an extraordinary mission have not on that account any superiority of rank Diplomatic agents take precedence in their respective classes according to the date of the official notification of their arrival A uniform mode is laid down in each State for the reception of diplomatic agents of each class Relations of consanguinity, or of family between courts, confer no precedence on their diplomatic agents. The same rule also applies to political alliances. (*Ency of the Laws of England*) *See also* Hall, International Law. River, Principes du Droit des Gens, Twiss Law of Nations in time of peace, Phillimore International Law, Spencer Walpole, Foreign Relations. Woolsey, Introduction to International Law

Diplomatic officer in the diplomatic service of Her Majesty in the Naturalisation Act, 1870, c 14, means any "Ambassador, Minister, or Charge d' affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Charge' d'affaires, or Secretary of Legation to execute any duties imposed by the Act on an officer in the diplomatic service of Her Majesty" (S 17.)

"Diplomatic representative of a foreign state," for the purposes of the Extradition Acts, 1870 and 1873, "includes any person recognised by a Secretary of State as a consul-general of that State." Ext. Act, 1873 (c 60), S. 7, extending Ext. Act, 1870 (c. 52), S. 7.

Direct.

Diplomatic service Enumeration of diplomatic offices in the English Diplomatic Salaries Act, 1869 (c 43, S 7.)

Dipsomania. An insatiable thirst for liquor intensified by long indulgence, inability to keep from alcohol Dipsomania is an irresistable impulse to indulge in intoxication, either alcohol or other drugs—(as) opium This mania, or dipsomania, is classed as one of the minor forms of insanity Dipsomania, or alcoholism, is a disease caused from excessive indulgence in drink. It oftentimes develops into what is called by medical men "mania a potu", wherein the patient become a madman, wholly deprived of all sane reason, while the fit is upon him In that condition he is not legally responsible for his actions, being treated as insane. As the disease has created for him, in his imagination, a totally new existence, the reason which before controlled his conduct no longer exists, but a new and perverted one has taken its place The will power which attended it has gone with the reason itself. So it is in the case of the mere hard drinker, who, a victim of the disease of dipsomania, loses control of his will with respect to restraining his thirst for liquor, and though he may be perfectly sane, and have complete control over himself generally, yet from his disease, or passion for drink, and the momentary relief indulgence of it gives his morbid feelings of despondency, he has entirely lost control of himself with respect to such indulgence, and drink he must and will have in spite of his reason, his past experience, and the warnings his physician and friends give him, He drinks not because of desire to taste stimulants, but because his disease demands of him that he get relief at any hazard" (*State* v. *Reidell* (*Del*) 14 *Atl* 550, 551, 9 *Houst* 470.)

Direct (*As an adjective.*) The term "direct," as defined by Webster, means "immediate, express, unambiguous, confessed, absolute," *People* v *Boylan* (U S.) 25 Fed. 594, 595, immediate or proximate, as distinguished from remote, straightforward, not crooked, not winding, not circuitous, not sideways, also an epithet for the line of ascendants and descendants in genealogical succession,opposed to collateral. The word "direct," in the English language, is one of very wide acceptation, and has been adopted into the law in many relations. Thus, we have "direct descent," 'direct taxes," "direct interest", 'direct route," and "direct payment", and as used in the latter term it means one which is absolute and unconditional as to time, amount, and the person by whom and to whom it is to be made.

Direct (*as a verb*) The definition of the word "direct", as given by Webster, is "to order, to instruct, to point out a course of proceedings with authority, to command." But direction may be given or a course of proceedings may be pointed out with authority in a will by implication as certainly as by explicit instructions A clear implication of the testator's intention is as binding upon the court as his express direction (*See* 110 I C. 788=29 Cr.L.J 756= A I R 1928 Pat 506) "Direct" as used in an Act providing that the Court to which the record is remitted is to pass such sentence as the appellate court shall direct, means to point out a law providing for the punishment, and direct the Court below to sentence thereunder. (*People* v. *Bor*, 96 N.Y 188, 202)

Direct.

IN TESTAMENTARY DISPOSITION. Either of the words *"wish"*, *"desire"*, *"command"* or *"direct"* are apt words to be used in a will to show testator's intent to make a will. (*Barney* v *Hayes*, 28 Am. Rep 495)

As used in a will directing the doing of certain things, "direct" is a mandatory word, unless controlled by something in the context indicating otherwise, and the fact that discretion is given in the execution of the direction is not sufficient to change the mandatory sense. [*Collister* v *Bassitt*, 39 N Y. Supp 800, 801, 7 App. Div 20 (reversing 28 N Y. Supp 601, 16 Misc. Rep 395).] The term "direct' as used in a will creating a trust, is used in the same sense as "wish" or "will". "Where a testator directs his debts to be paid, that imposes upon his Exors or Trustees a duty to pay them, which enables them to sell the real estate for that purpose" (*per* Cotton, L J, Re *Head and Macdonald*, 59 L J. Ch 606, 607)

DIRECT, CONDUCT, REGULATE To *Direct* as applied to the administration of affairs, is more authoritative than *Conduct*, while *Conduct* is more active or operative We *direct* by ordering others in the way to a certain end, as to direct the movements of an army We *conduct* by actually taking a practical part, as we speak of conducting an important or lucrative business *Regulate* stands midway between, with less of the command of *Direct*, and less of the activity of *Conduct*, as, to regulate the proceedings of a public meeting (*Smith Syn Dis*)

"DIRECTED". 10 Pat.L T 393

"DIRECT ATTACK UPON A JUDGMENT", is by appropriate proceedings between the parties to it, seeking, for sufficient cause alleged, to have it annulled, reversed, vacated or declared void" A direct attack on a judgment is an attempt to amend, correct, reform, vacate, or enjoin the execution of same in a proceeding instituted for that purpose such as a motion for a re-hearing, an appeal review, an injunction to restrain its execution, etc A direct attack on a judicial proceeding is an attempt to avoid or correct it in some manner provided by law. In *Morrill* v. *Morrill* 23 Am St Rep 95, a *collateral attack* is aptly defined to be "an attempt to impeach a decree in a proceeding not instituted for the express purpose of annulling, correcting, or modifying the decree, or enjoining its execution"

DIRECT CAUSE, NATURAL CAUSE AND PROXIMATE CAUSE —ALL SYNONYMOUS. In the statement of the rule that one is not liable for the results of an act, unless the act was the natural and proximate cause of the injury, the word "direct" is often used as synonymous with "natural" and with "proximate" (*Lovett* v *City of Chicago*, 35 Ill App 570, 571)

"DIRECT AND PROXIMATE CAUSE" means the cause which naturally leads to and might have been expected to be directly instrumental in producing the result complained of. (*McKeon* v. *Chicago M. & St. P. Ry. Co.*, 59 Am St. Rep. 910.) By "direct and proximate cause" is not meant the cause or agency which is nearest in time or place to the result, necessarily. "The active efficient cause, that sets in motion a train of events which brings a result, without the intervention of any force started and working actively from a new and independent source, is the direct and proximate cause" (*Lynn Gas & Electric Co.* v. *Meriden Fire Ins. Co*, 35 Am. St. Rep. 540). The direct cause may not be the proximate cause, and the proximate cause may not be the direct cause.

Direct.

Neither time nor distance is essentially a controlling element in determining whether a certain cause of an injury is the proximate cause of such injury.

DIRECT COMMUNICATION, in Ss. 7, 9 of the London Building Act, 1894 (57 & 58 Vict c. ccxiii), considered [*Woodham* v. *London County Council*, (1898) 1 Q B. 863, *Armstrong* v *London County Council*, (1900) 1 Q.B. 416.]

DIRECT CONTEMPT "is an open insult in the face of the Court, in the presence of the judges while presiding, or a resistance to its powers in their presence." Direct contempts are those which are committed in the presence of the Court while in session, or so near as to interrupt its proceedings Where attorneys during a Court day, but while it was not in session, held a meeting at which one of their number presided in a room in the court house adjoining the courtroom, and occasionally used as a courtroom, which meeting was attended by the Judge at their request, their acts in his presence are not committed in the presence of the Court, and hence cannot constitute direct contempt (*Snyder* v *State*, 52 N E 152, 151, Ind 553) To constitute a direct contempt of Court there must be some disobedience to its powers, judgment, or process or some open and intended disrespect to the court or its officers in the presence of the Court, or such conduct in or near the court as to interrupt or interfere with its proceedings or with the administration of justice (In re *Dill*, 49 Am. Rep 505)

"DIRECT DAMAGE", defined Ben. Act 3, 1899, S 352. Direct damages are such as flow immediately upon the act complained of.

DIRECT EVIDENCE. Evidence given where a witness testifies directly of his own knowledge as to the main fact or facts in dispute

"DIRECT OR POSITIVE EVIDENCE is given when a witness can be called to testify to the precise fact which is the subject of issue on trial." (*Commonwealth* v. *Webster*, 52 Am Dec 711)

DIRECT EXAMINATION OR EXAMINATION IN CHIEF The examination of a witness by the party producing him is denominated the "direct examination", the examination of the same witness upon the same matter by the adverse party, the cross-examination. The direct examination must be completed before the cross-exrmination begins, unless the Court otherwise directs

"DIRECT INJURY" AND "CONSEQUENTIAL INJURY" The phrases "direct injury" and "consequential injury" are not of the same meaning as "direct damages" and "consequential damages." The latter phrases are of the terminology of damages and the measure of damages, while the former are not, but are of the terminology of injuries. To illustrate, a direct injury may, in addition to direct damages, give rise to consequential damages; and the latter are recoverable as well as the former, unless they be not "proximate" but "remote". In the case of a direct injury the measure of damages includes both direct and indirect or consequential damages, but in the case consequential injuries, there are not recoverable damages at all. Consequential damages can only result from a direct injury, while no actionable damages of any kind result from a consequential injury (*Sadlier* v. *City of New York*, 40 Misc. Rep. 78.)

Direct Interest.

"DIRECT INTEREST" The words "direct interest" (in a temple) in S 92, C P Code, 1908 include the interest which the worshippers and devotees of the deity naturally have in the management of the temple. Much more therefore does it include the interest of, persons who happen to be also the descendants of the original founder of the endowment (15 B 612)

DIRECT LOSS In a policy of insurance, direct loss or damage by fire means the loss or damage occurring directly from the fire as the destroying agency, in contradistinction to the remoteness of fire as such agency Remoteness of agency may be illustrated by the following cases explosion of gunpowder, gases or chemicals caused by fire, explosion of steam boilers, the destruction of buildings to prevent the spread of fire, or their destruction through the falling of burning walls, etc. (*California Ins Co* v *Union Compress Co*, 10 Sup Ct 365, 372, 33 L Ed 730)

DIRECT RESULT By direct result, as relating to the cause of an injury, is meant the first or primary result or effect In an instruction, in an action for personal injuries, the jury should assess such damages as were the direct result of defendants' negligence, "direct" is synonymous with "natural" and "proximate"

DIRECT TAX A tax which is demanded from the very person who it is intended or desired shall pay it, a tax taken directly from property or income, a tax which is assessed upon the property, person business income, etc, of those who are to pay it It is the opposite of Indirect Taxes, which are those "demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another, such as the Excise, or Customs" [*Brewers Assn* v *A G* 1897 A C 231]

DIRECT TAXATION, in the British North America Act 1867 [See *Bank of Toronto* v *Lambe*, (1887) 12 App Cas 575, *Brewers &c Association of Ontario* v *Att-Gen for Ontario*, (1897) A C 231]

DIRECT TESTIMONY (See *Direct Evidence*) The term "direct testimony" or "positive testimony", is used to designate the testimony of those who speak of their own actual and personal knowledge of the fact in controversy

DIRECT TRUST A direct or express trust is one springing from the agreement of the parties, created by words, either expressly or impliedly evincing the intention to create trust It is distinguished from a constructive or implied trust, which is trust created by equity, a trust not created by any words either expressly or impliedly evincing a direct intention to create a trust, but by the construction of equity in order to satisfy the demands of justice.

"PROCEED DIRECT". Where a charter provided that the vessel was to proceed direct to load on the charter, the word "direct" meant that the vessel was to proceed without unreasonable delay and by the usual route, and the contract would have been the same if the word "direct" had been left out. The ourast (U.S.) 18 Fed. Cas. 728, 733.

TO GO DIRECT An agreement by one hiring a team to go to a certain place to go direct to such place does not necessarily imply an engagement to go by the shortest way, but merely to go by some usual and expeditious route, without diverging therefrom.

Director.

Directly. In a direct manner; Immediately; but "It does not mean instanter" (*per Cresswell, J, Duncan* v *Topham*, 8 C B 231, 18 L J C P 310, but "'Directly' clearly means something different from the lapse of a reasonable time" (*per Coltman, J*, Ib., 8 C B 230)

DIRECTLY, IMMEDIATELY, INSTANTLY, INSTANTANEOUSLY *Directly* refers more especially to the actions of men, *Immediately* to the course of time. *Instantly* is formed to express an interval so small as to be inappreciable *Instantaneously* has the same meaning, but with the specific reference to the interval between the cause and its effect (*Smith Syn Dis*)

A course of proceeding is *direct*, the consequences are *immediate*, and the effects *instantaneous*

"Directly and substantially in issue". See Civil Procedure Code, S 11

"Directly over"—"Directly under" The word "directly" in clause (*a*) of S 251-A of Bom Act III of 1888, is to be read as the equivalent of "immediately" and the words "DIRECTLY OVER OR DIRECTLY UNDER," in the said clause, mean not only vertically over or under, but also immediately over or under Therefore, a water-closet may be built so as to be vertically over or under any part of a building provided that a bath-room intervenes 11 Bom L R. 1167=4 I C 275

Directly or indirectly, 10 Pat.L T. 854=118 I C. 135

Direction Direction, address of letter order or instruction as to what one has to do

DIRECTION, ADDRESS, SUPERSCRIPTION A *direction* may serve to direct to places as well as to persons in *address* is never used but in direct application to the person a *superscription* has more respect to the thing than the person A *direction* may be written or verbal, in *address* in this sense is always written; a *superscription* must not only be written but either on or over some other thing

DIRECTION, ORDER *Direction* contains most of instruction in it, *order* most of authority *Directions* should be followed, *orders* obeyed It is necessary to *direct* those who are unable to act for themselves it is necessary to *order* those whose business it is to execute the orders *Directions* given to servants must be clear, simple, and precise; Government *orders* for regulation of trade may be particular or general

Director Defined in VII of 1913, S 2 8 Edw 7 C 67, S 274 (6)

DIRECTOR A superintendent, one who has the general management of a scheme or design, person appointed or elected according to law authorized to manage and manage the affairs of a corporation or company.

THE DIRECTORS OF A COMPANY, are "the persons having the direction, conduct, management, or superintendence," of its affairs (7 and 8 V c 110, S. 3).

"A Director is simply a person appointed to act as one of a Board, with power to bind the Co when acting as a Board,—but having otherwise no power to bind them" (*per Mellish, L J.*, Re Marseilles Extension Ry. 41 L J. Ch. 348).

Directors

"**Directors**", defined Act II, 1876, S 3

The *directors of a corporation* are its chosen representatives, and constitute the corporation to all purposes in dealing with others What they do to further the purposes of the corporation, the corporation does If they do an injury to another, though it necessarily involves in its commission malicious intent, the corporation must be deemed by imputation to be guilty of the wrong and answerable as an individual in such case (*Maynard* v *Firemen's Fund, Ins Co.* 91 Am Dec. 672)

"A director of a corporation is a trustee for the entire body of stockholders, and both good morals and common law imperatively demand that he shall manage all the business affairs of the company, with a view to promote, not his own interests but the common interests, and by assuming the office he undertakes, to give his best judgment in the interests of the corporation in all matters in which he acts for it, untrammeled by any hostile interest in himself or others" (*Bir Coal & Iron Co* v *Humes*, 37 Am St Rep 727 *See also* Ind. Com Act, 1913)

Director-General. Defined in VI of 1898, S. 2.

In the Post Office Act, unless there is anything repugnant in the subject or context,—(*a*) the expression "*Director-General*" means the Director General of Posts and Telegraphs. Act VI of 1898 (Post Office) S 2, Cl. (*a*)

Directors Board of "The term 'Board' of Directors has two meanings —the 'Board' consisting of all the members, or, a 'Board' consisting of a Quorum" (*Barker* v *Allan*, 5 H and N 72). "Board of Directors" would also include a provisional board *Norman* v *Nitchell* (2 W R 447 Eng)

"VACATING DIRECTORS," refers to Directors validly appointed, as distinguished from merely *de Facto Directors John Morley Bg Co* v *Barras*, 1891, 2 Ch 386, *Stroude*, 536)

"**Directory**"—*See* 1 S L R Cr 50=8 Cr L J 170

Directory Enactment When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment The difference between the two is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially (*See* Hardcastle on Statutes, 4th ed, by Craies, pp 230 et seq, Maxwell on the Interpretation of Statutes)

Dirham or Dirhem. *Dirham* is a term of Mahomedan Law and the money value of 10 *Dirham* is something between Rs 3 and 4 (2 All 573, *Ref*) 32 All 167=7 A L J 116=5 I C 411 A silver coin, of which from twenty to twenty-five have, at different times, passed current for a dinar (nearly equal to a ducat or about nine shillings) (*Mac Nan Mhn Law*)

Dirroas. In the ceded districts, wells or embankments for irrigation Mounds raised on the banks of rivers for drawing up water in buckets

Disable To incapacitate, make unable to act, to cause a disability, to do "something which creates a permanent disability and not merely a temporary injury" (*Arch. Cr.* 806).

Disaffection.

"**Disability**" defined 33 V c 14, S 17.

"Is when a man by any act or thing, by himself or his ancestor done or committed, or for or by any other cause, is disabled or made incapable to do, to inherit, or to take benefit or advantage of, a thing which otherwise he might have had or done" (*Terms de la Ley*)

DISABILITY, is the want of legal capacity to do a thing, a deprivation of ability state of being disabled incapacity, the want of legal or capacity to exercise legal rights either special or ordinary, (as) disability to sue, take lands by descent, to enter into contracts, to alien property, etc

DISABILITY, in the Naturalisation Act, 1870, C 14, S. 17, means the status of being an infant, lunatic, idiot, or married woman

DISABILITY, INABILITY, DISQUALIFICATION *Disability* expresses the absence of power or fitness, physical moral, intellectual, or social, in a subject capable of it *Inability* expresses its absence in a subject incapable of it *Disqualification* differs from Disability in being more general, while Disability is commonly used of specific social privileges (*Smith Syn Dis*)

Disabling Statutes A disabling or restraining statute is one which restricts the rights of persons *See* Stephen's Commentaries, Hardcastle on Statutes by Craies, Maxwell, Interpretation of Statutes

Disadvantage. Opposite of advantage.

DISADVANTAGE, INJURY, HURT, DETRIMENT, PREJUDICE *Disadvantage* is rather the absence of a good, *injury* is a positive evil *Hurt*, *detriment*, and *prejudice*, are all species of injuries *Injury*, in general, implies whatever ill befalls an object by the external action of other objects, whether taken in relation to physical or moral evil, to persons or to things, *hurt* is that species of injury which is produced by more direct violence Whatever affects the stability of a merchant's credit is highly *detrimental* to his interests, whatever is *prejudicial* to the character of a man should not be made the subject of indiscriminate conversation (*Crabb*)

DISADVANTAGE, DETRIMENT *Disadvantage* commonly refers to the actions and well-being of intelligent agents, *detriment* to anything of the nature of a valuable possession, or which ought to be preserved in integrity

"Though every man hath a property in his goods, yet he must not use them in *detriment* of the commonwealth"—State Trials, Hampden (*Smith. Syn Dis*)

Disaffected. Inclined to sedition; ill-disposed towards the rulers

"**Disaffection**" defined, Act 45 of 1860, S. 124A, expln, Act 1 of 1910, S 4, expln 1 Ind. States, etc., Act, 1923, S 2

"DISAFFECTION" includes disloyalty and all feelings of enmity Indian States (Protection against Disaffection) Act (1923), S. 2. *See also* 22 Bom 152 (F. B); 20 B. 55 (F B), 19 Cal 35, 19 P R. 1915=28 I C. 322)

DISAFFECTION, DISLOYALTY. The former is a wider term than the latter It denotes, generally, alienation or want of good will *Disloyalty* does not necessarily imply disaffection to a monarch or other

form of Government, but may be to any superior, and especially to the form of government under which one lives All *disloyalty* is, of course, *disaffection*, but all *dissaffection* is not *disloyalty* If the *disaffection* be against an usurped government, it may spring from loyal attachment to that which is the rightful government (*Smith Syn Dis*)

Disaffection is general *Disloyalty* is particular; it is a species of disaffection Men are *disaffected* to the government, *disloyal* to their prince *Disaffection* may be said with regard to any form of government, *disloyalty* only with regard to monarchy Although both terms are commonly employed in a bad sense, yet the former does not always convey the unfavourable meaning which is attached to the latter A man may have reasons to think himself justified in *disaffection*, but he will never attempt to offer anything in justification of *disloyalty* A usurped government will have many *disaffected* subjects with whom it must deal leniently, the best king may have *disloyal* subjects, upon whom he must exercise the rigor of the law Many were *disaffected* to the usurpation of Oliver Cromwell, because they would not be *disloyal* to their king (*Crabb*)

Disagreement A want of agreement unanimity, unpleasantness, quarrel

Disapprobation Disapproval (as, disapprobation by the people of the oppressive acts of the executive government

"DISAPPROBATION", DISAPPROVAL *See* 19 C 35

DISAPPROBATION, DISAPPROVAL *Disapprobation* is the feeling *Disapproval* is the expression of it Hence disapproval is the more public and formal To *disapprove* is therefore sometimes used in the sense of formally refusing a sanction, or annulling, in consequence of the feeling of *disapprobation* As, "the acts of the provincial governor were *disapproved* by the government at home," or, "His acts met with the *disapprobation* of the senate" (*Smith Syn Dis*)

Disarm Deprive of arms or weapons, abandon the maintenance of army or navy on a large scale

Disarmament Abandonment or reduction of warlike establishment

Disavow To repudiate, to disclaim

DISAVOW, DENY, DISOWN, REPUDIATE, DISCLAIM To *Disavow* is to refuse to acknowledge in a strong manner, with some solemnity

To *Deny* is to contradict specifically A *disavowal* is commonly volunteered, a *denial* follows upon a specific imputation

To *Disown* is, as the term implies, to disavow or deny, as connected with one's self personally, to refuse to acknowledge personal interest, authorship, or relationship generally.

Repudiate is to force away from one's self what some other person or some external power would connect with us, as a gift, claim or responsibility

To *disclaim* is the opposite of claim, to waive, as a claim, to deny ownership or responsibility, right, merit or pretension (*Smith Syn. Dis.*)

Disband Same as dissolve

Disbar. To deprive barrister or other legal practitioner of right of practicising at the bar.

Disbelief Act of disbelieving; a state of the mind in which one is persuaded that an opinion assertion or doctrine is not true, refusal of assent; denial of belief.

DISBELIEF, UNBELIEF, INCREDULITY, INFIDELITY. *Disbelief* and *unbelief* are thus differenced *unbelief* is negative, *disbelief* is positive One may have *unbelief* from want of knowledge, but *disbelief* rejects as false *Unbelief* is the absence, *disbelief* the refusal of credit

Incredulity and *infidelity* are used, the former to signify absence of belief where it is possible, the latter absence of belief where belief is right *Incredulity* may be, therefore, right where it denotes a rightful reluctance of assent to what ought not to be easily believed or not believed at all *Infidelity* is by the force of the term wrong It has the further sense of a breach of faith in matters not of belief, but practice—where those matters depend upon contract or promise (*Smith Syn Dis*)

Disbench Deprive bencher of his status

Disbursements are monies paid out, outlay

DISBURSEMENTS (BY EXECUTORS ETC) Money expended by an executor, guardian, trustee etc, for the benefit of the estate in his hands or in connection with its administration

DISBURSEMENTS REFERRED TO IN S 1, MERCHANT SHIPPING ACT 1889, 52 & 53 V. c 46 mean, "Disbursements which the Master makes in respect of things necessary for the ship for the purpose of the voyage which he as Master is bound to carry out, where the owner is not present and cannot be communicated with, and which the Master therefore is, necessarily, himself obliged to procure in order to discharge his duty" [per *Esher, M R, The Orienta*, (1895), P 49]

"DISBURSEMENTS" IN A MARINE POLICY, frequently means outfit [*Roddick* v *Indemnity Insrce*, (1895) 2 Q B 389]

DISBURSEMENTS, SOLICITORS The principles for determining what are a *Solicitor's "Disbursements"* were laid down by the taxing masters in Re Remnant (sup), as follows:—(1) "Such payments as the solicitor, in due discharge of the duty that he has undertaken is bound to make so long as he continues to act as solicitor, whether his client furnishes him with money for the purpose of with the money on account or not, as *e g* fees of the officers of the Court, fees of Counsel, expenses of witnesses,—and also such payments in general business, not in suits, as the solicitor is looked upon as the person bound by custom and practice to make, as, *e g* Counsel's fees on abstracts and conveyances, payments for registers in proving pedigree, stamp duty on conveyances and mortgages, charges of agents, stationers or printers employed by him—are by practice, and we think properly, introduced into the solicitor's bill of fees and disbursements (2) "But payments which the solicitor is not either by law bound to make, or by custom looked upon as the person to make, as, *e g*, purchase moneys, or interest thereon, moneys paid into court, damages or costs paid to opposite parties, bills due to the solicitors of trustees mortgagees or other parties, legacy or residuary duties (*Va*, Re *Haigh*, 12 Bea 307),—or other payments of a like description, which the solicitor makes as agent

Discard.

on the order of the client and not in discharge of his own duty or liability as solicitor, are by practice, and we think properly, charged in the cash account (3) "We also think that the question, whether such payments are professional disbursements or otherwise, is not affected by the state of the cash account between the solicitor and the client, and that, for instance, Counsel's fees could not the less properly be introduced into the bill of costs as a professional disbursement, because the client may have given money expressly for paying them, and that purchase money or damages would not be properly so introduced, notwithstanding the solicitor may have advanced the money out of his own funds" (Cited in *Stroude.*)

Discard. To cast off as useless or as no longer of service, to put off, to dismiss from employment, confidence or favour to reject

DISCARD, DISMISS, DISCHARGE. Of these, *Discharge* has applications in which it is not synonymous with the other two, as, to a load or cargo, a missile, an office, duty or obligation, in the sense not of disregarding, but performing it It is here equivalent to a removal from personal connection with one's self To *discard* is, literally, to throw out of the hand as an useless card. It has, therefore, the force of rejection of the person or thing so disposed of as useless or of comparatively little value, while *Discharge* is capable both of an honourable and dishonourable sense *Dismiss* is simply to send away or get rid of, and takes its colouring from the character of the dismissal A servant may be dismissed for bad conduct, an untenable charge is dismissed by a magistrate, an officer, arraigned before a Court martial, may be dismissed without any stain upon his character, or, on the other hand, dismissed from service. It has, when applied to things of the mind, a meaning closely resembling discard, that is, to abandon as worthless or insignificant as, you may dismiss an idea as fictitious, a fear as groundless, a hope as vain. In this sense, however, *discard* is used of habits, as to *discard* the follies and vices of youth, where we should not use *dismiss* As applied to persons, dismiss has less than discharge the idea of inferiority in the person sent away, and on the other hand, it has more of the force of peremptory sending away. A king might *dismiss* his refractory ministers, but he would not be said to *discharge* any but his menial servants. (*Smith Syn Dis*)

Discharge Release absolves, or acquit, as, of an obligation, claim, accusation, or service due to exonerate, to relieve, to clear.

DISCHARGE, ACQUITTAL The discharge is a judgment upon an accused person, because the law has not exactly provided for the offence The acquittal recognizes his innocence. In the former case the law is powerless to punish, in the latter powerful to absolve (*Smith. Syn Dis.*)

"DISCHARGE BY OPERATION OF LAW" is a discharge which takes place, whether it was intended by the parties or not.

IN BANKRUPTCY PRACTICE. Discharge is the release of the bankrupt; the step which regularly follows the adjudication of bankruptcy and the administration of his estate.

Discipline.

IN CIVIL PRACTICE to discharge a rule, an order, an injunction, process of execution, or in general any proceeding in a court is to cancel or annul it, or to revoke it, or to refuse to confirm its original provisional force, as, discharging a rule *nisi* is to annul it

IN CRIMINAL PRACTICE Discharge is the act by which a person in confinement, or held on an accusation of some crime or misdemeanour, is set at liberty

Discharged in S 119, Cr. P Code, is merely a 'permission to depart' [4 Ind Cas 1057 (1058)=6 M L T 133=33 M 85=20 M.L J 137]

IN EQUITY PRACTICE Discharge the process of accounting before the Chancery Court, a statement of expenses and counter claims brought in and filed by way of set off, by the accounting defendant

IN THE LAW OF CONTRACT, to discharge is to cancel or unloose the obligation of a contract, to make an agreement or contract null and inoperative Discharge the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated or is broken off before complete execution.

DISCHARGE, IN STAMP ACT, meaning of See *Firth & Sons* v *Inland Revenue Commissioners*, [(1904) 2 K B 205]

"DISCHARGE OF PRISONERS"—"ESCAPE"—"RESCUE" —"BREACH OF PRISON RULES" The term discharge as applied to persons under restraint, means their release in accordance with law from the custody or charge in which they are, whether they are in custody on an accusation or conviction of crime, or as debtors, or in respect of any civil liability When the release from custody is not in accordance with law, if effected by the voluntary act of the public custodian, it is an *Escape*, if by friends of the prisoner, it is a Rescue, if by the prisoner, it is Breach of Prison rules (1221, 1 Seld Soc Pub. pl 155 1270 ibid, pl b 199, 201) Where the custody is not legal, the prisoner is entitled to free himself by force if he can. Failing this, his discharge is ordinarily obtained by writ of *Habeas Corpus*.

DISCHARGE OF SURETY OR SECURITY *See* 6 O.C 262

Discharged Paid, released, acquitted, freed from debt or obligation [*See* 4 J C 1057=6 M L T 133=33 M 85=20 M L J 137, 6 C W N 163]

DISCHARGED INSOLVENT Meaning. [133 I C. 909= A I R 1932 All 58 (2)]

" 'DISCHARGED WITH DISGRACE,' in the Militia Act, (1882) 45 and 46 Vic, c 49, Sec. 10, means, discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude"

Disciple (in Hindu Law) with reference to a preceptor means the disciple who has been invested with the sacred thread by him. (*Visvarupa*)

Discipline. Training, especially used of training which produces self-control, obedience, orderliness, maintenance of a proper subordination in the army or school or the like (as, military discipline, school discipline). The *discipline of School Children* is not confined to school hours, but extends to acts done by a pupil out of school [*Cleary* v. *Booth*, (1893), 1 Q B 465]

Disclaim.

The English Grammar Schools Act, 1840, 3 & 4 V, c. 77,S. 25 defines the word as follows —"'Discipline' or 'management' of a school, shall mean and include, all matters respecting the conduct of the Masters or Scholars, the method and times of Teaching, the Examination into the proficiency of the Scholars, of any school, and the ordering of Returns or Reports with reference to such particulars, or any of them" In a way, it includes the whole conduct of the orderly running of the institution.

Disclaim To renounce a claim or title, disavow (intention, etc)

Disclaimer. "Disclaim, disclamare, is compounded of de and clamo, and signifieth utterly to renounce" (*Co Litt* 102-a, *Termes da la Ley*) *Disclaimer* is an express denial, or complete renouncing of a thing (*Tomlin's Law Dict*)

DIFFERENT APPLICATION OF THE TERM The term disclaimer has four principal applications in different branches of the law, namely, in the law of trusts, in the law of patents; in the law of landlord and tenant, and in the law of bankruptcy

In the law of trusts the term refers to the refusal to undertake the office or duties of a trustee

In the law of patents the term refers to the renunciation, by amendment of the specification, of a portion of an inventor's claim to protection

In the law of landlord and tenant the term refers to the repudiation of that relation by some act on the part of a tenant which in law has that effect

In the law of bankruptcy the term refers to the surrender by the trustee of property belonging to a bankrupt, which is of an onerous character (*Ency of the Laws of England*, See also *Ame Cyc*, *Halsbury Laws of England.*)

Disclose is to expose to view, to reveal

DISCLOSE (*in the Law of Contracts*) The word 'disclose' in S 230 of the Contract Act means to make known But the essential point is knowledge, and, therefore, where there is actual knowledge, it is equivalent to disclosure, (5 B 584).

DISCLOSE, DIVULGE, REVEAL, DISCOVER, TELL *Disclose* is to expose to view or knowledge anything which before was secret, hidden, or concealed *Divulge* is to communicate what had been before kept or confided as a secret, or known to but one or a few. *Reveal* is to make known that which has been unknown or concealed This may be purposely or designedly, with or without breach of faith It differs from *Disclose* as applying only to matters of knowledge, while *Disclose* is applicable to physical objects of sight The matter revealed is supposed to be of value or interest to him to whom it is *revealed* It may be to one or a few, while Divulge is to many *Discover* is simply to remove what was hid from view, and so to bring an object to light It is a sudden, unexpected, bringing before the eyes, not of others, but one's own The term *Reveal* conveys a favourable, as *Divulge* an unfavourable, impression. We *reveal* under a sense of duty or for the benefit of another, we *divulge* to his injury in betrayal of a trust. (*Smith Syn Dis*)

"DISCLOSE A DEFENCE UPON THE MERITS," means not merely to say there is a Defence, but to show what the nature of it is (*Whiley* v. *Wiley*, 27 L J.C P. 305).

Discontinuance

"Discloses himself". The words "discloses himself" in S 231 of the Contract Act must be construed strictly They do not mean merely "is disclosed" or "appears upon the scene" The words really denote the fact of the principal disclosing himself, and not the fact of the existence of the principal becoming known by some source or other (6 Bom L R 731 *See also* 5 B 584)

Disclosure The act of uncovering, unveiling or discovering, revealing, opening, making known, telling that which has been kept concealed, on that which has not been apparent

Discomfort The term "Discomfort" of a neighbourhood, connotes the same as "Annoyance" *per* O'Brien, C J, *Pembroke* v *Warren*, (1896) 1 I R 134

Discommon To deprive of a right of common.

Disconnect (in electricity) to sever connection between two wires, to put electric apparatus out of action by disconnecting parts

Discontent Unsatisfied state of mind, prevalence in society of the consciousness of unredressed grievances, a feeling of dissatisfaction with the existing order of things in the State or society

Discontinuance Default, a discontinuance in practice is the interruption in proceedings occasioned by the failure of plaintiff to continue the suit from time to time as he ought, or failure to follow up his case A break or chasm in a suit arising from the failures of the plaintiff to carry the proceedings forward in due course of law

DISCONTINUANCE is either *voluntary*, as where plaintiff withdraws his suit or *involuntary*, as where in consequence of some technical omission, mispleading, or the like, the suit is regarded as out of court A discontinuance means no more than a declaration of Plaintiff's willingness to stop the pending action, it is neither an adjudication of his cause by the proper tribunal nor an acknowledgment by him that his claim is not well founded

DISCONTINUANCE, IN R S C 1883, O XXVI, r. 1, includes both non-suit at common law and the right of a plaintiff in Chancery to dismiss his own bill *Fox* v *Star Newspaper Co*, (1898) 1 Q B 636, (1900) App Cas 19

DISCONTINUANCE AND DISMISSAL In practice, a dismissal, and a discontinuance amount to the same thing and are but different words employed to convey the same idea namely that the cause is sent out of court

DISCONTINUANCE AND NON-SUIT A *discontinuance* is somewhat similar to a non-suit, for when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day and time to time, as he ought to do, the suit is discontinued, and the defendant is no longer bound to attend. (*Blackstone Comm* 296; *Bouvier L Dict.*)

DISCONTINUANCE OF POSSESSION The word *"discontinuance," in Art* 142, *Limitation Act*, refers to a case where the person in possession goes out and is succeeded in possession by another [1 C W N 277, (*Rams* v *Buxton*, 14 Ch. D. 537=6 Cal 311 *F*) *See also* 6 Cal 311=7 C.L.R. 181.]

Discontinuance

Discontinuance nihil aliud quam intermittere, desenescere, inter-rumpere A maxim meaning Discontinuance is nothing else than to intermit, to abate, to interrupt.

"Discontinuous easement" defined Act 5, 1882, S 5

Discord Strife, want of harmony, conflict.

DISCORD, STRIFE *Discord* may arise from mere difference of opinion, *strife* is in general occasioned by some matter of personal interest, *discord* in the councils of a nation is the almost certain forerunner of its ruin, the common principles of politeness forbid *strife* among persons of good breeding

Discount *In a general sense,* (*as a noun*) a counting off, an allowance or deduction made from a gross sum on any account whatever, an allowance or deduction generally of so much per cent made for prepayment or for prompt payment of a bill or account, a sum deducted in consideration of cash payment from the price of a thing usually sold on credit, any deduction from the customary price or from a sum due at a future time, interest taken in advance a reduction, *As a verb* to abate in advance from the sum paid in a business transaction, to count back, to pay back, to purchase something pay or the amount therefor in cash less a certain per cent

DISCOUNT BY BANK ON BANK—DISCOUNT By the language of the commercial world, and the settled practice of banks, *discount* by a bank means, a deduction or drawback made upon its advances or loans of money, upon negotiable paper, or other evidence of debt payable at a future day, which are transferred to the bank, a deduction made for interest in advancing money upon a bill or note, not due, payments in advance of interest upon money loaned, the deduction of a sum for advanced payment, particularly the deduction of the interest on a sum lent at the time of lending, the interest allowed in advancing upon bills of exchange or negotiable securities

IN A COMMERCIAL ARRANGEMENT, to accept a prepayment "under Discount" at so much per cent per annum, means a rebate of Interest at that rate, and not a true or mathematical discount (*Re Lands Securities Co*, 1896, 2 Ch 320)

Discounting a Bill Advancing money not due till some future period, less the interest which will be due thereon when payable, the act of purchasing at a certain deduction or discount, a bill of exchange and the right to realise, upon it at maturity.

"Discovered to be void." The expression "discovered to be void" in S 65 of the Contract Act appropriate only to cases where the agreement is void by reason of some fact not known to the parties at the time of making it. [5 S L R 267=15 I C 836 (837) *See also* 39 Bom L R 1124=45 All 179=50 I A 69=37 C L J 346=71 I C 619=A I R 1922 P C 403=44 M L J 489 (P C)]

Discovert Unmarried, unprotected

Discovery The act of revealing or disclosing any matter by a defendant in his answer to a suit filed against him in a court of law To administer to the ends of justice, the Court, in many cases, compel a discovery (*See* Civil Procedure Code, O XI) (*Tomlin's Law Dic*) The right of discovery is defined in Bray on Discovery as the right by which a party to some proceedings before a civil Court is enabled, before the determination of any matter in question in those proceedings, to extort on oath from another party to those proceedings—(1) all his knowledge, remembrance, information, and belief of facts concerning the matter so in question, (2) the production of all documents in his possession or power relating to such matter Annual Practice, and Yearly Practice Notes to Order 31, Bray on Discovery, Kerr on Discovery, Civil Procedure Code, (Act V of 1908), O XI

The word also means the finding out on ascertaining something previously unknown or unrecognized

"Discovery is a matter of remedy, and not matter of right" *Lord Watson, Ind Coope & Co* v *Emmerson*, [(1887) 12 L R. Ap Ca 309]

"This kind of order (for discovery) which makes the administration of justice stink in the nostrils of commercial men," *A L Smith, L J Graham* v *Sutton, Carden & Co* (1897), L R 1 Ch D (1897), p 765 This was in reference to what was correctly termed by the learned Judge a "very large order" for discovery and inspection of books and documents *Rigby, L J*, also said "As regards the plaintiff he was wrong in asking for such an extravagant order, and wrong in insisting upon having his pound of flesh That is the sort of thing which, if permitted, brings the administration of justice into odium" (Cited in the Dict of Legal Quotations, p 73 Note)

DISCOVERY, INVENTION Both *discovery* and *Invention* denote generally something new that is found out in the arts and sciences But the term *Discovery* involves in the thing discovered not merely novelty, but curiosity, utility, difficulty, and consequently some degree of importance All this is less strongly involved in *Invention* But there are yet wider differences One can only *discover* what has in its integrity existed before the discovery, while *invention* brings a thing into existence America was *discovered* Printing was *invented* Fresh *discoveries* in science often lead to new *inventions* in the industrial arts Indeed, *discovery* belongs more to science, *invention* to art *Invention* increases the store of our practical resources and is the fruit of search *Discovery* extends the sphere of our knowledge, and has often been made by accident (*Smith Syn Dis*)

Discovery Bill of "Every bill in equity, except the bill of *certiorari*, is in a sense a bill of discovery, but the bill usually distinguished by this appellation is a bill for the discovery of facts resting in the knowledge of defendant, or of deeds, writings or other things in his custody or power, and seeking no relief in consequence of the discovery, but seeking discovery merely in aid for some other proceeding, in court law, pending or about to be brought, or in equity" (14 Ame Cyc 305)

Discovery claim. A mining claim held by right of discovery of minerals therein.

"Discovery of new matter." What is discovery of new matter to be a good ground of review (*See* Civil Procedure Code, 1908, O 47, R. 1 & Notes in M.L.J. Edition.)

Discredit Refusing belief (as) discrediting a statement or a witness.

Discredit.

Discredit.

Discredit, Disgrace, Reproach, Scandal *Discredit* and *disgrace* are negative qualities and apply properly to the outward circumstances of a person, but *reproach* and *scandal* are something positive and have respect to the moral character A man may bring *discredit* or *disgrace* upon himself by trivial or indifferent things, but *reproach* or *scandal* follows only the violation of some positive law, moral or divine A witness is *discredited* if he gives false testimony, a trader is *disgraced* if he deals dishonestly, a statesman deserves *reproach* if he uses his position to gain a private advantage Great men are generally deaf to *scandals*

Discretio est discernere per legem quid sit justum A maxim meaning "Discretion consists in knowing what is just in law" (*Broom*)

Discretion When any thing is left to any person judge or magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law (*Tomlin's Law Dic.*) In its ordinary meaning, the word signifies unrestrained exercise of choice or will, freedom to act according to one's own judgment, unrestrained exercise of will, the liberty of power of acting without other control than one's own judgment But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others *Discretion* is to discern between right and wrong, and therefore whoever hath power to act at discretion, is bound by the rule of reason and law (2 Inst 56, 298 *Tomlin's Law Dic*)

DISCRETION In general, is the discernment of what is right and proper It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution, nice discernment, and judgment directed by circumspection, deliberate judgment, soundness of judgment, a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the wills and private affections of persons

"Discretion" means, when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour It is to be not arbitrary, vague, and fanciful, but legal and regular And it must be exercised within the limit, to which an honest man, competent to the discharge of his office, ought to confine himself [*Lord Halsbury, L C., Sharp* v. *Wakefield* (1891), 64 L T Rep 180 (1891) Ap Ca 173]

The very word discretion standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste, evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking 33 Bom 334=10 Bom L R 821=3 I C 361 The word "discretion" in itself implies vigilant circumspection and care; therefore where the legislature concedes wide discretion it also imposes a heavy responsibility. (1933 Cr.C 175=A.I.R. 1933 Sind 49.)

Discretion

DISCRETION, DEGREES OF There be several degrees of Discretion, discretio generalis, discretio legalis, Discretio specialis,—'*Discretio generalis* is required of every one in everything that he is to do, or attempt,

"*Legalis Discretio*, is that which Sir E Coke meaneth and setteth forth in Rooke's and Keighley's cases and this is merely to administer justice according to the prescribed rules of the law,

"The third Discretion is where the laws have given no certain rule and herein Discretion is the absolute judge of the cause, and gives the rule" (Callis 112, 113, *Stroude* 541)

DISCRETION, FREE AND UNQUALIFIED. The "free and unqualified discretion" to refuse or grant Licenses, which is given to justices by the Beer Dealers Retail Licences is absolute as well as regards the renewal of an old, as the grant of a new, Licence (*R* v *Kay*, 52 L J M C 90)

"The discretion of a Judge is the law of tyrants, it is always unknown It is different in different men, It is casual, and depends upon constitution, temper, passion In the best it is oftentimes caprice, in the worst it is every vice, folly, and passion to which human nature is liable" [*Lord Camden L C J., Case of Hindson and Kersey* (1680), 8 *How, St Tr* 57]

Discretion, Judicial Is a certain latitude or liberty accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him The use of the word "judicial" limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review But the presence of the word "discretion" permits the judge to consider as a judge, what are vaguely termed, all the circumstances of the case and the purpose for which he is invested with the discretion, and to make his order by reference to considerations of convenience or utility or saving of expense rather than on considerations of strict law or technicalities

Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights The matters which should regulate the exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity When a statute gives a judge a discretion what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (*Lee* v *Bude Railway Co*, (1871) L.R 6 C P 576, 580, Willes, J, and see *Morgan* v *Morgan*, 1869, L R 1 P & M 644, 647) "That discretion, like other judicial discretions, must be exercised according to common sense and according to justice, and if there is a miscarriage in the exercise of it, it will be reviewed, but still it is a discretion, and for my own part I think that when a tribunal is invested by Act of Parliament, or by rules, with a discretion, without any indication in the Act or rules of the grounds on which the discretion is to be exercised, it is a mistake to lay down any rules with a view of indicating the particular grooves on which the discretion would run, for if the Act or rules did not fetter the discretion of the judge, why should the Court do so?"

Discretion of Court

Gardner v. *Jay*, (1885) 29 Ch D 50 at 58, *per* Bowen, L J) (*See also* 5 Cal. 259=4 C L J 25, 2 Bom L R 845, 17 Cal 767, 29 Bom. 71, 26 All 238 P.C , 11 C W N 1143)

Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to men's wills, and private affections *Lord Coke, Rooke's Case* (1598), 5 Rep 99 b

Discretion of Court "Ability to discern by the right line of law, and not by the crooked cord of private opinion, which the vulgar call discretion", freedom to act according to the judgment of the court, or according to the rules of equity, and the nature of circumstances, judicial discretion regulated according, to known rules of law, legal discretion, and not personal discretion sound discretion guided by fixed legal principles Sound discretion guided by law, sound judgment to be exercised according to the rules of law

Discretion, when applied to a Court of justice, means sound discretion guided by law It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful, but legal and regular *Lord Mansfield, Case of John Wilkes* (1763), 4 Burr Part IV 2539

Age of Discretion "The Age of Discretion, in English law is the age of 14 years (*Litt* S 104)

Discretionary Order Order from a client to a broker to purchase stock up to a certain amount at his discretion

Discretionary power A term which involves an alternative power, *i e* a power to do or refrain from doing a certain thing

Discuss Exchange or compare opinions, expound the various views, held on any subject

To discuss, examine *Discussion* is altogether carried on by verbal and personal communication, *examination* proceeds by reading, reflection, and observation, we often *examine*, by *discussion*, which is properly one mode of examination, a *discussion* is always carried on by two or more persons, an *examination* may be carried on by one only politics are a frequent though not always a pleasant subject of *discussion* in social meetings Complicated questions cannot be too thoroughly *examined*

"Disease" defined (*See* Dangerous Diseases Act 13, 1899, S 2)

Disease Any derangement of the functions or alterations of the structure of the animal organs, a morbid condition, resulting from some functional disturbance or failure of physical functions which tends to undermine the constitution, derangement of health "Voluntary drunkenness is not regarded as a disease affecting the mind, but involuntary drunkenness, and diseases caused by voluntary drunkenness, fall, so far as they affect the mind, within that term" (*Steph Cr 22*)

"Diseased" defined, Act 13, 1899, S 2

Disembargo To release from embargo.

Disengage. Relieve, release, extricate

Disengage, disentangle, extricate, detach We are *disengaged* from what binds us, *disentangled* from what implicates us, *extricated* from what embarrasses us, and *detached* from what embraces us. (*Smith Syn Dis.*)

Disfigure Mar the appearance of, to "disfigure" is to do some external injury which may detract from the personal appearance (*Arch. Cr.* 804)

Disfigurement The act of disfiguring, or the state of being disfigured, blemish, defacement, change of external form for the worse In law it is an external injury detracting from personal appearance It is treated as a form of bodily harm distinct from maiming, which means a bodily injury which creates a permanent disability. [*R* v *Boyce*, (1824), 1 Moo C C 29]

Disforest To clear off trees.

Disfranchise To deprive of citizenship

Disfranchisement Taking away or depriving a person of a franchise or the right of electing or voting for the National Assembly "Disfranchisement, signifies taking a franchise or citizenship from a man for some reasonable cause" (per *Mansfield, C J*, *Symmers* v *The King*, 2 Cowp 502).

Disguise *As a noun*, a dress or exterior put on to conceal deceive, artificial language or manner, assumed for deception *As a verb* to change the guise or appearance of a person or thing, especially to conceal by an unusual dress, to hide by a counterfeit appearance; also to effect or change by liquor, to intoxicate

Disguise, dissemble An enemy may *disguise* his hatred of another by an air of indifference. He *dissembles* when he assumes an air of friendship *Disguise* is a matter of appearance, *dissimulation* a matter of action A prince might *disguise* himself as a beggar, but unless he held such communications with others as to practically deceive them, he would not be *dissembling*. (*Smith Syn. Dis*)

Disherison A disinheriting.

"Dishonestly" defined *See also* Fraudulently, Act 45, 1860, S 24 "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly" (Penal Code, S 24) (*See also* 1 Weir 460=3 M H C App 6, 6 C W.N 203; 25 All 31, 32 C 775=9 C W N 807=2 Cr.L J 368=1 C L J 469)

The word "dishonestly" in S. 24, I. P. Code, has a technical meaning which is at variance with its popular sense as implying deviation from probity It is used in connection with *property* and has nothing to do with *probity*. If a person causes wrongful gain or wrongful loss by unlawful means in respect of property to which he is not legally entitled, he acts "dishonestly" within the meaning of S. 24, though he may act from laudable motives. (15 Mys L J. 18) The word "dishonestly" does not necessarily imply wrongful gain to accused himself. (28 O.C 230=88 I C. 833=2 O W N. 469=A.I.R. 1925 Oudh 469.)

S. 24, I P Code, is not an exhaustive definition of the word "dishonestly". The section does not say that the word is applicable only when there is an intention of causing wrongful gain to one person or wrongful loss to another but properly construed

Dishonour.

means that cases of intention of causing such wrongful gain or loss are to be considered as coming within the wider class of dishonest actions (9 Pat L T 800)

DISHONEST, KNAVISH *Dishonest* characterizes simply the mode of action *knavish* characterizes the agent as well as the action what is *dishonest* violates the established laws of man, what is *knavish* supposes peculiar art and design in the accomplishment It is *dishonest* to take anything from another which does not belong to one's self, it is *knavish* to get it by fraud or artifice, or by imposing on the confidence of another We may prevent *dishonest* practices by ordinary means of security, but we must not trust ourselves in the company of *knavish* people if we do not wish to be over-reached

"DISHONEST MISAPPROPRIATION OF PROPERTY," *See* Penal Code, S. 403

Dishonour (*In Mercantile Law and usage*) The refusal or neglect to accept a bill of exchange or other negotiable instrument on presentation for acceptance, or to pay it at maturity

Dishonour Cheque (*by Banker*) Return it unpaid to presenter

"Dishonour woman." This term involves the idea of violation of chastity or modesty

NOTICE OF DISHONOUR (*in Mercantile law*) Notice which the holder of a bill of exchange gives to the drawer when the bill is not paid on the due date.

"Dishonoured by non-acceptance" defined, Act 26, 1881, S 91.

"Dishonoured by non-payment", defined, Act 26, 1881, S 92.

Disincarcerate To release from imprisonment.

Disincorporate To annul or make void an incorporation (of a company etc)

Disinfect Purge a thing from infection, make pure or clean

Disinfectant Having disinfecting qualities, a substance having such qualities An agent which attacks putrescent or miasmatic substances or matter, and transforms them into harmless products either by uniting with them or breaking them up.

Disinherit Deprive one's heir of the right of inheritance

Disinheritance Depriving a person of his inheritance, rejecting a person from the position of a heir

Disinterested witness. A witness devoid of any pecuniary interest, having no prospect of gain or loss, in respect of the subject-matter of the litigation, or the testimony which he gives

Dismiss. To let go, to relieve from a duty

TO DISMISS, DISCHARGE, DISCARD, *Dismiss* is applicable to persons of all stations, but used more particularly for the higher orders: *discharge* on the other hand is confined to those in a subordinate station. A clerk is *dismissed*; a menial servant is *discharged*, an officer is *dismissed*, a soldier is *discharged*. Neither *dismiss* nor *discharge* define the motive of the action, they are used indifferently for that which is voluntary, or the contrary: *discard*, on

Disorderly conduct.

the contrary always marks a dismissal that is not agreeable to the party discarded A person may request to be *dismissed* or *discharged*, but never to be *discarded* The *dismissal* or *discharge* frees a person from the obligation or necessity of performing a certain duty, the *discarding* throws him out of a desirable rank or station A minister desires to be *dismissed* when his views are not accepted by the Governor, a military commander asks for a *discharge* when the Government is not prepared to give effect to his plans, a husband *discards* an unchaste wife

Dimissal of Action An action may be dismissed (1) on the merits or (2) on the ground of some default on the part of the plaintiff, or failure to take some necessary step, thereby entitling the defendant to dismissal for want of prosecution

Dismissal (*of execution petition*) 'To strike off the file' or 'to dispose of' are not same as to dismiss (*Re* Execution petitions) (31 Bom L R 1209)

Application "DISMISSED WITH COSTS" but no formal order drawn up embodying such decision—Effect of, (1937 A.W.R 858=1937 A L J 1208=A.I. R 1937 All 781)

DISMISSAL — DISCONTINUANCE AND NON-SUIT—RETRAXIT A *dismissal* of a case is an order for its termination without a trial of any other issues involved in it A *nolli prosequi* has been defined as an agreement not to proceed further in the suit, as to the particular person or cause of action A *discontinuance* at common law was a failure to continue the cause regularly from day to day, or from term to term, between the commencement of the suit and final judgment, and if there was any lapse the plaintiff had to begin a new.

A *nonsuit* has been defined as a renunciation of a suit by the plaintiff, most commonly upon the discovery of some error or defect, when the matter has so far proceeded in that the Court or jury are ready to deliver their judgment or verdict

As distinguished from a *dismissal*, a *discontinuance*, or a *nonsuit*, is where the plaintiff comes personally into Court after his plaint is filed there, and says that he will not proceed with it on an acknowledgment that he has no cause of action

The distinction between *retraxit* and *nonsuit* has been defined by Blackstone (3 Bla Com. 296) as follows. "A retraxit differs from a nonsuit, in that the one is negative and the other positive; the nonsuit is a mere default and neglect of the plaintiff and therefore he is allowed to begin his suit again, upon the payment of costs, but a retraxit is an open and voluntary renunciation of his suit in Court, and by this he for ever loses his action"

Dismortgage To redeem from mortgage.

Dismount (*Mil*) Take gun from its mount.

Disnomy. Bad legislation

Disorderly. Not regulated by the restraints of morality, not complying with the restraints of law or social order, confused or out of order, 'lawless' or contrary good morals, as, disorderly behaviour.

Disorderly conduct. In its broad sense the term *disorderly conduct* "embraces certain minor offences which are usually defined by statute and consist of disturbance of the peace and quiet of the public or

Disorderly house.

communities, or families or a class of persons, or conduct which tends to cause or provoke a breach of the peace or corrupt public morals"

While it is impossible to state with accuracy just what may be considered in law as amounting to disorderly conduct, the term is usually held to embrace all such acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts

Disorderly house 'A disorderly house is a house in which people abide or to which they resort to the disturbance of the neighbourhood or for purposes which are injurious to the public morals, health, convenience, or safety" "common bawdy houses, common gaming houses, common betting houses, disorderly places of entertainment—all these are comprised under the term 'disorderly houses" (*Steph Cr 122, Tomlin's Law Dict*) A Brothel is a Disorderly house, although no indecency or disorderly conduct is perceptible from its exterior (*R v Rice*, 35 L J M.C 93)

"While the term "disorderly houses", speaking generally, includes any place, of public resort where the peace, comfort, or decency of the neighbourhood is habitually disturbed, and conduct of the inmates of which constitutes a public nuisance, yet ordinarily the term has a more restricted significance and is especially adapted and applied to houses of prostitution At first the evil of prostitution was local in its character and was confined, in general, to ordinary bawdy houses kept by individual proprietors But in the development of crime it has gone far beyond this In the underworld today it is recognized as a regular matter of commerce As a consequence most countries have passed stringent legislation against the spread of this vice and its attending enormity A disorderly house is one so kept as to disturb, annoy, or scandalize the public generally, the inhabitants of any particular neighbourhood, or the passersby on the street, or, as otherwise characterized, it is a place kept for the purpose of public resort for thieves, drunkards, prostitutes, or other idel and vicious people" (*Kul Case Law.*)

Disorderly Inn "Inn kept in a disorderly manner and suffered to be resorted to by persons of bad character for any improper purpose" (Steph. Cr 125)

Disorderly person In common parlance, a person guilty of disorderly conduct, one who conducts himself in a way likely to provoke breach of the peace, Vagrant (14 Ame Cyc 514)

Disown Deny ownership or authorship or connection with or responsibility for a thing, repudiate, disclaim

Disparata non debent jungi. A maxim meaning "Dissimilar things ought not to be joined."

Disparage Speak slightingly of a person, bring into disrepute

To DISPARGE, DETRACT, TRADUCE, DEPRECIATE, DEGRADE, DECRY We *disparge* a man's performance by speaking slightingly of it. we *detract* from the merits of a person by ascribing his success to chance; we *traduce* him by handing about tales that are unfavourable to his reputation. thus authors are apt to *disparge* the writings of their rivals, or a soldier may *detract* from the skill of his commander, or he may *traduce* him by relating scandalous reports We may *depreciate* or *degrade* an individual, we *decry* measures and principles the former two are an act of an individual, the latter is properly the act of many Some men have such perverted notions that they are always *depreciating* whatever is esteemed excellent in the world they whose interests have stifled all feelings of humanity have *degraded* the poor Africans, in order to justify the enslaving of them political partisans commonly *decry* the measures of one party, in order to exalt those of another

Dispassionate Impartial, devoid of emotion, as, a judge giving dispassionate hearing to all parties in the suit

DISPASSIONATE, COOL *Dispassionate* solely respects angry or irritable sentiments, *cool* respects any perturbed feeling when we meet with an angry disputant it is necessary to be *dispassionate*, in order to avoid quarrels, in the moment of danger our safety often depend upon our *coolness*

Dispauper. To deprive of the privilege of suing *in forma pauperis*

Dispel To clear away, to banish

DISPEL, DISPERSE *Dispel* is to separate in such a way as to cause to vanish, or to drive away, at the same time *Disperse* on the other hand, means no more than to scatter abroad By the providence of God the Jews, *dispelled* from their own land, are now *dispersed* among the nations, (*Smith Syn. Dis*)

Dispense Deal out (as, dispensing justice), prepare and issue (as, dispensing medicine), grant exemption from an obligation, not insist upon (as, dispensing with one's services)

Dispensation Exemption from a religious obligation, order of things regarded as established and controlled by God (as "in the dispensation of providence)

Dispensary A room or apartment for the distribution of medicine "The main purpose of a 'Dispensary' is the distribution of medicine" per *Ld Watson, Dilworth* v. *Commr of Stamps*, (1899) A C 107]

Dispensatio est vulnus quod vulnerat jus commune A maxim meaning "A dispensation is a wound, which wounds common law" (*Ame Cyc*).

Dispentio est mali prohibiti provida relaxatio ultimate seu necessitate pensata, et est de jure domino regi concessa, propter, impossiblitatem praevidendi de omnibus particularibus. A maxim meaning "A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity, and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars."

Dispeople. To deprive a place of its population.

Disperse Break up from an assembled state (as, dispersing an unlawful assembly by use of force).

Dispersion. The removal of inflammation from any part of the body.

Displace Shift from a position previously occupied, oust; as, displacement of a servant. A master would be deemed to "displace" his servant, if

Displace.

Displeasure.

he voluntarily does anything that puts it out of his power to continue the employment, *e g*, transfers his business (*Stirling* v *Maitland*, 34 L J.Q.B. 1)

Displeasure Resentment, indignation, pain or vexation at the conduct of a dependant or subordinate, as, a clerk incurring the displeasure of the office superintendent. *Displeasure anger disapprobation Displeasure* and *disapprobation* are to be compared inasmuch as they respect the conduct of those who are under the direction of others *displeasure* is an act of the will, it is an angry sentiment, *disapprobation* is an act of the judgment,any mark of self-will in a child is calculated to excite *displeasure*, a mistaken choice in matrimony may produce disapprobation in the parent. *Displeasure* is always produced by that which is already come to pass, *disapprobation* may be felt upon that which is to take place a *master* feels displeasure at the carelessness of his servant, a parent expresses his *disapprobation* of his son's proposal to leave his situation

Disposal "Disposal" is frequently, used in the sense of regulating, ordering, conducting, a thing or business (*Baggett* v *Meux*, 13 L J Ch 232), also sometimes used as equivalent to distribution Where a testator devised a freehold house to his wife to be at her *"will and disposal"* in any way she might think best for herself and family, it was held that no trust was thereby created in favour of the testator's children [*Lambe* v *Eames*, (1871) L R. 6 Ch 597, 40 L.J.Ch 447, In re *Hutchinson and Tenant*, (1878) 8 Ch D 540, In re *Adams and Kensington Vestry*, (1884) 27 Ch D 394]

DISPOSAL, DISPOSITION *Disposal* is a personal act, it depends upon the will of the individual *Disposition* is an act of the judgment, it depends upon the things The removal of a thing from one's self is involved in a *disposal*, the good order of the things is comprehended in their *disposition* The *disposal* of property is in the hands of the rightful owner, the success of a battle often depends upon the right *disposition* of an army

DISPOSAL (OF PROPERTY ON A DOCUMENT) In Criminal Procedure Code, (V of 1898), S 517, does not include confiscation or forfeiture [2 Ind Cas 233 (236) *See also* Rat 492, 1 Weir 523, 1 Weir 534, 9 Mad 448, 8 C W N. 887=1 Cr L J 273, 19 M.L.J 254=9 Cr.L J 149, 24 M.L J 1=14 Cr L. J. 27, 34 Cal. 986, 6 Cr L J. 44, 9 C W N 597, 9 Cr L J 539]

DISPOSAL OF THE BENEFICIAL INTEREST THEREIN (in S 81, Trusts Act, 1882) [*See* 32 M 443 2 Ind Cas 4, *Per* Sankaran Nair, J]

Dispose Arrange or group with regard to relative position of things, generally used in connection with the preposition "of," and means to determine the fate of, to exercise the power of control over, to fix the condition, application, employment, etc, of; to direct or assign for a use; to exercise finally one's powers of control over; to pass over into the control of another.

"Disposed of." The expression 'disposed of' in O.6, R. 1, Cl.(c) of the Madras High Court (Original Side) Rules is used in contradistinction to 'settled' withdrawn or compromised after a partial or complete trial before judgment and should be interpreted to mean a disposal by an adjudication made by the Court itself on the merits of the case and not a

Disproved.

disposal made on any agreement between the parties such as settlement, withdrawal or compromise [24 L W 808=1926 M W N 887=A I R 1926 Mad. 1214.]

Disposing mind 'It is not sufficient proof of a "disposing mind" that a man should be able to maintain an ordinary conversation and to answer familiar and easy questions He must have more mind than suffices for that He must have what the old lawyers called "a disposing mind", he must be able to dispose of his property with understanding and reason This does not mean that he should make what other people may think a sensible will or a reasonable will or a kind and good will But he must be able to understand his property, to form a judgment with respect to the parties whom he chooses to benefit by it after his death, and if he has capacity for that, it suffices" The mere fact that the testator understood that he was making a will and by giving the whole of his property to one object of his regard, is not sufficient proof that he had "a disposing mind" (10 Ind Cas 130, 132)

Disposition Disposal, plan or arrangement for the disposal, distribution of something, definite settlement with regard to some matter

DISPOSITION, in 3 & 4 Will 4, c 74 (Fines and Recoveries Act), S 38 See *Crocker* v *Waine*, (1864) 5 B & S. 697

DISPOSITION, CHARACTER The *Disposition* is the prevailing spirit of mind, resulting from constitution It is the aptitude or tendency of character *Character* is often used in the sense of the social estimate formed of a man, his reputation for good or ill (*Smith Syn Dis.*)

"DISPOSITION OF UNOWNED LANDS" defined, Act, 18, 1881, S 41

Dispossess Oust or dislodge person from possession of property

Dispossession Where the heirs of the deceased could not realise rent owing to successful intervention of another person, it must be taken that they were dispossessed 2 I C 381 (Cal) *"Dispossession"* implies ouster, and the essence of ouster lies in that the person ousting is in actual possession (61 I C. 78=2 Pat L,T 133) A division of land by landlords among themselves is not dispossession of the raiyats (158 I C 21=A I.R. 1935 Pat 372)

"DISPOSSESSION, OR DISCONTINUANCE OF POSSESSION" means the abandonment of possession by one entitle to it (*Rimington* v *Cannon*, 22 L J.C.P 153).

Small acts by the rightful owner will disprove *"Dispossession or Discontinuance" e g.*, small repairs or, as regards a boundary wall, an inscription claiming it (*Phillipson* v. *Gibbon*. 40 L J. Ch. 406.)

DISPOSSESSION OTHERWISE THAN IN DUE COURSE OF LAW The words "dispossessed otherwise than in due course of law" within the meaning of S. 9 of the Specific Relief Act, 1877, do not apply to a case where the petitioner was dispossessed by a legal process but one which ought not to have been applied. [18 I. C. 727 (728).]

Disproved. Not proved, want of proper proof

DISPROVED. A fact is said to be *disproved* when, after considering the matters before it, the Court either believes that it does not exist, or considers its

Disputable presumption

non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist [Act 1 of 1872 (Evidence), Ss 3, 9]

Disputable presumption One which is conclusive until overthrown by contrary evidence

Dispute As a noun, a conflict or contest, sometimes used in the sense of controversy

A clause providing for an Arbitration "should any Dispute arise," includes Disputes of law as well as of fact (*Forwood* v *Whatney*, 49 L J Q B 447)

There would be a dispute so long as a claim is asserted by one party and denied by the other, be the claim a false or a true one, or whether it ultimately turns out to be false or true (42 C W N 391.)

The word 'dispute' occurring in a clause of the partnership articles providing for reference to arbitration does not include a dispute whether the partnership should be terminated (123 I C 696=A I R 1930 Sind 202)

Whether or not the Court can legally enquire into any question on which the parties join issue is a dispute within the meaning of Para 1 (Sch II, Civil Procedure Code) (52 Cal 559=42 C L J 26=87 I C 633=29 C.W N. 886=A I R 1925 Cal 812)

DISPUTE, IN ARBITRATION ACT, (1889) (52 & 53 Vict c 49) See *Parry* v *Liverpool Malt Co* (1900) 1 Q B 339 (C A.).

DISPUTE IN THE EMPLOYERS AND WORKMEN'S ACT, (1875) (38 & 39 Vict c 90), S 4, includes a complaint made by the employer as to the conduct of the workman. [*Clemson* v *Hubbard*, (1875), 1 Ex D 179]

DISPUTE AS TO THE AMOUNT "Dispute as to the amount," must be confined to questions of amount only, and will not embrace a case where the very liability of the party is in dispute (*R* v *Metropolitan Commrs. of Sewers*, 22 L J.Q B. 234)

DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY [*See* Criminal Procedure Code, S. 145, 6 C. 835=8 C.L.R. 217]

"DISPUTE CONCERNING THE USE OF ANY LAND" [*See* 29 M 97=15 M L J 394=3 Cr L J 31]

Disqualification That which disqualifies or incapacitates

'Disqualified" A person is said to be "disqualified" for an office if he is personally ineligible, or if some condition precedent to his election or appointment has not been fulfilled (*Howes* v *Turner*, 45 L J C. P 550.)

"Disqualified proprietor" defined, Ben Act 4, 1870, S 1.

DISQUALIFIED PROPRIETOR S 6 of the Court of Wards Act does not profess to define the term "disqualified proprietor". It merely defines the circumstances under which a certain class of persons *viz.*, the proprietors of land which is subject to the payment of Government revenue, shall be held to be disqualified to manage their own (property (29 Cal. 638=7 C W N. 20)

Disqualify In its natural and ordinary sense to incapacitate, to disable, to divest or deprive of the qualities or properties necessary for any purpose, to render unfit, to incapacitate, to deprive of legal capacity; to disable.

Dissension.

Disregard. (*As a noun*), neglect, contempt a word sometimes used in the sense of regret (*As a verb*) to omit to regard or take notice of, to overlook, to ignore, be uninfluenced by.

To DISREGARD, NEGLECT We *disregard* the warnings the words, or opinions of others, we *neglect* their injunctions or their precepts A child disregards the prudent counsels of a parent he neglects to use the remedies which have been prescribed to him

Disseisin *Or Disseizin* A species of injury by ouster to the estate of another,—A wrongful putting out of him that is seised of the freehold (1 Inst 277) As where a person enters into lands or tenements, and his entry is not lawful, and keeps him that hath the estate from the possession thereof (*Bract lib* 4, c 3 *Tomlin's Law Dic*) It is a tortious ouster, an ouster of the rightful owner of the seizin, the wrongful ouster of the rightful tenant from the possession and an usurpation of the freehold, a privation of seizin, the act of wrongfully depriving a person of the seizin of land, putting a man out of possession, the term also applies to an estate gained by wrong and injury

DISSEISIN AND DISPOSSESSION Disseisin "Is a putting out of a man out of seisin, and ever implyeth a wrong But dispossessing or ejectment, is a putting out of possession, and may be by right or by wrong" (Co Litt 153 b)

Disseisinam satis facit, qui uti non permittit possessorem vel minus commode licet omnino non expellat A maxim meaning "He makes disseisin who does not permit the possessor to enjoy or make his enjoyment less useful, although he does not expel him altogether"

"Disseminates", (in S 108, Criminal Procedure Code The word does not refer to the number of acts performed or to something in the nature of it A simple act is enough, if there is something to show that a repetition of the act is probable.(139 I.C 88= 1932 Pat 213)

Dissent Contrariety of opinion, refusal to agree with something already stated or adjudged or to an act previously performed (as) a dissenting judgment

DISSENT, DISAGREEMENT, VARIANCE, DIFFERENCE. *Difference* is the simplest, and admits of degrees from the smallest to the widest variation *Dissent* unlike the rest, is employed only of persons, and not of their opinions. *Disagreement* and *Variance* also imply the same thing, and commonly denote a difference on some practical, and not merely an abstract matter of opinion. Persons are said to *disagree* who might be expected to act together, and to be at *variance* where they might be expected to exhibit harmony, they are said to differ simply as a matter of fact (*Smith Syn Dis*)

Dissenters Separatists from the Church and the service and worship thereof. (*Tomlin's Law Dic.*)

Dissenting opinion or *Dissenting Judgment*. The opinion or judgment in which a judge announces his dissent from the conclusion held by the majority of the court, and expounds his own views.

Dissension Disunion. Quarrels due to difference of opinion.

Dissimilium

DISSENSION, CONTENTION, DISCORD. A collision of opinions produces *dissension*, a collision of interests produces *contention*, a collision of humours produces *discord*. A love of one's own opinion, combined with a disregard for the opinions of others, gives rise to *dissension*, selfishness is the main cause of *contention*, and an ungoverned temper that of *discord* *Dissension* tends not only to alienate the minds of men from each other, but to dissolve the bonds of society, *contention* is accompanied by anger, illwill, envy, and many evil passions, *discord* interrupts the progress of the kind affections, and bars all tender intercourse.

Dissimilium dissimilis est ratio A maxim meaning "Of dissimilars the rule is dissimilar"

Dissimulatione tollitur Injuria A maxim meaning "Injury is removed by being passed over or forgiven."

Dissolute. Unrestrained, loose in morals and conduct

DISSOLUTE, LICENTIOUS There is much in common between these two terms. Yet the *Licentious* man is not necessarily *Dissolute* as one may take much *licence* of self indulgence in one way without that universal laxity and reckless indifference to all self-restraint which is implied in the term *Dissolute* *Licentious* points rather to the indulgence of self-will or vicious pleasures, dissolute to the wanton disregard of everything that stands in the way of, or might restrain sensual enjoyment (*Smith. Syn Dis*)

Dissolution. In general, a dissolving, a break up, destroying

AS APPLIED TO CONTRACTS, the annulling of a contract by relieving the parties of its provisions.

AS APPLIED TO CORPORATIONS, the extinguishment of its existence in the manner prescribed by law.

AS APPLIED TO MARRIAGES, a divorce

IN COURT PRACTICE, rendering a legal proceeding null, abrogating or revoking it, unloosing its binding force

Distance. Degree of remoteness in space, length of the straightline that can be drawn from one point to another

Distant. Remote in time (as, distant ages), or space (as, distant place), or relation (as, distant cousin)

DISTANT, FAR, REMOTE. *Distant* is used to designate great space, *far* only that which is ordinary astronomers estimate that the sun is ninety-four millions of miles *distant* from the earth, a person lives not very *far* off, or a person is *far* from the spot. *Distant* is used absolutely to express an intervening *space*. *Remote* rather expresses the relative idea of being gone out of sight. A person is said to live in a *distant* country or in a *remote* corner of any country. A *distant* relationship between individuals is never altogether lost sight of, when the connexion between objects is very *remote* it easily escapes observation. (*Crabb*).

As *Distant* is opposed to near so *Remote* is opposed to immediate: as, "The accident was the remote, not the immediate cause of his death." Things are remote not only physically, but as regards our need or use of them, or the relation they bear to us, or the

Distinctly.

impression they produce on us, as a remote connection, cause, resemblance, effect A *distant* spot is simply one that if far off, a *remote* spot is solitary, inconvenient, difficult to reach, not likely to be well known, and the like (*Smith Syn. Dis*).

Distant kindred. The expression of "distant kindred" under the Mahomedan law, includes all relations, who are neither sharers nor residuaries It is not restricted to the four classes who are usually enumerated as primarily standing in that relation to the deceased. 29 C 738 *e.g.* the son of the grand daughter of the brother of the grandfather of the deceased comes within the expression "distant kindred" According to the Mahomedan law, the term "distant kindred" includes all those blood relations, whether near or distant, who are neither sharers nor residuaries (27 P R 1904=77 P L R. 1904=29 C. 738 *Foll*).

Distillation The conversion of any substance into vapour in a vessel so arranged that the vapours are condensed and collected again in a separate vessel

Distiller. A person whose occupation is to extract spirits by distillation"

'Distiller's Warehouse', means an approved Warehouse on the premises of a Distiller". (*Eng. Spirits Act*, 1880, S 3).

Distillery. A place or building where alcoholic liquors are distilled or manufactured, distilling establishment

"Distinct Matter". The agreement to refer any dispute whatever arising out of the contract to arbitration contained in a written contract is a part of the contract itself and not a "*distinct matter*" within the meaning of the S 5 of the Stamp Act II of 1899 (39 C 669=16 Ind. Cas. 153 (155).

"Distinct offence" By "distinct offence", it is meant that it must be an offence entirely unconnected with a former offence charged. (6 Rang. 386=111 I. C 850=A I R. 1928 Rang 252)

Distinct Subjects The terms "distinct subjects" in S 17 of the Court Fees Act are equivalent to "distinct causes of Action" [16 A. 401=14 A.W.N. 124 *See also* 5 L B R. 94=4 Ind. Cas 289, 27 A. 186 =(1904) A W N. 210, *See also* 1 All. 552 F B.; 2 All. 676 F B.; 30 M 61=16 M.L J 462.]

Distinctive Serving as a mark or token by which something may be known from others of its kind.

Distinctive device or mark In the Trade Mark Law a *distinctive device or Mark* is "a Mark or Device of such kind as, in case of infringement it shall be clear what it is that is being infringed, and that the mark is something distinct from all other marks used in the same class of goods" (*per* Lopes, L.J. *James* v. *Parry*, 55 L.J.Ch. 915). A device or mark is none the less distinctive because it is a pictorial representation of the article, but Colour alone will not make a device "distinctive" (*Re Hanson*, 57 L.J. Ch. 173).

"Distinctive words," in the Patents, &c, Act, 1883. See *Hopkinson's Trade Mark* (1892), 2 Ch 116.

Distinctly Clearly, explicitly, definitely, precisely, unmistakeably.

Distinct Subjects.

DISTINCTLY DISTINGUISHED FROM 'DIRECTLY' *See* 115 I C 1=1929 Lah. 338

"Distinct subjects". (In S 17, Court Fees Act) [*See* 63 Cal. 163=158 I.C. 780=39 C W.N 1146=1935 Cal 573]

Distinguenda sunt tempora, aliud est facere aliud perficere A maxim meaning "Times are to be distinguished, it is one thing to do, another to complete"

Distinguenda sunt tempora distingue tempora et concordabis leces A maxim meaning "Times are to be distinguished, distinguish times and you will make laws agree."

Distinguish (*Distinguishing cases*) To point out an essential difference, to prove a case cited as applicable to be really inapplicable

DISTINGUISH, DISCRIMINATE We *distinguish* by the eye or the mental perception, we *Discriminate* by the judgment alone We *distinguish* broadly, we *discriminate* nicely We *distinguish* best when we show great differences, we *discriminate* best when we show slight differences, or dissimilarities in detail under a general resemblance We *distinguish* in order to separate or keep things apart which might otherwise be confounded We *discriminate* with the further view of showing wherein their differences consist *Discrimination* must always be nice, particular, and exact, *dissecting*, as it were, the things discriminated *Distinction* may be exact or not, minute or rough, broad or nice (*Smith Syn Dis*)

Distracted. Disordered in intellect; deranged, mad; absentminded

Distrain. To take as a pledge the property of another to keep the same until he performs his obligation, or until the property is sold by the Sheriff or other proper officer to satisfy the obligation, legal seizing goods as a method of enforcing payment.

Distrainor. One who takes possession of personal property by a distress, for the purpose of enforcing payment or discharging obligation

"Distraining officer" defined Mad. Act 6, 1867, S 6

Distress A state of danger or necessity, a situation of misfortune calamity Technically a remedy-summary in its nature and extraordinary in its character a process whereby moveable property is taken from the possession of one to secure satisfaction for a demand, Distraint, *Distress* is also used to the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure a satisfaction for the wrong committed (3 *Comm* 6). The term Distress is also applied to the thing taken or distrained. (*Tomlin's Law Dic*)

Distress for recovery of rent "A distress is one of the most ancient and effectual remedies for the recovery of rent. It is the taking, without legal process, cattle or goods as a pledge to compel the satisfaction of a demand, the performance of a duty, or the redress of an injury. The act of taking, the thing taken, and the remedy generally, having been called a Distress, an inaccuracy which the older text-writers usually avoided" (*Wood*. 442). *See also* Gilbert on Distress and Replevin, Bullen, Law of

District

Distress, Woodfall on Landlord and Tenant, Oldham and Foster, Law of Distress, Foa on Landlord and Tenant, 3rd ed The special and local rent Acts, and Revenue Laws of the various Provinces of India).

Distressed. "*Distressed circumstances*," though capable of many interpretations, when used as a condition precedent to get the benefit of a friendly society, generally involves the idea of "want of sufficient independent means of livelihood." [Re *Back*, (1896) 2 Ch 727, *Stroude* 556]

Distribute. Deal out, give each a share, arrange in sets

DISTRIBUTE, ALLOT, ASSIGN, APPORTION. The idea of giving to several is common to these terms, this is the proper signification of *distribute*, but to that of the other terms is annexed some qualification. *Distributing* is always applied to a number of individuals but allotting, assigning, and apportioning is the giving either to one or several A sum of money is *distributed* among a number of poor people, it is *allotted, assigned* or *apportioned* to a particular individual, or to each individual out of a number *Distribute* is said properly of that which is divided, or divisible into any number of parts, as bread is *distributed* in loaves, *allotted* is applied to that which is divisible into lots, and *apportion* to that which is formed into certain proportional parts of portions, as to *allot* lands to apportion a sum of money *Assign* is applied to any distinct whole, not considered either as divided or divisible, as to assign a house, place etc.

Distributed in dividend, in the Bankruptcy Act, [1883 (46 & 47 Vict c. 52, S 72). Re *Christie*, (1900) 1 Q B 5]

"Distributing licensee" defined, Act 9, 1910, Sch cl. IX.

"Distributing main" defined, Act 9,1910, S. 2 (*e*)

Distribution In general the act of dividing or making an apportionment As applied to a publication like a newspaper or periodical, the term imports a delivery to persons who have bought it or have become subscribers, or otherwise become entitled to the same

'DISTRIBUTION' (*in the Law of Succession*) in its technical sense, denotes the division of personal assets of an intestate, after administration and the payment of all debts against the estates and expenses of the administration, among the persons entitled as heirs or next of kin. The term distribution is sometimes applied to the division among the heirs or next of kin of the residue of both real and personal estate. In general the term *distribution*, when applied to the estate of a deceased person, refers to the ultimate division of the estate among the next of kin, in case of intestacy, or among the beneficiaries under a will after the estate is free from debt, and does not include the payment of debt against the estate by the executor or the administrator.

"Distribution of Assets" defined, Act 2, 1874 S. 54, *expln.*

Distributive shares. The share which a person takes in a deceased person's property in case of intestacy.

"District" defined. [*N.B.*—This word occurs also in combination with other words (as) Civil District

District.

Collectorate, General police-district, labour-district, Municipal district, Scheduled District, Separate District, Sub-district, Vaccination District] Act 20,1856, S. 61, Act 18, 1873, S 3 (8); Act 13,1879, S. 3, Act 5,1886, S 3 (1), Act 1,1890, S. 2 (1), Act 5,1898, S 7, Act 5, 1908, S. 2, Act 16,1908, S 2, Act 6,1924, S. 2, Ben Act 6, 1873, S. 3, Ben Act 1, 1876, S. 2, Ben. Act 7, 1876, S 3 (14), Ben. Act 9, 1880, S. 4, Ben. Act 2, 1882, S. 3, Bom Act 7, 1867, S 1; Bom. Act 4, 1890, S. 3 (*b*), Bur Act 2, 1905, S. 3 (10); Mad. Act 5, 1884, S 3 (*m*), P. Act 3, 1905, S.3 (*vii*), Reg 1, 1894, S 10 (*c*).

District. A defined portion of the state or Province. In some cases the word may be used in the sense of region, section of the country, or locality occupied, and may be given the same meaning as "county."

The term "district" as used in the proviso to S 557, cl (*d*) of Calcutta Municipal Act (III of 1899) is equivalent to the term "Ward" and the two terms are synonymous (33 C. 396=3 C.L.J. 169=10 C.W.N 289.)

"DISTRICT" includes a Presidency-town and the town of Rangoon, [Criminal Tribes Act (VI of 1924), S. 2.]

DISTRICT, REGION, TRACT, QUARTER. These terms are all applied to portions of country, the former two comprehending divisions marked out on political grounds the latter a geographical or an indefinite division *district* is smaller than region, the former refers only to part of a country, the latter frequently applied to a whole country a *quarter* is indefinite, and may be applied either to a quarter of the world or a particular neighbourhood. a *tract* is the smallest portion of all, and comprehends frequently no more than what may fall within the compass of the eye. We consider a *district* only with relation to government, every magistrate acts within a certain district, we speak of a *region* when considering the circumstances of climate, or the natural properties which distinguish different parts of the earth; as the *region* of heat and cold, we speak of the *quarter* simply to designate a point of the compass, as a person lives in a certain quarter of the town that is north, or south-east, or west, etc, and so also in an extended application. (*Crabb.*)

DISTRICT, TRACT, REGION, QUARTER, PROVINCE, *District* was originally a portion of country over which the lord of the manor had the right to distrain goods. It is so far true to its etymology that it now means a portion of land as included in some kind of administration, as a civil, municipal, ecclesiastical district A *Tract* is literally something drawn out and extended. It commonly denotes such a space of country as can be taken in by the eye, or such as is distinguished by some natural characteristic, as a tract of marsh land or forest. *Region* is a term of wider extent, and denotes a large tract lying about some specific centre or vicinity as the arctic or ethereal regions, the regions of the tropics, etc. *Quarter* though not meaning necessarily, a fourth part, or a part coincident with the quarter of the compass, carries with it, nevertheless, something of both these elements, and means a district in a particular direction as regards the whole of which it forms a part, but vague as to the exact direction or the exact extent. *Province* as an outlying conquered territory of the Roman empire, hence a region

District Judge.

dependent on a distant authority, or a district remote from the capital, out of this flowed the idea of a territory over which a person had special jurisdiction, as the province of a proconsul, and in after-times of an archbishop; whence finally a man's peculiar business, the specific limits of a function in some wider economy and administration, a department within which action is at once a right and a duty. (*Smith. Syn Dis*)

"District Board" defined; U. P Act 2, 1906, S. 2 (2)

"District Collector" defined (*See also* Collector) Ben. Act 1, 1895, S. 4 (1), E B & A Act 1, 1910, S 3 (6), Mad. Act 1, 1891, S. 3 (8.)

"DISTRICT COLLECTOR" means the Chief Officer in charge of the revenue administration of a district. [Ben Act I of 1895 (Public Demands Recovery) S. 4, Cl. 1]

"District Court" defined, Act 16, 1908, S. 2, Act 6, 1882, S 3, Act 5, 1908, S 2, Act 11, 1886, S 3 (13), Act 5, 1888, Ss. 4 (9) & 50 (4), Act 7, 1889, S 3 (1), Act 8, 1890, S 4 (4), Act 3, 1907, S. 2 (*c*), Act 16, 1908, S. 2, Act 2, 1911, S 2, Act 4, 1912, S. 3, Act 7, 1913, S. 2, Act 5, 1920, S. 2, Bom Act 1, 1905, S. 2 (*a*), Bur Act 1, 1898, S 2 (18), E B. & A. Act 1, 1909, S 5 (17), Reg. 1, 1894, S 11 (*e*).

'DISTRICT COURT" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns. [Lunacy Act (IV of 1912), S. 3.]

"DISTRICT COURT" has the meaning assigned to that expression in the Code of Civil Procedure, and includes, a High Court in the exercise of its ordinary original civil jurisdiction [Act VIII of 1890 (Guardians and Wards), S. 4, Cl. 4.]

"DISTRICT COURT" includes the High Court in its ordinary original civil jurisdiction, Act XVI of 1908 (Registration), S. 2, Cl 4.

The expression "District Court" as used in S 29 (1) of the Inventions and Designs Act (V of 1888), includes the High Court in the exercise of its Ordinary Original Civil Jurisdiction. (12 C W N 446.)

Though the word "District" in the C P. Code, does include the local limits of a High Court in its ordinary Original Civil Jurisdiction, still it is not legitimate to construe the words "District Court" wherever they appear to mean and include a High Court in its Ordinary Original Civil Jurisdiction. [12 C.W. N. 446, *Diss. from*, 45 C.L.J 71=100 I.C. 331=A.I.R. 1927 Cal 290]

"District Delegates" defined, Act 19, 1865, S. 235-A. Act 5, 1881, S. 52, Act 39, 1925, S. 265.

"District Forest-Officer" defined: Mad. Act 5, 1882, S. 2.

"District Fund" defined, U. P. Act 2, 1906, S. 2 (2).

Districtio non Potest esse nisi pro certis servisiis A maxim meaning "Goods cannot be distrained except for certain services."

"District Judge" defined; Act 10, 1865, S 3; Act 4, 1869, S. 3 (2) (Act 5, 1881, S. 3), Act 10, 1897, S. 3 (15); Act 29, 1925, S. 2; Ben. Act 1, 1899, S. 3, Bom. Act 1, 1904, S. 3, Bur. Act 1, 1898, S. 2, E. B.

District Judge.

& A. Act, 16, 1907, S. 5, Mad Act 1, 1889, S. 5; Mad Act 4, 1904, S 3, P Act 1, 1898, S. 2, U P Act 3, 1892, S. 2, U P. Act 2, 1896, S 3; U.P. Act 1, 1904, S 4, Reg. 1, 1894, S. 10 (*e*)

"DISTRICT JUDGE" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. Act X of 1897 (General Clauses, S 3 (15)]

"District Magistrate" defined. *See also* Magistrate of the District Act 11, 1886, S 3 (12), Act 5, 1892, S. 2 (3), Act 8, 1897, S. 4 (*c*); Mad Act 7, 1884, S. 29

"DISTRICT MAGISTRATE" The words "District Magistrate" shall mean the chief officer charged with the executive administration of a district in criminal matters by whatsoever designation such officer is called Ben Act VI of 1870 (Village Chaukidari) S. 1.

"DISTRICT MAGISTRATE" shall include a Chief Presidency Magistrate. (Reformatory Schools Act (VIII of 1897), S. 4)

"DISTRICT MAGISTRATE" means, in the case of a Presidency-town or the town of Rangoon, the Commissioner of Police, (Criminal Tribes Act (VI of 1924), S 2,

"District Munsif" defined, Mad Act 1, 1889, S. 5.

"District Police" defined, Bom Act 8, 1867, S. 1.

"District Police-station" defined, Bom Act, 8 1867, S. 22

"District Superintendent" defined, Act 5, 1861, S 1 (Ins Act 8, 1895, S 1), Bom. Act 8, 1867, S 1, Bom Act 4, 1890, S 3 (*a*), Reg. 3, 1881, S. 2, Reg 1, 1894, S 10 (9)

The words *"District Superintendent"* and *"District Superintendent of Police"* shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any District Police Act (V of 1861), S 1

Distrust. Want of trust or confidence.

DISTRUST, SUSPICION, DIFFIDENCE *Distrust* is said either of ourselves or others, *suspicion* is said only of others, *diffidence* only of ourselves; to be *distrustful* of a person, is to impute no good to him, to be *suspicious* of a person, is to impute positive evil to him, to be diffident is to be wanting self-confidence.

Ditch A drain, a hollow space in the ground, natural or artificial, where water is collected or passes off, a narrow passage serving as a drain, sometimes also as a boundary of a piece of land.

Dittam (*M*), a preliminary forecaste or estimate of the year's cultivation, now disused (*Bad. Pow.* in 48.)

Dittamu (*Tel*). Arrangement, settlement, estimated aggregate of the revenue of a village from investigation of each several holding.

Diuretics are medicines which increase the urinary flow by acting upon the secreting power of the kidneys.

Dividend.

Dive's costs. A term applied to costs allowed to a person suing or defending in *forma pauperis*. These were costs paid voluntarily by a successful plaintiffs suing in *forma pauperis*, and which he was allowed to tax against his defeated opponent. (*Carson* v. *Pickersgill*, 54 L J. Q.B. 484)

Divest. 'Divest' is a word contrary to 'invest', for as an Invest signifieth to deliver the possession of thing, so Devest signifieth the taking away of a possession" (*Termes de la Ley.*) But, probably, it is more accurate to say that "Divest" is the antithesis of "Vest" when that latter word is used in the sense primarily of giving the property in the subject-matter" (*Per* Lord Tenterden, in *Giles* v *Grover*, 9 Bing. 280) "Property cannot be divested out of one person without being vested in another"

Divide To make something into smaller parts, and not to enlarge to make partition of; to distribute" A testamentary gift "To be divided" between two or more, means an equal division and creates a Tenancy in Common. (*Champman* v *Peat*, 1 Ves. Sen 542) To be *"divided"* amongst "Charities,' by no means, necessarily, infers equality (*Per* Eldon, C, *Mills* v *Farmer*, 19 Ves 490.) The expression "where the lands of an estate have been divided by private arrangement" in S 7, Estates Partition Act (V of 1897) (B C), evidently contemplates a formal division of the lands of an estate, by metes and bounds, agreed to by all the co-owners, and a possession of separate lands held in severalty by each such co-owner' 11 C.L J 291=14 C W.N. 632. Divided, in 41 & 42 Vict, c 15, S. 13 (Revenue), refers to the structural arrangement of the houses taxed by the Act, and not to the mode of dealing with the divided houses. *Yorkshire Insurance Co.* v *Clayton*, (1881) 8 Q B.D at p. 420, Brett, L.J.

TO DIVIDE, DISTRIBUTE, SHARE. The act of dividing does not extend beyond the thing divided, that of distributing and sharing comprehends also the purpose of the action we *divided* the thing, we *distribute* to the person, we may *divide* therefore without *distributing*, or we may *divide* in order to *distribute*; thus we *divid* our land into distinct fields for our private convenience, or we *divide* a sum to distribute it among a given number of persons, on the other hand, we may *distribute* without *dividing*; for money, books, fruit, and many other things may be *distributed*, which require no *division* To *share* is to make into parts, the same as *divide* and it is to give those parts to some persons, the same as *distribute*, but the person who shares takes a part himself; he who *distributes* gives it all to others. A loaf is *divided* in order to be eaten, bread is *distributed* in loaves among the poor, the loaf is *shared* by a poor man with his poorer neighbour, or the profits of a business are *shared* by the partners.

Divide et impera cum radix et vertex imperii in obedientum consensu rata sunt A maxim meaning "Divide and govern, since the foundation and crown of empire are established in the consent of the obedient."

Dividend. Defined in 47, 1920, S. 2.

DIVIDEND. In general something to be divided; a fund to be divided, a sum to be divided into equal parts; or an amount to be distributed proportionately. A portion of the principal or profits divided among several owners; an equitable share of surplus;

Dividend.

the share of one of the individuals among whom a sum is to be divided; a share on part allotted in division, the interest paid on to public funds.

"The word *'Dividend'* carries no special significance with it. It is applicable to various subjects, it is not intelligible without knowing the matter to which it is meant as referring"; but its ordinary meaning is, share of profits (*Per* Knight-Bruce, L J, *Henry* v. *G.N. Ry*, 27 L.J Ch 1)

"DIVIDEND" includes bonus, Act XLVII of 1920 (*Imperial Bank of India*), S. 2, cl. (*c*).

DIVIDEND (*in Insolvency or Liquidation*) Dividends by way of composition or part payment in respect of a claim on the estate of an insolvent debtor or a company in liquidation.

DIVIDENDS, IN 33 & 34 VICT, c. 35 (APPORTIONMENT), S 2, "includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise, out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed time or otherwise." (*Carr* v *Griffiths*, (1879) 12 Ch.D. 655, 661)

DIVIDEND, PREFFERENCE A *"Preference" Dividend* is substantially interest, to this extent, that the failure of profits where with to pay it in one year will *primafacie* be made good out of any profits that may be made in a subsequent year (*Henry* v. *G N. Ry.*, sup, *Sturge* v *Eastern Union Ry*, 7 D G.M. & G 158)

Dividend Warrants Written orders to a banker authorising the payment of dividends, an order representing a stock-holder's dividend.

Divinatio, non interpretatio est, quae omnino recedit a litera A maxim meaning "That is guessing not interpretation, which altogether departs from the letter." (*Broom. Leg Max.*)

Divine Law The laws of God natural or revealed.

Divine right. (*of King*). The old theory that the king derived his power and authority from God. The value which was placed upon the doctrine of hereditary succession as affording a refuge from the evils of contests for the throne and the personal attachment felt for the reigning family and its member by English politicians and divines in the seventeenth century, grew out into an abstract theory, whereby, the claim of the eldest member of the Royal family was held to be derived from God himself and no other institution, and to be absolutely incapable of being set aside by any power in the state. The expression now serves no other purpose than that of being occasionally aimed as a reproach against enthusiastic supporters of the royal power."

Divine Service Public worship. "The alms and relief of poor people, being a work of charity, is accounted in law divine service; for what herein is done to the poor for God's sake, is done to God himself." (*Co. Litt.* 96-b.)

Divining Rod. A rod or twig held in the hand by the aid of which, it was supposed, that under ground streams of water can be located.

Divisibilis est semper divisibilis. A maxim meaning "A thing divisible may be for ever divided"; "a divisible thing is always divisible."

Divorce

"**Division**" defined. *See also* Local Division. Act 3, 1913, S. 2, Mad. Act 1, 1884, S. 3 (*h*)

DIVISION. The act of dividing or separating into parts; the state of being divided, that which divides; partition, the separation of any entire thing into parts; a portion of the country (as) an administrative division.

"DIVISION," "DISTRICT" AND 'TAHSIL" have the same meanings as those in which they are employed in the Land Revenue Act. U. P. Act III of 1906 (*District Boards*), S 3, cl 2.

"**Divisional Canal-officer**" defined. Act 8, 1873, S. 3 Bur. Act 2, 1905, S 3.

"DIVISIONAL CANAL-OFFICER" means an officer exercising control over a division of a canal. Act VIII of 1873, S 3, cl. 7.

Division Court. A Court composed of two or more judges of the High Court and sitting generally in special cases. The expression "Division Court" in S 39, Letters Patent, does not apply only to a Division Court sitting on the Original Side. (32 C. 963=9|C W.N 566)

Division Court must consist of at least two judges [1 P 384=3 P L T. 194=1922 P.H.C.C 88=A I.R. 1922 Pat 13 (1)]

Division of opinion. A disagreement between judges.

Division Wall. A party wall.

Diviti Inam (*Tel*), Land granted as the portion of the village torch-bearer.

Divorce is a judicial act by which the marriage relation is either dissolved or partially suspended.

DIVORCE is unknown to Hindu Law—As to custom of divorce—Recognition. *see* 2 O.L J. 101=28 I.C. 201.

DIVORCE, LEGISLATIVE. A *legislative divorce* is one granted, by the legislature or by a court acting in a special case under authority granted by a special Act of the legislature.

DIVORCE, JUDICIAL. A judicial divorce is one granted by the sentence of a Court of justice pursuant to general law. *It may be either absolute or limited.*

FORMS OF DIVORCE. The usual divorces are only of two kinds, *i e* a mensa and thoro, from bed and board · and a vinculo matrimoni, from the very bond of marriage (*Tomlin's Law Dic.*)

A DIVORCE A MENSA ET THORO dissolveth not the marriage, it only suspends the marriage relation, and modifies its duties and obligations, bearing the matrimonial bond in full force. "And as it does not dissolve the marriage, so it doth not debar the woman of her dower, or bastardize the issue, or make void any estate for the life of husband and wife, etc." (Co. Lit. 235, 3 Inst. 89; 7 Rep. 43. *Tomlin's Law Dic.*)

A "DIVORCE A VINCULO MATRIMONII," absolutely dissolves the marriage, and makes it void. (*Tomlin's Law Dic. See also* Lush on Husband and Wife; Macqueen on Husband and Wife; Eversley, Domestic Relations, Edward and Hamilton, Law of Husband and Wife; Crawley, Husband and Wife; Clancy, Husband and Wife, Roper, Husband and Wife, Ratigan on Divorce.

Divorce.

Divorce. A divorced person.

Divortium dicitur a divertendo, quia vir divertitur ab uxore Divorce is said to be from *divertendo* because a man is diverted from his wife.

Diwan (*Persian.*) A royal court, a council of state, tribunal of revenue or justice A minister, a chief officer of state, an honorary title, civil officer of a district under the later Muhammadan administration.

Diwani. (*Ben &c.*) The civil administration, office of Diwan, as opposed to the Nizamat or Faujdari, the military and criminal administration (Bad-Pow. I, 391 *note.*) Of or relating to a diwan, civil as opposed to criminal The office, jurisdiction, emoluments, etc., of a diwan. The right to receive the collections of Bengal, Bihar and Orissa, conferred on the East India Company by the Titular Moghul [*See 27* Cal 156=26 I A 216=4 C.W N. 274 (P C.).]

Diwan-i-aam (*Arabic*) The large general audience-chamber where the Moghul emperor sat on a raised seat, resembling a pulpit, to which he had access by a private passage

Diyara (or Deara) (*Ben*), The alluvial survey. (Bad-Pow i. 466, 691)

Diyat, (*A*) The law of retaliation An expiatory mulct for murder. (*Mac. Naugh Mah. Law*).

Do. (*Lat*) I give

"Do into" Translate into (English etc) (Oxford Dic) (as, in an appeal to the superior courts, vernacular documents must be *done into English*).

"Do, pay", in Civil Procedure Code (Act V of 1908), O. XXXIV. (22 I. C 293)

"Do the Needful" Where a person against whom an award had been made directed a solicitor to act for him and "do the needful", it was held that these words empowered such solicitor to carry the whole award into effect, although his immediate business was to carry out only a part of it. [(*Dawson* v. *Lawley*, (1801) 4 Esp. 64.].

"Do without." Dispense with (as, In times of peace, the state can *do without* the large army called for war-time service).

Doab (*P.='two,'–'waters'*). Tract between two rivers (Pj.). (Bad-Pow. II. 534.)The land which lies between two rivers above their junction. The land between the Ganges and Jumna is known pre-eminently as the Doab

Doba chur. The terms "Degi chur," "Doba chur," "Nutan chur" precisely mean much the same thing, namely, a chur which emerges only at ebb tide and remains under water at flow tide. (A.I.R 1930 Cal 764)

Do-chand (*P.=twice*), 'dochanda rule' (C.P.). The rule of allotting to a village (at first S) an area of waste usually equal to *twice* the area cultivated. (*Bad-Pow* II 401 *note*)

"Dock" defined Bom Act, 6 1879 S. 3 (8), Mad. Act 2, 1886, S. 3 (10); Ben Act, 3, 1890, S. 3 (3)

"Dock" (in Port Trust Act) shall include all basins, cuts, quays, wharves, ware-houses, tramways, and other works and things appertaining to any dock. (Ben. Act III of 1890 S. 3 c. 3)

Document.

Dock (in court practice) the place or cage in a court of criminal law in which a prisoner is placed during his trial.

Dockage. Charges for use of a dock

Dock master. A dock master exercises an exclusive control and direction over the movements and navigation of vessel entering using, or quitting the docks

Dock warrant. Instrument issued by a dock-owner or company in favour of a person specified by the owner of goods, warehoused in dock, entitling such person to take possession of the goods It is a recognition of title to goods (*See* Scrutton, Charter Parties Chalmers, Eng Sale of Goods Act, Pearson, *see* Factors Act)

Dock yard Enclosure with docks and all appliances for building and repairing ships especially for navy.

Docket A brief writing on a small piece of paper or parchment, containing the effect of a greater writing, a register (*see* Smith's Case Ch Pr. 469), endorsement on paper showing its subject or contents

Doctor and Student. An ancient dialogue treatise of the common Law.

Doctor's Commons The buildings occupied by the proctors and the doctors of the Civil Law in London

Doctrines What is taught, the teachings of a person, sect or religion (as, the doctrines of the Christian religion), dogma, tenet

DOCTRINE, DOGMA, TENET A *doctrine* rests on the authority of the individual by whom it is framed the *dogma* on the authority of the body by whom it is maintained, a *tenet* rests on its own intrinsic merits Many of the *doctrines* of our blessed Saviour are held by faith in him, the *dogma* of the Romish church are admitted by none but such as admit its authority. every sect has its peculiar *tenets.* (*Crabb*).

DOCTRINE, DOGMA, TENET, PRINCIPLE. *Doctrine* means any speculative truth recommended by a teacher or a school of thinkers, whether in religion, science, or philosophy. *Dogma* is at present employed of such doctrine as is put forth authoritatively under a rigid definition, and especially in theology. *Tenet* is a matter of philosophy or religion, which, as resisting on its own intrinsic merits, is firmly held as true. A *principle* is a central or representative truth in philosophy, science, art, religion, or morals, which is fundamental and general, and out of which other matters of a speculative or practical character flow, and become its practical illustrations. (*Smith. Syn Dis.*)

Doctrine of cypres (See *Cypres*) A principle of equity construction substituting the nearest feasible condition or purpose of a trust for an impossible one.

"Document" defined This word is also used in collection with other words (as) forged document, making a false document; private document, public document [52-3 V, c. 52, S. 8: Act 45, 1860, S. 29; Act 1, 1872 S. 3 Act 1, 1889 S. 3 Act 15, 1889 S.

Document.

2 (3), Act 10, 1897, S 3 (16), Act 19, 1923, S. 2, Mad. Act 1, 1891, S 3 (9)]

DOCUMENT An instrument on which is recorded matter which may be used as evidence.

"The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter "(Penal Code, S 29, Evidence Act, S 3, General Clauses Act, S. 3)

"DOCUMENT" includes any painting, drawing, photograph, or other visible representation. Indian States [(Protection against Disaffection) Act 1923, S. 2

"DOCUMENT" includes part of a document Act XIX of 1923 (Official Secrets), S 2, cl 3.

Letters imprinted on the trees and intended to be evidence that the trees had been passed by the Forest Ranger, and so could be removed from the place where they were lying in the forest or a 'document' within the meaning of S 29, Forest Act (87 I C 838=27 Bom.L R 599=A I R. 1925 Bom.327)

The name given by the parties to document is not conclusive as to its real nature and effect. (137 I.C 458=1932 M W.N. 975=A.I R. 1932 Mad 689)

The documents referred to in Art 10, Sch II of the Court Fees Act are restricted to documents given to and presented by duly certificated mukhtars and Pleaders under the Legal Practitioners' Act [108 P W R 1912=202 P.L R 1912=15 Ind. Cas. 122 (123)]

The word 'document' in S 50 of the Registration Act means a document which is legally enforceable [2 O C 74 (76)]

DOCUMENT, INSTRUMENT These words are sometimes interchangeably used [(*See* Contract Act, Ss. 102, 103, 35 I C 954=20 C W N. 1182 (P C)]

DOCUMENT, MUNIMENT The *Document* serves the purpose of evidence The *Muniment* the purpose of proving possession in particular. The first is for proof, the other for protection. *Documents* which prove a man's title to his estates, or those which are kept by public bodies, as charters, grants, and the like, proving their property or privileges, are called *muniments*. (*Smith Syn. Dis*)

Document Bills. Bills of Exchange attached to the bills of lading, policies, or invoices, in respect of which they have been given.

DOCUMENT—DENIAL OF EXECUTION OF. A refusal to admit document, or a wilful refusal or neglect to attend and admit, the execution of a document is a denial of execution within the meaning of the Registration Act. (5 C. 445=5 C.L.R. 172, *see also* 1 C L.J. 126.)

DOCUMENT OF TITLE. A railway receipt issued to the consignor of goods is a 'document' or 'instrument of title' [35 Ind Cas 954=20 C.W.N. 1182 (P.C].' Whenever any doubt arises as to whether a particular document is a "document showing title" or "a document of title" to goods the test is whether the document in question is used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive the goods thereby represented. (35 I. C. 9 5.)

Domesday book.

Document of title to goods, in the Factors Act, 1889 (52 & 53 Vict, c. 45), S 1 (4), includes "bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented." (*See also* Act 3 of 1930, S. 2)

Documentary evidence. Evidence found recorded in a document as opposed to oral evidence

Does The word "does" in S 70 of the Contract Act include payment of money. (12 C 213)

Dog To write of a person that he is a "Dog in the Manger," is actionable (per *Denman, C.J*, *Hoare* v *Silverlock*, 12 Q B 628)

Dogra. Service-tenures in Orissa (Bad. Pow. I. 570.)

Dohli. Death-bed gift of a small plot of land to a Brahman

"Dokandari Khud" The use of these words does not prohibit sub-letting. [23 I C. 395 (396).]

Do lego I give and bequeath

Dolo facit qui petit quod redditurus est. It is fraudulent to claim what you must restore.

Dolo malo pactum se non servaturum. A maxim meaning "A pact made with a malicious intention will not be upheld".

Dolosus versatur in generalibus. A maxim meaning "a deceiver deals in generalities" *ie*, in general terms (2 Coke 34, 2 Bulst. 226, Lofft 782, 1 Rolle Abr 157, Wingate Max. 636, *Broom. Leg. Max*)

Dolus auctoris non nocet successori, nisi in causa lucrativa. The fraud of the author does not affect the successor (except) when he acquires by a lucrative title (gratuitously)

Dolus circuitu non purgatur. "Fraud is not purged by circuity".

"Dom". A suffix affixed to several words (to indicate territorial jurisdiction). Several words end in dom, as kingdom, earldom, etc. from whence they may be applied to the jurisdiction of a king on an earl on a lord (Mon. Angl tom. 1 fol. 284. *Tomlin's Law Dic.*)

Domain. Lands as held or ruled over; an estate; a realm.

'Domain lands' [*See* 2 L.W 117=27 I.C. 77]

Dome Doom (from the Sax dom) A judgment, sentence, or decree. (*Tomlin's Law Dic.*) (General.)

Dome-Book. "A book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom This book is said to have been extant late as the reign of Ed. IV; but it is now lost. (*See* 1 Comm. 64, 4 Comm. 411. *Tomlin's Law Dic.*)

Domesday or Domesday-Book A most ancient record, made in the time of William I called the Conquerer, and now remaining in the Exchequer,

Domestic.

fair and legible, consisting of two volumes a greater and a less, the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which it is said were never surveyed, and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. (*Tomlin's Law Dic.*)

Domestic. One who lives in the family of another as a hired household assistant, a house servant.

DOMESTIC, SERVANT, MENIAL *Menial* is one who performs inferior offices of service, which the term, however, does not define. A *Domestic* is a servant actually employed in the house A *Servant* is a paid attendant of any kind. A farm *servant* or a gardener is not, strictly speaking, a *domestic.* (*Smith. Syn Dis.*)

Domestic building. "Domestic building" "includes a dwelling-house, and any other building not being a public building or of the Warehouse class" (Lond Buildings Act, 1894, S 5, cl 26)

Domestic animals, in 12 & 13 Vict, c 92, S 2 (as amended by 17 & 18 Vict, c 60, S. 3), includes any pet bird, and also birds kept in captivity and trained as decoy birds [*Colam* v *Paget*, (1884) 12 Q. B D. 66.]

"Domestic purposes" defined. *See* supply of water for domestic purposes

DOMESTIC PURPOSE. Watering private horses, or washing private carriages, is using the water for a "domestic use or purpose" (*Busby* v *Chesterfield W.W. Co.*, 27 J M C 174) Watering a pleasure-garden attached to and occupied with the house is also used for domestic purpose (Stroude 564, 12 A L.J. 288=23 I C. 499.)

Domestics Domestic menial servants Domestic or menial servants are servants employed in a house or in rendering personal services to, or in close personal relation with, the employer. The term includes not only ordinary household servants, but grooms, gardeners, and the like[*Nowlan* v *Ablett*, (1835) 2 C M. & R 56, *Nicoll* v. *Greaves*,(1864) 33 L J C P. 259.] But no general rule can be laid down which will clearly demarcate those who do and those who do not come within the description (*See* Baylis, Domestic Servants, Macdonell, Master and Servant: Smith's Master and Servant, Eversley, Domestic Relations.) The contract between them and their masters arises upon the hiring It is usual to engage domestic servants at a fixed amount of wages per annum But there is generally no express stipulation as to the time that the service is to last, and when the terms are not otherwise defined, the contract is thus understood, that either party may determine, the service at pleasure, upon a month's wages (2 Steph. Com. 243.)

Domestic servant. Is a servant who sleeps in the dwelling-house of his master; in other words, an indoor servant. (*Vaughan* v. *Booth*, 16 Jur. 808) The expression 'domestic servant" would not be confined to the servants who actually worked in the house, but would include other persons who ordinarily form part of an Indian establishment, such as coachment, syces, malis, Palkibearers, and gardeners. (8 B.L.R. 244)

Domicile

Domestic trade. Trade pertaining to the home country, as opposed to foreign trade

Domestic use Use in the home or household. Books may be articles of "domestic use and enjoyment" (*Cornwall* v *Cornwall*, 10 L J. Ch. 364.)

Domicile is the place where a man has his home. (*Tomlin's Law Dic.*) A persons' regular place of abode A persons' "Domicil" means, generally speaking, the place where he has his permanent home (*Whicker* v. *Hume*, 28 L J Ch. 396, 400.)

That place is properly the domicile of a person in which he has voluntarily fixed his abode not for a mere special or temporary purpose but with a present intention of making it his permanent home Nevertheless, in common parlance, it is often taken to mean simply the house in which a man may have his abode for the time being Again a man may have a *commercial, a political, or a forensic domicile*, and all of these may exist at one and the same time and in different localities.

SYNONYMOUS WITH 'HOME'. No one word is more nearly synonymous with 'domicile' than 'home'.

DISTINGUISHED FROM 'RESIDENCE' AND 'INHABITANCY'. Domicile and residence are not convertible terms. The form is of more extensive signification and includes beyond mere physical presence at the particular locality positive or presumptive proof of an intention to constitute it a permanent abiding place. Nor is 'domicile' synonymous with inhabitancy, as the latter is deemed to include citizenship and municipal relations. As used in many statutes, however particularly those relating to the qualification of voters, to taxation, to the statute of limitations, to succession, guardianship and administration and in those prescribing the jurisdictional prerequisites to the maintenance of actions or for divorce or separation the term residence' has been held equivalent to 'domicile'. (14 Ame. Cyc 835)

SEVERAL KINDS OF DOMICILE *Domicile* may be divided into *domicile of origin domicile of choice*, and *domicile by operation of law.*

DOMICILE OF ORIGIN. A domicile of origin is that which every infant has upon attaining majority, being the domicile of the parents at that time

DOMICILE OF CHOICE. A domicile of choice is that which the individual has elected and chosen for himself to displace the domicile previously obtained.

DOMICILE BY OPERATION OF LAW (as) the domicile of a wife following that of the husband, is brought about by reason of marriage. Domicile connotes the place in which a man has voluntarily fixed the habitation of himself and his family, not for a special or temporary purpose, but with the intention of making a permanent home until some unexpected event shall occur to induce him to adopt some other permanent home. Every person at birth acquires a *domicile of origin.* A person may change his domicile by choice. The domicile of origin is retained until one of choice is acquired by a combination of residence and intention. Two things are in fact essential to constitute a *domicile of choice* in a new country, *viz*, residence in that country without any *animus revertendi* to the country of origin and the intention of making a permanent home in a new country. Domicile of choice is, in fact, a mixed question of intention and act. (146 I C. 193=1933 Cr.C. 813=A.I.R. 1933 Rang. 193.)

Domiciled.

DOMICIL OF NATIVITY is one's birth place *See* on this subject Dicey, Conflict of Laws, Dicey, The Law of Domicil, Westlake, Private Inter Law, Nelson Selected Cases in Private Inter Law, Phillimore, Inter Law; Round, English Law of Domicil, Phillimore, Law of Domicil, Moore's Digest of the Inter Law of the United States, Washington 1906

Domiciled As applied to a bill of exchange means that it is payable at a particular place

Domiciled in England, in the Bankruptcy Act, 1883 (46 & 47 Vict, c 52), S 6 (1), means "England" as distinguished from other parts of the United Kingdom [Re *Mitchell,* (1884) 13 Q B D 418]

"**Dominant heritage**" defined, Act 5, 1882, S 4.

"**Dominant owner**" defined, Act 5, 1882, S. 4

DOMINANT OWNER, DOMINANT HERITAGE The land for the beneficial enjoyment of which a right of easements exists is called the *dominant heritage,* and the owner or occupier thereof the *dominant owner,* the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner" Act V of 1882 (Easements), S 4.

Dominant tenement. A term used in the constitution of servitudes, and means the tenement or subject in favour of which the service is constituted, as the tenement over which the servitude extends is called the servient tenement (*Bell's Scotch Law Dict., Tomlins Law Dict*) *Dominant tenement* is that which enjoys a servitude, distinct from the servient tenement, which suffers it.

Dominion. Sovereignty or lordship, territory over which sovereignty or overlordship is exercised, title under which self governing colonies are known

Dominium non potest esse in pendenti. A maxim meaning "A fee or right of property cannot be in suspension, *i e,* it must always be vested in some one. (*Broom. Leg Max*)

Dominus aliquando non potest alienare A maxim meaning "A lord sometimes cannot alienate"

Dominus capitalis loco haeredis habetur quoties per defectum vel delictum extinguitur sanguis sui tenentis. A maxim meaning "The supreme lord takes the place of the heirs, as often as the blood of the tenant is extinct through deficiency or crime."

Dominus cel casam servi vel personam inculpatio defendet, etiam ubi alii non liceret. A maxim meaning 'The master may defend his servants cause, even when it is not lawful for another"

Dominus non maritabit pupillum nisi semel A maxim meaning, "A lord cannot give award in marriage but once."

Dominus omnium in regno terrarum rex habendus; et ab eo omnes tenent ita tamen ut suum cuiquesit. A maxim meaning "The sovereign is first seized of all lands, of him all others hold, so that every one has his own."

Dominus rex nullum habere potest parem multo minus superiorem. A maxim meaning "The king cannot have an equal; much less a superior."

Donatio perficitur

Domum suam unicuique reficere licet, dum non officiat invito alteri in quo jus non habet. A maxim meaning 'It is lawful for every one to repair his own house provided he does it not to the injury of another over whom he has no rights"

Domus sua cuique est tutissimum refugium. A maxim meaning "Every man's house is his castle"

Dona clandestina sunt semper suspiciosa A maxim meaning "Clandestine gifts are always open to suspicion"

Donari videtur, quod nullo jure cagente conceditur A maxim meaning "That is considered to be given which is granted without the obligation of any law"

Donate. To give generally for a specific object; to bestow freely, to grant, to give gratuitously, or without any consideration—especially for a fund or institution

Donatio causa mortis or donatio mortis causa A gift in prospect of death, a death-bed disposition (*viz.*) when a person in his last sickness apprehending his dissolution near, delivers or causes to be delivered to another the possession of any personal goods, to keep in case of his disease. (*Tomlin's Law Dic*)

Donatio inter vivos For a gift *inter vivos* two things are necessary—the intention to give, followed by acts giving effect to the intention So long as the intention is not completely carried out, the gift is imperfect and the donee has no legal rights against the donor. A mere promise to give is of no effect.

Donatio mortis causa (*See* Donatio causa mortis) is a gift made in contemplation of death, and upon condition that it is to take effect only in case of the death of the donor The condition need not be expressed The Court infers it if the gift is made in contemplation of death, and there is nothing to show a contrary intention If the donor recovers, the gift is revoked (*Tate* v *Hilbert* 1793, 2 Ves Jun 111, 30 E R. 548, 2 R R. 175; *Gardner* v *Parker,* (1818) 3 Madd. 184, 56 E R 478, 18 R R 213, *Edwards* v *Jones,* (1836) 1 Myl & Cr. 226, 40 E R 361, 43 R.R. 178). Therefore an absolute and irrevocable gift cannot be a donatio mortis causa (*Edwards* v. *Jones* (1836) 1 Myl & Cr. 226, 40 E R. 361, 43 R R 178) "Where a man lies in extremity, or being surprised with sicknesss, and not having an opportunity of making his will, but, lest he should die before he could make it, he gives with his own hands his goods to his friends about him, this, if he dies, shall operate as a legacy, but, if he recovers, then does the property thereof revert to him" (*per* Cowper, C., *Hedges* v. *Hedges,* Pr Ch. 269).

Donatio non praesumitur (*Jenk Cent* 109). A maxim meaning, "A gift is not presumed," i e. the general presumption is against a gift"

Donationum alia perfecta alia incepta, et non perfecta; ut si donatio lecta fuit et concessa ac traditio mondum fuerit subsecuta. A maxim meaning, "Some gifts are perfect, others incipient and not perfect; as if a gift were read and agreed to, but, delivery had not then followed.

Donatio perficitur possessione accipientis (*Jenk. Cent.* 109). A maxim meaning "A gift is per-

Donatio principis

fected by the possession of the receiver." (*Broom. Leg Max.*)

Donatio principis intelligitur sine praejudicio tertii A maxim meaning "A gift of the prince is understood, without prejudice of a third party"

Donatio propter nuptias. A gift in consideration of marriage

Donatio quaelibet ex vi legis sortitur effectum A maxim meaning "A donation obtains its effect by force of the law"

Donatio vilata. A veiled or hidden gift

Donator. A donor

Donator nunquam desinit possidere antequam donatarius incipat possidere. A maxim meaning "He that gives never ceases to possess until he that receives begins to possess"

"Done by". Where an act is to be "done by" a person it may generally be done by his agent (*R* v *Middlesex*, 20 L J M C. 42)

"Done or intended to be done" The words "done or intended to be done" in S 4 of the Epidemic Diseases Act, 1897, do not include omissions (31 C 829=8 C W.N 681)

"Donee" defined Act 4, 1882, S 122

DONEE One to whom a gift is made, one who takes without valuable consideration *Donee* is a person to whom property is given, Donor is the giver (*per* Channel, J, *A G* v *Dobree*).

Doni. A canoe hollowed fram a log.

Donka (*Tel*) A path between two fields, a passage for cattle

"Donor" defined Act 4, 1882, S. 122

Donor A giver, a grantor, one who makes a gift Donor is he who gives lands or tenements to another And the person to whom given is the *donee* (*Tomlin's Law Dic*) It also means a party conferring a power

Doon (dun) An old land measure in L. Burma (*Bad. Pow.*)

DOOR A movable barrier of wood metal or stone, or other material consisting sometimes of one piece, but generally of several pieces together, and commonly placed on hinges for closing a passage into a building, room or carriage

Door-keeper. Porter

Do rastu (*Tel*) Land yielding a double crop. The double apportionment of the harvest. The shares of the cultivator and of the Government.

Dormant. Silent.

Dormant partner A partner unknown as such to those doing business with the firm

Dormitory A room, suite of rooms, or building used to sleep in, a bed-room with a number of beds, sleeping quarters or sleeping house, a lodging house.

Dormiunt aliquando leges, nunquam moriuntur. A maxim meaning, 'The laws sometimes sleep, they never die.'

Doubt

Dorsa (C.P.), name of a kind of soil. (*Bad. Pow.*)

Doruvu (M), a kind of well for irrigating lands.

Dos de dote peti non debit A maxim meaning "Dower ought not to be sought from dower"

Dosili (*Tel*). A handful, as much as can be held in two hands, a small quantity of grain as a perquisite, an anjili A small quantity of grain granted as a fee or perquisite to the village servants at the time of harvest.

Dotage means weakness of the mental powers.

Doti lex favet, praemium pudoris est' ideo parcatur. A maxim meaning "The law favours dower, it is the reward of chastity, therefore let it be preserved"

Double Costs. *See* costs

Double Damages *See* Damages.

Double entry (in the law of accounts) a term among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every transaction It is used in contradistinction to single entry

Double Insurance Where a person, being insured by one policy, effects another on the same subject with other insurers, he may recover the amount of his actual loss against either set of insurers

Double Taxation Courts always look with disfavour upon double taxation, and statutes will be construed, if possible, so as to avoid double taxes. (34 Cal 257=5 C L.J 148)

Double Time (in military use) denotes the regulation of the running pace of infantry (*Oxford Dict*)

Doubt Uncertainty, uncertainty of mind, a condition or state of the mind where the judgment is not at rest, and is not decidedly on one side or the other of a question, the state of mind in which we hesitate as to two contradictory conclusions, want of settled conviction

DOUBT, HESITATION We *doubt* about entertaining opinions, we sometimes *hesitate* to express them We *doubt* for want of scientific evidence We *hesitate* for want of practical knowledge We *doubt* through ignorance We *hesitate* through fear, caution, misgiving *Doubt* is uncertain about principles, *hesitation* about consequences (*Smith Syn. Dis*)

DOUBT, QUESTION. These terms express the act of the mind in staying its decision *Doubt* lies altogether in the mind; it is a less active feeling than *question* by the former we merely suspend decision, by the latter we actually demand proofs in order to assist us in deciding. We may *doubt* in silence. We cannot *question* without expressing it directly or indirectly He who suggests *doubts* does it with caution he who makes a *question* throws in difficulties with a degree of confidence. We doubt the truth of a *position*. we *question* the veracity of an author. (*Crabb.*)

DOUBT, SUSPENSE. *Doubt* respects that which we should believe, *suspense* that which we wish to know or ascertain. We are in *doubt* for the want of evidence, we are in *suspense* for the want of certainty. (*Crabb*).

Doubtful.

DOUBT (benefit of). To give one the benefit of doubt is to suppose him innocent rather than guilty.

Doubtful. Giving rise to doubt, uncertain.

DOUBTFUL DUBIOUS, UNCERTAIN, PRECARIOUS. *Doubtful* and *dubious* have always a relation to the person forming the opinion on the subject in question, *uncertain* and *precarious* are epithets which designate the qualities of the things themselves, the efficacy of any medicine is *doubtful*, the manner of its operation may be *uncertain* *Precarious* is the highest species of uncertainty, applied to such things as depend on future casualties in opposition to that which is fixed and determined by design The weather is *uncertain*, the subsistence of a person who has no stated income or source of living must be *precarious* It is *uncertain* what day a thing may take place, until it is determined, there is nothing more *precarious* than what depends upon the favours of princes.

Doubtful Sex (*Hermaphrodite*) "The ancients have several fables founded on the idea of the union of the qualities of the male and the female in the same individual One of the personages who was supposed to be this endowed was named Hermaphroditus, *i e*, Mercurio-Venus, because, according to the classic fable, he was the son of Mercury by his sister Venus. In the woods where he frequently hunted, a nymph called Salmacis lived who greatly admired him, for he was very beautiful, but a great woman hater. She often tempted the young man, but was often repulsed, yet she did not despair She lay in ambush at a fountain where he usually came to bathe, and when he was in the water she also leaped in, but she could not overcome his extraordinary modesty Thereupon, it is said, she prayed to the gods, above, that the bodies of both might become one, which was granted. Hermaphroditus was amazed when he saw this change of his body and desired that, for his comfort, some other person might be like him. He obtained his request, for whoever washed himself in that fountain (called Salmacis, in the country of Caria) became an Hermaphrodite, that is had both sexes (Ovid's Metam, 1, 4) From this modest youth, then, came the term, as applicable to this class of beings The researches of modern anatomists have completely set at rest the long debated question of hermaphroditism, in the vulgar acceptation of the word It is anatomically and physiologically impossible Yet is it equally well established that many cases of extraordinary malformation have occurred, but they are either males, with some unusual organization or position of the urinary or generative organs, or females with an enlarged clitoris, or prolasped uterus, or individuals in whom the generative organs have not produced their usual effect in influencing the development of the body. Thus, it is evident that instead of combining the powers of both sexes, they are for the most part incapable of exerting any sexual function. Yet the prejudices of ancient natrons seem to have marked these unfortunate individuals as objects of prosecution and to have subjected them to the operation of the most absurd and cruel laws. *Diodorus* mentions that they were burnt by the Athenians and Romans At an early period of Roman History a law was enacted that every child of this description should be shut up in a chest and thrown into the sea; and Livy gives an instance, where, on some difficulty with respect to the sex of a newly born infant, it was directed to be thrown into the sea (Livy, *xxvii* 37, Eutropius, *iv.* 36) The Jewish Talmud, we are told, contains many ordinances founded on the apparent predominance of sex The canon and civil laws have also many enactments concerning them. An old French law allowed them great latitude It enacted that they should choose one sex, and keep to it The Hindoo Institutes of Manu provide for similar contingencies (The Chinese, by Davis, Vol, I p 221) These absurd notions and practices have now disappeared, but the subject is important on many accounts, as these unusual deviations often render the sex of an individual doubtful, and impose even on professional men. The English common law on this subject is thus laid down a monster having deformity in any part of its body, yet if it have human shape, many inherit And every heir is either a male, or a female, or an hermaphrodite, that is, both male and female And an hermaphrodite, shall be heir either as a male or female, according to that kind of sex which prevails, and accordingly it ought to be baptized." (*Wharton*)

Doubtful title A title which the Court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it.

Dover's powder A drug compounded of opium, sulphate of potash, and ipecacuanha.

Dowager Woman with title or property derived from her late husband "A Widow endowed: but chiefly an addition, applied in general to the Widows of Princes, Dukes, Earls, and Persons of Honour" (*Cowel*, *Tomlin's Law Dic.*) as, Queen dowager, dowager duchess, etc. The term is also applied the widow of the King, who, as such, enjoys most of the privileges belonging to her as Queen consort (*Tomlin's Law Dic*)

Dower (*in English law*) The portion which a widow hath of the lands of her husband at his decease, for the sustenance of herself, and education of her children (1 Inst 30, *Tomlin's Law Dic*)

DOWER (*in English law*) has been defined as that portion of lands or tenements which the wife hath for the term of her life of the lands or tenements of her husband after her decease, for the sustenance of herself and the nurture and education of her children. The term "dower" in its proper sense is applicable only to real property, and to the widow's life estate therein, but it is sometimes applied in statutes, wills or contracts to a widow's share in the personal property of her deceased, husband also.

DOWER, JOINTURE. These terms express the property of the wife under different aspects. The *jointure* is the estate settled on the wife to be enjoined by her after her husband's decease. The *Dowery* or *Dower* is the money, goods, or estate which a woman brings to her husband on her marriage, as well as that portion of a man's real estate which his widow enjoys during her life, or to which the wife is entitled at the death of her husband. The *jointure* regards the woman as a wife, the *dower* as a widow also. (*Smith Syn Dis.*)

KINDS OF DOWER (*in English law*). In general Blackstone and Littleton speak of five species of dower (1). Dower by the common law; (2) Dower by particular custom, (3). Dower *adostium ecclesiae*,

Dowle Bundobust

(4) Dower *ex assensupatris*, and 5. Dower *de la pluis beale* (See 14 Ame Cyc. 881)

DOWER (*in Mahomedan Law*) Money paid or agreed to be paid by intended husband to wife at time of marriage and in consideration of marriage It is either *prompt* dower or *deferred* dower (See *Wilson Anglo Mahamadan Law*)

Dowle Bundobust. Estimate settlement.

"Dowl kabuliyat and kistbundi" Means an engagement setting forth particulars of the arrangements made for the payment of revenue in respect of specified lands by fixed instalments. (126 I C 769=51 C.L.J 297=A I R 1930 Cal 411)

Dowry or Dote (*Dos Mulieris.*) Was in ancient times applied to that which the wife brings her husband in marriage, otherwise called *maritagium* or *marriage goods*, but these are termed more properly, goods given in marriage, and the marriage portion (Co Lit. 31) This word is often confounded with Dower, though it hath a different meaning from it (*Tomlin's Law Dic*) That which the wife gives the husband on account of marriage, and is a sort of donation made with a view to their future maintenance and support

Dozen. A collection of twelve objects (as), things packed in four dozens each. But it may be shown by custom that a dozen under certain circumstances means 'thirteen'. (*Coquad* v *Kansas City Bank*, 12 Mo App 261, 265)

"Dr" (*Debtor*). When a statement of account is made out, using the term Dr, without more, it simply indicates that the person owes the various items.

Draft As applied to commercial paper, a bill of exchange, a check, an order for money, a written order for payment of money drawn by one person on another. Draft also signifies a tentative provisional, or preparatory writing of any document for purposes of discussion and correction and which is afterwards, to be copied out in its final shape, a rough copy of a document to be prepared (as) draft of a sale deed or mortgage deed The term is also used to denote a body of men drawn from depot, etc, to reinforce an army or for other purposes.

Draftsman One who draws or frames a document (as) a will, conveyance, etc

Dragoman (*A*). An interpreter.

"Drain" defined (*See also* Municipal drain) Ben Act 3, 1899, S 3(16), Ben Act 1, 1900, S 4, Bom Act 3, 1888, S 3 (*u*), Mad Act 3, 1904, S 3 (11), U. P. Act 3, 1894, S. 3 (*b*), U P Act 1, 1900, S 3 (3)

DRAIN. A drain is an artificial channel or trench through which water or sewage is caused to flow a ditch As applied to houses, the term drain is sometimes applicable to a conduit pipe used for the drainage of the building

The word "drain" is used in English law in different senses, according to the subject-matter to which it is applied. The primary meaning of the word, however is a passage pipe or open channel for the removal of water or other liquid, especially from land or houses.

"DRAIN" includes a sewer, pipe, ditch, channel and any other device for carrying off sewage, offensive matter, polluted water, sullage, waste water, rain

Dram.

water or subsoil water, and any ejectors, compressed air mains, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage or offensive matter to the sewage outfall [Bom. Act III of 1888 (City Bom. Municipal) S 3, Cl. (*u*)]

OTHER DEFINITIONS OF THE TERM. A hollow space in the ground, natural or artificial, where water is collected or passes off In order to constitute either a ditch or a drain there must be a well defined channel or receptacle for the drainage of water A mere depression in the surface of the earth, with no channel or banks, cannot be called either a ditch or drain. *See* Vesey Fitzgerald, Public Health Acts, Lumley, Public Health Act, Kennedy and Sanders, Drains Sewers. See also *Bethnal Green Vestry* v. *London School Board*, (1898) App Cas 190, *Greater London Property Co* v *Foot*, (1899) 1 Q B, 972, *Thompson* v *Eccles*, (1905) 1 K.B 110. *Hacdiche* v. *Filan Barnet U D C*, (1904) 2 K B 807, *Hedley* v *Webb*, (1901) 2 Ch 126

TO DRAIN land is to rid it of its superfluous moisture Hence drainage as applied to land ordinarily contemplates the removal of water therefrom by means of an artificial channel or trench

DRAIN, EXHAUST *Drain* commonly refers to some involuntariness of expenditure, while *Exhaust* may refer to what has all along been spent purposely As, "The country was *drained* of its resources by a protracted and expensive war". "I brought with me twenty pounds from home, but I have *exhausted* my supply". (*Smith Syn Dis*).

DRAIN, SEWER. Broadly speaking, "Drain," as contrasted with "Sewer," means, the duct that drains only one house "Sewer" means the duct that serves more houses than one (*Holland* v. *Lazarus*, 66 L J.Q. B 285, *Stroude*).

"Drainage-work" defined, Act 8, 1873, S 3 (3), Ben Act 3, 1876, S 3 (3), Bom Act 7, 1879, S 3 (3), Bur Act 2, 1905, S 3 (4), 59

"DRAINAGE-WORK" includes escape channels from a canal, dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by the Government but does not include works for the removal of sewage from towns Act VIII of 1873 (*Canal and Drain*), S. 3, cl. 3

"DRAINAGE-WORK" means any work in connection with a system of irrigation which has been or may hereafter be made or improved by the Government for the purposes of the drainage of the country, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith, but does not include works for the removal of sewage from towns Ben Act III of 1876 (*Irrigation*), S 3, cl. 3.

A *"drainage-work"*, as defined in S 3 (4) of the Irrigation Regulation includes a natural or artificial channel for the discharge of waste or surplus water; a *trench* or drain carrying surplus water from a place higher up and conveying it to a place lower down is a drainage work and therefore an irrigation work within the meaning of Ss. 3 and 46 (*u*) of the Regulation. (15 Mys.L.J 51)

Dram A measure, a Dram, Avoirdupois, is 1-16 of an Ounce, The term "dram" is also used to

signify something that has alcohol in it, something that can intoxicate.

Drama. A stage play, the art of writing and presenting plays on the stage. A poem or composition representing a picture of human life, and accommodated to action, a story represented by action, the representation is as if the real persons were introduced and employed in the action itself

Dramatic performance A scenic performance adapted to the stage, a performance accompanied with the appropriate scenary and action for its representation "Its signification is broad enough to cover, any representation in which a story is told, a moral conveyed, or the passions portrayed, whether by words and actions combined, or by mere actions alone." In *Bell* v. *Man*, 6 Am. St Rep 786, it is said. "It is ordinarily designed to the spoken, but it may be represented in pantomime, when the actors used only gesticulation, but do not speak, or in opera, where music takes the place of poetry and of ordinary speech, and the dramatic treatment is essentially different from either."

"Dramatic piece" defined 5-6 V, c 45, S 2

"DRAMATIC PIECE" means, "every tragedy, comedy, play opera, farce, or other scenic, musical or dramatic entertainment" (Copyright Act, S 2) "Any piece which, on being presented by any performer to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience" [per *Denman, C.J.*, *Russell* v. *Smith*, 17 L.J Q B 225, 12 Q B 217]

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character. (Copyright Act, S. 35.)

Dravyam Dravyom (*Mal*) Otti amount (*Sund Iyer's Mal Law*) Money in general

In Malabar this word means the amount of Otti received by the Janmi when giving his property under the tenure of Otti.

Draw. To write in due form, to prepare a draft of, (as) to draw a deed of sale, to draw a plaint or petition, act of drawing (as), drawing of lots, drawn game.

Draw Drawbridge Draw is a depression in land into which surplus water, sometimes flow, and as applied to *drawbridges*, that part of a bridge which is made to be drawn up or aside; the movable section of a bridge, whether raised up, as was the earlier practice, or moved to one side, as at present.

Drawback, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all.

DRAWBACK AND BOUNTY. A drawback differs from a bounty in this respect that the latter enables a commodity to be sold for less than its natural cost whereas a drawback enables it to be sold exactly at its natural cost 'Drawbacks,' as Dr. Smith has observed, 'do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been imposed They do not tend to turn towards any particular employment a greater share of the capital of the country than would go to that employment of its own accord, but only to hinder the duty from driving away any part of that share to other employments. They tend not to overturn that balance which naturally establishes itself among all the various employments of the society, but to hinder it from being overturned by the duty. They tend not to destroy, but to preserve what it is in most cases advantageous to preserve the natural division and distribution of the labour of the society.

Most foreign articles imported into a country may be warehoused for subsequent exportation In this case they pay no duties on being imported, and, of course, get no drawback on their subsequent exportation

Sometimes a drawback exceeds the duty or duties laid on the article, and in such cases the excess forms a real bounty of that amount, and should be so considered. (*Wharton*) "Drawback," is used so as to include a "Bounty." (*Stroude*, 574)

Drawbridge A bridge one or more sections of which can be moved aside or lifted up so as to permit the passage of boats

"Drawee" defined Act 26, 1881, S 7.

DRAWEE The person on whom a bill is drawn, or to whom the bill is addressed

An instrument is not taken out of the definition of a bill of exchange simply for the reason that the drawer and the drawee are the same persons. (9 Pat. 717=127 I C 575=A I R 1930 Pat 239)

"Drawee in case of need" defined Act 26, 1881, S 7

When in the bill or in any indorsement thereon the name of any person is given in addition to drawee to be resorted to in any case of need, such person is called a "drawee in case of need" Act XXVI of 1881 (*Negotiable Instruments*), S. 7

"Drawer" defined. Act 26, 1881, S 7

DRAWER In general a person who draws an instrument in writing Used in connection with commercial paper, a person who draws a bill of exchange, the maker of a bill of exchange or cheque.

The maker of a bill of exchange or cheque is called the "*drawer*," the person thereby directed to pay is called the "*drawee*" Act XXVI of 1881 (*Negotiable Instruments*), S 7.

The word 'drawer' as used in Cl. (d) of S 76 of the Neg Ins Act does not include the 'maker' of a pronote (39 P.L R. 765=A.I.R. 1937 Lah. 892.)

Drawing. A representation on a plane surface, by means of lines and shades; act or fact of drawing, the drawing of lots in a lottery

Drawing board. Board for stretching drawing paper on.

Drawing lottery. The word "drawing" with reference to a lottery is that the lots should be drawn by some mechanical or human agency involving their chance extraction. Where there was no

Drawing rooms

physical or mechanical "drawing" to determine the lucky lots which depended on a sort of arithmetical progression based on an original number to be determined merely by the chance-death of a bond-holder. *Held*, that the publication of the scheme involving such a lottery was no offence (35 P L.R. 753=A I.R. 1934 Lah 840)

Drawing rooms. Hall or room for Court reception, levee, reception room to which ladies withdraw after dinner.

Drawn Bonds Bonds of a class in respect of which periodical drawings are made by lots

Dreadful Full of dread or fear, also full of reverence and awe. (*Webster*)

DREADFUL, FEARFUL *Fearful* would denote no more than a sense of personal danger *Dreadful* seems to convey more than fearful *Fearful* is rather that which inspires fear by its impression upon the senses We may speak of "*dreadful* accounts of a foreign war," but not "*fearful* accounts" On the other hand, the news of a large army attacking our own country would be a *fearful* report (*Smith Syn Dis.*)

Dredge *As a noun* in its original meaning, a net or drag for taking oysters it is now called a machine for cleansing canals and rivers, but sometimes applied to a dredger. *As a verb*, to gather or take with a dredge to remove sand, mud and filth from the beds of rivers, harbours and canals with a dredging machine

Dren (*Panjabi*) An inflated bullock's hide, used as a float in crossing rivers and streams.

"Dried chicory" and "Roasted chicory" '*Dried chicory*,' is construed to mean, chicory which have been kiln-dried, or dried by any other means whatever, and not completely roasted to a state fit for grinding into powder, '*Roasted chicory*,' is construed to mean, chicory which have been completedly roasted to such a state as last mentioned, whether the same shall have been ground or reduced to powder or not, '*Dryer of chicory*,' is construed to mean and include, any person who shall kiln-dry, or dry by any other means, any chicory, '*Roaster of chicory*,' is construed to mean and include, any person who carries on, the process of drying chicory to a state in which it shall be fit for grinding to powder' (English Excise Act, 1860, S 21, *Stroude*)

"Drift" defined. Madras Act 7 of 1871, S 1

Drifts of the forest. A view or examination of what cattle are in a forest, chase, etc, that it may be known whether it be surcharged or not; and whose the beasts are. (Man p, c XV, *Wharton*)

Driftway. A common way for driving cattle A driftway is "a right of way, restricted to foot passengers, or restricted to foot passengers and horsemen or cattle" (per *Jessel, M. R., Cannon* v *Villars*, 8 Ch D. 421.) A carriageway will comprehend, a horseway, but not a driftway. (*Ballard* v. *Dyson*, 1 Taunt. 279, 285)

Drive. To "drive" is "to make move"; to urge in some direction by blows or coercion; chase, *e g*, to drive an ox, horse, a steam engine, or a nail or a train (*See* 12 Cr L J 573=12 I C. 837.)

Druggist.

Driver or drivers, in Ss 37, 40—52, 54, 58, 60—67 of the Town Police Clauses Act, 1847 (10 & 11 Vict, c 89), includes the conductor of an omnibus (English Town Police Clauses Act, 1889, c. 14, s. 4.)

"Driving a vehicle". A man riding a bicycle may properly be said to drive a vehicle within the meaning of the Municipal Acts. (12 Cr.L J 573=4 Bur L. T. 134=12 I C 837)

No person is a driver unless driving It is only a Police Officer who can demand the license, and an order requiring the driver to attend a Magistrate's house or Court with his license is illegal.(49 A 754= 101 I C 668=25 A L J 574=28 Cr L.J 492=A.I R. 1927 All 478)

Droit ne done pluis que soit demaunde A maxim "Justice gives no more than is demanded"

Droits civils Civil or private rights.

Droits of admiralty. The perquisites attached to the Office of Admiral of England (or Lord High Admiral) (*Wharton*) Abandoned goods found at sea, goods taken in war time by a non-commissioned ship

Dropsy is a morbid collection of water in any part of the body, when the natural cavities become distended with that fluid

Drove A collection of cattle driven, a number of animals, moving herd or flock

Drover Driver or dealer in cattle.

Droving The trade of a drover.

Drowned Suffocated by submersion, in water or other fluid, perished in water; deprived of life by immersion in water or other liquid.

Drowning (as used in an insurance policy), "is in itself not a danger, but the result of a peril, and against that result the company insure" (*Moore* v. *Perpetual Ins. Co* 16 Mo 98, 101, 14 Cyc. 1077)

"Drug" defined *See also* Intoxicating drug (Ben. Act 3 of 1899, S 3 (17)

DRUG A simple substance used alone or as an ingredient in medicine, a substance used in the composition of medicines, a substance or commodity used as a remedy for decease, any mineral substance used in chemical operations

What is a "Drug," is, to a great extent, a question of the circumstances, *e g*, Beeswax is sometimes used in the preparation of medicines, but when sold by a small country grocer, not as a drug, but in the ordinary way or his trade, it is not a "drug" (*Fowle* v *Fowle*, 75 L.T 514 (See *Stroude* 576)

According to the generally accepted definition a drug is any vegetable, animal or mineral substance used in the composition of medicines, any stuff used in dyeing or in chemical operations, or any ingredient used in chemical preparations employed in the arts.

Druggist Is one who deals in drugs and medicines; dealer in drugs. The term is synonymous with "pharmacist" or "chemist" It is not essential that a druggist should compound or manufacture medicines in order to constitute him as such. It is said that the term druggist properly means one whose occupation is to buy and sell drugs without compounding or

Drunkard.

preparation, but in its usual acceptation it means one who deals either in medicines or in meterials that are used in compounding medicines

Drunkard A drunken person, a person under intoxication, person who is often found in a drunken state or condition

'DRUNKARD', 'HABITUAL DRUNKARD', 'COMMON DRUNKARD.' A drunkard is one with whom drunkenness has become a habit, one who habitually drinks to intoxication, a sot, one who habitually gets drunk. The difference between the terms *'drunkards'* and *'habitual drunkard'* is not well defined The latter appears to be a greater and a stronger term A habitual drunkard is one who has acquired a fixed habit of drunkenness, one who has formed the habit of drinking liquor to excess and of becoming often intoxicated One who has got confirmed in the habit of getting drunk or who commonly or frequently is found drunk The term *'common drunkard'* has been considered as synonymous with *'habitual drunkard'* (*Ame Cyc*)

Drunkenness Drunkenness is the state of being drunk or overpowered by intoxicants, the habit of indulging in intoxicants, ebriety, inebriation, intoxication, of the term does not include the physical state resulting from the use of drugs

DRUNKENNESS, INTOXICATION, INEBRIATION, INEBRIETY. *Drunkenness* is specifically the becoming intoxicated by strong drink, and is used to express both the casual state and the habit *Intoxication* includes cases in which the same effect is produced by other courses than drinking as, for instance, the fumes of tobacco *Inebriation* differs from intoxication in being confined to the results of drinking, and from *drunkenness*, in denoting the process or the state, but not the habit *Inebriety* expresses the state and the habit, but not the process *Intoxicate* lends itself most easily of all to a secondary application, so that a man is said to be intoxicated with success, pleasure, and the like (*Smith Syn Dis*)

HABITUAL DRUNKENNESS is the fixed habit of frequently getting drunk, the term does not necessarily imply a state of continual drunkenness

HABITUAL INTEMPERANCE is a persistent habit of becoming intoxicated from the use of strong drink, the constant indulgence in such stimulants as wine, brandy and whisky, whereby intoxication is produced, not ordinary use but the habitual abuse of them. The habit should be actual and confirmed It may be intermittent It need not be continuous, or even of daily occurrence

"CONTINUED DRUNKENNESS" is used in their ordinary sense and signifies gross and confirmed habits of intoxication.

Drunken person. A person who is drunk although he shows no indications of insobriety. (*Cundy* v. *Le Cocq*, 53 L.J. M C. 125)

Dry craeft. Witchcraft.

Dry exchange. An evasion of usury laws.

Dry mortgage One imposing no personal liabilay on the mortgagor

Dry rent. Rent reserved without right of distress.

Due notice

Dry trust. One wherein the trustee merely holds the title

Duam or do-yam. (*P.*) Second-class land, etc. (Bad. Pow iii, 437)

Duarchy A government with two rulers.

Duas uxores eodem tempore hebere non licet A maxim meaning "It is not unlawful to have two wifes at one time".

Dubash. One who speaks two languages, an interpreter, a broker. The Hindu who, at Madras, in the days of the East India Company managed the money concerns of the European, and served him as a confidential agent in his private and public transactions with the other natives (*Fifth report.*)

Dubitante Doubting.

Dubitatur. It is doubted.

Dubitavit It has been doubted.

Ducking stool An instrument formerly used for punishing scolds, being a chair wherein they were plunged in water.

"Duct" defined. Reg 8, 1887, S 2 (5).

DUCT A canal or tube of small size, conveying fluids in the body from a secreting organ Thus the lacrymal duct, for the conduct of tears, the gall duct, carrying the bile to the bowel, the salivary duct, conveying the saliva from the glands to the mouth, etc

Due *As a noun*, an existing obligation; an indebtedness, a simple indebtedness without reference to the time of payment · a debt ascertained and fixed though payable in future, *As an adjective*, capable of being justly demanded, claimed as of right, owing and unpaid, remaining unpaid, payable, regular, formal, according to rule or form. (4 M.H C 385) *'Due'* in an instalment bond means payable (15 I C 231, *Re* European Life Assrce, Co 39 L J Ch. 326)

"A Debt is still 'due' notwithstanding that the Statute of Limitations may have run against it, for that statute only bars the remedy and does not extinguish the debt" (Exparte *Cawley*, 34 S J 29)

Rent is *"due"* "at the beginning of the day in which to pay it" (*per* Erle, J, *Dib le* v. *Bowater*, 2 E. & B. 570, *Stroude*)

AS AN ADVERB, exactly, directly.

"Due course" defined The word is also used in conjunction with other words as in the terms, holder in *due course*, payment in due course.

Due course of administration. As applied to a claim against an estate the term means that it shall be paid as, and *pro rata* with, other claims of that class, out of the assets administered (*Ame. Cyc*)

"Due course of law" in S. 9, Sp Rel. Act. [See 29 B. 213=7 Bom.L.R. 12.]

Due diligence Such watchful caution and foresight as the circumstances of the particular case demands.

Due notice Public or personal notice ordered by the Judge in his discretion; such notice as is prescribed by law.

No fixed rule can be recognised as to what shall constitute *'due notice'*. Due is a relative term, and

Due process of law

must be applied to each case in the exercise of the discretion of the court in view of the particular circumstances' (*Lawrence* v *Bowman*, 15 Fed. Cas No 8, 134)

Due process of law. The application of the law as it exists in the fair and regular course of administrative procedure

Due service. Service made in proper time, and in proper manner, as ordained by law

The service of summons against a major defendant upon a person who is described to be his guardian cannot be said to be a proper or due service on the defendant though the supposed guardian may be his brother (166 I C. 635=18 Pat.L T. 72=A I R 1937 Pat. 17)

Duel The act of fighting with deadly weapons between two persons in persuance of a previous agreement "What we now call a duel is a fighting between two, upon some quarrel precedent." (*Jacob L. Dict.*)

Duelling The offense of fighting a duel Duelling and challenging to fight a duel are usually made criminal by modern Penal Codes. A duel may be defined as a combat with deadly weapons between two persons, fought according to the terms of a precedent agreement and under certain agreed and prescribed rules. It has none of the elements of sudden heat and passion, but on the contrary is a combat fought in cold blood, and under rules prescribing the utmost formality. (1 Hale, Hist Pl Cr 471, 479, Hawk, P C, bk *i e* 31, ss. 20-35, Foster Cr Law , Russ on Crimes, Arch Cr. Pl , Mayne, Indian Crim Law)

Dues A word of general significance, and includes all contractual obligations.

The word "dues" in art 13 of the Provincial Small Cause Courts Act, must be taken to comprise only dues similar in kind to those specifically mentioned therein (21 M 243),also applies to shares in even what has been paid voluntarily to a religious association (28 M 202)

Duffadar. The commander of a party of horse, also of peons (*Fifth report*) , a head peon.

Duffing A dishonourable practice which was faid formerly to prevail in the pawnbroking trade, of rubbing up soiled or damaged goods and selling them as new, or repledging them with other pawnbrokers To charge a pawnbroker with "duffing" is actionable, whether the words be written or spoken [*Hickinbotham* v *Leach*, (1842) 10 Mee. & W. 361.]

Dufter Register, record, office. (*Fifth report.*)

Dukki (*Tel*) Ploughing, ploughed ground, a ploughed field.

Dullakottuta. (*Tel*) Threshing corn

Dulocracy. A government of slaves.

Duly regularly, fitly, in a due, fit, suitable, or becoming manner, in due manner, when or as due, in due time or proper manner, in accordance with what is right, required or suitable; according to law or some rule of law, legally on proper authority.

IN A PLEADING, it imports but a conclusion relating only to the formalities observed or, non-observed

Dumb.

Sometimes it refers not to form merely, but includes form and substance.

Duly appointed pleader [*See* 41 M.L J. 645=44 Mad. 736=48 I A 534=A.I.R. 1922 P C 225 (P C.)]

"Duly arrested,' means that the officer to whom the warrant was addressed acted "under authority enabling him, and was not a trespasser." (*Butcher* v. *Steuart*, 12 L J. Ex 391)

Duly authorized Implies that all things have been done which are requisite to confer legal authority.

"Duly authorised in that behalf" The words "Duly authorized in that behalf" do not mean specially or expressly authorized and they are the proper designation of an agent acting within the scope of his powers, ordinary or special [6 I. C 948 (951)]

Duly made A contract "made in writing," in the Companies Act, means a contract executed by all the parties thereto [Ex parte *Menzies*,(1890) 43 Ch.D. 118]

Duly served Served in manner prescribed by law, as applied to the service of summons (*See also* 4 Mys L J. 226)

"Duly stamped" defined Act, 12, 1899, S 2 (11).

"DULY STAMPED" as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India. Act 2 of 1899 (Stamp) S 2 (11).

Duly sworn A swearing according to law, lawfully sworn A term which imports the administration of an oath according to the formula prescribed by law.

Dumala, dumala-gaum. A Bombay term often applied to any inam or revenue-free village *Properly*, it only means land held free foi life, or for a term, (Bad Pow)

Dumat (*N W P*) A loam soil, about equal parts clay and sand (Bad Pow. II, 76)

Dumb Unable to speak, mute, inarticulate.

DUMB, MUTE, SPEECHLESS, SILENT, VOICELESS, NOICELESS. *Dumb* commonly signifies unable to speak, whether from temporary or permanent and natural causes, as "dumb brutes," "struck dumb with amazement" *Mute* is commonly employed of the human race, and refers to articulate speech, which for some peculiar reason is temporarily suspended as, "mute in astonishment." Many are *mute* by nature who are not, strictly speaking *dumb*. *Speechless* relates only to articulate sounds, and means destitute or deprived, whether permanently or for a time, of the faculty of speech. *Silent* is very general, and relates to anything characterised by the absence, temporary or permanent, of speech or sound. It is applicable not only to living beings, but to anything producing sound. "The *voiceless woods*" would mean the absence of animal sounds, "the *noiseless woods*" the absence of all sounds, whether vocal or otherwise. (*Smith Syn. Dis*)

Dumb bidding

Dumb bidding. In sales at auction, when the amount which the owner of the thing offered for sale is willing to take is written and placed by the owner under a candle stick and it is agreed that no bidding shall avail unless equal to that This is called dumb bidding.

Dumbala (*Tel.*) An order for giving up the government share of the produce to the cultivators There is no presumption that the inam grant was of the melwaram only to a kudiwaram holder, nor is such a meaning inherent in the word "dumbala" (112 I C 400=A I R 1928 M 960)

Dumbala-deron The issue of an order to the cultivators to reap the crops without waiting for the final adjustment of the assessment with the Zamindars

"Dumbala" inam [112 I C 400=A.I R 1928 Mad 960]

Dumbala-manyam (*Tel.*) Lands held free of assessment, or at a low quit rent, under special grant, not forming part of the original assignment

Dumping Sending superfluous goods for sale at low price abroad with a view to maintaining home price and capturing foreign trade

Dum sola While unmarried.

Dunce One of dull capacity and apprehension, dullard

To say of a lawyer that "he is a dunce, and will get little by the law," is slander, for "'Dunce,' in common intendment and speech, is taken for one of dull capacity and apprehension, and not fit for a Lawyer" (*Peard* v *Johnes*, Cro Car 382)

Dungali (*Karn*) A measure of two and a half seers (South Kanara)

Dungeon A subterranean cell for prisoners, a close prison, dark or subterraneous Originally it signified the principal building of a district or fortress, which from its position or structure had the command of the rest, donjon in fortification is generally taken for a large tower or redoubt of a fortress where the garrison may retreat in case of necessity (*Bail*) The name of dungeon has finally been given to such an underground prison as was formerly placed in the strongest part of a fortress (*Wedgw*) Whence all prisons eminently strong were called dungeons, a close prison, dark or subterraneous.

Duo non possunt in solido unam rem possidere A maxim meaning 'ownership or possession in entirety cannot be in two persons of the same thing'

Duo sunt instrumenta ad omnes res aut confirmandas aut confirmandas aut impugnandas—Ratio et auctoritas A maxim meaning, 'There are two instruments either to confirm or impugn all things 'reason and authority—'

Duorum in solidum dominium vel possessio not potest A maxim meaning "Ownership or possession in entirety cannot be in two of the same thing. (*Bracton*)

Duodenum The first portion of the intestine, commencing at the pylorus, by which it communicates with the stomach, and terminating at the jejunum

Durbar.

Dupatkari, didhpatkari (Bad Pow Vol. III, 291)

Duplex placitum non admittur A maxim meaning 'A double decree cannot be regarded'

Duplicate A copy of the original, the double of anything, a counterpart, one of two originals of the same tenor, a document resembling another in all essentials A document essentially the same as some other document, having precisely the like operation and effect (*Toms* v *Cuming*, 7 M & G 88)

DISTINGUISHED FROM AN EXAMINED COPY 'It is a very different thing from an examined copy, although an examined copy may, in effect, be a duplicate under certain circumstances. (*Toms* v *Cuming*, 14 L J C P 67)

Duplicate originals When the counterparts, of a document are made and delivered by each party to the other they are commonly spoken of as 'duplicate originals' (2 M & G 518)

Duplicity Double dealing, bad faith

DUPLICITY, DOUBLE DEALING *Duplicity* is that sustained form of deception which consists in entertaining one set of feelings, and acting as if influenced by another *Double dealing* is acting in such a way as to have a double line of conduct, and commonly to give the impression of consulting the wishes or interests of others, while one is really following one's own (*Smith Syn Dis*)

DURABLE, LASTING, PERMANENT *Durable* is naturally said of material substances, and *lasting* of those which are spiritual, although in ordinary discourse sometimes they exchange offices *permanent* applies more to the affairs of men That which perishes quickly is not *durable* that which ceases quickly is *not lasting*, that which is only for a time is not *permanent* Stone is more *durable* than iron, and iron than wood in the feudal times animosities between families used to be *lasting*, a clerk has not a *permanent* situation in an office

"Land comprehend all things in law of a *permanent* substantial nature" (*Blackstone*)

Durante absentia (*Executor*) During absence, an administration granted when the executor is out of the realm, to continue in force until his return. (*Tomlin's Law Dic*)

Durante minore oetate (*During minority*) An infant cannot act as executor during which minority administration is granted (*Tomlin's Law Dic*)

Duration Extent, limit, or time, during which a thing lasts, the power of enduring

DURATION, TIME *Duration* comprehends the beginning and end of any portion of time, *time* is employed more frequently for the particular portion itself, the *duration* of a prince's reign is an object of particular concern to his subjects if he be either very good or the reverse, the *time* in which he reigns is marked by extraordinary events the historian computes the *duration* of reigns and of events in order to determine the antiquity of a nation, he fixes the exact *time* when each person begins to reign and when he dies, in order to determine the number of years that each reigned.

Durbar Levee of an Indian Prince or Governor in British India

Durbust hakuk.

Durbust hakuk. The term "durbust hakuk" includes everything which might be considered as belonging to the zamindari right [(A I R 1925 P C 42 and 16 C L J 7, *Foll*) 55 Cal. 35=46 C L J 307=32 C.W N 16=106 I C 117=A I R 1927 Cal. 956]

Duress Standing alone it means any intimidation, or restraint on action or any thing tending to restrain free and voluntary action. In its more extended sense, the word means 'that degree of severity, either threatened and impending, or actually inflicted, which is sufficient to overcome the mind and will of a person of ordinary firmness.'

Generally speaking, duress may be said to exist whenever one, by the unlawful act of another, is induced to make a contract or to perform some other act under circumstances which deprive him of the exercise of free will.

Whatever is done by man to save either life or limb, is looked upon as done by the highest necessity and compulsion Therefore, if a man through fear of death or mayhem, is prevailed, upon to execute a deed, or do any other legal act, these, though accompanied with all other requisite solemnities, may be afterwards avoided, if forced upon him by a well grounded apprehension of losing his life, or even his limbs, in case of non compliance. (2 Inst 483) And the same is also a sufficient excuse for the commission of many misdemeanours The constraint of a man is under in these circumstances is called in law duress. (*Tomlin's Law Dic*)

By the law of England, if a man is under lawful imprisonment for a civil debt, an agreement which he makes while subject to that constraint is not, by reason of his being so subject to it, capable of being avoided, provided that it is not unconscionable But imprisonment in a country where there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, is duress of a wholly different kind In the one case the prisoner knows that the length and severity of his imprisonment are defined and limited by the law, and cannot be exceeded, whereas in the other the prisoner neither knows what will be the length of his imprisonment, nor what amount of pain and misery he may be put to, all is indefinite, and therefore the apprehension acting on the mind of a man in such a situation would be indefinitely greater than if he were imprisoned in a country like England, where the law is settled, and cannot be exceeded by the Judge. [(1876) 3 I A. 61=1 C. 330 (334)=3 Sar. 597]

During. In the time of, in the course of

" **'During coverture'** " means during the continuance of the marriage. (*Co Litt* 112 *a*)

'DURING COVERTURE' as used in a marriage settlement 'means after the commencement and before the termination of the coverture.' (*Archer* v *Kelly*, 1 Dr and Sm 300, 307)

"During the pleasure of Government". The words "during the pleasure of Government" used in a Grant by the sovereign power to a subject cannot mean absolutely and unconditionally at the will of Government, and only imply subjection, but not subjection to an arbitrary and final extinction of the rights strenuously claimed by the subjects and to a considerable extent acknowledged by the sovereign [11 I.C. 948 (956)=13 Bom L R. 609.]

Duty.

"During the suit," in S 33 of the Parsi Marriages Act, may be taken to include the period up to the making of a final or absolute decree (17 Bom 146)

Durmasanam, Durmasenum Places where water and rice are distributed gratis to travellers, Religious establishments, lands granted for religious institutions at a low rent during the Hindu Government at Tinnevelly

Durmatichitta Accounts prepared in 1801 of wargs (*Kan*) (*Sund Iyer's Mal. Law*)

Durrul-Mukhtar "A note book, or Hashiyat, entitled the Hashiyat-al-Tahtawi Ala Durrul-Mukhtar It is a work of authority on Mahomedan Law. (*Morley's Digest*)

Durum est per divinationem a verbis recedere A maxim meaning 'It is hard by conjecture to depart from the meaning of words'

Dussarah A Hindu festival in honour of Parvathi or the goddess consort of Siva It commences on the tenth day after the newmoon in the month Asin, answering to the latter end of September, and lasts nine days (*Fifth report*)

Duster dehi An official village register (131 I C 137=A I R 1931 All 405)

Dustkhat The signature of a partner of the firm who signed the hundi was preceded by the word "*dustkhat*" *Held*, that the prefixing of "*dustkhat*" to the signature denoted that the person incurred no personal liability on the instrument. It was the firm which was to be liable on the instrument and not the partner [(1909) 1 K B. 792, A I R 1918 P C 146 and 2 S L R 11 *Rel on*) A I R 1931 Sind 4]

Dutch auction Starting the auction sale of an article at a price above its value, and gradually lowering it to an amount at which a sale is effected or the article withdrawn

"Dutiable goods" "*Dutiable goods*" means any article on which a duty of land customs is leviable by virtue of a notification issued under S 5 of the Indian Tariff Act 1894 [Act XIX of 1924 (Land Custom S 2, cl (*d*))]

Dutiable value. The value of the property for the purpose of levy of duty after the debts or other allowances or exceptions authorized by the act are deducted

Duties. (See *Duty*) Imports or customs taxes, taxes and charges levied upon goods, chattels, commodities or manufactures

Duties of persons (*King and the people.*) Allegiance is the duty of the people, protection the duty of the King yet they are reciprocally the rights, as well as duties of each other Allegiance is the right of the King, and protection the right of the people. (1 Comm 123, *Tomlin's Law Dic*)

"Duty" defined (The word is also used in combination with other words, as, municipal duty, probate-duty, town-duties, death duties, customs duty, tariff duty).

DUTY Anything that is known to be due by law, and thereby recoverable, is a duty before it is recovered; because the party interested in the same hath power to recover it. (1 Lill, 495. *Tomlin's Law Dic*)

Duty

"Duty" also means, a thing due and recoverable by law, a service business of office, obligation, that which one is bound or under obligation to do, a legal obligation to perform some work, and sometimes used also in the sense of debt The word is also used to designate a tax or impost due to the government upon the importation or exportation of goods (as) export duty, import duty.

In its most enlarged sense, duty is nearly equivalent to tax, embracing an imposition or charge levied on persons or things.

Duty is always a question of circumstance. It cannot be defined by ticketing a man as belonging to a certain profession or calling, and then going to authorities to show what the duties of that profession or calling are [31 M L T 104 (P C.).]

Sudden emergency—Duty of a man who finds himself in a—Negligence on his part—What amounts to [8 L W 4 (8-9)]

DUTY, OBLIGATION Law and conscience dictate to a man what is his *duty*, and the neglect of it is a violation of right or virtue *Obligation* is more practical, and is dictated rather by usage and propriety *Obligation* has also very often the sense of the power that binds while *duty* is the thing enforced A *duty* never can be against reason, an *obligation* may be even absurd, as depending upon custom *Obligation* is defined by the extent of the power which obliges, *duty* by the ability of the subject who performs (*Smith Syn Dis*)

Dvamushyayan A son may be given in adoption on condition that he shall be the son of both the natural and the adoptive fathers Such a son is called the Dvamushyayan

Dwars or Duars (Dwara=gate, or pass into hills beyond), the Eastern and Western (*Bad Pow* I, 485, 499, 552, III 431)

Dwell To inhabit, to reside, to remain, to be domiciled, to live in a place, to have a habitation, to have a fixed place of residence, to abide as a permanent resident, or to inhabit for a time, to live in a place, to have a habitation for some time or permanence.

DWELL is not to be restricted in meaning to actual presence Such is not the meaning attributed to it in common parlance or by the Lexicographers (*Eatontown* v *Shrewsbury*, 49 N J L 188, 190)

A person may "dwell" in two or more places (*Butler* v *Ablewhite*, 28 L J C P 292), and a member of parliament residing in London for about 3 months in the year would "dwell" there, as well as at his country seat (*Bailey* v. *Bryant*, 28 L J.Q B 86)

A man can, however, scarcely be said to "dwell" at his place of business (*Kerr* v *Haynes*, 29 L.J Q B 70), still less in a prison in which he may be temporarily incarcerated (*Dunston* v. *Paterson*, 28 L.J C P 97.)

A Corporation can only "Dwell" where it carries on business (*Taylor* v *Crowland Gas Co*, 24 L.J. Ex 233.)

To "dwell," "dwelling," are expressions nearly, but no quite, equivalent to "Reside," "Residence", for to "dwell" connotes, more definitely than "reside," a place where a person lives and sleeps (V. per *Pollock, C.B., A-G.* v *McLean*, 1 H & C 761.)

Dwelling house

The words "dwell" and "reside" have a narrow or more extended meaning according to the intention of the Legislature in the various Acts in which they occur For the purpose of jurisdiction, *prima facie* a man may be said to dwell where he is staying at any particular time, but it is open to him to show that he is not dwelling there, but at some other place And, therefore, where a person has no permanent residency, he may be said to dwell wherever he is found (25 B 176=3 Bom L R 291)

The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs

Where a defendant stays in Bombay only for a temporary purpose, his residence is not such as would satisfy the requirements of Cl 12 of the Letters Patent, 1865, so as to give to the High Court jurisdiction over him

In order to afford foundation for jurisdiction under Cl 12 of the Letters Patent, 1865, the residence of the defendant must be of a permanent character So, the fact of his having purchased a house at Bombay, in the year preceding the year of his visit and of his residing therein temporarily during his visit, would not give rise to an inference of an intention on his part to "dwell" in the house from time to time (18 B 290)

A person having no permanent place of abode "dwells," at the place where he may temporarily be (*Alexander* v. *Jones*, 35 L J Ex 78.)

DWELL, in the County Courts Act, 1888 (51 & 52 Vict, c 43), S 74, applies to temporary as well as permanent residence [See *Alexander* v *Jones*, (1876) L R 1 Ex 133, decided on 9 & 10 Vict [c 95, S. 128 *Cf Riley* v *Read*, (1879) 4 Ex D 100.]

"Dwell" and "Reside" *See* 25 Bom 176

Dwelling Mere casual presence or even residence for a temporary purpose within the jurisdiction of a Small Cause Court, without the intention of remaining is not "dwelling" within the meaning of S 4 of Small Cause Courts Act, (XLII of 1860) (2 M.H. C.R. 304)

Staying in a place with a defined object or a fixed purpose (in the case of a person having a *bona fide* and permanent abode elsewhere) for a short and limited period cannot constitute a dwelling in such place for the purpose of the Letters Patent (14 B. 541.)

A defendant, who had taken up his abode with his wife and family in a hired house in Madras meaning to remain there several months, and was actually living there when the suit was instituted, could not be heard to say that he was not dwelling within the original jurisdiction of the High Court within the meaning of S. 12 of the Letters Patent of the Madras High Court [13 Bom.L R 520 (P C)=15 C W N 741=8 A L J 774=14 C L J 64=11 I.C. 447 =1911 (2) M.W N 375=21 M L J 669=34 M 257]

"Dwelling-house" defined. Ben Act 3, 1899, S, 3 (18), Ben Act 1, 1900, S 4 [*See* 19 C.W N 1027.]

DWELLING HOUSE Is defined as the house or the building in which a person lives or which is inhabited by man; an inhabited house, the house of his person abode, a place of habitation, a place of residence, habitation, a house occupied or intended to be occupied as a residence.

Dwelling-house.

"A person has his dwelling where he resides permanently, or from which he has no present intention to remove" (*Anderson L Dict.*) (19 C W N 1027=31 I C 10.)

The term is sometimes defined as the house where a person sleeps at night, and sometimes it means 'Usual place of abode'

'The law does not contemplate by the word '*dwelling-house*' any particular kind of house It may be a brown stone front, all of which is occupied for residence purposes, or it may be a building part of which is used

'Whether a building is or not a dwelling-house depends upon the use of which it is put A barn may be converted into a dwelling house or a dwelling-house into a barn, by a change of uses, so an infirmary may or may not be a dwelling-house, depending in no wise upon the question of its ownership or the purposes of its original construction, but upon outside facts and circumstances' (*Davis* v *State*, 38 Ohio St. 505, 506)

Cottages are equivalent to '*dwelling house*' (see 11 Cyc 294 note 22)

"A *dwelling-house* may be humble and inexpensive yet as much a domicile as a mansion" [Matter of *Lyman*, 24 Misc (N Y) 552]

A *dwelling-house*, to be exempted under S 37 of the Revenue Sale Law, must be a dwelling-house of a permanent character, and mere huts would not come within that description [3 C W N 212 *See also* 12 C W.N 1029 (1031)]

A "*dwelling-house*" in S 4 of the Partition Act means not only the house itself but also the land and appurtenances which are ordinarily and reasonably necessary for its enjoyment (18 Pat L T 866=1937 P W N. 902=A I R 1938 Pat 13)

In the definition of Burglary, a "*Dwelling-house*," means a permanent building in which the owner, or the tenant or any member of the family, habitually sleeps at night" (*Steph Cr* 247)

DWELLING-HOUSE (*Tent distinguished from*) "Though it may be used for other purposes, as a store house office, mill house or the like A tent or open shed does not come within the meaning of a dwelling-house." [Tex Code, Art 2311 (quoted in *Calahan* v *State*, 41 Tex 43, 45]

"DWELLING-HOUSE BELONGING TO UNDIVIDED FAMILY'. The expression "a dwelling-house belonging to an undivided family" as used in S 4 of the Partition Act, 1893, is not applicable to a house belonging to a Muhammadan family [29 A 308=4 A L J 209=1907 A W N 52 (13 All 282, *R*) *See also* 7 I C. 436 (440)=12 C L J. 525.]

DWELLING-HOUSE, in 41 & 42 Vict C 26 (Parliamentary and Municipal Registration), S 5, means a part of a house separately occupied, not by a lodger merely, but in such a manner that the occupier can be separately rated to the relief of the poor [*Bradley* v *Baylis*, (1881) 8 Q.B D. 195]

DWELLING-HOUSE in 5 & 6 Vict, C 35 (Income Tax), S 100, Sch. D, "does not include a house in which a bank or limited company carries on business," even if the manager lives in part of it. [*Russell* v. *Town and County Bank*, (1888) 13 App, Cas. 418 430, cf. *Tennant* v *Smith*, (1892) App Cas. 150.]

Dynamo machine

DWELLING-HOUSE in the Bankruptcy Act, 1883, S 6 (*d*), for purposes of founding bankruptcy jurisdiction over a foreigner, held to include 'furnished rooms' taken under circumstances which did not make the hirer a lodger [Re *Hecquard*, (1890) 24 Q B D 74, cf Ex parte *Maxim Nordenfeldt Co*, (1895) 1 Q B 151]

A DWELLING-HOUSE NEED NOT BE A SEPARATE BUILDING It may be bounded by a horizontal plane just as well as by a vertical plane, and would therefore include a *flat*, but not lodgings, nor rooms in a hotel [See *Allchurch* v *Hendon Assessment Committee*, (1891) 2 Q B 436 and cf *Kimber* v *Admans*, (1900) 1 Ch 412, *Rogers* v *Hosegood*, (1900) 2 Ch 389, *Robertson* v *King*, (1901) 2 K B 265, *Weatherell* v. *Cantley* (1901) 2 K B 285, *Nicholls* v *Malim*, (1906) 1 K B 272, *Lewin* v. *End*, (1906) A C 299]

Dwiragaman or Gowna ceremony What is called the gowna ceremony in Hindu Law is also known as the Dwiragaman ceremony, *i.e*, the ceremony performed when the young wife, upon the attainment of puberty, leaves her parental home to take up her residence in the house of her husband Although the marriage ceremony is not incomplete without the dwiragaman ceremony, yet,it is regarded as an essential compliment to marriage. (13 C W N 994=1 I C 945)

Dying declaration Dying declarations are statements made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted Statements made by a deceased long prior to the occurrence resulting in death are not dying declarations and not admissible under the Evidence Act (4 Lah 451=A I R, 1924 Lah 253 *See also* Evidence Act, S 32) The necessity of recording a dying declaration arises only when the hopes of life of the man are given up. (129 I C 676=32 Cr L J 416=52 C L J 425) The inhabitants of the Punjab often in a dying declaration not only accuse the actual offenders but also include the names of other enemies and hence in the Punjab it is not safe to base a conviction on the uncorroborated dying declaration of a deceased person (A I R 1925 Lah 549) A discrepancy between a first information report and dying declaration makes it incumbent on the Court to examine both pieces of evidence with extreme care, but such a discrepancy does not render the dying declaration wholly unreliable (71 I C 593=24 Cr L J 177=A I R 1924 Lah. 413)

Dying without issue Death without a child born either before or after death

Dynamo machine A device for converting mechanical energy into electricity

In *Thompson-Houston Electric Co* v. *Western Electric Co*, 65 Fed 615, 616, it is said 'It has a revolving part, called the armature usually driven from a steam engine At one end of the armature there is a projecting part, called the commutator, standing out something like the hub of a wagon wheel Upon two opposite sides of this commutator are placed two copper strips, bars, or bundles of thin copper leaves, called commutator brushes, which press upon the surface and the commutator during its revolution. A wire joined to one of these brushes leads away from the machine through the lamps or motors in which the current is used and

Dynasty

back to and through the other brushes Thus the electric current which is generated in the armature by its revolutions passes out through one brush and back through the other'

Dynasty A race or succession of kings of the same line of family, a family succession to a throne (as the dynasties of Egypt, China, etc)

Dyrge or Dirge A mournful song over the dead (mostly of a laudatory character) (*Cowel Tomlin's Law Dict*)

Dysentery A disease in which there is great difficulty in voiding the faeces, which consist chiefly of mucus and blood

Dysmenia Difficult or painful menstruation (Called also Dysmenorrhoea)

Dysnomy Bad legislation, the enactment of bad laws

Dyspepsia A form of indigestion

Dysphagia Difficulty in swallowing, which may arise either from constriction of the gullet or oesophagus, or from nervousness

Dyspnoea Shortness or difficulty of breathing, associated with syncope, and disease of the heart, lungs, larynx, or windpipe

Dyvour (*Scotch*) An insolvent who had assigned all his property for the benefit of his creditors

"E"

E and O E Abbreviation for "errors and omissions excepted The letter E and O E commonly put in this country under a bill have no effect whatever on its finality (18 Bom L R 156=33 I C 701)

E. e Errors excepted (used in accounts)

E g Exempli gratia, for example

Each Every one of any number separately considered, or every one of several The word is understood to mean every one of the two or more individuals composing the whole, considered separately from the rest "Take each man's censure, but reserve thy judgment" (*Shakes*) It is a distributive adjective denoting or referring to every one of two or more of the series mentioned, either or any unit of a numerical aggregate consisting of two or three, indefinitely, used in predicating the same thing, or both or all the numbers of the pair, aggregate or series mentioned or taken into account, considered individually, or one by one, often followed by 'one' with or before a noun (as, it is our duty to assist *each* other, "wandering each his several way" Milton.)

A GIFT TO "EACH" of two or more persons, or to each of their "respective heirs," create a tenancy in common (*Gordon* v *Atkinson*, 1847, 1 De G & Sm 478, 63 E R 1156, 75 R R 171, *see also* Ex parte Tanner, 1855, 24 L J Ch 657, Jarman, Wills 5th ed, p 1152).

Eadem causa diversis rationibus coram judicibus ecclesiast ics et secularibus ventilatur A maxim meaning 'The same cause is argued upon different principles before ecclesiastical and secular judges' (*Broom Leg Max.*)

Ear-mark

Eadem mens proesumitur regis quae est juris, et quae esse debet, praesertim in dubiis A maxim meaning 'The mind of the Sovereign is presumed to be coincident with that of the law, and with that which it ought to be especially in ambiguous matters' (*Broom*)

Ea est accipienda interpretatio, quae vitio caret A maxim meaning 'That interpretation is to be received which is free from fault'

Ea quae commendandi causa in venditionibus dicuntur si palam appereant venditorem non obligant A maxim meaning 'These things which are said for the sake of commendation in sales, if they are plainly apparent, do not bind the seller'

Ea quae in curia nostra rite acta sunt debitae executioni demandari debent A maxim meaning 'Those things which are properly transacted in our court ought to be committed to a due execution.'

Ea quae raro accidunt, non temere in agendis negotiis computantur A maxim meaning 'Those things which seldom happen are not rashly to be taken into account in transacting business'

Ealderman (*same as Alderman*) Among the Saxons was as much as Earl with the Danes (Camb. Brit 107) Falderman or aldermen, are those that were associated to the mayor or chief officer in the council of a city or borough town (*Tomlin's Law Dic*)

Earl This it is said was a great title among the Saxons, and is the most ancient of the English peerage, there being no title of honour used by our present Nobility that was likewise in use by the Saxons, except this of Earl, which was usually applied to the First in the Royal Line Whencesoever it is derived the title Earl was given to those who were associates to the King in his council and martial actions. (*Tomlin's Law Dic*)

Earldom The seigniory, jurisdiction or dignity of an earl

Early Pertaining to the first part or period of some division of time, or of some course in time, in advance of the usual or appointed time (early crops, early fruits, early spring)

The word "*early*" means at or near the beginning of a period It implies that there is not merely a time which is late but also an intermediate time which is neither early nor late Therefore in a contract to deliver rice in "*early January*" the words mean the first third of the month of January, and the 13th of January is not "early January" (4 Bur L T 16=9 I C 460)

EARLY, SOON Early is essentially relative, and implies some ordinary or fixed point of time, in advance of which something else takes place, as "to rise early," "an early spring" Soon indicates always a short interval posterior to any given moment or the present moment, as "soon after sunrise," (*Smith Syn Dis*)

Ear mark A mark put upon a thing to distinguish it from another A mark of identity or ownership (Murray's Dictionary) Money is said "to have no earmark" This maxim means no more than that if it be paid for value to one who receives it honestly and without notice that it is not the payer's money,

Earn

the payee cannot be compelled to refund the amount, although the payor had, in fact, no right to the money

Earn. To again, obtain, or acquire as the reward of labor, or performance of some service, or as a just return or recompense by service, labour or exertion, to merit or deserve by labour

Earnest A part payment of the purchase price of goods A coin or some other thing of value given by a buyer to signify the conclusion of a bargain between him and the seller The buyer loses the earnest if he fails to perform his part of the contract Also means a fixed determination, a pledge or payment given as an assurance of earnest or serious purpose to fulfil a promise or discharge an engagement

Earnest, Pledge In the proper sense, the *earnest* is given as a token of our being in earnest in the promise we have made, the *pledge* dignifies a security by which we are engaged to indemnify for a loss The *earnest* has regard to the confidence inspired, the *pledge* has regard to the bond or tie produced when a *contract* is only verbally formed, it is usual to give earnest, whenever money is advanced, it is common to give a *pledge* (*Crabb*)

A pledge is some kind of security actually given for the future An earnest often involves no more security than that of a high probability If I say, "I pledge my word that it shall be so," I leave, as it were, a deposit in honour that I will do what I say If I say, "His early school successes were an earnest of his brilliant career in after life," I mean no more than that they raised expectations which were afterwards fulfilled (*Smith Syn Dis*)

Earnest money Money paid as earnest to bind a bargain or ratify a sale being done by way of earnest (*Tomlin's Law Dic*)

Earnings That which is earned, reward, that which is gained or merited by labour, the reward for personal services, whether in money or other goods the price of services performed, gains derived from service or labour without the aid of capital Sometimes the term means more than the wages of labor [See also *Abram Coal Co.* v *Southern*, (1903) App Cas 306]

EARNINGS DISTINGUISHED FROM WAGES "Wages" is often applied to earnings for personal service, as contradistinguished from the income arising from a business involving other elements of gain than the mere personal services of those conducting it, and it implies a sum due for personal services and will not include, to any substantial extent, recompense for materials furnished The term "earnings" includes not only wages but also compensation for materials furnished and expenditure made in connection with the labor, or services rendered

Earth The habitation of man "As the heavens are the habitation of Almighty God, so the Earth hath He appointed as the suburb of heaven to be the habitation of man, Psal. exv. 16" (*Co Litt* 4a), the globe which we inhabit, the planet on which man dwells.

"EARTH" AND "THE EARTH," [*See* 14 M L J 155=25 M. 531 (F.B).]

Eastern Bengal

"**Easement**" defined also, used in combination with other words (as) Apparent easement, Continuous easement, Discontinuous easement, Non-apparent easement).

EASEMENT A service or convenience which one neighbour hath of another, by grant or prescription, without profit, as, a way through his land, a sink, or such like (*Tomlin's Law Dic*) "Easement," is a privilege that one neighbour hath of another, by written, grant, or prescription, without profit" (*Termes de la Ley, cited by Bayley, J., Hewlins* v. *Shippam*, 5 B & C 229, 230) An easement (*as defined in the Indian Easements Act*) is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own (Act V of 1882, S 4).

"EASEMENT" (*as defined in the Limitation Act*), includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another Act IX of 1908, S 2 (5)

An easement, under the extensive meaning given to the word by the Limitation Act, embraces what in English Law is called a *profit a prendre*, *i e*, a right to enjoy a profit out of the land (meaning also land covered by water) of another, so as to include a right of fishery [5 C 945=6 C L R 269, *see also* 23 Cal 503 (P C)]

"**Easements annexed thereto**" [I L R (1937) Nag 204=171 I C 496=A I R 1937 Nag 179=38 M 141==24 M L J 552=13 M L T 313=1913 M W N 317=19 I C 80]

"**Easement impliedly released**" defined. Act 5, 1882, S 38, Expl 1

"**Easement of necessity**" defined. Act 5, 1882, S 13 *See also* 3 Bom L R 601.

It is a question of fact from the circumstances of each case as to whether an easement of a claim is an easement of necessity or not There can be an easement of necessity to take water from other's land (103 I C 862=A I R 1927 Mad 963)

"**Easing oneself**". Expression "easing oneself" used in sanitary rules and regulations, whether includes making water (51 C L J 342=A I R 1930 Cal. 444)

East In describing courses the words 'north" "south" "east" and "west" mean true courses, and refer to the true meridian unless otherwise declared The point in the heavens where the sun rises at the equinox Also used to denote the eastern parts of the earth (as) Persia, India, China "The gorgeous *east*, with richest land, pours on her Kings, barbaric pearl and gold". (*Milton*)

East by North, East by South, expressions used to denote courses or directions between due east and north or south respectively

Easter term (*In England*) begins on the 15th of April and ends on the 8th of May

"**Eastern Bengal**" defined. E. B & A. Act 1, 1909, S. 5 (20)

Eastern Bengal and Assam.

"**Eastern Bengal and Assam**" defined E B. A Act I of 1909, S 5 (21)

"**Eastern Bengal and Assam Act**" defined. E B. & A. Act I of 1909, S 5 (22) Act 10, 1897, S. 3 (16-*a*.)

East-India Company A corporation, or "United Company of Merchants, of England Trading to the East Indies," which name is given to them in Stat 6 Ann c 17 13, More explicitly, according to their charter, and the adjustment of their rights, trading "into, and from, the East Indies, in the countries and parts of Asia and Africa, and in, to and from, the islands, ports, havens, cities, creeks, towns, and places of Asia, Africa, and America, or any of them, beyond the Cape of Good Hope, to the Straights of Magellan, where any trade or traffic of merchandise is or may be used or had, and to and from every of them" (St 9 & 10 Will 3 C 44, S 61) (*Tomlin's Law Dic*)

"**East India stock**" defined 36 V c 17, S 2

"**East Indies**" In the English Post Office (Offences) Act, 1837, IV c 36, "'East Indies' means every port and place within the territorial acquisitions now vested in the East India Company in trust for Her Majesty, and every other port or place within the limits of the Charter of the said Company (China excepted), and shall also include the Cape of Good Hope" (S 47)

"**Easy terms**". A representation that money will be lent on 'Easy terms" which in fact is lent on hard terms, throws on the lender the burden of showing that, before making the loan, he had removed from the borrower's mind the impression created by the representation and had clearly explained to him the terms on which the loan would be made (*Moorhouse* v *Wolfe*, 46 L T 374) In *Helsham* v *Barnett*, (21 W R 309), Malins, V C, said, "Easy terms" with reference to the rate of interest on loans "meant not more than 10 per cent"

Eating-House A public place where food is sold to casual guests to be eaten upon the premises, and may include an oyster-stall

DISTINGUISHED FROM INN "A mere eating house for meals cannot be considered an inn, nor can the liabilities attaching to innkeepers be extended to the proprietors of such establishments They are wanting in some of the requisites necessary to constitute them inns, as no lodging places are provided for travellers" (*Carpenter* v *Taylor*, 1 *Hilt* (N Y) 193, 195)

Eaves The possession of a *pankh* or eaves for the discharge of water overhanging another's land is an easement and not an occupation of his property [37 Bom. 491=15 Bom L.R 551=20 I.C 246 *also* 38 Bom. 1.]

Eaves-Dropper "'Eaves-droppers," are such as stand under walls or windows by night or by day, to hear news and to carry them to others to make strife and debate amongst their neighbours" (*Termes de la Ley*), one who watches for an opportunity to hear the private conversation of others Persons that listen under the eves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales (4 Comm 169, *Tomlin's Law Dic*)

Ecclesiastical

Ebb The reflux of the tide, the return of tide water toward the sea

Ebb tide. The reflux of tide-water, the retiring tide

Ebriety. Intoxication by spirituous liquors, in ebriety, drunkenness The state and condition which inevitably follows from taking into the body, by swallowing, or drinking, excessive quantities of intoxicating liquors

Eccentricity A marked peculiarity in a person's mental condition, whimsical nature, oddity

Ecchymosis Extravasation of blood, as in the cases of bruising blows, the "black eye" is the most conspicuous kind of ecchymosis.

Ecclesia (*Lat*) A church, a parsonage

Ecclesia ecclesiae decimas solvere non debet. A maxim meaning 'A church ought not to pay tithes to a church'

Ecclesiae magis favendum est quam parsonae A maxim meaning 'The church is to be more favoured than the person'

Ecclesia est infra aetatem et in custodia domini regis qui tenetur jura et haereditates ejusdem manu tenere et defendere A maxim meaning 'The church is under age, in the custody of the king, who is bound to uphold and defend its rights and inheritances'

Ecclesia fungitur vice minoris, meliorem conditionem suam facere potest deteriorem nequaquam A maxim meaning 'The church enjoys the privilege of a minor, it can make its own condition better, but not worse'

Ecclesia non moritur, the church does not die

Ecclesia semper in regis tutela A maxim meaning 'The church is always under protection of the King'

Ecclesiastic A person in holy orders, a clergyman a priest

ECCLESIASTIC, DIVINE, THEOLOGIAN An *Ecclesiastic* derives his title from the office which he bears in the ecclesiastic or church, a *divine* and *theologian* from his pursuit after, or engagement in, divine or theological matters An *ecclesiastic* is connected with an episcopacy a *divine* or *theologian* is unconnected with any form of church government An *ecclesiastic* need not in his own person perform any office, although he fills a station, a *divine* not only fills a station, but actually performs the office of teaching, a *theologian* neither fills any particular station, nor discharges any specific duty, but merely follows the pursuit of studying theology

Ecclesiastical Denotes something belonging to, or set apart for the church; as distinguished from civil or secular, with regard to the world. (*Tomlin's Law Dic*)

The bishop is in the nature of an ecclesiastical sheriff-North, C J., *Walwyn* v. *Awberry* (1678), 1 Mod 260

"This venerable body of men (the clergy) being separate and set apart from the rest of the people, in order to attend the more closely to the service of Almighty God, had formerly much greater

privileges, which were abridged at the time of the Reformation on account of the ill-use which had been made of them" (*Sir Wm Blackstone* (1765), *Com* Vol 1 p 343

Ecclesiastical Censure The Ecclesiastical Censures are of two classes —1 To which both Clergy and Laity are subject, *i e*, Admonition or Monition, Penance, Excommunication 2 To which only the Clergy are subject, *i e*, Suspension from office, Sequestration, Deprivation, Degradation (*Phil Ecc Law*, Part 4, Ch 12, *Stroude*)

Ecclesiastical Charity, in the Local Government Act, (1894) (56 & 57 Vict c 73), unless the context otherwise requires, includes a charity the endowment whereof is held for some one or more of the following purposes —(*a*) For any spiritual purpose which is a legal purpose, or (*b*) For the benefit of any spiritual person or ecclesiastical officer as such, or (*c*) For use of a building as a church, chapel, mission-room or Sunday-school, or otherwise, by any particular Church or denomination, or (*d*) For the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein, or (*e*) Otherwise for the benefit of any particular Church or denomination, or of any members thereof as such, *i.e*, to the exclusion of non-members, whether the benefit is religious or temporal. *Re Perry Almshouses*, (1899) 1 Ch 21, 30 (C A) This definition does not purport to be complete (*loc. cit* p 29, Lindley, M R), and does not exclude eleemosynary charities (*loc cit* 36, Chitty L.J)

Ecclesiastical Commissioners —The Ecclesiastical Commissioners for England [and Wales] for the time being Int Act, 1889, C 63, S 12 (15).

Ecclesiastical Corporations Are where the members that compose it are spiritual persons They were erected formerly for the furtherance of religion, and perpetuating the rights of the church) (*Tomlin's Law Dic*,) An ecclesiastical corporation is a corporation of which both the members are spiritual persons and the objects are of a spiritual kind They are also, like civil corporations, divided into corporations sole and corporations aggregate (*See* Pollock and Maitland, History of English Law, Bracton, Coke, Institutes, Watson, Clergyman's Law, Grant on Corporations, Encyclopedia of the Laws of England)

Ecclesiastical Law The law administered in the ecclesiastical courts The main sources of the existing Ecclesiastical Law of England are as follows — 1 The Common Law 2 The Canon Law, so far as it is not opposed to the common or statute law, or to the royal prerogative 3 The Statute Law (which includes the Book of Common Prayer). It may be pointed out that the common law includes not only the common law of the realm in secular matters (jus commune lacium), but also the common law of the Church (jus commune ecclesiasticum), in other words, the unwritten part of the ecclesiastical law. *See* (*Per* Whitlock, J., in *Evers* v *Owne* (3 Car 1), Godolphin, Rep Johnson, English Canons, Gibson, Codex, Oxford ed, 1761, Watson, Clergyman's Law, Burn Eccl Law, 9th ed. (by Phillimore), Rogers Eccl Law, Stephens, Laws Relating to the Clergy, Cripps, Church Law, 6th ed,

1886, Phillimore, Eccl Law, 2nd ed 1896, Maitland, Roman Canon Law in the Church of England)

Ecclesiastical Persons Churchmen, persons whose functions consist in performing the service, and keeping up the discipline of the church (*Tomlin's Law Dic.*)

ECCLESIASTICAL PURPOSE, in 19 & 20 Vict c 104 (Lord Blandford's Act), S 14, includes "burial of the dead" *Hughes* v *Lloyd* (1888), 23 Q B D 157 So that when a parish is divided under that Act for ecclesiastical purposes, parishioners in the old undivided parish cease to have any right of interment in the old parish churchyard unless they are resident within the ecclesiastical district within which it lies It also includes publishing banns and solemnising marriages *Fuller* v *Alford* (1883), 10 Q B D 418 Spiritual purposes is distinct See 6 & 7 Vict c 37, Ss 9 and 15

Economy. The management of domestic affairs, especially as they concern income and expenditure (*as domestic economy*), the internal pecuniary management of any undertaking business, corporation and the like (as Political economy), proper management of the state finances (*State economy*)

ECONOMY, FRUGALITY, PARSIMONY *Economy* avoids waste and extravagance and applies money to the best advantage, *frugality* cuts off all indulgences and proceeds on a system of rigid saving, *parsimony* is frugality carried to the extreme *Economy* is a virtue and *parsimony* a vice, *Frugality* may lean to the one or the other according to the motive from which it springs (*Webster*)

ECONOMICAL, SAVING, FRUGAL, THRIFTY, PARSIMONIOUS, SPARING, PENURIOUS *Frugal* conveys the idea of not using or spending superfluously, and when used of matters of consumption points to a simplicity of manners

Thrifty connects the ideas of frugality and industry, or such careful expenditure as comes of a knowledge of the value of money, and results in the competent possession of it

Parsimony is exercised in small matters, and is the retrenchments of trivial expense. It is minute and rigorous

As *economy* gains by judicious spending, *parsimony* gains by scrupulous spending, and *sparing* by not spending, or not till a cheap opportunity has been found *Economy* suits large fortunes, *parsimony* small fortunes, *sparing* uncertain fortunes

The *penurious* is one who suffers want in the extremity of his sparing (*Smith. Syn Dis*)

Eczema Heat eruption, occurring in small confluent vesicles

Edam. (*Mal*) The house of a member of the Palgha Royal family (*Sund Iyer Malabar Law*) The distinctive name of a house or palace occupied by a member of the family of the Palghat Rajah It is also sometimes used to denote the house of a Naduvali of consequence in Palghat taluk (*Moore's Mal Law*)

Edanotti. (*Mal.*) Security where title alone is pledged (*Sund. Iyer's Mal Law.*)

Edaru-chitu (*Karn*) A document given by the purchaser of land engaging to give it back to the

Edge.

seller on repayment of the purchase-money within a definite term

Edge The border or part adjacent to a line of division the part nearest some limit An invariable test whether two papers formed parts of one document is to see whether the separated edges of the two parts fit in with each other

Edge-railway. A Railway having the rails set on edge

Edict, (*Edictum*) An ordinance or command, a statute, Law (*Tomlin's Law Dic*) as, the edicts of the Roman Emperors

Edicta magistratum constitutio principles A maxim meaning 'The ordinance of the Magistracy is the construction of the Emperor'

Edition As applied to a publication, the total number of copies issued or published at once, a republication, sometimes with a revision and correction any publication of a book previously published In a contract between an author and publisher, an "Edition" consists of so many copies as are issued to the public at a time, and where the work is stereotyped, every fresh issue is a new Edition (*Reade* v *Bentley*, 27 L J Ch 254) In this case Wood, V C, defined editions as "the putting forth of a work before the public at successive periods, and whether this is done by moveable type or by stereotype it does not seem to me to make any substantial difference" "The edition," he went on to say, "might be of one, two, three, or any number of thousands of copies, and if a person chose to print twenty thousand and put forth to the public a limited number at a time, each 'issue' of the copies would be, "an edition in every sense of the word"

Edition De Luxe As applied to a publication, an elaborate and costly edition, often limited, a sumptuous edition, as regards paper, illustrations binding, etc a general expression, meaning simply an elegant edition of some kind

Editor A person who edits,—especially a person who prepares, superintends, revises or corrects a book magazine or newspaper for publication The editor of a newspaper is the man to whom the proprietor has entrusted the responsibility of deciding what words shall be published in its columns If he allows anything libellous to appear, he is liable, and so is the proprietor, for the proprietor is deemed to have given his printers general orders to print whatever the editor sends to the press, though he never saw it, and even though he has expressly forbidden his editor to publish anything libellous or on the verge of being libellous

Education is the bringing up, the process of developing and training the powers and capabilities of human beings In its broadest sense the word comprehends not merely the instruction received at school, or college but the whole course of training moral, intellectual and physical, is not limited to the ordinary instruction of the child in the pursuits of literature It also comprehends a proper attention to the moral and religious sentiments of the child And it is sometimes used as synonymous with 'learning'

"EDUCATION" in general means training up the young in general learning and does not extend to teaching for a business or profession, as Civil Engineering (*See* Re Institution of Civil Engineering 19 Q B D 610, 3 Times Rep 729)

EDUCATION, INSTRUCTION, BREEDING, TRAINING. *Instruction* and *education* are as parts to the whole *Instruction* is mental, *education* is moral as well as mental

Education is more applicable to the younger portion of life, when the mind and the moral nature are unstocked and undeveloped, while *instruction* may be given or received on specific points or departments of knowledge at all periods *Instruction* makes men wiser, *education* ought to make them wiser and better, and *Breeding* will make them more polished and agreeable

Training makes men perfect by instruction, exercise and discipline (*Smith Syn Dis.*)

BUILDING USED FOR THE "EDUCATION OF THE POOR," will not include a building where pauper children are clothed, maintained, and doctored, as well as instructed (*Hadfield* v *Liverpool*, 80 L T. 566)

Education Department See Int. Act, 1889 (c. 63), S 12 (6)

DEPARTMENT, SCOTCH, in all Acts means "the Lords of the Committee for the time being of the Privy Council appointed for Education in Scotland." [Int. Act, 1889 (C 63), S 12 (7)]

Educational Endowment In "the English Endowed Schools Acts, 1869 to 1889" "Educational Endowment,' is defined to mean an Endowment, or any part of an Endowment, which or the income whereof has been made applicable, or is applied, for the purposes of Education at School (of boys and girls, or either of them), or of Exhibitions tenable at a school or an University or elsewhere

Edurnudi Counterpart of a lease (Kan), also Tamil) (*Sund Iyer's Mal Law*)

Edurnudi Krayachit Sale deed with a counter agreement, may be a sale or mortgage (Kan) (*Sund Iyer's Mal Law*)

Efface To remove any written or printed thing, to make erasures (as) to efface certain operative portion of a will

EFFACE, OBLITERATE, EXPUNGE, ERASE, CANCEL. Memoirs and impressions are *effaced*, traces, vestiges *obliterated*, offences and injuries are *expunged*, gratitude, good and kindly thoughts, are *erased*, obligations, necessity favours debts are *cancelled* (*Smith Syn Dis*)

Effect (*Noun*) A result which follows a given act, consequence, event and sometimes used as synonymous with weight (as) Effect of evidence The "Effect" of a cause, is anything which would not have happened but for that cause, and it is none the less an Effect of such a cause, because it has been developed or accelerated by something supervening

EFFECT (*Verb*) To produce, to bring to pass, to cause to be "wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence" (Penal Code, S 36)

TO EFFECT, PRODUCE, PERFORM To *produce* signifies to bring something forth or into existence, to *perform* to do something to the end, to *effect* is to

Effective.

produce an effect by performing To *effect* is said of that which emanates from the mind of the agent himself, to *perform*, of that which is marked out by rule, or prescribed by another We *effect* a purpose, we *perform* a part or a duty We *produce* a result

Effective Productive of certain results, efficient efficacious, operative (as) "whoever is an *effective* cause of doing his neighbour wrong is a criminal" (*Bishop Taylor*)

EFFECTIVE, EFFICIENT, EFFECTUAL, EFFICACIOUS *Effective* and *efficient* are used only in regard to physical objects an army or a revenue is effective that can be employed to effect any object a cause is *efficient* that is adequate to produce an effect *Effectual* and *efficacious* are said of operations and intellectual objects an end or result is *effectual*, the means are efficacious a remedy or cure is *effectual*, a medicine is *efficacious* that effects a cure An *efficacious* remedy is had recourse to, and proves *effective* if it does decided good, *effectual* if it does all the good desired (*Smith Syn Dis*)

EFFECTIVE (*In commerce*) Specie or coin as distinguished from paper money—a term used in many parts of Europe Thus a draft is "directed to be paid in *effective*, to guard against depreciated paper currency" (*Simmonds*)

Effectual cancellation The question whether the cancellation of a stamp on an instrument amounts to effectual cancellation as required by S 12, Stamp Act, depends on the particular circumstances of each case The true test to be applied is, if, the stamp became detached from the document to which it had been affixed and came to the possession of an ordinary normal person, whether he could conscientiously use that stamp again (A I R 1937 Rang 413)

"Effects" defined, 57-8 V c 60, S 742

EFFECTS Property, or worldly substance As thus used, it denotes property in a more extensive sense than goods 'The use of this word in a testamentary disposition will comprise the entire Personal Estate of the testator, unless restrained by the context within narrower limits" (Jarm 751) *"Effects"* may also include Realty if aided by a context, *e g*, (possibly) if the operative word be "Devise" (*Phillips* v *Beal*, 25 Bea 25)

A bequest of "HOUSEHOLD FURNITURE AND EFFECTS" does not pass jewellery (*Northey* v *Parton*, 60 L T 30)

"EFFECTS AND THINGS," in Partnership Articles, would be equivalent to "Assets", and would include goodwill (*Rolt* v *Bulmer*, W N (78) 119)

EFFECTS OF A DECEASED PERSON (in the Succession Certificate Act, S. 4) Succession by survivorship to an ancestral impartible estate of which certain debts form a part is not a person claiming to be entitled to such debts as the effects of a deceased person (*Ghur Prasad* v *Dhori Rai*, 7 Ind Cas. p 806, 807)

Efficient Causing effects, producing results, actively operative A stipulation in a Charter-party that the ship shall be "Efficient" may easily have, at varying times, varying applications, but generally means "that the ship shall be efficient to do what she is required to do when she is called upon to do it"

Ejaman

[per *Halsbury C*, *Hogarth* v. *Miller*, 1891, A C. 48) "The *efficient* cause is the working cause" (*Wilson*)

Efficient cause. The working cause or the cause which produces the effects or results

Efficiently With effect, effectively "What can be required of Ry, Companies TO WORK A LINE 'EFFICIENTLY' must vary according to their respective powers, and a mode of working which would be sufficient in one case would not be so in another" (*East London Ry*, v *L B & S Ry*, Stroude, p 605)

Efficient Machinery Machinery which is capable of producing the effect intended to be secured by the use of it for the purpose for which it was made

Effigy A figure or epresentation of a person If made with intent to make the subject an object of ridicule, it is a libel

Effluvia injurious to health, in 38 & 39 Vict. c 55, S 114 include an effluvium which causes sick persons to become worse, although not injurious to persons in sound health *Malton Urban Sanitary Authority* v *Malton Manure Co* (1879), 4 Ex D 302

Efflux Running of time, expiration by lapse of time

Efflux of time When this phrase is used in leases, conveyances, and other like deeds, it indicates the expiration of an agreed term of years etc specified in the deed or writing

Effort An exertion of strength or power, whether physical or mental, strenuous endeavour, laborious attempt, struggle directed to the accomplishment of an object, an effort to excel

E G Abbreviation for *"Exempli Gratia"* "For the sake of an example"

Egopithu (*Tam*) Means harmoniously, (20 M L J 99=5 Ind Cas 880)

Ei incumbit probatio qui dicit non qui negat, cum per rerum naturam factum negantis probatio nulla sit A maxim meaning 'The proof lies upon him who affirms, not upon him who denies since by the nature of things he who denies a fact cannot produce any proof'

Eimak (*Pashto*) A sect or section of a tribe, the name is applied especially to some nomadic or semi nomadic tribes to the west of the Hazras

Ei nihil turpe cui nihil satis A maxim meaning 'To whom nothing is sufficient, to him nothing is base.'

Either One or the other of two, taken indifferently as the case requires, being both of two or each of two taken together, but viewed separately, one of two the one and the other, one or another of any number, one or other of two or more of special things (*Ame Cyc*) "Originally", 'Either' had much of the meaning of 'Both' For some centuries, however, its normal meaning has been 'one or other', which is its *prima facie* meaning at the preseut time (per *Rigby, L J Re Pickworth*, 68 L.J. Ch 328)

Ejaman Master (Canarese term for the head of an Aliya Santanam family) Equivalent to Karnavan in Malabar. (*Moore's Mal Law*, *Sund. Iyer's*

Ejarah.

Malabar Law.) Where the *de jure Ejman* of an Aliasantana family abandons his position as such, the junior members can assume management [63 I C 365 (M)]

Ejarah (*H*) A farm of land, or rather of its revenue (*Fifth report*)

Ejarahdar. The holder of a farm of land, or rather of its revenue (*Fifth report*)

Eject, to send away, to thrust out As applied to a person to compel him against his desire to leave a place

Ejected The word "ejected" in S 94 of the Central Provinces Tenancy Act implies some degree of force or violence, and is not applicable to a case in which possession was admittedly taken with the consent of the opposite party, though that consent is said to have been obtained by fraud, and the transaction to be, therefore, voidable The word "ejected" is derived from the Latin "ejectus," which means 'Thrown out", and the verb 'to eject' is defined in the Student's English Dictionary as meaning 'to throw out, to cast forth, to thrust out, to discharge, to dismiss from an office, to turn out, to dispossess of land or estate, to drive away, to expel' In the Encyclopaedia of the Laws of England, the word 'ejectment' is not explained, but one is referred to the head 'recovery of land' and one finds under that head the term treated as the equivalent of recovery of land by legal process from a holder unwilling to give it up, whilst in Wharton's Law Lexicon ejectment is defined as 'the mixed action at common-law to recover the possession of land, and damages and costs for the wrongful withholding of the land', and in Stroud's Judicial Dictionary 'ejectment' is said to generally mean an action for the recovery of land Nowhere have I been able to find the word eject or its derivatives used in a sense that would cover a voluntary surrender" [*Ganpat* v *Trimbak*, 3 Ind Cas 51 (52)=5 N L R 97 (per *Skinner A J C*)]

Ejection A turning out of possession, *see* 3 Bl Com 199 (*Eviction*)

"**Ejectment**" defined, Mad Act 1,1900, S 3 (2)

EJECTMENT, (suit) is defined to be an action to recover immediate possession of real property, an action to try the right of possession to the land in controversy, a possessory action *'Ejectment'* is designed to protect and enforce the right of possession derived from ownership or title' *Dyer* v *Reitz*, 14 Mo App 45, 46 "Ejectment", generally means, an Action for the Recovery of Land *See* 3 I C 51=5 N L R 97 "An ejectment is an ingenious fiction, for the trial of titles to the possession of land" *Lord Mansfield, Fairclaim, &c* v *Sham-title*, (1761), 3 Burr Part IV, p 1294

Ejectum Things cast up by the sea, wreckage, (see *Jetsam*)

Ejm or azm or izm. Meaning of 63 Cal 415

Ejusdem Generis "of the same kind or species" A well known maxim of construction The phrase "*ejusdem generis*' means "of the same kind" and is more restricted than the word 'analogous' 5 Rang 675=107 I.C. 161=A.I R 1928 Rang 31. For an application of the rule in the construction of Statutes [*See* (1882) A.W N 102, A.I R 1928 Rang 31, 10 Bom L R 1019, 107 I C 161]

Eldest

"By the application of the maxim ejusdem generis, which is only an illustration or specific application of the broader maxim *noscuntur a socis*, general and specific words which are capable of an analogous, meaning being, associated together, take color from each other, so that the general words are restricted to a sense, analogous, to the less general" (*Murch* v *Russell*, 12 L R A 125, 107 I C 161=A I R. 1928 R 31)

The doctrine of *ejusdem generis* applies where there is specific mention of a distinct category followed by general words in mercantile documents (2 Rang 272=3 Bur L J 265=82 I C 702=A I R 1924 Rang 348)

Ejusdem negotii, of the same transaction

Ejus est interpretari cujus est condere A maxim meaning, "It belongs to him to interpret (or explain) who enacts, the right of interpreting belongs to him who enacts"

Ejus est non ville qui potest velle A maxim meaning, "He may consent tacitly who may consent expressly"

Ejus est periculem cujus est dominium aut commodum A maxim meaning, "He who has the dominion or advantage has the risk"

Ejus nulla culpa est cui parere necesse sit A maxim meaning "He is not guilty of fault who necessarily, obeys, that is, no one incurs fault or blame through, the performance of an act which he is under the necessity of performing"

Ekabogam *Ekabogam* is the possession of tenure of village land by one family without any co-sharer The appellation is continued in some instances where other parties have been admitted to hold portions under the original tenure as long as that remains unaltered 45 Mad 565=49 I A 237=43 M L J 536 (P C), *see also* 1 L W 41 The word 'ekabhogam' according to the glossary in the North Arcot District Manual of 1895, means the possession or tenure of all the lands of a village by a single individual or family without any co-sharer (60 M L J 137)

'Ekabogam miras' (1 L W 41=23 I C 113)

Ekabhogam Mirasidar (1 L W 41)

Ekkaru (*Mal*) Agricultural implements, apparatus for ploughing.

Ekjaddi. (23 A 32=1900 A W.N. 188.)

Elayad (*Mal*) An inferior class of Brahmins who officiate as priests for Sudras (*Sivn Iyer's Mal Law, Moore's Mal Law*)

Elchi (*Persian*). An envoy, an ambassador

Elderly Somewhat old, bordering on old age (as, elderly people)

ELDERLY, AGED, OLD These three words rise by gradation in their sense, *aged* denotes a greater degree of age than *elderly* and *old* still more than either The *elderly* man has passed the meridian of life, the *aged* man is fast approaching the term of our existence, the *old* man has already reached this term, or has exceeded it

Eldest The *prima facie* meaning of "Eldest" is "Eldest, or first born" (2 *Jarm.* 213) as, the eldest

Eldest.

son or daughter In its primary legal meaning, oldest that has the right of primogeniture, oldest, most old, most aged, surpassing in years *Eldest* is an adjective, it describes the quality, it must belong to some substantive (*Thellusson* v *Rendlesham*, 7 *H L Cas* 429) The word *eldest* is, however, capable of more meanings than one as the term elder is In Dr Johnson's Dictionary this word is said to be the comparative of old, changed to eld (*Thellusson* v *Rendlesham*, 7 *H L Cas* 429, 520, per *Lord Wensleydale*)

ELDEST, OLDEST In the strict propriety of the English language the word *eldest* thought its etymology be the same) is not synonymous with the word oldest, for the word oldest does not necessarily or even primarily import eldest in personal age' Lord Wensleydale said "When the word elder or eldest is used alone, or with reference simply to an individual person, the eldest man, for instance, it means eldest in years"

Eldest male line The male line which has existed the greatest number of years

Eldest male lineal descendant First male lineal descendant

Eldest man The one who has existed for the greatest number of years

Eldest parent Eldest in age, or eldest *qua* parent

Eldest son First born son (15 *Ame Cyc* 247-249)

Elect To choose, to pick out, to select from a number or to make a choice of And the term is also used as meaning to prefer, to take by preference, etc Sometimes the word is used in the sense of 'appoint'

Electa una via non datur recursus adalteram A maxim meaning "He who has chosen one way cannot have recourse to another"

Elected Chosen by a popular vote, the condition of having been chosen or selected, (as *Elected* member of legislative assembly as opposed to a *nominated* member)

Elected domicile A domicile fixed by election of the parties

Electio est interna libera et spontanea separatio unius rei ab alia sine compulsione consistens in animo et voluntate A maxim meaning "Election is an internal, free and spontaneous separation of one thing from another, without compulsion, consisting in intention and will"

Election "Election, in law is when a man is left to his own free will to take or do one thing or another which he pleaseth" (*Termes de la Ley, Jacob Law Dict*) The act of choosing, the act of electing power of choosing, a free choice between different things, preference, selection, a deliberate act of choice, the selection of one man amongst more, to discharge the duties in a state, corporation or society, the act of choosing a person to fill an office or employment by any manifestation of preference as by ballot, uplifted hands or *viva voce*, a public vote upon a proposition submitted, a poll for the decision by vote of any public matter or question.

Election of remedies

"ELECTION is the choosing between two rights by a person who derives one of them under an instrument in which a clear intention appears that he should not enjoy both"

"The right of selecting one of several forms of action for the redress of injury or enforcement of a right" (*English L Dict*, *Bouvier L Dict*, *Rapalje and L L Dict*)

ELECTION (OF MEMBERS TO REPRESENT PEOPLE IN ASSEMBLIES, AND LOCAL BODIES) An *election* is the embodiment of the popular will, the expression of the sovereign power of the people In common parlance an election is the act of casting and receiving the ballots, counting them, and making the return

ELECTION (TO THE LEGISLATIVE COUNCIL *"election"* means an election to either Chamber of the Indian legislature or to a Legislative Council constituted under the Government of India Act (Election Offences and Enquiries Act, S 4)

DISTINGUISHED FROM APPOINTMENT The term "election" carries with it the idea of a choice in which all who are to be affected with the choice participate, whereas from the word "appointment", we understand that the duties of the appointee are for others than those by whom he is appointed As distinguished from an election an appointment is generally made by one person or by a limited number acting with delegated powers, while an election is the direct choice of all the members of the body from whom or by whom the choice should be made

ELECTION AND REFERENDUM Election must be distinguished from the determination of questions as to certain existing or proposed legislation by a reference to popular vote The technical term used frequently to designate this latter form of election is "referendum" The referendum is employed in determining questions covering wide ranges

The term "election" carries with it the idea of a choice in an appointment and is generally made by one person, or by a limited number, acting with delegated powers

GENERAL ELECTION A general election is an election held to select an officer after the expiration of the full term of the former officer.

PRIMARY ELECTION A primary election is purely a creation of political parties and associates as a means for selecting their candidates

SPECIAL ELECTION A special election is an election held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected or an election at which some question or proposition is submitted to the vote of the electors

"Election of remedies" is the right to choose, or the act of choosing between different actions or remedies, where plaintiff has suffered one species of wrong from the act complained of (*Anderson L Dict*) And broadly speaking, an election of remedies is the choice by a party to an action of one of two or more co-existing remedial rights, where several such rights arise out of the same facts, but the term has been generally limited to a choice by a party between inconsistent remedial rights (*Bouvier*) *Cyclop. L D*)

Election Equitable.

An election of remedies is defined as the choosing between two or more different and co-existing modes of procedure and relief allowed by law on the same state of facts On this question the language of the Scottish law is sometimes used, that a man shall not be allowed to approbate and reprobate

The basis for the application of the doctrine is in the proposition that where there is, by law or by contract, a choice between two remedies, which proceed upon opposite and irreconcilable claims of rights, the one taken must exclude and bar the prosecution of the other—the same principle being applicable also to a choice of defenses The doctrine of election of remedies is, therefore, generally regarded as being an application of the law of estoppel, upon the theory that a party cannot, in the assertion or prosecution of his rights, occupy inconsistent positions

Election, Equitable Doctrine of—"It is a principle conformable to good sense and natural justice that a man cannot, in the language of the law, approbate and reprobate—that he cannot accept a benefit under an instrument without adopting the whole of it conforming to all its provisions, and renouncing every right inconsistent with them His doing so is an implied condition of the benefit This principle or implied condition is the ground of the equitable doctrine of election (*Streatfield* v *Streatfield* V 735 Ca. t Talb. 176, 25 E R 724, *Noys* v *Mordan Mardaunt*, (1705) 2 Vern, 581, 23 E R 978, *Dillon* v *Parker*, (1818) 1 Swans 359, 381 n 391n, 36 E R 422, 18 R R 72, *Rogers* v *Jones*, (1876) 3 Ch D 688) It may be made clear by an oft noted illustration Suppose that a testator by his will gives Blackacre, which is not his property but *A's* property, to *B* and by the same will gives Whiteacre, which is the testator's own property, to *A* In such a case *A* cannot keep Blackacre and also claim Whiteacre That would be approbating and reprobating He must elect between two courses, to take under the will or against it If he elects to take under the will he must conform to it by conveying Blackacre, to *B*. If he elects to take against the will, he keeps Blackacre, but he can only get Whiteacre on the terms of making compensation to *B* for the loss of Blackacre This theory of compensation, which has been engrafted by the authorities on the original doctrine of election, rests like the doctrine itself on the implied intention of the donor *Rogers* v *Jones*, (1876,) 3 Ch D 689, *Re Booth*, *Booth* v *Robinson*, (1906) 2 Ch 321, *Gretton* v *Haward*, (1818) 1 Swans 443, 444, *Pickersgill* v *Rodger*, (1877) 5 Ch D 163, Ency of the Laws of England Vol V p 83, White and Tudor, Lea Cas 7th ed 416-445, Watson, Practical Compendium of Equity, 2nd ed 176 Seton, Judg 6th ed 1588-1594, Smith, Principles of Equity, 3rd ed 470 485, Snell, Principles of Equity, 14th ed. 199-212)

Election Agent "The term 'Election Agent" previously to the passing of the Corrupt and Illegal Practices Prevention Act, 1883, was used to denote the person intrusted with the conduct and management of the business of an election to legislative bodies. The office of Election Agent in its present sense, however was created by the Act of 1883, which requires the appointment of an Election Agent on whom specific and stringent duties and responsibilities are imposed with regard to the making of contracts involving, among others the payment and return of, election expenses.

Elective Franchise.

In creating the statutory office of Election Agent the purpose of the legislature was to secure the appointment of a person who should be effectively responsible for all the acts done in procuring the election, and more especially to provide an efficient means for the control and regulation of election expenses. The object of the Act, it has been said, was that the affair of the election should be carried on in the light of day, and that a respectable and responsible man, responsible to the candidate and to the public should be there to do all that was necessary" (per *Field, J Barrow-in-Furness*, 1886, 4 O. M & H. 83)

Election Commissioners Election Commissioners are persons appointed by the government for the purpose of making enquiry into the existence of corrupt practices at elections and to decide election disputes

Election Expenses The incurring of excessive expenses in connection with elections has always been deemed contrary to law, as violating the fundamental principle of the freedom of elections The reduction, regulation, and control of expenditure by candidates at elections has long engaged the attention of the legislature, and to this end various legislative efforts have been directed (*See* Corrupt and Illegal Practices Prevention Act, 1883 and similar enactments) Any expenses incurred "on account of or in respect of the conduct or management of an election" are election expenses *See* Bazalgette and Humphreys, Law Relating to Local and Municipal Government, 1888, Macmorran, Local Government Act, Bazalgette and Humphreys, Law Relating to County Councils, 3rd ed, 1889, Glen, Law Relating to County Government, 1890, Lushington, County Council and Municipal Elections Manual, 2nd ed, 1892, Ryde, Election Manual for Parish Councillors, Urban and Rural and Dill The Local Government Act, 1894, 3rd ed, 1896, Punt London Local Government, 1897, Macmorran, London Government Act, 1899, Hunt, London Government Act, 1899, Hunt, Metropolitan Borough Councils Elections, 1900, Rogers on Elections, vol III (Municipal and other Elections)

ELECTION AND RESULT OF ELECTION Meaning of, (45 L W 594—1937 M W N 197.)

Elective franchise on Electoral right The *elective franchise*, even in the most democratic countries is not a natural right, and is made to rest upon the authority of law which defines the qualifications of those citizens who may exercise it "The very term *elective franchise* excludes the idea of natural right, for a franchise is a privilege granted by the sovereign authority to an individual." (*Blair* v. *Ridgely*, 97, *Am Dec* 248) In *Kinneen* v *Wells*, (59 *Am Rep* 105), *Devens, J*, said "The qualifications of voters are fixed by state legislation. The requisitions as to ownership of property, citizenship, sex, and residence, in connection with the right of voting vary with the laws of the several states However unwise, unjust, or even tyrannical its regulations may be, or seem to be in this regard, the right of each state to define the qualifications of its voters is complete and perfect" In England the elective franchise is not regarded as a natural right, although it has been declared to be a vested right

"The right of suffrage is regarded with jealous solicitude by a free people, and should be viewed in

Elector

a liberal spirit by those intrusted with the mighty power of guarding and vindicating their sovereign right Such a construction of the law as would permit the disfranchisement, of large bodies of voters, because of an error of a single official, should never be adopted where the language in question is clearly susceptible of any other" (*Bowers v Smith*, 33 *Am St Rep* 491)

Elector One who elects, or one who has the right of choice Also one who exercises the right of election

"**Electoral right**" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election (*Election Offences and Enquiries Act*, S. 2)

Electio memel facta, et placitu testatum, non patitur regressum A maxim meaning "Election once made, and plea witnessed, suffers not a recall"

Electricity in physics is 'the name given to the cause of a series of phenomena exhibited by various substances, and also to the phenomena themselves" Its true nature is not understood Imperial Dict (quoted in *Spensley v Lancashire Ins Co*, 54 Wis 433, 442, 11 N W 894, where the court, quoting from the same authority, said, "We are totally ignorant of the nature of this cause whether it be a material agent or merely a property of matter But as some hypothesis is necessary for explaining the phenomena observed, it has been assumed to be a highly subtle, imponderable fluid, identical with lightning, which pervades the pores of all bodies, and is capable of motion from one body to another Electricity, when accumulated in large quantities, becomes an agent capable of producing the most sudden, violent and destructive effects, as in thunder storms and even in its quiescent it is extensively concerned in the operations of nature"

Notwithstanding the wonderful results accomplished by it as a means, but little is known of the nature of electricity. According to the definition of the earlier lexicographers, it is an "exceedingly subtle agency that pervades all space" And a consideration of the definition given it by the more recent lexicographers leaves the mind in the same nebulous conditions as to what it really is It is seen only through the results accomplished by it, and although it has come to fill one of the greatest needs in the economies of modern life, it remains as much a mystery as ever Its extensive and diverse use has demonstrated the fact that the electric force is the most powerful and dangerous agency of nature, and, even when restrained or controlled by the most perfect machinery and appliances, its high tension currents are extremely dangerous in many directions, and since the courts take judicial notice of the laws of nature, and of nature's powers and forces, they therefore take judicial notice of that which is known as electricity and of its properties, not, of course, of the various methods of generating and transmitting or using it, but of the thing itself, and of its nature" (*Rul case law*)

Electric Line Electric line includes a wire or wires, conductor, or other means used for the purpose of conveying, transmitting or distributing, electricity with any casing, coating, covering, tube pipe or insulator, enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus

Elevators.

connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents.

"**Electric Supply Line**" defined Act, 9, 1910, S. 2 (*f*)

Electrode A pole of the current from an electric battery applied generally to the two ends of an open circuit, the path by which electricity is conveyed into or from a solution or other conducting medium

Electro-Metallurgy A term characterizing all processes in which electricity is applied to the working of metals (15 *Ame Cyc* 481-482)

Electuary A medicated conserve

Eleemosynary Something constituted for the perpetual distribution of the alms or bounty of the founder, (2 *Kent Comm* 275)

Eleemosynary Corporations Corporate bodies constituted for the perpetual distribution of free alms, or bounty of the founder of them (*Tomlin's Law Dic*)

Elegit, (Lat) (*He has chosen*) A writ of execution given on judgment for debt or damages

Elephant In *Harper v Marcks*, (1894) 2 Q B at 323, *Wright, J*, seemed to incline towards the opinion that an elephant might become a domestic animal within the Cruelty to Animals Act, 1849 But the fact that some elephants have been thoroughly tamed is not in law regarded as enough to exclude the elephant from the class of animals of a known mischievous or undomesticated character. Consequently the owner of an elephant keeps it at his own risk, and is liable for all injury done by it without need of proof that it was known to be mischievous (*Pilburn v People's Palace and Aquarium Co.*, (1890), 25 Q B. D 258 and see *Beven Negligence*, 2nd ed., bk. 111 c 5, *Mayne, Indian Criminal Law*, 1896, p 576)

When a wild animal, *e g*, an elephant has escaped from captivity and pursuit of it has been given up, the property which a man may have formerly had in it ceases and it becomes open to any one else to reduce the animal to his possession, and then it will, for the time become his property An animal which has gone away and may be supposed to be likely to return to a state of captivity ceases to be a wild animal (35 Cal 413 *Foll*) (64 I C 831=11 L B R 71)

Elephantiasis An abnormal enlargement or expansion of the legs and feet or other parts of the body, arising from a preternaturally thickened condition of the skin and the tissues beneath it

Elevated Rail Road A rail road which is placed above the surface of the street

Elevators. The term "elevator" is understood to refer to at least two distinct mechanisms or structures In the first place, an elevator may be defined as a car or cage installed in a building and used for the vertical conveyance of persons and property, or, speaking in a broader sense, the term may be construed to include not only the car or cage, but also the power machinery for its propulsion, together with the connections, and shaft through which the car or cage passes Secondly, the term refers to a structure used for the storing of grain in bulk, including the machinery, such as lifters and conveyers,

Eligible.

necessary for the convenient handling of the grain The authorities are not uniform regarding the test to be applied in determining what constitutes the distinction between a passenger elevator and a freight elevator (*Rul Case Law*)

Eligible. Worthy of choice, desirable, that may be selected,or elected, worthy of choice or adoption, suitable, (*Stand Dict*) preferable (*Webster Dict*)

Applied to the selection of persons, the word has two meanings i e "legally qualified," or "fit to be chosen" (*per* Ld Chelmsford, *Baker* v. *Leo*, 30 L J Ch. 631, 8 H L Ca 495)

"ELIGIBLE AS A DIRECTOR," means capable of being elected as such at an election" (per *Selborne C*, *Forbes' Case*, 8 Ch. 774)

Ellall (*Tel*) **Ellai** (*Tam*) A boundary.

Ellaikal (*Tam*) A boundary stone

Ellaikattu (*Karn*) A limit, a boundary

Ellai-takarar (*Tam*) Boundary dispute

Ellai-vyajyam (*Tam*) A boundary quarrel or dispute, a suit respecting boundaries

Elarai (*Tel.*) A boundary stone.

Elope To run away, escape privately, especially used of a woman, either married or unmarried, who runs away with a lover

"ELOPE" is never used in any other sense than criminally (*per* Best, C J *Hunt* v *De Blacquiere*, 5 Bing 557.)

Elopement Is where a married woman of her own accord, goes away, and departs from her husband, and lives with an adulterer (*Tomlin's Law Dic*)

Else. Besides, except that mentioned other than the person, thing, place etc mentioned

Elsewhere In another place, in any other place, (*Burril L Dict*), in other places indefinitely (as "the rumour is current in town and *elsewhere*")

"ELSEWHERE" as used in a memorandum of an association of a mining company declaring the object to be the purchase and working of mines etc in the State of Missouri or *elsewhere*, means elsewhere than in the State of Missouri

A devise of "all of lands in A and B and elsewhere," is equivalent to a devise of all testator's land in A and B "or in any other place whatsoever "(*Chester* v *Chester*, 3 p Wms. 61)

In a testamentary gift of property, this word is "the most significant, sensible and comprehensive word that could be used for that purpose," or "in any other place whatsoever" (*Chester* v *Chester*, 2 Eq. Cas Abr 330.)

The words "the United Kingdom or *elsewhere*," as used in an Income-tax Act, do not include the whole world (*Colquhoun* v *Brooks*, 21 Q B D 52, 58.)

Elude. To avoid by artifice, to evade, to baffle, to remain undiscovered (as), To elude deduction, to elude an officer.

Emaciation. A gradual wasting of flesh and fat, indicative of disease

Embankment officer

Emancipation. An act by which a person who was once in the power or under the control of another is rendered free. (*Bouvier L Dict*), setting free from slavery, subjection, dependence or control, the state of freedom, liberation(as, the emancipation of slaves) "Ordinarily speaking, one of these things must happen before A SON CAN BE SAID TO BE EMANCIPATED FROM HIS FATHER,either he must have obtained a settlement for himself—or have become the head of a family,—or at most he must have arrived at that age when he may set up in the world for himself" (*per* Kenyon, C J, *R* v *Off-Church*, 3 T R 116, Strodue)

EMANCIPATION, MANUMISSION *Emancipation* was the voluntary setting free from the condition of such servitude as had made the slave the property of his master *Manumission* denotes simply the formal giving of a slave his liberty (*Smith. Syn Dis*)

"Embankment" defined This word is also used in combination with other words (as), Field embankment, Flood embankment, Public Embankment; Stream-embankment [Act 32, 1855, S 2, Act 13, 1877, S 2, Ben Act 6, 1873, S 3, Ben Act 2, 1882, S. 3, Bur Act 4, 1909, S 3 (1).]

EMBANKMENT An artificial bank or mound of earth, a ridge of earth of sufficient height and base to form a serious obstruction to a highway, if raised across its passage, a mound or bank raised for protecting against inundation

"EMBANKMENT," should be construed to include the ties used by a railroad company in the construction of a Railway, and the ballasting, or filling in between the same (*Pittsburgh etc, R Co.* v. *Rose*, 74 Pa. St 362, 369, 15 *Ame Cyc* 485)

EMBANKMENT, LEVEE "Embankment. ..is not synonymous with the term levee, as used in a statute Every Levee is an embankment, but every embankment is not a Levee" [*State* v *New Orleans, etc, R Co.* 42 La Ann 138, 142, 7 So 226]

"EMBANKMENT" includes—every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land, every sluice, spur groyne, training-wall or other work annexed to, or portion of, any such embankment, every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters, and also all buildings intended for purposes of inspection and supervision Ben Act II of 1882 (*Embankment*, S 3)

"EMBANKMENT" means any embankment constructed for the purpose of excluding, regulating or retaining water, and includes all earthen walls, dams, canals, drains, piers, groins, sluices, buildings, watergauges, benchmarks and other works subsidiary to any such embankment, Bur Act IV of 1909(*Embankment*) S 3, Cl 1 *See also* 5 C.W.N 108

"EMBANKMENTS, CULVERTS AND ROADS." *See* 18 C W N 860=21 I C. 966

"Embankment-officer" defined Act, 13, 1877, S 2 Bur Act 4, 1909, S 3 (3)

"EMBANKMENT-OFFICER" means any officer appointed by a notification of the Local Government to be an Embankment-officer in respect of any embankment. Bur. Act IV of 1909 (*Embankment*) S 3, cl. 3.

Embargo.

Embargo Prohibition to sail, a restraint and detention by public authority, an order of the Government prohibiting the departure of ships or goods from the ports of the country, a detention of vessels in port *Embargo* is a prohibition upon shipping, not to go out of any part on a war breaking out, &c (*Tomlin's Law Dic*) "It is an arrest laid on ships or merchandize by public authority, or an order prohibiting ships from putting to sea, and sometimes from entering ports" (*Wood* 353) "*Embargo*," means only a temporary suspension of trade A general and permanent prohibition of trade would not be an embargo

An Embargo may be a measure of public utility, hostility, or defence, and sometimes, like reprisal retortion and pacific blockade and is resorted to as a mode of putting stress upon a weaker State See Hall, International Law, J H Ferguson, International Law, Hazlitt and Roche, Law of Maritime Warfare, Moore, Digest of the International Law of the United States, Washington, 1906, Vol VIII, Abbott's Law of Merchant Ships and Seaman, Arnold on Marine Insurance

Embarrass To hinder through perplexity, to entangle, to render intricate "Embarrass" applied to pleadings means that matter is introduced in pleading that a party is not entitled to make use of [per *Jessel, M R, Hough v Chamberlain*, 25 W R 742 A Defence is not "embarrassing" merely because inconsistent statements of facts are alleged (Re *Morgan*, 35 Ch D 492)

The Court or a judge may at any stage of the proceedings order any matter in any indorsement or pleading which may tend to embarrass the fair trial of the action to be struck out or amended, and may in any such case order the costs of the application to be paid by the party at fault (R S C, Order 19, R 27)

Embarrassed (*In commerce*) In its application to a man's financial condition or standing, "Embarrassed" means incumbered with debt, beset with urgent claims and demands, unable to meet one's pecuniary engagements

EMBARRASSED, PERPLEXED, ENTANGLED Pecuniary difficulties *embarrass*, contrary counsels *perplex* artifices of cunning *entangle*

Embarrassing Pleadings will not be deemed embarrassing because they are inconsistent (In re *Morgan*, 35 Ch D 492, 500.)

When used in respect of the condition of a trader It is substantially of the same meaning as the words "bad circumstances," "insolvent" "unworthy of credit."

Embezzle Divert funds fraudulently to one's own use "When a Clerk or a Servant, or person employed in the capacity of a clerk or servant, commits theft by converting any chattel, money, or valuable security, delivered to or received, or taken into possession by him for or in the name or on account of his master or employer, his offence is called Embezzlement" (*Steph* Cr Law Ch 36 See *Theft*)

Embezzlement. The statutes relating to embezzlement, both in this country and in England, had their origin in their design to supply a defect which was found to exist in the criminal law By reason of nice and subtle distinctions, which the courts of law had recognized and sanctioned it was difficult to reach and punish the fraudulent taking and appropriation of money and chattels by persons exercising certain trades and occupations by virtue of which they held a relation of confidence or trust towards their employers or principals and thereby became possessed of their property In such cases the moral guilt was the same as if the offender had been guilty of an actual feloneous taking, but in many cases he could not be convicted of larceny, because the property which had been fraudulently converted was lawfully in his possession by virtue of his employment, and there was not the technical taking which is essential to the proof of the crime of larceny (Bazeley's Case, 2 East P.C 571, 2 Leach C C 973) The statutes relating to embezzlement were intended to embrace this class of offences, and it may be said generally that they do not apply to cases where the element of a breach of trust or confidence in the fraudulent conversion of money or chattels is not shown to exist

EMBEZZLEMENT AND LARCENY OR THEFT Embezzlement is a fraudulent appropriation of another's property by a person to whom it has been intrusted or into whose hands it has lawfully come It differs from larceny or theft in that the original taking of the property was lawful or with the consent of the owner, while in larceny or theft the felonious intent must have existed at the time of the taking

EMBEZZLEMENT is distinguished from larceny, properly so called, as being committed in respect of property which is not at the time in the actual possession of the owner

Emblazon Portray conspicuously, adorn shield with heraldic device

Emblem Symbol, heraldic device.

Emblements Natural products of soil, growing crops to which an outgoing tenant has a right if his tenancy terminates before they can be harvested The term applies to the growing crops of those vegetable products of the soil which are not spontaneous, but require an outlay of cost and labour The produce of grass, shrubs and the like is not included in the term

"EMBLEMENTS, are the profits of sown land but the word is sometimes used more largely, for any products that arise naturally from the ground, as grass, fruit, &c In some cases he who sowed the corn shall have the emblements and in others not, a lessee at will sows the land, he shall have the emblements though if the lessee determines the lease himself, he shall not have them, but the lessor" (5 Rep. 116 *Tomlin's Law Dic.*)

"EMBLEMENTS" is the right which the occupier of land (or his personal representatives) has to reap in peace the crop which he sowed, when his occupation has been determined by his death or otherwise unexpectedly comes to an end from a cause beyond his control (*Litt* S 63 Co, *Litt* 55a, 56a.)

"EMBLEMENTS" do not include fruits which grow on trees which are not planted yearly (*Sparrow v. Pond, 32 Am St Rep* 571) "This class included grain, garden vegetables, and the like"

Embrace To encircle, to encompass, to surround or inclose, to include as part of the whole, or

Embracery.

as subordinate divisions of a part, to comprehend, —as natural philosophy embraces many sciences (*Webster Dict.*); accept eagerly (as, embracing the doctrines of the christian religions), folding in the arms, (euphem) sexual intercourse.

Embracery is an attempt to corrupt, influence, or instruct the jury, or in any way incline them to be more favourable to one side than to the other. An attempt to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like (*Tomlin's Law Dic*) "Everyone commits the misdemeanor called Embracery who by any means whatever except the production of evidence and argument in open Court, attempts to influence or instruct any juryman, or to incline him to be more favourable to the one side than to the other in any judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false" (*Steph* Cr 88, 89)

EMBRACERY BRIBERY (distinguished)

Embracery is the corrupt attempt to influence a juror by money, promises, threats, or persuasion Bribery is the voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done (5 Cyc 1039) The two crimes differ therefore in three respects namely 1 In bribery there must and in embracery there need not be a thing of value given or promised In this aspect, embracery is the broader offence. 2 In embracery the attempt must be directed against a juror while any public officer who corruptly accepts payment, or a promise of payment for the doing of an official act is guilty of bribery. (*See* 5 Cyc 1040) In this aspect bribery is the broader offense 3. In the case of bribery both the giver and taker are guilty of the crime (5 Cyc 1039.) In the case of embracery, however, only the person seeking to influence the juror is guilty Embracery being the attempt corruptly to influence a juror, the juror himself cannot in the nature of the case be guilty of it If, however, the juror accepts a thing of value or the promise of it in consideration of a corrupt decision, then while he is not guilty of embracery he commits the offense of bribery, and in this event the giver or promisor is guilty of both offenses

Embrandivis, Brahmins of Canara in Malabar (*Sun. Mal Law*)

Embran or Embrantiri. A class of sacrificing Brahmans, chiefly Tulu Brahmans, who officiate non-brahman ceremonies. (*Moore. Mal Law.*)

Embrocation An external stimulating or soothing application, called also a liniment.

Embryo. Offspring of animal before birth, a thing in rudimentary stage, undeveloped

EMBRYO, FOETUS Both words refer to what is formed in the womb of the mother, but embryo properly implies the first fruit of conception, and the foetus that which is arrived to a maturity of formation. Anatomists tell us that the *embryo* in the human subject assumes the character of the *foetus* about the forty-second day after conception.

Emergency. Any event or occasional combination of circumstances which call for immediate action or remedy, pressing necessity, exigency; a sudden or unexpected happening, an unforeseen occurrence or condition.

Eminent Domain.

Per Bhide, J —An "emergency" may result from an unforeseen combination of circumstances. This combination may not take place all at once but gradually An immediate action may be rendered necessary when the culminating point is reached. (126 I C. 177=31 Cr.L J 987=31 P.L.R. 677=A.I R 1930 Lah 781.)

"**Emigrant**" defined. Act 17, 1908, S. 2 (1)(*ii*), (2).

EMIGRANT is a person who emigrates or quits one country or region to settle in another

"EMIGRANT" means any person who emigrates or has emigrated or who has been registered as an emigrant under the Emigration Act, and includes any dependent of an emigrant, but does not include—(i) any person emigrating to a country in which he has resided for not less than five years or the wife or child of such person, or (ii) the wife or child of any person who has lawfully emigrated when such wife or child departs for the purpose of joining such person (Act VII of 1922, S 2)

Emigrant Agent A person engaged in hiring laborers within the state to be employed in another state or foreign country, any person engaged in hiring laborers or soliciting emigrants in the state to be employed beyond the limits of the state.

"**Emigrant-vessel**" defined Act 17, 1908, S. 2 (1) (*iii*)

"**Emigrate**" defined Act 6, 1901, S 2 (1) (*e*), Act 17, 1908, S 2 (1) (*iv*), (2), Act 7, 1922, S 2. (37 Cal 27=5 I C. 495)

EMIGRATE is to remove from one country or state to another, for the purpose of residence, employment or labour

"Emigrate" and "emigration" mean the departure by sea out of British India of—(i) any person who departs under an agreement to work for hire in any country beyond the limits of India, and (ii) any person who is assisted to depart, otherwise than by a relative, if he departs, for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of India, Emigration Act (VII of 1922), S 2

"**Emigration**" defined. Act 17, 1908, S. 2 (1), (*iv*) (2). Act 7, 1922, S. 2.

EMIGRATION The act of changing one's domicile from one country or state to another.

EMIGRATION IS TO BE DISTINGUISHED FROM "EXPATRIATION" The latter means the abandonment of one country and renunciation of one's citizenship in it, while emigration denotes merely the removal of person and property to a foreign state The former is usually the consequence of the latter Emigration is also used of the removal from one portion or province to another of the same country. (*Black L. Dict*) (as, emigration of South Indian labourers to Tea plantations in Assam).

Eminent Domain The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the sovereign to take it for a public purpose. This right is called "eminent domain". *See* Lewis on Eminent Domain, Mills on Eminent Domain, Randolph, on Eminent Domain)

It is the right of the state or of those to whom the power has been lawfully delegated to condemn pri-

vate property for public use and to appropriate the ownership and possession of such property for such use, upon paying the owner a due compensation to be ascertained according to law

OTHER DEFINITIONS OF THE TERM "The sovereign power vested in the State to take private property for the public use, providing first a just compensation therefor" "A superior right to apply private property to public use" 1 Redfield Railw, Sect 63 "A superior right inherent in society, and exercised by the Sovereign power, or upon delegation from it, whereby the subject-matter of rights of property may be taken from the owner and appropriated for the general welfare" *Abbot. L Dict* "The right belonging to society, or to the Sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the State, is called the Eminent domain" (*Jones* v *Walker*, 13 Fed Cas No 7, 507) "The right of every government to appropriate, otherwise than by taxation and its police authority, private property for public use" (*Dillon Mun Corp*) "The right to resume the possession of private property for the public use" (*Blood-good* v *Mohawk*, etc *R. Co* 31 Am Dec 313) 'The ultimate right of the Sovereign power to appropriate not only the public property but the private property of all citizens within the territorial Sovereignty, to public purposes" (*Ame Cyc.*)

"Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use" Mills Em Dom Sect I

Emir Arab Prince or governor, descendant of Mohammad

Emissary Person sent on usually on an odious or underhand mission, one sent on some secret state business

Emissary, Spy Both these words designate a person sent out by a body on some public concern among their enemies, but they differ in their office according to the etymology of the words The *emissary* is sent so as to mix with the people to whom he goes, to be in all places, and to associate with every individual as may serve his purpose, the *spy*, on the other hand, takes his station wherever he can best perceive what is passing, he keeps himself at a distance from all but such as may particularly aid him in the object of his search Although the offices of *emissary* and *spy* are neither of them honourable, yet that of the former is more disgraceful than that of the latter The *emissary* is generally employed by those who have some illegitimate object to pursue; *spies*, on the other hand, are employed by all regular governments in a time of warfare Nations that are at war sometimes send *emissaries* into the states of the enemy to excite civil commotions

"Emoluments" defined, Mad Act 3, 1895, S 4

Emolument Salary, profits from an office or employment.

EMOLUMENT IN 31 & 32 Vict, c. 110, S 8 (7), is the most comprehensive word the Legislature could have used to describe the profits of an office *R* v *Postmaster-General* (1878), 3 Q B D. 428, 430] See *Livingstone* v *Mayor, &c of Westminster*, (1904) 2 K.B. 109, 117, Buckley, J , and *Remuneration.*

EMOLUMENT IN SCHED I, OF THE INCOME TAX ACT, 1842 (5 & 6 Vict c 35) See *Tennant* v *Smith*, (1892) App Cas 150.

Emotional Insanity. A term applied to the case of one in the possession of his ordinary reasoning faculties who allows his passions to convert him into a temporary maniac (14 *Ame Cyc.* 1041).

Emperor, (*imperator*) The highest ruler of a large kingdom and territories, a title anciently given to renowned and victorious generals of armies, who acquired great power and dominion (*Tomlin's Law Dic*)

Empire. Supreme, wide, political dominion, Government under an emperor, territory of an emperor

EMPIRE, KINGDOM The word *Empire* carries with it the idea of a state that is vast and composed of many different people, that of *Kingdom* marks a state more limited in extent, and united in its composition In *kingdoms* there is a uniformity of fundamental laws, the difference in regard to particular laws or modes of jurisprudence being merely minor variations which do not affect the unity of political administration With *empires* it is different, one part is sometimes governed by fundamental laws, very different from those by which another part of the same empire is governed, which diversity destroys the unity of government, and makes the union of the states to consist in the submission of certain chiefs to the commands of a superior general or chief From this very right of commanding, then, it is evident that the words *empire* and *emperor* derive their origin, and hence it is that there may be many princes or sovereigns and *kingdoms*, in the same *empire* Rome, therefore, was first a *kingdom*, while it was formed of only one people, it acquired the name of empire as soon as other nations were brought into subjection to it, and became members of it, not by losing their distinctive character as nations, but by submitting themselves to the supreme command of their conquerors (*Crabb*) "In the vast fabric of kingdoms and commonwealth, it is in the power of kings and rulers to extend and enlarge the bounds of empire" (*Bacon*)

Empire, Dominion *Empire* is more definitely the territory subject to a king or queen, while *Dominion* has the vague meaning of political subjection or subordination of any kind, whether at home or abroad, and is even applicable to the lordship which man exercises over the creation (*Smith Syn Dis.*)

EMPIRE, REIGN, DOMINION As *empire* (as conveying the idea of power) signifies command, or the power exercised in commanding, it properly refers to the country or people commanded, and as *reign* signifies the act of reigning, it refers to the individual who reigns If we speak of an extended *empire*, it has regard to the space over which it extends, if of an extended *reign*, it has regard either to the country reigned over, or to the length of time that a prince reigns *Empire* and *reign* are properly applied to civil government or the exercise of regular power; dominion signifies either the act of ruling by a sovereign or a private individual, or the power exercised in ruling, which may either be regular or irregular; a sovereign may have *dominion* over many nations by force of arms, he holds his reign by force of law. (*Crabb.*)

Empire

Empire, Reign, Kingdom. *Empire* stands to States as *Reign* to persons and dynasties The most glorious epoch of the Babylonian *Empire* was the *reign* of Nebuchadnezzar, of the Persian *Empire*, the *reign* of *Cyrus*, of that of the Greeks, the *reign* of Alexander, of the Roman *Empire*, the reign of *Augustus* A *reign* is short or long, glorious or inglorious An *empire* is lasting or ephemeral, and more or less extensive. *Empire* and *Kingdom* are differenced most obviously by being subject in the former case to an emperor, in the latter to a king An empire denotes a State, extensive, and composed of many different peoples, a *kingdom*, one more limited, and more strongly marked by the unity of its people In *Kingdoms* there is marked uniformity of fundamental laws, while varieties of customs do not affect the unity of political administration. The unity of an *empire* depends on the submission of certain chiefs, or the recognition of a universal head (*Smith. Syn Dis*).

Empiricism A practice of medicine founded on mere experience without the aid of science or the knowledge of principles, acting on observation and experiment, not on theory.

Employ. *As a noun*, Employment, (*Cent Dict*) (as, "in the *employ of*" means "employed by" *As a verb*, to engage in a service, to keep in one's service *See* 25 I C. 1005 A contract "to employ" means, to retain and pay a person, whether employed or not (*Stroude*)

"Medical advisers may be employed at a salary to be ready in case of illness, members of a theatrical establishment in case their labours should be needed, household servants in performance of their duty to be ready when their masters wish, in these and other similar cases the requirement of actual service is distinct from the employment by the party employing" (*per* Parke, B 'delivering judgment of the Ex Cham in *Elderton* v. *Emmens*, 17 L J P 309)

"**Employs,**" meaning of *See* 17 O.C. 311=25 I.C 1005

To EMPLOY, USE We may speak of *employing* persons as well as things, but we speak of *using* things only and not persons, except in the most degrading sense Persons, time, strength, and power, are *employed*, house, furniture, and all materials of which either necessities or conveniences are composed, are *used*. (*Crabb*)

We *employ* agents, and we *use* instruments. We do not *use* persons, except in some low sense, as machine or tools A monarch negotiating with a foreign court would *employ*, not *use*, an ambassador (*Smith. Syn Dis*)

"RETAIN AND EMPLOY" Agreement to "retain and employ", means only to "retain" in the service 'and employ is mere tantology" (per *Parke*, *B*, Ib. 13 C B. 532, 4 H L. Ca 668)

"**Employed**" defined (*See also* Actually employed) Act 15, 1881, S. 2, Act 8, 1901, S. 3 (*c*)

EMPLOYED. (*As applied to persons, engaged or about to be engaged*) engaged or occupied in the performance of work or duties, hired to perform labor, a term which means not only the act of doing a thing, but also to be engaged to do it, to be under contract or orders to do it. (*As applied to tangible objects*), used, destined to be used, habitually used; (*As applied to capital*) used, kept at work so as to earn profit or interest, invested.

These terms "Employ, Employed", are used in law in a variety of juxtapositions, which will be found treated under the following heads —"In his employ," "employed" or "engaged" in coasting trade, "employed in a mine" The primary meaning of the term "to employ" is to retain a person for service and pay him whether employed or not, and not "to find actual employment for," (see *Elderton* v *Emmens*, 1848, 17 L J C P 309, 1853, 4 H L C. 624, 10 E R 606)

The work of drawing cotton forms part of the operations of a Cotton mill, and a boy who does this work comes within the definition of the word "*employed*" in the mill or factory (1 Ind. Cas 102)

Employed, in S 143 of the Army Act (44 & 45 Vict c 58), is not equivalent to "used" *Craig* v. *Nicholson*, (1900) 2 Q B 444.

"EMPLOYED FOR HER MAJESTY'S USE OR SERVICE" as used in a statute exempting persons erecting a building from giving the customary notice of an intention to build [see *Reg* v *Jay*, 8 E. & B. 469, 477, 92 E.C.L 469]

"PERMANENTLY EMPLOYED" *See* 172 I.C. 735=A.I R 1938 Nag 91

Employee. One who works for an employer, one who is employed, one who works for wages or salary or who is engaged in the service of another; one whose time and skill are occupied in the business of his employer, one who works for another for hire

Employee of the Postal Service A term which includes employees who are hired and paid by postal contractors or other persons having charge of mail matters sworn as mail carriers, etc

"**Employer**" defined Act 6, 1901, S. 2 (1) (*f*) Mad. Act 1, 1903, S 3 (1) (*a*) 6 Edw 7, c 58, S 13.

EMPLOYER. One who employs, one who engages or keeps men in service, one who uses or engages the services of other persons for pay or salary. The words "employer" and "employment" "are not of the technical language of the law or of any science or pursuit, and must, therefore, be construed according to the context and the approved usage of the language" Construing the word according to the context it may include not only a master, but also a client, a farmer, a firm, a joint stock association, a company, or a corporation, a master mechanic, a patient, a sub-contractor and the like

Employer's Liability. The "law of employers' liability" has by usage become the expression employed to express the liability imposed by law upon certain employers of labour to make pecuniary compensation to their workmen in respect of personal injury suffered in the course of their employment.

Employers' liability insurance is the general designation of a certain kind or branch of the insurance business, which provides indemnity to employers against liability for accidents to employees. It is a recent form of accident insurance and is the outgrowth of a demand for indemnity to employers against the liability of their employees for injuries occurring in the prosecution of business or industrial enterprises. (*Ame. Cyc.*) This has become familiar since the passing of employers' liability Acts. It insures an employer against claim for com-

Employer and workmen.

pensation for damage on the part of an employee for injuries suffered

Employer and workmen *See* Arnold's Employer's and Workmen's and Conspiracy and Protection of Property Acts; Davis, Labour Laws, Factories Acts.

Employment. The act of employing, the state of being employed; business, calling, commission, occupation, office, profession, service, vocation, that which engages the head or hands, object of industry; appointment, engagement.

When a person was doing a thing not in the way of business but for his own pleasure (as talking with a friend) and suffered an injury, it would not be an accident '*arising out of and in the course of "Employment"*, (*Smith* v *Lanc & Y. Ry.* 1899, I Q B 141) As to what are accidents arising out of and in the course of Employment *See* Workmen's Compensation Act, 1923 and cases decided thereon)

EMPLOYMENT, BUSINESS, AVOCATION, OCCUPATION, ENGAGEMENT, VOCATION *Business* is more active employment, which at the time engrosses the time and attention as of primary importance, as in the common phrase, "I will make it my business to attend to it". *Business* is responsible *employment* We choose our *employments*, our *business* claims us.

Avocation is commonly used of the minor affairs of life, less prominent and engrossing than Business, and of such calls as are beside the man's duty or *business* of life

Occupation is used of such employment as has become, or tends to become, habitual as a favourite occupation, which may be one of seriousness or sport, an occupation in life, meaning a trade or calling

Engagement is an engrossing occupation, not compulsory not systematic, but casual, yet at the time leaving little or no room for other employments

Vocation conveys the idea of systematic employment in an occupation appropriate to the person employed It implies specific aptitude in the person, the result of training (*Smith. Syn Dis*)

Employment Agency The business of keeping an intelligence office, employment, bureau, or other agency for procuring work or employment for persons seeking employment, or for acting as agent for procuring such work or employment for persons seeking employment. A fee is generally charged, for registration of applicants, or for procuring or assisting to procure employment, work or situation of any kind, or for procuring or providing help in that direction.

"Empowered in that behalf" by the Local Government. [*See* 170 I C. 1=I L R. (1937) Bom 655 =39 Bom. L.R. 548=A I R. 1937 Bom 275 (F.B.)]

Emptio et vend ito contrahitur simulat que de pretio convenerit. A maxim meaning "The buying and selling is complete when the price is agreed upon". (*Morgan Leg. Max.*)

Emptor emit quam minimo potest, venditor vendit quam maximo potest. A maxim meaning "The buyer buys for as little as possible, the vendor sells for as much as possible"

Empty. In its ordinary signification, as a verb, to make void, to exhaust, to deprive of the contents.

Enactment.

As an adjective, containing nothing As used in respect to a vessel, 'without a cargo".

EMPTY, VACANT, VOID, DEVOID *Empty*, in the natural sense, marks an absence of that which is substantial, *vacant* designates or marks the absence of that which should occupy or make use of a thing A *house* is empty which has no inhabitants, a *seat* is vacant which is without an occupant a *room* is empty which is without furniture, a *space* on paper is vacant which is free from writing.

Emulsion A medicine of a milk-like character, prepared by the amalgamation of some alkali or sugar with oil and water

Enable Authorise, empower, supply person with means In the case of a person under any disability as to dealing with another, the term has the meaning of removing that disability, not of conferring compulsory power as against that other

"TO ENABLE IT (THE APPELLATE COURT) TO PRONOUNCE JUDGMENT". In Civil Procedure Code, O 41 R 27) [*See* 14 Ind Cas 140 (141)=11 M L T 241= (1912) 1 M W N 460]

Enabling Statute A statute which makes it lawful to do something which would not otherwise be lawful. Such statutes or Acts are passed for a variety of purposes, for instance, to authorise the taking of land compulsorily to carry out some public work, or to legalise what would otherwise be a public or private nuisance (*See* Hardcastle on Statutes, Stephen's Commentaries Maxwell, Interpretation of Statutes)

Enact To ordain, to establish by law, to perform or effect, to decree.

"Enactment" defined. Act 10, 1897, S 3 (17). Ben Act 1, 1899, S 3 (14). Bom Act 1, 1904, S 3 (17) Bur Act 1, 1898, S 2 (21) E B & A Act 1, 1909, S 5 (23) P Act 1, 1898, S 2 (17) U. P. Act 1, 1904, S 4 (14).

"ENACTMENT" shall include a Regulation and any Regulation of the Bengal, Madras or Bombay Code and shall also include any provision contained in any Act or in any such Regulation as aforesaid Act X of 1897 (General Clauses), S. 3 (17).

ENACTMENT, MANDATE, ORDINANCE *Enactment* is the making a thing into a law, the giving to it legal validity and authority. This may be the act of one or many, according as the source of authority is personal or collective The latter is in modern times so far the most common principle of legislation that the term usually expresses that last step in the process of legislation, by which a Bill passes into law

A *Mandate* is an official or authoritative command, but not applied to the acts of collective legislation The source of a mandate is always personal.

An *ordinance* is a rule of action permanently established by authority Any statute, law, edict, decree or rescript may be called an ordinance when it is regarded in this light. The *ordinance* is always a thing of wide establishment, and is not applicable to matters of domestic management, or connected with the administration of minor associations. An ordinance is an operative act of sovereign power. (*Smith. Syn. Dis.*)

Enak.

Enak. (*Mal.*) Notice announcing transfer of interest by mortgagor or mortgagee (*Sun. Iyer's Mal Law.*)

Enak or Inak (*Mal*) agreement, a certificate from mortgagor to mortgagee, or *vice versa*, announcing the transfer of his interest in the property. (*Moore Mal. law.*)

Enaum (Inam). Present, gift, gratuity, favour. Enaums or grants of land free of rent, or assignments of the Government's share of the produce of a portion of land, for the support of religious establishments and priests and for charitable purposes, also to revenue officers and the public servants of a village

Enaumdar Holder of inam, Holder of any thing as a favour, a person in the possession of rent-free, or favourably rented, lands, or one in the enjoyment of the government dues from a particular portion of land, granted for charity, etc. (Fifth report)

Encourage To embolden to incite to anything, to give courage to, to inspirit, to raise confidence.

To ENCOURAGE, EMBOLDEN To *Encourage* is to give courage, and to *Embolden* to make bold, the former impelling to action in general the latter to that which is more difficult or dangerous, we are *encouraged* to persevere, the resolution is thereby confirmed, we are *emboldened* to begin, the spirit of enterprise is roused Success *encourages*, the chance of escaping danger *emboldens*.

Encroach. To intrude usurpingly, make gain upon, occupy, or use the land, right, or authority of another, to gain unlawfully lands, property or authority of another.

To ENCROACH, INTRENCH, INTRUDE, INVADE, INFRINGE All these terms denote an unauthorised procedure, but the two first designate gentle or silent actions, the latter violent if not noisy actions *Encroach* is often an imperceptible action, performed with such art as to elude observation, *intrench* is, in fact, a species of encroachment; it involves the idea of surrounding with a trench. *Intrude* and *invade* designate an unauthorised entry the former in violation of right, equity or good manners, the latter in violation of public law the former is more commonly applied to individuals, the latter to nations or large communities To *invade* and *infringe* are both violent acts, but there is more violation of good faith in *infringing* than in *invading*, as the infringement of a treaty. A privilege may be either *invaded* or *infringed* but to *invade* in this sense is applied to any privilege however obtained, but *infringe* properly applies to that which persons hold under some grant, treaty, or law. (*Crabb*)

ENCROACH, INTRUDE, INVADE, INFRINGE. To *Intrude* is to thrust one's self in an abrupt or unwelcome manner upon the presence or society of another; while to *Invade* denotes a direct, positive, and open violation of another's rights. Men often *encroach* when they would hesitate to *invade*. Invasion carries with it the idea of an overt act of hostility; often done suddenly and without warning, but always as the commencement of such hostilities. *Infringe* is positively to violate, or negatively to disregard a direct law, treaty, obligation, or right. (*Smith. Syn. Dis.*)

Endorser.

'**Encroachment**" defined. Bom. Act 2, 1876, S 29

ENCROACHMENT. Is "an unlawful gaining upon the right or possession of another man" (*Termes de la Ley* 97 I C 288=27 Pun L R. 410), a gradual entering on and taking possession by one of what is not his own, the gaining upon the rights or possession of another.

"**Encumbrance**" defined. *See* Incumbrance

ENCUMBRANCE Burden on property; impediment, mortgage or other claim on property.

Grant of lands rent free or the grant of the landlord's zarait land to a tenant for the purposes of cultivation does amount to an encumbrance of the estate Apart from mere dealings such as mortgages which create a charge upon the land, there are other dealings which amount to an encumbrance Anything which interferes with the unrestricted rights of the proprietors as they then existed would be an encumbrance upon the land, even the granting of a lease of zarait lands, that is to say the lands which the landlord is entitled to hold in direct possession and to cultivate for his own purposes A lease of such lands granted to an occupier in circumstances which would give him a right of occupancy over the land, would amount to an encumbrance (1 P L.T. 145=73 I C 359 =A I R 1924 Pat 362)

End Limit, surface bounding a thing at either extremity The extreme point of a line or any thing that has more length than breadth (*As a verb*) Bring to an end, to destroy, to result in

Endemic Diseases are those arising from local conditions, as ague, in swampy and fenny neighbourhoods, or belonging to a particular period of the year

Endorse To "endorse" anything on a document means, as a general rule, is to write it on the back of the document (*Ackers* v *Howard*, 55 L J Q B 278, 16 Q B D 739), to confirm (as, endorsing a statement or opinion).

Endorse over. Make over one's right in (*Bill or note*) to another person.

"**Endorsement,**" is that that is written upon the back of a Deed (*Termes de la Ley*)

INDORSEMENT OF A BILL OF EXCHANGE OR PROMISSORY NOTE may be on the face as well as the back of the instrument (*Byles on Bills*)

"**Endorsed**" defined *See* Indorsed.

"Endorsee" defined *See* Indorsee

ENDORSEE The person to whom a bill of exchange or promissory note is transferred by endorsement.

"**Endorsement**" defined. *See* Indorsement.

ENDORSEMENT (*of a bill or note*) The signing of one's name on the back of a bill or note an act which transfers the right in it to the endorsee.

"ENDORSEMENT" and "*endorsed*" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under the Registration Act; Act XVI of 1908, S. 2, cl. 5.

"**Endorser,**' defined (*See* Indorser,) Person who transfers a negotiable instrument to another by endorsement.

Endow.

Endow To bestow upon, to give, to bestow, to bequeath, to invest with, to furnish with a portion of goods or estates, to settle on as a permanent possession, to furnish with a permanent fund or property, to make provisions for the support of a corporation or institution

As applied to a school, a hospital or other beneficial institution it is not the building, or providing a site for a school or hospital, or institution but the providing of a fixed revenue for the maintenance of the institutions and also for the support of those by whom the institutions are conducted (*Edwards v Hall*, 66 De G.M.G. 74, 83)

ENDOW, ENDUE, INVEST *Endow* signifies to furnish with something which is of the nature of gift, *i e*, to make an endowment, as an endowment to a Temple or Choultry *Endue* is another form of Endow, and has a similar, yet less forcible meaning *Invest* is more external than Endue We are commonly said to endow with privileges or substantial benefits, to endue with moral qualities, and to invest with dignity, authority, and power (*Smith Syn Dis*)

"Endowed Institution," is a School, Hospital, or other Institution, wholly or partly maintained by means of any Endowment

Endowed School A school which is wholly or partly maintained by means of any endowment

Endowment Property or money bestowed as a permanent fund, property held in trust for any charity, (as) the endowments of a college, a hospital or a library. In *domestic relations* it refers to the provision made by law by way of dower (15 *Cyc* 1045, *Oxford Dic*)

In the English Charitable Trusts Act, 1853, "Endowment" means and includes all Lands and Real Estate whatsoever of any tenure, and any Charge thereon or Interest therein, and all, stock, Funds, Money, Securities, Investments, and Personal Estate whatsoever which shall, for the time, belong to or be held in trust for any Charity, or for all or any of the objects or purposes thereof See also *Re Clergy Orphan Corporation* (1894), 3 Ch 145 *Re Stockport Schools* (1898), 2 Ch 687 (C A)

ENDOWMENT, GIFT, PRESENT, BENEFACTION In their simplest signification the distinction between these is obvious An *Endowment* is a gift in perpetuity, of which the usufruct is continually accruing, as to give a sum of money, of which the interest may serve to endow a public institution.

A *gift* is usually from one who is in some sense a superior, and intended to benefit the person to whom it is given

A *present* is commonly from an equal or an inferior, as a mark of affection or respect, or from a desire to please or to gain favour

A *benefaction* is a gift sufficiently important to be of lasting value, but not like Endowment, amounting to a maintenance of the institution or the individual on which it is conferred. (*Smith Syn Dis*)

Endowment Insurance. A contract to pay a certain sum to the insured if he lives a certain length of time, or if he dies before that time, to some other person indicated, an insurance payable at the expiration of a fixed period

Enmity

Endowment policy A policy payable at a certain time at all events, or sooner if the party should die sooner, an insurance into which enters the element of life In one respect it is a contract payable in the event of a continuance of life, in another in the event of death before the period specified (15 *Ame. Cyc* 1046)

Enema An injection into the bowel, employed often with beneficent effect in constipation

"Enemy" defined (*See also* Alien enemy) 43, 5 V c 51, S 190 (20) Act 5, 1869, Pt I, cl (e) (13) (Ins Act 12, 1894, S 4) Act 14, 1887, S 2 (1) (*a*)

ENEMY Hostile person, opponent, member of a hostile army or nation, hostile force

ENEMY also signifies a nation which is at war with another, a public enemy, with whom the nation is at open war.

ENEMY, FOE An *enemy* is not so formidable as a foe, the former may be reconciled, but the latter always retains a deadly hate Any *enemy* may be so in spirit, in action, or in relation, a *foe* is always so in spirit, if not in action likewise, a man may be an *enemy* to himself, though not a *foe* Those who are national or political *enemies* are often private friends, but a *foe* is never anything but a foe A single act may create an *enemy*, but continued warfare creates a *foe* (*Crabb*)

ENEMY, ADVERSARY, ANTAGONIST, OPPONENT, FOE *Enemy* is one who is actuated by unfriendly feelings, and in consequence attempting or desiring the injury of another An enemy may be open or secret collective or personal The term is employed of man's relationship to things as well as persons, as an enemy to truth, an enemy to falsehood

A *Foe* is a personal enemy, one who bears a more energetic and specific hatred than Enemy

Adversary, *Antagonist*, and *Opponent* denote primarily personal opposition, and only secondarily personal ill-will, which in some cases may not exist at all, as in the case of an adversary at fence, an antagonist at chess, and a political opponent

The *enemy* makes war and desires to destroy, and would wound the very person The *adversary* contends for the possession of something of which he would deprive his competitor, the *antagonist* tries to stop, to disarm, to defeat Some nations seem instinctively to be natural *enemies* to each other A man who has the power and the will to bribe, is often the most formidable of *adversaries* (*Smith Syn Dis.*)

ENEMY STATE A state is an Enemy when the country is at war with it

Enemy property. Property belonging to an enemy of the country

KING'S ENEMIES OR PRINCES ENEMIES all mean the same thing (*Stroude*)

"PIRATES" are not recognised as Enemies the word Enemy' applying to States" (1 *Maude & P* 487 But see the Indian Marine Act, 1887, S 2 which says that "'enemy' includes a private or rebel" So also in the English Army Act, 1881, "'Enemy', includes all Armed Mutineers, Armed Rebels, Armed Rioters and Pirates"

Enmity. State or condition of being an enemy.

Energy

ENMITY, ANIMOSITY, HOSTILITY *Enmity* lies in the heart, it is deep and malignant *animosity*, a spirit, lies in the passions, it is fierce and vindictive *Hostility* lies in the action, it is mischievous and destructive *Enmity* is something permanent, *animosity* is partial and transitory in the feudal ages, when the darkness and ignorance of the times prevented the mild influence of Christianity, *enmities* between particular families were handed down as inheritance from father to son, in free states, party spirit engenders greater animosities than private disputes *Enmity* is altogether personal, *hostility* respects public or private measures *Enmity* often lies concealed in the heart, and does not betray itself by any open act of *hostility*

"Energy" Defined Act 9, 1910, S 2 (*g*)

ENERGY As defined by a statute relative to electricity, means electrical energy *See* Indian Elec Act

En eschange il covient que les estates soient egales A maxim meaning "In an exchange it is necessary that the estates be equal"

Enforce To put in execution, to cause, to take effect, to urge (as, to *enforce* an argument), to impose (as, to *enforce* a course of conduct or action on a person) As *applied* to *process*, the term implies execution of process

In *Tassell* v *Hallen* (36 S J 202) *Collins J.*, said "enforced" when applied to a contract refers not merely to an action for specific performance, but also for breach of covenant"

An application for restitution in pursuance of a Privy Council decree is in substance one to enforce a decree (20 A L J 456=44 All 555=4 U P L R. (A) 74=A I R 1922 All 238)

"ENFORCE", "DIRECT" "COMMAND" To "enforce" is more authoritative than "direct" and less imperious than a "command", the word has the force of pressing admonition with authority (*Johnson L Dict*)

ENFORCE, URGE To *Enforce* is to endue with force, or to bring into operation that which has a force of its own as, to enforce a command or to enforce a law or obedience to it *Urge* has a more purely moral character than Enforce It has more of argument, persuasion, entreaty, expostulation, Enforce more of authority and power (*Smith Syn Dis.*)

'ENFORCE A RIGHT' The true import of the expression 'to enforce any right' relates to an initial act when it is done in furtherance of any right and not to an act when it is done to maintain a position already achieved in the lawful exercise of that right (27 O C 292=35 I C 353=26 Cr L J 573=A.I R 1925 Oudh 425.)

ENFORCING AN ORDER "includes enforcing by Action as well as by Execution" [(per *Lindley M R Pritchett* v *English & Colonial Syndicate*, (1899) 2 Q B. 428)

"ENFORCEABLE AS IF IT WERE A DECREE" The fact that an award is "*enforceable as if it were a decree*" makes it clear that it is not a decree, though it may be executed as though it were a decree.

"ENFORCEABLE UNDER THE ATTACHMENT," The words "enforceable under the attachment" in S 64, Civil Procedure Code, must be read as meaning

Engineer

legally enforceable under the attachment. [20 A 421 =18 A W.N 98, (17 A 447, (1897) A W N. 37, 17 M I A 543 *R*)]

Enfranchise, To set free; invest with municipal or electoral franchise, to render a holding free from some obligation (as, enfranchisement of inams)

Enfranchisement does not mean "Resumption and fresh grant" It implies that the title of the previous occupiers continues unchanged [*See* 30 Mad 434= 17 M L J 101]

Enfranchisement of service Inam does not involve a resumption of the inam by the Government and a fresh grant in favour of the persons named in the title-deed [30 M 434 (F B)=17 M L J, 101=2 M L.T 101 *See also* 32 Mad 86 (87)=5 M L.T 80]

Engage To take part, to devote attention and effort, to employ one's self, to conduct, to agree with, or bind by contract, to promise. In a deed the word "engage" is sufficient to constitute a covenant, since it shows that the parties bind themselves to do certain act [*Rigby* v *Great Western Ry Co*, (1845), 15 L J Ex 62, 14 Mee & W 816, 69 R R 839]

Engagement The 'engagement' (referred to in Madras Irrigation Cess Act (VII of 1865), S 4 may be an implied engagement 13 M L T 330=1913 M W N 417=24 M L J 680=19 Ind Cas 227 "The legislature has evidently used the comprehensive word 'engagement' in the above Act instead of the word 'agreement' or 'contract' in order tha implied undertakings (based on equitable considerations) made by Government and not merely the ordinary contracts based on regular deeds signed by parties or arising out of formal proposals and acceptances made orally or to be gathered from correspondence might be relied on by landlords, proprietors and inamdars in support of their claims for exemption from water-cess" [22 Ind Cas. 107 (119)]

"Engine" (*See* Fixed engine) Mechanical contrivance consisting of several parts (as, steam engine), Machine or instrument used in war

"Engineer" defined Ben Act 6, 1873, S 3 Ben. Act 2, 1882, S 3 Ben Act 8, 1895 S 2 (*h*) Bom Act 6, 1879, S 24 Mad Act 1, 1884, S 3 (*f*) (am Mad, Act 2, 1892, S 3) Engineers are divided between two principal branches, civil and mechanical engineers The distinction between the two branches is, speaking generally, that civil engineers plan and carry out works of construction, such as roads, bridges, docks, and railways, and mechanical engineers design and construct machinery Numerous subordinate divisions of the profession are recognised, some of which are indicated by the terms, "*consulting*," "*railway*," *sanitary*," "*drainage*," "*electrical*" engineers (*See* Emden's Building Contracts, Hudson's Building Contracts, Donaldson's Handbook of Specifications)

As applied to civil matters term refers to a person employed in the construction of fixed public works, or to the designing and construction of public works *As applied to mechanical operations*, one who manages an engine, a person who has charge of an engine and its connected machinery *As used in connection with railways*, the party in charge of the locomotive

"The Engineer" means the Engineer in charge of the public embankments of the district, or any part thereof, or any Engineer specially appointed by th

Engineering work.

Lieutenant-Governor of Bengal to perform the functions of an Engineer in respect of any tract of country or of any works Ben Act II of 1882 (Embankment), S 4.

Engineering work, in S 7 of the Workmen's Compensation Act, 1897 See *Chambers* v *Whitehaven Harbour Commissioners* (1899), 1 Q.B 132 A Bridge forming part of the Line of a Railway is an "Engineering Work (*A C* v *Tewkesbury Ry*, 32 L J. Ch. 482)

Engine room Room or compartment in a mill factory or other building where engines are stationed, a room in or attached to a building in which the engine is situated and operated upon

England Means and includes England, Wales, Berwick upon Tweed, the Isle of Man and the Channel islands ENGLAND, in S. 5 of the Act of 1889, c 72, means Scotland in the application of the Act to Scotland (S 17) 'England' and the sovereignty of the English King or Queen, stop at Low-Water Mark" [(per *Coleridge C J*, *Harris* v *The Franconia*, 46 L J C P 363)] except in cases in which the jurisdiction has been extended by Act of Parliament (*Stroude*)

Englander. (*or Little Englander*). One opposed to imperial policy

Englishman (*or English woman*) one who is English by birth descent, or naturalization.

English marriage. A marriage solemnised in England

"English mortgage" defined, Act 4, 1882, S 58 (*e*)

English ship on the high seas is a part of England (*Marshall* v *Murgatroyd*, 40 L J M C 7)

English tables. Certain tables constructed from the official records of the Registrar-General for England and Wales showing the average duration of life.

Engraving. The act or art of producing upon hard material incised or raised patterns, characters, lines and the like, an engraved plate, a print

"Engravings" include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs (Copyright Act, S 35)

Engross. To make a fair copy To engross is to buy up an article in order to increase prices It also means to write or copy in a bold clear hand, to copy the rude draft of an instrument in a fair, large hand, to write out in a large, fair hand on parchment or paper

Engrosser One who engrosses or writes in a large, fair hand, one who purchases large quantities of any commodity in order to have the control of the market, and to sell them again at a high price.

Engrossing Writing on parchment in a large, fair hand

Enhanced Increased (*as*) enhanced rent, enhanced rate of interest

"Enhancement" defined, Ben Act 6, 1908, S. 3.

Enhancement of rent (in S. 29, Bengal Tenancy Act) Enhancement of rent means, only an increase in the rate of rent which is ordinarily designated "enhancement of rent" and not an increase in the amount of rent by reason of increase of the area. (26 C. 233) The term means the increase of rent in amount without alteration in kind. The conversion of cash rent into rent in kind, if may be regarded as enhancement [*See* 21 I C 351 (552)]

"Enhancement or Reduction of Rent" defined, Act 16, 1887, Ss 27 (4), 28 (4).

Enipadu (*Mal*) See *Koyilment* (*Sund. Iyer's Mal Law*)

Enjoin To command, to require with earnestness to prescribe, to order or direct with urgency, to admonish or instruct or direct with authority

Enjoy. To have the benefit of, to have the advantage of using, take delight in

A person can be said to 'ENJOY' A BENEFIT within the meaning of S 70 of the Contract Act, only by accepting a benefit when he has the option of declining or accepting it (19 M L J 489=6 M L T 162=3 I C 110=33 M 15)

"Enjoys the benefit" in S 70, Contract Act means "accepts and enjoys" the benefit (10 Pat 528=134 I.C 139=1931 Pat 394)

Enjoyment means occupation, use and occupation.

The "enjoyment" of a right for the acquisition of an easement by prescription is not necessarily equivalent to "actual user" [7 C 132=8 C L R 281 *See also* 1 Cal 422 (430)=25 W R 228, *See also* S 15, Easements Act)]

Enlarge To extend, to widen, to increase To "enlarge" a market, imports the idea of increasing "the space in which the market is held" (per *Ld Chelmsford*, *A G* v *Cambridge*, L R 6 H L 310, 22 W R 38)

TO ENLARGE, INCREASE, EXTEND. We speak of *enlarging* a house, a room, premises, or boundaries, of *increasing* an army, or property, capital, expense, etc, of *extending* the boundaries of an empire

Enlist Engage for military service To enlist is to accept or agree to accept a "commission or engagement in the Military or Naval Service" of the Crown

Enlisted Any one whose name is duly entered upon the military rolls, mustered and received into the military service.

Enlisted man Includes a non-commissioned officer, musician, or private in the army or navy

Enlistment The act of making a contract to serve the government in a subordinate capacity, either in the army or navy, a voluntary engagement to serve as a private soldier In common usage, the term may signify either the complete fact of entering into the military service, or the first step taken by the recruit towards that end (15 *Ame Cyc.* 1051.)

Ennam (*Mal*) Counting It is a term used for the expense of reaping, reckoned 10 per cent In some places this proportion is given after the paddy is measured out, in others one out of ten sheaves is given in the field. (*Log Mal. Man.*)

Enormous. Huge, very large "A word, of richer, deeper colour than the word great (*Ame. Cyc*)

Enough.

"ENORMOUS CRIMES" will not generally include the crime of "soliciting the chastity of women" (*Oswald* v *Everard*, 1 Ld Raym 637.)

Enough Not less than the required number, quantity or degree

ENOUGH, SUFFICIENT He has *enough* whose desires are satisfied, he has sufficient whose *wants* are supplied We may therefore frequently have *sufficiency* when we have not *enough*

"Enquiry" defined *See* INQUIRY.

An enquiry under the Cr P Code does not merely mean an enquiry into an offence, its meaning is considerably wider and extends to enquiries into matters which are not offences Proceedings under S. 145 of the Code are enquiries [9 M L T 414=(1911)1 M W N 231=10 I C. 669=12 Cr.L J 190].

'Enquire into or try any charge.' The expression 'Enquire into or try any charge" in S 443 of the Criminal Procedure Code applies to proceedings under S 107 of the Code, as the party against whom such security proceedings are instituted, is in the position of an accused party (1 I.C 737).

Enrol "Enrolment" Enrolment in English law is the registering or entering on the rolls of Chancery, King's Bench, Common Pleas, or Exchequer, or by the Clerk of the Peace in the records of the quarter sessions, of any lawful act (*Black Law Dic*)

"Enrolled" means enrolled or re-enrolled in the Indian Territorial Force under this Act Territorial Force Act (XLVIII of 1920), S 2

TO ENROL, ENLIST, REGISTER, RECORD. *Enrol* and *enlist* respect persons only, *register* respects persons and things, *record* respects things only *Enrol* is generally applied to the act of inserting names in an orderly manner into any book, *enlist* is a species of enrolling applicable only to the military. The *enrolment* is an act of authority, the *enlisting* is the voluntary act of an individual Soldiers are mostly raised by means of enlisting To *enrol* and *register* both imply writing down in a book, but the former is a less formal act than the latter The object of registering differs from that of enrolling, what is *registered* serves for future purposes, and is of permanent utility to society in general, but what is *enrolled* often serves only a particular or temporary end To *register* in its proper sense is to place in writing, to *record* is to make a memorial of any thing, either by writing, printing, engraving, or otherwise *registering* is for some specific and immediate purpose, as to register decrees or other proceedings in a Court, *recording* is for general and oftentimes remote purpose, to *record* events in history.

Enslave To make a slave of

TO ENSLAVE, CAPTIVATE There is as much difference between these terms as between slavery and captivity to *enslave* is always taken in the bad sense, *captive* in a good or bad sense, *enslave* is employed literally or figuratively, *captivate* only figuratively we may be *enslaved* by persons, or by our gross passions, we are *captivated* by the charms or beauty of an object

"Ensuing year." The words "ensuing year" refer to a period of one year commencing from the expiration of a current year and not the remaining part of current year. (100 I.C 573=A.I.R. 1927 Lah. 240.)

Enteritis.

Ensure To secure, make sure.

ENSURE, SECURE That which is *secure* is safe from danger, intact, not liable to be altered or removed That which is *ensured* is free from uncertainty, fixed, not liable to prevention, frustration defeat Things actual and present are *secured*, things future or contingent are *ensured* That which is *secured* to us is ours, and will remain so, that which is *ensured* will become so We *secure* by exercising a power to retain, we *ensure* by controlling means which will confer He who *secures* knows how to preserve, he who *ensures* knows how to acquire. (*Smith Syn. Dis*)

Entailment A word sometimes used in the same sense as devise, settlement of succession of landed estate so that it cannot be bequeathed at pleasure, inalienable inheritance

Entangle. To become entangled or involved in difficulty

ENTANGLE, IMPLICATE, INVOLVE. *Entangle* is so to *involve* as to render extrication a matter of bewildering difficulty It is used both physically and metaphorically *Implicate* and *involve* are used only in the metaphorical sense The difference lies rather in the customary applications of these terms than in any essential unlikeness of meaning We are *entangled* in difficulties or difficult relationships, we are *implicated* in blame, faults, crime, transactions, the term being always employed in an unfavourable sense. We are *involved* in things external which take strong effect upon us, as in doubt, in ruin, in the untoward consequences of conduct or actions (*Smith Syn Dis*)

Enter Primarily, to go in, or to come in "TO ENTER UPON" is to assume possession of property "TO ENTER INTO" is to engage in or bind oneself by (an engagement, contract, treaty, etc)

AS APPLIED TO RECORDS "TO ENTER" is to set down in writing, to register, to inscribe, to enrol, to record as, to enter a name, a date or a statement of fact, to enter a debt in a ledger

IN COURT PRACTICE "TO ENTER" is to place a thing properly before a Court, and usually in writing, to put upon, or among its records, to file or duly deposit.

'ENTER' USED WITH REFERENCE TO BURGLARY AND HOUSEBREAKING, means, the entrance into the house of any part of the offender's body, or of any instrument held in his hand for the purpose of intimidating any person in the house, or of removing any goods. (Steph Cr 248 Arch 601)

TO "ENTER ON A REFERENCE," TO ARBITRATION means, "not merely making an appointment to hear the parties but, actually beginning to hear them" [per *Stirling, J Baring Gould* v *Sharpington Syndicate*, (1898) 2 Ch 633]

"Enters upon his office." [1937 A.L.J 840(F.B.).]

Enteralgia Nervous pain in the bowels, commonly called stomach-ache

Enteric is typhoid, or gastric fever, due to the absorption in the alimentary canal of specific disease germs.

Enteritis. Inflammation of the external coat of the intestines, due generally to catarrh, and indicated by excessive discharge of mucus

Entertainment

Entertainment The act of furnishing accommodation, refreshment, good cheer or diversion, mental enjoyment, instruction or amusement afforded by anything seen or heard, as, a play, etc, the act of providing gratification or diversion, the act of receiving a host, hospitable reception, hospitable provision for the wants of a guest, a formal or elegant meal, etc, a hospitable report, a banquet, a public reception, the receiving and accommodating guests, either with or without reward

ENTERTAINMENT, IN 23 & 24 VICT, C 26, S 6, does not merely apply to public entertainments, like concerts, but also to the general accommodation provided in refreshment rooms [*Muir* v *Keay*, (1875) L R 10 Q B 594, *Howes* v *Inland Revenue*, (1876) 1 Ex D 394]

ENTERTAINMENT OR AMUSEMENT, IN 21 GEO 3, C 49, S 1, does not apply to proceedings of a religious nature [*Baxter* v *Langley*, (1868) I R 4 C P 21]

"**Entertainment of the stage**" may include a performance consisting of songs, glees, recitations, selections from operas, etc (*Juvenile Delinquents Reformation Soc* v *Neusbach*, 16 N Y W Kly Dig 349)

Entiapars semper praeferanda est propter privilegium aetatis A maxim meaning "The part of the eldest sister is always to be preferred on account of the privilege of age"

Entice To allure, to attract, to seduce, to coax A word which may import an initial active, and wrongful effort, (as) enticing away a married woman

ENTICE, ALLURE, DECOY, SEDUCE, TEMPT *Entice* is to draw on or instigate by means of a feeling internal to one's self, as hope or desire *Allure* is to do the same thing by means of something external to one's self, as prospect of gain *Decoy* is to lead on quietly into the snare, as opposed to violent and noisy modes of capture, as "to *decoy* troops into an ambush" To *seduce* is to draw aside from the path of duty integrity, or chastity by false or alluring representations To *tempt* is to bring an influence, commonly no creditable one, to bear upon another to induce him to do something (*Smith Syn Dis*)

Entire Undivided, unmingled, complete in all its parts, whole

Entire estate. When an estate sold for arrears of revenue is admittedly one recorded as a separate number in the Collector's rent roll, with a separate revenue assessed upon it, and the specification in the sale certificate granted to the purchaser shows that the estates sold was an entire estate, the purchase is of an entire estate within the meaning of the Revenue Sales Law Act (XI of 1859) [(2 C W N 299 *See also* 26 M 521=13 M L J 139]

An estate does not cease to be an entire estate within the meaning of the Assam Land and Revenue Regulation, 1886, because a few plots of land are common to it and some other estate, or because they are brahmutter or debutter, or because they are held in some undefined way jumalt with other person. (24 C. 75 1)

A new estate created upon partition by the Collector is an entire estate such as is contemplated by Act XI of 1859, S. 37 (24 C 887.)

Entire services A contract to render a person's "Entire services," precludes the contractor from

Entry

accepting any other employment (*Woodworth* v. *Sugden*, 32 S J 742.)

Entire stock The plaintiff contracted to sell to the defendant "the entire stock at Shalimar Depot or say 700 to 800 tons of the bust Kusunda steam coal" at a certain rate to be delivered at a certain time The plaintiff's entire stock at the Depot was actually 469 tons which were delivered to the defendant The plaintiff sued for the price of the coal delivered to the defendant *Held* that the words "say 700 to 800 tons" were not merely a statement of expectation, that is, a mere collateral estimate of quantity but that they were a warranty, that is words descriptive of the entire stock, and that the plaintiff had not performed his contract in its entirety by delivering 469 tons (37 Cal 334=6 I C 924)

Entirety Denotes the whole, in contradistinction to "moiety" which denotes the half part It means completeness, total sum

Entitle To give a claim, right, or title to, to give a right to demand or receive, to furnish with grounds for claiming "The word may, without any violence to language may be taken to means "entitled in interest" or "entitled in possession," or "entitled to payment" [*Jopp* v *Wood*, (1865), 2 De J & S 329, 46 E R 400, 4 De G J & S 616, 46 E R 1057]. The interpretation is in each case a question of construction, and no definite rule can be laid down

"**Entitled to**" as applied to estates generally embraces every interest of every kind which the party in question has any title to whatever, whether it be an estate or interest in possession, in remainder or reversion, either vested or contingent (*Wilton* v *Colvin*, 3 Drew 617)

"ENTITLED TO" "SEIZED", "POSSESSED OF" The words "seized," or "possessed of", or "entitled to," are generally used to mean the same thing and very frequently occur in Settlements and wills, and other instruments where undefined property is dealt with by general words (*Stroude*)

"**Entitled to act**" defined, Act 1, 1894, S. 3 (*a*), Act 7, 1903, S 2

"**Entitled to share in rateable distribution of assets**" The words "entitled to share in rateable distribution of assets, in R 90 of O XXI, C. P C, refer to decree-holders who are entitled to a rateable distribution under S 73 of the Code The right to receive dividend before the Official Receiver is not contemplated by the rule (35 I C 530=10 S L R 53)

Entozoa Several species of troublesome irritating parasitic worms or low animal organisms, chiefly such as infest the intestines

Entrance A door, a gate, an opening, and, perhaps a passage, entering into or upon (office), right of admission (as, entrance fee) *As a verb* "Entrance" is to throw into a trance, overwhelm (with joy or fear)

"**Entrusted to**". The words "entrusted to" in S. 30 of the Contract Act apply only to the case of winners (12 Bom L R 590=7 I C 665)

Entry AS APPLIED TO A BUILDING, a passage leading into a house or other building or a room, coming or going in,

Entry

The mere putting of a hand into a hole in the wall without putting it through the hole is not an entry into the house (4 Lah 399=77 I.C. 446=23 Cr L J. 398=A I R 1923 Lah. 509)

As applied to writings, that which is written, in words or figures

As applied to books of account Setting down items of account in writing, the act of setting down or causing to be set down transactions in writing, recording or causing to be recorded, in due form, the act of making a record of a fact or transaction (as, ledger entry), the act of setting down the particulars of a sale or other transaction in a merchant's or tradesman's account books Particulars of goods imported or exported, supplied for registration at the Customs Office

As applied to judicial proceedings, recording in due form and order a thing done in Court

As applied to real estate, the act of going on land with the intention of asserting a right in such land, taking possession of lands by the legal owner, act by which an individual acquires an inceptive right to a portion of vacant land or the unappropriated soil of the country

As applied to Warehousing An entry made at the Custom House giving particulars of dutiable goods to be stored on import in a bonded warehouse, such goods are not liable to duty until taken out for consumption

Other Legislative definitions, "entry" means entry by water, land or air [Passport Act (XXXIV of 1920), S 2]

"Entry" includes landing at any port in British India during the period the ship's stay on her way to a destination outside British India. [Act III of 1924 (Immigration into India), S. 2, Cl (*b*)]

Enuka or Yenuka (*Mal*) A certificate given by a hereditary proprietor to the person to whom he has mortgaged or made over occupation of his lands, or a document given to the proprietor by the mortgagee, if he transfers possession

Enumerate To designate, or specifically mention, to count to mention in detail, or reckon up singly, to recount, to relate.

Enumeratio infirmat regulam in casibus non enumeratis A maxim meaning "Enumeration disaffirms the rule in cases not enumerated" [*Black Law Dict*]

Enumeratio unius est exclusio alterius A maxim meaning "Specification of one thing is an exclusion of the other" (*Adam's Gloss*)

En ventre sa mere The law applying to an unborn child has remained unchanged in principle since the days of Coke. A child en ventre sa mere is deemed to be already born for some, but not for all purposes An unborn infant is deemed to be already born and in being, wherever that fiction or benevolent theory is for the child's benefit, not for its detriment [See *Vilhar* v *Gilbey*, (1907) A C. 139, 23 T L R 392, *See also* 1 P L.R 1914.]

Eodem ligamine quoligatum est dissolvitur. A maxim meaning "A bond is released by the same formalities with which it is contracted"

Eodem modo quo oritur, eodem modo dessolvitur A maxim meaning "By the same mode or means by which a thing originates, by the same mode or by means it is dissolved" (*Adam's Gloss.*)

Eodem modo quo quid constituitur, eodem modo destruitur "A maxim meaning "In the same way in which any thing is constituted, in that way it is destroyed" (*Whart Law Lex*)

Eo instante (*Lat*) At that instant (see 1 Bl. Com 249)

Eo intuitu With that view or intent.

Eo nomine Under that name

Ephemeris annua pars legis anglicanae A maxim meaning "An annual diary is a part of the English law, that takes notice of the annual calender" (*Adam's Gloss*)

Epidemic Spreading widely, generally prevailing, affecting great numbers

Epidemic, sporadic, endemic, epizootic These terms are distinguished in their medical application An *Epidemic* disease is one of which the cause acts upon a large number at the same time by reason of its wide diffusion A *Sporadic* disease is a disease peculiar to a nation or a number of people, and is an *epidemic* having its origin in or connected with the local or personal peculiarities of those among whom it prevails An *Epizootic* disease is an epidemic among cattle (*Smith Syn Dis*)

Epidermis The outer or scraf skin, not composed of fibres, but of separate rounded cells

Epigastric region The upper part of the abdomen

Epiglottis A cartilage of the larynx, which protects the glottis, or wind-pipe, when food is being partaken of

Epilepsy A disease of the brain, which may be either idiopathic or symptomatic, spontaneous or accidental, and which occurs in paroxysms, with uncertain intervals between (*Dunglison Med Dict*), nervous disease in which the patient falls to the ground unconscious The criminal responsibility of epileptic is governed by the same principles as that of insane persons

"Epileptic fury" is a term descriptive of the temporary insanity which in some cases follows the paroxysms of epilepsy, varying in different instances from the slightest agitation to most violent mania (*2 Wood Pr Med* 748)

Episcopus alterius mandato quam regis non tenetur obtemperare A maxim meaning "A bishop need not obey any mandate save the king's" (*Whart Law Lex*)

Epoch and Aera Epochs are points fixed by chronologists and Historians, aeras are certain points fixed by a people or nation "The Christian *aera* began at the epoch of the birth of Christ" (*Kocks History of Europe, Wharton*)

Equal As an adjective, being in just proportion, uniform As a verb to make equivalent to, to equalise to recompense fully, to answer in full proportions, cause to be equal in amount or degree What is meant by being equal, must have reference to its effect "If circumstantial evidence satisfies the mind, then it is equal to positive evidence, because it produces the same effect"

Equality.

EQUAL, EVEN, EQUABLE, LIKE, OR ALIKE, UNIFORM All these epithets are opposed to difference *Equal* is said of degree, quantity, number, and dimensions, of an equal age, an equal in years, an equal height, *even* is said of the surface and position of bodies, a board is made even with another board, the floor or the ground is even, *like* is said of accidental qualities in things, as alike in color or in feature, *uniform* is said of things only as to their fitness to correspond, those which are unlike in color, shape, or make, are not uniform, and cannot be made to match as pairs, *equable* is used only in the moral acceptation, in which all the others are likewise employed (*Crabb*)

Equality Likeness in possessing the same rights and privileges, and immunities, and being liable to the same duties A word which conveys the idea of identity in size and form

Equalize To make equal, to cause to correspond or be alike in amount or degree, to secure equality (*Ame Cyc*)

Equally The words "equally" or "equally to be divided", or "equally amongst them," or "to be distributed in joint and equal proportions," occurring in a testamentary gift creates a "Tenancy in common" (*Rigden* v *Vallier*, 3 Atk. 733, *Stroude*.)

Equation of payments A mathematical operation determining the date at which a single payment may be made instead of several payments but at various times

Equinox The precise time when the sun enters one of the equinoctrial points

Equipage Furniture, fitting out, especially the furniture and supplies of a vessel; fitting her for a voyage or warlike purposes equipment for troops or an army. As used in shipping, this term is sometimes applied to the crew of a vessel. (*Falconer Marine Dict.*)

Equipment. The act of equipping or fitting, or the state of being equipped, to supply with whatever is necessary to efficient action in the way; to provide troops with arms stores, munitions, etc., for an expedition As applied to transportation, the necessary adjuncts of a railway travel. "Equipment," in the English Army Act, 1881, "includes any article issued to Soldier for his use, or entrusted to his care, for Military purposes" (S 4, 56 & 57 Vict, c. 4.)

'Equipping" defined, 33-1 Vict., c 90, S 30

Equitable Marked by a due consideration for what is fair, unbiassed or impartial, according to natural justice, untrammelled by technical niceties of the law

Equitable assets The assets which a creditor could, under the old practice, reach only through a Court of equity.

Equitable assignment Assignment giving to the assignee a right enforceable only in equity An *equitable assignment* (of debt) does not always take the form of a regular assignment. It may be couched in the language of command It may be a courteous request It may assume the form of mere permission The language is immaterial if the meaning is plain All that is necessary is that the debtor,should be given to understand that the debt has been made over by the creditor to some third person. If the

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debtor ignores such a notice he does so at his peril. If the assignment be for valuable consideration, and communicated to the third person it cannot be revoked by the creditor or safely disregarded by the debtor" [*Lord Macnaghten* in *William Brandt's Sons & Co.* v *Dunlop Rubber Company*, (1905) A C. at p. 462] Not only what may be termed equitable choses in action, but also any property, or even a mere naked possibility, may be the subject of an equitable assignment (see Vol II, p 557) For example, debts to become due to a person [*Tailby* v *Official Receiver*, (1888) 13 App. Cas 523], share in a copyright venture [*Lucas* v. *Moncrieff*, (1905)21 T L. R 683], bank deposit [Re *Griffin*, (1899)1 Ch 408], shares in a joint-stock company (*Peat* v. *Clayton*, (1906) 1 Ch 659] *See also* White and Tudor's L.C, Fisher on Mortgages, Coote on Mortgages, Story's Equity, Ch 27 and Leake on Contracts

Equitable charge Any agreement in writing and properly signed, however informal, by which any property, real or personal, is to be security for a sum of money, is a charge, and amounts to an equitable mortgage (Coote on Mortgages *See* T P Act, Ss 58-59)

Equitable estate An estate acquired by operation of equity, or cognizable in a Court of equity

Equitable estoppel (*See* estoppel) The doctrine of part performance is clearly one of equitable estoppel and a party who is not privy to the transaction on which the estoppel rests can take no advantage of it (4 O W.N 913=A I R. 1927 Oudh 482.)

Equitable Execution A term applied to the appointment of a receiver in aid of execution of a decree The appointment of a Receiver at the instance of a judgment-creditor is "equitable execution." (26 C 772=4 C W N. 27) *Equitable execution*, is not like legal execution, it is equitable relief which the Court gives, because execution at law cannot be had It is not execution but a substitute for execution (In re *Shepherd*, 43 Ch. D 131, 137)

Equitable interest An interest which, although lacking in the characteristics of a legal estate, may be enforced in aCourt in the exercise of its equitable jurisdiction This term is also applied to the collateral obligations of trust which were not known at law as interests in land

"EQUITABLE INTFREST IN LAND" is such an interest only as might furnish a ground for equitable relief against the trustee to enforce execution of the trust, or an "equitable chose in action" (*McIlvaine* v. *Smith*, 97 Am. L Dec 295.)

"EQUITABLE INTEREST IN PROPFRTY," IN THE STAMP ACT, 1891 (54 & 55 Vict c 39, S. 59)., See *Muller & Co's Margarine, Ltd.* v *Inland Revenue Commissioners*, (1900) 1 Q B 310

EQUITABLE JETTISON In admiralty practice, this term is applied in the adjustment of losses, where there is an ejection of cargo in case of a common peril threatening the destruction of a vessel and cargo

EQUITABLE LEVY The filing of a creditor's bill and the service of process which creates a lien, in equity, upon the effects of the judgment-debtor.

EQUITABLE MORTGAGE. A charge or lien on real estate, by deposit of title deeds, which does not as in

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an ordinary mortgage constitute a transfer of the legal estate, but which is recognised as security for payment of money. (*See* T P Act.)

EQUITABLE PLEA OR DEFENCE. A defence to a legal action in cases where an injunction would be granted in equity, resting on equitable grounds or doctrines (*Stemson*)

EQUITABLE TITLE. The right in the person to whom it belongs, to have the legal title transferred to him

EQUITABLE WASTE. Extreme or excessive waste, or injury to the inheritance, forbidden even to a tenant without impeachment of waste, wilful destruction, which could only be remedied by Courts of equity (*See* Waste)

Equitably Fairly, justly, impartially, in an equitable manner (as), the laws should be *equitably* administered

Equity, is defined to be a correction, or qualification of the law, generally made in that part wherein it faileth, or is too severe In other words "the correction of that wherein the law, by reason of its universality, is deficient" (1 Comm 62, *Tomlin's Law Dic*)

The word "equity" is used by lawyers and legal writers in various senses [*See* Austin's Jurisprudence, Ch XXXIII, Story's Equity Jurisprudence, Ch 1, Co. Litt 24 (b.)] Of these by far the most important is its meaning as the name of what Austin proposed to call "Chancery Law," and what can only be defined as that portion of remedial justice which was formerly exclusively administered by a Court of equity as contradistinguished from that portion which was formerly exclusively administered by a Court of Common law (*Story*, S. 25), that portion of remedial justice administered in England by the High Court of Chancery by virtue of its extraordinary jurisdiction as extended, limited, and modified by statute, and adapted to English conditions by judicial construction. The lay notion of equity is that its purpose is to administer natural justice in the particular case without regard to fixed or general rules, and indeed to set aside rules of law when essential to do so to the ends of natural justice Such was undoubtedly the principle guiding the early chancellors Such a state of affairs inevitably led to the condition depicted by the well-known statement of Selden that "Equity is a roguish thing For law we have a measure, and know what we trust to, equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. It is all one as if they should make his foot the standard for the measure we call the Chancellor's foot. The modern theory follows that of Lord Eldon. "The doctrines of this Court ought to be as well settled, and made as uniform almost as those of the common law, laying down fixed principles, but taking care that they are not to be applied according to the circumstances of each case." (*Gee* v. *Pritchard*, 2 Swanst. 402, 414 19 Rev. Rep 87, 36 Eng. Reprint 670) *See* the following writers on equity.—Story, Spence, J W Smith; For the history of the equitable jurisdiction of the Court of Chancery, see Spence, Campbell's Lives of the Lord Chancellors; Select Cases in Chancery (Selden Society) articles in the Law Quarterly Review, I. pp. 162, 443, and Kerley's Historical Sketch of the Equitable Jurisdiction of the Court of Chancery)

Equity Jurisprudence.

EQUITY, JUSTICE *Justice* and *Equity* are intrinsically the same, but, in the technical sense, *equity* is the moral redressing of what is legal, where, owing to the imperfection of human laws, what is *legal* is not exactly just A Court of *equity* is also sometimes styled a Court of *justice* The following remarks may serve to illustrate the difference generally between the two *Justice* is chiefly concerned with personal rights, and rights of property between man and man. *Equity* is concerned chiefly with men himself. Our life, faculties, work, the fruits of our work, our fortune, reputation, honour, are exclusively our own. *Justice* forbids violence to be done against these, and compensates for it if done Our wants, miseries, errors, faults, wrongs, are not ours exclusively, they come of the weakness of humanity. *Equity* compassionates these things, and binds one to do good to another, if it be in his power. *Justice* in a manner isolates us one from another, and guards against the occasion which may make us enemies *Equity* unites us, regarding us as members of the same body Wrong not another, and recompense whom you have wronged, is the language of *justice*. Do to that other as you would be done, by, is the language of *equity* *Justice* ensures to individuals all that law accords to them, and so implies communities living under positive rule *Equity* is based upon natural law, and is an expression of human sentiment, rather than political enactment. *Justice* is the inflexible guardian of the public safety, and being inflexible regards nothing but the fact, whereas *equity* will consider motives and intentions, and modify its decisions accordingly I have received injury, *justice* grants me redress, but if the offence have been in any degree by error, or if the penalty which I have the right to enforce should involve the ruin of the other, *equity* suggests the question, "ought I to pursue the case?" All that the law declares is *just*. It belongs to *equity* to temper the rigour of its decrees.

"From this method of interpreting laws by the reason of them, arises what we call *equity*, which is thus defined by Grotius.—"The correction of that wherein the law, by reason of its universality, is deficient."—Blackstone. (*Smith. Syn. Dis.*)

Equity and law. "Equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigour, hardness and edge of the law, and is a universal truth It does also assist the law, where it is defective and weak in the constitution (which is the life of the law), and defends the law from crafty evasions, delusions and mere subtleties, invented and contrived to evade and elude the common law, whereby such as have undoubted right are made remediless. And thus is the office of equity to protect and support the common law from shifts and contrivances against the justice of the law. Equity, therefore, does not destroy the law, nor create it, but assists it." *Sir John Trevor, M.R., Dudley* v. *Dudley, Preced*, in Ch 241, 244, 1 Wooddeson, Lect. 7, 192, 1 Story Eq. Jur. 13.

"**Equity jurisprudence,** that portion of remedial justice which is exclusively administered by a Court of equity as contradistinguished from that portion

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of remedial justice which is exclusively administered by a Court of Common-law" (1 Story Eq Jur)

MAXIMS OF EQUITY Pervading the administration of equity in all its branches there appears a recognition of certain broad principles, so generally accepted and of such fundamental character, that they have become known as maxims "They are not the practical and final doctrines or rules which determine the equitable rights and duties of individual persons, and which are constantly cited by the courts in their decisions of judicial controversies. They are rather the fruitful germs from which these doctrines and rules have grown by a process of natural evolution" Having not anywhere been authoritatively declared as a code of rules, they have not been expressed in precisely the same form by different writers, and the treatises are not even in accord as to what precepts should be dignified as maxims Most of these maxims of equity have received general acceptance

"EQUITY will not suffer a wrong to be without a remedy" This is a fundamental maxim of equity and includes the whole theory of equity jurisdiction, it affords relief wherever a right exists and no adequate remedy at law is available All that has heretofore been said as to the jurisdiction of equity is therefore pertinent to this maxim, including the limitations upon the powers of equity as well as the scope of those powers In accordance with this maxim, where a statute creates a new right which cannot be adequately enforced at law, equity will contrive new remedies and orders to enforce it (As to this and other Maxims of Equity see *Story Eq Jur.*)

Equity of a Statute The sound interpretation of a statute, taking into consideration its reason and spirit This expression is used in two senses — (1) In *Knight* v *Parnby*, (1706), 2 Salk 670, it is used as meaning the principle or ground of a rule of law or equity adopted by analogy to a statute (2) It is also used in some early cases as an equivalent for the 'equitable construction" of a statute [*Russel* v *Prat* (1589), 1 Leon, 193, 74 E R 178 *See* Dwarris on Statutes, Maxwell on Statutes, 4th ed, 381-393, Wilberforce on Statutes, Hardcastle on Statutes (*Ency of the Laws of England "Within the Equity*" of a statute means the same thing as 'within the mischief' of a statute" (*per* Byles, J, *Shuttleworth* v *Fleming*, 19 C B N S 703)

Equity of Redemption, on mortgages The estate or right of a mortgagor in mortgaged land If where money is due on a mortgage, the mortgagee is desirous to bar the equity of redemption, he may oblige the mortgagor either to pay the money, or to be foreclosed of his equity, which is done by proper proceedings in Court (*Tomlin's Law Dic*) It is the right, of a mortgagor to redeem after the time limited by law has passed, by paying the debt with interest

Equity to a settlement or wife's equity The right which a wife has in equity to have a portion of her equitable estate (usually one-half) settled upon herself and children (*Stimson*)

Equivalent Equal in worth or value.

EQUIVALENT, EQUAL *Equal* expresses the fact that two things agree in anything which is capable of degree, *e.g.*, in quantity, quality, value, bulk,

Eri

number, proportion, rate, rank, and the like. Equivalent is equal in such properties as affect ourselves or the use which we make of things, such as value, force, power, effect, impact, and the like (as) "Equivalent of money" (*Smith Syn. Dis*)

Er or Yer (*Tam*) A plough

Eradi (*Mal*) A cow-herd A sub-division of the Nayar caste which formerly ruled in what is now the Ernad Taluk (*Moor Mal Law*)

Eradicate To destroy to the roots, to root out

TO ERADICATE, EXTIRPATE, EXTERMINATE. To eradicate is to get out by the root. Extirpate is to get out the stock, to destroy it thoroughly In the natural sense we may eradicate noxious weeds whenever we pull them from the ground, but we can never extirpate all noxious weeds *Exterminate* signifies to expel beyond the boundary (of life), that is out of existence It is used only in regard to such things as have life, and designates a violent and immediate action, extirpate on the other hand, may designate a progressive action, the former may be said of individuals, but the latter is employed in the collective sense only Plague, pestilence, famine, extirpate the sword exterminates

Erasure A scraping, scratching, or rubbing out, removal of a word or part of a word from a writing by any means, obliteration

Erect To erect is to build, to construct, to raise and set up in an upright or perpendicular position, to set up, raise up, to set up or found or establish or institute (9 Bom.L R 932=6 Cr L J 236)

The phrase "erect in a Street," refers to a building upon the surface, and not under-ground (*per* Smith, L.J, *Baird* v *Tunbridge Wells*, 64 L J Q B 154)

'Erect a Building" defined, Bom Act 3,1888, S 337 (2) (35 Bom 236=8 I C 1050)

"Erect any Building" defined Act 18,1889, S. 52, Expln Reg 5, 1886, S 85, Expln

"Erect or re-erect", [*See* 1900 A W N 1905, 252 =2 A L J 676]

"Erect or re-erect any building" defined Act 17,1884 S. 75 (4) (am Act 21,1891, S 4) Act 20,1891 S 94

The expression "erect or re-erect any building" includes—(*a*) any material alteration or enlargement of any building, (*b*) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation, (*c*) such alternations in a building as materially affect its drainage or security, and (*d*) the addition of any rooms, buildings, out-houses or other structures to any building U P Act 1 of 1900 (Municipalities), S 3, Cl 9

"Erect or re-erect any house, not being a hut" defined Ben Act 3,1884, S. 240 (ins Ben. Act 4 1894 S 68)

Erection "Erection", is a wider term than "Building", and may include Trade Fixtures (*Bidder* v *Trinidad Petroleum Co.*, 17 W R 153)

Eri. (*Tam.*) A large reservoir or piece of water, partly artificial, constructed for purposes of irrigation.

Eri-merai. (*Tam.*) A portion of the crops set apart to meet the expense of keeping the reservoir and water-courses in repair

Eri-pachal (*Tam*) Watered by channels conducted from a reservoir or tank

Erosion. A gradual eating away of the soil by the operation of the currents or tides

Erpadu (*Tam*) A decision, a settlement.

Errappuvaram (*Tam*) Share of the charge or tax for watering the lands by lifting water from a well or tank

Erroneous Deviating from the law, inequitable, incorrect, unlawful.

Error "A mistake in judgment or deviation from the truth in matters of fact, and from the law in matters of judgment, mis-statement or misdescription erroneously and not wilfully introduced, unintentional misdescription, excess" (*Ame Cyc*) "'Error', is a fault in a judgment, or in the process or proceeding to judgment or in the execution upon the same, in a Court of Record, which in the Civil Law is called a Nullitie" (*Termes de la Ley*)

ERROR, FAULT *Error* respects the act, *fault* respects the agent, an *error* may lay in the judgment, or in the conduct, but a *fault* lies in the will or intention.

ERROR, MISTAKE, BLUNDER, HALLUCINATION An *error* is any deviation from the standard or course of right, truth, justice, or accuracy, which is not intentional A *mistake* is an error committed under a misapprehension or misconception of the nature of a case An *error* may be from the absence of knowledge, a *mistake* is from insufficient or false observation *Blunder* is a practical *error* of a peculiarly gross or awkward kind, committed through glaring ignorance, heedlessness, or awkwardness "An *error* may be overlooked or atoned for, a *mistake* may be rectified, but the shame or ridicule which is occasioned by a *blunder*, who can counteract" Strictly speaking, *Hallucination* is an illusion of the perception, a phantasm of the imagination The one comes of disordered vision, the other of disordered imagination It is extended in medical science to matters of sensation, whether there is no corresponding cause to produce it In its ordinary use it denotes an unaccountable *error* in judgment or fact, especially in one remarkable otherwise for accurate information and right decision It is an exceptional *error* or *mistake* in those otherwise not likely to be deceived (*Smith Syn Dis*)

"Error apparent on the face of record" *See* C P. Code, O. 47 and notes in M L.J. Edition of C. P. Code.

"Error defect or irregularity.' In S 105, C P Code, mean error, defect or irregularity affecting the decision of the case on the merits (35 I C 209)

Errores ad sua principia referre, est refellere A maxim meaning "To refer *errors* to their principles, is to refute them" (*Wharton L Lex*)

Errores scribentis nocere non debet A maxim meaning "The mistakes of the writer ought not to harm"

Error fucatus nuda veritate in multis est probabilior, et saepenumero rationibus vincit veri-

tatem error. A maxim meaning "Varnished error is in many things more probable than naked truth, and frequently error conquers truth by reasoning." (*Wharton L Lex*)

Error numinis nunquam nocet, si de identitate rei constat A maxim meaning "An error in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, *i e*, where the intention is clearly known." (*Adam's Gloss*)

Error of fact. That *error* which proceeds either from ignorance of that which clearly exists, or from a mistaken belief in the existence of that which has none (*Ame Cyc*)

Error of law The term includes the ignorance of legal consequences of the known existence or non-existence of facts. (*Ame Eyc.*)

Error placitandi aequitatem non tollit A maxim meaning "A clerical error does not take away equity"

Error qui non resistitur, approbatur A maxim meaning "An error which is not resisted is approved" (*Adam's Gloss.*)

Errors and Omissions Excepted (E E or E and O. E.) These words when written at the foot of invoices or accounts indicate that they are open to correction if any mistakes should be discovered

Erubescit lex filios castigare parentes A maxim meaning "The law blushes when children correct their parents" (*Wharton L. Lex.*)

Erugeru (*Tel.*) Gross produce.

Erupalu (*Kan.*) The farmer's portion of the produce

Eruvaka. (*Tel.*) The commencement of cultivation

Escape "'Escape', is where one that is arrested cometh to his liberty before that he be delivered by award of any justice or by Order of Law" (*Termes de la Ley*) "It is a violent or privy evasion out of some lawful restraint, as where a man is arrested or imprisoned, and gets away before he is delivered by due course of law" (*Tomlin's Law Dic*) Escape has been defined as the loss, before discharge by due process of law, of the lawful custody of a prisoner, whether voluntarily or negligently suffered. *See* Hawk P.C, bk II, cc 19, 20, Burn, Justice tit "Escape", Russ on Crimes, Arch, Cr. Pl, Stephen, Dig Crim Law, Com Dig., tit. "Escape," Vin Abr., tit "Escape."

ESCAPE, ELUDE, EVADE. *Escape* involves the idea of successful effort to avoid danger, or the power, coercion, or even observation of another. To *Elude* is to escape by artifice, vigilance, or dexterity, and implies some person or force at work, from which we escape, as to *elude* an officer, detection, an argument, a blow, inquiry, search, comprehension, analysis To *Evade* is to go out of the way or reach of a thing or person It is commonly done by dexterity, ingenuity, or subterfuge. (*Smith Syn Dis.*) We *escape* from danger or prison, we *elude* search · our *escapes* are often providential, and often narrow, our success in *eluding* depends on our skill there are many bad men who *escape* punishment by the mistake of a word; there are many who *escape* detection by the art with which they elude observation and inquiry.

Escape

Elude and evade both imply the practice of art on trying occasions, but the former consists mostly of actions, the latter of words as well as actions a thief *eludes* those who are in pursuit of him by dexterous modes of concealment, he *evades* the interrogatories of the Judge by equivocating replies One is said to *elude* a punishment, and to *evade* a law (*Crabb.*)

ESCAPE, RESCUE, PRISON BREAKING, FLIGHT FROM JUSTICE The term "*Escape*" is usually confined to cases where the prisoner gets away without the use of force, or the custodian voluntarily or negligently lets the prisoner out of his custody Where the prisoner is by force or fraud relieved by others against the will of the custodian, it is termed *Rescue*, where the prisoner used force to obtain his liberty it is termed *Prison Breaking* Escape in law is quite distinct from *flight from justice* before arrest or pursuit

'VOLUNTARY ESCAPE" is when any person having a felon lawfully in his custody voluntarily permits him to escape from it or go at large " (1 Hale P C 590)

"ESCAPE ASSESSMENT" (*Income-Tax Act*, § 34,) Per *Rankin, C J*—It may be that income cannot be said to have escaped assessment except in the case where an assessment has been made which does not include the income At all events, income has not escaped assessment if there are pending at the time proceedings for the assessment of the assessee's income which have not yet terminated in a final assessment thereof [58 Cal. 909=133 I C 187=35 C.W N 310=A I.R 1931 Cal 545 (S B)]

The words "for any reason" placed before the expression "escaped assessment" clearly indicate that the Legislature intended to include all those cases which either resulted from mere inadvertence or from conscious misapprehension of the proper situation There is no justification for confining the meaning of the word "escape" to those cases only which have not come to the notice of the Income-tax Officer at all and excluding those cases where he has applied his mind, but on account of an error of judgment has set any part of the income free from assessment. The idea conveyed by the words "for any reason" is so wide as to make it impossible not to include any case of non-assessment to whichever cause it may be due (158 I C 349=A I R 1935 Lah 361)

"ESCAPE ASSESSMENT" AND "ESCAPE FROM ASSESSMENT" The expression "escape assessment" is not the same thing as "escape from" assessment *Obiter*. So where there was an assessment of the income of a company at the proper time, but that assessment was subsequently set aside by the High Court as not having been made properly, it would scarcely be right to say that the income escaped assessment in respect of that income at a later period [61 Cal 132=150 I.C 404=38 C.W N 204=A I R. 1934 Cal 515]

Escheat The casual descent, in the nature of forfeiture, of lands and tenements within his manor to a lord either on failure of issue of the tenant dying seised, or on account of the felony of such tenant (*Tomlin's Law Dic.*) Blackstone defines it "an obstruction of the course of descend, and a consequent determination of the tenure, by some unforeseen contingency, in which case the land naturally results back by a kind of reversion, to the original grantor. or lord of the fee," (2 Comm. Cap. 15 *Tomlin's Law Dic.*) "Escheat is Word of Art, and signifieth properly when, by accident, the lands fall to the lord of whom they are holden, in which case we say the fee is escheated" (Co Litt 13 *a*)

ESCHEAT The term now signifies a falling of a deceased's estate into the general property of the state upon his death intestate and without lawful heirs, and is applied indifferently to all rights of property of whatever nature The property itself which reverts to the state is also termed an *escheat.*

ESCHEAT IS DISTINGUISHED FROM FORFEITURE in that "the former was always to the lord of the fee as a consequence of the feudal connection, while the latter was always to the crown and inflicted upon a principle of public policy" (4 Kent Com 426)

ESCHEAT IS ALSO DISTINGUISHED FROM A REVERSION in that "land escheated to the lord when tenant died without heirs, while on the other hand, on the death of the tenant for life, or the death without issue of a tenant in tail, the land reverted to the donor who had created the tenant's estate" (*2 Pollock & M Hist Eng L. 22, 23*)

Escrow "An escrow is a written instrument, which by its terms imports a legal obligation, deposited by the grantor, promisor, or obligor, or his agent with a stranger or third person, that is, a person not a party to the instrument, such as the grantee, promisee, or obligee, to be kept by the depositary until the performance of a condition or the happening of a certain event and then to be delivered over to take effect"

"The word 'escrow' properly signifies writing, when an instrument is delivered to a person who is a stranger to it, to be by him delivered to the other party or parties to it upon the performance of some condition, it is styled an escrow, that is to say, a mere writing as distinguished from a deed Where, however, the condition has been performed, the instrument takes effect from the time of its execution. An example of an escrow is the execution and delivery of a purchase deed of real estate by a vendor to his solicitor, to be delivered to the purchaser on the payment of the purchase money" (*Ency of the Laws of England.*)

Esquire An Esquire was originally one who was attending a knight in the time of war Hotoman saith, that those whom the French call Esquires were a military kind of vassals, having *viz.* liberty to bear a shield, and in it the ensigns of their family, in token of their gentility or dignity, but this addition hath not now for a long time had any relation to the office or employment of the person to whom it hath been attributed, as to carrying of arms, etc, but has been merely a title of dignity and next in degree to a knight. (*Tomlin's Law Dic.*, Cowel, Jacob.; 1 Blac. Com. 406) According to Sir Edward Coke (2 Inst. 668) every one is entitled to be termed esquire who has the legal right to call himself a gentleman.

Esquire is neither a profession nor occupation. [Martin B., *Perrins* v. *Marine & C. Society*, (1860) 8 W.R 563]

Considering the laxity with which the title of Esquire has been used, as is the subject of remark by Sir Thomas Smith, in his days, as to the title of gentleman... the Court cannot take upon itself in this case to define, whether it has been improperly assumed. [Sir William Scott, *Ewing* v. *Wheatley*(1814)

Esquire.

Esquires and Gentlemen.

2 Hagg. Con. Rep. 183] "Till a recent period, this term was affixed to the names of men of birth and professional persons only. Men of inferior importance had "Mr" prefixed to their names, and thus a distinction between the two classes was kept up Now it is quite customary to add "Esq" to the names of the better class of tradesmen when they are addressed as private persons". [*See* Dict of Legal Quotations, p. 86, note.]

Esquires and Gentlemen are confounded together by Sir Edward Coke, 2 Inst. 668 He there observes that every Esquire, is a Gentlemen, and a gentleman is defined to be one who bears coat armour, the grant of which adds gentility to a man's family. It is indeed a matter somewhat unsettled what constitutes the distinction, or who is a real Esquire for it is not an estate, however large, that confers this rank upon its owner." (*Tomlin's Law Dic*)

Essence. "Time of the essence of the contract" means, that the time agreed for the performance of a stipulation must be strictly observed by the parties.

Establish The words "*to establish*" in Art. 131 of the Limitation Act (IX of 1908) do not extend, and cannot be extended, to cases in which the plaintiff seeks to recover specific sums of money due to him in respect of recurring right. [14 I. C. 505= 9 A.L J. 297=34 A 246 *See also* 1914 M W N 228= 23 I C. 806]

"Established par value" defined, Act 13, 1876, S. 10 (compare Act 14, 1882, S. 610)

Established usage. The words "established usage" in Bengal Tenancy Act refer not to a practice previously prevailing between the landlord and his tenant, but to the established usage of the pergannah in which the property is situate [15 Cal 714. *See also* 21 Cal. 132 (134), 1 C.W N. 687 (689)]

"Estate" defined (*N B* This word is used in combination with other words as in the following terms.—Istimrari estate; Joint individual estate, Parent estate; Permanently-settled estate; Private estate, Proprietary estate, Separate estate; Temporarily-settled estate, Personal estate, Real estate) Act 1, 1869, S 2, Act 7, 1870, S 7, *Expln*, Act 8, 1885, S 3 (1); Act 16, 1887, S 4 (9), Act 17, 1887, S. 3 (1), Act 6, 1901, S. 2, Ben Act 7, 1868, S 1, Ben Act 4, 1870, S. 1, Ben Act 16, 1873, S 3, Ben Act 5, 1875, S. 2; Ben Act 7, 1876, S 3 (2), Ben. Act 8, 1876, S. 4 (*viii*), Ben Act 9, 1879, S 3, Ben. Act 6, 1880, S 3; Ben. Act 9, 1880, Ss 4, 40-A Ben. Act 2, 1882, S. 3, E.B. & A. Act 1, 1907, S. 2; Ben. Act 8, 1895, S 2 (*b*), Ben. Act 3, 1904, S 2 (1) (*a*), Ben Act 6, 1908, S 3 (*x*); Bom Act 5, 1879, S. 3(5), Mad. Act 2, 1894, S. 4 Mad. Act 3, 1896, S. 2, Mad. Act 4, 1897, S 3 (1), Mad. Act I, 1903, S 3 (1) (*b*), Mad. Act 1, 1908, S. 3 (2); U. P. Act 2, 1906, S. 2 (3), Reg 1, 1886, S. 3 (*b*); Reg 6, 1893, S. 2 (4); Reg 1, 1899, S. 3 (4); Pun. Act 4, 1902, S 2. *See also* 10 C W.N. 241; 10 Cal. 435, 9 I C. 83 (88), 21 I.C. 953

Estates. "An estate in land is the degree, quantity, nature or extent of the interest which a person has in it. While in its primary and technical sense the term "estate" refers only to an interest in land, yet by common usage it has acquired a much wider import and application, being applied to personal property as well as realty, and in its most extreme sense signifying everything of which riches or fortunes may consist. In many cases therefore its precise meaning can only be ascrtained from the context, or the circumstances under which it is used. As applied to land it does not necessarily import a free hold, but merely the quantity of interest a person has from absolute ownership to naked possession, and is applied to rights in land, both in possession and expectancy and to future estates either vested or contingent" (*Ame Cyc*) Choses in action are included under the word "*estate*". 'Estate' imports the most absolute property that a man can have" in the thing of which it is spoken (*Jacob*)

"ESTATE" (*in Revenue Law*) means any area—(*a*) for which a separate record-of-rights has been made, or (*b*) which has been separately assessed to land-revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed, or (*c*) which the Local Government may, by general rule or special order, declare to be an estate Pun. Act XVII of 1887 (Land-Revenue) S. 3, cl. (1).]

"ESTATE" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same: Bom. Act V of 1879 (Land Revenue Code), S. 3, cl. (5)]

"ESTATE" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue. [Ben. Act V of 1897 (Estates Partition), S 3, cl. (9).]

" 'STATE' OR 'ESTATE' signifieth such inheritance as any man hath in lands or tenements, etc. And by the grant of his estate, etc, as much as he can grant shall pass" (Co. Litt. 345a).

Estate pur autre vie An estate *pur autre vie* is very unusual, and scarcely known in India. (3 Suth. 159=24 W. R. 176)

ESTATE, REAL AND PERSONAL. "The word 'Estate' doth comprehend all that a man hath property or ownership in, and is divided into Real and Personal" (*Anon, Skinner*, 194, *Stroude*).

ESTATE AND EFFECTS. "The term 'Estate and Effects' are, at least as strong as 'personal Estate'" (per *Denman, C J.* in *Sayen Dufaur*, 17 L. J. Q. B 50; *Stroude*). Goodwill is included in "other Estate and Effects" of a Partnership (*Stuart* v *Gladstone*, 47 L. J Ch. 423)

ESTATE, TESTATE AND INTESTATE. The estate of deceased persons fall into two classes first testate, which includes those estates as to the settlement of which the deceased has left directions embodied in a will, in which case the deceased is termed the testator; and second intestate, which includes the estates of persons who have left no wills. The term "intestate" is also used to designate a person who has died without leaving a valid will. There may, however, also be cases of partial intestacy, which the deceased has left a will containing directions as to the position of a portion of his property, but such instrument leaves a portion undisposed of. In the collection and preservation of effects, and the payment of debts, charges, and allowances, there is little or no difference between the two classes, the essential difference being that testate estates are distributed, after the payment of debts, and the like, according to the directions of the testator, while intestate estates are distributed according to the rules established by the various rules or statutes regulating succession and inheritance. (*Ame. Cyc.*).

Estate duty.

ESTATES, ADMINISTRATOR OF. "Administration" of estates means the management of the estate of a decedent and expresses the jurisdiction assumed by the proper Court over it. It includes more than the mere collection of the assets, the payment of debts and legacies, and distribution to the next of kin It involves all that may be done rightfully in the preservation of the assets, and all which may be done legally by the administrator in his dealings with creditors, distributees, or legatees, or which may be done by them in securing their rights, and it includes all which may be done, and rightfully done, in relation to adverse claims to assets which have come to the possession of the administrator as the property of the testator or intestate (*Ame Cyc*)

When a person dies leaving property, his estate is usually set apart to be administered or settled under the immediate supervision of the Courts The jurisdiction, powers, and functions connected with such settlement are usually confined to special tribunals, ordinarily styled probate courts, which are usually tribunals with jurisdiction and powers defined or created by statute The main objects of such jurisdiction are that the property of the deceased, together with income and profits, be properly collected, preserved, and duly accounted for, that his just debts and the charges consequent upon his death and the settlement of his estate be paid and adjusted, and that the residue of the estate distributed among such persons and in such proportions, as the will of the deceased, if there be one, or, if not, the statutes or rules of distribution, may have prescribed. Where the deceased left what purports to be a will, the solemn establishment of that will and its public authentication require further attention from such tribunals. (*Ame Cyc*)

Estate duty. Duty payable on the value of property of which any person may die possessed

Estate and house agent A commission agent whose duty is to introduce purchasers, mortgagees, investors, and tenants and to negotiate for the sale, mortgage, letting, etc, of estates, lands, houses, shops, and other properties on commission

The words "ESTATE AND PROPERTY AND CREDITS" of a deceased person in the Probate and Administration Act apply only to property in which a deceased person had ownership, so as to connote by it a portion of his estate although he held it in trust and do not apply to property of a muth which was in the charge of a deceased Mohunt of which he was neither owner nor trustee [16 C.W.N 798=16 I C 453 (455)].

Estate of Inheritance Is one that is subject to the owner's powers of alienation capable of devolving after the death of the owner, commonly called the ancestor, upon his heirs

Est boni judicis ampliare jurisdictionem A maxim meaning "It is the part of a good Judge to extend the jurisdiction" (*Adam's Gloss*)

Est boni judicis ampliare justiciam, non-jurisdictionem A maxim meaning "It is the duty of a good Judge to amplify, extend justice, not jurisdiction or authority" (*Adam's Gloss*).

Estimate. *As a noun,* a valuing or rating by the mind, without actually measuring, weighing, or the like; rough or approximate calculation; an approximate judgment or opinion as a rough or an accurate calculation, or measuremant A statement generally in writing specifying the amount of money for which a contracting party will perform certain work, or supply certain goods (as) building estimate An offer is not less binding for being in the form of an estimate, and headed "estimate". (*Croshaw* v. *Pritchard*, 16 Times Rep 45) *As a verb,* to judge and form an opinion of the value, from imperfect data; (to fix the worth of) roughly or in a general way, to form an opinion of, as to amount, number, etc, from imperfact data, comparison or experience, to make an estimate of, to rate, to calculate roughly, to assess. (*Ame Cyc*)

TO ESTIMATE, COMPUTE, RATE. All these terms mark the mental operation by which the sum, amount or value of things is obtained to *estimate* is to obtain the aggregate sum in one's mind, either by an immediate or a progressive act, to *compute* is to obtain the sum by the gradual process of putting together item, to *rate* is to fix the relative value in one's mind by deduction and comparison. a builder *estimates* the expense of building a house on a given plan, a proprietor of houses *computes* the probable diminution in the value of his property in consequence of wear and tear, the taxing officer rates the annual value of lands or houses

"Estimate of value," as applied to fire insurance, or in respect of consignment of goods through rail or ship, means an opinion of the value of the property in question made by the applicant for a policy or the consignor of goods (*Wheaton* v *North British, etc, Ins, Co*, 9 Am St Rep 216)

Estoppel. An estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is affected by it is not permitted to contradict it (*Co Litt* 352a, *2 Smith L C.*, 11th ed. p 744, in the note to the *Duchess of Kingston's Case*), *Estoppel* is an impediment or bar to a right of action arising from a man's own act or where he is forbidden by law to speak against his own deed, for by his act or acceptance he may be estopped to allege or speak the truth. (*Co Litt* 332, *Tomlin's Law Dic.* Indian Evidence Act, Ss 115, 116). In the broad sense of the term "Estoppel" is a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceedings of judicial or legislative officers, or by the act of the party himself, either by conventional writing or by representations, express or implied, in pais

ESTOPPEL is an equitable relief and where it is operated by cheating another of his rightful claims it will not be effective help to him to deprive another of his rights. (1923 M.W.N. 679=A.I.R. 1924 Mad. 177)

OTHER DEFINITIONS OF THE TERM. "A preclusion in law which prevents a man alleging or denying a fact in consequence of his own previous act, allegation, or denial of a contrary tenor." "An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies." "The conclusive ascertainment of a fact by the parties, so it no longer can be controverted between them." "The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own

Estoppel by acquiescence.

part, or on the part of those under whom he claims." "A fictitious statement treated as true." (*General Finance, etc, Co. v. Liberator Permanent, Ben. Bldg. Soc.*, 10 Ch. D. 15). "A restraint, or impediment, imposed, by the policy, of the law, to preclude a party from averring the truth." (*Gibson* v *Gibson*, 8 Am Dec 94) *An estoppel* arises where a man "has done some act which the policy of the law will not permit him to gainsay or deny." (*Greenleaf Ev* c 4.) It is so called "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth." (*Coke. Litt* 352 a See all this collected in 16 *Ame. Cyc.* 179.) *See also* the notes to the *Duchess of Kingston's Case*, in 2 Smith's Leading Cases and to *Burrows* v. *Lock*, in 1 White and Tudor's L C, Ruling cases. The leading work on the topic is Biglow on Estoppel *See also* Everest and Strode on Estoppel. Estoppel is a rule of evidence which in certain circumstances precludes a person from establishing real facts, and compels him to abide by a certain conventional set of facts. (7 Bom.L R. 602)

Estoppel by acquiescence. The acquiescence to deprive a man of his legal rights must amount to fraud [8 L R 155 (Rev)=99 I C. 894=A I R 1927 Oudh 135] Acquiescence implies that a person who is said to have acquiesced did so with knowledge of his rights and the other person acted in the *bona fide* belief that he was acting within his rights. The absence of either of these elements makes the doctrine inapplicable. [99 I C 199=A I.R. 1927 Oudh 89.]

"Estoppel by judgment" A bar which precludes the parties to an action to relitigate, after final judgment, the same cause of action or ground of defence, or any fact determined by the judgment, *res judicata* (*See* 172 I C 949=A I R. 1938 Nag 129)

"Estoppel by laches." A neglect to do something which one should do or to seek to enforce a right at a proper time has been termed, (with questionable propriety), "estoppel by laches." (*Ame Cyc*)

"Estoppel by negligence" is where a man is "estopped by another's misrepresentation, if, in breach of some duty to the person deceived, he has supplied the person making the representation with that which was necessary to make it credible" (16 *Ame. Cyc.* 681)

Estoppel by record. A judgment not only creates a right, it works an estoppel. A judgment creating a charge on immovable property binds not only the parties to the suit but also their privies. The term "privy" is a term of the law meaning a partaker who is not a party, that is, in this connection it includes all who derive title to the land, the subject of the charge from one who was a party to the suit by the decree in which the land was charged. It follows, therefore, that the charge is effective against a *bona fide* purchaser of the land for value without notice by reason of the law of estoppel by record. (10 R N. 264=172 I.C. 949=A.I.R. 1938 Nag. 129.)

"Estoppel by silence." arises where a person who is under a duty to another to speak, "refrains from doing so, and thereby leads the other to believe in the existence of a state of facts in reliance upon which he acts to his prejudice." (*Ibid*)

Estray.

"Estoppel by verdict." Precludes the parties to an action from relitigating a fact which had been determined in a previous action between them.

"Estoppel by warranty" is based on the principle of "giving effect to the manifest intention of the grantor appearing on the deed, as to the lands or estate to be conveyed, and of preventing the grantor from derogating from or destroying his own grant by any subsequent act"

"Estoppel in pais." "Estoppel in pais" includes all forms of estoppel not arising from a record, from a deed, or from a written contract

ESTOPPEL IN PAIS, BY MATTER OF RECORD, BY MATTER IN WRITING It is commonly said that there are three kinds of estoppel, viz, by *matter of record*, by *matter in writing*, and by *matter in pais*. Estoppel by record is founded, either on a judicial or a legislative record Estoppel by matter in writing is based on either a deed or a written contract Estoppel by matter in pais, is founded on misrepresentation, express or implied.

"EQUITABLE ESTOPPEL" "Equitable estoppel" is estoppel in pais, signifying estoppel by misrepresentation. The three terms are commonly used interchangeably. Equitable estoppels are so called not, because their recognition is peculiar to equitable tribunals, but because they arise upon facts which render their application in the protection of rights equitable and just. The doctrine is recognised in the Courts of common law just as much as in Courts of equity, although it was at first administered as a branch of equity jurisprudence

"QUASI-ESTOPPEL." A term applied to certain rules of law which are analogous to, and yet differ from, the principle founding estoppel in pais, certain legal bars which have the same effect as an estoppel and yet are not strictly such. (*Ency. of the Laws of England*)

"TECHNICIAL ESTOPPELS." Those which arise from matter of record or the deed of the party estopped, estoppels arising from a strict on technical construction of rules of law

"TITLE BY ESTOPPEL." Where a person without title, having conveyed with warranty, subsequently acquires the title, it inures to the benefit of the grantee, who is said to acquire the title by estoppel. (*See* T.P Act.)

"TITLE BY ESTOPPEL" OR "RIGHT OF ESTOPREL" is said to arise also where one person makes to another a statement which is afterwards acted upon, since in any action brought afterwards upon faith of that statement by the person to whom it was made, the person making it is not allowed to deny that the facts were what he represented them to be, although in truth they were different. (16 *Ame. Cyc.* 683.)

Estoveria sunt ardendi, arandi, construendi, et claudendi A maxim meaning "Estovers are for burning, ploughing, building, and inclosing."

Estovers. "Estovers' are nutriment or maintenance." (*Termes de la Ley.*), supplies; alimoney of a donorsee, (*in old English law*) a tenant's right to take wood for fuel and repairs.

Estray. Is any valuable animal that is not wild, found within a lordship, and whose owner is not known. (*Tomlin's Law Dic.*) Estray is any beast not wild found within any lordship where it has no

Estreat.

right to be, and not claimed by any man as owner. (*Cowell, Law Dict.*, 1 Black Com 298) It includes swans and cygnets. (4 Co. Inst. 280) But not other birds, and may be treated generally as including all domestic or domesticated beasts of value and presumably owned and not being *ferae naturae* Burn, Justice, 30th ed., "Estray," and Scriven on Copyholds). In I Bl Comm 298, it is said "Any beasts may be estrays that are by nature tame or reclaimable, and in which there is a valuable property, as sheep, oxen, swine and horses, which we in general call cattle Animals upon which the law sets no value, as a dog or cat, and animals wild animals, as a bear or wolf, cannot be considered as estrays.....The reason of which distinction seems to be that cattle and swans being of a reclaimable nature, the property in them is not lost merely by the temporary escape, and they, also, from their intrinsic value, are a sufficient pledge for the expense of the lord of the franchise in keeping them the year and day."

Other definitions of the word have been given as follows. "A beast which, having escaped from its keeper, wanders over the fields, its owner being unknown." (*Spelman Gloss*)

"An animal found in an unusual place or such an animal, or an animal that has roved for some time in a certain place whose owner is unknown" (*E Imbeaux Co.* v. *Severt*, 9 La Ann 124) "An animal that has escaped from its owner and wanders or strays about" is an estray (*Stewart* v *Hunter*, 8 Am. St. Rep. 267.)

Estreat. *As a noun*, an extract or copy from the record, an extract from the records of the Criminal Courts, to serve as the foundation of proceedings against the accused and his bail or surety *As a verb*, it means, to draw out, to extract. To estreat a recognizance, or fine, is to enforce an obligation to the Crown (5 *Encyc* 82, 84, *Stroude*)

Est un maxime en nostre ley "parols pout ple" It is a maxim in our law "Words make the plea" (*Adam's Gloss*)

Et al (*Lat*) "And another" "and others," an abbreviation in common use in writs, pleadings, style of cases and entries on the minutes and dockets of the Court.

Etc or & C is an abbreviation of Et Cetera, and therefore may mean and others, and so forth, and the rest, other things, other things of the same character, or only those things *ejusdem generis* Custom, the intention of the parties, the context, and the manner and place in which the abbreviation is used may govern its meaning, but where it can have one certain meaning, it will be given that meaning, although as sometimes used it is considered as meaningless and without effect, and is often disregarded as surplusage. (*Cyc.*)

Et cetera And so forth, and so on, and the rest, and others, others of the like kind

Where the words, 'etc', follow an enumeration of specific things beginning with "all kinds of trees" having some characteristic, the words should be restricted to things of the same nature as those already mentioned. In such a case the rule of *ejusdem generis* will apply. [A.I.R 1923 Mad 511=44 M.L J. 285=1923 M.W.N. 230=72 I.C. 258]

Eustachian Tube

A bequest of "all household furniture and effects, plate, glass, wearing apparels, etc", would pass the articles enumerated and others *ejusdem generis*, but not the general residue. (*Newman* v. *Newman*, 26 Bea 220)

Et est pactio dourum plerumque in idem placitum consensus. A maxim meaning "The consent of two or more in the same will (Placitum, that which is their pleasure to arrange between them) constitute a placitum or bargain" (*Adam's Gloss.*)

Ethiopian A term used in the classification of races of mankind,

Etmamdar. A kind of lease holder in Chittagong (Bad Pow I, 567)

Et sicut ad quaestionem juris non respondent juratores, sed judices, sic ad quaestionem facit non respondent judices sed juratores. A maxim meaning "For jurors are to try the fact, and the Judges ought to judge according to the law that riseth upon the fact"

Ettukkonnu and Muppara (*Mal*) Meaning one to eight, and three paras, it expresses the nature of the land tax in the Travancore province. On the garden land one in eight (of the pattam or rent) is said to be taken, and on rice-lands three paras (out of ten)

Eum, qui noncentem infamavit, non esse bonum aequum, ob eam rem condemnari; paccata enim noncentium nota esse, et opertere et expedire. A maxim meaning "He who has defamed or accused one who has committed a wicked or criminal act, is not justly or equitably to be condemned on that account, indeed, the marked or notorious sins or transgressions of wicked men ought to be exposed" (*Adam's Gloss.*)

Eunoch In its primary and general signification, a castrated male of the human species. In its secondary meaning, unproductive, barren

Eunomy. Equal laws and a well-adjusted constitution

Euonymin A resinous preparation of considerable service in bilious disorders, usually administered in combination with sagara extract.

"European" defined (*See also* Person of European Extraction Act 24, 1855, S. 15.)

The word "European," as used in, shall be understood to include any person usually designated a European British subject [Penal Servitude Act (XXIV of 1855), S 15 *See also* 16 All. 88]

"European British Subject" defined Act 15, 1903, S 2 (*a*), Act 5, 1898, S 4 (*i*); Act 8, 1890, S. 4 (7).

European Principals. The phrase *"European principals"*, as used in contracts with Karachi firms, is not vague It means all Europeans engaged in business at Karachi, who can ordinarily act independently in such business and are the controlling authority in it.

"European soldier." *See* S.C. 104, Oudh.

Eustachian Tube. The normal communication between the ear-drum and the throat, permitting the passage of air into the tympanum.

Evade.

Evade. To avoid by some dexterity; by some device or stratagem, to elude, to escape (as) to evade a blow, to evade punishment, to evade the force of an argument.

Used in connection with succession duty "evade" means "a secret device by which what is really a part of the estate of the deceased is made to appear to belong to some body else in order to escape payment of Duty" [(per *Way, C J* adopted by *P C Simms* v *Registrar of Probates*, 69 L.J.P.C. 54, (1900) A.C. 323).]

TO EVADE, EQUIVOCATE, PREVARICATE. These words designate an artful mode of escaping the scrutiny of an inquirer we *evade* by artfully turning the subject or calling off the attention of the inquirer, we *equivocate* by the use of equivocal expressions, we *prevaricate* by the use of loose and indefinite expressions we avoid giving satisfaction by *evading*, we give a false satisfaction by *equivocating* we give dissatisfaction by *prevaricating* *Evading* is not so mean a practice as *equivocating* it may be sometimes prudent to *evade* a question which we do not wish to answer, but *equivocations* are employed for the purposes of falsehood and interest *prevarications* are still meaner, and are resorted to mostly by criminals in order to escape detection.

Evangelical According to the gospel, consonant to the doctrines and principles of the gospel, contained in the gospel, found in the doctrines of the gospel, orthodox.

Evangelist A minister who exercises his office in the organization of church societies

Evasion. The act of escaping by means of artifice, a trick or subterfuge, a subtle endeavoring to set aside truth, or to escape the punishment of the law (*Tomlin's Law Dic*) 'Evade' is capable being used in two senses (1) which suggests underhand dealing, (2) which means nothing more than the intentional avoidance of something disagreeable" (*Simms* v. *Registrar of Probates*, 69 L J P C. 56)

"I never understood what is meant by an Evasion of an Act of Parliament, either you are within the Act of Parliament or not If you are not within it you have a right to avoid it, to keep out of the prohibition, if you are within it, say so, and then the course is clear." (per *Cranworth C, Edwards* v *Hall*, 25 L J Ch 84) As to evasion of income tax by means not forbidden by law, [*see* 1928 All 81 =9 Pat 194=1930 A L J 26=120 I.C. 435 (F.B)]

Evasively By evasion of subterfuge, in a manner to avoid direct reply Pleading "evasively", is the converse of answering to the point, or replying directly

Evening That portion of the day which commences at sunset and continues during twilight, the latter part and close of the day, the time of the decline of the sun, the decline or fall of the day.

Event The consequence of anything, the issue, conclusion, and that in which an action, operation, or series of operations, terminates; issue, or success, that follows doing anything, equivalent to "result", the final success in an action; the final outcome and end of the litigation, the outcome or the result of a trial or proceeding, of which there may be more than one.

Every

EVENT, INCIDENT, ACCIDENT, ADVENTURE, OCCURRENCE These terms are expressive of what passes in the world, which is the sole signification of the term *event*, whilst to that of the other terms are annexed some accessory ideas an *incident* is a personal event; an *accident* an accidental event which happens by the way, an *adventure* an extraordinary event, an *occurrence* an ordinary or domestic event *Event*, in its ordinary and limited acceptation, excludes the idea of chance, *accident* excludes that of design, *incident*, adventure, and occurrence, are applicable in both cases History records the *events* of nations, plays require to be full of *incidents* in order to render them interesting, romances and novels derive most of their charms from the extravagance of the *adventures* which they describe; periodical works supply the public with information respecting daily *occurrence*. (See *Crabb. Syn. Web Dic*) A person giving an account of a campaign; might dwell on the leading *events* which it produced, might mention some of the striking *occurrences*, might allude to some remarkable incidents which attended it, and might relate how some well thought out plans miscarried by accidents

"THE COSTS SHALL FOLLOW THE EVENT," means costs to follow the 'Result'," (per *Bramwell, L.J., Myers* v *Defries*, 49 L J Ex 270)

Eventually. Finally, ultimately

Eventus est qui ex causa sequitur; et dicitur eventus quia excausis evenit. A maxim meaning "An event is that which follows from the cause, and is called an event because it eventuates from causes." (*Wharton, L Lex*)

Eventus varios res nova semper habet. A maxim meaning "A new matter always produces various events" (*Wharton, L Lex.*)

Ever. At all times, always through all times, forever, at any time (as, nothing *ever* happens by mere chance)

Every Each, all, all things, each one and all; the whole number, but each separately considered, all the separate individuals which constitute the whole, regarded one by one By the context, this word may be restrained in its meaning, and it may be used as the equivalent of any. (*See* 16 Ame. Cyc 819.)

EVERY, EACH, ALL. *Every* with which *Each* is also connected, is collective, *Each* is distributive. *Every* includes the whole class one by one, as *all* includes it in a mass But *Every* supposes uniformity in detail, and excludes exceptions and differences, *Each*, on the other hand, implies these. *Every* man has failings, this follows from the constitution of nature *Each* man has his peculiar weakness, this follows from the diversity of human temperament. This distinction, however, is not so much in the force of the words as in the nature of the things. (*Smith. Syn. Dis*)

The expression "EVERY QUESTION RELATING TO VALUATION", in S. 12 (1) of the Court-Fees Act, is of a comprehensive nature and cannot be construed in the restricted sense of a question relating to appraisement of court fee as distinguished from the question of category. [I L R 1937 Mad 275=166 I.C. 615 (2)=1936 M W N. 1392=44 L W 845=A.I. R. 1937 Mad 81=(1937) 1 M.L J. 1 (F.B).]

Every one.

Every one. Every person, including a corporation, ·ach (as), *every one* of them is right.

Everything. All things.

"**Every toddy-producing tree**" In using the erms "any tree" in S. 14 and the words "every oddy-producing tree" in S. 20 of the Bombay Abkari ct (V of 1878), the Legislature should not be taken o have meant only any and every tree in regard to vhich no special right of drawing toddy previously xisted. The above terms have been intended to inlude one and all the trees, in the Presidency of Bombay, from which toddy is drawn or produced. 6 B 398)

Everywhere. In each place.

Evicted. In pleading, expelled by legal process, ut out of possession

Eviction (from *evinco*, to overcome) A recovery of land, etc by form of law. (*Tomlin's Law.)ic*) In its original and technical meaning it is an xpulsion by the assertion of a paramount title, and y process of law, a recovery of land, etc, by form f law, a lawful dispossession by judgment of law, n ouster. Act of the landlord with the intention and aving the effect of depriving the tenant of the njoyment of the demised premises, the term is now opularly applied to every class of expulsion

"**Evidence**" defined (*N.B*)—This word is also used i combination with other words as in the following hrases,—Conclusive evidence, Continuous proof, abricating false evidence, Giving false evidence, ral evidence, Primary evidence, Secondary evidnce). Act 24, 1870, S 16, Act 1, 1872, S. 3, Act 6, 876, S. 15, Reg 4, 1872, S. 31

EVIDENCE is the means from which an inference ay logically be drawn as to the existence of a fact. t consists of proof by testimony of witnesses, on ath, or by writings or records. (*Tomlin's Law)ic*)

The word "evidence" signifies only the instruments y means of which relevant facts are brought before ie Court, *viz*, witnesses and documents, and by eans of which theCourt is convinced of these facts 26 N L.R. 229=125 I C 673=31 Cr. L.J 881=A I R. 930 Nag. 242 (F.B.).]

"EVIDENCE" means and includes—(1) all statements hich the Court permits or requires to be made beore it by witnesses, in relation to matters of fact ider inquiry, such statements are called *oral evi·nce*; (2) all documents produced for the inspection the Court, such documents are called *documentary ıdence*. [Act I of 1872 (Evidence), S 3.]

OTHER DEFINITIONS. "The word '*evidence*' signi:s, in its original sense, the state of being evident, ·, plain, apparent, or notorious. But by an almost ·culiar inflexion of our language, it is applied to at which tends to render evident or to generate oof. This is the sense in which it is commonly ed in our law books. Evidence, thus understood, is been well-defined, any matter of fact, the effect, ndency, or design of which is, to produce in the nd a persuasion, affirmative or disaffirmative, of e existence of some other matter of fact" (Best ·. 11.)

'All the means by which any alleged matter of :t, the truth of which is submitted to investigation, is established or disapproved." (1 Greenleaf Ev. c. 1, 1.)

"EVIDENCE is that which makes a matter in dispute clear, evident".

"That which demonstrates, makes clear, or ascertains. The truth of the very fact or point in issue either on the one side or on the other." (3 Blackstone Comm. 367.)

"All the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation." (*Taylor Ev.* 1)

"Any matter of fact which is furnished to a legal tribunal..otherwise than by reasoning or a reference to what is noticed without proof..as the basis of inference in ascertaining some other matter of fact". (3 Harv. L Rev. 142, 147.)

The word "*evidence*" in S 346 of the Cr. P. Code means all facts and statements which have been disclosed by enquiry and is not restricted to depositions recorded by the Magistrate. (100 I C 992=28 Cr L J 384=A.I.R 1927 Mad. 591.)

"The wisdom and goodness of our law appear in nothing more remarkably, than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property may be concerned herein we glory and pride ourselves, and are justly the envy of all our neighbour nations Our law, in such cases, requires evidence so clear and convincing, that every by stander, the instant he hears it, must be fully satisfied of the truth of it, it admits of no surmises, innuendos, forced consequences, or harsh constructions, nor anything else to be offered as evidence, but what is real and substantial, according to the rules of natural justice and equity." [Lord Cowper, 8 New Parl. Hist. 338; Proceedings against *Bishop Atterbury*, (1723) 16 How. St. Tr. 323, id. Vol. 29, p 1328]

"There is no difference, in point of evidence, whether the case be a criminal or civil case, the same rules must apply to both" [Hotham B., *King* v. *Cator* (1802) 14 Esq 143]

"A general fishing cross examination ought not to be permitted" [Lord Esher, M R, *Culson* v *Disborough*, (1894) L R 2 Q B D. 318]

ADMITTED IN EVIDENCE The words "admitted in evidence" in S 35 mean admitted after a conscious application of the mind to the question of admissibility and not merely mechanically allowing a document to be tentatively marked, as an exhibit subject to its admission or rejection at the end of the trial [(12 Bom L.R. 466 *Foll*). 4 Mys. L.J. 194.]

EVIDENCE AND ADMISSION. "Admission", in the law of evidence, have been defined as being concessions or voluntary acknowledgments made by a party of the existence of certain facts, and have been said to be direct or express, implied or indirect, or incidental and either judicial or extrajudicial, the former being such admissions as appear of record in the proceedings of a Court. (*Black. L. Dict.*)

"EVIDENCE" AND "FACTS" are not synonymous terms, but they are sometimes so used, (*Gates* v. *Haw*, 150 Indi. 370, 372, 50 N.E. 2991.)

Evidence.

EVIDENCE: JUDICIAL NOTICE. Judicial notice or knowledge may be defined as the cognizance of certain facts which Judges and jurors may, under the rules of legal procedure or otherwise, properly take and act upon without proof, because they already know them. In the case of Judges the term "fact" in this definition includes certain constitutional and statutory laws and rules of law. (*See* Evidence Act.)

JUDICIAL NOTICE is "that cognizance of matters of common knowledge, such as historical, geographical, and meteorological facts, the general usages of business, etc, which a Judge or Court may take and act upon without requiring evidence to be adduced". (*Century Dict*) "The cognizance taken by a Court of matters of fact, without the production of evidence thereof. The matters of fact of which judicial notice will be taken are, in general notoriety, immemorial usage, or uniform national occurrence." (*Shumaker & L Cyc. L Dict*) "The act by which a Court, in conducting a trial, or framing its decision, will, of its own motion, and without the production of, evidence, recognise the existence and truth of certain facts, having a bearing on the controversy at bar, and which, from this nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety, *e g*, the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, etc" (*Black Law Dict*) "Facts as to the existence or truth of which no evidence need be adduced" (*Rapalja and Law Dict*) "Judicial notice takes the place of proof, and is of equal force As a means of establishing facts it is therefore superior to evidence In its appropriate field it displaces evidence, since, as it stands for proof, it fulfils the object which evidence is designed to fulfil, and makes evidence unnecessary" (*State* v. *Main*, 61 Am St Rep. 30)

EVIDENCE JUDICIAL. PROOF "Judicial proof," is defined to be "a clear and evident declaration or demonstration of a matter which was before doubtful, conveyed in a judicial manner" (*Powel* v *State*, 65 Am St Rep 277)

EVIDENCE. PROOF. Judicial "evidence" stands to 'proof," when the latter term is properly employed, in the relations of means to an end Proof is the result; evidence, the means of attaining it "Evidence" and "Proof" are sometimes used as synonymous terms

EVIDENCE AND TESTIMONY. While "testimony" is frequently employed as an equivalent, in legal effect, to evidence," it is more accurately used to designate a species of it, *viz*, that which comes to the tribunal through living witness under oath.

EVIDENCE—SUSPICION AND BELIEFS "I cannot go upon suspicion; I can only look at the evidence." (*Lord Selborne, L C, Nobel's Explosives Co.* v. *Jones*, (1882) L R. 8 Ap. Cas 9.) "A fair suspicion may be well worthy of further investigation, and it may well be worth the expense and trouble of examining witnesses to see whether it is well founded" [*Jessel, M. R.* In re *Gold Co*, (1879) L R. 12 C D. 84] "Suspecting is not believing, saying he suspects would not be well; but swearing according to his estimation is sufficient" [*Lord Hardwicke, C. J., Smith* v. *Boucher and others*, (1734) 7 Mod. Rep. 178]

Evidence.

CHARACTER. EVIDENCE AND EVIDENCE OF GENERAL REPUTE. "Character" and "reputation" are terms used at times interchangeably As used in respect of evidence, "character" denotes a particular collection of actual moral qualities or traits pertaining to and distinguishing from others an individual man or animal. "Reputation" indicates that portion of reputation as a whole which consists of a current, popular impression as to the existence of such qualities in some relevant particular In other words reputation as to character is alone specifically treated in this connection

EVIDENCE OF GENERAL REPUTE *See* 5 O C. 203

COMPETENT EVIDENCE By "competent" evidence is meant that which the very nature of the thing to be proved requires as the fit and appropriate proof in the particular case, such as the production of the writing where its contents are the subject of enquiry. The term has also been used and construed as synonymous with "admissible," with "relevant" and with sufficient or "adequate"

DIRECT AND CIRCUMSTANTIAL EVIDENCE Direct and circumstantial evidence differ merely in their logical relation to the fact in issue, evidence as to the existence of the fact is direct, while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue

JUDICIAL EVIDENCE is that portion of evidence in general which under the rules of legal procedure is received in Courts as tending to establish the existence or non-existence of a fact, involved in an issue, submitted to judicial determination.

MATERIAL EVIDENCE. Evidence offered in a cause, or a question propounded, is "material" when it is relevant and goes to the substantial matters in dispute or has a legitimate and effective influence or bearing on the decision of the case.

POSITIVE AND NEGATIVE EVIDENCE The term "positive" as applied to evidence has been held in many cases to mean direct as distinguished from circumstantial evidence, but it is also and more accurately used to denote affirmative as distinguished from negative evidence

PRIMARY AND SECONDARY EVIDENCE Best *evidence* or primary evidence is that particular means of proof which is indicated by the nature of the fact under investigation as the most natural and satisfactory, the best evidence the nature of the case admits, such evidence as may be called for in the first instance upon the principle that its non-production gives rise to a reasonable suspicion that, if produced, it would tend against the fact alleged (*Abbott. Law Dict.*) All evidence which shows upon its face that better remains behind, is secondary "Evidence which carries on its face no indication that better remains behind is not secondary, but primary. (*Greenleaf Ev. s.* 84) And *evidence* which is originally secondary may become primary by the loss of that which was originally primary.

RELEVANT EVIDENCE. Evidence is "relevant" when it touches upon the issues which the parties have raised by their pleadings, so as to assist in getting at the truth of the facts disputed "Any matter of fact, the effect or tendency of which, when presented to the mind, is to produce a persuasion concerning the existence of some other matter of fact, a persua-

Evident.

sion either affirmative or disaffirmative of its existence." (1 *Bentham Rationale Jud Ev.* 17.)

RULE OF EVIDENCE. The rules laid down as to the mode and manner of proving the facts and circumstances upon which a party relies to establish any fact in dispute in a judicial proceeding (*See* 16 Ame. Cyc. 847.)

Evident. Clear to the mind, obvious, plain, apparent.

Evidentiary fact. A fact furnishing evidence of the existence or non-existence of some other fact.

Evil "I think the old, sound, and honest maxim that "*You shall not do evil that good may come*," is applicable in law as well as in morals. *Cockburn, C J. Reg* v. *Hicklin* [(1868) 11 Cox C C. 27, S C. 3 L R. Q.B. 372]

Ex. In law Latin the word "ex," or "e" as it occurs before consonants is a preposition, used at the beginning of many phrases and maxims, meaning "from," "out of," "of" "by," "by virtue of," "on," "on account of," "according to," "with," "at or in," and it is sometimes used in conjunction with other words as an adverb As a prefix, it may denote removal or cessation, or it may be equivalent to "without," "reserving" or "excepting" It is also sometimes used as an abbreviation of Exhibit

Ex abundanti cautela. From excessive caution. From abundant (or excessive) caution.

Ex abuso non arguitur ad usum From the abuse of a thing you cannot argue as to its use "No argument can be drawn from the abuse (of a thing) against its use." (*Taylor L. Gloss*)

Ex adverso. On the other side

Ex aequitate. In equity

Ex aequo et bono According to what is just and good.

Ex all (Stock Exchange term) This term signifies that the stock or shares are sold apart from any dividend, bonus, or profit then due

Ex antecedentibus et consequentibus fit optima interpretatio. A maxim meaning "A passage will be best interpreted by reference to that which precedes and follows it (*Broom. Leg Max*) From that which goes before, and from that which follows, is derived the best interpretation

Ex assensu patris From the father's consent.

Ex arbitrio judicis From the discretion of the Judge

Ex auditu From hearsay.

Ex bonis Of the goods

Ex bonis maternis paternis. From the goods inherited through the mother, the father

Ex capite doli (or) fraudis On the ground of fraud.

Ex causa lucrativa. By a lucrative title (*i e.*) gratuitously.

Ex certa scientia. Of certain knowledge.

Ex comitate. By comity or courtesy.

Ex commodato, From a loan.

Ex necessitate

Ex comparatione scriptorum. By comparison of handwritings.

Ex concessis From the granted (Premises).

Ex consultu. From consultation.

Ex continenti. Immediately.

Ex contractu. From contract

Ex convict A convict who has served out a sentence for crime or has been pardoned.

Ex culpa levissima. From the slightest fault.

Ex debito naturali. From natural obligations.

Ex defectu juris. For a defect in right.

Ex defectu sanguinis. For a failure of blood.

Ex delicto. From fault or crime.

Ex dem, demissione On the demise.

Ex drawing Without drawing. This term is used in regard to bonds sold, and indicates that the buyer is not to have any benefit that may accrue from a drawing then taking place.

Ex empto. From purchase

Ex facto From an act.

Ex facto jus oritur The law (arises) depends on the fact.

Ex fictione juris. By a fiction of law.

Ex gratia By favor

Ex improviso Without preparation

Ex incontinenti Summarily.

Ex integro Anew, afresh.

Ex intervallo After an interval.

Ex jure naturae By the law of nature,

Ex justa causa By a just cause

Ex latere. On the side, collateral.

Ex lege, legibus. According to law

Ex licentia regis By the King's license.

Ex locato. From a letting, a hiring

Ex maleficio non oritur contractus From misconduct no contract can arise.

Ex mero motu. Of mere motion.

EX MERO MOTU. Of one's own free will and motion. These words are frequently used in the Royal Charters "whereby the King signifies that he doth that which is contained in the Charter of his own will and motion, without petition or suggestion made by any other", and the effect of these words is to bar all exceptions that might be taken to the instrument on the allegation that the King, in passing that charter, was abused by any false suggestion.. "These words shall be taken most strongly against the King." (*Termes de la Ley.*)

Ex mora debitoris. On account of the debtor's delay.

Ex more. According to custom.

Ex natura rei. From the nature of the thing.

Ex necessitate. By necessity.

Ex-new.

Ex-new. Not including the right to new stock or shares about to be issued, and which the shares purchased might entitle original owner.

Ex nudo pacto non oritur actio From a bare agreement (parol and without consideration) no action arises.

Ex officio. By virtue of office

Ex pacto illicito non oritur actio From an illegal agreement no action arises

Ex parte. From, of, or by one side, or one party, hence partial, done for or by one party, On the application of one party

O 9, R 6, C. P Code, lays down when the Court may proceed *ex parte* but there appears to be no explanation in the Code what *ex parte* procedure is In respect of the issues, it is the accepted practice that none are framed, though the plaintiff is always called upon, expressly or impliedly but in quite general terms to prove his case. (69 I C 619=A I R 1923 Nag. 83)

Ex parte materna, paterna On the mother's, father's side.

Ex paucis From few (things or words).

Ex posto facto By matter happening afterwards, from a later act or event

Ex post facto law. An act or statute changing the law as to previous events or contracts.

Ex praecogitata malitia. Of malice aforethought

Ex praemisses From the premises.

Ex propria motu. Of his own accord

Ex proprio vigore. Of their own force.

Ex provisione viri. Lands settled on the wife in tail by provision of the husband, or on both husband and wife, by his ancestor.

Ex qua persona quis lucrum capit, ejus factum praestare debet A maxim meaning "One who takes gain, profit or advantage on account of a person, ought to be answerable for his act or deed" (*Adam's Gloss*)

Ex quasi contractu. Arising as if from a contract. From quasi-contract

Ex rel, relatione. On the relation, or information.

Ex rigore juris. According to the rigour of law.

Ex scriptis olim visis. From writings formerly seen.

Exship. A sale of goods on shipboard, all the cost and responsibility of the removal of which falls on the purchaser.

Ex speciali gratia Of special favour.

Ex tempore. By lapse of time, without preparation.

Ex testamento. By will.

Ex transverso. Across.

Ex turpi causa non oritur actio. On a bad (illegal) consideration no action can arise.

Examination.

Ex una parte. From one side

Ex utraqu parte. On both sides

Ex vi aut metu. By force or fear

Ex visitatione Dei. By the visitation of God.

Ex visu scriptionis. From sight of the writing (from having seen the person write).

Ex vi termini By the force of the term

Ex warehouse In a sale of goods ex-warehouse the costs of removing the goods from the warehouse must be borne by the buyer.

Exacerbation. Increase in the severity of a disease

Exact AS AN ADJECTIVE, precisely accurate, rigorous AS A VERB, demand, enforce payment, insist upon, demand urgently

EXACT, EXTORT, EXTORTION To *Exact* and to *extort* agree in expressing a forcible mode of requiring, but *exact* has commonly the sense of rigidly insisting upon what is due, while *extort* relates to the unjust exaction of what is not due. Men *exact* tribute, obedience, demonstrations of respect, they *extort* money under exorbitant charges or false pretences The term is also applied to the compulsory procuring of what others are unwilling to give, as to "extort a confession". "*Extortion* is an abuse of the public justice, which consists in any officers unlawfully taking by colour of his office from any man any money or thing or value that is not due to him, or more than is due, or before it is due" (*Smith Syn Dis*)

To *exact* is to demand with force, it is commonly an act of uncharity or injustice. to *extort* is to get with violence, it is an act of tyranny The collector of the revenue *exacts* when he gets from the people more than he is authorised to take an arbitrary prince *extorts* from his conquered subjects whatever he can grasp at In the figurative sense, deference, obedience applause, and admiration, are *exacted* a confession, an acknowledgment, and the like, are *extorted*. (*Crabb*)

EXACT (*in the law Patents and Copyright*). "Exact imitation" has a much stricter meaning than a "colourable imitation".

Exaction The act of demanding and receiving, illegal or exorbitant demand, extortion, arbitrary impost "'Exacation' is a wrong done by an officer, or by one pretending to have authority, in demanding or taking any reward of fee for that matter, cause, or thing, for which the law alloweth not any fee at all.. ...'extoration' is where an officer demandeth and wresteth a greater sum or reward than his just fee" (*Termes de la Ley, Tomlin's Law Dic., Cowel*)

Examination A weighing, balancing; search, minute inspection; investigation, inquiry, an investigation made in order to form a judgment.

AS USED IN CRIMINAL PROCEEDING, a preliminary investigation. Sometimes the term is used to designate the written record of the evidence taken at an examination of a witness or party.

DISTINGUISHED FROM "INVESTIGATION." The word 'examination' is clearly not as extensive as 'investigation' It does not imply a laborious or contested inquiry.

Exa mination-in-chief.

"Examination-in-chief" defined, Act 1, 1872, S. 137.

The examination of a witness by the party who calls him is called his examination-in-chief (Evi dence Act, S. 137)

Examiner. One charged with the examination of any matter. (*English Law Dict*)

Examining Court A term applied to a Court or magistrate when sitting for the purpose of enquiring into a criminal accusation against a person. (*Ame Cyc*)

Exampla illustrant non restringunt legem. A maxim meaning "Examples illustrate but do not narrow the scope of a rule of law,"

Example. A fact or thing illustrating a general rule.

EXAMPLE, PRECEDENT Both these terms apply to that which may be followed or made a rule, but the *example* is commonly present or before our eyes, the *precedent* is properly something past, the *example* may derive its authority from the individual, the precedent acquires its sanction from an authority time or common consent we are led by the *example*, we are guided or governed by the *precedent* The former is a private and often a partial affair, the latter is a public concern we quote examples in literature, and precedents in law (*Crabb*)

EXAMPLE, SAMPLE, PRECEDENT, INSTANCE, COPY, PATTERN, MODEL, ILLUSTRATION, CASE *Example* is literally a portion taken out of a larger quantity, to show the nature of the whole—the sense in which we now use the word *Sample* By an extension of meaning, it is used to signify something to be imitated or followed, as a *model*, *copy*, *pattern*, or *precedent*, or, negatively, to be avoided as a caution, as, "to make an *example* of a person," and finally, an instance serving for *illustration* of a rule, precept, or principle of science The discrimination to be drawn between *example* and *instance* is as follows an *example* is a permanent *instance*, an *instance* is a specific *example*. An *example* proves a rule, an *instance* does not, nor does it imply the existence of anything so methodical *Example* has an active, *instance* a passive, signification. An *example* may be a person or a thing. An *instance* is always an occurrence or a thing done An *example* instructs, an *instance* illustrates or represents. Men may be personally *examples* of virtue or vice, while their actions may be *instances* of virtue or vice We act upon or follow *examples*· we reflect upon *instances* An *example* might do not more than show us what we should do, imitate, or avoid. An *instance* would involve the reason why *Precedent* is something which comes down to us with the sanction of usage and common consent, as a guide to conduct or judgment. and in the legal sense of the term, has force in other cases, while an *example* has not force beyond itself *Case* is used in a loose way of an occurrence which, and not the law or principle of it, is all that occupies the mind, as a case of felony (in law). It is evident that a particular *case* may become a *precedent* (*Smith. Syn Dis*)

Excambium naturaliter vult in se warrantium A maxim meaning "An exchange naturally creates in itself a warranty". (*Adam's Gloss.*)

Exceptio quae.

Excambium non potest esse rerum diversae qualitatis; neque excambium inter tres parties datur A maxim meaning "An exchange cannot be of things of a different quality, nor is it granted among three parties" (*Adam's Gloss.*)

Excavation An uncovered cutting in the earth, as distinguished from a covered cutting or tunnel. (*Webster.*)

Excellency. A title of honour given to viceroys and their wives, ambassadors, and certain other members of the diplomatic corps. The title is also applied to the Governors and the wifes of governors in British India and of British Colony. (*Calvo, Dict, de Droit International* (*Paris*, 1885.)

Except Not including, unless. The word has also been construed to mean "until".

"EXCEPT WITH THE WRITTEN PERMISSION OF THE COMMISSIONER" [12 Bom. L. R. 274=5 Ind. Cas. 213]

Excepted Objected The term has been erroneously used in connection with commercial paper as the equivalent of "accepted".

"Excepted temple", [46 L.W. 787=1937 M.W. N 1073=(1937) 2 M L J. 830]

Under S 9 (5), Madras Hindu Religious Endowments Act, there are two grounds upon which a temple may be found to be an excepted temple, the first category is temples in which right of succession to the office of trustee is hereditary and the second category consists of temples the succession to the trusteeship whereof has been specially provided for. (A I R 1938 Mad 321)

Exceptio ejus reicujus petitur dissolutio nulla est A maxim meaning "A plea of that matter, the dissolution of which is the object of the action, is of no effect" (*Adam's Glossary*)

Exceptio falsi omnium ultima A maxim meaning "A plea of that which is false is the last of all" (*Wharton L. Lex*)

Exceptio firmat regulam in casibus non exceptis A maxim meaning "an exception confirms the general rule in those cases not excepted." (*Trayner Leg Max*)

Exceptio firmat regulam in contrarium. A maxim meaning "The exception affirms the rule to be the other way". (*Adam's Gloss*)

Exceptio firmat regulam in rebus non exceptis A maxim meaning The exception confirms or strengthens the rule in matters not excepted'. (*Adam's Gloss.*)

Exceptio nulla est versus actionem quae exceptionem perimit A maxim meaning "There is (can be) no plea against an action which destroys (the subject or matter of) the plea". (*Adam's Gloss.*)

Exceptio probat regulam. Exception proves the rule

Exceptio probat regulam de rebus non exceptis. A maxim meaning "An exception proves a rule concerning things not excepted". (*Bouviers.*)

Exceptio quae firmat legem exponit legem. A maxim meaning "An exception which confirms a law, expounds (or explains) the law." (*Trayner Leg. Max*)

Exceptio quoque.

Exceptio quoque regulam declarat, A maxim meaning "The exception also declares the rule". (*Bouvier L. Dict*)

Exceptio semper ultima ponenda est A maxim meaning "An exception is always to be last". (*Wharton.*)

Excess Overstepping due limits; intemperance in eating or drinking, amount by which one exceeds another. The quality or state of exceeding the proper or reasonable limit or measure. (*Webster*)

"EXCESS", IN THE EXECUTION OF POWERS consists in the transgression either of the rules of law or of the scope of the power" (*Farwell*, 285.)

Excess fare (On railway), payment due for travelling further or in higher class than the ticket warrants.

Excess luggage. Luggage over the weight prescribed for free carriage.

Excessite ex ephebis est person A maxim meaning "He who comes out of,exceeds his minority, becomes legally a person" (*Adam's Gloss*)

Excessive. Tending to or marked by excess, more than reasonable or necessary.

"Excessive,' distress is one that is obviously disproportioned to the rent" due (Bedman, 388, 389, citing *Field* v. *Mitchell*, 6 Esp 71)

Excessive weight, in S 23 of the Highways, etc, Act, 1878 (41 & 42 Vict, c 77), applies only to the load carried on a single vehicle. *Hill* v *Thomas*, [(1893), 2 Q B. 333]

Excessivum in jure reprebatur Excessus in be qualibet jure,reprobatur communi A maxim meaning "Excess in law is reprehended Excess in anything is reprehended in common law". (*Adam's Gloss*)

Excessus in petita Excusatio manifesta fit. A maxim meaning "An excess in seeking an excuse becomes manifest, *i e*, he who excuses before he is accused manifests his own guilt" (*Adam's Gloss*)

"Exchange" defined. *See* Bill of Exchange, Act 4, 1882, S. 118.

Exchange. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange". Act 4, 1882 (Transfer of Property,), S 118.

EXCHANGE. (*In Commercial Law.*) A negotiation by which one person transfers to another goods or funds which he has in a certain place, either for other goods, or at a price agreed upon, or at a price which is fixed by commercial usage

Exchanges An *exchange* is an association of persons engaged in business of the same nature who for convenience had combined to provide at the common expense and under uniform rules a common place for the transaction of their individual business. They are commonly formed by dealers in stocks and commodities of various kinds, and are known by various names, notably stock, grain, cotton, live stock, produce and real estate exchanges, and also boards of trade and chambers of commerce.

Exchange value.

TERMS DISTINGUISHED. TO EXCHANGE, BARTER, TRUCK, COMMUTE. To *Exchange* is the general term signifying to take one for another, or put one thing in the place of another, the rest are but modes of exchanging. To *barter* is to exchange one article of trade for another. To *Truck* signifies to bandy about, it is a familiar term to express a familiar action for exchanging one article of private property for another *Commute* signifies an exchanging one mode of punishment for another, or one mode of payment for another, we may *exchange* one book for another, traders barter *trinkets* for gold dust, coachmen or stablemen *truck* a whip for a handkerchief, *government* commutes the punishment of death for that of banishment, tenants get grain rents commuted into cash rents.

"BARTER" AND "EXCHANGE" are often used synonymously. (*Cooper* v *State*, 37 Ark. 412)

The difference between an "EXCHANGE" AND A "SALE" is that in the former no fixed money price is placed upon either of the properties exchanged, while in the latter there is either a money consideration or the equivalent thereof in property at a fixed valuation. (*Fuler* v *Duren*, 76 Am. Dec. 318.)

"A PARTITION AND AN EXCHANGE are well known modes of assurance perfectly distinct from each other, each having its own rules" (*Atty Gen.* v. *Hamilton*, Madd 214, 223, 16 Rev Rep. 208)

"EXCHANGE" DIFFERS FROM "BAILMENT" in that in the former no return of the property given in exchange is contemplated, whereas in the latter the specific property, either in its identical form or in some other form into which it may be traced, must be returned by the bailee.

EXCHANGE AMONG MERCHANTS is a commerce of money, or a bartering or exchanging on the money of one city or country for that of another, money, is this sense, either real or imaginary, real, any species current in any country at a certain price, at which it passes by the authority of the State, and of its own intrinsic value · and by imaginary money is understood, all the denominations made use of to express any sum of money, which is not the just value of any real species. (*Lex Mercatoria, Tomlin's Law Dic*)

EXCHANGE OF GOODS, "A commutation, transmutation or transfer of goods for other goods, as distinguished from sale which is a transfer of goods for money." (*Burrill, L Dic*)

"EXCHANGE OF GOODS AND MERCHANDISE, were the original and natural way of commerce, precedent to buying, for there was no buying till money was invented In exchanging, both parties act as buyers and sellers, and both equally warrant" (2 *Jacob L. Dic*)

EXCHANGE OF LAND has been defined to be "a mutual grant of equal interest the one in consideration of the other" (2 Black Comm. 323)

An exchange of land can only be made between two parties in interest If more than two parties, pursuant to an agreement between them make conveyances each to the other, it is not a technical exchange. (*Doe* v. *Spencer*, 2 Exch 752)

Exchange value. The exchange value of a thing is its general power of purchasing the command which its possession gives over commodities in general; the price or value for which a thing can be exchanged.

Exchange value.

KING'S EXCHANGE, is the place appointed by the King for exchange of plate or bullion for the King's coin, etc (*Tomlin's Law Dic*)

STOCKS EXCHANGE A building or room in which Stock-brokers meet to transact their business of purchasing and selling stocks, Stock exchanges were first established in England in the latter part of the seventeenth century. (*Dos Possos Stock Br and Stock Exch* 10 971)

Exchequer. A term connected with the revenues of the Crown, department of public service charged with receipt and custody of State revenues, royal or national treasury An ancient court of record, wherein all causes touching the revenue and rights of the crown were heard and determined (*Tomlin's Law Dic*)

Exchequer bill In England a kind of bill of credit which is issued by the officers of the exchequer, when a temporary loan is necessary to meet the exigencies of government Bills of credit issued by authority of Parliament, bills issued by the Treasury bearing interest at the rate current on the day of issue These bills contribute the medium of transaction of business between the bank of England and the Government They contain a guarantee from government which secures the holders against loss by fluctuation.

Exchequer bonds Such bonds made payable to bearer, are issued by the treasury for sums borrowed. They are for a specified period at the expiration of which they are redeemable at par

CHANCELLOR OF THE EXCHEQUER Finance minister of England

COURT OF EXCHEQUER Court of law, now merged in the King's Bench Division

Excise "Excise" is defined to be an inland imposition, sometimes upon consumption of the commodity and sometimes upon retail sale, sometimes upon the manufacturer, and sometimes upon the vendor.

EXCISE is duty charged on home goods during manufacture or before sale to home consumers. It is an inland imposition paid sometimes on the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption This is doubtless (says Blackstone, 1 Comm 318), impartially speaking, the most economical way of taxing the subject, the charges of levying, collecting, and managing the excise duties being considerably less in proportion than in other branches of revenue It also renders the commodity cheaper to the consumer than charging it with customs to the same amount would do But at the same time, the rigour and arbitrary proceedings of excise laws, seen hardly compatible with the temper of a free nation. For the frauds that might be committed in this branch of the revenue, unless a strict watch is kept, make it necessary wherever it is established, to give the officers a power of entering and searching the houses of such as deal in exciseable commodities at any hour of the day, and in many cases of the night likewise. And (for the same reasons) the proceedings in case of transgression are summary and sudden. (*Encyc of the Laws of England*) Originally this duty was imposed on the makers and vendors of beer, ale, cyder, and perry; and was afterwards imposed on such a multitude of commodities that it might now fairly be denominated general. (*Tomlin's Law Dic*)

Exclusively.

"Excise Commissioner" defined E.B. & A. Act 1, 1910, S. 3 (8) U, P. Act 4, 1910, S 3 (3).

Excise duties are taxes imposed on articles of home product for home consumption, or on their manufacture or sale. (See Duties)

Excise Law. An "excise law" is a law imposing excise duties on specified commodities and providing for the collection of revenue therefrom

"Excise-officer" defined (*See also* Abkari-officer) Act 12, 1896, S 44 (2); Ben Act 5, 1909, S. 2 (9), E B & A Act 1, 1910, S 3 (9), U P Act 4,1910, S 3 (2) Officers of the Excise Department are Police Officers for certain purposes under the Excise Acts (154 I C 341=36 Cr L J. 511=A I.R 1935 Nag 13) An Excise Officer, who, in the conduct of investigation of an offence against the Excise, exercises the powers conferred by the Code of Criminal Procedureupon an officer in charge of a PoliceStation for the investigation of a cognizable offence, is a Police Officer The legislature in using the term "Police Officer" did not intend to exclude from its meaning Excise Officers exercising powers of detection and investigation of crimes committed against Excise Laws [61 Cal 607=150 I C 561 (2)=35 Cr L J 1071=59 C L J 555=38 C W N 93=A I.R 1934 Cal 580 (F B), 18 S L R 75=25 Cr L J. 1223=82 I. C 151=A I R 1925 Sind 70]

"Excise-revenue" defined Ben Act 5, 1909, S. 2 (10), F B [& A Act 1, 1910, S. 3 (10), U. P. Act 4, 1910, S 3 (1).

"Exciseable article" defined Ben Act 5, 1909, S. 2 (7), E B and A Act 1, 1910, S. 3 (7), U. P. Act 4, 1910, S 3 (13)

EXCISEABLE ARTICLE in the Bengal Excise Act 1909 has been defined as any liquor or intoxicating drug as defined by or under this Act 'Liquor' means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, pachwai, beer, all liquid consisting of or containing alcohol and any substance which the Local Government may, by notification, declare to be liquor for the purposes of this Act. (13 Cr L J 545=16 C W N 785=15 Ind Cas 961=39 Cal. 1053.)

Exciseable Liquor "Exciseable liquor is liquor subjected to the duties of Excise" (*per* Lord Campbell, C J, in *Lancashire* v *Staffordshire Justices*, 1857. (26 L J M C 171; *See also* 39 Cal. 1053=15 I.C 961.)

Exclude. To shut out, whether by thrusting out or by preventing admission; to debar, to reject, to prohibit, to expel, to eject, to dispossess, to except.

Exclusion Mere non-participation of some of the sharers in the possession of the properties is not exclusion (20 M. L. J. 364=7 M. L T. 174=5 I C. 924.)

Exclusive Possessed and enjoyed to the exclusion of others debarred from a participation or enjoyment, undivided, sole (as, exclusive possession; exclusive privilege); not including, admitting or pertaining to any other; opposed to inclusive, not to be taken into account.

Exclusively. To the exclusion of all others; without admission of any others to participation.

Excommunicati.

Excommunicati interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis passit conveniri A maxim meaning "Every legitimate act is forbidden an ex-communicated person so that he cannot act, nor sue any person, but he may be sued by others." (*Adam's Gloss*)

Excommunication from caste To put out of caste. [*See* 157 I C 302=A I.R 1935 Nag 156, 158 I.C. 414=A I R. 1935 Bom. 361=37 Bom L R 417]

The decision of the "Jamait" or Council of the Khoja community ex communicating a person is within the scope of its authority if arrived at in a manner consonant with the ordinary principles of justice, but if it is not so arrived at, the Court would have jurisdiction to interfere [(26 Bom 174, Foll 126 I.C. 49=A I R 1930 Sind 204]

EXCOMMUNICATION AND FINE Distinctions are supposed to exist between ex-communication and fine and also between payment of a fine and giving a caste dinner The fine imposed for transgressions of caste regulations may be a fixed sum of money or the price of a dinner, but it is a fine in both cases And the excommunication is merely the only means available for enforcing the payment of the fine Every such disciplinary decision of a caste can be regarded either as a sentence of excommunication which can be set aside on payment of a fine or as a sentence of fine with excommunication in default of payment. (76 I C 341=A.I.R. 1924 Nag 157.)

Excuse The act of excusing, exculpating or pardoning.

EXCUSE, PARDON, FORGIVE, CONDONE We *excuse* a small fault, we *Pardon* a great fault or a crime. We *excuse* commonly what relates to ourselves We *pardon* offences against rule, law, morals Kings *pardon* criminals, and friends may *excuse* each other *Pardon* is always from a superior. *Excusing* may come from a superior or an equal We *excuse* an apparent fault, we *pardon* a real one Tolerance *excuses* indulgence *pardons*. *Forgive* differs from both in relating only to offences against one's self Omissions and neglects or slight commissions may be *excused*, graver offences and crimes *pardoned*, personal insults and injuries *forgiven* *Condone* has legal air, and denotes generally a constructive *pardon* that is, such behaviour towards another as, without the formal expression of *forgiveness*, implies that the offence has been overlooked In the ecclesiastical law it has the special meaning of a *pardon* express or implied on the part of the husband of the wife for a breach of the marriage vow (*Smith. Syn Dis*)

Excursion Ticket. One of the varieties of special rate tickets coming within the designation or general description of "commutation tickets." (17 *Ame. Cyc* 873.)

Excusable. Admitting of excuse. (*Anderson L. Dict*), having grounds for exculpation.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. A maxim meaning "that excuses or extenuates an offense of wrong in capital cases which do not operate similarly in civil cases. (*Adam's Gloss Ballantine Law Dic*)

Excuse. An apology offered; exculpation; a plea offered in extenuation of a fault or neglect. [*See also* Lawful excuse] "*Excuse* presupposes the imposition of a duty and a qualification to perform it"

TO EXCUSE, PARDON We *excuse* a small fault, we *pardon* a great fault we *excuse* that which personally affects ourselves, we *pardon* that which offends against morals, we may *excuse* as equals, we can *pardon* only as superiors We exercise good nature in *excusing*, we exercise generosity or mercy in *pardoning*. Friends *excuse* each other for the unintentional omission of formalities, it is the *prerogative* of the king to pardon criminals whose offences will admit of pardon, the violation of good manners is *inexcusable* in those who are cultivated, falsehood is *unpardonable* even in a child

Ex delicto non ex supplicio emergit infamia A maxim meaning "Infamy arises from the crime, not from the punishment" (*Wharton*)

Ex diuturnitate temporis omnia proesumuntur. A maxim meaning "Elapse of long time leads to a presumption that all things have been properly done"

Exdiuturnitate temporis omnia praesumuntur solemniter esseacta A maxim meaning "From length of time (after lapse of time) all things are presumed to have been done in due form" (*See also Tracy* v. *Talmage*, 64 *Am Dec* 132)

Ex dolo malo non oritur actio A maxim meaning "A right of action cannot rise out of fraud.' (*Broom*) From fraud no action arises

Execute Carry into effect (as, to execute a plan or command to execute a decree or order of a court, to execute a judicial sentence), To make a legal instrument valid (as, to execute a deed is to give it validity by signing or signing and sealing as required by law, to discharge functions (as, execute an office), inflict capital punishment or (as, the execution of a prisoner on whom sentence of death has been pronounced.

EXECUTE, IN THE INDIAN WILLS ACT, "is employed to designate the whole operation of making a will, including both the signature and acknowledgment of the testator and the attestation of the subscribing witnesses." (*Casement* v *Fulton* (1845), 5 Moore, P C 141)

TO EXECUTE, FULFIL, PERFORM, DISCHARGE. The soldier *executes* the orders of his general, the merchant *executes* the commissions of his correspondent. It is the part of an honest man to enter into no engagements which he cannot *fulfil*. One *performs* according to circumstance, what suits one's own convenience and purposes, every good man is anxious to *perform* his part in life with credit and advantage to himself and others The bailiff, in *discharge* of his offical functions should *execute* the warrant of the civil Court, if the debtor fails to *perform* the duties or *fulfil* the obligation laid upon him by order of Court

"EXECUTE" A DEED Meaning of. [*See* 55 I.A. 81= 54 M.L J. 473 (P C.)]

EXECUTE A WRIT OR PROCESS "denotes the act of the Sheriff in carrying out the command of the court contained in the writ or process.

"TO EXECUTE WELL AND FAITHFULLY" implies 'a faithful discharge of one's duties." (17 *Ame. Cyc*, 875)

Executed.

Executed. Done; finished, effected, fully performed, accomplished.

"EXECUTED" AND "EXECUTION" used with reference to instruments, mean "signed" and "signature". Act II of 1899 (*Stamp*), S. 2 (12)

"EXECUTED" DISTINGUISHED FROM "SIGNED." To say that A 'signed,' a note and that he 'executed' a note, as usually understood, may mean very different things The former conveys the meaning that the act of signing was performed personally by the maker, while the latter imports that the maker either signed it himself, or authorised another to sign it for him. The terms are by no means equivalent." *Brems* v *Sherman*, 158 Ind 333, 301 (*Bouvier L. Dict. Webster Int. Dict , Ame Cyc*)

Executed estate An estate in possession, by which a present interest passes, as distinguished from an *executory estate*, one depending on some future contingency. (*Stimson*)

Executed trust. A trust fully created and exactly defined.

Executio est executio juris secundum judicium. A maxim meaning, "An execution is the execution of the law according to the judgment.'

Executio est finis et fructus legis A maxim meaning "An execution is the end and the fruit of law."

Executio juris non habet injuriam. A maxim meaning "The law will not in its executive capacity work a wrong" (*Broom*), Execution of the process of the law does no injury

Executio juris non habet injuriam or actus leges nemenem est damnosum. Execution of law works no injury.

Execution (*See* Execute) The accomplishment of a thing, the completion of an act or instrument, the fulfilment of an undertaking (as) execution of a contract or deed

"EXECUTION" designates the whole operation including signing by the executant and attestation by the witnesses. [A I.R 1924 Nag. 367, 6 C W.N. 329, 5 C W N 781]

The words "EXECUTE," "EXECUTED", AND "EXECUTION" when used in their proper sense, convey the meaning of carrying out some act or course of conduct to its completion. 1937 A.W R. 115=168 I C 988=9 R.A 691=1937 A.L.R. 437=1937 A.L.J. 161=A.I.R. 1937 All. 273 The sense in which the term is used should generally be determined from the context. In each of the applications of the term (as) the execution of a deed, of a writ, or of a criminal, by an execution, and in every other application of the word, there is, when the word is used in its strict sense, the same meaning, namely, that of completing or performing what the law either requires, orders or validates. (*Brown L. Dict.*)

In criminal law "execution" means the putting to death of a criminal under such a sentence of Court.

In reference to the act of the executor in carrying out the provisions of a will, the terms "Execution" and "executed" mean the settlement of the estate under the provisions of law.

Execution. (IN STAMP ACT) The words "executed" and "execution" means "signed" and "signature." [22 Ind. Cas. 75 (76).]

Execution of a deed.

Execution in duplicate: Used in reference to a written instrument, a term meaning that there must be two originals.

Execution of decree or order. " 'Execution signifies in law the obtaining of actual possession of any thing acquired by judgment of law. (*Co Litt.* 154a) (*Termes De la Ley*) EXECUTION, signifies the last performance of an act as of a judgment, &c It is the obtaining possession of any thing recovered by judgment of law. (1 *Inst* 289. *Tomlin's Law Dic*) This *execution*, or putting the law in force, is performed in different manners, according to the nature of the action upon which it is founded, and of the judgment which is had or recovered (*Tomlin's Law Dic. See* Civil Procedure Code, O 21.) EXECUTION, in the usual legal sense of the word, is a judicial writ grounded on the judgment of the Court from whence it issues, and is supposed to be granted by the Court at the request of the party at whose suit it is issued, to give him satisfaction on the judgment which he hath obtained [*Tomlin's Law Dic.*) An "Execution" proceeds from a judgment (*Re* Hastings, 61 L.J Q.B. 654, 67 L.T 234), and does not include a distraint for rent or other cause (Ex p. Birmingham & Staffordshire as Co, Re Fanshow, 40 L.J Bank. 52, nor a Garnishee Order, [(per *Coleridge C.J*, *Fellows* v *Thornton*, 54 L.J Q.B. 279 *Stroude*.)

When there still remains something substantial to be done under a decree before it can become thoroughly effectual, that decree has to be 'executed' within the meaning of Civil Procedure Code. 5 C. W N. 781. As to execution of decrees and orders of Courts, *see* Civil Procedure Code 1908, O 21, Anderson's Law of Execution, Annual Practice, yearly Practice of the English Supreme Court, Bacon's Abridgment of the Law, Cababe, on Attachment of Debts and Equitable execution, Chitty's Archbold's Practice, Chitty's Forms, Daniell's Chancery Practice, Daniell's Forms and Precedents, Day's Common Law Procedure Acts, Edwards on the Law of Executions Gilbert on the Law of EXECUTION, Kerr on Receivers, Mather's Compendium of Sheriff Law, 2nd ed, 1903; Seton's Judgments and Orders, 6th ed, 1901, Tidd's Practice of the Court of King's Bench, 1828.)

Execution of a deed or other instrument. Thus when the terms are applied to a written instrument they include the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation, of every act required to give the instrument validity, or to carry it into effect, or to give it the forms required to render it valid (*Webster Dict.*) "The word '*executes*' applied to a deed, rather than to a will" *Casement* v *Fulton*, (5 Moore P.C. 130, 141, 13) In a technical sense, the words necessarily include in English law the performance of three acts signing, sealing, and delivery, and in some instances the acknowledgment of the instrument, but the act of delivery is not always included; and not infrequently the terms are employed to express merely the acts of signing and sealing, or of signing only. The officer of a corporation affixing its seal to a deed is "the party executing the deed". Execution must mean voluntary execution, the signing of the document of the executant's free will. Where the signature to an agreement was obtained by duress and intimidation, there is no execution of the docu-

Execution of document by Marksman.

ments. [1 C.L.J. 126=(6 W.R. Mis. 131=1 B.L.R.O. C. 47=4 M.H C.R. 425 *Dis.*)]

Execution of document by Marksman When a marksman merely touches his pen but does not put his mark himself but his mark is put to the document by another person to whom the pen is handed over by the marksman after being touched by him in token of his having consented to the contract, the document should be taken to have been duly executed by the marksman (6 M.L J 209)

ADMISSION OF EXECUTION. Admission of signature or thumb impression on a blank paper does not amount to an admission of execution. (20 A.L.J. 672 =A.I.R 1922 All 401)

Execution of Statutory powers Means a careful and skilful execution and a protection afforded for work done in execution of statutory powers would not extend to the effects of carelessness or the absence of proper skilfulness. (*Clothier* v. *Webster*, 31 L. J. C. P. 316.)

Execution of writ; issuing out of a court, directed to an officer thereof, and running against the body or goods of a party

Execution proceedings. *Execution* is a separate proceeding from the previous steps in the suit The term "proceedings" in S. 6 of the Gen Clauses Act does not include proceedings in execution after decree. [16 C. 267 (F B)]

Executions. quashing Execution The term "quash" as applied to writs is predicated of some defect in the writ itself, or in the form of the writ, which defect does not reach to the merits of the case.

Execution sale. An *execution sale* was held by a Court Nazir who accepted a bid and the deposit of 25 per cent. of the purchase money After the property had been knocked down, another bidder applied to the Court which ordered a resale. *Held*, that the sale was not concluded when the property was knocked down and the deposit made and the Court had a discretion to order a resale. (A.I R. 1923 Cal 316)

Execution, to set aside or recall. "To set aside" and "to recall" execution are used as synonyms of "to quash" execution.

Execution, Stay of. The stopping for a limited period (as when an appeal is pending) an execution on a judgment decree or order that is, of the judgment creditor's right to issue execution. This is called a stay of execution.

Execution, writ of. The purpose of a *writ of an execution* is to authorize the officer to whom it is directed, and delivered, to seize and hold the property of the debtor for the satisfaction of the amount ordered to be made by such writ (*See* Civ Pro. Code, O 21). A *writ of execution* has been defined as the end of the law; final process and the end of the law; the end and fruit of the law; the act of carrying into effect the judgment or decree of a court; the final judgment of a court, or other jurisdiction, and the writ which authorises the officer so to carry into effect such judgment; a judicial writ issuing from the court where the judgment is rendered.

A WRIT OF EXECUTION is not necessarily based upon judgment, it may be employed to enforce other

Executor de son tort.

obligations which, by statute, have, in this respect, been made equivalent to judgments.

Executive. Pertaining to the execution of the laws. (*Webster Dict.*), administrative (*as*) Executive department. *As a noun*, that department of the government which carries the laws into effect, or secures their due performance The word is also used as an impersonal designation of the chief executive officer of a state or nation. (*Black Law Dict*)

"**Executive authority**". *See* (1893 1900), L.B.R 371.

"**Executive business**" acts which an officer is directed to perform by legislative authority, and which he is bound to obey (*Altemus* v. *New York*, 6 Duer (N. Y) 446, 455, *Ame Cyc*)

'**Executive class**" or **Executive officers.** Includes all persons who have functions in the administration of public affairs, as contradistinguished from legislative judicial functions

Executive Government. There is no sharp separation of legislative, executive and judicial powers in the structure of the English constitution Historically, all these powers emanate from the Crown, and though now in a great measure separated, still retain traces of their common origin The executive authority of the Crown may be defined for convenience as including all those acts of government which the Crown can lawfully do or authorise to be done without obtaining the concurrence of the legislatures, though some of them in strictness belong rather to the sphere of subordinate legislation than of executive action These discretionary powers, as they have been styled, of the Crown and its advisers are in part derived from the common law and in part statutory (*Ency of the Laws of England.*)

"**Executor**" defined, Act 10, 1865, S. 3; Act 5, 1881, S. 3.

"EXECUTOR" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided, (Act XXXIX of 1925 (*Succession*) S 2 (*c*). "Executor" is when a man makes his Testament and last Will and therein nameth the person that shall execute his Testament, then he that is so named is his Executor". (*Termes de la Ley*) *Executor* is one appointed by a man's last will and testament to perform or execute the contents thereof after the testator's decease; and to have the disposing of all the testator's substance, according to the tenor of the will (*Tomlin's Law Dic.*) *See also* Williams, Law of Executors and Administrators Walker and Elgood, Compendium of the Law Relating to Executors and Administrators, Williams Personal Property; Pollock and Maitland, History of English Law, Seton, Forms of Judgments and Orders.

"**Executor de son Tort**' (*or Executor of his own wrong*) is he that takes upon him the Office of an Executor by intrusion, not being so constituted by the testator" (*Cowel*; *Padget* v. *Priest*, 2 T. R. 97) An *executor de son tort* is a person who without authority intermeddles with the estate of a decedent and does such acts as properly belong to the office of an executor or administrator, and thereby becomes a sort of *quasi executor*, although only for the purpose of being sued or made liable for the assets with which he has intermeddled. The designation is

Executor of his own wrong.

inapt in that it applies the terms "executor" to intestate as well as testate estates, and also in that it gives to a person who has merely incurred a certain liability by reason of his intermeddling an official title corresponding with that of a duly appointed representative. (*Ame. Cyc.*)

"Executor of his own wrong" defined, Act 10, 1865, S. 265, Act 39, 1925

Executory Executive, pertaining to the execution of official duty, to be executed in the future, of such a nature as to take effect on a future contingency

Executory Devise The devise of a future interest A Devise that vests not at the death of the testator, but depends on some contingency which must happen before it can vest (1 Eq Cas. Abr. 486 *Tomlin's Law Dic*)

Executory trust. "A Trust is said to be Executory or Directory where the objects take, not immediately under it but, by means of some further act to be done by a third person, usually him in whom the Legal Estate is vested" (2 *Jarm.* 344, *Lewin, Godefroi, Ch.* 10)

Executory Use A springing use similar to an executory denial.

Executed use. One created and executed at the time of the conveyance.

Executory. That which remains to be carried into operation or effect, incomplete, depending upon a future performance or event (*Executory Agreement, Executory, Bequest, executory Use*

Executory Use A springing use, one to arise at some future time, not dependent on a preceding estate in the land.

Exemplary. Such as may serve for a warning to others, such as may deter from wrong doing.

Exemplary damages. Exemplary damages are awarded, rather to express indignation at the defendant's wrong than as representing the plaintiff's loss 135 I C 619=34 L W. 898=A I R. 1932 Mad 53=62 M L.J 107 Where owing to a deliberate and wanton assault by the defendant, the plaintiff loses his eyesight and has suffered considerable pain and loss of earning and he files a suit for damages, substantial and exemplary damages, should be awarded. (144 I.C. 729=34 P.L R. 783=A.I.R. 1923 Lah 761)

Exemplification. A certified copy, usually under seal, of a record.

Exempt Used with reference to taxation means, precluded from being chargeable (per *Ellenborough, C. J. R v Leeds, &c Canal Co.* 5 East, 331)

"Exempted person" Act III of 1913 (*Administrator-General's*), S 4, cl. 2

Exemption "Exemption", is a privilege to be free from certain Services or Appearances (*Termes de la Ley. Jacob*) An *exemption* is defined to be an immunity, freedom from any service, charge, burden, taxes, etc. (*Tomlin's Law Dic*)

Exercise, in the Patents, &c., Act, 1883. [See *Saccharin Corporation* v. *Reitmyer & Co.* (1900), 2 Ch. 659.]

Existing company.

Exhalation, or the emission of vapour, occurs in the human body, from the lungs and the pores of the skin.

Exhausted A coal mine is "exhausted," when there is not enough coal left in it to make it worth working (*Ellway* v. *Davis*, 43 L J Ch. 75).

Exhibit *As a noun*, a paper or document produced and exhibited to a court during a trial or hearing, or to a commission taking depositions, or to auditors, arbitrators, etc, as a voucher, or in proof of facts, or as otherwise connected with the subject matter, and which, on being accepted, is marked for identification and annexed to the deposition, report, or other principal document or filed on record, or otherwise made a part of the case

AS A VERB, to present, to present in a public or official manner, to offer or propose in a formal and public manner, to present or show in legal form; to present to a court, to produce a thing publicly, &c., to produce a thing publicly so that it may be taken possession of, or seized, to file of record "Where a deed or other writing is in a suit exhibited and proved or to be proved by witnesses, and the Court certifies on the back of it, that the deed or writing was shewn to the witness, to prove it at the time of his examination, and by him sworn to this is then called an exhibit in law proceedings". (*Tomlin's Law Dic*)

AS APPLIED TO A COMPLAINT, OR INFORMATION, in a criminal case, the word means "to present the same to a public officer".

Exhort. To preach, to urge, to persuade

TO EXHORT, PERSUADE. A superior *exhorts*, his words carry authority with them, and rouse to action, a friend and an equal *persuade*, he wins and draws by the agreeableness or kindness of his expressions *Exhortations* are employed only in matters of duty or necessity; *persuasions* are employed in matters of pleasure or convenience.

Exigency, Emergency. The *exigency* is more common, but less pressing, the *emergency* is imperious when it comes, but comes less frequently, a prudent traveller will never carry more money with him than what will supply the *exigencies* of his journey, and in case of an *emergency* will rather borrow of his friends than risk his property.

Exist. To have existence to live

TO EXIST, LIVE, *Existence* is the property of all things in the universe, *life*, which is the inherent power of motion, is the particular property communicated by the Divine Being to some parts only of his creation. *exist therefore*, is the general term and live the specific term. Existence, in its proper sense, is the attribute which we commonly ascribe to the Divine Being life is that mode of existence which he has made for other objects besides Himself.

Existence. Created life, living beings in general (as) "fellow-feeling with all forms of *existence*" (Carlyle)

"Existing company" in the Companies Act, 1913, means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882; Act VII of 1913 (Companies), S. 2, cl. 7,

Exomphalus

Exomphalus A rupture of the navel

Exonerate To free a person from blame or a duty imposed on him

To EXONERATE, EXCULPATE We *exonerate* him upon whom a charge has lain, or who has the load of guilt; we *exculpate* ourselves when there is any danger of being blamed, circumstances may sometimes tend to *exonerate*, the explanation of some person is requisite to *exculpate*.

Exorcist "The Exorcist is he who adjures evil spirits in the name of Almighty God to go out of persons troubled therewith" (*Phil Ecc Law* 89)

Exorcize To drive out or expel evil spirits by invocation

Ex pacto illicito non oritur actio. A maxim meaning "No action arises out of an illicit bargain".

Ex parte Of the one Part, from one party. (*Tomlin's Law. Dic*) This term is applied in law to a proceeding by one party in the absence of, and without notice to, the other

A person who obtains an *ex parte* decree is responsible for slips in the decree [16 C W N 793=14 Bom L R. 1223=17 C L J 14=23 M L J 738=10 A L J 379=(1912) M W N. 1151=12 M L T 482=16 I C 830 (P C.)]

Ex parte Proceeding A proceeding at the instance and for the benefit of one party only and without notice to or contestation by any person adversely interested

Expatriation Renunciation of allegiance, one voluntary renunciation of citizenship in order to become a citizen of another country.

Expectancy Estates in, are of two sorts, one created by act of the parties called a remainder; the other by act of law, called a reversion (*Tomlin's Law Dic*) It is a present estate the use and enjoyment of which are future. An estate in expectancy, as distinguished from an estate in possession, is an estate the right to the possession of which will only arise at a future date, *e g*, on the determination of a prior life estate

Expectant Having relation to or depending upon, and this word is likewise used in the law with fee, as fee-expectant (*Tomlin's Law Dic.*)

Expectant Heir "Every person who is entitled, either absolutely or contingently, to any Reversion or Remainder in a property or a portion, or who has the Hope of Succession to the property of an ancestor or relative, either by reason of his being the heir apparent or presumptive, or by reason merely of any supposed or presumed affection on the part of his ancestor or relative, is an Expectant Heir (Seton, 2343, citing *Beynon* v. *Cook*, 10 Ch 391.) An expectant heir, in seeking to anticipate his expectancy by selling or mortgaging it, has always been so liable to be the victim of improvident and unconscionable bargains, as for example, by selling at a gross undervalue or agreeing to pay interest at an exhorbitant rate, that in such cases Courts of equity began at an early date to grant relief where it could not be shown by the person wishing to uphold the particular

Expiration

transaction that it was fair, just, and reasonable.' (*Ency. of the Laws of England*).

Expected An assurance in a Charter Party that the Ship is "expected to be" at a stated place by a stated time, is a warranty that she will be there at that time, or that she is in such a part of the world that she may be reasonably expected to be there about that time (*Corkling* v. *Massey*, L R 8 C P 395· 42 L J C.P 153, 28 L T 636, 21 W R 680)

"Expecting to be a public servant" defined, Act 45, 1860, S. 141, *expln.*

Expectorants. Medicines which assist the discharge of phlegm or mucus from the mouth

Expedit republicae ne sua re quis male utatur A maxim meaning "It is for the public good that no one should use his property badly"

Expend, "Expenditure"..' To expend is to spend, expenditure is spending money or amount expended, What do you expend? You expend that which you have. In common parlance, you say that a man has spent more than his income. That is common parlance, but that is not language which you would suppose the legislature to use A man cannot spend what he has not got, he can mortgage or pledge, but he cannot actually spend" (per *Kekewich, J., Re Bristol*, (1893) 3 Ch 161)

"Expenditure incurred for earning profits" (in Income Tax Act) [168 I C. 769=41 C.W N. 869 =I L R (1937) Bom 591=46 L W. 72=1937 A.L.J. 1059=A.I.R. 1937 P.C 189 (P C.).]

"Expenditure incurred solely for the purpose of earning the income etc"—Meaning of. [169 I.C. 590 (2)=A I R. 1937 Cal. 369]

Expense. Outlay in executing a commission A Legacy made 'free of all Expense", refers to a legacy duty free (*Osden* v *Dotterill*, 1 My. & K, 56)

Expenses. "Expenses" generally means, actual disbursements, not allowances for loss of time (*Jones* v. *Carmarthen*, 10 L.J. Ex. 401.)

"Expert" defined Act, 1, 1872, S 45 A person specially skilled or practiced on any subject.

EXPERT In a general sense, an expert is a person of peculiar knowledge or skill, one who has peculiar knowledge or skill as to some particular subject, such as any art or science, or particular trade, or profession, or any special branch of learning, and is professionally or peculiarly acquainted with its practices and usages. a person who has technical and peculiar knowledge in relation to matters with which the mass of mankind are supposed not to be acquainted; he who has some special, particular or practical knowledge in relation to some special department of the affairs of men as would qualify him to stand as an expert, skilled enough to teach others. (*Ame. Cyc.*)

Experto crede, means An expert should be believed.

Expiration. Coming to an end, ceasing 'As we signify by 'Expiration' the death of a man and his last end, whatever way it happens, so the word 'Expiration' being applied to an estate for years, may aptly enough signify the end of it whatever way it be". [*Wrotesley* v. *Adams, Plowd* (198)]

Explain

EXPIRE, DIE To *expire* is appropriately used of animals which breathe the breath of life Of these it may be said that they live and that they *die* or *expire* All living things either *die* or *expire* All things that *die* or *expire* are not necessarily living things, for to *die* is used analogously, as "to let a secret *die* within the breast," and oftener with the addition of the word out or away Trees live and *die*, but do not *expire* The flame of a candle and the periods of time neither live nor *die*, yet are said to *expire* (*Smith Syn Dis*)

Explain Make known in detail, make intelligible, account for

TO EXPLAIN, ILLUSTRATE, ELUCIDATE, To *explain* is simply to render intelligible, to *illustrate* and *elucidate* are to give additional clearness every thing requires to be *explained* to one who is ignorant of it, but the best *informed* will require to have abstruse subjects *illustrated*, and obscure subjects *elucidated* We always *explain* when we *illustrate* or *elucidate*, and we always *elucidate* when we *illustrate*, but not vice versa, Words are the common subject of *explanation*, moral truths require *illustration*, poetical allusions and dark passages in writers require *elucidation*

EXPLANATORY, EXPLICIT, EXPRESS The *explanatory* is that which is superadded to clear up difficulties or obscurities. A letter is explanatory which contains an explanation of something preceding The *explicit* is that which of itself obviates every difficulty A person ought to be *explicit* when he enters into an engagement, he ought to be *express* when he gives commands.

"Explosive" defined, Act 4, 1884, S 4 (1), Act 20, 1891, S 3 (6)

An "explosive" is any substance by whose decomposition or combustion gas is generated with rapidity that it can be used for blasting or in fire arms An "explosive substance," includes any materials for making any explosive substance, also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine, implement (46 Vict c 3, S 9)

"EXPLOSIVE" (*a*) means gunpowder, nitro-glycerine, dynamite, guncotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect, (*b*) includes fog signals, fire-works, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined" [Explosives Act (IV of 1884), S 4]

"EXPLOSIVE" AND "PETROLEUM" have the meanings assigned to them in the Indian Explosives Act, 1884, and the Indian Petroleum Act, 1899, respectively [C P. Act XVI of 1903 (Municipal), S. 2, cl. (*g*) *See also* U. P. Act I of 1900, S 3, cl (8)]

"Explosive substance" defined. Act 6, 1908, S 2, Beng Act 2, 1866, S 54 (add Ben Act 3, 1910, S 4), Ben Act 4, 1866, S 3 (add Ben Act 3, 1910, S. 4)

"EXPLOSIVE SUBSTANCE" shall be deemed to include any materials for making any explosive substance also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement [Explosive Substances Act (VI of 1908), S. 2.]

Expository statute.

"Export" defined, Act 1, 1878, S 3, Act 11, 1878, S 6 Expl, Bom Act 5, 1878, S 3 (10); E B & A Act 1, 1910, S 3 (11) Mad Act 1, 1886, S. 3 (16), U. P. Act 4, 1910, S 3 (18)

EXPORT In its primary, general or essential meaning as a verb, to carry or send out of a place In its secondary, specific or special meaning, as a verb, to carry from a state or country, as wares in commerce (*Webster Dict*), to send out from one country to another, to send goods and merchandise from one country to another, to send or carry out of the state, for the purpose of sale, trade, or disposition. *Export as a noun*, a thing exported—the article itself, the correlative of "import" (*Ame Cyc*)

"Export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government [Opium Act (I of 1878), S 3]

Exportation The shipping or carrying out the native commodities of a state or country for other countries (*Tomlin's Law Dic*) A severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other, the transportation of merchandise from one country to a foreign country"

"SHIPPED FOR EXPORTATION" is not, necessarily, restricted to an exportation to foreign countries, but may mean a carrying out of Port, and include carrying commodities from one part to another within the same Kingdom (*Stockton Ry* v *Barrett*, II Cl. & F 590, 5th Dwar 648, 691)

Expose To remove from shelter, to leave unprotected, especially from weather, to place in a situation to be affected or acted on (*Webster Dict.*) In reference to pain, to make liable, to subject; and (referring to the custom of some nations to expose their children) to cast out to chance, to turn (child) out to perish (*Shannon* v *People*, 5 Mich. 71, 90)

"EXPOSE" AND "EXHIBIT," are not works of art and have no legal meaning (per *Parke, B, R* v *Webb*, 2 C & K 940)

EXPOSED FOR SALE, in the Margarine Act, 1887 (c 29), S 6, means exposed to view in the shop in the sight of the purchaser. [*Crane* v *Lawrence*, (1890) 25 Q B D 152, contra, *Wheat* v. *Brown*, (1892) 1 Q. B 418] Margarine on other article may be "EXPOSED FOR SALE", though not itself visible, being in a closed package. [*Wheat* v *Brown*, (1892) 1 Q. B. 418]

Expositio, quae ex viceribus causae nascitur, est aptissima et forfissime in lege. A maxim meaning "An exposition, which springs from the vitals of a cause, is the fittest and most powerful in law" (*Adam's Gloss,*)

Expository statute A statute which is substantially in the nature of a mandate to the Courts to construe and apply a former law not according to

Ex post facto.

judicial, but according to legislative judgment." (19 *Ame Cyc* 21)

Ex post facto. Is a term used in the law, signifying something done after, or as arising from, or to affect, another thing that was committed before An act done, or estate granted, may be made good by matter *ex post facto*, that was not so at first, by election, etc (5 Rep 22, 8 Rep 146, *Tomlin's Law Dic.*) An *ex post facto* law is one which operates upon a subject not liable to it at the time the law was made Such is an act imposing duties of customs on goods imported before the passing of the act (*Tomlin's Law Dic*) Blackstone says laws are made *ex post facto*, "when, after an action is committed, the legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who committed it Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law, he had therefore no cause to abstain from it, and all punishment for not abstaining must of consequence be cruel and unjust" (*see* Blackstone's Commentaries, Vol. I, p 46)

AN EX POST FACTO LAW MAY BE DISTINGUISHED FROM A RETROSPECTIVE LAW Every *ex post facto* law must necessarily be retrospective, but every retrospective, law is not an *ex post facto* law, laws are not to be considered *ex post facto* when they modify the rigours of the Criminal law, but only when they create or aggravate the crime or increase the punishment or change the rules of evidence for the purpose of conviction (see *Phillips* v *Eyre*, (1870) L R 6 Q B at p 25, which refers to the case of *Calder* v. *Bull*, (1798) 3 Dallas (U S) at p 391 *See also* Blackstone, Commentaries, Hardcastle, Statute Law

Exposure The state of being exposed, openness to danger, accessibility to anything that may affect, especially detrimentally (*Davis* v *Western Home Ins Co*, 881 Iowa 496, 498)

AS TO EXPOSURE AND ABANDONMENT OF CHILD by parent or person having care of it (*See* Penal Code, S 317]

Exposure to unnecessary danger is a term which is equivalent to negligence (*Sawtelle* v *Railway Pass Assur. Co*, 21 Fed Cas No 12, 392)

Expound To lay open the meaning of, to make clear, to interpret, to remove an obscurity (as) expounding a law

EXPOUND, EXPLAIN, INTERPRET *Expound* denotes sustained *explanation*, while a mere word or phrase may be *explained*, a whole work or parts of it may be *expounded* *Exposition* is continuous critical explanation *Interpret* beyond the mere sense of verbal translation from one language to another, conveys the idea of private or personal explanation of what is capable of more than one view Hence *interpretation* is more arbitrary than *exposition* and more theoretical than *explanation* To *explain* conduct would rather be to account for it, to *interpret* it would be to assign motives or significance to it. *Explanation* deals with facts, *interpretation* with causes also I *explain* when I give the meaning of a thing, I *interpret* when I give my view of that meaning. *"The Pundits are the expounders of the Hindu law."*—Sir W. Jones (*Smith Syn. Dis.*).

Express promise.

Express As an adjective, given in direct terms, definite, explicit, manifest, not implied, opposite of dubious, not implied or left to inference, made unambiguous, stated or declared, that which is made known and not left to implication (*Bouvier*) As a noun, a messenger sent on a particular errand or occasion, usually, a courier sent to communicate information of an important event or to deliver important despatches (*Cent Dict*), in postal affairs, every kind of conveyance employed to carry letters on behalf of the post office other than the usual mail (1 Vict c 36, S 47) *As a verb*, to set forth or represent in words to exhibit by language, to show or make known in any manner (*Johnson Dict*), to designate (*Scipio* v *Wright*, 25 L ed 1037.)

TO EXPRESS, DECLARE, SIGNIFY, TESTIFY, UTTER Words, looks, gesture, or movements, serve to *express*, actions and things may sometimes *declare* sometimes we cannot *express* our contempt in so strong a manner as by preserving a perfect silence when we are required to speak, an act of hostility, on the part of a nation, is as much a *declaration* of war as if it were *expressed* in positive terms To *express* is to convey to another by any means that which passes in one's mind To *signify* is to convey by some outward sign. An *expressive* look is that which is fitted to express what is intended, a *significant* look is that which is calculated to signify the particular feeling of the individual *Utter*, differs from *express* in this, that the latter respects the thing which is communicated, and the former the means of communication We *express* from the heart, we *utter* with the lips · to *express* an uncharitable sentiment is a violation of Christian duty, to *utter* an unseemly word is a violation of good manners

EXPRESSION, FERM, WORD *Word* represents generally an utterance of our thoughts or feelings, *term* is the same thing viewed in connection with a certain class of expressions or subjects, as " a legal *term*" "a scientific *term*," "a geographical *term*" In the choice of *words* is shown the purity of language, in the choice of *terms* the precision of speech, on the choice of *expressions* depend the brilliancy and effectiveness of style *Word* is a matter of simple speech Usage determines its meaning *Term* is a matter of subject, its force is determined by agreement *Expression* is a matter of thought, its merit depends on the turn given to it (*Smith. Syn Dis*)

"Words are like leaves, and where they most abound Much fruit of sense beneath is rarely, found" (*Pope.*)

"Express authority", defined, Act 9, 1872, S 187

"An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case [Act IX of 1872 (Contract), S. 187)

Express company. A species of common carrier. (*Alsop* v. *Southern Express Co.*, 104 N C. 278, 288)

"Express delivery", in Post Office Act means delivery by a special messenger or conveyance [Act VI of 1898 (Post Office), S. 8.]

"Express promise", defined, Act 9, 1872, S. 9.

Express revocation.

EXPRESS PROMISE, is the express stipulation of the party making it to do or not to do a particular thing, the term is distinguished from "implied" promise

Exress revocation (of a will) An act performed when the change of mind or intention of the testator to revoke is declared by a subsequent will or codicil (*Langdon* v. *Astor*, 3 Duer N Y 477, 561)

Express trust The words "trust for a specific purpose" in S 10 of the Limitation Act, mean the same thing as the "express trust" of the English Law (31 Bom 222=8 Bom L R 328, referring to 21 Bom 646) The phrase "vested in trust for a specific purpose" in S 10 of the Limitation Act, may be treated as a more expanded mode of expressing the same idea as that conveyed by the expression "express trust" in the English Law [32 Bom 394=10 Bom L R 540 (referring to 21 Bom 646)

Express trustee In order to make a person an express trustee within the meaning of S 10 of Limitation Act, it must appear, either from express words or clearly from the facts, that the rightful owner has intrusted property to such person for the discharge of the particular obligation (4 All 187=2 A W N 3)

Express understanding, means express contract, or express agreement between the parties

Expressa nocent, non expressa non nocent A maxim meaning "Things expressed are (may be) prejudicial, things not expressed are not" (*Adam's Gloss.*)

Expressa non prosunt, quae non expressa proderunt A maxim meaning "Things expressed do no good, which, not expressed do no harm" (*Adam's Gloss.*)

Expressio, eorum quae tacite insunt nihil operatur A maxim meaning "The expression of what is tacitly implied is inoperative" (*Broom Leg Max*) Express mention of those things which are tacitly implied has no effect

Expressio unius est exclusio alterius, or which is shortly put **Expressio unius alterius exclusio** A maxim meaning "Express mention of one thing implies the exclusion of another (*See also* 1938 N L J 98, 36 C L J 382) Broom in his "Legal Maxims" says that no maxim of the law is of more general and uniform application, and it is never more applicable than in the construction and interpretation of statutes (*Broom Leg Max*) Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, *viz*, that the thing shall not be done otherwise (*Ame Cyc*) The maxim "expressio unius exclusio alterius" is one that certainly requires to be watched The scope of maxim is very wide, its construction varying under different circumstances and being open to qualifications and exceptions (36 C L J 382=A I R 1923 Cal 66) A general rule of construction of Acts of the legislature is *expressio unius exclusio alteris* (The express mention of one thing implies exclusion of another.) But the method of construction summarised in the maxim cannot be applied without limitation, for a failure to make an expression complete may easily arise from the accidents of legislative procedure, and it is common to find provisions put into statutes *ex abundanti cautela* and at the instance of parties interested. (36 C L J 382=A I R 1923 Cal 66)

Extend to and include

Expressly In an express, clear or distinct, direct or pointed manner, plainly, with a distinct purpose, in direct terms (*i e*) not by implication. In its primary meaning the term denotes precision of statement, as opposed to ambiguity, implication, or inference, and is equivalent to "in an express manner, or in direct terms." It is also commonly used to designate purpose, and as equivalent to especially, or particularly, or for a distinct purpose or object (*Magone* v. *Heller*, 150 U S 70, 74)

"EXPRESSLY BARRED In S 9, C P Code, means barred by any enactment for the time being in force. [152 I C 861=11 O W N 1435=1935 Oudh (96)]

Expressum facit cessare tacitum A maxim meaning 'Expression precludes implication, "A thing expressed puts an end to tacit implication" (*Trayner Leg Max*)

Expressum servitium regat vel declaret tacitum A maxim of *Lord Bacon*, which literally translated means "Let service expressed rule or declare what is silent" (*Adam's Gloss*)

Exprocedentibus et consequentibus optima fit interpretatio A maxim meaning "The best interpretation is made from things preceding and following *i e*, the context" (*Bouvier.*)

"Exproprietary tenant", defined, Act 22, 1886 S 7 A, U P Act, 2, 1901, S 10, Reg 2, 1877, S 41.

Expunging remarks from judgment [*See* 153 I. C 262=35 P L R 373, 1935 All 902, 1933 Sind 91, 1933 All 949]

Ex Quay or Warehouse "In a contract for the sale of goods "Ex Quay or Warehouse,' there is an implied condition that the vendor shall give notice to the purchaser of the place of storage, and until such notice has been given, the purchaser is not in default for non-acceptance" (*Benj* 671, citing *Davies* v *McLean*, 21 W R 264)

Extend This term has a wide variety of meanings and has been defined as follows To prolong, to continue or continue in any direction, stretch out; to stretch out or reach, to expand, to enlarge or lengthen the bounds or dimensions of, lengthen And it is sometimes used as equivalent to the word "exceed" (as) to extend the bounds of jurisdiction.

EXTEND, STRETCH, REACH A country is said to *extend* in its ordinary application, but it is only said figuratively to *stretch*, when it seems to extend itself by an effort to its utmost length. To *extend* is indefinite as to the distance, it may be shorter or longer, and requires therefore to be expressly defined, to *reach* is defined by the point arrived at which may be either expressed or implied (as) a road may *extend* many miles, but it may not *reach* so far as the country house.

Persons *extend* things, as one extends a field, boundary, etc, persons or things *reach* things; a person reaches a place.

"Extend to and include" The words "shall extend to and include" "often used in an interpretation clause, are wider and go further than the words "shall mean", and denote that, in addition to the popular meaning given to a word or phrase, such word or phrase shall also have the meanings given to it by the Interpretation Clause" (per *Baggallay, L J, and Brett, M.R., Portsmouth* v. *Smith*, 53 L. J. Q. B. 92).

Extension.

Extension. The act of extending or stretching out, enlargement in any direction, in length, breadth, or circumference the continuance of an existing thing (as), extension of the term of Parliament

'EXTENSION', is the enlarging, or giving further duration to, any existing right, but "does not import the re-vesting of an expired right; that would not be an *'Extension'* but a *'Re-creation'*" (per *Richardson, Brooke* v *Clarke*, 1 B & Ald. 399).

IN COMMERCIAL LAW Extension is an indulgence by giving time to pay a debt, or perform an obligation, an agreement made between a debtor and his creditors, by which the latter in order to enable the former embarrassed in his circumstances, to retrieve his standing, agree to wait for a definite length of time after their several claims should become due and payable, before they will demand payment (*Bouvier L Dict*)

IN CONNECTION WITH RAILWAYS AND TRAMWAYS When an 'Extension' of a Railway or Tramway is spoken of, no one supposes "that the thing meant is merely to prolong the existing line or to increase its breadth for laying down more rails Branches are contemplated as well as the original main line when extensions are spoken of That is certainly a common use of language, nor can their lordships see that in point of etymology or philology it is incorrect" (*Shanghai Corp* v *McMurray*, 69 L J P C 20)

EXTENSION OF A ROAD See *Shanghai Municipal Council* v *McMurray*, (1900) App Cas 206

"Extent of interest" (in the Land Registration Act) means the share or interest in an estate or revenue free property of which the person with respect to whom the words are used is in possession as proprietor or manager [Bengal Act VII of 1876 (Land Registration), S 3, cl (3)]

Extenuate To lessen the gravity of a thing by partial excuse

TO EXTENUATE, PALLIATE. These terms are both applicable to the moral conduct, and express the act of lessening the guilt of any impropriety To *extenuate* is simply to lessen guilt without reference to the means, to *palliate* is to lessen it by means of art To *extenuate* is rather the effect of circumstances to *palliate* is the direct effort of an individual Ignorance in the offender may serve as an *extenuation* of his guilt, although not of his offence it is but a poor *palliation* of a man's guilt, to say that his crimes have not been attended with the mischief which they were calculated to produce. (*Crabb.*)

To *Extenuate* is to diminish the conception of crime or guilt by the allegation of pleas or the consideration of attendant circumstances. To *Palliate* is to seek to lower the intrinsic guilt or evil of the thing itself Wrong is *extenuated* by attendant circumstances; it is *palliated* by sophistry. (*Smith Syn. Dis*)

External This term is used in contradistinction to "internal" It can only apply to something which has an outside and an inside, and as applied to a house, everything external to the house, or, as it is popularly called "out of doors." (*Perry* v *Davis*, 3 C.B.N S. 769, 777)

External wall *"External wall" of a house or a building* "means, an outer wall, or vertical enclosure, of any house or building not being a party-wall."

Extinguitur obligatio

Externus non habet terras A maxim meaning "A foreigner or alien holds no lands" (*Trayner Leg. Max*)

Externus non habet terras, habet res suas, et vitam et libertatum A maxim meaning "A foreigner has no lands, he has his personal effects, and life, and liberty" (*Adam's Gloss*)

Exterritoriality Extra-territoriality This term denotes the authority of a State within its own territory, absolute and exclusive This admits, however of a certain number of exceptions comprehended in international law under the fiction of extra-territoriality, or now, more common, exterritoriality, —a word which is neither exhaustive nor correct, but which in the absence of a better one has acquired in the currency of international law a pretty well defined meaning (*Ency of the Laws of England See also* Hall, International Law, Jenkin's British Rule and Jurisdiction Beyond the Seas, Lawrence, International Law, Lorimer, Institutes of the Law of Nations, Calvo, Droit International, Woolsey, International Law, Twiss, Law of Nations in Time of Peace, Vattel, The law of Nations, Pit-cobbett, Leading Cases and Opinions on International Law)

Extinct. To destroy, or put out. (*Co Litt*, 147 b)

Extincto subjecto, tollitur adjunctum A maxim meaning "When the substance is gone, the adjuncts disappear" (*Adam's Gloss*)

Extinguish The words "extinguish," "extinguished", "extinguishment" when used in their exact sense express the idea of a complete wiping out, destruction, or annihilation, and not a mere suspension (*Taylor* v *Hampton*, 17 Am Dec 710, a termination, (*Barlow* v *Ross*, 24 Q B D. 381, 386). It is in this sense that the terms are properly applied to contracts rights, titles, interests, or a debt, or other obligation whether the effect produced is by the act of god, or by operation of law, (*Baker* v *Baker*, 28 N J L. 13, 2), or by the act of a party (*Taylor* v *Hampton*, 17 Am Dec 710) The meaning of these terms as frequently used, varies with the subject-matter to which they are applied The words 'MERGER", "SUSPENSION" and "ABATEMENT", would in many instances where "extinguishment" is used, much more accurately and felicitously express the idea intended to be conveyed

Extinguishment The extinction or annihilation, of a right, estate, etc, by means of its being merged in, or consolidated with another, generally a greater or more extensive, right or estate. Wherever a right, title or interest is destroyed, or taken away by the act of God, operation of law, or act of the party this in many books is called an extinguishment. (*Co Lit* 147 b *Ro Abr* 933) This *Extinguishment* is of various natures, as applied to various rights, *viz*, estates, debts, liberties, services and ways. (*Tomlin's Law Dic.*)

Extinguishment of contract The act by which a contract is made void

Extinguishment of debt. Destruction of debt

Extinguitur obligatio que rite constiteret si in eum casum inciderit a quo incipere non potuit A maxim meaning "An obligation which has been sealed in due form is extinguished if it fall into that state from which it cannot arise." (*Adam's Gloss*)

Extort

Extort. To obtain possessions or knowledge by force or compulsion, etc, to wrest from another by force, menace, duress, to obtain money or other valuable thing either by compulsion, by actual force, or by the force of motives applied to the will, and often more overpowering and irresistible than physical force This term which necessarily implies the adoption of illegal means

"Extortion" defined, Act 45, 1860, S 383

EXTORTION (*Extorsio*) in its widest sense means any oppression under pretence or colour of right. In a popular sense it is used as equivalent to black mailing or obtaining money by threats But its ordinary and proper legal meaning is the taking of money or any valuable thing by any public officer by colour of his office, and otherwise than in good faith on a mistake as to the law, where none or less is due, or before it is due (Beawfage's Case, (1613), 10 Co Rep 102 a, Steph Dig Cr Law, 6th ed, p 88, *Ame. Cyc See also* 3 Co. Litt 368, 1 Co. Inst 368, Vin Abr, tit. "Extortion," Bac Abr, tit. "Extortion", Arch Cr. Pl 1, Russ on Crimes, Hawk P C. bk. I, c 68, *Black Com* Burn. Justice, 30th ed. tit. "Extortion")

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits 'extortion" (Penal Code, S. 383)

DISTINGUISHED FROM ROBBERY. "Robbery is the unlawful taking against the will by means of force or violence or fear of injury immediate or future, to one's person or property, while extortion is the obtaining with consent similar means" (*Rex* v *Jones*, 1 Leach C C 164)

Ex tota materia Emergat resolutio. A maxim meaning "The explanation, construction or resolution should arise out of the whole subject-matter" (*Adam's Gloss*)

Extra A Latin preposition, occurring in many legal phrases meaning, without, or outside of, beyond, except

Extra feodum Out of his fee.

Extra judicial Something which is done without judicial proceedings This we speak of *extra-judicial* evidence, or that a distress is an extra-judicial remedy Something which is said by a Judge or judicial officer in a judicial proceeding, but beyond its scope. (*Sweet L Dict*)

"Extra-judicial" is when judgment is had in a cause not depending in that Court where given, or wherein the Judge has not jurisdiction The term is used in contradistinction to a regular act done in judgment, or in the regular proceedings of a Court. (*Tomlin's Law Dic*)

Extra judicium. Out of Court.

Extra jus Beyond the law.

Extra legem Out of the law, or of the law's protection.

Extra legem positus est civiliter mortuus. A maxim meaning "One who is put out of the law (*i.e*, outlawed) is civilly dead." (*Adam's Gloss*)

Extradition

Extra praesentiam mariti. Out of the husband's presence

Extra quartor maria Beyond the four seas

Extra regnum. Out of the kingdom

'Extra territoriality' The words 'extra territoriality' denote a fiction by which the house and land occupied by a foreign sovereign or his ambassadar was treated in law as part of his dominions, and that it is a convenient word to denote any grant of privileges belonging to that class [26 B 1=28 I.A 121 (P C.)]

Extra territorium jus dicenti impune non paretur A maxim meaning "One who exercises jurisdiction out of his territory cannot be obeyed with impunity" You cannot safely obey one exercising jurisdiction out of his own territory

Extra viam Out of the road

Extraparochial Out of any parish, anything privileged and exempt from the duties of a parish (*Tomlin's Law Dic*)

Extra work As used in a contract for the furnishing of materials and performance of labour, a term applicable to labour or materials not called for by such contract. (*Ame Cyc*)

Extract Some portion or fragment of any writing AS USED IN A CUSTOMS TARIFF, anything drawn from a substance by heat, solution, distillation, or chemical process, as essences, tinctures, and the like (*Stykes* v *Magone*, 38 Fed 494, 497)

"EXTRACT" in Bombay City Land Revenue Act (II of 1876), S 40 is something different from a copy The inference is that the Legislature contemplated the granting, under the designation of 'extracts' of selected entries only, although they might not be all the entries relating to the property with which the extract was concerned [14 Bom L R. 654=16 I C 714 (724)]

Extradition International extradition is the surrender by one nation to another, for trial and punishment, of a person accused or convicted of an offense within the jurisdiction of the latter.

EXTRADITION is the delivery by one State to another of fugitives from justice "The extradition of fugitive criminals," says the Report of the Royal Commission on Extradition of 1878 (Parl Paper, 1878), is founded on a twofold motive. (1) That it is the common interest of mankind that offences against person and property offences which militate against the general well-being of society, should be repressed by punishment, as the means of deterring others from committing, as well as of deterring the criminal himself from repeating, the offence, as also of disabling the offender, either permanently or temporarily from further crime, and (2) that it is to the interest of the State into whose territory the criminal has come that he shall not remain at large therein, inasmuch as from his past conduct it may reasonably be anticipated that, if opportunity offers, he will again be guilty of crime. No State can desire that its territory should become a place of refuse for the malefactors of other countries. It is obviously its interest to get rid of them. These are motives rather for the punishment of offenders than strictly for their extradition.

Extradition crime.

Beccaria, in his famous Traite des delities et des peines (French translation Lausanne, 1766) states the grounds upon which extradition rests with more precision —"He who raises his hand against man, deserves having all men as his enemies, and must always be an object of universal execration It must be remembered, however, that Judges are not the avengers of humanity in general, but act in virtue of conventions, binding man with man. The place of punishment can only be that in which the crime is committed. * * * Is it useful that nations should reciprocally give up criminals? I believe that the notion of not being able to find a place upon earth where a criminal will not be punished, would be an effective means of prevention I cannot, however, approve the usage of our surrendering criminals until laws, being brought more into conformity with the needs of humanity, punishments rendered less vigorous, arbitrary power, as well as the power of opinion, more weakened, give a perfect security against the effect of personal hatred" Extradition in other words, has followed from the necessary territoriality of criminal procedure It is based on the assumption that all mankind have a common interest in the punishment of acts universally considered as crimes On the other hand, just as the interest of mankind justifies extradition, the same interest justifies States in regulating extradition by treaties, and not exposing the extradited criminal to vindictive proceedings or charges which are not common ground among civilised communities *See* Ency of the Laws of England, Clarke Treatise on the Law of Extradition Moore Treatise on Extradition and Interstate Rendition, Kirchner,Extradition, Spears The Law of Extradition, Lawrance, International Law)

"Extradition Crime" defined 33-4 Vic 52, S 26

"Extradition Offence" defined, Act 15, 1903, S 2 (b)

Extraneus est subditus qui extra terram, *i e*, Potestamem regis, Natus est A maxim meaning "A foreigner is one who is born out of the territory, that is, the government of the king "(*Adam's Gloss*)

Extraordinary Beyond or out of the common order or rule, not usual, regular or of a customary kind, not ordinary, above ordinary (as) Extraordinary jurisdiction of the High Court The word does not mean what has never been previously heard of, or within former experience, but only what is beyond the ordinary, usual or common (The Titania 19 Fed. 101, 105)

EXTRAORDINARY, REMARKABLE, are epithets both opposed to the ordinary, but things may be *extraordinary* which are not *remarkable*, and the contrary The *extraordinary* is that which is out of the ordinary course, but it does not always excite remark, and is not therefore *remarkable*, as when we speak of an *extraordinary* loan, an *extraordinary* measure of government, on the other hand, when the *extraordinary* conveys the idea of what deserves notice, it expresses much more than *remarkable* (as) a remarkable event.

EXTRAORDINARY AND ACCIDENTAL CIRCUMSTANCES. This term is sometimes construed to mean something in opposition to the act of man (*Hazeltine* v. *Edgmand*, 35 Kan. 202, 214, 57 Am. Rep.)

Extravagant claim

EXTRAORDINARY CARE OR PRUDENCE "'Extraordinary' is a strong word It is a much stronger word than prudent, or ordinarily prudent,"

EXTRAORDINARY FLOOD Such a flood as is of such unusual occurrence as could not have been foreseen by men of ordinary prudence.

EXTRAORDINARY OR SPECIAL MEETING. As applied to corporations, a meeting of the shareholders called upon emergencies, and for the transaction of particular business

"EXTRAORDINARY RESOLUTION" defined, Act. 6,1882, S 173

EXTRAORDINARY TRAFFIC As applied to a highway something unusual in weight, or extraordinary in the kind of traffic, either as compared with what is usually carried over roads of the same nature in the neighbourhood, or as compared with that which the road in its ordinary and fair use may be reasonably subjected to, (8 Q B D 59, 62), something which goes beyond the ordinary user of the particular road [*Etherley Grange Coal Co* v *Auckland Dist. Highway Bd*, (1894) 1 Q B 37, 42] "What constitutes" extraordinary traffic must, to a great extent, depend upon the opinion of those who know the neighbourhood" (*per* Grove, J, *Pickering* v *Barry*, 8 Q. B D 59, 19 Ame Cyc 102) EXTRAORDINARY TRAFFIC, in Sect 23 of 41 & 42 Vict, c 77, includes all such continuous and repeated user of a highway by the vehicles of one person as is out of the common order of traffic on the highway, and is calculated to damage the highway and increase the expenditure on its repair [*Hill* v *Thomas*, (1893) 3 Q B 333, *Etherley Grange Coal Co* v *Auckland District Highway Board*, (1894) 1 Q B 37, *Kent County Council* v *Vidler*, (1895) 1 Q B 448] It includes the passage of traction engines and trucks over a highway connecting two main roads, and used principally by farmers of land adjoining it for ordinary traffic [*R* v *Ellis*, (1882) 8 Q B D 460 *See* 61 & 62 Vict. c 29, s 13, *Kent County Council* v. *Folkestone* (*Mayor, &c*), (1905) 1 K B 620] To constitute a *traffic extraordinary* there must be an exceptional user of the highway" (*per* Charles, J, *Wolverhampton* v *Salop Co*, 64 L J M C 179)

"DIFFICULT OR EXTRAORDINARY" is to be distinguished from "common or ordinary"

Extravagant Passing the bounds of reason, wild, absurd, exorbitant

EXTRAVAGANT, PRODIGAL, LAVISH, PROFUSE The *extravagant* man spends his money without reason, the prodigal man spends it in excesses: one may be extravagant with a small sum where it exceeds one's means, one can be prodigal only with large sums *Extravagant and prodigal* designate habitual as well as particular actions lavish and profuse are properly applied to particular actions, the former to denote an expenditure more or less wasteful or superfluous, the latter to denote a full supply without any sort of scant (*Crabb.*)

We are *extravagant* when we spend more than we can afford We are *profuse* when we give away in great or excessive quantities. *Profuseness*, therefore, is a mode of extravagance, namely, an *extravagant* expenditure on other objects than ourselves. (*Smith Syn Dis*)

Extravagant claim 1937 M W.N 1006.

Extravasation.

Extravasation. Escape of the fluids of the body from their natural canals, and consequent diffusion in adjacent issue

Extrema potius pati quam turpia facere A maxim meaning "Extremeties are rather to be suffered than to do disgraceful, infamous or scandalous things". (*Adam's Gloss.*)

Extreme The best or worst; a thing of the superlative degree, most urgent, greatest, highest, immoderate, excessive; most violent

Extremis probatis praesumuntur media. A maxim meaning "Extremes being proved, those things which fall within or between them are presumed" (*Trayner Leg Max.*)

Extrinsic evidence. Evidence not legitimately before the tribunal in which the determination of a case is tried, such facts or circumstances outside, or not referred to in, a written document, which serve to explain or vary its meaning and sometimes to contradict it

Ex turpi causa non oritur actio. A maxim meaning "From an immoral cause, no action arises"

Ex turpi contractu non oritur actio A maxim meaning "No action arises on an immoral contract. (*Bouvier.*)

Ex vi termini The interpretation of a term by virtue of its own essential meaning, and not by extrinsic evidence, whether the term is used in a philological or a legal sense

Eye-witness One who saw the act, fact, or transaction to which he testifies.

Eyre "A judicial visitation of the counties by justices appointed for the purpose of hearing all pleas". [*See* Pollock and Maitland, History of English Law; *Ency. of the Laws of England.*)

Ezhuvan Tiyans are so called in Palghat and Valluvanad, they follow Makkathayam. (*Sun Iyer's Mal. Law*)

F

F. A letter which often stands for something abbreviated (*As, first, French, Anderson L. Dict.*), a letter where with felons, etc, are branded and marked with a hot iron, on their being admitted to the benefit of clergy. (*Jacob L. Dict., Tomlin's L. Dic.*)

F A A. These letters denote "free from all average" in marine policies [*Aston* v. *Blundell*, (1895) 2 Q B 196, (1896) 1 Q B 123)]

F C Fidei commissum

F D. Fides data, or fide data.

F F. Filius familias, or fidem facit

F J Fieri jussit.

F N C Fidei mostrae commisit

Fabric Thing put together, structure, building, woven material "As used in a custom Revenue Act, a term which includes elastic cords and braids manufactured of silk and India rubber" (19 Cyc. 105.)

Fabricate In criminal law, a word which has been said to import a criminal intention—a *mens rea*, a wrongful act, an act done with a *mens rea*, fraud or falsehood, a false or fraudulent concoction, knowing it to be wrong and contrary to law (as) fabricating false evidence (*Aberdare Local Bd. Health* v *Hammett*, L R 10 Q B 162, 165, 166)

Fabricated evidence Evidence manufactured or arranged after the fact, and either wholly false or else warped and discoloured by artifice and contrivance with a deceitful intent (*Black L. Dict.*)

"Fabricating false evidence" defined, Act 45, 1860, S 192.

Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence" (Penal Code, S 192.)

Face. In commercial law, the word is used in its apparent or obvious meaning, (as) face value. As applied to an instrument that which is shown by the mere language or evidence (*Black L. Dict.*) as, "on the face of the document". The principal sum which it expresses to be due or payable, without any additions in the way of interest or costs. (*Black L. Dict.*)

Face about ('*in Milit*') Turn round

Face of an instrument is that which it shows without extrinsic evidence

Face value As applied to commercial paper, the value expressed on the face of the writing (*Marriner* v *John L. Roper Co.*, 112 N C 164, 166) Nominal value marked on the face of a security—the par value of stocks or shares

ON THE FACE OF IT Judging by appearances, as, a document false and fabricated on the *face* of it

Facias (*Lat.*) You cause,—an emphatic word in various writs.

Facilis Est Lapsus Juventutis A maxim meaning "Youth is very liable to err. (*Morgan Leg Max.*) It is on this and similar other maxims that the laws for the protection of infants, and expectant heirs of young age from the artifice of money-lenders are founded

Facility The quality of being easily performed, absence of difficulty, dexterity, ease in performance, that which promotes the ease of any action

Facilities, Reasonable facilities. "When you speak of giving 'Reasonable facilities' you imply that the thing with regard to which you order a facility is an existing thing [per *Esher, M.R. Darlaston* v *Lond & N W. Ry.*, (1894) 2 Q B. 694).

Facinus quos inquinat a equat. A maxim meaning "Guilt makes equal those whom it stains". (*Wharton L. Lex.*)

Facsimile.

Facsimile. Exact copy of a writing or picture, etc.

"**Fact**" defined (*See also* Question of fact) Act 1, 1872, S. 3

FACT is a term having a variety of meanings, thus it may signify either a state of things, that is, an existence or a motion, that is, an event (1 Bentham Jud. Ev. 48), an act action or deed a thing done (*Bouvier L. Dict.*), an effect produced, or achieved (*Webster Dict*); something fixed unchangeable, a reality as distinguished from supposition or opinion (*Walker Dict*), a truth as distinguished from fiction or error a circumstance (*Clare* v *People*, 9 Colo 122, 124; 10 Pac 799), an occurrence or event (*Boyle* v. *State*, 105 Ind. 469, 494), an incident, an event or incident (*Ame Cyc*).

"Fact" means and includes—(1) anything, state of things, or relation of things capable of being perceived by the senses, (]) any mental condition of which any person is conscious [Act I of 1872 (Evidence), S 3]

The definition of fact does not restrict a fact to something which can be exhibited as a material object. Statements of prisoners while in police custody leading to discovery of material object held ... sible as leading to discovery of relevant ... ad 642=158 I C 764=36 Cr L J 1442 (2) =1934 M W N 1479=42 L W 124=A I R 1935 Mad 528=68 M L J (Supp) 73 (F B)] A statement is included in the definition of "fact" (171 I C 481= 1937 O L R 561=1937 O W N 1058) The word 'fact,' in S 157 of the Evidence Act is not used in the limited sense of 'event' but also includes a continuing fact, such as possession Possession is a fact within S 3 of the Act (25 I C 510) Meaning of the word "fact in S 27, Evidence Act, discussed [58 Mad 642 =158 I C 764=36 Cr L J 1442 (2)=42 L W 124= 1934 M W N 1479=A I R 1935 Mad 528=68 M L J (Supp) 73 (F B)]

"**Fact in issue**" defined, Act 1, 1872, S 3, *Expln*

The expression "facts in issue" means and includes —any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows *Explanation*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue. (Evidence Act, S. 39)

Fact or law, Question of The circumstances which govern the distinction between the powers of Judge and jury (in English law) are frequently of a complicated nature, and though the general principle may be laid down that it is for the Judge to determine the law and the jury the facts in any given case, it is often extremely difficult to draw any sharp line of division.(1 Co Litt 155-b. Hargrave's edition, and Taylor on Evidence, 1906 ed, vol. I, pp 23 *et seq*)

Fact or matter in issue A fact or matter on which the plaintiff proceeds by his action and which the defendant controverts in his pleadings.

Facts of which courts take judicial knowledge. *See* Evidence Act, S. 57.

Factor

Facta sunt potentiora verbis A maxim meaning "Facts are more powerful than words." (*Bouvier L Dict.*)

Facta tenent multa quae fieri prohibentur. A maxim meaning "Deeds contain many things which are prohibited to be done" (*Wharton L Lex*)

Faction. Self-interested or unscrupulous party, especially in politics.

FACTION, PARTY The term *party* has of itself nothing odious, that of *faction* is always so One may have a *party* for one's merit, from the number and ardour of one's friends, but a *faction* is raised by busy and turbulent spirits for their own purposes *Faction* is the demon of discord, armed with the power to do endless mischief, and intent alone on destroying whatever opposes its progress, woe to that state into which it has found an entrance; *Party* spirit may show itself in noisy debate, but while it keeps within the legitimate bounds of opposition, it is an evil that must be endured.

Factions Actuated by the spirit of a faction, or party spirit, self-interested, unscrupulous

FACTIOUS, SEDITIOUS The *factious* man attempts to raise himself into importance, he aims at authority and seeks to interfere in the measures of government, the *seditious* man attempts to excite others, and to provoke their resistance to established authority the first wants to be a law-giver, the second does not hesitate to be a law-breaker the first wants to direct the state, the second to overturn it the *factious* man is mostly in possession of either power, rank, or fortune the *seditious* man is seldom above the mass of the people. *Factious* is mostly applied to individuals; *seditious* is employed for bodies of men hence we speak of a factious nobleman, a seditious multitude

Facto In fact, as where anything is actually done, etc *See* De facto (*Tomlin's Law Dic.*)

Factor [*See also* Broker] A factor is a mercantile agent who, in the customary course of his business as such agent, is intrusted with the possession or control of goods, wares, or merchandise for sale on commission An agent employed to sell goods or merchandise consigned or delivered to him, by or for his principal, for a compensation commonly called "factorage" or "commission"

A factor is a species of mandatory, whose powers depend on the nature and terms of the mandate, commission, or authority under which he acts

A factor must be in actual or constructive possession of the property which he sells for his principal.

FACTOR, AGENT. The *factor* only buys and sells on the account of others, the *agent* transacts every sort of business in general, merchants aad manufacturers employ *factors* abroad to dispose of goods transmitted, lawyers are frequently employed as *agents* for the receipt and payment of money, the transfer of estates, and various other pecuniary concerns

FACTOR, AGENT, BROKER. There is little difference in these words themselves. A *factor* and agent being persons who act on behalf of others; but an *agent* has more discretionary power, and represents his employer's interests more generally, a *factor* transacts business on commission The *factor* differs

Factor

from the *Broker*, in that he is the consignee of goods, and buys and sells in his own name, while the broker is only a middleman and takes no possession (*Smith Syn Dis.*)

FACTOR AND BROKER DISTINGUISHED The character of broker is materially different from that of factor, and therefore where a broker sells goods without disclosing the name of his principal, he acts beyond the scope of his authority (*Barring* v *Corrie*, Term Rep K B. Mic 59 Geo 3157 *Tomlin's Law Dic.*)

"The difference between a factor and a broker is that a factor is intrusted with the possession of the goods which he is authorised to sell, and has a special property in and lien upon them, whereas a broker is a mere negotiator and is not, as a general rule, intrusted with the possession of the goods, and therefore has no such special property or lien" (*Baring* v. *Carrie*, (1818), 2 Barn & Ald 137, 20 R R 383, *Stevens* v *Biller*, (1883), 25 Ch.D 31)

FACTORS DISTINGUISHED FROM EMPLOYMENT AGENTS A person who hires or procures for another person to be employed by him in the laying out and surveying of a line of railway is an employment agent and not a broker or Factor. *Milford* v *Hughes*, 16 L J. Exch 40, 16 M & W 174)

FACTORS AND STOCK-BROKERS *A Stock broker* is one who, for a commission, attends to the purchase and sale of stocks and other securities for the account of clients (*Banta* v *Chicago*, 40 L R A 611.)

A person who for brokerage and hire negotiates and concludes bargains for stocks is broker in point of law (*Janssen* v *Queen*, 4 Burr 2103)

DOMESTIC FACTOR One who resides in the same country with his principal

Factorage The wages or allowances paid to a factor for his services

"**Factory**" defined (*See also* Salt Factory,) Act 15, 1881, S 2 (A I R 1928 Lah 78)

FACTORY, (1) in the English Factory, etc, Act, 1901 *Horner* v *Franklin* (1905) 1 K 479, *Spacey* v *Dowlais Gas & Coke Co*, (1905) 2 K B 879, *Barret* v *Kemp Bros.* (1904) 1 K B 517, *Dyer* v *Swift Cycle Co*, (1904) 2 K B 36, *Brass* v *L C. C*, (1904) 2 K B 336, (2) in Workmen's Compensation Act, 1897, *Fenn* v *Miller*, (1900) 1 Q B 788, *Francis* v *Turner*, (1900) 1 Q B 478, *see also* A I R 1928 Lah 78

FACTORY AND WORKSHOP Every place in which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the making of any article, or part of any article or altering, repairing, ornamenting, or finishing it, or otherwise adapting it for sale is *prima facie* a *"factory"* or a "workshop" If the employer of those who work there has the right of access to the place or has control over it If any machinery moved or worked by steam, water, or other mechanical power is used in such manufacture, or in aid of such manual labour, the place is a "factory" If no machinery moved or worked by any mechanical power is used there the place is, generally speaking, "workshop," but to this rule there are some exceptions. (Sec 5 *Ency of the Laws of England* 674)

Factory and Workshops Acts Acts under which factories and workshops are regulated. *See* 9 M I.

Faculty.

A 140=15 Moo.P C. 230=1 Suth. 471=1 Sar. P C. 831

Factory prices The prices at which goods may be brought bought-at-factories, as distinguished from the prices of those bought in the market, after they have passed into the hands of third parties of shopkeepers (*Whipple* v *Levett*, 29 Fed Cas. No. 17, 518, 2 Mason 89, 90)

"WHOLESALE FACTORY PRICES" import the actual wholesale market prices at the factory (*Avery* v *Stewart*, 7 Am Dec 240)

Factum A fact, fact, as distinguished from law (*Burrill L Dict*), In old English law, a deed.

"The *factum* of an instrument means, not barely the signing of it, and the formal publication or delivery, but proof in the language of the person executing the same 'that he well knew and understood the contents thereof, 'and did give, will, dispose, and do in all things as in the said will is contained' (*Zacharias* v *Collis*, 3 Phillim, 176, 179)

Factum a judice quod od ejus officium non spectate non ratum est A maxim meaning "An act of a judge which does not pertain to his office is of no force" *Bouvier L Dict* (citing Broom Leg Max 93 Note)

Factum cuiqu suum, non adversario nocere debet A maxim meaning "A man's actions should injure himself, not his adversary" (*Bouvier L Dict*)

Factum infectum fieri aequit A maxim meaning "What is done cannot be undone" (*Bouvier L Dict*)

Factum negantis nulla probatio A maxim meaning "No proof is incumbent on him who denies a fact" (*Bouvier L Dict*)

Factum non dicitur quod non perseverat A maxim meaning "That is not said to be done which does not last" (*Bouvier L Dict*).

Factum unius alteri noceri non debet A maxim meaning "The deed of one should not hurt" another (*Wharton L. Lex*)

Factum valet That the maxim *"Quod fieri non debuit factum valet"* is not recognised by the schools of Hindu Law other than the Bengal School in the same degree as in the Bengal school is undoubtedly true But that it receives no application except in Lower Bengal is a proposition which is contradicted not only by passages in Sir William Macknaghten's work, but by decided cases The High Courts of Madras and Bombay have acted upon it [51 I A 40= 3 C 587 (601)=2 C L R 51=3 Sar 786=3 Suth 499]

Factum valet or quod fiere non debet, factum valet A maxim meaning "Fact cannot be altered though it should not have been done"

Facultas probationum non est angustanda. A maxim meaning "The facility of proofs is not to be narrowed" (*Wharton L Lex*)

Faculty Colleges, a body of instructors (as) Faculty of Arts 'Faculty' signifies a privilege or special dispensation, granted unto a man by favour and indulgence to do that which by the law he cannot otherwise do" (*Termes de la Ley*) In ecclesiastical affairs, properly speaking, it is a license issued by the ordinary through his Consistorial Court, to effect certain alterations of a grave character in a parish church (*Boyd* v. *Phillpots*, L.R. 4 A & E. 297, 342).

Faggot vote.

Faggot vote. A faggot vote was a vote created for party purposes at parliamentary elections by transferring to a person not otherwise qualified for the electoral franchise the bare amount of property sufficient to give him the necessary legal qualification Where property was conveyed to an individual with the fraudulent intent of giving him the qualification for a vote without giving him the substance of the property, the vote so acquired was termed a "faggot vote" (*see* Hansard, Parliamentary Debates, vol xxxvi, col 945) The use of the word faggot in this sense is apparently derived from its analogy to the employment of the term faggot as denoting a dummy soldier, *i e*, a person temporarily hired to supply a deficiency on the muster of a regiment (*see* Murrat, Eng. Hist. Dict, vol iv, p 20, *Ency of the Laws of England*)

Fail To leave unperformed, to omit, to neglect, as distinguished from refuse, which latter involves an act of the will, while the former may be an act of inevitable necessity (*Bouvier L Dict*), although the word is sometimes used in the sense of refuse (*Persons* v *Hight*, 4 G 474, 494)

IN COMMERCIAL LAW, to become unable to pay one's debts or other obligations (*Mayer* v *Hermann*, 16 Fed Cas No 9, 344, 10 Blatchf 256)

"Fails to appear" Is equivalent to default

Failure When used in connection with any enterprise, in its ordinary and obvious sense, abandonment or defeat (*White* v *Pettyjohn*, 23 N C. 52, 55), the result of action which predicates earnest effort, and not mere inaction and refusal to do (*O'Connor* v *Tyrrell*, 53 N J Eq 15, 19) *See also* 1937 M W N 294=A I R 1937 Mad 797 Sometimes the term is used in the sense of nonperformance of a duty—that is, as the equivalent of neglect

As applied to a merchant or mercantile concern, an inability to pay his or their debts, from insolvency (*Boyce* v *Ewart Rice* (S C) 126, 140), a suspension of payment or an enforced suspension of business

The word "failure" contemplated in r *2*, O 9 of the Civil Procedure Code (V of 1908), includes not only absolute failure to pay but also failure to pay within a certain time fixed by the Court therefor [(11 Ind Cas 906 (907)=7 N L R 114)]

FAILURE, FAILING. *Failure* is opposed to success, a *failing* to a perfection The merchant must be prepared for *failures* in his speculations, the statesman for *failures* in his projects, Every body must be prepared for the *failings* of our human nature

FAILURE, MISCARRIAGE, ABORTION *Failure* is more definite in its signification, and limited in its application; we speak of the *failures* of individuals, but of the *miscarriages* of nations or things *Abortion*, in its proper sense, is a species of miscarriage We speak of the abortion of a scheme with as little reference to the schemer, as when we speak of the miscarriage of an expedition

"FAILURE, NEGLECT, OR DEFAULT" to perform an obligation, See *Lewis* v *Swansea*, 4 Times Rep 706

"Failure" in a suit. *See* 6 Bom. L.R 1122=29 B 102.

Fair. *As an adjective*, in common usage, the word conveys some idea of justice or equity impartial free from suspicion of bias, equitable, (Webster Dict), reasonable, honest, upright; and as applied to the weather, a fair weather is one free from clouds, not obscure

Fair

AS A NOUN, a public mart or place of buying or selling, a greater species of market, distinguished from an ordinary market in former times (1 Blackstone Comm 274) and even at the present time as existing or recurring at intervals of time A Fair "is a solemn or greater sort of Market granted to any Town by privilege for the more speedy and commodious provision of such things as the subject needeth, or the utterance of such things as we abound in above our own uses and occasions" (*Cowel*) *Jacob*)

FAIR, CLEAR A *fair* statement contains everything that can be said pro and con, a *clear* statement is free from ambiguity or obscurity *Fairness* is something desirable and inviting, *clearness* is an absolute requisite, it cannot be dispensed with

FAIR, HONEST, EQUITABLE, REASONABLE *Fairness* enters into every minute circumstance connected with the interests of the parties, and weighs them alike for both, *honesty* is contended with a literal conformity to the law, it consults the interest of one party An estimate is *fair* in which profit and loss, merit and demerit, with every collateral circumstance, is duly weighed, a judgment is *equitable* which decides suitably and advantageously for both parties, a *price* is reasonable which does not exceed the limits of reason or propriety A decision may be either *fair* or *equitable*, but the former is said mostly in regard to trifling matters, and the latter in regard to the important rights of mankind It is the business of the umpire to decide *fairly* between the combatants, it is the business of the Judge to decide *equitably* between men whose property is at issue.

Fair, just, equitable, reasonable, moderate. All these terms are applicable to persons, their conduct, and their demands *Fair* denotes an estimate in detail of what is reciprocally just, a *fair* price for an article is that which seems right considering the circumstances of buyer and seller and sale A *fair* man is he who is ready to look at other's interests as well as his own, and to view matters without partiality, prejudice, or self seeking.

Just is more comprehensive, and implies the application of principles of retributive justice, where it is due There is a dignity and sternness about the term *just* which does not belong to *Fair* So prizes are said to be *fairly* won and *justly* awarded.

Equitable is according to Equity, and so has the force of the noun itself, which is not mere fairness, but such as may serve to supplement the imperfection of law or rule

Reasonable denotes what is fair under another aspect As the *fair* is the right between man and man, the *reasonable* is the right in itself, as it would commend itself not only to the just but to the wise man The reasonable, however, extends beyond the matters of intercourse between man and man, to the essential nature of things which are in accordance with common sense or common experience *Moderate* as commonly employed, denotes a marked absence of excess in demand, this may or may not flow from justice or fairness—the term states nothing but the fact "I purchased the article at a moderate price" indicates nothing as to the intentions of the seller. Moderate measures may be

and very often are, the expressions of justice, but they may also originate in prudence or be dictated by necessity (*Smith Syn Dis*)

Fair abridgment A real condensation of copyright matter

Fair cash value As applied to property, the highest price that a normal person, not under any peculiar compulsion, and not having a special fancy for it, will pay at a given time to get the property (*National Bank of Commerce* v *New Bedford*, 175 Mass 257, 56 N E 288)

Fair cash valuation is such a price as honest and impartial men would naturally and reasonably place upon any given piece of property, in view of its useful capabilities and the end to be accomplished by its sale and purchase (*Jones* v *Whitworth*, 94 Tenn 602 606, 30 S W, 736)

Fair Comment "A Fair Comment (excusing what would otherwise be a Libel) is a comment which is either true, or which, if false, expresses the real opinion of its author (as to the existence of a matter of fact, or otherwise), such opinion having been formed with a reasonable degree of care and on reasonable grounds" (*Steph Cr* 202, *See* I P C S. 499) *Tenterden, C J, in Macleod* v *Wakley* (3 C & P 313) said —'Whatever is fair and can be reasonably said of the works is not actionable unless it appears that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author, then it will be a libel'" (per *Bowen L J, Merivale* v *Carson*, 20 Q B D 283, *Stroude*)

Fair heritage is an ample and goodly heritage

Fair knowledge or skill A reasonable degree of knowledge or skill

Fair play Equal opportunities, just treatment

Fair preponderance of evidence, a preponderance of evidence fairly perceptible

Fair pleader in old English law (Beau pleader, fair pleading, apt or correct pleading)

Fair Price Coleridge, C J said,—"In ordinary colloquial language 'Price' does not always mean money, and 'Fair Price' is not necessarily an adequate sum of current coin it may be used where the result of a transaction is that a man gave a fair equivalent for what he got" (*London and Yorkshire Bank* v *Belton*, 54 L J Q B 568)

Fair report A fair report of a judicial proceeding is one that 'is a substantially true accurate, and either complete or condensed report in such a manner as to give a just impression of what took place", (*Steph Cr* 206) The report may be "fair," although it contains only the speech of counsel and the summing-up of the judge, with or without a statement of the facts (*Milissich* v *Lloyds*, 46 L J Q B. 404 *Odgers*, 285)

Fair sale In speaking of a sale held under a power conferred by a mortgage deed the term implies "a sale conducted with fairness as respects the rights and interests of the parties affected by it." (*Lalor* v *McCarthy*, 24 Minn, 417, 419)

Fair trade. Free trade conditional on reciprocity

Fair trial· A trial which is fair and proper in contemplation of law, *viz*, that which the law secures to the party (*St Paul, etc R Co*, v *Cardner*, 18 Am Rep 334), before an impartial jury, one where the jurors are entirely indifferent between the parties, and one held in accordance with the procedure laid down by law

Fair valuation Present market value

Fairway In navigation, water on which vessels of commerce habitually move. (*The Oliver*, 22 Fed 848, 849), a clear passage way by water, a navigable channel

"Fair-way" of a river, is a "clear passage way by water, and is not, necessarily confined to that part of the channel which is marked by buoys, but includes all that part of the river which is navigable for vessels of moderate draught (*The Blue Bell*, 1895, P 242, 64 L J P D & A 71, 72 L T 540) The "fairway" of a river of channel means "the clear passage way by water, or the open navigable passage used by vessels proceeding up and down a river or channel." *Bruce J, The Blue Bell*, (1895) P 242

Fairly An agreement to do a work "fairly" or "Diligently" and "Regularly," or "Uninterruptedly, Efficiently and Regularly," mean more or less the same thing (Mac Ss 217, 233, *Stroude*)

Faisal The settled rate, the assessment fixed at the time of the original survey in Madras

Faisal Patrak The final survey paper showing the area and assessment of each survey number

Faith Confidence, credit, trust, belief in divine truth (as) the Christian faith, reliance; credence, purpose, intent, sincerity (as, good faith), state of knowledge or design In Scotch law, a solemn pledge, an oath, as in the phrase "to pledge one's faith"

GOOD FAITH [*See* Bona fides], fairness, loyalty, fidelity, sincerity

BAD FAITH Insincerity, intent to deceive.

FAITH, CREED *Faith* has always a reference to the principle in the mind, *creed* only respects the thing which is the object of *faith* The Church of England has adopted that *creed* which it considers as containing the purest principles of Christian *faith*

FAITH, FIDELITY We keep our *faith*, we show our *fidelity* *Faith* is a public concern, it depends on promises, *fidelity* is private or personal concern, it depends upon relationships and connections. A breach of *faith* is a crime that brings a stain on a nation, for *faith* ought to be kept even with an enemy. A breach of *fidelity* attaches disgrace to the individual, for *fidelity* is due from a subject to a prince or from a servant to his master, or from married people one to another No treaty can be made with him who will keep no faith, no confidence can be placed in him who discovers no *fidelity*. The Danes kept no *faith* with the English, fashionable husbands and wives in the present day seem to think there is no *fidelity* due each other

Faithful, Observant of compacts, treaties, contracts, vows, or other engagements, loyal, sincere, true to one's word. (*Cent Dict.*)

FAITHFUL, TRUSTY. It is the part of an honest citizen to be *faithful* to all his engagements; it is a particular excellence in a servant to be *trusty*.

Faithful subject.

FAITHFUL; TRUSTY, CONFIDENTIAL. The *Faithful* servant is he who is full of faith, in the sense of fidelity to his master, the *Trusty* servant is he who is worthy of his master's trust. Hence *Trusty* is a more comprehensive term than *Faithful*, which it includes, together with all other qualities which justify the reposing of confidence The indiscreet servant, however he might love his master, would not be *trusty*, though we might not speak of him as *unfaithful* *Confidential* expresses the simple relationship of trust, not the deserving of it It has happened that masters have been robbed, betrayed, and murdered by their confidential servants (*Smith Syn. Dis*)

"Faithful subject" What is connoted in the term "Faithful subject" is fidelity or allegiance to some person in relation to whom there is a binding tie [28 Bom L.R 1175=98 I C 448=A I.R. 1926 Bom 581]

Faithfully Diligently, without unnecessary delay (*Don* v *Thompson*, 16 N L J 72, 730, It is also a usual formula in closing a letter, (as, yours *faithfully*)

Faithless Perfidius, false, deceitful, false to promises, unreliable

FAITHLESS, UNFAITHFUL A woman is *faithless* to her husband who breaks the marriage vow, she is *unfaithful* to him when she does not discharge the duties of a wife to the best of her abilities.

FAITHLESS, TREACHEROUS, PERFIDIOUS *Treachery* lures by deceitful appearances to ruin *Perfidy* violates engagements from self interest or inclination. *Perfidy* is a falsehood dark and deep It is an abuse of trust founded on inviolable guarantees of humanity, good faith, laws, gratitude, friendship, natural relationship The more sacred such rights and the more calm the trust reposed upon them, the more secret the perfidy, and the more established the relationship, the baser the *perfidy* which violates it. (*Smith Syn Dis*)

Faitour An old English term meaning "An evil doer, or an idle companion," and, is synonymous with the term Vagabond." (*Termes de la Ley*)

Faizullahpuria (*Punjabi*) The name of one of the Sikh misls, they occupied tracts on the right bank of the Bias and Satluj They were otherwise called the Singhpuria misl

Fakir (*Arabic*) A Muhammadan religious mendicant. 135 I C 56=12 Lah 590=32 P L.R 867, *See also* 1936 Lah 496 A poor man, a mendicant A Musulman beggar (*Mac. Mahon Law*) also a street-vendor. (*Cent Dict.*) Mills Annot. St. (1891) sect. 1400, defines a fakir to be "any person who shall sell or attempt to sell any article, goods wares or merchandise, of any kind upon the street or streets of any city or town, by means of any false representations, trick, device or lottery, or by means of any game of chance, for the purpose, and with intent to procure or obtain a greater or better price for such article or goods, than their actual retail price or value upon the market."

'Fakir' and 'Khadim' The word 'fakir' means a religious man who devotes his life to meditation and spiritual exercises. The word "khadim" does not mean a servant; it is a mode of describing the peculiar relationship which exists between a spiritual preceptor and his disciple (12 Lah 590=32 P.L R. 867=1931 Lah 379)

FAKIR, TAKIA, KHANKAH, DARGAH The word *'fakir'* does not mean 'beggar' but it means a holy person who has relinquished the world and devotes his time to imparting religious instructions to his disciples and others The place of abode of a fakir is called a *takia* before he attains sufficient public importance and when a fakir attains sufficient public importance and a large number of disciples begin to get round him and lodgment is provided for such disciples, then the place is called a *khankah* and then if the fakir on his demise is buried in the *khankah* it becomes a *dargah* The *takia* itself is an institution recognised by law and a grant of endowment to the same will be as valid a waqf as to *khankah*, *adargha* or a mosque (6 Lah 140=88 I.C. 816=A I R 1925 Lah 420)

Faldage (*in Feudal law*) " 'Faldagium' is a privilege which anciently several Lords reserved to themselves of setting up Folds for Sheep in any fields within their Manners, the better to manure them, and this not only with their own, but their tenants, sheep, which they called Secta faldae This Faldage, in some places, they call a Fold-Course, or Free-fold, and, in some old Charters, Faldsoca, that is, Libertas faldae, or faldagii" (*Cowel*)

Falesia (*Old English Law*) Bank or hill by the sea-side (*Co Litt* 5 b)

Fall *As a noun*, that which falls or has fallen something in the state of falling or of having fallen (*Cent Dict*), descent from a higher to a lower level, *when applied to the seasons of the year*, the season when the leaves fall from the trees. (*Webster Dict*)

Fall *As a verb*, to descend from a higher to a lower place or position through loss or lack of support, to come down by tumbling or loss of balance (*Cent Dict*), to descend freely, to abate, to merge, to be transmitted to be assigned (*English Dict*)

Fall back Retreat.

Fall due. To become due (as, a debt falling due on a particular date).

THE FALL (*Among Christians*) denotes Adam's sin

WOMAN FALLS Loses chastity

"Falling into possession"—The mere fact that there is a provision in a will to the effect that the property devised should be in the possession of a manager until the person, in whose favour the devise is made, should attain the age of 30 years, would not prevent the estate from falling into possession, immediately on the date of the testator's death (17 C. 272)

"Falling Through', (of a contract or bargain.) This term is not susceptible of a precise definition, but is "broad enough to comprehend the failure of a contract of a sale through the refusal of the buyers to pay the price." (*Hopkinson* v. *Leeps*, 9 Phila. (Pa.) 5, 9).

Fallacious, Sophistical. *Sophistical* reasoning is that of which the nature is to subtle, that is faults

Fallacious, sophistical

Fallow

cannot easily be detected and exposed, and it may be unanswerable without being convincing *Sophistical* reasoning may silence any bewilder, but seldom persuades By *fallacious* reasoning we may deceive others, and are continually deceiving ourselves, in those cases in which our own hearts give credence to the fallacy, but *sophistical* reasoning is felt at the time to be inconclusive (*Smith Syn Dis.*)

"Fallow", defined Reg 6, 1893, S 2 (5), *Expln*

FALLOW, means uncultivated, barren, ploughed, but left uncropped for the year

Falsa demonstratio, false designation, erroneous description of a person or thing

Falsa demonstratione legatum non-peremi A maxim meaning "A legacy is not destroyed by an incorrect description" (*Bouvier L Dict—citing Broom Leg Max* 645)

Falsa demonstratio non nocet Erroneous description does not vitiate a deed "A false description does not render a deed or other writing inoperative" The maxim *falsa demonstrato non nocet* means that if there be a sufficient and adequate description to create a certainty of what was meant, subsequent erroneous additions will not vitiate a description otherwise accurate (5 Bom.L R 995 *See also* 4 Bom L R 871.)

Falsa grammatica, false or bad grammar, *Falsa Grammatica non vitiat concessionem* false or bad grammar does not vitiate a grant *Falsa orthographia non vitiat chartam* false spelling does not vitiate a deed.

Falsa moneta, false or counterfeit money

Falsa orthographia, sive falsa grammatica, non vitiat concessionem A maxim meaning "Erroneous or incorrect spelling or ungrammatical expression does not vitiate a grant, "False spelling or false grammar does not vitiate a grant" (*Bouvier L Dict*)

False Erroneous, untrue, the opposite of correct, or true The term does not necessarily involve turpitude of mind In the more important uses in jurisprudence the word implies something more than a mere untruth, it is an untruth coupled with a lying intent (*Wood* v *State*, 15 Am Rep 664.), or an intent to deceive or to perpetrate some treachery or fraud The true meaning of the term must, as in other instances, often be determined by the context *See* 9 C W N 799=30 Cal 123 (F B) When used with reference to the testimony of a witness it ordinarily means something more than that the testimony is untrue, and implies that it is intentionally untrue, but the word is also sometimes used in the sense of mistakenly or erroneously

FALSE, FABULOUS False is opposed to true *Fabulous* expresses a mode of the false—the false in representation, description, or narrative The fabulous is inventive falsehood That which is *fabulous* implies order, arrangement, effort at probability, and like. And yet, so far as mere appearance is concerned, the positively false may approach much nearer to probability than the fabulous. Where the false is probable the probability is inherent and essential. Where the *fabulous* is probable the probability is contrived. (*Smith. Syn. Dis*)

False entry

"False and frivolous". *See* 160 I C. 364=1935 Pesh 178.

'FALSE' AND 'FRAUDULENT', may express different qualities of the noun 'proof' (*Miller* v *Tobin*. 18 Fed 609, *Ame Cyc.*)

False or fraudulent persuasion The term equivalent to the terms inducement, promise, artifice, or deception.

False or unjust, in sect 26 of the Weights and Measures Act, 1878 (41 & 42 Vict c 49), applies to a weighing machine used by putting it into a scoop containing the article to be weighed, and having fixed to it a piece of paper, weighing less than the bag in which the article weighed was to be delivered to the purchaser *Lane* v *Rendall*, (1899) 2 Q B 673 *L.C. C* v *Payne*, (1904) 1 K B 194, (1905) 1 K.B. 410.

"FALSE" AND "UNTRUE" "We do not speak of untrue pretences', when we wish to designate an offence of that character, but we say 'false pretences' So we say 'false measures', 'false weights', a 'false swearing' not 'untrue swearing', as indicating perjury, or a designed misstatement"

False Account An account which is morally false, known to be untrue

False Bank-note. A forged paper in the similitude of a bank-note, or which on its face appears to be such a note.

False bottom Horizontal partition of vessel.

False charge An accusation made to a person who has nothing to do under the law with setting the Criminal Law in motion would not amount to a charge within the meaning of S 211, I P Code But allegations of an offence made to a competent authority or other person with a statutory standing in the matter for the purpose of obtaining sanction to prosecute while not amounting to institution of criminal proceedings, containing amount to making of a charge within the meaning of S 211 (16 Pat 571=1937 P W N 937)

"Falsely charging" means a false accusation made to any authority bound by law to investigate it or to take any step in regard to it (32 Mad 258, *Ref*) (1930 Cr C 1094=A.I R. 1930 Pat 550)

False claim; a claim by one of more than his due and amercement and punishment therefor

False colours Flag one has no right to

"False document" defined *See* Making a false document, Penal Code.

False Document A document purporting to be made by a person who did not make the same, or a document purporting to be made by some person who did not in fact exist (*Canada Cr Code*, S 421)

False entry. An entry which is either totally fictitious, or fictitious to some extent, an untrue or incorrect entry contradistinction to "correct" entry (*U. S* v *Potter*, 56 Fed 83, 94) An entry would be a false entry or a statement in a record or document would be a false entry, if it does either by reason of some false additions or of some material omissions misrepresents the truth. The omissions may be illegal or may not be illegal. The thing to consider is what is the effect of the omission on the entry as made or on the statement as occurring in a document. (169 I.C. 64=38 Cr.L.J. 700=A.I R. 1937 Cal. 42.)

False evidence.

"False evidence" defined. *See* Fabricating false evidence, Giving false evidence

FALSE EVIDENCE "Whoever being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true is said to give false evidence *Explanation* 1 A statement is within the meaning of this section whether it is made verbally or otherwise *Explanation* 2 A false statement as to the belief of the person attesting is within the meaning of this section, and a person, may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know (Penal Cade, S. 191)

False Imprisonment, is a trespass committed against a person, by arresting and imprisoning him without just cause, contrary to law, or where a man is unlawfully detained without legal process, To constitute the injury of false imprisonment two points are necessary, the detention of the person and the unlawfulness of such detention. (*Tomlin's Law Dic*) *False Imprisonment* consists in the retaining of the liberty of any person against his will and without the authority of law. To constitute imprisonment, the restraint must be substantially total for some period, however short. It is immaterial whether the restraint is in a prison or within the walls or in an open place, but merely restraining a man from going in a particular direction is not imprisonment if there are other directions in which he is free to go (*Bird* v. *Jones*, 1845, 7 Q B 742, 68 R R 564). "The gist of false imprisonment is unlawful detention." "A pure, naked, unlawful detention, unaffected by any question of motive or purpose" Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment 30 I A 154=30 C. 872 (879)=7 C W N 729=5 Bom L R 490=8 Sar 503 "A wrongful interference with the personal liberty of an individual, without any sufficient legal cause therefor "Imprisonment is any restraint of the personal liberty of another, any prevention of his movements from place to place, or his free action according to his own pleasure and will It is false imprisonment when this is done without lawful authority." *Johnson* v *Tompkins*, 13 Fed Cas No 746 It is the unlawful and total restraint of the liberty of the person The imprisonment is false in the sense of being unlawful (*Bird* v *Jones*, 7 Q.B. 742, 752) On this subject see 2 Co Inst 482, 589; Viner, Abr, "Imprisonment" Com. Dig, tit "Imprisonment" Hawk, P C, bk 1 c 60, Addison on Torts, Pollock on Torts; Clerk and Lindsell on Torts, Bigelow on Torts, Stephen on Malicious Prosecution; Archbold, Cr Pl. Russel on Crimes, Indian Penal Code

FALSE IMPRISONMENT AND MALICIOUS PROSECUTION —DISTINCTION—TEST [30 I A 154=30 C 872 (879)= 7 C.W.N. 729=5 Bom L.R 490=8 Sar. 503]

False measure Wrong measure.

False personation, personating another person, and acting in the assumed character, either to obtain property or exercising a right belonging to such person, or to subject such person to a legal liability.

False weight

False personation False personation is the offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others and thereby gain some profit or advantage, or in order to enjoy some right or privilege belonging to the one so personated or subject him to some expense, charge, or liability. (*Black L Dict* citing 4 Stephens Comm 181, 290. See also *Abbott L Dict*, *Bouvier L Dict*, *Burrill L Dict*)

False pretence, within the Larceny Act, 1861 (24 & 25 Vict, c 96), S 90, must be *an existing fact* But the Courts take wide views as to what is an existing fact *R* v *Gordon*, (1889), 23 Q B D 355 S 90 was passed because of an earlier case *R* v *Dangar* (1857) Dearsley & Bell, 307 *See also* Archbold Cr Pl. Steph Dig Crim Law, Russel on Crimes, Mayne, Ind Crim Law

'False property-mark" defined *See* Using a false property-mark

False return A return made by the sheriff or other ministerial officer to a writ in which is stated a fact contrary to the truth and injurious to one of the parties, or to some one having an interest in it. (*Bouvier*)

False signals or False light It is a felony for any person unlawfully to mark, alter, or remove any light or signal, or unlawfully to exhibit any false light or signal with intent to bring any ship, vessel, or boat into, or unlawfully and maliciously to do anything tending to, the immediate loss or destruction of any ship, vessel, or boat

False swearing, (*Perjury*) In its ordinary sense, swearing to what the deponent knows to be untrue, swearing corruptly · swearing which is morally, wilfully false, not merely mistaken, is the act of knowingly and intentionally stating upon oath what is not true (*Linscott* v *Orient Ins. Co*, 51 Am. St Rep 435)

False token, a false document or sign of the existence of a fact, used with intent to defraud, for the purpose of obtaining money or property.

"False trade description" defined Act 4, 1889, S. 2(3)

FALSE TRADE DESCRIPTION is a trade description which is false in a material respect as regards goods to which it is applied.

"FALSE TRADE DESCRIPTION" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of the Mer. Marks Act IV of 1889 (Merchandise Marks) S 2, cl 3 See *Kirchenboim* v. *Salmon & Gluckstein, Ltd.*, (1898) 2 Q B. 19.

"False trade-mark" defined. *See* Using a false trade mark

False weight. Wrong weight.

Falsely packed

Falsely packed, in the Hops Act, 1866 (29 & 30 Vict c 37), S 5, means not substantially according to sample *Johnson* v. *Gaskain* (1891), 8 Times L R 70

FALSEHOOD, UNTRUTH Of these terms *Lie* is the strongest It is criminal falsehood, an untruth spoken for the purpose of deceiving, and, indeed, for the worst of all purposes

An *Untruth* is simply a statement which is not true, and may have been uttered without intention to deceive and through ignorance "I must correct myself, I accidentally spoke an *untruth*"

Falsehood denotes necessarily the violation of truth for purposes of deceit.

"A *lie* is a breach of promise, for whoever seriously addresses his discourse to another tacitly promises to speak the truth, because he knows that truth is expected" Paley (*Smith Syn Dis*)

Falsify. To prove false, to avoid or defeat, *Falsify* is to give a false appearance to anything to reverse or avoid, as a verdict, or judgment (Burrill) to prove a thing to be false (*Bouvier*) In criminal law, to forge or counterfeit, to make false, (as, False coin, false document)

Falsus in uno, falsus in omnibus A maxim meaning false in one thing, false in all."

FALTER. HESITATE He who *falters* proceeds but in a weak, unstable, uncertain manner, he who *hesitates* for the time suspends progress. Under that which distracts or oppresses us we *falter*, before that which discourages us, or places obstacles in our way, or disturbs our judgment, we *hesitate* (*Smith Syn Dis*)

Fama est constans virorum bonorum de re aliqua opinio A maxim meaning "Fame is the constant opinion of good men concerning a thing", (*Morgan Leg Max*)

Fama Fides, et oculus non patiuntur ludum. A maxim meaning "Fame, plighted faith, and eyesight do not endure deceit" (*Bouvier L Dict*)

Fama, quae suspicionem inducit, oriri debet apud bonos et gaves, non quidem malevolos et maledicos, sed providas et fide dighas personas, non semel sed saepius quia clamor minuit et defamatio manifestat A maxim meaning "Report, which induces suspicion, ought to arise from good and grave men, not indeed from malevolent and malicious men, but from cautious and credible persons, not only once, but frequently, for clamour diminishes, and defamation manifests' (*Wharton L. Lex*)

Fame Report or opinion widely diffused, public report renown, notoriety, celebrity, favourable or unfavourable, but especially the former, reputation (*Cent Dict*)

FAME, REPUTATION, RENOWN The *fame* of a quack may spread among the ignorant multitude by means of a lucky cure; the *reputation* of a physician rests upon his tried skill and known experience, the *renown* of a general is proportioned to the magnitude of his achievements

FAME, REPORT, RUMOUR, HEARSAY *Fame* serves to form or establish a character either of a person or a thing A *report* serves to communicate information of events it may be more or less correct according to the veracity or authenticity of the reporter A *rumour* serves the purposes of fiction. Every battle gives rise to a thousand *rumours*, the *hearsay* serves for information or instruction, and is seldom so incorrect as it is familiar

Familia, L *In old English law* A family or household, including servants, and all who were under the authority of one master a portion of land sufficient to maintain one family

'Family" defined Bom Act 3, 1874

FAMILY While the term may be said to have a well defined, broad, and comprehensive meaning in general, (*Race* v *Oldridge*, 32 Am Rep 27), it is one of great flexibility and is capable of many different meanings according to the connection in which it is used Thus it may mean "children" "wife and children," "blood relations," or the "members of the domestic circle," according to the context, it may be of narrow or broad meaning as the intention of the parties using the word, or as the intention of the law using it, may be made to appear (*Herb rache* v. *Grand Lodge*, 1 Mo App 268, 271)

In its ordinary and primary sense the term "family" signifies the collective body of persons living in one house, or under one head or manager, or one domestic government, the relations between such persons necessarily being of a permanent or domestic character, not that of persons, abiding temporarily together as strangers, a household, those who live under the same roof with the *pater familias* who form his fireside In its restricted use, the term would include only parents and their children, but the term, as commonly understood is not so limited (*Barr* v *Robinson*, 56 Am Rep 198), thus it may include grandchildren and all the persons of the same blood living together in the household, so it may include son-in-law and daughter-in-law; in fact it may include all members of the household living under the authority of the head thereof, as also the servants employed in the house, and sometimes it may include persons who are merely lodgers boarders (19 Ame. Cyc 451-452)

Although the term 'family' is sometimes used to include those descended or claiming descent from a common ancestor it has, very often, a much wider import, it is often used to indicate a body of persons formed by those who are merely connected by blood or affinity, it is sometimes used to include even a body of persons who live in one house or under one head (*Oxford Dict* of Vol. 5, p. 55 quoted in 7 I.C 436 (439.)

No definite number of persons is necessary to constitute a family when the term is used in its primary sense, except that there must be at least two persons, for it is obvious that a collection of persons must consist of more than one person, a husband and wife living together without children, servants or any one at all may constitute a family. The word is frequently used in common speech without reference to any established household, but merely for the purpose of indicating the individuals related, as husband, wife or parents and children.

"The family consists of those who live under the same roof with the *pater familias*; those who form (if I may use the expression) his fire-side"—*Lord Kenyon, C.J., R.* v. *Inhabitants of Darlington* (1792), 4 T.R. 800. The word "family" is elastic and capable

Family.

of different interpretations. Where a will, which made a good bequest of the income of a house for religious purposes, provided. "The said house shall remain under the control and the supervision of the shebait for the time being, but shall be available to all the members of my" (testator's) "family both male and female, for temporary residence and use," *held* that the phrase "members of my family" in the will meant the members of the testator's family who were existing at the date of his death and the bequest was valid Their Lordships see no reason why the word "family" in this will should be extended to include people other than those existing when the testator died. [24 C.W N. 1026=1921 M W.N 550= 61 I C 323=28 M.L T. 453] Family—Meaning of *See* 54 M.L J 357=109 I C 661=1928 M. 497, 1928 Oudh 155. Descendants on female side if included in the word "family" [*See* A,I R 1928 Oudh 155]

The word *family* in a will held to mean "the testator's descendants and their wives living at the time of his death" (1 C W N. 671 *N*)

The word "family" in the Wakf Validating Act includes all relatives more or less dependent on the settlor, and a daughter-in-law living with an Indian house holder is undoubtedly a member of his family in that sense. (111 I C 583=A I R 1928 A. 516)

'FAMILY' (*in the Partition Act*) includes a group of persons related in blood, who live in one house or under one head or management and is not limited to a body of persons who can trace their descent from a common ancestor. [7 I.C. 436 (439).]

'FAMILY' (in S. 3(*a*) of the Mussalman Wakf Validating Act, 1913), was intended to be used in a very large and extensive sense The policy of the Act was to validate the creation of a wakf in perpetuity in favour of persons who happened to be the members of a family according to the popular acceptance of that term Technically the word 'family' may be taken to mean the collective body of persons who live in one house and under one head or manager: and includes within its fold a household consisting of parents, children and servants and as the case may be, lodgers or boarders Popularly however the term indicates persons descended from one common progenitor and having a common lineage. The nephews of the settlor are in this sense the members of his family. It could never have been the object of the legislature to exclude persons who were related by blood merely by reason of the fact that they did not reside in the house of the settlor or that the settlor was not normally responsible for their maintenance. [1930 A L J. 109=123 I.C. 369=A I R 1930 All 169 *See also* 125 I C. 33=1930 Sind 318]

FAMILY (*of a lunatic*) The word "family" of a lunatic in Lunacy Act includes persons living with the lunatic as members of his family, *i.e*, to say, persons actually depending upon him for their maintenance. (23 C 512.)

"FAMILY" (*of a watandar*) includes each of the branches of the family descended from an original watandar. Bom. Act III of 1874 (*Hereditary offices*), S. 4.

FAMILY, HOUSE, LINEAGE, RACE. The *family* is considered as to its relationships; the number, union, condition and quality of its members; the *house* is considered more as to what is transacted within its walls. We speak of a numerous *family*, a united or affectionate *family*; a mercantile *house*, the *House* of Parliament We speak of a genteel *family*, a respectable *family*, the royal *family*, an illustrious *house*, the *House* of Bourbons, of Brunswick, or of Hanover. *Family* includes in it every circumstance of connection and relationship, *lineage* respects only consanguinity · *family* is employed mostly for those who are coeval, *lineage* is generally used for those who have gone before. *Family* is confined to a comparatively small number, *race* is a term of extensive import, even including all mankind, as the human race

Family Agreement, Arrangement, or, settlement An agreement or arrangement made between a father and his son or children, or between brothers, and other members of a family to dispose of property in a different manner from what would otherwise take place (*Willey* v *Hodge*, 76 Am. St. Rep 852.)

Where an arrangement is entered into to save the honour or preserve the property. (*Williams* v. *Williams*, 1866, L R. 2 Ch , at p. 314) of a family, the Court will be glad to lay hold of any just ground to carry it into execution and to establish the peace of a family (*per* Lord Hardwicke in *Stapilton* v. *Stapilton*, (1739) 1 Atk. 2, 26 E R 1), even though it rests upon grounds which might not have been considered satisfactory between strangers (*per* Sugden, L C, in *Westby* v. *Westby*, (1842) 2 Dr. & War 502) and especially in cases of disputed legitimacy. (*Ibid*)

The family arrangement or settlement is ordinarily resorted to in the interests of the whole family when recourse to it is essential to protect the family property from the extravagance of a particular member of the family, or to make suitable provision for a female member of the family [6 All 560 P.C. (*Ref. to*) A I R. 1928 Nag 308]

A very slight consideration will be sufficient to support an agreement by way of family arrangement. In order to set such agreement aside on the ground of inadequacy of consideration, the inadequacy must be so gross as to involve the conclusion that the complainant either did not understand what he was about, or was the victim of some imposition (*per* Lord Westbury in *Tennent* v. *Tennents*, 1870, L.R. 2 H L Sc. App. 6.)

Courts favour *family arrangements*. [(13 L.W. 436 (440)=2 Pat L T 237=24 C W.N. 105=50 I.C. 812.]

Their Lordships are willing, to give, if possible, that benevolent construction to the Ekrarnama which, it has often been said, that, "family arrangements" deserve, but all depends in the long run on the construction of the written words. [88 I.C. 149=A.I.R. 1925 P.C. 70 (73).]

Family arrangement and transfer of property. A family arrangement is in no sense a transfer of property, for no right, vested or contingent, is conveyed by one party to another. The arrangement proceeds upon the assumption that one or other of the claimants has an antecedent title to the property in whole, or in part or in unequal proportions, and the entire scheme rests not upon the transfer of a right but upon the recognition of a claim. The true character of the transaction appears to have been a settlement between the several members of the family of their dispute each one relinquishing all claim in respect of

Family Bible.

the property in dispute other than that falling to his share and recognizing the right of the others allotted to them respectively. The acknowledgment of the claim of one party necessarily involves the abandonment of the claim by another, but this is not equivalent or tantamount to a transfer [(1 I.A. 157 (166) (1); 1868 N.W P.H.C.R. 82 (84) *Rel on.*) A.I R 1930 All 498 (2)]

Family Bible. Large bible with fly leaves for registering births etc. A bible containing a written record of the births, deaths, and marriages of the persons composing the family (*Rapalje & L L Dict.*)

Family custom. In Chapter I of the Tagore Law Lectures for 1908 (Customs and Customary Law in British India) a family custom is defined as being "the usage of a family transmitted successively from father to son according to law." The learned author goes on to say that the custom generally relates to matters affecting the members of the family in their relationship to each other and to the family as a unit Amongst the members of a family it has an obligatory force and distinguished the family by its rules from other families He further says that unlike *desachar,* which binds all persons within the local limits in which it prevails, a family custom (kulachar) governs the members of a particular family only and beyond that its controlling influence cannot extend. [20 I.C. 894 (895).]

The word 'family" as used in the expression "family custom" is not wide enough to include a clan. (20 I C 894)

FAMILY CUSTOM. A well established custom in a family cannot be defeated by the fact that in one case the custom was not enforced [41 I A 275=42 C 582 (606)=(1914) M W. N 807=16 M. L T 382 =1 L W. 863=18 C.W.N. 1249=12 A L T 1217= 17 Bom.L R 18=21 C L J 9=25 I C 417=27 M L J. 373.]

Continuance of family custom after change in condition of things necessitating custom—Maxim *cessat ratio cessat lex*—Applicability. *See* 12 L.W 730 (737, 740.)

Well-established discontinuance must be held to destroy family usages This would be so when the discontinuance has arisen from accidental causes, and the effect cannot be less, when it has been intentionally brought about by the concurrent will of the family. It would lead to much confusion and abundant litigation, if the law attempted to revive and give effect to usages of this kind, after they had been clearly abandoned and the abandonment has been long acted upon (2 Suth. 744=19 W R. 8=8 M.J. 151)

It is of the essence of family usages that they should be certain, invariable, and continuous (2 Suth 744=19 W.R 8=8 M.J. 151)

The tenacity of family customs, even under the strain of migration, has been repeatedly recognised by law (29 I A 82=29 C 433 (452)=6 C W N. 490= 4 Bom L R. 365=8 Sar 205.)

An adherence to family usages is a strong Oriental habit; it is in most places not a weak one, and since, generally, the love of them increases with their long prevalence, it requires no effort to believe in the retention of religious usages and customs in any particular branch of the family [12 M.I.A 81=10 W.R (P.C) 35=1 B.L R. (P.C.) 26=2 Suth. 147=2 Sar. 372.]

Faraiz.

"Family debt" (*in Hindu Law.*) No *debt* can be strictly a family debt, that is a debt binding on the family, unless it is borrowed for legal necessity or for the benefit of the estate or for any obligatory religious purposes. The test of a family debt is the purpose of the debt, not merely its antecedency (A I R. 1937 Nag. 327.)

Family freedom In domestic relations the term means freedom from family ties (*People* v. *Smith,* 93 Am At Rep. 206)

Family feud means enmity from the time of the ancestors of the parties.

Family hotel A hotel which is not designed for the accommodation of transient guests or casual boarders, but one in which rooms and suites are taken by families or individuals for some period

Family meeting A council of the relatives (or, if there are no relatives, or friends) of a minor, for the purpose of advising as to his affairs and the administration of his property (*Black Law Dict*), or to decide about the conduct of family affairs in general

"Family pedigree" [3 Luck 246=110 I C 466= 1928 Oudh. 125]

Family physician A phrase having no technical signification but which has been applied to the physician who usually attends and is consulted by the members of a family in the capacity of a physician (*Price* v *Phoenix Mut L Ins Co*, 10 Am Rep 166)

Family relation That relation sustained by the members of a family towards each other where each individual works for the benefit and comfort of the whole family without any expectation of receiving compensation or pay outside of the general comforts of all (*Curry* v *Curry,* (Pa. 1887) 11 Atl 198, 199)

Family tree Genealogical chart.

Family use. Such use as is appropriate to the individual needs of the members of a household, and to the needs of the members collectively

IN THE FAMILY WAY means, with child

Fanam. A name applied at different time and places to several different coins.

In Malabar, fanam is money is general (*Log Mal Law.*)

Fancy. Delusion; unfounded belief, individual taste, adapted to please the fancy or taste, ornamental. (*Webster Int. Dict.*)

Fancy fair. Bazar for sale of fancy goods.

Fancy price. Price proportioned to the buyer's desire to possess, not the market value.

Fancy word. *See* Trade-marks and trade-names.

Faqir [See *Fakir*] (*A*) a beggar, a religious mendicant; same as fakir.

Faraiz (*A*) The legal knowledge of dividing inheritance according to the Mahomedan law. (*Mac. Mhn. Law.*)

Farakhabad rupee.

"**Farakhabad rupee**" defined. Act 45, 1860, S 230 (*e*) [Ins. Act 6, 1896, S 1 (2).]

Farash (*Arabic.*) A servant whose duty it is to spread carpets, etc Now usually a servant who sweeps an office.

Farashkhanah (*Persian*) The place where carpets, tents, etc., are kept

Farazi. (*Hindustani*) The name of a sect of Muhammadan reformers

Farce A short dramatic entertainment, in which ludicrous qualities are greatly exaggerated for the purpose of exciting laughter, a short play of low comic character, dramatic piece meant merely to excite laughter, an absurdly futile proceeding.

Fard Dal Bachh Statement showing revenue realisable from each holding

Fard Lakhiraj Statement or revenue free-holdings

Fardnavis (literally writer of lists or schedules), a financial secretary in the Maratha State, (*Bad. Pow* 1. 261)

Fare A rate of charge for the carriage of passengers, cost of passenger's conveyance, food provided (as, bill of fare)

FARE, FOOD, PROVISIONS, VICTUALS. *Food* is the simplest, and expresses whatever properly supports animal life, whether in men or other animals *Fare* is food regularly accruing, and commonly has associated with it some term expressive of its specific character, as good, substantial, poor, meagre. *Provision* or *Provisions* is suitable food for the procuring of which arrangements have been made. *Victuals* is employed only of human food. *Food* and *provisions* may exist in a crude state, or unprepared for eating *Fare* and *Victuals* denote prepared food. *Victuals* would not now be applied to uncooked meat, flour, corn, and the like, nor is *fare* used of any but human beings (*Smith Syn. Dis.*)

Farfarmas or farfarmanish, One of the extra cesses levied in Maratha times, being contributions in kind, hides, charcoal, rope, ghee, etc, or converted into a cash payment (Bom.) (*Bad. Pow.*)

Farighkhatti (*Arabic.*) A written receipt and acquittance, a release, a deed of resolution of partnership, or of partition of property, a written divorce.

Farikh khatt. (*P.*) A written release

Faringati A class of cultivated lands in Assam (*Bad Pow* see III. 417.)

Farm. *As a noun,* a body of land, usually under one ownership, devoted to agriculture, either to the raising of crops, or pasture, or both, an indefinite quantity of land, some of which is cultivated, whether it be large, or small, isolated, or made up of many parcels, for a farm may be of any size, of any shape, of any boundaries, may include less than one lot, or comprise several lots of parts of lots. In more modern times the word has received a more extended signification, and now denotes a considerable tract of land, devoted, in part at least, to cultivation, with suitable buildings, and under the supervision of a single occupant, regardless of the nature or extent of his tenure. [*Kendall* v. *Miller*, 47 How. Pr (N Y.) 446, 448]

As a verb, it means to take a lease of lands for cultivation, to agree to take the proceeds of a tax or revenue on payment of a fixed sum (as) farming tolls, farming revenue tolls, etc. As used in a lease of mineral lands, the term means to bring the minerals up to light for purposes of commerce, and make them profitable to lessor and lessee (*Anderson L. Dict.*)

Farm house. Dwelling place on a farm.

Farm product A term applicable to an article which is produced by the soil, either under cultivation, or by nature, by labour or otherwise, and of spontaneous growth Under some circumstances the term will embrace animals (as horses, swine, sheep etc And it has even been said to embrace meat, manure, and cord-wood. [*Philadelphia* v. *Davis*, 6 Watts & S. (Pa.) 269, 279.]

Farmstead Farm with buildings.

Farm yard. Yard of a farm house.

Farmer. He that holds a farm, or is tenant or lessee thereof (*Termes de la Ley, Tomlins Law Dic.*) A person engaged in the tillage of the soil, an agriculturist, a husbandman a man who cultivates a considerable tract of land.

FARMER, HUSBANDMAN, AGRICULTURIST. *Farmer* signifies one managing a farm, or cultivating the ground for a subsistence *Husbandman* is one following husbandry, that is, the tillage of land by manual labour, the *farmer*, therefore, conducts the concern, and the *husbandman* labours under his direction *Agriculturist* signifies any one engaged in the art of cultivation The *former* is always a practitioner, the *agriculturist* may be a mere theorist, the *farmer* follows husbandry solely as a means of living, the *agriculturist* may follow it as a mere science, the *former* tills the land upon given admitted principles, the *latter* frames new principles, or alters those that are established Betwixt the *farmer* and the *agriculturist* there is the same difference as between practice and theory the former may be assisted by the latter, so long as they can go hand in hand, but in the case of a collision, the farmer will be of more immediate service to himself and his country than the agriculturist farming. Agriculture may only promise future, and consequently, contingent advantages

Farmer is one who cultivates land, whether as the freehold proprietor or tenant, for any purpose connected with agriculture.

Husbandman, is one who performs manual labour in tillage, whether on his own account or as a hired servant

Agriculturist, admits the idea of scientific or theoretical farming, and farther still, the science of farming with or without the practice of it. (*Smith Syn. Dis*)

Farming. The occupation of a farmer. In connection with other words the words "farming has often received judicial interpretation; as for example as used in the following phrases. "Farming buildings." (See *Cook* v. *Cholmondeley*, 4 Drew. 326, 327, 6 Wkly Rep 802.)

Farming Neighbourhood. A region in which there are several tracts of farming land with a proxi-

Farokht.

mity of location, and which can be regarded as a whole with reference to some common interests, although they are distinct in boundaries, and held in individual proprietorship (*Lindsay Irr. Co.* v. *Mehrtens*, 97 Cal. 676, 680.)

Farokht. "*Farokht*" cannot be held to mean "transfer" as it is inconsistent with the ordinary meaning of the word. [76 I.C. 1050=45 All 321= A I.R 1923 All. 361]

Farrier. A farrier is defined by Johnson as (1) "a shoer of horses," and (2) "one who professes the medicine of horses" According to the same authority, *farriery* "is the practice of trimming the feet and cutting the diseases of horses."

Farvardigan days. The Farvardigan days are the most holy days during the Zoroastrian year and during the Farvardigan days the performance of *muktad* ceremonies is enjoined by the Zoroastrian religion. (33 Bom 122=10 Bom.L.R. 417=1 I C 834.)

'Farzandan' The term Farzandan means offspring or lineal descendants and includes daughters and daughter's sons. (A.I.R. 1922 Nag 170=65 I.C 72)

Farzi, (*A*) A purchase in a fictitious name. synonymous with Benami; a term used of a transaction which is partly fictitious. (*Mac Mhm. Law*)

Fasid, (*A*) Vicious, imperfect invalid. (*Mac. Mhn Law*)

Fasl. (*A*) Harvest, *fasli-jyasti*, *fasl-kami* (*M.*) Addition or reduction in the revenue on account of double crops, or the loss of one (*Bad Pow* iii 99)

Fasl (*Hindustani*) A division of the year, a season, a harvest, a crop. The principal crops are divided into *kharif* and *rabi*, according to the time of their harvests.

Fasli Of or belonging to a harvest, the Mahommadan official era. (*Bad Pow* II 13, 14)

Agricultural lease in which the word 'Fasli' is used unless there are indications that the intention of the parties was to use the word in its strict sense, should be held to be for the agricultural year. (L.R. 2 A 139 (Rev.)

Fasli or Fusli. What relates to the seasons, the harvest year. (*Mac. Mhn. Law*) The name of an era instituted by Akbar, who made the samwat year agree with that of the hijra by arbitrarily cutting 649 years off from the former. This was done in the year 963 of the hijra which year was therefore also 963 fasli, but fasli or harvest year was necessarily counted according to the seasons while that of the hijra is the lunar year of only 354 days. Thus a difference of several years has arisen between the hijra year and the fasli year. (*See also* 1896 A W. N. 123)

Fasli-jasti (*Tel*) An extra crop, one more than usual, an extra cess imposed on land bearing more than one annual crop.

'Fastened' A door cannot be said to be fastened when its shutters were merely closed. The term "fastened" implies something more, such as chaining the shutters or trying them with a rope or bolting them or locking the door.

Fasti. In the Roman Law. Lawful (p. 311)

Fatetur Facinus.

Fatal accident, Compensation for On a claim for compensation by members of the family of a person killed by accident, it is advisable to proceed on the principle of assessing the total amount in the first instance, and then to apportion it (31 M L.T. 317 (P.C.) In a case of a claim for compensation to families of persons killed through negligence, the difficulty arises not in the statement of the principle on which the amount of compensation is to be arrived at, but in its application to a case in which the extent of the actual pecuniary loss is largely a matter of estimate, founded on probabilities, of which no accurate forecast is possible (1922) 31 M.L.T. 317 (P.C.)

Fatawa (*Arabic*) A collection or digest of judicial decisions The best known is the *fatawa Alamgiri*, compiled by order of Aurangazeb.

Fatawa-i Alamgiri. "The Fatawa-i-Alamgiri is a work of great authority in Mahomedan law, and was commenced in the year of the Hijrah 1067 (A D 1656), by order of the Emperor Aurangzeb Alamgir, by whose name the collection is now designated. It contains a bare recital of law cases, without any arguments or proofs, an omission which renders it defective for elementary instruction. The immense number of cases however, compensate in some measure for this want, which is, moreover, supplied by the Hedayah, and other works, and the insertion of argument can the more readily be dispensed with, since the opinions of the modern compilers could not have been esteemed of equal authority with those of the older writers on jurisprudence, and the mere decisions, without comment or explanation, are equally applicable to particular cases, when illustrated and explained by reference to works of authority as text, books," (Introduction to Morley's Digest of Indian Cases, Vol I. p cclxxxix)

Fatawa-i-Khairiah. A collection of Fatwas by Khairuddin Ahmed-al-Faruqi. This is a book of reference on Mahomedan Law

Fatawai-i-Kazi Khan "The Fatawa-i-Kazi Khan, or collection of decisions of the Imam Fakhrad Din Hasan Ben Mansur al-Uzjandi al-Farghani, commonly called Kazi Khan, who died in A H 592 (A D. 1195) is a work held in the highest estimation in India among Mahomedans, and is received in the Courts as of equal authority with the Hidayah, it is replete with cases of common occurrence, and is therefore of great practical utility, the more especially as many of the decisions are illustrated by the proofs and reasoning on which they are founded". (Introduction to Morley's Digest of Indian Cases, Vol. I, p. cclxxxv)

Fatawa-i-Serajiah. "The highest authority on the law of inheritance amongst the Sunnis of India is the Sirajiyah, which is some times called the Faraiz-as-Sajawandi, and was composed by Siraj-ad-Din Muhammad The Sirajiyah has been commented upon by a vast number of writers upwards of forty being enumerated in the Kashf-az-Zunum. The most celebrated of these commentaries and the one most generally employed to explain the text, is the Sharifiyah by Sayyid Sharif Ali Ben Muhammad-al-Jurjani, who died in A. H. 814 (A.D. 1411)" (Introduction to Morley's Digest of Indian Cases)

Fatetur facinus qui judicium fugit A maxim meaning "He who flees from judgment confesses his guilt". (*Bouvier L. Dict.*)

Father.

"Father" defined. (*See also* Parent) Act 10, 1897, S 3 (18), Mad Act 1, 1891, S. 3 (30).

FATHER. The male parent, a male who has begotten a child, also an adopted father, or a male ancestor more remote than a parent.

'FATHER", in the case of any one whose personal law permits adoption, includes an adoptive father Act X of 1897 (General clauses.) S. 3 (18.)

Father, in 4 & 5 Ph. & Mar c. 8, S. 3, which imposes a penalty upon any person who "takes away any woman-child out of the custody of the father of such child," includes the putative father of an illegitimate child *R.* v *Cornforth* (1740), 2 Str 1162. *See also* Archb Cr Pl.

ADOPTIVE FATHER One who has adopted a child.

CITY FATHERS. Leading men and elders of the city.

FATHER-IN-LAW Father of one's wife or husband

FATHER LAND Native country.

RIGHT, MOST REVEREND FATHER IN GOD The title of bishop or archbishop

THE HOLY FATHER The pope, God

Fathom A measure of 6 feet When used in the measurement of land, a word which is to be understood as meaning a square fathom, but in its common usage an integral part of a unit of land measure (*Ame Cyc*)

Fath-ul-Kadir "The Fath-ul-Kadir is the most comprehensive of all the comments on the Hidayah, and includes a collection of decisions which render it extremely useful". (Introduction to Morley's Digest of Indian Cases, Vol I, pp cclix-cclxx)

Fatihah (*Arabic*) The opening Surat or chapter of the Koran, it is read for dying persons, whence the word has come to mean prayers offered up for a deceased person

Fatuus In old English law An idiot or fool, foolish, absurd, indiscreet or ill-considered

Fatuum judicium A foolish Judgment or verdict

Faujdar (*Hindustani*) The chief of a body of troops, under the Moghul Government, an officer who was head of the police and also a Magistrate, under the British Government, the head police officer of a city or taluka, in some places, village constable

Faujdari (*Hindustani*). Criminal as opposed to diwani or civil.

Faukdari-Adalat A criminal court. Under the Muhammadan Government this was the title of a district criminal court, subordinate to the central one called the Nizamat adalat

Favorabilia in lege sunt fiscus, dos, vita, libertas. A maxim meaning "Things favourably considered in law are the treasury, dower, life, liberty" (*Wharton L. Lex.*)

Favorabiliores rei potius quam actores habentur A maxim meaning "Defenders are held to be in a more favourable position than pursuers". (*Trayner Leg. Max.*)

Fealty.

Favorabiliores sunt executiones aliis processibus quibuscunque. A maxim meaning "Executions are preferred to all other processes whatever" (*Wharton L. Lex*)

Favores ampliandi sunt, odia restringenda. A maxim meaning "Favourable inclinations are to be enlarged, animosities restrained" (*Bouvier L. Dict*)

Favour Partiality, bias; good will, approval, affection (Burrill), support, help (as, cheque drawn in one's *favour*; an argument in *favour* of home-rule)

Favoured nation (in Pol. Econ.) is a term that is applied to a nation to which the state accords the lowest scale of import duties

"Favourable rent". *See* 23 Mad. 268.

Favourably In a favourable manner; with friendly disposition or indulgence; conveniently, advantageously (*Century Dict.*)

Fazendari Fazendari, though indicates nature of rent, does not necessarily decide the nature of tenure which depends upon the agreement between the parties (16 Bom. L R 720=27 I C. 523.)

"FAZENDARI" The term "Fazendar" cannot properly in its strict sense be applied to a lessee from Government (25 Bom. L R. 1192=A.I.R. 1924 Bom 212)

Fazendari tenure In its strict or proper meaning Fazendari tenure means an indefeasible right to hold for ever on payment of a small quit or ground rent, in its loose sense, any kind of tenure agreed on between the parties The estate to be really Fazendari must be one which approaches as near as possible an estate of absolute ownership It must be of unlimited duration subject to such rights as escheat There must be no rights as re-entry or resumption on the part of the Government. (25 Bom. L R 1192=A I R. 1924 Bom. 212)

F C S. (*In Marine Insurance*) These letters stand as an abbreviation for "free of capture and seizure," and are generally used "in slips" for policies of marine insurance to denote that the insurer is not liable for loss or damage to the goods or ship arising from capture and seizure(*Fisher* v *Liverpool Mar I C.*, 1874, L R. 9 Q.B. 418) "Capture and seizure" include takings by an enemy whether lawfully commissioned or not. (*Goss* v *Withers*, 1758, 2 Burr. 683), by mutinous passengers. (*Plemwort* v. *Shepard*, 1859, 1 El & El 447); by pirates. (*Dean* v *Hornby*, 1854, 3 El & Bl. 180), by officers of the Government of the country to which the ship or goods belong (see *Lozano* v *Janson*, 1859, 2 El. & El 160, and seizure by the assured's own Government, in anticipation of war with the country to which the insurer belongs (*Robinson Gold Mining Co.*, v *Alliance M & G C.* (1904) A.C. 359; (*Ency of the Laws of England*)

Fealty, "In feudal law, the obligation of fidelity which the tenant owed to his lord", fidelity. The oath taken at the admittance of every tenant, to be true to the lord of whom he holds his land, and he that holds land by the oath of fealty, has it in the freest manner. (*Tomlin's Law. Dic.*)

Feasible.

Feasible Capable of being done, performed, or effected, that may be accomplished or carried out; practically possible. (*Century Dict*, *Webs Dic*)

FEASIBLE, POSSIBLE, PRACTICABLE Many things may be *possible* which are not *feasible*, for *feasible* belongs to the province of action only, *possible* to that of thought and action also, as when we say, "It is *possible*, but not *probable*"

Practicable is very like *Feasible*, but *Practicable* refers to matters of moral practice, while *Feasible* belongs to matters of physical action, of human plans and designs We might say "A *feasible*," or "A *practicable* scheme," but we could only say, "A *practicable*," not a "*feasible* virtue" *Practicable* has the further sense of capable of being made use of (*Smith. Syn. Dis*)

Feasts "We take notice of all feasts, and the almanack is part of the common law, the calendar being established by Act of Parliament, and it is published before the Common—prayer book"—*Holt, C J., Brough* v *Parkings*, (1703), 2 Raym 994

Federal. Concerning a political society in which several states form a unity, but remain independent in internal affairs

Federation Government based on federal principles, Group of states for political purposes, federated society.

Fee, and Fee-simple Tenant in fee-simple, is he who has lands or tenements to hold to him and his heirs for ever (*Litt c 1 Tomlin's Law Dic*)

Fee Expectant An estate whereby lands are given to a man and his wife and the heirs of their bodies

Fee-Simple (*In English Law*) An estate of inheritance, estate in absolute ownership

Fee-Tail (*In English Law*) Free-hold property entailed in a certain line of descent

Fees Certain perquisites allowed to officers or persons engaged in the administration of justice, as a recompense for their labour and trouble, ascertained either by Acts of the legislature, or by ancient usage, which gives them an equal sanction with a statute of the land (2 New. Abr. 463 *Tomlin's Law Dic*)

FFES, are a charge or emolument, or compensation for particular acts or services, reward or compensation for services rendered or to be rendered,—a payment in money for official or professional services, whether the amount be optional or fixed by custom, compensation paid to professional men, as an attorney or physician, the reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his official duties, frequently for services rendered in the progress of a cause, to be paid by the parties obtaining the benefit of the acts, or receiving the services, at whose instances they were performed. Sometimes the term may mean charges, and is often used in interchangeably with the term "costs".

"Fees" and "Costs" including attorney's fees.—"In its legal sense, the term costs denotes, not only the expenses incurred by reason of being a party to legal proceedings, but also the charges which an attorney is entitled to recover from his client, as remuneration for his professional service." (*Williams* v. *Flower*, 24 Am, St. Rep. 772)

Feme

"Fellow" defined Bom. Act 3, 1888, S. 3 (*h*)

FELLOW. One associated with another, a comrade (as) fellow citizen, fellow soldier, fellow countryman

"FELLOW", in the University Acts means a fellow of the University. Bom Act III of 1888 (*City Bom. Municipal,*) S 3, cl (*h*),

Fellow servant A servant in the same service with another and subject to the same general control

"Fellows' election" defined. Bom Act, 3, 1888, S. 3 (*j*)

Felo de se. Self murderer A man of the age of discretion, and compos mentis, who voluntarily kills himself, by stabbing, poison, or any other way (*Life Assoc of America* v *Waller*, 57 Cra. 533, 536) One who deliberately puts an end to his own existence, or commits an unlawful, malicious act, the consequence of which is his own death

Felon One who has committed felony, one convicted of felony

Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum A maxim meaning "Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind" (*Wharton L Lex*)

Felonia implicatur in qualibet proditione A maxim meaning "Felony is implied in every treason". *Wharton J Lex*)

Felonious Having the quality of felony, criminal

Felonious homicide, the killing of a human creature of any age or sex, without justification or excuse

Feloniously In a felonious manner

Felony (*See* crime) crime of any kind,—legally graver than misdemeanour Acts declaring any act or omission to be felony attach to the act or omission all the incidents for the time being attached by common law or other past or future statutes to felonies. *Craies' St Law*)

"Female" is not a word of technical character, and may be substituted by the use of synonymous words, or words which plainly indicate a female, such as "her" or 'she" and proper names applied to females only

FEMALE, FEMININE, EFFEMINATE *Female* is applied to the sex as opposed to male *Feminine* is applied to the properties and characteristics of the sex as opposed to masculine. To matters distinctively related to women we apply the adjective *female*, as *female* dress. To matters which are appropriate to women, but not exclusively restricted to them, we apply the adjective *Feminine*, as, *feminine* accomplishments *Feminine* branches of learning are taught in *female* schools. To what belongs as a fact to men, but would belong more fitly to women, we apply the adjective *Effeminate*. (*Smith. Syn. Dis*)

"Female Heirs" has been construed to mean the daughters of a certain person. (*Beall* v. *Harwood*, 3 Am. Dec. 532.)

Feme. A woman, In the phrase *"baron et feme"* the word has the sense of "wife". (*Black L. Dic*)

Feme Baron.

Feme, Baron and 'In the feudal theory of the common law, the wife was subject to the husband. They were styled in the earlier law book *baron and feme*, or lord and woman Blackstone says that the disabilities of the wife intended, for the most part, for her protection and benefit, 'so great a favourite is the female sex of the law of England.'"

Feme covert, femme couverte, a woman protected —that is, married

Feme sole. A spinster

Feme sole trader A married woman, who trades on her own account, independently of her husband

Feme Tader A woman deserted by her husband who does business as a feme sole.

Femme de chambre (Fr), Lady's maid, chamber maid

Fences A fence is an inclosing structure about a field or other space, or about any object, composed of wood, iron, or other material, and intended to prevent intrusion from without or straying from within

A FENCE may consist of a hedge, a ditch, a wall, a trestle, or a navigable stream or deep watercourse (19 *Cyc* 468) It is nothing more than a line of obstacle, and may be composed of any material which will present a sufficient obstruction (*Allen* v. *Tobias*, 77 Ill 169) A barbed wire is a proper material of which to construct fence *A fence* is an actual barrier which separates adjoining lands.

Fender Thing used to keep something off to prevent collision etc, guard; As applied to street railway cars, a guard or protection against danger to pedestrians

Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive reditus A maxim meaning "A fee is that which any one holds from whatever cause, whether tenement or rent" (*Black L Dict*).

Feodum simplex ex feodo simplici pendere non potest A maxim meaning "A simple fee cannot depend upon a simple fee" (*Morgan Leg Max*).

Feoffee The person to whom a feoffment is made, the person enfeoffed

Feoffee to uses One in whom the legal estate is vested the beneficial owner being the cestui que use

Feoffment, feffement A conveyance in fee, of land or other corporeal hereditaments, accompanied by livery of seisin or actual delivery of possession. The instrument or deed by which conveyance of corporeal hereditament is made, In *Thompson* v *Bennet Smith* (N H.) 327, 328, it is said The mode "was for the seller to go with the purchaser on to the lands, and there declare (for in early times writing was very little known), in the presence of the neighbouring tenants, the sale; show the boundaries; and deliver possession to the purchaser This was called a feoffment, and, for ages, was the only mode of passing a fee-simple; and, though it serves equally well to pass other estates of free-hold yet it was held properly to signify a conveyance in fee". *See* Challis Law of Real Property, Goodeve, Modern Law of Real Property, and article on "Feoffments" in Mr. Ferryi Challis's 'Introductory Essay on Assurances" to Comyn's Abstract of Title

Feoffment, Feoffor Feoffee Feoffment is a gift or grant of any lands or tenements, to another to him and his heirs for ever, by the delivery of seisin and possession of the thing given or granted In every feoffment, the giver or grantor is called the feoffor, and he that receives by virtue thereof, is the feoffee (*Tomlin's Law Dic*) Blackstone (2 Comm. 399) defines feoffment to be the gift of any corporeal hereditament to another (*Tomlin's Law Dic.*)

Feoffor. The person making a feoffment Feoffor is he that infeoffs or makes a feoffment to another of lands or tenements in fee-simple. Feoffee is he who is infeoffed or to whom the feoffment is so made (*Tomlin's Law Dic*).

Fera In the civil law. Wild (p 314).

Fera natura Wild nature Ferae naturae: of a wild nature,—a term applied to animals not commonly tamed.

Ferae igitur bestiae et volucres et pisces, id est, omnia animalia quae mari, coelo et terra nascuntur simul atque ab alipuo capta fuerint, jure gentium statim illius esse incipiunt A maxim meaning "Wild beasts, birds, fishes and all animals, either in the sea, the air, or on the earth, so soon as they are taken by any one, immediately become by the laws of nations the property of the captor."

Fere in omnibus poenalibus judiciis Et imprudentiae succuritur A maxim meaning "In almost all criminal trials, let allowance be made for youth and imprudence" (*Morgan Leg Max*).

Feretory. Shrine for the relics of saints, tomb, chapel in which shrines and sacred relics are deposited.

Feria A week day, as distinguished from Sunday, a holiday, a day exempt from judicial process

Ferial days (*Lat*) working days, or week days, as distinguished from Sunday; holidays

Feringhee. A word used to denote a European—especially an Indian born Portuguese

"Fermented liquor" defined (*See also* Liquor; Tari) Act 12, 1896, S. 3 (*h*); Ben Act 7, 1878, S 4

A 'FERMENTED LIQUOR" means malt liquor, wine, pachwai and fermented tari, and shall, if the Local Government, subject to the control of the Governor-General in Council, so directs include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment [*Excise Act* (XII of 1896) S. 3]

Ferriage Charge for use of ferry, conveyance by ferry

"Ferry" defined This word is also used in combination with other words (as) Municipal ferry; private ferry; public ferry; [Act 17, 1878, S. 3; Act 9, 1890, S 3 (2), Ben Act 1, 1885, S. 5, Mad. Act 2, 1890, S 3; Bur Act 2, 1893, S 3]

FERRY A ferry is a franchise or exclusive right of carrying passengers, animals or goods across a river or other body of water at a particular place, and taking a toll for so doing, which is called ferriage. It can only be created by grant from the Crown, Act of Parliament, or prescription (*Trotter* v *Harris*, 1828, 2 Y & J 285, 31 R R 593). *Ferry* is a liberty, by prescription, or grant, to have a boat for

Ferries.

passage upon a river, for carriage of horses, goods and men for reasonable fare it is usually to cross a large river. (*Termes de la Ley*) A ferry is a liberty to have a boat upon a river for the transportation of men, horses, and carriages with their contents, for a reasonable toll. The term is also used to designate the place where such liberty is exercised (*Black L. Dict*) In the latter sense a ferry is a public highway, being a continuation of the highway with which it connects and the limits of the ferry proper are the highwater-mark at either terminus.The word "ferry" has been defined as "a public highway or thoroughfare across a stream of water or river by boat instead of by a bridge" "A public highway upon water" *Patterson* v *Wollman*, 33 L R.A 536 "A substitute for a bridge where a bridge is impracticable" "Merely the continuance of a road across a river It is only a substitute for a bridge" (19 *Ame Cyc.* 493). *See also* 27 C 317=4 C W N 348 To constitute a ferry two points on two sides of the river for conveying persons and property are necessary [7 Pat L T. 734=92 I C 871=27 Cr L J 359= A.I.R 1925 Pat. 623 *See also* 35 I C 782,]

Ferries. There is nothing in the nature of a ferry which requires that it should be operated from but one place on one shore to a single point on the opposite shore nor is there any particular limit to the distance over which it may be operated "The owner of a ferry has as incident to the ferry, such right to use the land on both sides as to enable him to embark and disembark his passengers, but he need not have any property in the soil for that purpose. it is sufficient if he has the right to use the land for all the purposes of his ferry, he must have a right to land on both sides but he need not have the property in the soil in either" (Holroyd and Bayley, JJ) *Peter* v *Kendal*, 1827, 6 Barn & Cress 703, 30 R R 504; so Comyn, Digest, "Piscy," (*B*)

The word "*ferry*" includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the aprroaches to, and landing-places of, a ferry C P. Act XVII of 1878 (Northern India Ferries), S 3

FERRY is the starting place of boats on the banks of a river. (35 I.C 782=21 C W N 601)

It is recognised law in India that a man may set up a ferry on his own property, and take toll from strangers for carrying them across, and may acquire such a right by grant or by user over the property of others, and, except as affecting the proof of his acquisition of title, it can make no difference whether he is a co-sharer with those others or not (19 I A 48 =19 C 253 (262)=6 Sar 133)

Ferries Public and private A distinction is also made between private ferries, which riparian owners may under certain restrictions establish for their own convenience, and public ferries which are franchises that cannot be exercised without the consent of the state and must be based upon grant, license, or prescription (*Geer* v *Haughabook*, 47 Ga. 282)

MUNICIPAL FERRY. The word ferry in the expression "*Municipal Ferry*" [*i e*, a ferry owned by a municipal corporation] denotes a place where passengers are conveyed by boat from one side of the river to the other; and the "right of ferry" is the right so to carry passengers at such a place. (35 Ind. Cas. 782.)

Feudum paternum.

Ferry boat. A "ferry boat" must mean any boat used for the purpose of carrying passengers across the river, whether at a designated place or at some other place (35 I C 782=21 C W.N. 601=25 C.L J. 639)

Ferry bridge Large ferry boat transporting railway train entire

Ferry man A person who conducts a ferry or is in charge of a ferry

Festinatio justitiae est noverca infortunii A maxim meaning "Hasty justice is the step-mother of misfortune" (*Black L. Dict*)

Festival Festal day, merry making

Fete Festival, great entertainment

Fetish Worship of inanimate objects by savages as being inhabited by spirits

Fetwah. (*A*) [*See* Fatawa] A judicial decision, a written opinion on a point of law, especially that delivered by the mufti to the kazi

Feuda ad instar patrimoniorum sunt redacta A maxim meaning "Lands held in fee are reduced to the character of a patrimony or succession" (*Trayner Leg Max*)

Feudal law The law of feuds or feual estates, the system of law by which the creation, enjoyment and transmission of feudal estates were regulated, and the rights and duties growing out of the relation of lord and vassal defined and enforced

Feudal system The system of feuds (*Black L. Dict*) "A political and social system which prevailed throughout Europe during the eleventh, twelfth and thirteenth centuries" Mediaeval European polity based on relation of vassal and superior, arising from holding of lands in feud;the system of feuds or fiefs, a system of tenure, the origin of which is traced to the peculiar policy and usages of the northern nations who overturned the Roman empire and settled in its provinces

Feudum. (*Lat*) A fee

Feudum antiquum An ancient fee

Feudum apertum An open fee A fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone

Feudum francum A free or frank fee

Feudum improprium An improper or derivative fee

Feudum individuum. An indivisible or impartible fee, descendible to the eldest son alone.

Feudum maternum. A maternal fee, a fief descended to the feudatory from his mother.

Feudum militare. A military fee.

Feudam militis. A knight's fee.

Feudum novum A new fee; a fief which began in the person of the feudatory, and did not come to him by succession; a fee acquired by the man himself.

Feudum paternum. A paternal fee; a fief descendible only to the heirs by the father's side.

Feudum simplex.

Feudum simplex. Fee-simple.

Feudum sine investitura nullo modo constitui potest A fee can by no method be created without livery of seisin

Feudum talliatum A mutilated fee, or inheritance, from which the heirs general were cut off

Feudatory Under an overlordship, feudally subject to (as) feudatory chiefs

Fever Morbid condition with high temperature

Few This is a relative term and of great elasticity of meaning, [*Anderson* v *Williams*, 44 Wkly Notes Cas (Pa) 418, 420] , not many

F G A These letters stand for "free from general average" and are generally used in the "slips" for policies of marine insurance to denote that the underwriter is not liable to make good general average losses suffered by the subject of insurance or the general average contributions due from it to other interests engaged in the voyage [see *Fisher* v *Liverpool Maritime, I C* , (1874) L R 9 Q.B 418, Arnold, Marine Insurance, 7th ed , 1901, 25, 882] These letters also denote "foreign general average" *i e* , average adjustment made abroad under clause in the policy (Arnold, 997—1001 , 1 Maude & p 449)

Fiance. One betrothed

Fiasco Failure, ignominous break down of an enterprise.

Fiat Let it be done A short order or warrant of a Judge, commanding or authorizing something to be done

Fait jus, ruat justitia A maxim meaning "Let law prevail, though justice fail" (*Wharton L Lex*)

Fiat justitia Let justice be done

Fait justitia ruat caelum A maxim meaning "Let justice be done, though the heaven should fall." (*Bouvier L Dict.*)

Fait prout fieri consuerit, nil temere novandum A maxim meaning "Let it be done as formerly , let no innovation be made rashly" (*Bouvier.*)

Fictio cedit veritati, fictio juris non est ubi veritas A maxim meaning "Fiction yields to truth, where there is truth, fiction of law exists not" (*Wharton L Lex.*)

Fictio est contra veritatem, sed pro veritate habetur. A maxim meaning "Fiction is against the truth, but it is to be esteemed truth" (*Bouvier L Dict*)

Fictio juris non est ubi veritas A maxim meaning "Where truth is, fiction of law does not exist" (*Bouvier L. Dict*)

Fictio legis iniquae operatur alicui damnum vel injuriam A maxim meaning "A legal fiction does not properly work loss or injury" (*Wharton Lex*)

Fictio legis neminem laedit. A maxim meaning "A fiction of law injures no one." (*Bouvier*)

Fiction (*in law.*) A false averment on the part of the plaintiff which the defendant is not allowed to traverse, the object being to give the Court jurisdiction. (*Main. Anc. Law.*)

Fidelity Insurance

Fiction of Law. A supposition of law, that a thing is true, without enquiring whether it be so or not, that it may have the effect of truth so far as is consistent with equity It is allowed of in several cases , but it must be framed, according to the rules of law , not what is imaginable in the conception of man and there ought to be equity and possibility in every legal fiction (*Tomlin's Law Dic*) A legal assumption that a thing is true which is either not true, or which is as probably false as true , an allegation in legal proceedings, that does not accord with the actual facts of the case , and which may be contradicted for every purpose, except to defeat the beneficial end for which the fiction is invented and allowed (*New Hampshire Stafford Bank* v *Cornell*, 2 N H, 324, 327.)

"A fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted" [Lord Mansfield, *Mostyn* v *Fabrigas*, (1775) Cowp 161]

"Fictions are allowed against all the King's subjects for the furtherance, but never for the hindrance, of justice" Lord Mansfield, *Lane* v. *Wheat*, (1780) 1 Doug 314]

Fictitious Feigned, assumed, imaginary, not real, counterfeit, false, not genuine , regarded as a legal fiction

Fictitious or non existent, in 45 & 46 Vict , c 61 (Bills of Exchange), S 7 (3), considered in *Bank of England* v *Vagliano*, (1891) App Cas 107 Cf *Clutton* v *Attenborough*, (1896) App Cas. 90

Fictitious action or suit A mere colourable dispute, to obtain the opinion of the Court upon a question of law which the party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit (*Smith* v *Junction R Co* 29 Indi 546, 551)

"Fictitious stamp" defined , Act 45, 1860, S 263 (3)

Fidei commissarius In the civil law, a person who had a beneficial interest in an estate which, for a time, was committed to the faith or trust of another

Fide commissary A term sometimes used as a euphonious substitute for *cestui que trust*

Fidelity Loyalty, faithfulness, conformity to fact and truth , honesty

Fidelity insurance Fidelity Insurance is a contract whereby the insurer, for a valuable consideration, agrees, subject to certain conditions, to indemnify the insured against loss consequent upon the dishonesty or default of a designated employee (*See* Vance Ins. S. 247)

The contract is sometimes in a form very similar to that of a policy of insurance, while in other instances it is in the form of a bond of indemnity (See *Maryland Fidelity, etc Co.* v *Coutney*, 46 L. Ed 1193) It is sometimes issued upon the application of the employer and sometimes upon the application of the employee But whatever the form of the contract, it is well established that guaranteeing the fidelity of employees is a form of insurance, although it also partakes somewhat of the nature of a suretyship.

Fides est

Fides est obligatio concientiae alicujus ad intentionem alterius A maxim meaning "A trust is an obligation of conscience of one to the will of another" (*Wharton L Lex*)

Fides servanda A maxim meaning "Good faith must be observed" (*Bouvier*)

Fides servanda est, simplicitas juris contium praevaleat A maxim meaning "Good faith is to be preserved, the simplicity of the law of nations should prevail" (*Bouvier*)

Fiduciary *As a noun*, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee *As an adjective*, in the nature of a trust, having the characteristics of a trust, amalogous to a trust, relating to or founded upon a trust or confidence

Fiduciary contract An agreement by which a person delivers a thing to another on the condition that he will restore it to him, a contract based on mutual trust and confidence

Fiduciary duties *Fiduciary duties* cannot be made the subject of delegation This is so whether the person under a fiduciary duty is a trustee in the strictest language, or whether his position is merely a representative one [49 I A 46=49 C 325 (333)=66 I.C 140=1922 M W N 98=26 C W N 236=30 M L T 182]

Fiduciary loan A loan granted without any security being given, one based on trust.

Fiduciary note issue. Issue of bank notes without provision of a money reserve to meet them, relying on the confidence of the public and the honour of the bank

"Field" defined, Reg 8, 1887, S 2 (1)

FIELD Cleared land for cultivation or other purposes, whether enclosed or not a cultivated tract of land a wide extent of land, suitable for tillage or pasture

"Field-embankment" defined, Reg 8, 1887, S. 2 (3)

Fieri To be made, to be done

Fieri feci I have caused to be made, the return upon such a writ that the judgment has been satisfied

Fieri Facias (*Writ of*) Literally, "That you cause to be made" (*English L Dict*) The process to enforce the collection of a claim which has gone to judgment which has become final and executory

FIERI FACIAS A judicial writ of execution, that lies where judgment is had for debt or damages recovered in the King's Courts, by which writ the sheriff is commanded to levy the debt and damages of the goods and chattels of the defendant, etc (*Tomlin's Law Dic*)

Fieri non debuit sed, factum valet A maxim meaning "It ought not to be done, but done it is valid." (*Bouvier L Dict*)

Fight. To strike or contend for victory, in the battle or in single combat; to attempt to defeat, subdue, or destroy an enemy, either by blows or weapons (*Webster*)

Filius constat

Figures The numerical characters by which numbers are denoted, expressed or written

Filament A substance like a thread, a long thread like process (*Worcester Dict*) fibre

File A word of well-defined meaning, which may, however, be used in several senses (*Chapin* v *Kingsbury*, 138 Mass 194, 196)

FILE *As a noun*, it signifies a thread, string, or wire, upon which writs and other exhibits in Courts and offices are fastened or filed for the more safe keeping and ready turning to the same, a paper placed with the officer, and assigned by the law to his official custody, a record of the court, papers put together and tied in bundles, and, more loosely the official custody of the Court or the place in the offices of a Court where the records and papers are kept (*Black L Dict*)

FILE As a verb, it means to string, to fasten, as papers, on a line or wire for preservation, to arrange or insert in a bundle, as papers, indorsing the title on each paper (*Webster Dict*), to leave a paper with an officer for action or preservation (*Meridian National Bank* v *Hoyt etc, Co*, 60 Am St Rep 504), to deposit with the proper custodian for keeping to place in the official custody of the clerk, to put upon the files or among the records of a Court (*Webster Dict*), to place papers upon a file, or, more generally to deposit papers in official custody (*Abbott L Dict*), to receive papers officially for orderly, systematic safe keeping to note on a paper the fact and date of its reception in Court, to indorse on a paper the date of its reception, and retain it in the office, subject to inspection by whomsoever it may concern (19 Ame Cyc 528)

Field Delivered to the proper officer and by him received to be kept on file The derivation and meaning of the word, as defined in the dictionaries, carries with it the idea of permanent preservation, becoming part of the permanent records of the public office where it is filed, and includes the idea that the paper is to remain in its proper order on the file in the office (*Bergeron* v *Hobbs*, 65 Am St Rep 85)

Filial Due from son or daughter towards father

Filiation Being some one's child.

Filibuster One who engages in unauthorized warfare against a foreign state

"FILING DISTINGUISHED FROM "ENTERING OF RECORD." These expressions are not synonymous They are nowhere so used, but always convey distinct ideas, "Filing" originally signified placing papers in order on a thread or wire for safe-keeping In modern practice it means depositing them in due order in the proper office Entering of record uniformly implies writing. [*Naylor* v *Moody*, 2 Blackf (Ind) 247, 248]

FIELDMASTER OR FIELD-REEVE means a person appointable to superintend the ordering, fencing, cultivating, and improving of open and common fields. (1772, 12 Geo 3, c 81, S 3.)

Filius constat esse in familia patris et non matris. A maxim meaning "A son appears to be in the family of the father and not of the mother." (*Trayner Leg. Max.*)

Filius in utero.

Filius in utero matris est pars viscerum matris A maxim meaning "A son in the mother's womb is part of the mother's vitals" (*Wharton*)

Filius nullius. A bastard

Fill To make or become full, to so occupy that no space remains (*English L. Dict*), to hold, as an office (*Bongor Bridge Co.* v *McMahon*, 10 Me 478, 480)

Fille de chambre (*Fr*) Chamber maid.

Fille de joie (*Fr*) Prostitute

Fill a prescription To furnish, prepare, and combine the requisite drugs in due proportion as prescribed. (*Ray* v *Burbank*, 34 Am Rep 103)

"Fill up cover over or drain off meaning of 168 I C 199=39 Bom L.R 47=38 Cr L J 535=A.I R 1937 Bom. 165

Filter To purify, to make a liquid flow down through a porus substance, so as to keep off the dross and send down the pure matter.

Filth Anything that soils or defiles, foul, offensive matter (*Cent Dict*), Dirt

Filtration The act of process of filtering, the mechanical separation of a liquid from the dissolved particles floating in it

Filing Delivery of a paper to the proper officer to be kept on file, placing and leaving a paper among the files, placing a paper in the proper official custody, presenting a paper at the proper office and leaving it there, deposited with the papers in such office, placing a paper in the proper official's custody by the party charged with this duty, and the making of the proper indorsement by the officer.

The modern method of filing papers is to place them in the official custody of the proper officer to be kept as a permanent record and the making of an indorsement thereon by the officer of the time they were received (*Wilkinson* v *Elliot*, 43 Kan 590, 595, 19 Am St Rep 158), but "though the ancient mode of filing papers has gone into disuse, the phraseology of the ancient practice is retained in the common expressions 'to file', 'to put on file', 'to take off the files,' etc, from 'filum,' the thread, string or wire used in ancient practice for connecting the papers together." (*Holman* v. *Chevallier*, 14 Tex 337, 339, *Abbott Law Dic*; 19 Ame Cyc. 529-530)

In matters of practice, the word "filing, is very commonly used to express the duty of bringing to the proper office, as the case may be, writs, pleadings, affidavits and other such matters for safe custody, or enrolment The duty of filing in this sense may be properly considered as included under the word "returning" (*Hunter* v *Caldwell*, 10 Q.B 69, 81, 12 Jur 285; 59 E C.L 69.)

Filum. An imaginary thread or line passing through the middle of a stream or road.

Final In its ordinary signification, last; that which absolutely ends or concludes a matter (as, final decision) precluding further controversy on the question passed upon that which terminates or ends a matter or proceeding not absolutely, however. Some times it may mean conclusive (38 Mad. 41=16 I.C 971.)

Final order

AS APPLIED TO A JUDGMENT OR DECREE, it has a technical, fixed, and appropriate meaning It denotes the essential character, not the mere consequences, of the order, it is used in contradiction to "interlocutory" (*State* v *Wood*, 23 N J L 560, 561 *See also* 1 A L J 29=1904 A W N 49) It is doubtful whether the word 'final' used in C P. Code means 'non-appealable' 31 All 610=6 A L J 884=4 I C 23) The term "final" used in S 45 (5) of the U P Encumbered Estates Act only means "not subject to appeal" It cannot be final in the sense that the power of the High Court to interfere in revision is shut out [1937 A W R 1081=1937 A L J 1101. *See also* 2 C L J 306 (310), 14 Cal 64, 30 Cal 619=7 C W N 433]

The word "final" in S. 5 of the Court-Fees Act (VII of 1870), has the same meaning as in S 12, although it is applied to a different subject. In both, it means simply "not appealable," a decision under S 5 is not open to appeal revision or review and is final for all purposes [12 A 129=10 A W N 39 (F B)

"Final and conclusive. A person gives a *final* judgment, but in order to make it *conclusive* it must be satisfactory to all parties (*i e*) not be taken in appeal by any dissatisfied party The words "final and conclusive" used in S 61 of Bengal Act VI of 1870, must be taken to be used in their literal and ordinary sense (11 C 632)

Final decision A decision obiter of any question not necessary to the disposal of the suit is not a final decision (11 Bom L R 360=3 I C 124)

'Final decree' *See* 21 M L J 31=8 I C 736, 17 Bom 146

"FINAL DECREE" does not mean last decree, but decree determining rights finally (18 I A. 6=15 B 155)

The words 'final decree' occurring in the last paragraph in S. 3 of Madras Estates Land Act (I of 1908) mean final with reference to the Court which passes the decree and they are none the less final, for the purposes of the section, because an appeal was pending when the Act came into operation [8 M L.T 258 =1 M W N 369] *See also* 8 I C. 736 (741).

Final judgment, in the Bankruptcy Act, 1883 (46 & 47 Vict, c 62), S 4, does not include an order by consent to pay costs [Ex parte *Schmitz*, (1884) 14 Q. B D 509, nor an order to pay costs paid on a motion in bankruptcy] Ex parte *Official Receiver*, (1895) 1 Q B 609], nor an order on a co-respondent in a divorce suit to pay petitioner's costs [Ex parte *Dale*, (1893) 1 Q B 199] Nor does it include a garnishee order absolute [Ex parte *Chinery*] (1883) 12 Q.B D 342, although by the Judicature Act, 1873, orders are enforceable in the same way as judgments But judgment in an action for costs payable under an interlocutory order is final [Ex parte *M'Dermott* (1895), 1 Q B 611, and *see Ex parte Alexander*, (1892) 1 Q B 216].

"Final" order [*See* S. 109, C.P. Code) The decision of the High Court on a cardinal issue in the suit is a final decree (62 I C. 776=25 C.W N 896=A I R 1921 C. 177) If the order decides in effect finally the cardinal point in the suit, if it decides an issue which goes to the foundation of the suit, and, therefore, is an order which can never, while the decision stands,

Final order

be questioned again in the suit, it is final within the meaning of section, notwithstanding that there may be subordinate enquiries to be made [9 I C 183 (187), 11 I C 65 (66)=13 C L J 688=15 C W N 879] The term "final order" in S 109 of the Code of Civil Procedure, denotes an order which finally decides any matter directly at issue in the case in respect of the right of the parties [10 I C 444 (445)=13 C L J 681 *See also* 169 I C 739=41 C W N 310=A I R 1937 C 16]

"FINAL ORDER" in Stamp Act (Art 45) refer to the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed 23 I C. 98 *See also* 2 A 664 (F B)]

Final order passed on appeal An order passed by the High Court in the exercise of its revisional jurisdiction, under S 115 of the Code of Civil Procedure of 1908, or its power of superintendence, under S 15 of the High Courts Act of 1861, is an order made or passed on appeal within the meaning of S 109 of the Code and S 39 of the Letters Patent (11 I C. 65=13 C L J 688=15 C W N 879)

'Finality' Sometimes has a restricted meaning (31 Bom L R 1235)

Finality of order An order under S 23, Provincial Small Cause Courts Act returning a plaint to be presented to the regular Courts, is final, and confers jurisdiction on the latter (23 C 425)

Finally At the end or conclusion, ultimately, at last, lastly (*Cent Dict*)

Finally decided [*See* Civ P Code, S 11]

"A matter cannot be considered to be finally decided, unless in point of fact it was actually decided by all the tribunals before which that particular matter came for decision" (3 I C 87.)

An issue cannot be said to be 'finally decided' unless the decree is based on the finding thereon, and unless the party affected thereby has had an opportunity of appealing against it [18 C 647 (650)]

"Finally disposing of the matter" *See* 9 Bom. 15.

Finance Pecuniary resources of the state (termed public finance), company or person science of revenue

Financial member An important officer of government in charge of the finance department of the state.

Financial Of revenue, pertaining to money matters

Financial commissioner" defined Act 16, 1887, S. 75 (2), Act 17, 1887, S 7 (4); P Act 1, 1898 S 2 (19).

"Financial year" defined 52-3 V c 63, S 22, Act 1, 1883, S 2, Act 20, 1883, S 3 (5), Act 10, 1897, S 3 (19) Ben Act 3, 1885, S 5, Ben Act 1, 1889, S 3 (16), Bom Act 1, 1901, S 3 (19), Bur Act 1, 1898, S. 2 (23), F B & A Act 1, 1909, S. 5 (25), Mad Act 1, 1891, S 3 (10), P Act 1 1898, S 2 (20), U P. Act 1, 1904, S 4 (16)

"FINANCIAL YEAR" shall mean the year commencing on the first day of April [Act X of 1897 (General Clauses), S. 3 (19)]

Fine

"FINANCIAL YEAR"(in the Life Assurance Companies Act). means each period of twelve months at the end of which the balance of the accounts of the Life Assurance Company is struck, or, if no such balance is struck, then the calendar year [Act VI of 1912 (Life Assurance Companies), S 2 (4) *See also* Pro Soc Act, S 2]

Financier One skilled in levying and managing public money, a capitalist

Finate Bounded, limited, not—infinite

Find In its primary meaning to come to, obtain, to meet, and hence to reach, to attain to, to arrive at to discover, to determine, to declare (as, to find a person guilty or innocent). In law, to ascertain by judicial inquiry to determine a controversy in favour of one of the parties, as to "find for the plaintiff," "find true bill"

TO FIND, DISCOVER, INVENT *Find* is applicable to the operative arts, *invent* to the mechanical; *discover* to the speculative Harvey *discovered* the circulation of blood the geometrician *finds* by reasoning the solution of any problem, he *invents* an instrument by which the proof can be deduced from ocular demonstration.

That which is *found* may be trivial That which is *discovered* is important, and hence the word is used of new countries, new truths, or facts in science One often *finds* what one did not look for *Finding* sometimes plays a part subordinate to *discovery*, as when new countries are *discovered* they are sometimes *found* to be uninhabited One *discovers* what is hidden or secret, whether in the moral or the physical sense One *finds* what has fallen, not through one's own act, under one's observation or knowledge That which is *discovered* was not visible or apparent, that which is *found* was visible or apparent, but beyond reach, or out of one's own sight One *discovers* a gold mine, and *finds* a new botanical specimen Secrets, plots, conspiracies are *discovered* One finds what one requires in the market (*Smith Syn Dis*)

Finding. The decision of a judge, arbitrator, jury, or referee (*Anderson L Dict*) A term used by the profession and by the courts as meaning the decision of a trial court upon disputed facts

Finding lost goods. (*Finder of lost goods*—See *Indian Treasure Trove Act*) By the general rule of the common law one who finds and appropriates a lost article not buried in or attached to the soil acquires the title thereto and the right to possession thereof against all the world except the true owner (*Brandon* v *Planter's etc, Bank*, 18 Am Dec 48) This rule of the common law has been frequently and variously modified by the terms and provisions of particular statutes (See *Treasure Trove Act*)

Fine (*In old English Law*) A solemn amicable agreement or composition of a suit (whether that suit be real or fictitious) made between the parties, with the consent of the judges; and enrolled among the records of the Court, where the suit was commenced, by which agreement free hold property may be transferred settled and limited. (*Tomlin's Law. Dic*) A conveyance by *fine* and recovery, if unreversed, bars all the world (*Tomlin's Law. Dic.*)

FINES AND RECOVERIES (IN OLD ENGLISH LAW)—DISTINCTION. Though a recovery, generally speak-

Fine.

ing, is a more extensive species of conveyance than a *Fine*, to guard an estate against all claims and incumbrances, yet the operation of each is not seldom necessary in aid of the other (*Tomlin's Law Dic.*)

"A *Fine* is technically said to be levied. A recovery to be suffered—Good writes however have but too frequently confounded the terms." (*Tomlins Law. Dic*) As to *Fines and Recoveries* in old English *Law, see* Cruise on Fines and Recoveries, Challis, Law of Real Property, and also the "Introductory Essay on Assurances" to Comyn's Abstracts of Title, by Mr. Challis.

FINE (*In Criminal law*) Fine, in this sense, is amends, pecuniary punishment, or recompense for an offence committed against the King and his laws (*Tomlin's Law Dic.*) It seems that originally all punishments were corporal, but that after the use of money, when the profits of the courts arose from the money paid out of the civil causes, and the *Fines* and confiscations in criminal ones, the commutation of punishments was allowed of, and the corporal punishment, which was only *in terrorem*, changed into pecuniary, whereby they found their advantage Hence a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanour (*Bouvier*)

OTHER DEFINITIONS —"A pecuniary punishment for an offence or a contempt committed against the King on Court." (*Coke Litt.* 126-*b*, See also *Jacob L Dict*)

"A pecuniary punishment imposed by the judgment of a Court upon a person convicted of crime" "Pecuniary punishments for offences, which are inflicted by sentences of a Court in the exercise of criminal jurisdiction" "A sum of money exacted of a person guilty of a misdemeanour or a crime, the amount of which may be fixed by law or left to the discretion of the Court" "A sum of money ordered to be paid by an offender as a punishment for an offence." (*Rapalje and L L Dict*) "*Fine*" is derived from "finis", and is so called because its payment puts an end to the offence for which it is imposed (*State* v. *Steen*, 14 Tex. 396, 398)

Personal liabilities imposed on public officers for the non-performance of official duties are not fines (*Porter* v. *Thomson*, *22* Iowa 391, Ame Cyc Vol 19, p 545)

DISTINGUISHED FROM "PENALTY". In its broadest sense "penalty" includes fines, as well as all other kinds of punishment (*Esselink* v. *Campbell*, 4 Iowa 296.)

DISTINGUISHED FROM FORFEITURE,—"A *fine* is pecuniary penalty," while "a forfeiture is a penalty by which one loses his rights and interests in his property." (*Esselink* v *Campbell*, 4 Iowa, 296, 300)

FINE, MULCT, PENALTY, FORFEITURE The *fine* and *mulct* are always pecuniary, a *penalty* may be pecuniary, a *forfeiture* consists of the deprivation of any right or property the *fine* and *mulct* are imposed, the *penalty* is inflicted or incurred, the *forfeiture* is incurred. The violation of a rule or law is attended with a *fine* or *mulct*, but the former is a term of general use, the latter is rather a technical term in law.

Fine Arts. Arts appealing to the sense of beauty music, painting sculpture, architecture etc, are some of the chief fine arts.

Fire Insurance

Fines mandatory domini regis per resc ripta sua (scil. brevia) diligentur sunt observandi. A maxim meaning "The limits of the king's mandates in his rescripts (*i e*, writs) are to be diligently observed" (*Peloubet Leg Max.*)

Finger of God Is a phrase used to denote divine agency.

Finger post Sign post at turning of road on road crossings

Finger print. Impression of finger on paper used for identification of persons—especially used in the criminal intelligence department

Finis finem litibus imponit A maxim meaning "a fine puts an end to litigation" (*Peloubet Leg. Max.*)

Finished. Done, complete As applied to furniture, the term means that the article has been varnished oiled, polished, or the like (*i, e*) made ready for use

Finis. An end or termination a limit, terminus or boundary.

Finis rei attendedus est. A maxim meaning 'The end of a thing is to be attended to." (*Bouvier L. Dict*)

Finis talis concordia finalis dicitur eo quod finem imponit negotie, adeo quod neutra pars litigantium, ab eo de caetero potest recedere. A maxim meaning "A final concord is that by which an end is put to the business, from which end neither litigant can recede" (*Morgan Leg. Max, citing Coke Litt.* 121)

Finis unius diei est principium alterius A maxim meaning "The end of one day is the beginning of another" (*Wharton*)

FINITE, LIMITED. This world is *finite*, and space infinite, the power of a prince is *limited* We are *finite* beings, and our capacities are variously *limited* either by nature or circumstances

Fire alarm. Automatic device giving notice of fire

Firearms. This term includes all kinds of canon, rifles, shotguns, and pistols, whatever the compound used for propelling the missile or bullet (See *Arms Act.*)

Fire ball. (*Milit.*) Ball full of combustibles.

Fire-brick. A brick made of material which will not fuse readily in a kiln or furnace (*Cent. Dict.*)

Fire brigade. Organized body of fire men.

Fire-engine An engine, the primary purpose of which is to extinguish fires

Fire-escape A contrivance or apparatus in a building to enable the occupants to escape without injury in case of fire (*English L Dict.*)

Fire insurance A contract by which the insurer, for a consideration, agrees to indemnify the insured against loss of or damage to property by fire. (*Warren Davenport F. Ins Co*, 7 Am Rep 160)

Fire Insurance and Marine Insurance. *Fire insurance* is a contract whereby in consideration of the payment of an agreed premium the insurer undertakes to make good to the assured any loss or dam

Fire lock.

age which may happen to specified property during a stipulated period. Fire policies, in this respect, differing from marine policies—are usually for a specific sum, which bears no necessary relation to the value of the property insured The amount payable, in case of a loss, therefore, is not determined by the value of the property insured and injured but simply by the amount of the damage The sum payable can in no case exceed the amount named in the policy, but, as the contract is a contract of indemnity, if the loss is less, the amount for which the insurer is liable will also be less In some cases, however, especially where the risk is large, a term is inserted in the policy providing that the insurers shall be liable, in the event of loss by fire, to make good such proportion out of the loss as the sum assured shall bear to the total value of the property at the time the fire breaks out, thus making the assured his own insurer for the residue Such terms are called average clauses or average policies, and are similar to marine insurances The contract is usually contained in a written instrument called a policy which must bear a specific stamp

A contract of fire insurance is in its nature personal, being presumed to rest to some extent on the trust and confidence of the insurer in the insured that the property will not be destroyed by the insured for the purpose of realizing on the contract

Fire lock (*Milit*) Musket in which the priming was ignited by sparks

Fire man. A man employed to control or extinguish fires one who tends the furnace

Fire office An office or company that issues Fire Insurance policies

Fire-ordeal (A relic of ancient superstition generally prevalant in ancient times in all countries) In Saxon and old English law, the ordeal by fire or red-hot iron, which was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight, or by walking barefoot and blindfolded, over nine red-hot ploughshares, laid lengthwise at unequal distances (*Black L Dict*)

Fire policy Policy issued by a fire Insurance Company.

Fire-proof. Proof against fire, incombustible.

Fire salute (*Milit*) Gun fire as salute

Fire ship (*Milit.*) A ship sent adrift to ignite enemys ships.

Fire works. A device for producing spectacural effects by the use of combustibles, etc, squib, etc

Fire worship. Worship of or Devotion to the god of fire, fire being considered as a deity

UNDER FIRE (*Milit*) Being shot it (as, enemy troops being under fire.)

"Firm" defined, Act 9, 1932, S 4

FIRM Persons who have entered into partnership with one another are called collectively a "firm". [Act IX of 1872 (Contract), S. 239, *See* Indian Partnership Act, 1932, S 4]

Persons making an agreement to carry on a moneylending business and share the profits therefrom, are partners and constitute a firm. [I L.R 1937 Nag. 358=169 I.C. 855=A.I R 1937 Nag. 134.]

First of exchange.

The *persona* in the case of Robert Watson & Company, Limited, *i e.*, an incorporated *persona* is different from the *persona* in the case of Robert Watson and Company, a firm of individual men. Legal remedies at law available against a limited company might not be the same as in the case of individuals [42 I A 97=42 C 1029(1041)=17 M.L.T. 377=*2* L.W. 555=19 C W N 585=13 A L J 534=21 C L.J. 446=17 Bom L R 449=30 I C 55=29 M L.J 80]

If a firm allows its business to be transacted in its name by a manager or employee, it assumes responsibility for what their manager or employee does [31 M L T 104 (P C)]

Firmaun Order, mandate An imperial decree, a royal grant or charter (*Fifth Report*)

Firmior et potentior est operatio legis quam dispositio hominis A maxim meaning "The operation of law is firmer and more powerful than the will of man".

Firmly In a firm manner, solidly, resolutely, compactly, strongly, steadily.

First Being before all others, being the initial unit or aggregate in order of occurrence or arrangement as to time, place, or rank, (as) first born, first floor (*i e*) that which is above the ground floor, first lord of the Treasury or admiralty. (*Century Dict*)

First aid Help given to wounded person before doctors come

"First charge" defined; Act 7, 1878, S 82, Mad. Act 5, 1882, S 67

First-class Of the best quality, first-rate, superior quality.

First class paper Bills, notes and such other securities given by companies, which are easily discountable and held in high esteem in the commercial world.

"First conviction". *See* 11 O.C 122=7 Cr L J 454

"First cousin" defined, Act 10, 1865, S. 86. *See* now Act 39, 1925.

FIRST-COUSIN. Cousin first in degree, that is, the child of an uncle or aunt

"First cousin once removed" defined, Act 10, 1865, S. 86, Act 39 of 1925

First day (of the week) Sunday.

"First discovery" (in Patent law). 32 C.W.N. 699=A I R. 1928 Cal 495

First fruits First products of agriculture for the reason—especially as offered to god, being the first results of the reasons worked in the fields

First mortgage Implies that the lien of the mortgage is prior to that of any other claim.

First offence. The expression "first offence" in S 15 of the Merchandise Marks Act, must be construed as the first offence of the series of similar offences regarding the same trade mark. (35 I.C. 671)

First of exchange The first of a set of foreign bills of exchange. These are usually drawn in triplicate. If the first be paid the others are valueless.

First hearing

First hearing The expression "first hearing" in O 35, r 4, Civil Procedure Code, means the date on which the Court goes into the pleadings in order to understand the contentions of the parties (41 C W N. 1229)

"First hearing of suit". *See* 159 I.C. 862=A I.R. 1935 Mad. 261

First wife (*in Hindu Law*) There are, undoubtedly, authorities in Hindu texts which show that the first wife occupies a position of honour and precedence above all others, but no just analogy can be established between the status of the first wife and that of any subsequent wife Her title to special rank and privileges rests upon grounds peculiar to the first wife, and which can have no application to others [(1872) Sup I A 1=14 M I A 570=17 W R 553=12 B L.R 396=2 Suth 603=3 Sar 108]

The reason on which the precedence and privileges of the first wife over her co-wives are founded are scarcely pertinent to the succession of sons to their father, which is governed by other considerations [8 I A 1=2 M. 286 (293)=8 C L. R 315=4 Sar 203]

"Fisabilillah wakf" The use of the expressions "fisabilillah wakf", and similar terms in the outset of the deed, held to be only a veil to cover arrangements for the aggrandisement of the family and to make their property inalienable. [17 C 498 (P C)= 17 I A 28]

Fiscal Of or pertaining to the treasury or public Revenue or finance (*English L. Dict.*)

"Fish" defined Act 4, 1897, S. 3 (1), Ben. Act 2, 1889, S 2, Bur Act 3, 1905, S 3 (1)

"FISH" defined Bur Act 3, 1905, S 3 (3), Reg 3, 1889, S 32 (1) (*b*)

'FISH" includes, besides other fish, turtle, estuary tortoises, seaslugs (beche-de-mer), shell-fish and mother-of-pearl shells [Bur Act III of 1905 (Burma Fisheries), S 3, cl. (1), Ben. Act II of 1889, S. 2]

Fish and game The term "game" has been defined as birds and beasts of a wild nature obtained by fowling and hunting Within the meaning of the same laws, however, it refers primarily to game fit for food, although under some statutes it applies also to animals valuable for their fur or otherwise (*State* v *House*, 6 Am Rep 744) Within these laws the term "fish" is included in the term "game", and in itself includes oysters, and other shell fish (*Caswell* v *Johnson* 58 Me 164, 19 Ame Cyc 987.)

Fish plate Either of the two plates holding rails together

Fish, Royal "These are whale and sturgeon according to the Statute of 1324, (17 Edw. II. c 11); but Hale adds porpoises, and these are also mentioned in Sir Henry Constable's Case (1599, 5 Co. Rep 106, De Jure Maris, ch vii Moore, 412) They belong to the Crown as a royal franchise when taken within the seas that are part of the realm, but not if on the high seas, when they belong to the person who takes them" (6 *Ency. of the Laws of England*, 103) GAME FISH "Game fish" is any fish, the capture of which requires skill and affords

Fishing Boats

sport (*Com* v. *Penn Forest Brook Trout Co.*, 26 Pa. Co. Ct. 163,)

Fisheries The term "fisheries" includes oyster and shell fisheries (*Moulton* v *Libbey*, 59 Am Dec. 57.)

'Fishery" defined Bur Act 3, 1905, S 3 (2) Reg. 3, 1889, S 32 (1) (*a*). *See* 41 I.A 221 (227)=42 Cal. 489 (510).

"FISHERY" means any collection of water, running or still, tidal or non-tidal, which is of itself of a permanent nature or is or has recently been connected with any waters of a permanent nature, in which fish may be found, and it includes the sea and the sand-banks on which turtle and estuary tortoises habitually lay their eggs Bur. Act III of 1905 (*Burma Fisheries*), S 3, cl 2. *"Prima facie* a fishery is a right incidental to the ownership of the soil over which the water flows in which that right is exercised, and thus in tidal waters the fishery is presumed to belong to the Crown, and in non-tidal waters to the person (generally the riparian owner) who has the property in the bed of the water (see *Murphy* v. *Ryan*, 1868, Ir Rep 2 C.L. 143.) The right of fishery in the sea and the creeks and arms thereof is originally lodged in the Crown, as the right of depasturing is originally lodged in the owner of the waste whereof he is lord, or as the right of fishing belongs to him that is the owner of a private or inland river But though the King is the owner of this great waste and hath the primary right of fishing in the sea and the creeks and arms thereof, and navigable rivers within the tide, yet the common people of England have regularly a liberty of fishing therein as a public common of piscary, and may not without injury to their right be restrained of it unless in such places or creeks are navigable rivers, where either the king or some particular subject hath gained a proprietary right exclusive of that common liberty (*Ency of the Laws of England*, Hale, De Jure Maris ch. iv., Moore, Foreshore, *Lord Mansfield* in *Carter* v. *Murcot*, 1768, 4 Burr. 2163, Woolrych, Waters, Stuart Moore, Foreshore, Stuart Moore and H Stuart Moore, History of the Law of Fisheries, Paterson, Fishery Laws Oke's Handy Book of Fisery Laws *See also* L B R. 1893-1900, 202)

Fishery and Agriculture "Fishery" is not "agriculture" nor an "agricultural purpose" and income derived from fisheries is not an agricultural income, stacking timber is liable to assessment [51 Cal 504= 84 I C. 31=A.I R 1924 Cal 668.]

"Fishery officer" defined Bur. Act 3, 1905, S. 3 (5) (Am Bur Act 6, 1909, S 3)

"FISHERY OFFICER" means any person appointed by or under the orders of the Government of the Financial Commissioner or of a Commissioner to be an *Inkunwun* or a Superintendent or Inspector of Fisheries, or to discharge any function of a Fishery-officer under the Fisheries Act and Bur Act III of 1905 (*Burma Fisheries*), S. 3, cl. 5

Fishing Boats. A fishing boat is defined as a vessel of whatever size and however propelled, employed in sea fishing but not a vessel for catching fish otherwise than for profit, except where so expressly provided, a *"second hand" of a fishing boat* is the person next in authority to the captain or skipper on board; and a *fishing "voyage"* is a fishing trip for one part to another where the trip ends, but

Fishing Implement

not one whether she return in distress) (See *Eng. Mer. Ship Act*,, 1894, S. 370)

"Fishing Implement" defined. Bur Act 3, 1905, S 3 (4)

' FISHING IMPLEMENT" means any implement, weapon,engine or contrivance for catching or facilitating the catching of fish Bur Act III of 1905 (*Burma Fisheries*), S 3, cl 4

Fissure A narrow opening made by the parting of any substance, a cleft, a clevage, cleft made by splitting or separation of parts

Fistula Long pipe-like ulcer with narrow mouth

Fit. To be in harmony with, be of right measure shape, etc , adaptation, adjustment.

TO FIT, SUIT, ADAPT, ACCOMMODATE, ADJUST By the *fitness* of things is meant what is right and appropriate, *suitability* consists in being well fitted to meet the necessary requirements and give satisfaction. *accommodate* supposes a certain sacrifice or yielding on the part of the person accommodating for the convenience of the person accommodated We say that a difference is either *accommodated* or *adjusted* for it is accommodated, inasmuch as the parties yield to each other so as to make it commodious to both, it is *adjusted*, inasmuch as that which was wrong is set right

"When things were thus far adjusted toward a peace, all other differences were soon accommodated" (*Addison.*)

Fit fabricando faber A maxim meaning "The law presumes that a workman becomes an expert by a long continued exercise of his particular vocation." (*Morgan Reg. Max.*)

Fitting Anything used in fitting up, especially in the plural, necessary fixtures or apparatus, anything employed in fitting up permanently, used generally in the plural, in the sense of fixtures, tackle, apparatus, equipment (*Century Dict*)

Fitness The quality or state of being fit, suitable, or serviceableness, use, utility, the quality of being suitable and adapted to the performance of certain duties.

Fitzherbert. An ancient English law writer, temp. author of an abridgment of the year books

Fix To make firm, stable, or fast, to set or place permanently, to fasten immovably, to determine, to settle, (as, to fix the price) to settle permanently. Sometimes used in the sense of "allow."

TO FIX, DETERMINE, SETTLE, LIMIT. To *fix* is a positive and immediate act, as to fix the day, hour, or minute &c,to *determine* requires consideration, as to *determine* times and seasons, or modes of doing things, and the like. We commonly *determine* all subordinate matters in order to *settle* a matter finally thus, the *determination* of a single cause will serve to settle all other *differences* To *limit* is the act of a conscious agent; a question is *determined* by removing the doubt, the price is *limited* by law, or the command of the magistrate, or the agreement of the parties

Fixed. Settled, established, firm. In commercial paper, it means that the paper in which it is written shall be payable upon the exact date named for its maturity.

Fixtures

The word "fixed" in S 48 of the Bombay Land Revenue Code as it stood before the amendment of 1901 cannot mean "fixed in perpetuity." [29 S.L.R 382=163 I C. 887=A I R. 1936 Sind 108]

"FIXED" *Re* fixing summons in defendant's residence. *See* 118 I C. 792=A.I R. 1929 B. 257

Fixed Capital is money invested in land, buildings and other property of a more or less permanent nature (See Capital.)

"Fixed engine" defined. Act 4, 1897, S. 3 (2). Ben. Act 2, 1889, S 2 Reg. 3, 1889, S. 32 (1) (*o*).

"FIXED ENGINE" (*in Fishery*) means any fixed implement for catching or for facilitating the catching of fish, and includes a net secured by anchors or otherwise temporarily fixed to the soil. Bur Regn III of 1889 (*U B Land and Revenue*), S. 32, cl. (*c*).

"FIXED ENGINE" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way Ben Act II of 1889. (*Private Fisheries Protection*), S. 2.

"Fixed furniture" is to be distinguished from "fixtures" *Birch* v *Dawson*, 2 A & E 37, 39 (*See also* Fixtures)

"Fixed rent" The term "fixed rent" in S. 15 of Act X of 1859 cannot mean a rent so permanently fixed that it cannot be enhanced under any circumstances [2 I A 193=15 B L.R. 120=23 W.R. 352=3 Sar. 466=3 Suth 116]

Fixed rate tenant' defined U. P Act 2, 1901, S 8.

Fixed Salary Fixed pay. Fixed emolument. "A 'salary' is '*fixed*' when it is at a stipulated rate for a defined period of time A 'pay' or 'endowment' is 'fixed' when the amount of it is agreed upon and the service for which it is to be given is defined A salary, pay, or emolument, is fixed by law, when the amount is named in a statute, or by regulation, when it is named in a general order promulgated under provisions of law, and applicable to a class or classes of persons" (19 *Ame Cyc* 1032)

"Fixed time" does not necessarily mean a definite period—as for instance, one year, two years, or three years—but refers to a term of office which is established or settled as contradistinguished from a term which depends upon the mere will or pleasure of the appointing power (*People* v *Loeffler*. 175, Ill. 585, 603, 51 N.E. 785.)

Fixtures. Moveable additions to a building or land securely fastened to it.

"Tangible property is either real or personal The former is land, the latter is all other tangible property, The law of fixtures deals with property whose status as realty or personalty is indeterminate until the proof of certain facts and the application of certain rules of law When the status is thus determined, tangible property must be either real or personal. Fixtures then may be defined as tangible property whose status as realty or personalty is indeterminate. According as certain facts shall appear its status will become determinate and it will fall into one or the other category".

The word "fixture" does not necessarily in England mean affixed to the freehold, but that is the sense it bears in ordinary parlance. For anything to be a fixture, it must be attached to the earth, as that

Flag

expression is defined in S 3, T. P. Act. Hence, shed which is not so attached, but which simply rests by its own weight on the foundation prepared for it, and the roof of which is connected with the wall of the main building by a dammered canvas, is not a fixture. The shed is not an addition to the main building, for the word "addition" implies such a union with the hereditaments as would make that to which it is applicable an integral part of those hereditaments. 6 Bom L.R. 1073.

OTHER DEFINITIONS. "An article which was a chattel, but which by being physically annexed or affixed to the realty, became accessory to it, and part and parcel of it" (*Teaff* v. *Hewitt*, 59 Am. Dec 634). "Articles of a personal nature which have been affixed to land" "Chattels of a personal nature which have affixed to land". "Personal chattels which have been annexed to the freehold, but which are removable at the will of the person who has annexed them", (*Hallen* v *Runder*, 1 C M & R 266, 276, 3 L J Exch 260) "Such movable articles or chattels personal as are fixed to the ground or soil, either directly or indirectly by being attached to a house or other building" *Williams Pers. Prop* (15th ed 129, Amos and Ferard, Law of Fixtures, Notes, to Smith's Leading Cases, vol ii, pp 204-231, 11th ed, *Elwes* v *Maw*, Brown, Law of Fixtures)

Flag Piece of hunting etc., usually oblong or square attached to staff, as stand or ensign. Each country has its own special flag

Flag captain. Captain of flag ship, A subordinate officer of a vessel who assumes the character and duties of captain only on special occasions

Flag of truce White flag indicating desire for peace.

Flag officer Admiral.

Flag ship. Ship with the admiral on board

Flag staff Pole on which flag is hung.

Flag station Railway station where trains stop only if signalled, or one in which a few shuttle trains stop for a very little time.

Yellow Flag. Flag of ship with infectious disease, Hospital ship; ship in quarantine.

White flag Flag hoisted as a sign of surrender or as a flag of truce

Flank (*Milit*) Right or left side of army or body of troops

Flash Cause to gleam, burst suddenly into view, as, flashed his sword, the police-man had a lantern flashed in the prisoner's face.

Flat. "In the ordinary use of the term a flat is a self-contained set of rooms, structurally divided and separately owned or let from the rest of a building, which for the most part consists of other flats separated in like manner. Formerly a flat would commonly comprise an entire storey or floor, but the increased size of modern buildings has rendered this less usual. The word is one of popular use without any defined legal significance. The rule is to construe the word in the popular rather than in the technical legal sense and in accordance with the general object indicated by the context" *See* Clode, Tenement Houses and Flats, Daniel, Manual of the Law of Flats. (*Ency. of the Laws of England*).

Floatage

FLAT (*in the law of waters*). Shallow, or shoal water, land covered by the water at high tide, and left bare at low tide (*Jones* v. *Janney*, 42 Am. Dec. 309).

Flat *as an adjective*, having an even and horizontal surface, or nearly so, without marked prominences or depressions. (*Webster. Int. Dict*).

Flee from Justice. (*See absconding*) To leave one's home or residence or known place of abode, with intent to avoid detection or punishment for some offence (*U.S* v *O'Brien*, 17 Fed. Cas No. 15, 908, 3 Dill, 381, 383).

Fleet Formerly, a prison in London, so called from a river or ditch that was formerly there, on the side whereof it stood. To this prison men were usually committed for contempt to the King and his laws, particularly against the courts of justice, or for debt, when persons were unable or unwilling to satisfy their creditors, there was a Warden or Keeper belonging to the Fleet Prison (*Tomlin's Law Dic*)

FLEET Naval armament, number of warships under one commander-in-chief, number of ships or boats sailing in company

Fleet Prison (*See Fleet*) Formerly in England the prison of the court of Chancery and of the court of Common Pleas (*Wade* v *Wood*, 1 C B 462, 463, 50 E.C L. 462).

Flesh Human nature with all its emotions and infirmities (as) "more than flesh and blood can endure".

ONE'S OWN FLESH AND BLOOD One's own near relations, descendants

'SINS OF THE FLESH" means unchastity.

Fleta A general treatise on English law, supposed to have been written in the reign of Edward I; so called, as the author says, because written during his confinement in the Fleet prison

Flight (*See Absconding, Flee from justice*) The act of one under accusation, who evades the law by voluntarily withdrawing himself or absconding (*Black L. Dict*) Running away, hasty retreat, absconding (as) Prisoner's flight from justice

Float *In land-grant law*, a term used to indicate a certain quantity out of a larger quantity of land, a certificate authorizing the entry, by the holder of a certain quantity of land (*Marks* v *Dickson*, 20 How (U S) 501, 504, 15 L ed 1002). *In the lumber trade*, two or more rafts attached together, prepared by proper fastenings and suitable arrangement to withstand the winds and waters (*Tome* v. *Four Cribs of Lumber*, 24 Fed Cas. No. 14,083, Taney 533). *In cloth manufacturing*, a defect caused by the warp not being woven into the cloth, and the weft passing underneath the warp instead of being woven into the warp. (*Smith* v. *Walton*, 3 C.P D. 109, 110, 47 L. J M C. 45, 37 L.T Rep. N.S. 437). In fishery, the word signifies a cork or quill used on fishing line as indicator, cork supporting edge of fishing net.

Float bridge is a bridge of rafts or boats

Flota (*Lat.*) Fleet.

Floatage. Floating, flotsam; part of ship above water line.

Floatages.

Floatages Such things as, by accident, float on the top of the sea or great rivers.

Floaters. (In Stock Exchange) Bearer securities on which loans are readily raised, and as the loans on them are called in by one bank are passed to another, and so on, hence the name "floaters". Government stock certificate, railway bond etc, recognized as security

Floating bridge A kind of bridge and ferry, also part of a bridge that can be swung away on pan toon.

Floating capital Capital which a trader or banker reserves for ordinary business operations and does not appropriate for fixed or permanent investment.

Floating charge Meaning of 58 Cal 136=53 C. L J 269=131 I C 689=1931 Cal 223

Floating charge or security A floating security is not a future security It is a present security which presently affects all the assets of the Company expressed to be included in it On the other hand it is not a specific security, the holder cannot affirm that the assets are specifically mortgaged to him The assets are mortgaged in such a way that the mortgagor can deal with them without the concurrence of the mortgagee A floating security is not a specific mortgage of the assets *plus* a license to the mortgagor to dispose of them in the course of his business but is a floating mortgage applying to every item comprised in the security but not specifically affecting any item until some event occurs or some act on the part of the mortgage is done which causes it to crystallize into a fixed security Opinion of Buckley, L J in *Evans Rival* v *Granite Quarries, Limited*, [(1910) 2 K B 979, Rel on 50 Bom 547=28 Bom L R 689=96 I C. 417=A I R 1926 Bom 427]

Floating debt The term as applied to municipal corporations means that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporation treasury specially designed.

Floating indebtedness Same as Floating debt (*Huron* v *Second Ward Sav Bank*, 86 Fed 272, 276, 277, 30 C.C A. 38, 49 L R A 534)

Floating population Variable population, whose members as well as numbers are constantly changing.

Floating policy (*in Marine Insurance*) Policy that covers certain specified goods without naming the ship by which they are to be conveyed.

Floating security. Security on the property of a company as a going concern, used in regard to the security of a limited company, and forming a charge on its assets, but not enforceable unless there is default in payment.

FLOATING SECURITY is a term applied to a species of debentures under which the company issuing the same is allowed to deal with its assets in the ordinary course of business until the company is wound up or stops business, or a receiver is appointed at the instance of the debenture-holders, or, a form of security which constitutes a charge, but gives a license to the company to carry on its business.

Flotsam

Floating Security-Floating charge. This term "Floating Security" and the term "floating charge" are synonymous [Palmer's Co. Prec. vol III 9th ed. pp 16, 65, *Illingworth* v *Houldsworth*, (1904) 35 5 356] The terms "floating security" and "floating charge" have for many years been in common use in financial and mercantile circles, and have been adopted by lawyers and received judicial recognition. "The term 'floating' is," says Romer, L.J, "one that until recently was a mere popular term. It certainly had no distinct legal meaning It is not a legal term. It has recently been used in more than one statute" [In re *Yorkshire Woolcombers' Association*, (1903) 2 Ch. 284, 294, 50 Bom 547]

FLOATATION OF A COMPANY.] See *Torra Gold Mining Syndicate* v *Kelly*, (1900) App Cas 612.

Floatation Starting of Company or enterprise. According to stock-exchange parlance, inviting subscriptions from the public for the purpose of launching a company, the grouping of a certain number of claims to be formed in a company to be worked at a profit.

Flock Large number of people, animals of one kind; number of domestic animals, especially sheep, goats etc kept together (In Eccles and phraseology) it means the christian body, a congregation especially in relation to its pastor. Also applied to a family of children, number of pupils.

Flogging. Corporal punishment by stripes inflicted with a cat, or any punishment which in substance or effect amounts thereto. (*U S.* v *Cutler*, 25 Fed Cas No. 14, 910.)

Flood A great flow of water, a body of moving water, a body of water rising, swelling and overflowing land not usually covered with water, an inundation, a great body or stream of any fluid or substance (*Webster*)

"**Flood Embankment**" defined, Ben Act 3,1876, S 3 (4), Bom. Act 7, 1879, S 3 (4).

"FLOOD EMBANKMENT" means any embankment constructed or maintained by the officers of Government in connection with any system of irrigation-works for the protection of lands from inundation, or which may be declared by the Lieutenant-Governor to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments" [Ben Act III of 1876 (*Irrigation*) S 3, Cl. 4.]

Floor A section of a building between horizontal planes (*Lowell* v. *Strahan*, 15 Mass 1, 8; 12 N E. 401, 1 Am St. Rep 422) Also a term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session ("on the *floor* of the House").

Florence. An ancient piece of English gold coin; every pound weight of old standard gold was to be coined into fifty Florences, to be current at six shillings each. (*Tomlin's Law Dic*)

Floriculture. Cultivation of flowers.

Florin. A coin.

Flotilla. Small fleet, fleet of boats or small ships.

Flotsam. Floating wrecklessly. A term applied to a ship which is sunk or otherwise perished, and the goods float upon the sea, or to goods that are

Flour.

found floating on the waves, goods lost at sea and found floating on the water.

Flour. The finely ground meal of wheat or any other grain, flour is the product from grain, both ground and bolted while meal is the pulverized grain ground but unbolted (*Washington Mut Ins Co* v *Merchant's etc., Mus. Ins Co*, 5 Ohio St. 450)

Flouring mill A mill used for grinding grains for food, to wit, wheat, etc

Flowing lands A term which commonly imports raising and setting back water on another's land by a dam placed across a stream or water course which is the natural drain and outlet for surplus water on such land. (19 Ame Cyc 1081)

"**Flowing well**" defined, Reg 6, 1910, S. 2 (*e*)

Fluctuate. Move up and down, irregular rise and fall (as) a fluctuating market, fluctuation of prices of commodities

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est A maxim meaning "Rivers and ports are public, therefore the right of fishing there is common to all" (*Bouvier*)

"**Fluvial action**" defined, Act 8, 1885, S 30, *explu*

Fluvius (*Lat.*) A river, public rivers for public passage, flood, or flood-tide

Fluvious Regales. Royal streams public rivers

F. O. B An abbreviation for the words "free on board" As applied to a sale of merchandise destined for shipment, a term used to indicate that it will be placed on a car vehicle or vessel free of expense to a purchaser or consignee (*Capehart* v *Furman Farm Implement Co*, 48 Am. St. Rep. 60). The term denotes that the seller is to put the goods on board at his own expense, but on account of, and thenceforward at the risk and as the property of, the purchaser. (*Cowasjee* v *Thompson*, 5 Moore, P. C. 173, *Brown* v *Hare*, 27 L.J Ex. 372) In Ex p. *Rosevear Co* Re *Cock* (II Ch D 565), Bacon, C. J said — Delivery '*free on board*' only means 'The price shall be that which we stipulate for, and you shall not have to pay for the wagons or carts necessary to carry (to the ship) we will bear all those charges and put it free on board the ship, the name of which you furnish"

Fodder. Any kind of meat for horses, bulls, cows, or other cattle. (*Tomlin's Law Dic*)

Foe. Enemy; adversary, opponent, ill wisher.

Foeminae ab omnibus officis civilibus vel publicis remotae sunt. A maxim meaning "Women are not admissible to public offices." (*Bouvier.*)

Foenus nauticum. A high rate of interest paid on ship loans (*English L Dict.*)

Foetus. Fully developed embryo in the mother's womb.

Fog. Vapour, suspended near earth's surface; abnormal darkness of atmosphere. A generic term descriptive of all conditions of the atmosphere increasing the perils of navigation. (19 Cyc. 1082 *See also* 7 Cyc. 341 Note 33).

Fondness

Foenus Nauticum. Nautical or maritime interest, interest after an extraordinary rate

Folcland. Folkland, Land of the people or public

"FOR WHOM IT MAY CONCERN" a general clause in a policy of insurance, intended to embrace all persons who have an insurable interest.

Foist Introduce surreptitiously or unwarrantably

Folio A leaf of a book or manuscript (*Burrill*), a large size of book, the pages being obtained by folding the sheet of paper once only in the binding (*Black L Dict.*) In its legal sense, "folio" denotes a certain number of words in a legal document In conveyances there are seventy or seventy-two words, every figure comprised in a column, or authorised to be used, being counted as one word, and the same rule applies to all documents filed or used in proceedings in Courts (R. S. Co., Order 65, R 27 (14), and in parliamentary proceedings there are ninety words to the folio. In probate matters both the foregoing methods of counting a folio are in use. In all proceedings dealing with a will, such as searching, inspection, obtaining copies, or extracts, the fees are prescribed per folio of ninety words

The term "*folio*" seems to have originated in the practice of writing a certain number of words on a sheet, which, becoming invariable, gave the name of the sheet or leaf (folio) to the number of words written upon it (*Burrill Law Dict.* citing 3 Blackstone Camm 323) References to the writing of the older law authors are usually made by citing the folio.

Follicle A small gland or bag as at the roots of hairs

Follow To go or come after, to move behind in the same path or direction (*Webster Int Dict*) In the construction of statutes the word generally means next after, unless the context requires a different construction.

FOLLOW, SUCCEED, ENSUE Persons and things *Follow* and *Succeed* Only things *Ensue* To *Follow* is to move behind and in the same direction To *Succeed* is to follow in such a way that the subsequent thing takes the place of the preceding as "The son *succeeds* to his father's estate." (*Smith. Syn Dis.*)

'**Follow the event**', as applied to costs. *See* 26 M.L J 356=22 I.C. 919

FOLLOWER, ADHERENT, PARTISAN, A *Follower* is one who follows a person generally, an *Adherent* is one who adheres to his cause, a *Partisan* is the follower of a party. The *follower* follows from various motives, the *adherent* adheres from a personal motive, the *partisan*, from a party spirit motive.

Fomentation. A simple efficacious method of applying moisture to the body for the alleviation of plain.

Fondling. A person or thing fondled or caressed, one treated with foolish or doting affection. (*Gay* v *State*, 2 Tex. App. 127, 134, citing *Webster Dict*)

Fondness. The quality or state of being fond

"FONDNESS" FOR WOMEN does not, ex vi termini convey the meaning of lustful desire, and its unlaw-

Food

ful gratification". (*Cauley* v *State*, 92 Ala. 71 73. 9 So. 456).

"**Food,**" defined, Ben. Act 3, 1884, S. 251.

FOOD has been defined as "what is eaten for nourishment to organic bodies, nutriment, aliment, victuals, provisions". (*Century Dict*)

'Food,' whether includes drink. (27 M.L J. 732=26 I.C 311)

OTHER DEFINITIONS. "A substance that promotes the growth of animal or vegetable life." (*State* v. *Ohmer*, 34 Mo App 115, 124) "Every article used for food or drink by man" (*Webb* v *Knight*, 2 Q B D 530, 535, 26 Wkly Rep 14) Tobacco has been held not to be food (*State* v. *Ohmer*, 34 Mo App 115)

Fool One who is destitute of reason or the common power of understanding, an idiot (*Webster Dict*), silly person, simpleton

FOOL, IDIOT, BUFFOON The *fool* is either naturally or artificially a fool, the *idiot* is a natural fool, the *buffoon* is an artificial fool whoever violates common sense in his actions is a *fool*, whoever is unable to act according to common sense is an *idiot*; whoever intentionally violates common sense is a *buffoon*.

Foot. A measure of length containing twelve inches or one-third of a yard, the base, bottom, or foundation of anything (as, foot of the hill), the end or termination (In Milit) Infantry (as Foot soldier, regiment of foot)

Foot mark Foot print

Footnote A note inserted at the foot of a page

Foot passenger One who walks, not rides or drives.

Foot path. A public footpath or footway is a highway open to all the King's subjects alike, for passage on foot only It is distinct from footpaths which are private, or reserved for a particular class of persons, *e.g.*, an occupation way, for use by occupiers of certain tenements, or inhabitants of a particular parish In certain cases, roads, which are occupation roads only for horses or carriages, may be public footways (*See* Hunter on Open Spaces, 2nd ed, 1902 *See also* Pratt on Highways, Glen on Highways, 2nd ed, 1897, *Ency of the Laws of England*)

Foot print Impression left by the foot.

Foot race Running match between person.

Footway. A term used merely to distinguish an ordinary passage way from a horse or carriage way. (*Gorish* v. *Shattuck*, 132 Mass 235, 238.)

Footing Firm position, established place, relative condition.

"'ON THE FOOTING OF' means 'on the same principle as"' [*Wilding* v *Sanderson*, (1897) 2 Ch. 534, 548]

For. As a conjuction, sometimes used as meaning "because" As a preposition, the part of speech in which it most commonly appears, frequently used as meaning "as agent of," "in behalf of," or "in place of"; "buy", "designed to be or serve as"; "in consideration of", "in favour of", "in lieu of", "on", "on account of," "by reason of," or "because of," "on charge of", "to the extent, number, quantity, or amount" of; "with a view to the use, benefit, comfort

For ever.

convenience, etc;" "of," and as thus employed, often expressing purpose or object (See *Century Dict.*; *Ame Cyc.*)

FOR. When applied to time, the term ordinarily means "during," "throughout," or "during the continuance of', and has also been defined with approval to mean the space of all time through which an action or state extends (*Webster Dict.*) but it may mean "before" or "in front of."

Again this word is sometimes used as importing a condition precedent, or as a word of limitation "However, the sense in which the word is used must often be determined from the context of the writing in which it appears"

COMPARED WITH AND DISTINGUISHED FROM "OF." While the word is sometimes used as synonymously with the word "of" it has a broader meaning the variation between the word "for" and the word "*of*" seems at first sight, but in the connection with which they are used in signatures, the difference is substantial [*Tucker Mfg Co.* v *Fairbanks*, 98 Mass. 101, 105 (quoted in *Donovan* v *Welch*, 11 N.D 113, 118)] This Jones Smith of A.B firm is very different from Jones Smith for A B firm

"For all persons indiscriminately." So far as the words "for all persons indiscriminately" (used with reference to the liability of carriers) are concerned, these simply mean that persons so engaged in and catering for business satisfy the demands or applications of customers as they come and are not at liberty to refuse business. This arises from the public employment in which they are engaged [51 Cal 304=26 Bom L R. 571=22 A L J. 173=19 L W. 277=51 I A 28=28 C.W.N 392=80 I C. 1038=A I.R 1924 P.C. 40 (P.C)]

"For any purpose" *See* 1937 Rang L R. 127=A.I. R. 1937 Rang 408

For any sufficient cause 7 I C. 39 (40)=4 A.L. J 835.

For any sufficient reason. 11 I C. 743 (744)= U B.R. (1911) I, 84

The words "*for any other sufficient reason*" in S. 623, C. P. Code, (1882) do not apply and cannot apply to something which came into existence after the decree was made, and the discovery of new and important matter or evidence must also be in existence at the time of the decree. [24 M I at p 10 (P. C.) *foll*) 14 C W.N. 244=11 C.L.J. 26=5 I.C. 182]

"For ever" (*used in a deed of maintenance grant*). It cannot be laid down as a broad proposition that in no case where the purport of the grant is maintenance the estate conferred can be an absolute estate This would depend on the construction of the particular deed taken as a whole If the deed stated clearly that the grantee was to have an absolute interest, such interest cannot be controlled by the mere fact that the motive of the grant was maintenance, but where the terms of the grant are not clear and there are inconsistent conditions in the deed itself pointing to opposite conclusions, the safe rule is to construe the document as a whole and not to hold it to confer absolute title merely on the ground that the words used were "*as proprietor*" and "*for ever*" and "*in perpetuity.*" (3 O.W.N. 102=97 I.C. 897=1926 Oudh 561)

For money.

For money (*In Stock Exchange*). A sale "for money" involves immediate delivery of the securities purchased and payment of receipt.

For the account (*In Stock Exchange*). Business transactions included in current account for settlement on the next settling day.

"For payment to the decree-holder." The words "for payment to the decree-holder" in C.P C. (O. 21, R. 89) mean that he is the person solely entitled to the money which has been paid into Court (30 C. 262=7 C.W.N 341)

For that. In pleading, words used to introduce the allegations of a declaration. (*Black L. Dict*)

For that whereas In pleading, formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. (*Black L. Dict. citing Burrill* Pr. 127)

For the benefit of wife and children The words of S. 6 of Married Women's Property Act (3 of 1874) "for the benefit of his wife, or of his wife and children, or any of them" should be construed as "for the benefit of his wife or of his children, or of his wife and children, or any of them". [25 M.L J. 65=1913 M W N 697=20 I. C. 934)

"For the profit of a person". Per *Obiter* The expression for the profit of a person does not mean that there should be proof that profit was certain to result, a mere expectation of profit would suffice, [49 All. 562=8 L.R. 75 (Cr)=101 I C 474=28 Cr L. J. 442=7 A I C R. 487=25 A L.J 346=A I.R 1927 All 480]

For the purposes of execution The words "for the purposes of execution of the Decree" in S 28 of the Presidency Small Cause Courts Act only mean that, as between the judgment-debtor and the judgment-creditor, property of this particular class (*i e*, tiled huts) shall, for the purposes of execution, be deemed to be moveable (4 C W N. 470)

"For the same period as the term of their own engagements with Government." In S. 48 of Bengal Reg 8 of 1793, do not mean "in perpetuity", but only refer to the period of the decennial settlement. (14 C. 133.)

For the time being" [23 C 357, 25 C. 283 (284); 32 C 494=9 C.W N 372=1 C L J. 118; 47 Bom. 843 =25 Bom L.R 945=A I.R 1923 Bom 321]

For value received Generally the expression "for value received" used in a pronote imports a consideration

Forage. Hay and straw for horses, particularly for the use of horse in any army. (*Tomlin's Law Dic*)

Forbear Abstain, refrain from, be patient. When unqualified by terms of restriction, in reference to a debt, in the popular sense, a term which is equivalent to "Wait," without any adjunct whatever, and has regard to a general forbearance.

Forbearance. A delay in enforcing rights; the act by which a creditor waits for payment from the debtor.

Force.

FORBEARANCE. Refraining from claiming a right, a delay in enforcing rights. A term used in general jurisprudence in contradistinction to "act" or act immediately. (*Black L. Dict.*)

In the legal sense of the word, a forbearance is an engagement which ties up the hands of a creditor; an act of the creditor depriving himself by something obligatory of the power to sue; the giving of time for the return of a loan, or more properly it signifies the giving a further day, when the time originally agreed on is passed. (*Ame. Cyc.*)

Forbid To command, not to allow a thing to happen.

TO FORBID, PROHIBIT, INTERDICT *Forbid*, is the ordinary term, *prohibit* is the judicial term; *interdict* the moral term The former is more applicable to the power of private persons, and the latter to the authority of government. A parent *forbids* his child marrying when he thinks it not proper; the government *prohibits* the use of spirituous liquors. *Interdict* is a species of forbidding applied to more serious concerns, as to *interdict* the use of any one strong drink To *forbid or interdict* are opposed to command, to *prohibit*, to allow.

"Force" defined (*See also* COERCION, CRIMINAL FORCE) Act 45, 1860, S 349

Force. Efficacy, power in law to bind strength, compulsory power; mere strength or power exercised without law

FORCE signifies strength, vigour, might, energy, power, violence, armament, necessity (*Worcest Dict*), active power, momentum, virtue, efficacy, validity (*Webster Dict.*), the definition nearest to the exact meaning of the word is violence, power exerted against will or consent (*Webster Dict.*)

FORCE is most commonly applied in an evil part and signifies any unlawful violence. (*Tomlin's Law Dic*)

"A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact, with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described. *First*—By his own bodily power. *Secondly*,—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person. *Thirdly*.—By inducing any animal to move, to change its motion, or to cease to move. (Penal Code, S. 349)

FORCE, VIOLENCE. The arm of justice must exercise *force* in order to bring offenders to a proper account; one nation exercises *violence* against another in the act of carrying on war. *Force* is mostly conformable to reason and equity; *violence* is always resorted to for the attainment of that which is unattainable by law. All who are invested with authority have occasion to use *force* at certain times to subdue the unruly will of those who should submit: *violence* and rapine are inseparable com-

Force Majeure

pamons, a robber could not subsist by the latter without exercising the former

Force Majeure. Irresistible force or compulsion, circumstance beyond one's control, (*See* 48 Mad, 538=87 I C 68=A I R. 1925 Mad 626=48 M.L J. 374)

"Forced" The word 'forced' in S. 366, I P.C. can also be taken to be used in the ordinary dictionary sense as including forced by stress of circumstances. (50 C L J 593=1930 Cr.C. 209=A I R 1930 Cal 209)

Forced sale A sale under process of law, and against the consent of the owner A sale made at the time and in the manner prescribed by law, in virtue of an execution issued on a judgment already rendered by a court of competent jurisdiction, or in other words, a sale which is made under the process of the court and in the mode prescribed by law (*Sampson* v *Williamson*, 55 Am Dec. 762, *Macdonough* v *Elam*, 20 Am Dec. 284)

FORCED SALE AND SALE ON EXECUTION "A forced sale' is not synonymous with a 'sale on execution'" and the term does not include "A foreclosure sale, whether under the power of sale contained in the mortgage or in pursuance of a decree" (*Peterson* v *Hornblower*, 33 Calif (266, 276, 277)

Forcible entry A *forcible* entry has been defined as follows "an entry made with violence, against the will of the lawful occupant and without the authority of law" (*Anderson L Dict* 464 quoted in *Lewis* v *State*, 59 Am St Rep 255)

"An entry on another's property or in some special circumstances on one's own, of a nature to be the subject of a personal occupation, made with such an array of force as to create terror in those who are present opposing" (*Bishop Cr L*)

"An offence against the public peace, or private wrong committed by violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law" (*Black L Dict* citing 4 Blackstone Comm 148, 4 Stephen Comm 280)

A forcible entry or detainer consists in violently taking or keeping possession of lands or tenements, by means of threats, force, or arms, and without authority of law (*Bouvier L Dict*)

Forcible entry and forcible detainer While it is usual to treat forcible entry and detainer as one offence or ground of liability, yet it is recognized by the early English Statutes, and by many of those of the present time, that forcible entry and forcible detainer are separate and distinct, a forcible entry being generally an entry upon another's possession by force or violence, (*Foster* v *Kelsey*, 84 Am. Dec. 676), and a forcible detainer being generally a wrongful or unlawful entry, although without force, which has been followed by a detention with force and strong hand (*Boyle* v. *Boyle*, 121 Mass 85)

UNLAWFUL DETAINER IS DISTINGUISHED FROM FORCIBLE ENTRY OR DETAINER in that the element of force is wanting It is provided for either particularly under this distinct name or by general statutes as to forcible entry and detainer, and is usually confined to cases where such relations as that of landlord and tenant, vendor and purchaser, or mortgagor and mortgagee exist (19 Cyc. 1112.)

Foreign

Ford, (farda) A shallow place in a river. (Mon Ang Tom 1, p. 637, *Tomlin's Law Dic.*; Angel on water Rights) Shallow place where river, etc, may be crossed by wading

Forecast Foresight, conjectural estimate of something future

Foreclosed Shut out or excluded, as the barring of the equity of redemption on mortgages, etc. (*Tomlin's Law Dic*)

Foreclosure Foreclosure in theory, at least, is merely a decree determining the equitable right of a mortgagor to redeem after the mortgagee's estate has become absolute at law [See *Bonham* v *Newcomb*, (1806) 1 Vern 232, 23 E R 435, *Sampson* v *Pattison*, (1842) 1 Hare, 533, 66 E.R 1143; 58 R.R. 178, *Carter* v *Wake*, (1877) 4 Ch D 605] The term is also loosely applied to any of the various methods statutory or otherwise, known in different jurisdictions, of enforcing payment of the debt secured by a mortgagee, by taking and selling the mortgaged estate

The expression "FORECLOSING A MORTGAGE" is sometimes used in a loose sense as referring to any such action on the part of the mortgagee as has the legal effect of definitely putting the mortgagor to the option of either paying the mortgage debt within a specified date or suffering his right of redemption to be extinguished 27 A 17 was cited as an instance of such a use of the word. [12 O C. 314 (317)]

Forefather Those from whom one's father or mother is descended, the earlier generations of a family or race, ancestor

FOREFATHERS, PROGENITORS, ANCESTORS *Forefathers* is a partial and familiar term for the preceding branches of any family *Progenitors* is a higher term in the same sense, applied to families of distinction, we speak of the *forefathers* of a peasant, but the *progenitors* of a nobleman *Forefathers* and *progenitors*, but particularly the latter, are said mostly of individuals, and respect the regular line of succession in a family, *ancestors* is employed collectively as well as individually, and regards simply the order of succession we may speak of the *ancestors* of a nation as well as of any particular person. (*Crabb*)

FOREFATHERS, ANCESTORS, PROGENITORS, PREDECESSORS We descend from *Forefathers*, *Ancestors*, and *Progenitors*, but *Forefather* includes parents, *Ancestors* excludes them.

Predecessors expresses our civil, not our genealogical ancestry We are children of our *forefathers*, the posterity of our *ancestors* and *progenitors*, the successors of our *predecessors* *Forefathers* and *Progenitors* are more ordinary terms *Ancestors* implies some dignity of birth (*Smith. Syn Dis.*)

Forefront. Very front, foremost part (as) in the forefront of the battle

Foregoing Preceding, going before, in time or place or in a series, antecedent. (*Cent. Dict*)

Foreign. Strange or outlandish, of another country, or society, and in our law, is used adjectively, being joined with divers substantives in several senses (Kitch 126; *Tomlin's Law Dic*) That which belongs to another; that which is strange; belonging to another nation or country, belonging to

Foreign administrator.

or subject to another jurisdiction, that which is out of a certain state, country, jurisdiction, etc. (*Sweet L Dict.*), the correlative of "domestic."

Foreign administrator, An administrator appointed, in and under the law of a foreign country or another state

Foreign assignment. An assignment made in a foreign coontry.

Foreign attachment An attachment of a foreign or absent debtor. A process by which the property (lying within the jurisdiction of the Court) of an absent or non-resident debtor is seized, in order to compel his appearance, or to satisfy the judgment that may be rendered, so far as the property goes (*Black L Dict.*)

Foreign bill A bill of exchange drawn or payable in foreign country (*English L Dict*)

Foreign bills or money Well known phrases significant and descriptive of bank bills duly issued by legally constituted and incorporated banking institutions of foreign countries (*Gashee* v. *Eddy*, 71 Am Dec. 728)

Foreign bill of exchange. A Bill of Exchange drawn in one state or country, and payable in another

Foreign charity A charity established by one who is domiciled in a foreign state or country (*English L Dict*)

Foreign coins Coins issued by the authority of a foreign government

Foreign company. A foreign company must be deemed to carry on its business at its agent's office in British India. [167 I C 897=1937 A L J 98=1937 A W R 52=I L R 1937 All 234=1937 A L R 265 =A I R 1937 All. 208]

Foreign corporations The term "foreign corporation" is used to designate a corporation created by or under the laws of a foreign country

"Foreign" or "alien" corporations A corporation created by or under the laws of a foreign country is an "alien" in any other country, although most or all of its members may be citizens or subjects of the latter country. [*Janson* v *Driefontein Consol. Mines*, (1902) A C 484, 7 Com Cas 268, 71 L J K B 857, 87 L.T Rep N S. 372, 51 Wkly Rep 142)]

"Foreign country" defined, 44-5 V c 58, S. 190 (24), Act 9, 1908, S 2 (6.)

When used in relation to countries in political sense, the term "foreign" refers to the jurisdiction of government of the country

'FOREIGN COUNTRY" means any country other than British India [Act IX of 1908 (Limitation), S 2 (6).]

Foreign county Another county in the same kingdom.

"Foreign Court" defined Act 15, 1908, S 2 (5) *See* 35 Bom. 139=8 I C 645

"FOREIGN COURT" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor-General in Council. [Act V of 1908 (C. P. Code, S. 2, cl. (5).]

Foreign jurisdiction.

The supreme Court of Mauritius is a foreign Court. Judgments of that Court are foreign judgments. (29 C 509=6 C.W.N. 829.)

"FOREIGN COURT," "FOREIGN JUDGMENT." An English Court is a "*Foreign Court*" within the meaning of S 2, C P. C., and its judgment is a foreign judgment. (28 Cal. 641=5 C.W.N. 741.)

Foreign divorce Divorce obtained in the Courts of another country. "The law as to divorce in communities whose marriage laws are of Christian origin are of a most embarrassing variety. No two European States have the same reasons for granting a divorce, each of the United States and most British Colonies and even the three parts of the United Kingdom have distinct divorce laws This variety coupled with the migratory habits of modern times and a tendency to seek the most favourable forum for divorce, has made it often necessary to consider whether a divorce or decree of nullity of marriage obtained outside the realm can be treated as valid in one's own country." [*Ency of the Laws of England*, Ind. Div. Act., Dicey on Conflict of Laws, Westlake, International Law, Foote Private International Law, Ceary on Marriage, a most full and valuable articles by Mr Monnier in Law Magazine Nos. 286 (1892), p. 12, and 287 (1893), p. 118]

Foreign domicile. Domicile in another country or foreign state

Foreign dominion in 25 & 26 Vict. c. 20, S. 1 (Habeas Corpus), means "a country" which at some time formed part of the dominions of a foreign State or potentate, but which by conquest or cession has become a part of the dominions of the Crown of England" Per *Cockburn, C J*, in Ex parte *Brown* (1864) 5 B & S 290]

Foreign factor One who resides in a different country from his principal.

"Foreign frontier" means the frontier separating any foreign territory from any part of British India [Act XIX of 1924(Land Customs), S 2, cl.(*e*)]

"Foreign-going ship" defined, 57-8 Vict. c 60, S. 742, Act I, 1859, S 118 (Am Act 6, 1891, S 5).

"Foreign instrument" defined, Act 26, 1881, S 12.

"Foreign judgment" means the judgment of a foreign Court [Act V of 1908 (C. P. Code), S. 2, cl (6)]

Foreign jurisdiction. Any jurisdiction foreign to that of the forum.

The expression "*Foreign Jurisdiction*" in its wider sense includes the whole relationship of a State to its subjects when they are beyond its territorial boundaries. Thus the State claims for its subjects and citizens the duty of allegiance wherever they may be resident It may prescribe penalties for acts done by them abroad. But the term is now used in a more restricted sense to express the jurisdiction which certain foreign States have consented by treaty to allow the British Government to exercise within territorial limits where these foreign States have otherwise absolute power (*see* Capitulations), Ency. of the Laws of England; Hall, Foreign Powers and Jurisdiction of the British Crown (Oxford), 1894; Jenkyns, British Rule and Jurisdiction Beyond the

Foreign jury.

Seas (Oxford), 1892, Pigott, Exterritoriality, Tarring, British Consular Jurisdiction in the East (*Stevens and Haynes*, 1887)

The Foreign Jurisdiction Act appears to make the jurisdiction acquired by the Crown in a protected country indistinguishable in legal effect from what might be acquired by conquest [A I R 1926 P C. 131 (133)=30 C.W N 961=99 I C. 265 (P C)]

Foreign jury A jury from another, or foreign county.

Foreign kingdom. A kingdom which is under the dominion of a foreign prince. (*King* v *Parks*, 19 Johns N Y. 375, 376)

Foreign law The law of a foreign country or state.

"**Foreign liquor**" defined; Ben Act 5, 1909, S 4, E B & A Act 1 1910, S 4, Mad. Act, 1, 1886, S. 3 (12), U. P Act 4, 1910, S. 4 (2).

Foreign market. Market located in a foreign country.

Foreign missions. A term used in contradistinction to home missions, and applicable to all missions located or conducted in a country which is foreign to that where the home organization is established (*Bruere* v *Cooke*, 63 N.J. Eq 624, 52 Atl 1001)

Foreign navigation. A term applicable to ships when passing to or from a foreign country

Foreign office. Department of Government for foreign affairs

Foreign place or port. A port or place exclusively within the sovereignty of a foreign nation (The Eliza, 8 Fed Cas No 4, 346).

"FOREIGN PORT" defined, Act 8, 1878, S 3 (*e*), Act 2, 1896, S 3 (8)

FOREIGN PORT A port within the dominions of a foreign sovereign, some spot within the territory of a foreign nation (The Adventure, 1 Fed. Cas No 93, 1 Brock 235, 239, 240) The term is also used to include all maritime ports other than those of the state where the vessel belongs. (*Cole* v. *White*, 26 Wend N Y 511, 517)

"**Foreign possessions** in the Income Tax Acts (5 & 6 Vict. c 35, S. 100 and 16 & 17 Vict c 34, S 2 Sch. D), applies to profits and gains entirely earned abroad, but does not apply where the business is domiciled in England, nor to profits earned by a trader carrying on one single business partly in the United Kingdom and partly elsewhere, even though they are not remitted to the United Kingdom [*London Bank of Mexico* v *Apthorpe*. (1891) 1 Q B. 383, *Colquhoun* v *Brooks*, (1889) 14 App Cas 493. See *San Paulo Brazilian Rail. Co* v *Cartee*, (1896) App. Cas 31]

"**Foreign ship**" defined; 41-2 V c. 73, S. 7, Act 10, 1889, Sch. I, Pt. II, *Expln.* 1

"**Foreign state**" defined; 33-4 V. c. 90, S. 30, 36-7 V c 59, S 2, 36-7 V. c. 88, S. 2, Act 4, 1874, S. 2.

"**Foreign state**" means a State to which, for the time being, the Extradition Acts, 1871 and 1873, apply. [Extradition Act (XV of 1903), S. 2.]

FOREIGN STATE, means a foreign country or nation, for all legal purposes the term embraces a neighbouring state.

Foreshore

"**Foreign steamer**" defined, Act 10, 1889, Sch. I, Pt. II, *Expln.* 1.

"**Foreign territory**" means any territory (other than territory forming part of a State in India) which has been declared under S. 5 of the Indian Tariff Act, 1894, to be foreign territory for the purposes of that Act, [Act XIX of 1924 (Land Customs), S. 2, Cl. (*f*)]

Foreign trade. The exportation and importation of goods or the exchange of the commodities of different countries (See *Russel* v *U. S*, 21 Fed. Cas. No 12, 164)

Foreign vessel. A vessel owned by residents in, or sailing under the flag of, a foreign nation.

Foreign voyage. A voyage to some port or place within the territory of a foreign nation, a voyage intended to some place within the limits or jurisdiction of a foreign country.

"**Foreigner**" defined, Act 3, 1864, S. 1

FOREIGNER In a general sense, this is applied to a person belonging to another nation or country.

The word "foreigner" shall denote a person, (*a*) who is not a natural born British subject as defined in sub-Ss (1) and (2) of S. 1 of the British Nationality and Status of Aliens Act, 1914, or (*b*) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India. Provided that any British subject who, who under any law for the time being in force in British India, ceases to be a British subject shall thereupon be deemed to be a foreigner, [Foreigners Act (III of 1864), S 1]

A a person is no less a "foreigner" because he is the subject of the common Soverign of the country in which the judgment was passed, and the country in which it is sought to be enforced [(*Turnbull* v. *Walker*, 67 L T. Rep 767, *R*) 29 Cal 509=6 C W. N 829.]

FOREIGNER, STRANGER, ALIEN. *Stranger* denotes one who is strange or unknown, whether a fellow-country-man or not. A *Foreigner* is a native of another country As the *stranger* need not be a *foreigner*, so the *foreigner* need not be a *stranger*. An *Alien* is a foreign resident in a country, or one who is not a naturalized, or has not the privileges of a subject or a citizen in the country in which he resides. (*Smith. Syn Dic*)

Forejudge. To judge or determine before hearing evidence.

Foreman (*of the jury*). President or spokesman of the jury

FOREMAN (*in a workshop*) Principal workman, superintending the works of other workmen.

Forenoon The day till noon, morning.

Foresaid. Aforesaid, as aforesaid etc. These are synonymous terms and mean simply "before indicated," or "stated before" (*See* 1 Jarm, Wills)

Foreshore. That part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides. (*Black L. Dic.*)

Lord Hale, in his celebrated treatise, De Jure, Maris, defines the foreshore or seashore as follows.

Forewoman

"The shore is that ground that is between the ordinary high water and low water mark; this doth *prima facie* and of common right belong to the King, both in the shore of the sea and the shore of the arms of the sea. It is certain that that which the sea overflows, either at high spring tides or at ordinary tides, comes not, as to this purpose, under the denomination of *litus maris*, and the King's title is not of that large extent, but only to land that is usually overflowed at ordinary tides (Hale, De Jure Maris, ch IV, quoted in Moore's History of the Foreshore, 378, and Fisheries, 99 *See* Stuart Moore, History of the Foreshore and Hale, De Jure Maris and First Treatise, and Hall, Seashore, Stuart Moore and H Stuart Moore, History of the Law of Fisheries; *Ency. of the Laws of England.*)

Forewoman President or spokeswoman of a jury of matrons, chief work woman supervising others

Foreword Preface, introductory remarks (as) Foreword of a book

Forensic medicine. Forensic medicine is the science which deals with the application of every branch of medical knowledge to the purposes of the law *"Legal medicine," "State medicine,"* and *"Medical Jurisprudence"* are practically synonymous

Forester. Forest officer, officer in charge of forest or growing timber, dweller in forest

"Forest" defined This term is also used in connection with other words (as) protected forest, Reserved forest, State forest, village forest

A forest is a large tract covered with trees and undergrowth, unenclosed woodland district kept for hunting [*See* Manwood's Forest Law, Coke's Fourth Institute, Charter of the Forest *See* U B R (1894—1901), Vol I, 196]

FOREST. A great or vast wood, Manwood, in his Forest Laws, gives this particular definition of it "A Forest is a certain territory or circuit of woody grounds and pastures known in its bounds and privilege, for the peaceable abiding of wild beasts, and fowls of forest chase and warren, to be under the king's protection for his princely delight; replenished with beasts of venary or chase, and great coverts of vert for succour of the said beasts, for preservation whereof there are particular laws, privileges, and officers belonging thereunto." (Manw par 2 c. 1; *Tomlin's Law Dic*)

FOREST, CHASE, PARK. The *forest* is so formed of wood, and covers such an extent of ground, that it may be the haunt of wild beasts, the *chase* is an indefinite and open space that is allotted expressly for the chase of particular animals, such as deer; the *park* is an inclosed space that serves for the preservation of domestic animals.

Forest Court. A Court held for the enforcement of the forest laws. (*Bouvier*)

"Forest-offence" defined, Act, 7, 1878, S 2, Act 19, 1881, S. 3, Mad. Act 5, 1882, S 2, Reg. 6 1887, S. 2 (5); Reg 5, 1890, S. 2 (8), Reg. 7, 1891, S. 3 (5); Reg. 6, 1893, S 2 (8).

"FOREST-OFFENCE" means an offence punishable under the Forest Acts Bur. Act IV of 1902 (Forests), S 3, cl. (4).

Forfeit

"Forest officer" defined This term is also used in connection with other words (as) Chief Forest-officer, District Forest-officer, Village Forest-officers) Act 7, 1878, S 2, Act 19, 1881, S. 3, Mad. Act 5; 1882, Ss. 2, 34; Reg 6, 1874, S 2; Reg 6, 1887, S 2 (1) Reg, 5, 1890, S 2 (3); Reg 7, 1891, S 3 (1), Reg. 6, 1893, S 2 (2)

"FOREST-OFFICER" means any person appointed by or under the orders of the Government to be a Conservator, Deputy Conservator, Extra Deputy Conservator, Assistant Conservator, Extra Assistant Conservator, Forest-ranger, Deputy Forest-ranger, Forester or Forest-guard, or to discharge any function of a Forest-officer under the Forest Act [Bur. Act IV of 1902 (Forests), S. 3, cl (5)]

"Forest produce" defined, Act 7, 1878, S 2 (am. Act 5, 1890, S. 2), Act 19, 1881, S 3 (am Act 5, 1890, S 15), Mad. Act 5, 1882, S 2 Reg. 6, 1887, S 2 (4) [am Reg. 8, 1890, S 2 (3)]; Reg. 5, 1890, S. 2 (7). Reg. 7, 1891, S. 3 (4), Reg. 6; 1893, S. 2 (9).

"FOREST-PRODUCE" includes (*a*) the following when found in, or brought from a reserved forest or public forest-land, that is to say—(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinafter mentioned of trees, (*ii*) plants not being trees (including grass, creepers, reeds and moss), and all parts of produce of such plants; (*iii*) wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax, edible birds' nests, bats' guano, and all other parts or produce of animals, and (*iv*) peat, surface-soil, rock and minerals (including lime-stone laterite, mineral oils and all products of mines or quarries), and (*b*) the following whether found in, or brought from, any such forest or forest-land, or not, that is to say—timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams [Bur Act IV of 1902 (Forests), S 3, cl (6).]

Forestall the market To buy up provisions on the way to market with intent to sell at a higher price.

Forestry Science or art creating, managing and improving forests.

Forever Through eternity, through endless ages; eternally (*Webster Int. Dict*) The term is sometimes used as the equivalent of permanently. (*Sawyer* v. *Arnold*, 1 La Ann. 315, 316.)

Forfeit As a noun, that which is forfeited or lost by neglect of duty (*Webster Dict.*); something lost by the commission of a crime, something paid for the expiation of the crime; or in other words, a fine. (*Com* v *Avery*, 29 Am. Rep 429), a mulct (*State* v *Baltimore*, 38 Am Dec 319), a penalty, a fofeiture (*Taylor* v. *The Marcella*, 23 Fed. Cas No 13, 797) that which is or may be taken from one in requital of a misdeed committed—that which is lost, or the right to which is alienated by a crime, offence, neglect, of duty, or breach of contract, not merely that which is actually taken from a man by reason of some breach of condition, but also that which becomes liable to be so taken. (*Ame. Cyc.*)

"The term 'forfeit, in common parlance, strongly implies penalty, and such appears to be the import ascribed to it by lexicographers of the highest respectability, in giving with precision and accuracy, the

meaning of our language" (*State* v. *Baltimore, etc., R. Co*, 38 Am. Dec. 319.)

As an adjective, in its usual and common meaning, lost, by omission or negligence or misconduct, liable to penal seizure, alienated by a crime, lost either as to right or possession by breach of conditions

As a verb, to lose, and this is also its legal meaning, to lose by some breach of condition, to lose by some offence, to put away a property or right, to alienate or lose (by misdeed or transgression) (*Richardson Dict*)

The meaning of the word, has to be determined by the connection in which it is used When used in civil proceedings and in connection with the enforcement of civil rights, it contemplates an ordinary civil judgment, which need not even be penal in its character But, when used in a criminal law to denote a punishment for a statutory crime, the meaning of the word is equivalent to fine. (*Exp Alexander*, 39 Mo App 108, 109)

Forfeiture Forfeiture, is the divestiture of specific property without compensation in consequence of some default or act forbidden by law

FORFEITURE is defined by Blackstone to be a punishment annexed by law to some illegal act or negligence in the owner of lands tenements or hereditaments whereby he loses all his interest therein, and they go to the party injured, as a recompense for the wrong, which either he alone or the public together with him hath sustained (2 Comm 267, *Tomlin's Law Dic*)

FORFEITURE, as used in S 103 of Merchant Shipping Act, 1854 (repealed but re-enacted as sect 76 of the Merchant Shipping Act, 1894, 57 & 58 Vict c 60), implies that the property forfeited "is divested by the offence committed," even before the property is seized on behalf of the Crown [*The Annandale*, (1876) 2 P D 719 and *see* Sedgwick, Statutory Law (2nd ed), p 78]

"The king has no interest in this money he is only Royal trustee for the party" (*Lord Mansfield, Rex* v *Hyres*, (1766) 4 Burr Part IV, 2119)

FORFEITURE ACT The Forfeiture Act (IX of 1859) was passed for the special purpose of providing a Court for the adjudication of claims by innocent persons upon the property of rebels which had been forfeited to the Government It established a special Court, consisting of three Commissioners, and suspended the action of all other Courts in respect of such claims. Special modes of proceeding are established, and various clauses in the Act relate to that special course of procedure [(1874) 1 I.A 167=13 B L R 392=21 W R 318=3 Sar 363]

Forfeiture—English doctrine of—Basis of The doctrine of forfeiture in England is founded on tenure [(1867) 11 M I A. 223=7 W R (P C) 18=1 Suth 673=2 Sar 246]

Forge *As a noun*, an establishment, or mechanical contrivance by which iron is made or manufactured from (*Rogers* v. *Danforth*, 9 N J. Eq 289, 296.)

As a verb to make in the likeness of something else (*Webster Dict*), to fabricate by false imitation, to make or fabricate a thing in imitation of another

with a view to deceive and defraud, to make falsely, to counterfeit.

FORGE, FABRICATE *Forge* is employed both of manual and mental things, and so combines the meanings of counterfeit and invent, as to *forge* a signature or a tale To fabricate is only employed of mental fictions, as to fabricate an excuse. Fabricate involves a more sustained exercise of the inventive faculty than forge We fabricate tales, we forge statements.

'Forgery may with us be defined at common law to be the fraudulent making or alteration of a writing to the prejudice of another man's right" (*Blackstone*)

"Our books are not fabricated with an accommodation to prevailing usages" Paley. (*Smith Syn. Dis*)

Forged Counterfeited, a term which includes false making, counterfeiting, and improper alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature of a party or witness, and the placing or connecting together, with intent to defraud, different parts of several genuine instruments (*State* v *Geenwood*, 77 Am St Rep. 632.)

Forged document A false document made wholly or in part by forgery is designated "a forged document" (Penal Code, S 470)

"**Forgery**" defined Act 45, 1860, Ss. 463, 464, *Explin*

Forgery The fraudulent making or alteration of any record, deed, writing, instrument, register, Stamp, etc to the prejudice of another man's right (4 Comm 247) A false making of any written instrument for the purpose of fraud or deceit; including every alteration of or addition to a true instrument (2 East's P Cc. 19, c 1 49 *Tomlin's Law Dic*)

Forgery is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability (2 Bishop Cr. L. sect. 523, *Rembert* v. *State*, 25 Am Rep. 639)

FORGERY Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery. (Penal Code, S 463)

OTHER DEFINITIONS. "The false making of any written instrument, for the purpose of fraud or deceit" (*State* v *Phelps*, 34 Am Dec. 672.) "The fraudulent making or alteration of a written instrument to the prejudice of the rights of another" "The fraudulent making of a false writing, which, genuine, would apparently be of some legal efficacy."

FORGERY, UTTERING FORGED INSTRUMENT, FALSE PRETENCES DISTINGUISHED Where the false pretence made use of to obtain money or property is a written instrument, the resulting crime is sometimes forgery or the uttering of a forged instrument, and sometimes obtaining property by false pretence. If the instrument used is false in itself and is one which if

Forgive

genuine would create some right or liability, obtaining property on the faith of it is forgery or the uttering of a forged instrument as the case may be [*People* v *Peacock*, 6 Con (N Y) 72]

Forgive To pardon, remit fine, debt, etc

TO FORGIVE, PARDON, REMIT *Forgive* is the familiar term; *pardon* is adopted to the serious style Individuals *forgive* each other personal offences they *pardon* offences against law and morals. the former is an act of clemency the former is an act that is confined to no condition, the latter is peculiarly the act of a superior *Remission* is the consequence of the crime it has more particular regard to the punishment, it is granted either by the prince or magistrates, it arrests the execution of justice.

Form Established method of expression or practice, fixed way of proceeding, conventional or stated scheme (*Webster Int Dict*), a shape around which an article is moulded, woven or wrapped

FORM. (Observance of form in legal proceedings) Form is required in law proceedings, otherwise the law would be no art, but it ought not to be used to ensnare or intrap (Hob 232) The formal part of the law or method of proceeding, cannot be altered but by the Act of the legislature for, if once those were demolished, there would be an inlet to all manner of innovation in the body of the law itself (1 Com 142, *Tomlin's Law Dic*)

TO FORM, COMPOSE, CONSTITUTE Shareholders *form* a company. A society is *composed* of individuals, but law and order *constitute* the essence of society

Forma dat esse A maxim meaning 'Form gives being" (*Cyclopaedic L Dict*)

Formal Done in due form, or with solemnity, according to regular method (*Webster*) Of the outward form, shape or appearance, not the matter or substance of a thing, ceremonial, required by convention, observance of form and not of the spirit

"Formal adjudication" defined Bom Act, 2,1863, s, 16 (*e*) Bom Act 7, 1863, s 32 (*e*).

"Formal warning" defined Act 9, 1894, s 46 (1), *Expln*

Forma legalis forma essentialis A maxim meaning "Legal form is essential form" (*Bouvier L Dict*)

Formality An established order, a rule of proceeding, a formal mode or method. (*Century Dict*)

Formal parties Parties who have no interest in the controversy between the real litigants, but have an interest in the subject-matter, which may be conveniently settled in the suit, and thereby prevent further litigation. (*Chadbourne* v *Coe*, 51 Fed 479, 480)

Formation. The manner in which a thing is formed, structure; construction, conformation.

Formed, in the Companies Act, 1862 (25 & 26 Vict c 89), S 4, is used in its proper sense, and not technically; consequently, a society originally instituted in 1861 need not be registered under the Act even if the effect of its constitution is to create a new partnership from time to time between his

Formication

members subsequent to the commencement of the Companies Act, 1862. [*Shaw* v *Simmons*, (1883) 12 Q B.D 117]

Former Preceding or going before in a series, antecedent in order of action, etc (*Century Dict*)

"Former year" The expression "or former year" in Reg XVII of 1827, S 31, Cl 3 does not mean the years immediately proceeding the current year, but any previous year (11 B H C R. 106)

FORMERLY, IN TIMES PAST, OR OLD TIMES, DAYS OF YORE, ANCIENTLY, OR ANCIENT TIMES An old man may speak of *times past*, as when he says he does not enjoy himself as he did in times past *Old times, days of yore*, and *anciently*, are more applicable to nations than to individuals, and all these express different degrees of remoteness With respect to our present period, the age of Queen Elizabeth may be called *old times*, the days of Alfred, and still later, the *days of yore* the earliest period in which Britain is mentioned may be termed *ancient times*

Fornication Fornication is voluntary unlawful sexual intercourse between persons of the opposite sex, under circumstances not constituting adultery (*Hood* v *State*, 26 Am Rep. 21), and therefore varies as does the definition of adultery. By the canon law it was the unlawful sexual intercourse of a single person with another of the opposite sex, whether married or not (*Territory* v *Whitcomb*, 25 Am Rep 740), while by the common law it was such intercourse between a man, whether married or single, and an unmarried woman (*State* v *Chandler*, 96, Indi 591, *Hood* v *State*, 26 Am Rep 21)

OTHER DEFINITIONS —"The incontinence or lewdness of an unmarried person, male or female" "The carnal and illicit intercourse of an unmarried person with the opposite sex" (*Territory* v *Whitcomb*, 25 Am. Rep 740)

'Unlawful sexual intercourse, and open and unlawful living together of unmarried persons man and woman." (*Black L. Dict, Territory* v, *Whitcomb*, 25 Am Rep 740) "Sexual intercourse between a man, whether married or not, and an unmarried woman"

FORNICATION AND ADULTERY Fornication is Whoredom, or act of incontinency in single persons for if either party is married, it is adultery (*Tomlin's Law Dic*)

Fornication is voluntary sexual intercourse between persons who are not husband and wife (*See* Mirror of Justice, 7 Seld, Soc Publ 29) Where one of them is married such incontinence is usually termed adultery (*See* 2 Phill Eccl Law, 2nd ed. p 841, Burn Justice 30th ed, title "Lewdness".)

Sexual intercourse of a married man with a married woman is adultery, not fornication. [*State* v *Pearce*, 2 Blackf (Ind) 318, *See also* 1 Cyc 952]

INCESTUOUS FORNICATION It is incestuous fornication for a daughter to have a criminal intercourse with her own father. See Incest (*Cook* v. *State*, 56 Am. Dec. 410)

FORNICATION DIFFERS FROM RAPE in that both parties consent If the act be accomplished with the female's consent, even though such consent be induced by the use of such a measure of force as might, under ordinary circumstances, seems to overcome her

Forsake.

power of resistance, the offence is fornication, and not rape. (*Mathews* v. *State*. 101 Ga 547; 29 S.E. 424)

Forsake. To abandon, renounce, give up, desert.

FORSAKEN, FORLORN, DESTITUTE It is particularly painful to be *forsaken* by the friend of our youth, and the sharer of our fortunes, the orphan, who is left to travel the road of life without counsellor or friend, is of all others in the most *forlorn* condition, if to this be added poverty, his misery is aggravated by his becoming *destitute*

Forstellarius est pauperum depressor, et totius communitatis et patriae publicus inimicus A maxim meaning "A forestaller is an oppressor of the poor, and a public enemy to the whole community and the country" (*Bouvier L Dict.*)

Forswear Abjure, renounce, perjure oneself

TO FORSWEAR, PERJURE, SUBORN To *forswear* is applied to all kinds of oaths, to *perjure* is employed only for such oaths as have been administered by the civil magistrate A soldier *forswears* himself who breaks his oath of allegiance by desertion A man *perjures* himself in a court of law who swears to the truth of that which he knows to be false *Forswear* and *perjure* are the acts of individuals *suborn* signifies to make to forswear, a perjured man has all the guilt upon himself, but he who is *suborned* shares his guilty with the suborner

"Fort" defined, Act 13, 1881, S 2

Forthwith In its ordinary signification, immediately (*Whitehurst* v *North Carolina Mut Ins. Co*, 78 Am Dec 246), as soon as by reasonable exertion, confined to the object, it may be accomplished (*Anderson* v *Goff*, 1 Am St Rep 34), as soon as is reasonably convenient (*Hudson* v *Hill*, 43 L J C P 273, 279), as soon as reasonably can be, as soon as reasonably possible, as soon as the thing may be done by reasonable exertion confined to that object (*Bouvier L Dict*), as soon as with reasonable dispatch in the ordinary course of business, it can be done, by and by (*Cooper Dict*), directly (*Webster*) at the same point of time, at one and the same time, simultaneously at once, now, as from this moment, henceforth, in the reasonable course of the orderly conduct of the business of an office, presently, with all reasonable diligence and dispatch, with diligence (*Ciffey* v *New York Cent Ins Co*, 53 Am St. Rep 202), with due diligence, with reasonable diligence (*Central City Ins Co* v. *Oates*, 11 Am St Rep 67), without unreasonable delay, without unreasonable or unnecessary delay (*Munz* v *Standard L, etc, Ins. Co*, 99 Am St. Rep 830), without unnecessary procrastination and delay Such is the import of the term, but it varies with any particular case, and will imply a longer or shorter period, according to the nature of the thing to be done

The word "Forthwith" must receive a reasonable construction, and in giving it a construction some regard must be had to the nature of the act or thing to be performed and the circumstances of the case.

FORTHWITH, "in an Act of Parliament, has in several cases been construed to mean 'in a reasonable time,' as soon as the party who is to perform the act can reasonably perform it." [*R.* v. *Price*, (1853) 8 Moore, P C 213, and see *Immediately*].

Forum domesticum.

FORTHWITH, in 9 Geo. 4, c. 31, S. 27, means "forthwith if demanded" (*Coster* v. *Hetherington*, (1859), 1 E. & E. 802.]

FORTHWITH, in S 3 of the Bastardy Act, 1846 (8 & 9 Vict., c. 10), means "with due and proper diligence and without any delay which cannot be satisfactorily explained" [*R* v *Worcestershire* (1846), 10 Jur. 595]

FORTHWITH, in Bankruptcy Rules, 1870, r 144, "has not a fixed and absolute meaning, but must be construed with reference to the objects of the rule and the circumstances of the case." [*Per* Lush, L J, Ex parte *Lamb*, (1882) 19 Ch. D. 173]

Fortifications In olden times certain ancient fortresses at the mouths of the principal rivers, and at various points of the coast, had been erected and maintained by the Crown, in virtue of its prerogative and they belonged to it as its own estate and as part of the hereditary possessions of the Crown Various military measures have provided the necessary costs of maintenance, repair, and defence upon invasion of the kingdom These ancient fortresses and lands are now vested in the Secretary of State for War (*See* Military Forces of the Crown, St Bl Vol. II, 505, 506, Anson, Law and Custom of the Constitution, The Crown, 2nd ed, pp 376, 388, Manual of Military Law, War Office, 1899, Pratt's Military Law, 13th ed, 1899.)

Fortior et potentior est dispositio legis quam hominis A maxim meaning "The disposition of the law is stronger and more powerful than that of man" (*Bouvier L Dict* citing *Broom Leg Max*, *Coke Litt* 234)

Fortius sunt foris arma, nisi est consilium domi A maxim meaning "The strongest arms in the field are weak, if there is not wisdom in the council at home" (*Morgan Leg Max*)

Fortnightly. Occurring or appearing once in a fortnight

Fortuitous event In the civil law, an event which happens by a cause which we cannot resist (*Eugster* v *West*, 48 Am. Rep. 232), one which is unforeseen and caused by superior force, which it is impossible to resist, a term synonymous with Act of God (1 Cyc. 758)

Forum At common law, a place of jurisdiction, the place where a remedy is sought, jurisdiction, a court of justice, a court, a jurisdiction; a place where legal redress is sought.

Forum actoris or rei. The forum of the plaintiff's or the defendant's domicile

Forum actus. The forum of the place where the thing was done.

Forum conscientiae. The forum or tribunal of conscience.

Forum contentiosum *Contentious forum*, a place of litigation, a court of justice, as distinguished from the tribunal of conscience.

Forum contractus. The forum of the contract, the Court of the place where a contract is made.

Forum domesticum. A domestic forum or tribunal.

Forum domicilii.

Forum domicilii. The forum or Court of the domicile

Forum ecclesiasticum. An ecclesiastical or spiritual Court, as distinguished from a secular one.

Forum gestai. The form of the place where an act is done, considered as a place of jurisdiction.

Forum ligeantiae rei or actoris. The forum of allegiance of the defendant or plaintiff. (Of the country to which he owes allegiance)

Forum litis motae or fortuitum. The forum where the suit happens to be brought.

Forum originis. The forum or Court of nativity, place of a person's birth, considered as a place of jurisdiction

Forum regium The king's Court

Forum rei or rei sitae The forum where the property is

Forum saeculare. The secular forum as distinguished from the spiritual or ecclesiastical.

Forum sequitor reum. The Court follows the defendant.

Forward *As an adjective,* in the forepart (*Webster Int Dict*) *As a verb,* to send forward; send toward or to the place of destination, transmit to transport or to carry. (*Hooper* v. *Wells,* 85 Am. Dec. 211)

Forwarder A person who receives and forwards goods, taking on himself the expense of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons by which they are transported, and no interest in the freight, a person who for a compensation takes charge of goods intrusted or directed to him, and forwards them, that is, puts them on their way to their place of destination by the ordinary and usual means of conveyance, or according to the instruction he receives. (*Ame. Cyc*)

Forwarding agent Person who ships goods from the county for foreign or other merchants, and his contractual rights and liabilities are governed by the ordinary law of agency.

Forwarding merchants A class of persons who usually combine in their business the double character of warehouseman and agents, for a compensation, to ship and forward goods to their destination.

Fossils Organic substances which have become penetrated by earthy or metallic particles, putrified forms of plants and minerals, ore, a compound of metal and some other substance.

Fosterage. *See* 1 O.L J 281=24 I C. 643.

Foujdar Under the Mogul government, a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver-general of the revenues. (*Fifth Report.*)

Foujdari, or Foujdarry. The office or jurisdiction of a Foujdar or criminal Magistrate or Judge Any thing appertaining to a Foujdar, as his office, jurisdiction, Court, and the like. Also the produce of fines, confiscations, and chout, in the Foujdarry Courts. (*Fifth Report.*)

Fowls of warren.

Foujdarry abwab Foujdarry assessments Assessments made by the Foujdars Also a Soubahdarry impost established by Sujah Khaun, being in the nature of a territorial assessment, levied from the Foujdars in the frontier districts, which were imperfectly explored, or brought into subjection to the ruling power of the state (*Fifth report*)

Foujadarry Court. A Court for administering the criminal law. (*Fifth report*)

The Foujdary Court was simply a Police Court and so far dealt with the possession that it prevented the occupation being disturbed by violence. (5 M I.A. 413=1 Suth 241)

The jurisdiction of the Foujdary Court was confined to cases of possession only. It was beyond their province to inquire into and ascertain the title to landed property. (7 M I.A 283=3 W.R. 45=1 Suth 325=1 Sar 645)

Foul bill Document given by a Consul or other competent official to the master of a vessel on leaving port, certifying that at the time of clearing the port was infected with contagious disease.

Found Ascertained to be, obtained, or supplied, "reached," "got at", seen or discovered. *As a verb,* the term is often used as a synonym of establish or declare *In criminal law* the word has a well-defined meaning regarding indictments (as) the prisoner was *found* guilty or innocent.

"FOUND GAMING" S 12, Bombay Gaming Act, does not require that the police should apprehend persons in the actual act of gaming The words "found gaming" have a wider meaning than "seen gaming" 'Found" is more akin to "discovered" in its nature and purpose, and therefore, if people are found by the police in such circumstances that it is clear that when the police came upon the scene they were engaged in gaming, the section applies. (29 S.L R 349= 164 I C. 642=37 Cr L J. 1005=A I R 1936 Sind 126)

Foundation. The space immediately beneath the footings of a wall, also the incorporation or endowment of a college or hospital. (*Black L. Dict*)

Founder's shares Shares granted to persons concerned in promoting or originating of a company, as compensation for their promotion or other services. They are usually issued (as) fully paid up shares and some times they also carry special profits and privileges.

Foundling A deserted or exposed infant; a child found without a parent or guardian, its relatives being unknown. (*Black L Dict, Ame Cyc*)

Foundry Works for the casting of metals. (*Bendict* v *New Orleans,* 44 La Ann. 793, 795)

F O.W. An abbreviation of the words "first open water," and are used in charter parties with reference to the ports in the Baltic to mean "immediately after the ice breaks up"

Four corners. The whole of an instrument.

Fowl. *As a noun* any bird; especially any large eatable bird. (*Webster Int. Bird*) *As a verb,* to catch or kill wild fowl, for game or food, as by shooting, or by decoys, nets, etc, (*Ame. Cyc*)

Fowls of warren Birds of game; which are divided by Coke into field birds, word birds, and water fowl, but of which according to Manwood

there are but two kinds, the pheasant and the partridge

Fraction A fragment, a separate portion, a disconnected part, a fragment or broken part, a portion of a thing less than the whole

FRACTION (*of a day*) The law makes no fraction of a day. (*Tomlin's Law Dic.*)

In presumption of law, when a thing is to be done upon one day, all that day is allowed to do it in, for the avoiding of fractions in time, which the law admits not of, but in case of necessity (*Tomlin's Law Dic*)

"Fractional share" Meaning of (105 I C 881= A.I R. 1927 Mad 1002)

Fractional township A township where the outer boundary lines cannot be carried out in full, because of a water course or some other external interference. (*Ame. Cyc*)

Fractionem diei non recipit lex Fraction of a day, the law takes no notice of "The law does not regard a fraction of a day" (*Bouvier L Dict*)

Fracture The primary meaning of the word "fracture" is "breaking" though it is not necessary in the case of fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack, but if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface (170 I C 753=38 Cr L J 960=A I R 1937 Rang 253.)

FRACTURE. The breakage or rupture of a bone

Frail Easily broken or destroyed, fragile (*Cent Dict*), the term is sometimes used to describe a certain class of goods in bills of lading (*Ame Cyc*)

Frame As applied to a building "wooden" (*Ward* v *Murphysborn*, 77 Ill. App 549, 552)

Frame-work A structure or fabric for inclosing or supporting anything. (*Cent Dict*)

Franchise The word "franchise" has various significations, both in popular and in a legal sense, and there is some confusion arising from a failure to discriminate in what sense the word is used.

Franchises It is used as synonymous with liberty (2 Black Comm 37), freedom, exemption, immunity, privileges and immunities of a personal character, or in the sense of privileges generally (*Fietsam* v *Hay*, 3 Am St Rep 492) Thus, *in a broad and popular sense*, it embraces in a free country the right of trial by jury, the right of *habeas corpus*, and political rights of subjects and citizens like the elective franchise (*Chicago* v *Dunbar*, 95 Ill. 571, 575) *In a strict legal sense franchises* are special privileges which are conferred by government on individuals, and which do not belong to the citizens of the country generally of common right. (*State* v *Philadelphia R. Co*, 24 Am. Rep 511.)

FRANCHISE AND LIBERTY. Franchise and liberty are used as synonymous terms, and their definition is "A royal privilege or branch of the King's prerogative, subsisting in the hands of a subject" Being derived from the crown, they must arise from the King's grant, or in some cases may be held by prescription, which pre-supposes a grant. (*Finch L.* 164) The kinds of such rights are various and

almost infinite they may be vested either in natural persons, or in bodies politic, in one man or many, but the same identical franchise that has before been granted to one, cannot be bestowed on another, for that would prejudice the former grant (2 Rol Ab. 191, Keilw. 196, (*Tomlin's Law Dic.*)

FRANCHISE. POLITICAL PRIVILEGE A *franchise* involving solely matters of pecuniary interest, or a privilege in respect to property, can in no just sense be called a political privilege (*Atchison St. R Co* v *Missouri etc R Co*, 31 Kan 661, 666, 3 Pac. 284)

OTHER DEFINITIONS "A royal privilege or branch of the King's prerogative, subsisting in the hands of a subject" (2 Black Comm 37) "Certain privileges conferred by grant from government, and vested in individuals" (3 Kent Comm 458) "A particular privilege conferred by grant from a sovereign or a government, and vested in individuals, an immunity or exemption from ordinary jurisdiction, a constitutional or statutory right or privilege" (*Webster Dict*) "A certain privilege or exemption bestowed by grant from the government and vested in individuals—immunity" (*Worcester Dict.*) "A special privilege existing in an individual by grant of the sovereignty and not otherwise exercisable" "Privileges derived from the government, vested either in individuals or private or public corporations" "A privilege in which the public have an interest, and which cannot be exercised without authority from the sovereign power"

FRANCHISE, IN THE COUNTY COURTS ACT, 1888 (51 & 52 Vict. c 43), S. 56, includes the right or privilege granted by Letters Patent for a new invention [*R.* v. *Judge of Halifax County Court*, (1891) 1 Q.B 793, 2 Q B. 263], and the right to a registered trade-mark. [*Bow* v *Hart*, (1904) 2 K B 693]

FRANCHISE (ELECTORAL) The term "franchise," in its electoral sense, denotes both the right of voting at elections and the qualifications upon which that right is based (On this subject see *Ency of the Laws of England*, Prynne, Register of Parliamentary Writs, Carew, Historical Account of the Rights of Elections of the several Counties, Cities, and Boroughs of Great Britain 1755, Whitelocke on the King's Writ for choosing Members of Parliament, Simeon, Treatise on the Law of Elections, Heywood, Law of Borough Elections, Heywood, Law of County Elections, Orme, Digest of the Election Laws, Oldfield, The Representative History of Great Britain and Ireland, Roe, Law of Elections; Anson Law and Custom of the Constitution Part I, "Parliament," Rogers on Elections

It is doubtful whether the word 'franchise' includes the right to vote in the Legislative Council. The right to vote at the election for Parliament or for the Indian Legislative Assembly or for the various Provincial Legislative Councils is certainly a franchise but the word does not include the power to vote on matters coming before a legislative body. The term 'franchise' in its electoral sense denotes both the right of voting at elections and the qualifications upon which that right is based. (51 Cal 874= 40 C L J 44=82 I C 374=A.I.R 1925 Cal. 48.)

Frankalmoign. Free alms.

Frank bank. Free bench.

Frank chase. Free chase, the liberty or franchise of having a chase

Frank fee

Frank fee. A species of tenure in fee simple, being the opposite of ancient demesne, or copyhold.

Frank ferm. Lands in socage tenure.

Frank fold. Free fold, a privilege of the lord to have the sheep of his tenants in its fold, in his demesnes, to manure his land.

Frank marriage An estate tail special given upon marriage to the husband of the donor's female relative

Frank Law (*Old English usage*) The benefit of the free and Common Law of the land. (*Tomlin's Law Dic.*)

Frank-pledge, (*in Old English law*) A pledge or surety for the behaviour of Freemen, it being the ancient custom of the United kingdom, borrowed from the Lombards, that for the preservation of the public peace, every free-born man at the age of fourteen (religious persons, clerk, etc excepted) should give security for his truth towards the king and his subjects, or be committed to prison, whereupon a certain number of neighbours usually became bound one for another, to see each man of their pledge forthcoming at all times, or to answer the transgression done by any gone away And whenever any one offended, it was forthwith inquired in what pledge he was, and then those of that pledge either produced the offender within one and thirty days, or satisfied for his offence. This was called Frankpledge. (*Tomlin's Law Dic.*) Living under Frankpledge has been termed living under law, etc (*Tomlin's Law Dic*)

Frank tenant A free holder.

Frank tenement A free tenement, free holding or free hold

Frater fratri uterino non succedet in haereditate paterna Full brothers succeed in preference to half brother "A brother shall not succeed a uterine brother in the paternal inheritance." (*Bouvier L Dict*) "This maxim is now superseded in England by 3 & 4 Wm LV c 106, c. 9."

Fraternal Brotherly

Fraternal Insurance Temporary insurance, insurance from the maturity of one assessment to the naturity of another, and stipulations to insure promptitude in the payment of the assessments constitute both the substance and the essence of the contracts for it

Fraternal Society As defined by statute any corporation, society or voluntary association organised and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with a ritualistic form of work and a representative form of government, providing for the paying of benefits in case of death

Fraternity Brotherliness, guild; company with common interests, a religious body; a set of men of the same class.

Fratricide. One who has killed a brother or sister, alto the killing of a brother or sister (*Black L. Dict.*)

Freehooter Pirate; piratical adventurer

Freedom. Personal liberty; civil liberty, independence; liberty of action (as) freedom of contract·

Fraud

Friend. One joined to another in intimacy or mutual benevolence, acquaintance.

MY HONOURABLE FRIEND is an expression used of another member in the House of Commons or other legislative assembly.

MY LEARNED FRIEND is an expression used of another lawyer in Court.

"**Fraud**" defined (*See also* Cheating) Act 9, 1872, S 17

FRAUD Is deceit in grants and conveyances of lands, and bargains and sales of goods, etc, to the damage of another person which may be either by suppression of the truth, or suggestiou of a falsehood. (*Tomlin's Law Dic*)

"FRAUD" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract (1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true, (2) the active concealment of a fact by one having knowledge or belief of the fact, (3) a promise made without any intention of performing it, (4) any other act fitted to deceive, (5) any such act or omission as the law specially declares to be fraudulent

Explanation —Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is in itself, equivalent to speech. [Act IX of 1872 (Contract) S 17]

The term "*fraud*" *in Civil Procedure Code*, S 48 should be interpreted in a wider sense than that in which it is generally used in English law [13 I C 88 (89).] The action of a party in locking up his house and keeping it locked up, when he knew that a warrant for the attachment of his moveable property has been issued, is a contrivance or stratagem or "fraud" within the meaning of S 48, C.P Code. (*22 M 320*) A judgment-debtor evaded arrest and finally when arrested spent two years pretending to prosecute insolvency proceedings without any intention of pressing them and thus evaded the execution of the decree within the period of 12 years *Held*, the judgment-debtor was guilty of fraud within S. 48, C P Code (9 A L J 17=13 I C 929) The expression 'fraud' in S 18, C P Code should be construed in a broad sense A deliberate evasion of the process of Court with intention to defeat execution of decree would amount to fraud [35 Mad, 670=22 M L J. 35=10 M.L T 413=(1911) 2 M W N. 434=12 I.C 679 Any improper means resorted to by the judgment-debtor (such as, hiding in a foreign territory) in order to prevent execution is fraud under the section (24 M L.J. 270=18 I C 1008=1913 M. W N. 182=13 M.L.T 226=24 M L.J 270

The word "fraud" *as used in the Penal Code* is used in its ordinary and popular acceptation, a man who deliberately makes a false document with false signatures in order to shield and conceal an already perpetrated fraud is himself acting with intent to commit fraud within the S 463, Penal Code [15 Bom. L.R. 708=14 Cr L J. 518=20 I.C. 928 (1001) *See also* 13 Bom. 515, 1 Weir 554]

"As to relief against fraud, no invariable rules can be established, fraud, is infinite; and were a Court

Fraud

of equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped and perpetually eluded by new schemes, which the fertility of man's invention would contrive" Lord Hardwicke in a letter to Lord Kaims, quoted by Mr Justice Story, 1 Story Eq. 186*n*

The classification of fraud most frequently used by courts and text writers is (1) *Actual* or *positive fraud*, (2) *legal fraud* or *fraud in law*, (3) *constructive fraud*

ACTUAL OR POSITIVE FRAUD. Actual or positive fraud has been said to consist in circumventing, cheating, or deceiving a person to his injury, by any cunning, deception, or artifice

LEGAL FRAUD OR FRAUD IN LAW. The terms "legal fraud" and "fraud in law" were formerly used by the courts to describe a species of actionable fraud in which a corrupt motive, such as a desire to obtain a benefit or to cause an injury, was lacking, but the other elements were present. The term "legal fraud' has also been used to characterise false representations more or less innocent which will be sufficient ground for the rescission of a contract.

"I do not understand legal fraud To my mind it has no more meaning than legal heat or legal cold, legal light or legal shade There never can be a well founded complaint of legal fraud, or of anything else, except where some duty is shown and correlative right, and some violation of that duty and right." (Lord Bramwell, *Weir* v *Bell* (1878) 3 Ex D. 243)

CONSTRUCTIVE FRAUD A constructive fraud has been said to be "an act which the law declares to be fraudulent, without inquiring into its motive, not because arbitrary rules on this subject have been laid down but because certain acts carry in themselves an irresistible evidence of fraud"

FRAUD UPON THE LAW. A term sometimes used is "fraud upon the law" It is said that this term does not designate any independent kind of offence not embraced within the other definitions of fraud but is merely a term of convenience by which a striking aspect of certain frauds is designated Since every fraud must be committed against a being capable of rights, "fraud upon the law" is a fraud upon an individual, a corporation or the sovereign, generally in evasion of some statute such as the Bankruptcy Act

FRAUD, GUILE, CIRCUMVENTION *Fraud* and *Guile* have in common the idea of duplicity, or deceit in action, but they differ in the motives in which they directly originate. *Fraud* aims at the disadvantage of another. *Guile* is a wily regard for one's own interests, without directly referring to the interest of one's neighbour *Circumvention* is the gaining of one's ends in treating with another This may be by *fraud*, but may also be by address. It trades either on the weaknesses, the ignorance of others, or their comparatively inferior knowledge or experience It is the process of stratagem (*Smith Syn Dis*)

"FRAUD, SURPRISE, OR MISTAKE OR SUCH OTHER GROUNDS" The words "fraud, surprise, or mistake or other special ground "in rule 617 (in Belchambers Rules and Orders 1st Ed) refer to fraud surprise or mistake or some other special ground incident to or connected with, or which has resulted in the making of, the certificate or report itself and not to something which has occurred quite outside and independent of the certificate or report (28 C. 272=5 C W.N. 337.)

Fraudulent conveyances.

'Fraud on Court' What constitutes (38 Mad. 225=19 I.C 579.)

Fraud on registration The inclusion in a deed of item of property merely for the sake of registration does not amount to fraud on registration where the transferor is entitled to transfer it (46 All 764=82 I C 213=A I R 1924 All 897)

Fraud and collusion "Collusion between two persons, to the prejudice and loss of a third, is, in the eye of the Court, the same as a fraud." [Hardwicke, L C , *Garth* v *Cotton*, (1750) 1 Ves 524.]

Fraud and Falsehood "If every untrue statement which produces damage to another would found an action at law, a man might use his neighbour for any mode of communicating erroneous information, such (for example) as having conspicuous clock too slow, since plaintiff might thereby be prevented from attending to some duty or acquiring some benefit." [Lord Denman, C J , *Barley* v *Walford*, (1837) 9 Q B 208]

Fraud and illegality "Fraud," in my opinion, is a term that should be reserved for something dishonest and morally wrong and much mischief, is, I think, done, as well as much unnecessary pain inflicted, by its use where "illegality" and "illegal" are the really appropriate expressions [Wills, J., In re *Companies Acts*, *Ex parte Watson*, (1888) L.R. 21 Q.B. 309

Fraud and undue influence "As no Court has ever attempted to define fraud, so no Court has ever attempted to define undue influence, which includes one of its many varieties," [Lindley, L J , *Allcard* v. *Skinner*, (1887), L R. 36 Ch. 183]

Frauds, statute of The English Statute of Frauds, 29 Car II c 3, was a valuable piece of legislation in its day, especially at a time when the evidence of parties to a suit was not admissible. It consists of a number of requirements for documentary or other evidence of various legal transactions, made with a view to the prevention of fraud and perjury. [*Ash* v *Abdy*, (1678), 3 Swams. 664, 36 E.R 1014]

Fraudulent. The term "fraudulent" has, by rather an happy use of language, been applied by Courts of Equity to transactions which are not at all dishonest in their nature, but are only such as the law will not allow [19 I A 15=19 C 223 (231)=6 Sar. 98.]

Fraudulent conveyances. Fraud is seen in various forms, but one form has been common to all ages and nations—the fraud of a debtor seeking to put his property out of the reach of his creditors English law, which "abhors covin," has from the earliest time endeavoured to defeat designs of this kind. Some of the earliest Statutes were directed against collusive gifts by a debtor in secret trust for himself. The Acts, as Lord Mansfield said, were one declaratory of the common law, but they have the merit of having formulated the common law with precision. Being in repression of fraud, it is to be and has always been liberally expounded. (May, Fraudulent Conveyances, Smith's Leading Cas 10th ed. Vol. I. pp. 1 *et. sew.* *See also* S 53, Indian Transfer of Property

Fraudulent creditor

Act, and the 'provisions of the Indian Insolvency Acts')

Credit is extended in reliance upon the evidence of the ability of the debtor to pay, and in confidence that his possessions will not be diminished to the prejudice of those who trust him This reliance is disappointed, and this confidence abused, if he divests himself of his property by giving it away after he has obtained credit The tendency of modern legislation has been to prevent unfeeling creditors from oppressing or punishing a debtor for his poverty, but a strong purpose is manifested in the recent Acts and decisions of the courts to enlarge and strengthen the creditor's remedies against the property of the debtor *See* T P. Act, S. 53

Fraudulent creditor (*in Insolvency*) A creditor who wilfully and with intent to defraud, makes, in a bankruptcy or liquidation, by arrangement, a false claim,or a proof, declaration, or statement of account which is untrue in any material particular

Fraudulent preference The words "with a view of giving that creditor a preference" in S 54 should be interpreted to mean that what the debtor did was an act of free will and that his dominant intention in performing that act was to prefer such creditor. The mere fact that the transaction was effected by the debtor when he was in imminent expectation of bankruptcy is not sufficient to prove intention to give fraudulent preference The word 'preference' imports a free choice and it is necessary to prove that the debtor's act was voluntary and not due to extraneous influence, such as pressure or threat from the creditor. (166 I C 801=1937 A L R 71=A I R. 1934 All. 4)

Fraudulent use A man can use a document fraudulently even though it is used for the purpose of supporting a good title. (51 Cal 469=26 Cr L J. 24=83 I C 504=A I R. 1924 Cal. 718.)

"Fraudulently" defined (*See also* Dishonestly), Act 45, 1860, S 25, Act 15, 1887, S. 3 (6) Act 5 1892, S 2 (6), Reg 3, 1881, S 2, Reg 2, 1888, S 2 (4), Reg 4, 1890, S 3 (5)

"FRAUDULENTLY" Person does a thing fraudulently if he does it with an intent to defraud and so to constitute fraud two elements are necessary—deceit and injury and loss to some person [125 I C 861=33 C W.N 997=A I R 1930 Cal 263, 28 M 90, (F B), 5 C.W.N. 897, 4 L.B R 315, (F B) 15 A. 210, 19 C 380, 22 C. 313, 32 C 775=9 C W N 807=2 Cr L J 368=1 C.L J. 469, 1902 A.W N 173=25 All 31]

The word "*fraudulently*" in S 206, I P Code, cannot be interpreted as meaning nothing more than "dishonestly." The two words do not mean exactly the same thing. A dishonest act is not necessarily a fraudulent act The elements which make an act fraudulent are,first deceipt or an intention to deceive and in some cases mere secrecy. Where there is neither an intention to deceive, nor secrecy, the act, though dishonest is not fraudulent. [1937 M W. N. 462=46 L.W. 139=A.I.R 1937 Mad. 713=(1937) 2 M.L.J. 802]

The term "fraudulently' in S 471, I P. Code, does not necessarily connote deceit and injury to the person deceived. It may, but it need not, do so (52 Cal. 881=A.I.R. 1926 Cal. 89.)

Free of overside.

"A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise" (Penal Code, S. 25)

Free. To set at liberty, relieve

TO FREE, SET FREE, DELIVER, LIBERATE A man *frees* himself from an engagement, he *sets another free* from his engagement: we *free*, or set ourselves free, from that which has been imposed upon us by ourselves or by circumstances I *free* myself from a burden, I *set my own slave free* from his slavery, I *deliver* another man's slave from a state of bondage, I *liberate* a man from prison A man *frees* an estate from rent, service, taxes, and all incumbrances, a king *sets his subjects free* from certain imposts or tributes, he *delivers* them from a foreign yoke, or he *liberates* those who have been taken in war.

FREE, EXEMPT *Freedom* is either accidental or intentional, the *exemption* is always intentional, we may be *free* from troubles, we are *exempt*, that is exempted by government, from serving in the militia.

Frighten To throw into a fright, to create sudden or violent fear in a person.

TO FRIGHTEN, INTIMIDATE We fear immediate bodily harm when we are *frightened*, we fear harm to our property as well as our person when we are *intimidated frighten*, is always applied to animals, but *intimidate* never

"Free consent" defined Act 9, 1872, S. 14

Consent (in Contract Act) is said to be free when it is not caused by—(1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation, (5) mistake. Act IX of 1872 (Contract), S 14

Free course. Having the wind from a favourable quarter. To prevent collision or danger of collision of vessels, it is the duty of the vessel having the wind free to give way to a vessel having up to windward and tackling

Freehold That land or tenement which a man holds in fee-simple, fee tail, or for term of life. (*Tomlin's Law Dic.*)

Freeman. One distinguished from a slave, that is born or made free, and these have divers privileges beyond others (*Tomlin's Law Dic.*)

Freemason The lodges of freemasons are certain societies which have been long accustomed to be holden in the kingdom the meetings whereof have been in great measure directed to charitable purposes.

Free of all average (*In Marine Insurance*). The term denotes that no claim for partial loss or average, but only in respect of total loss, can be entertained

Free of capture and seizure (*In Marine Insurance*) Non-liability in case of a ship falling into the hands of a belligerent or other capturing force.

Free of expense to ship. The use of this term throws all liability for cost of loading or unloading on the character.

Free of general average. A clause in a marine policy absolving the underwriter from general average contributions.

Free of overside. A term indicating that the risk of goods sold is with the buyer after being unshipped.

Free of particular average

Free of particular average (*In Marine Insurance*) A clause defining the insurers non-liability for partial loss, unless the same has been brought about by accident or unavoidable cause.

"Free of revenue" defined. *See* Revenue-free.

Free on board. Abbreviated f.o b. in the law of sales. A sale free on board is one in which the seller agrees to deliver the goods in a railway carriage or on board a ship at a place named, at his own expense free to be taken by the purchaser without any obstruction or impediment

Free ships Neutral ships "Free ships make free goods" is a phrase often used in treaties to denote that the goods on board neutral ships shall be free from confiscation, even though belonging to an enemy.

Free fishery An exclusive right of fishing in a public river, or an arm of the sea

Free or frank tenure Freeholding, the opposite of the ancient villeinage.

Free warren A royal franchise granted to a subject for the preservation or custody of animals called beasts and fowls of warren, being the exclusive right of taking and killing game within certain limits

FREE, EXEMPT. *Exemption* is a species of *freedom* or *freedom* from certain things, and under certain circumstances

Freedom may come in various ways, and may be said of anything from which it is desirable to be free, as to be *free* from pain, inconvenience, oppression, debt *Exemption* carries our minds to a dispensing power. We are exempt by virtue of some human authority which binds others, as an obligation, a service, or a tax. Exemption is that sort of freedom which consists in not sharing the liabilities to which others are subject. (*Smith Syn Dis.*)

Freedom liberty [*See* Liberty] *Freedom* is both a quality and a condition *Liberty* is only a condition *Freedom* is therefore more independent and abstract *Liberty* relates to such restriction or confinement as is opposed to it The slave when set at *liberty* shares that *freedom* which his master has all along enjoyed (*Smith Syn. Dis*)

Freedom of speech. "The power of communication of thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society, and therefore it seems to follow, that human laws ought not to interpose, nay, cannot interpose, to prevent the communication of sentiments and opinions in voluntary assemblies of men—Eyre, L. C J, *Hardy's Case*, (1794) 24 How St. Tr. 206.

Freight The money paid for carriage of goods by sea, or in a larger sense, it is taken for the price paid for the use of ship to transport goods, and for the cargo, or burthen of the ship

The word "freight" means the reward payable to a shipowner for the safe carriage and deliver of the goods carried in his ship The term is also (perhaps improperly) applied to the hire paid for the use of a ship for a voyage or period of time. It does not, in the absence of usage, include "passage money" or money paid for carrying persons as opposed to goods

From son to grandson

[*Lewis* v *Marshall*, (1844) 7 Man & G 729] Carver, Carriage by Sea, Abbott, Merchant Shipping]

DEAD FREIGHT. Is a compensation for loss of freight [*Lord Ellenborough, Phillips* v *Rodie*, (1812) 15 East, 547, 13 R R 428) either at an agreed rate or not, payable to the shipowner by the charterer if he fails to ship a full cargo.

Freight note Statement giving particulars of freight charges

Freight release When goods have been shipped "freight forward", a note of "freight release" which shows that all freight charges have been paid must be produced to the master of the ship before they can be taken away

"Fresh evidence" in the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict c. 39), S 7 [See *Johnson* v *Johnson*, (1900) P. 19]

Friendly societies are associations, chiefly among the most industrious of the lower and middle class of tradesmen for the purpose of affording each other relief in sickness and their widows and children some assistance at their death (*Tomlin's Law Dic*, *See* Pratt on Friendly Societies, Baden Fuller, Friendly Societies, Diprose and Gammon Law Cases Affecting Friendly Societies, 1897, Brabrook, Law of Friendly Societies, Bunyon, Life Assurance Ch. 13; Parliamentary Papers, 1905, c 41) p. 46

"Frivolous" Paltry, trifling, not serious; silly. (*See* 1904 A W N 116=1 A L J 250=26 A 512)

'Frivolous and vexatious'. Meaning of. 28 C. 251. *See also* Cr. P Code, S 250

"From" defined. Act 10, 1897, S 9 (1), Ben Act 1, 1899, S 11, Bom. Act 1, 1904, S. 10, Bur. Act 1, 1898, S 8, E. B & A. Act 1, 1909, Ss 13, 8, Mad. Act 1, 1891, S 9 P. Act 1, 1898, S 7. U. P. Act 1, 1904, S 9

From amongst (my) near representatives. Where by the will of a Hindu, the widows of a testator were authorized to take in adoption a boy from the near representatives of their husband, the expression "from amongst my near representatives" is, if strictly construed, meaningless, and if the testator intended to restrict the class of boys within which the choice by his widows was to be limited he failed to effectuate that intention. The expression "my wives will adopt whomsoever they would select" must be construed distributively as conferring an authority on the widows severally. [16 C.L.J. 304=16 I.C. 817 (819)]

"From generation to generation." It has now been settled that the words "with your son and grandsons in succession", *i e* from generation to generation or generations born of your womb successively enjoy the same and words of similar import convey a permanent and transferable right. (56 Cal. 180=117 I.C. 534=A I.R. 1929 Cal. 454.) 'From generation to generation' meaning of. (*See* A.I.R. 1937 Nag. 248.)

The words "from generation to generation" used in documents does not signify more than the meaning of "absolutely" and "for ever" used in English wills. (1 M.H C.R. 400)

From son to grandson. The words "from son to grandson" used in documents, are words of pur-

From the date of such judgment

chase and import a grant of absolute property under the Hindu Law and the words "my own grandsons being my sons sons" do not exclude sons by adoption [(28 M 363 15 M L J 229). *See also* 56 Cal 180=117 I C 534=A I R 1929 Cal. 454]

"From the date of such judgment" The words "from the date of such judgment" in section 58, Act VIII of 1869 (B C), should be read as if they were "from the date when the rent is adjudged to be payable" [7 C 127=8 C L R. 409 per Garh *See also* 9 Cal 711.]

"From time to time appoint" *See* 25 Cal 210= 1 C W N 646, 31 Cal 628

Front main wall of the building on either side, in Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict, c 52), S 3 For the considerations by which it is to be ascertained, see *Att-Gen* v *Edwards*, (1898) 1 Ch 104

Frontage Land abutting on street or water, land between front of building and road

Frontier Part of the country that borders on another.

FRONTIER The boundary of a State On land it is usually indicated by posts set up at intervals from each other, where not marked by other physical signs Seawards, the frontier extends to the limit of territorial waters and when a river passes between two States, in the absence of immemorial usage in favour of one or the other, the frontier is held to pass through the middle of the river course (6 Ency of the Laws of England 309.)

BOUNDARY, BOUND, FRONTIER, CONFINE The *Frontier* is a *bound* or *boundary* line of one side only, which is regarded as a front opposed to another front It must be observed, however, that, while a *boundary* may be an imaginary or geographical line, a *frontier* is a slip of actual country, as in the phrase "towns on the frontier" *Confine* is a word most commonly used of a point upon a line separating two territories, as, "the two kingdoms."

Fructus (*Lat*) Fruit, produce.

Fructus fundi. The fruits of land.

Fructus naturales Natural fruits those fruits or profits of land, or other thing, which are produced solely by the powers of nature

Fructus pecudum The produce of flocks or herds, including milk, hair and wool

Fructus pendentes The fruits of a thing, while united with the thing which produces them

Fructus rei alienae The fruits of another's property.

Fructus separati Separate fruits, the fruits of a thing when they are separated from it

Fruit 'Cocoanut'—If fruit *See* (1937) 1 M L.J. 233 (F.B.).

Frustra agit qui judicium prosequi nequit cum effectu He in vain sues who cannot prosecute his judgment with effect, Fleta liti (6 C. 37, S. 9, *Cyc. Law. Dic*)

Frustra expectatur eventus cujus effectus nullus sequitur. An event is vainly expected from which no effect follows

Full age

Frustra feruntur leges nisi subditis et obedientibus. Laws are made to no purpose unless for those who are subject and obedient, (7 Coke 13, *Cyc. Law Dic*)

Frustra fit per plura quod fieri potest per pauciora That is done vainly by many things, which might be accomplished by fewer. (Jenk Cent. Cas 68, Wingate Max, *Cyc. Law Dic*)

Frustra legis auxilium quaerit qui in legem committit Vainly does he who offends against the law seek the help of the law. (2 Hale P C 386, Broom, *Cyc. Law Dic.*)

Frustra petis quod statim alteri reddere cogeris Vainly you ask that which you will immediately be compelled to restore to another. (Jenk. Cent. Cas. 256, Broom, *Cyc. Law Dic.*)

Frustra probatur quod probatum non relevat. It is vain to prove that which, if proved, would not aid the matter in question (Broom, *Cyc Law Dic.*)

Frustra [vana] est potentia quae nunquam venit in actum That power is to no purpose which never comes into act, or which is never exercised (2 Coke 51, *Cyc Law Dic.*)

"Fugitive criminal" defined. 33-4 V. c 52, S. 26.

"Fugitive criminal of a foreign state" 33-4 V. c 52, S 26

Fugitive offenders. Fugitives from justice are arrested within the country by the ordinary modes of arrest The complex construction of the British Empire, and its division into different areas some almost autonomous, and all, in respect of their judicatures, almost as independent as foreign States, has led to the development of complicated system for the extradition of fugitives both from British and foreign justice When a person accused of an offence in one part of the "British islands" is in another part of those islands, he is made amenable to justice by the procedure which is laid down in the Fugitive Offenders Acts. 11 & 12 Vict c 42 & 44 and 45 Vic c 24, *See* Biron and Chalmers on Extradition, Clarke on Extradition, Stone Justices' Manual.

Fulfil To fulfil a promisee is to perform it according to the engagement

FULFIL, DISCHARGE, REALIZE, SUBSTANTIATE. To *Fulfil* is to fill up according to a measure or standard, which may be internal or external, personal or otherwise

Discharge is to relieve one's self of what is of the nature of a weight laid upon us in the form of an obligation, duty, debt or office. Generally speaking, we *discharge* in order to relieve ourselves, we *fulfil* in order to satisfy others.

To *substantiate* is to give substance, in the sense of reality, to things of statement, claim, or assertion, by the means of proof or evidence.

Realize is to bring from abstract or possible into real existence. We *realize* a scheme when we carry it effectually into execution. We realize an estate we convert it into money. (*Smith Syn. Dis*)

Full Complete.

Full age. The age at which persons come to the rights of adults under the law.

Full Bench decision.

Full Bench decision. *See* 1915 M W N. 810.

Full blood A term of relation denoting descent from the same couple.

Full brother, sister. Born of the same father and mother.

Full compensation, in S. 308 of the Public Health Act, 1875 (38 & 39 Vict, c 55), held to include taxed party and party costs, but not solicitor and client costs [*Barnett* v *Mayor, &c of Eccles*, (1900) 2 Q B 104, 423, *Walshaw* v *Mayor, &c of Brighouse*, (1899) 2 Q B. 287 (C.A.)]

Full court A court sitting in banc, implying strictly, the presence of all the judges.

Full legal capacity Meaning of the expression "*full legal capacity to continue the line*" considered 60 I A 242=12 Pat 642=37 C W N. 938=14 Pat L T 399=38 L.W. 1=1933 M W N. 769=57 C L J 593 =1933 A L J 710=35 Bom L R 859=143 I C 441= A I R 1933 P C. 155=65 M L J 203 (P C).

Full life. Life in fact and in law. (*Kenny*)

"Full water-rate" The words "full water-rate" in R 22 of the Madras Irrigation Rules, means full water-rate in respect of wet cultivation and not full water-rate in respect of the crop actually raised, wet or dry, as the case may be. [7 I C 266 8 M L.T. 53 (per *White, C J*)]

'Funds" defined (This word is also used in combination with other words. *See* Chaukidari Fund, Local Fund, Municipal Fund, Provident Fund, Railway Provident Fund), Act 11, 1878, S 3, Mad. Act 1, 1888, S 2, Reg. 4, 1892, S 2.

Funded Debt. The public debt for the payment of which money has been appropriated as opposed to floating debt.

Funding. Process whereby a floating debt is converted into stock The term "funding" has been sometimes applied to the process of collecting together a variety of outstanding debts against corporations, the principal of which was payable at short periods, and borrowing money upon the bonds or stocks of the corporation to pay them off

Funding a debt The pledging of a specific fund to keep down the interest, and ultimately discharge the principal When the extinguishment of the debt is contemplated, it is called a "sinking fund".

Funding bonds. Funding and refunding bonds are those issued to pay off prior indebtedness.

Funeral. Burial of the dead with ceremonial observances.

FUNERAL OBSEQUIES We speak of the *funeral* as the last sad office which we perform for a friend, it is accompanied by nothing but by mourning and sorrow, we speak of *obsequies* as the greatest tribute of respect which can be paid to the person of one who was high in station or public esteem' the *funeral*, by its frequency, becomes so familiar an object that it passes by unheeded; *obsequies* which are performed over the remains of the great attract our notice from the pomp and grandeur with which they are conducted.

Funerals. Amount allowed for—Difference in various countries as regards. (*See* 1 Knapp. 245=1 Sar. 6.)

Furtum non est.

Furiosi nulla voluntas est. A madman has no will. Dig, 50, 17, 5. (Broom, *Cyc. Law Dic.*)

Furiosus absentis loco est (D. 50, 17, 124, S 1). A madman is considered as absent (*Cyc. Law Dic.*)

Furiosus solo furore punitur. A madman is punished by his madness alone *Co. Litt* 247, 4 Sharswood, Bl Com 24, Broom, *Cyc. Law Dic*)

Furlong One eighth of a mile

Furlough (*of person in military service*) Leave of absence from duty granted to soldiers, the length of time and conditions being stated on the furlough paper The soldier remains under orders, and if without leave he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or otherwise so acts as to furnish proof of an intention not to return to duty (though on furlough at the time), he may be tried for desertion *See* Manual of Military Law, War Office, 1899 King's Regulations for the Army, arts 1933-1951; Stevens, Gifford, and Smith, Criminal Law of the Navy, 1901, Admiralty Regulations, arts. 744-753)

"Furnace" defined Ben. Act 3, 1905, S 3 (1)

Furnished house or room. House or room let out with furniture

Further assurance A covenant by a grantor that he will execute such further instruments as may be found necessary to assure the title.

Further enacted A term used as an appropriate or apposite expression to connect one section of an Act with another, the full expression being "Be it also further enacted" (*per* Abbott, J., *Brooke* v, *Clarke*, 1 B. & Ald 402.)

"Further enquiry" [*See* 14 C P.L R Cr 161, 2 C P L.R 82. 1 L B R 101=12 C 522, 14 M. 334=1 M. L.J 343=2 Weir 557]

Further evidence "Further Evidence," or additional evidence is Evidence not used in the Court below (Re Chennell, 47 L J. Ch 583, 8 Ch. D 492)

"Further relief" (*See* Specific Relief Act, S. 42) [33 C L J 592=65 I C 8=26 C W N 206=A.I R. 1922 Cal 8, 169 I C 348=1936 M.W N. 773=A I R 1937 Mad 495=14 Cal 586.]

Further or other relief The general clause in S 539, C P Code, S. 92(h), C.P Code 1908, dealing with "further or other relief ought to be read with the five preceding specific clauses, and the nature of the reliefs, which may be properly granted under it is of the same character as the reliefs which may be granted under the preceding clauses. 33 C. 799 *See also* 33 Bom. 509. [*See also* 55 I A. 96=55 C 519=I. L R. 40 C. 19=9 P L T 65=27 L W 339=32 C W N. 482=26 A L J 464=108 I C 361=33 Bom L R. 744= 48 C L J. 55=(1928) M.W.N. 926=A I.R. 1928 P.C 16=54 M.L.J. 609]

Furtive. Done by stealth, clandestine, stealthy, thievish pilfering

Furtum conceptum Received theft; the offence of receiving stolen goods.

Furtum oblatum. Offered theft.

Furtum non est ubi initium habet detentionis per dominum rei (3 Inst. 107.) It is not theft where

Fusil.

the commencement of the detention arises through the owner of the thing (Broom; *Cyc Law Dic.*)

Fusil. Obsolete light musket.

Fusilier Certain regiments formerly armed with fusils.

Fusillade Continuous discharge of fire arms.

Futawa Plural of Futwa.

Future assurance. A transfer in the future such as will cure a defect in a title.

Future estate An estate to which a person is entitled in future, an estate in expectancy

Future delivery Delivery to be made at a future date, not present delivery.

Future rent A claim to rent to fall due in future is an actionable claim (31 I C. 473, *Foll*) [(1926) M W N. 774=98 I C 263=A I R. 1926 Mad. 1173]

Futures Foreign produce brought for future shipment.

Futuri. (*Lat*) Future persons, persons not yet in being

Futwa or futwah (*See* Futawa) A judicial decree, sentence, order or judgment particularly when delivered by a Mufti or doctor of Muhammadan law (*Fifth report*), Mac Mahamadan Law.

G

G. In law French, is frequently used at the beginning of words to express the English W (as) Gager in Law French is equivalent to Wager in English

Gabel A tax, import, or duty an excise "Pay his *gabel* to the ministry" (*Bp Taylor.*) "For the better understanding of ancient records, statutes, charters, &c, gabel, or gavell, gablum, gabellum gabellettum, galbellettum, and gavilletum, doe signifie a rent, customs duty, or service, yielded or done to the king or any other Lord" (*Co Litt.* 142)

Gabhar (*C P.*) Level land (*Bad Pow* II. 430)

Gadamu (*Tel*) Grass growing in fields of dry grain

Gadda (*Tel*) A water-course.

Gaddateru-inamu (*Tel*) Rent-free grant for bringing waste land into cultivation

Gadde (*Karn*) Wet or paddy land; land fit for rice cultivation, or on which rice is grown. An embankment, a bank or dyke.

Gadde-bedalu (*Karn.*) Wet and dry land, or wet and dry cultivation.

Gadde-gada (*Karn*) A ridge or bank dividing rice fields

Gadde-hasi-hulla-hana (*Karn.*) A tax formerly levied in Mysore on grass grown on the banks of the paddy fields.

Gadde-kattu (*Karn*) A bank, or dike, an embankment

Gadde-madi (*Karn*) A rice field.

Gadde-zamin (*Karn.*) Lands on which crops that depend on the rains are grown.

Gain.

Gaddi (*Tel*) Grass, straw

GADDI (*H*) A pillow, but used as a throne. The seat of sovereignty or chiefship, the state cushion or throne spoken of as representing the kingdom or principality as when an heir succeeds to "the gaddi" (*Bad Pow* I 224.)

Gaddi is also a common name for a hill shepherd, but especially the name of a Hindu tribe of the Panjab who are supposed to be of Khatri origin, and of a class of Musalman milkmen in Delhi, Karnal and Ambala.

Gaddi-gaval (*Tel*) Waste land.

Gaddi nishin (*P*) Sitting on a pillow A Sovereign or Chief He who sits on the gaddi. A Superintendent of a religious endowment; a ruler, a king, but sometimes an heir-apparent.

Gaddi nashini (*In Oudh*) Gaddi Nashini imports entirely the idea of inheritance by a male and not by a female A.I R 1925 Oudh 190 The rule of Gaddi Nashini in Ss 8, and 22, cl 11 of (Act I of 1869), Oudh Estates Act, means succession by a single heir (8 I. C. 422)

Gadi (*H*) [See *Gaddi*] A cushion to sit upon, the ordinary Indian seat, but especially a king's cushion, a throne

Gadun. A Pathan tribe settled on the southern slopes of the Mahaban mountain overlooking the Yusufzai plain and allied to the Kakars.

Gage, or Gager A pledge or pawn, personal property placed by a debtor in possession of his creditor as a security for payment of his debt, a pledge or pawn "Nor without *gages* to the needy lend" (*Sandys*)

Gage (*in Old English law.*) "Signifies a Pawn or Pledge" (*Cowel*) The same word has now been changed into Wage. (*Cowell*)

Gain. means acquisition. It is not limited to pecuniary gain or commercial profits A company formed to acquire, something (as distinguished from one formed to spend or give away something) is one formed for 'gain" I0 Rang. 490=140 I C 467=A I. R. 1932 Rang 167 'Gain' must be taken to mean material gain [4 U B R 174=25 Cr L J 129=76 I.C 225=A I R 1925 Rang 9]

Gain means "acquisition of gain, or profit in business concern "Gain is something obtained or acquired It is not limited to pecuniary gain. In fact, we should have to put the word 'peculiarly, to show it. It is not 'gains,' but 'gain' in the singular. Commercial profits no doubt, if acquired, are gain; but I cannot find any word limiting it simply to a commercial profit- I take the word as referring to a company which is formed to acquire something and in which the individual members are simply to give something away or to spend something, and not to gain anything" (per *Jessel M R., Re Arthur Average Asson*, 44 L.J Ch. 572, 10 Ch. 546). A person cannot be said to be employed "*for the purposes of gain*", "merely because what he does enables some one else to earn money" *per* Darling J., *Mather* v. *Lawrence*, 68 L.J.Q B 714, Where a father keeps his daughter at home for domestic purposes to enable his wife to go out to work, the daughter cannot be said to be employed" for the purpose of gain". (*Stroude* 793).

Gain

GAIN, PROFIT, EMOLUMENT, LUCRE *Gain* is here a general term, the other terms are specific the gain is that which comes to a man, it is the fruit of his exertions The *profit* is that which accrues from the thing Thus, when applied to riches, that which increases a man's estate are in his *gains*, that which flows out of his trade or occupation are his *profits*. *Emolument* is a species of gain from labour, or a collateral gain; of this description are a man's *emoluments* from an office, a man estimates his *gains* by what he receives in the year, he estimates his *profits* by what he receives on every article, he estimates his *emoluments* according to the nature of the service which he has to perform, the merchant talks of his *gains*, the retail dealer of his *profits*, the place-man of his *emoluments* (*Carbb*) *Gain* and *profit* are also taken in an abstract sense *lucre* is never used otherwise, but the latter always conveys a bad meaning, it is, strictly speaking, unhallowed gain. an immoderate thirst for gain is the vice of men who are always calculating *profit* and *loss*, a thirst for *lucre* deadens every generous feeling of the mind.

Gains are commonly upon a considerable scale, *profits* are commonly made in little instalments, but the *gain* is more uncertain or casual than the *profit*, which ought to accrue in a regular manner as the fruit of professional industry, while we often hear of illgotten *gain*. Yet exorbitant *profit*, though it retain the name, is sometime a kind of theft

Emolument is any *profit* arising from office, employment, or labour It supposes, however, some dignity of occupation, and would not be employed of menial work, manual labour,or even a petty trade, and is most commonly employed of official income and revenue

Lucre denotes sordid or illgotten gain The verb to *gain* is distinguished from the verb to win as endeavour is distinguished from luck.

"A gentleman who farms a part of his own estate, after paying the expenses of cultivation, should *gain* both the rent of the landlord and the *profit* of the farmer He is apt to denominate, however, his whole *gain profit*, and thus confounds *rent* with *profit*, at least in common language". (*Smith Syn. Dis*)

Gaini-chali (*Karn*) A tenant-at-will.

Gaini chitti (*Karn.*) Agreement for payment of rent, receipt or acknowledgment of rent

Gaini kar (*Karn*) A tenant, a rent payer.

Gaini-nairmul (*Karn*) A proprietor of land

Gaini-shadmal (*Karn*) A tenant at a fixed and perpetual rent.

"Gaining wrongfully" defined 'Act 45, 1860, s 23.

"PROFITS AND GAINS"—Meaning explained *Mersey Docks* v *Lucas*, 53 L J Q B 7; 8 App Cas 891.

Gairada (*Tel*) Waste, uncultivated

Gair-Kharch. Extra miscellaneous expenses.

Gair-mankula Immoveable or real property, property other than personal

Gair-Mumkin. (A not possible) Waste or other land wholly or permanently uncultivable.

Gambling

Gakkhar The name of a tribe numerous along the plateaus at the foot of the Lower Himalayas in the Rawalpindi, Jhelum, and Hazara districts. They are Shiah Musalmans and claim to be of Moghul descent, but are rated as later Turanian

Gale Derived from Gabel To gale a mine, is to acquire the right of working it payment of rent (*Wedgwood Dict Eng Etym*, *Gabel.*" Elph 582, a moderate current of air, a strong breeze, a state of excitement or hilarity

Galevu (*Karn*) A complete ploughing apparatus.

Gall, the bile, a bitter, yellowish-green fluid secreted by the liver

Gall Bladder, a membraneous pear-shaped bag, attached to the under side of the right lobe of the liver

Gallantry Splendid appearance, show magnificance, bravery, courage, heroism (as, the troops attacked the fort with great gallantry.

Gallery A room for the exhibition of fine arts (as) a picture gallery

(*Naut.*) A frame like a balcony projecting from the stern or quarter of a ship (as) stern gallery, quarter gallery

Galley (*Naut*) A low flat-built vessel with one deck, and navigated with sails and oars, a light open boat

Gallon A measure of capacity, usually for liquids "The English Unit or Standard Measure of Capacity from which all other Measures of Capacity (as well for Liquids as for Dry Goods) shall be derived, shall be the gallon, containing 10 Imperial Standad Pounds weight of distilled water weighed in air against brass weights, with the water and the air at the temperature of 62 per cent of a Fahrenheit's thermometer, and with the barometer at 30 inches" (S 15, 41 & 42 V. C 49)

Gallows Structure on which criminals are hanged, punishment of hanging

Galvanism Medical use of electricity produced by chemical action

Gamaganelekhkha (*Karn*) Revenue account of a district containing several villages

Gamal lands (Mysore) Gamal lands in Mysore attached to unalienated villages are lands at the disposal of Government and the proprietary interest therein, apart from the right of pasturage, does not vest in the villagers. (10 Mys. L J. 110)

Gamble Play game of chance for money

Gambler is one who gambles, one who play for money or other stake. To say that a person is a "Gambler" by itself actionable (*Forbes* v *King*)

"Gambling"—*See* Gaming] 13 B. 681 To play or game for money or other stake

Gambling according to the common use and understanding of that word is a generic term, and includes within its meaning every act, game, and contrivance by which one intentionally exposes money or other thing of value to the risk or hazard of loss by chance.

"Gaming in all its forts is too big an evil for the regulation of positive law. Subject it to that, and

Gambling.

the event is you restrain it not at all, but the honest party suffers doubly, and the knave escapes and triumphs. The former loses, he pays, it is a debt of honour the latter happens to lose, then the condition is changed I would have taken, if I had won; but now, I'll pay you in law This is gaming very high indeed *Lord Mansfield, Coote* v *Thackeray*, (1773) Lofft 153

GAMBLING, GAMING, WAGER *Gambling and gaming* are frequently treated as synonymous, although gaming commonly applies to playing with stakes at cards dice, or ther contrivance to determine which shall be the winner and which the loser A wager is a contract by which two or more parties agree that a certain sum of money or other thing of value shall be paid or delivered to one of them upon the happening of an uncertain event, it implies that each of the parties shall jeopardize something and have a chance to gain something or to recover the stakes or thing bet or wagered upon the determining of the contingent or uncertain event in his favour, and hence is a form of gambling.

Gambling Contract Contract in which the parties in effect stipulate that they shall gain or lose upon the happening of an uncertain event in which they have no interest, except that arising from the possibility of such gain or loss [*See* Contract Act, S 30]

Gambling policy. A policy of life insurance issued to one, as beneficiary who has no interest in the life of the insured

"Game" defined. Mad Act 2, 1879, S 2.

GAME (as used in law) signifies animals pursued and taken by sportsmen.

The most general statutory definition of game is that it includes "hares, pheasants, partridges, grouse, heath or moor game, blackgame and bustards" *See* on this subject Manwood, Forest Laws, Oke, Game Laws, Warry, Game Laws Archbold, Cr Pl, Stone's Justice of the Peace (*Ency of the Laws of England*)

A game has been defined as any sport or amusement, public, private It includes physical contents, whether of man or beast, when practised for the purpose of deciding wagers, or for the purpose of diversion, as well as games of hazard or skill by means of instruments or devices Game, in Scotland, specifies "hares, partridges, pheasants, muirfowls, tarmargans, heath fowl, snipes, and quails" 13 Geo 3, c. 54, S 3 Game, in 1 and 2 Will 4, c 32, S 40, means *living* game, although in some other parts of the statute, as, for instance, when it speaks of game at a poulterer's, the word 'game' may properly mean dead game" *Kenyon* v. *Hart* (1865), 6 B and S. 255 *Erle, C J* said 'Game' is an indefinite word, and seems at various times to have had various meaning, to have at one time included one thing, at one time another, to have had at one time a wider, and at another time a narrower, signification." *Jeffryes* v *Evans*, 34 L J.C.P 263.

GAME, PLAY, GAMBLING Boys are at *play* when they amuse themselves in a random manner When they go to cricket they begin a *game* But in regard to the verbs, to *play* a *game* is the phrase used, because to game is restricted to playing at games of chance or *gambling* (*Smith Syn. Dis.*)

Game Act or Game laws. Act or law regulating the killing and preservation of game.

Game of skill.

Game Laws The game laws are a series of old statutes passed with the object of protecting persons who have exclusive or concurrent sporting rights over lands, from the invasion of the lands, and the capture or killing thereon of certain wild animals by trespassers The cause or excuse for the passing of the statutes is that wild animals, even when valuable for food, are not the subject of larceny (*R.* v. *Townley*, 1871, L R 1 C C C.R 315) and that it has been deemed desirable to create the special crime known as "poaching" rather than to apply the law of larceny, so as to vest in the owners or occupiers of land an absolute property in wild animals found thereon

The *Game laws* are a system of positive regulations introduced and confirmed by several statutes the provisions of which ascertain and establish certain qualifications of property enabling or allowing persons to kill game, and imposing penalties, as well on such qualified persons for irregularities in killing Game, as on unqualified for hunting or killing game at all. (*Tomlin's Law Dic*) These laws have been the subject of much discussion, they have been styled even from the Bench, as (*see* 1 Term Rep. 49) an oppressive remnant of the ancient arbitrary Forest laws, under which, in darker ages the killing one of the King's deer, was equally penal with murdering one of his subjects. (4 Comm. c. 33. II 2 *Tomlin's Law Dic*)

"The game laws are already sufficiently oppressive, and therefore ought not to be extended by implication"—*Willes, J, Jones* v. *Smart* (1785), 1 T.R. 49

Game licence. Licence to kill or deal in game

Game preserver A landowner or other person who breeds game and applies game laws strictly.

Game tenant Lessee of shooting or fishing

Gaming. Game is also used to denote a continuance or arrangement designed to furnish sport, amusement or recreation (as) game of chance, game of skill, field game, out door game.

"Gaming" defined (*See also* Instrument of gaming) Act 21, 1857, S. 59 Ben. Act 4, 1886, S 3 Ben. Act 2, 1867, S. 1 Bom Act 4, 1887, S. 3.

GAMING. "Gaming," which is substantially the same in meaning as 'gambling," has been defined to be a contract between two or more persons by which they agree to play by certain rules at cards, dice, or other contrivance and that one shall be the loser and the other the winner. Where in a certain game, certain operations are to be performed to enable the gamester to play the game, the persons taking part in such operations must be deemed to be "gaming" within the provisions of the Gaming Act as they actually assist in the gaming [31 S.L R 44=169 I C 35=38 Cr L.J. 668=9 R.S 255=A.I.R. 1937 Sind. 99] "To game" is to play at any game, whether of skill or chance, for money or money's worth. (*R* v. *Ashton*, 22 L J. M. C 1.) Gaming in the Licensing Act, 1872 (c. 94), S 17, is the playing of any game for money or money's worth, whether the game be or be not lawful. *Dyson* v. *Mason* [(1889), 22 Q B D 351, 5 L.Q.R. 331]

Game of skill No game can be a game of skill alone, and in any game in which even great skill is required, chance must play a certain part. Even a

Game of skill.

skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part But it is not necessary to decide in terms of mathematical precision the relatives proportion of chance to skill when deciding whether a game is a game of mere skill within the provisions of S. 13 of the Act. When in a game the elements of chance most strongly preponderate, it cannot be a game of mere skill [31 S L R 44=169 I C 35=38 Cr.L J. 668=9 R S 255=A.I R 1937 Sind 99]

The games of skill denotes a game where there are two parties pitting their skill against each other. (23 I.C 484, 486)

"Gaming and playing" defined Bur Act 1, 1899, S 3 (2).

"GAMING" AND "PLAYING" (2) The words "gaming" and 'playing" with their grammatical variations and cognate expressions, include taking part in the game of it or in any other game or pretended game of a like nature Bur Act I of 1899 (Gambling) S 3, Cl 2

"Gaming and wagering" There is no difference between "gaming and wagering" used in the English Statute and in the earlier Indian Act XXI of 1848, and the expression "by way of wager" used in S 30 of the Contract Act (IX of 1872) [3 Bom L R, 476 (P C)=29 C 461=28 I A 239=5 C W N 714]

GAMING is playing at any game, sport, pastime or exercise lawful or unlawful, for money or any other valuable thing, which is staked on the result of the game, etc., *i.e.* which is to be lost or won, according to the success or failure of the person who has stakes (*R* v. *Ashton*, 1852, 1 *El* v. *Bl* 286, *Lockwood* v *Cooper*, (1903) 2 K B 428) Wagering, which includes betting, is making a contract on an unascertained event, past or future (in which the parties have no pecuniary interest other than that created by the contract) by which the parties are to gain or lose, according as the uncertainty is determined one way or the other *See* Coleridge and Hawkford on Gaming, Stutfield on Betting, Oliphant on Horses

Gaming contract. "Contracts or agreements by way of gaming or wagering" means, contracts or agreements for wagers, and relates only to contracts which are themselves by way of wagering (per *Cleasby B., Beeston* v *Beeston*, 45 L J Ex 232)

"Gaming house" defined *See* Common gaming-house.

The Act of keeping *gaming house* consists in keeping open house to which a large number of persons are invited to congregate habitually for the purpose of gaming, *i.e.* playing at games for money, and falls under the category of public nuisances as being a great temptation to idleness, and apt to draw together great numbers of disorderly persons The essential element of the offence is not the gain of the keeper, but the public scandal and disorder and inconvenience caused by the keeping, (See *R.* v. *Hall*, 1674, 2 Keb 846; *R.* v *Betterton*, 1695, 5 Mod. 142; *R.* v. *Mowel*, 1675, 3 Keb. 465.) Hawk., P.C. bk 1. c 75; 4 Black Com 171, Russell on Crimes, Archbold Cr. Pl. *Steph Dig. Cr Law* 6th ed)

Gameti (*Bom.*) One of the designations of the petty chiefs of former days (*Bad Pow* III 282.)

Gaol-Delivery.

Gana (*S*) A large assembly of all castes led by brahmans

Ganda A fraction of a rupee (in reckoning divisions of land), (N.W P) II 128 (Ben) a small land measure, being $\frac{1}{20}$ of a katha, which is $\frac{1}{20}$ of a bigha (*Bad. Pow* I 459 note)

Gandada pommu (*Karn*) A fine, formerly levied from the cultivators of gardens for turning up sandal seedlings in ploughing

"Gandharva' marriage. (*in Hindu Law*) Marriage by Gandharp or Gandarva form is nothing more or less than concubinage, and has become obsolete as a form of marriage giving the status of wife making the offspring legitimate (3 A 738, 24 M L.J 271= (1915) M W N. 568=2 L W. 1214)

Gandi (*Tel*). A breach in the bank of a tank made by the water, a channel cut in it to let out the water for irrigation also a pass in the hills

Gandrupin (*H*) A dancing girl.

Gang The word 'gang' is derived from the Anglo-Saxon word 'gangan' to go, and its dictionary meaning is "a number going in company, hence a company or number of persons associated for a particular purpose" The expression 'belong to a gang of persons' in S 401, I P Code, means the same thing as 'to be one of a gang of persons' A person who receives stolen property from them cannot be said to *belong* to their gang [99 I C 851=28 Cr L J 179=28 Punj L R 19=A I R. 1927 Lah 524]

Gangana (*Tel*) By villages, settlement of revenue by villages, the same as mauzawar.

Gangrene. Incipient mortification, a term applied to the death of the tissues, following disease of the part, which becomes black and void of sensation.

Gangura (*Ben*), a large embankment for drainage, &c. (*Bad Pow.* I 683. note)

"Ganja" defined Ben Act 5, 1909, S 3 E B & A. Act, 1910, S 5 U P Act 4, 1910, S 5

GANJA (*H*) Intoxicating drug, used for smoking. From this a drink called *bhang* is also made.

Ganthi one of the tenures of Bengal (*Bad Pow* I 547)

Ganw or *Gaon* (*H*) a village-mauza (*P*) (*Bad. Pow* I 21)

"Gaol", signifies a Cage for Birds, but, metaphorically is used for Prison. And from thence the keeper of the prison is called *Gaoler*, or *Gayler*" (*Termes de la Ley Jacob*)

GAOL a strong place or house for keeping of debtors, &c and wherein a man is restrained of his liberty to answer an offence done against the laws. (*Tomlin's Law Dic*)

Gaol bird Prisoner, habitual criminal

Gaol-Delivery "The administration of justice being originally in the crown, in former times our Kings in person rode through the realm once in seven years, to judge of and determine crimes and offences, afterwards Justices in eyre were appointed, and since Justices of Assise and gaol delivery, &c. A commission of a gaol delivery is a patent in the nature of a letter from the King to certain persons,

appointing them his justices, (two, or three, of them), and authorising them to deliver his gaol, at such a place, of the prisoners in it, for which purpose, it commands them to meet at such a place, at the time they themselves shall appoint, and informs them that for the same purpose the king hath commanded his sheriff of the same country to bring all the prisoners of the gaol, and their attachments before them at the day appointed Cromp. (Jurisd 125 4 Inst. 168, *Tomlin's Law Dic.*)

COMMISSION OF GENERAL GAOL DELIVERY is the power which the Judges of Assize had "to try and deliver every prisoner who shall be in the gaol when they arrive at the Circuit Town" (4 Bl. Com 270, III) *Oyer and Terminer*

Gaoler The keeper of a gaol.

GAOLER is the master of a prison, one that hath the custody of the place where prisoners are kept (*Tomlin's Law Dic*)

Gaon sanjait parat bahak Gaon Sanjait Parat Bahak land is uncultivated waste land which is measured but on which no revenue is assessed (1938 A L J 4)

Gaonthan (*C P*) The place where village cattle are collected in the morning before they are taken to graze on the waste land or elsewhere

Gaontiya (*Sambulpur and C P*), the village headman (*Bad Pow* II 470.)

Garabi The name of a Mahamadan sect who say that Ali was the real prophet to whom Gabriel was sent, but that the Angel, misled by the family likeness, went to Muhammad instead

Garagadamu (*Tel*) Marks made with cow dung and water upon heaps of winnowed grain to prevent depredation

Garble, is to sort and select the good from the bad, Garbling of spice is nothing else but to purify it from the dross with which it is mixed (*Termes de la Ley.*)

Garce (*Mal*) 120 paras of 25 Macleod seers, or 3,000 Macleod seers, make a garce (*Log Mal Man*)

Garden Piece of ground devoted for growing flowers, fruits, vegetables etc "My freehold Cottage with the Garden" includes a small Orchard, very near but not adjoining the cottage. [*Prichard, W N.* (82) 140]

Garden and Nursery ground A piece of ground chiefly used to grow seeding pear-trees for sale is not a "Garden", but a "Nursery ground" only See *R. v. Hodges* Moo & M. 341, Ex p Hammond, 14 L.J. Bank 14

"Garden Sardar" defined Act 6, 1901, S 2 (1)(*h*).

Gargle. Wash throat with liquid kept in motion by breath; liquid used for this purpose. A wash for the throat, astringent, antiseptic or soothing

Garhi (*H.*) A fort, a hill fort, a mud fort in a village the Patels residence, or the centre of the village (*Berar &c*) (*Bad. Pow.* III, 361)

Garhiband (*H*) The name of a tenure in Bundelkhand, so called from the practice of thakurs shutting themselves up in their garhis to resist the Government demand of revenue, in this way they secured very favourable terms both from the Moghul and Maratha Governments.

Garhtiya Garhotiya, fort holder, name given to certain chiefs in Chhattisgarh (*C P.*) (*Bad. Pow.* II. 446.)

Garmattu (*Karn*). Any kind of reed, grass or corn

Garnishee A third person or party in whose hands money is attached by process of court, so called, because he hath had Garnishment or warning not to pay the money to the defendant, but to appear and answer to the plaintiff creditor's suit. (*Tomlin's Law Dic*) The person on whom a garnishee order is served (*i e*) an order attaching money or goods of the judgment-debtor in the hands of such persons.

Garnishee Order. Order of court to attach money or goods belonging to a judgment-debtor in the hands of a third person

Garnishment Process of attachment of money in respect of which a garnishee order has been obtained.

Garnishment is proceeding by which plaintiff in an action seeks to reach the rights and effects of defendant by calling into court some third party, who has such effects in his possession or who is indebted to defendant.

COMPARED WITH ATTACHMENT AND EXECUTION. While a garnishment proceeding accomplishes the same purposes as an attachment or execution, it is in no sense a levy on property, but is a judicial proceeding by which a new judgment is to be obtained.

Garret. Room on the top floor, room partly on entirely on roof.

Garrison Troops stationed in fortress, town etc. to defend it Troops or soldiers engaged on garrison duty (*i e.*) in defence

Gas. In referring to the expression "except explosion by Gas" used in a Fire Insurance Policy Kelly C B, said,—"Strictly and philosophically speaking it (steam and vapour) is gas, but so are the component parts of the water of the ocean in their strict philosophical and physical sense. But it appears in this case, and, without any statement to that effect we know of our own knowledge, that though steam and vapour and substances of that description which find their way into the atmosphere strictly speaking are Gas, they do not pass in ordinary parlance by the name of Gas Therefore construing the Policy on the principle that these parties expressed themselves in the ordinary language, not only of men of business but even of scientific men when dealing with matters of this description, I think that the Company were not to be liable for any explosion unless occasioned by Illuminating Gas", *Stroude Jud Dic*; Michael and Wills on Gas and Water, Reeson's Gas and Water Acts, Beven on Negligence.

Gas engine One worked by explosions of gas in closed cylinder

Gas Helmet or Gas mask Helmet or mark of flannel soaked in chemicals against poison gas

Gas meter.

Gas meter. An instrument for registering the amount of gas consumed for lighting, and other domestic or industrial purposes

Gas shell Shell filled with gas, instead of explosives

Gas Works The business of manufacturing and selling illuminating gas is not a prerogative of government, but like the manufacture and sale of any other ordinary article of traffic it is open to all, and may be carried on by any person without legislative authority But the right to dig up streets and other public ways and place therein pipes and mains for the distribution of gas for public and private use is a franchise, the privilege of exercising which can only be granted by the state, or by a municipality or some other local agency acting under legislative authority.

Gasoline Liquid got from petroleum etc used for heating purposes

Gastric Appertaining to the stomach, as gastric arteries, gastric juice, gastric fever, etc.

Gastric Fever Another name for Typhoid Fever

Gastric Juice A fluid containing pepsin and hydrochloric acid, secreted in the interior of the stomach, and forming a principal agent in the digestive process

Gastritis Chronic inflammation of the stomach

Gastroraphy The sewing up of abdominal wounds.

Gastrorhagia Gastric haemorrhage

Gastrotomy Surgical bisection or cutting open of the stomach

Gateway Grant of a "Gateway" passes not merely a right of way, but also the right to use the gateway for all lawful purposes *Reilly* v *Booth*, 44 Ch.D. 12.

Gatha (*C P*) an embankment for irrigation purposes. (*Bad Pow* II 371)

Gather Cause to assemble, collect, amass, infer, deduce

TO GATHER, COLLECT Gathering is a mere act of necessity or convenience, collecting is an act of design or choice the farmer gathers the fruits of the season The antiquarian *collects* coins, the officer collects taxes

Gat-kul (*Bom*) one of the terms indicating the existence, formerly, of a landlord class in Dakhan villages (*Bad. Pow.* III 257)

Gattu (*Tel*) A bank, an embankment, a bund, a dam or dyke.

Gattu-tumu (*Tel.*) One-twentieth part of the gross produce collected by Zamindars from each village for the repair of tanks and embankments.

Gatwall or Ghatwal An officer who has charge of a pass in the mountains or a landing place on a river. (*Fifth report.*)

Gaudalu (*Karn*) A caste or tribe in Mysore following agriculture as labourers, or sometimes small farmers under a lease from the landholder.

Gauda-manyam (*Karn*) The privileged land and fees of the headman of a village.

Gazette

Gauda-miras (*Karn*) The hereditary privileged land of the head of a village

Gauda-tarige (*Karn*) A fee formerly paid to the headman by the villagers, resumed by the Government of Mysore.

Gaud-aya (*Karn.*) Proportion of the crop formerly set apart for the headman, resumed by the Mysore Government

Gauge Standard measure to which things must conform (as) measure of capacity, contents of barrel, diameter of bullet, thickness of sheet iron or other metallic sheet As used in Railway Law, the terms Broad gauge, narrow gauge, and meter gauge occurs

Gauhan one of the 'Zones' of cultivation, that is nearest the homestead bara (N.W P) (*Bad. Pow* II. 57 note)

Gauli (*H*) The name of a caste, they are cowherds and milk-sellers, and live chiefly in towns and large villages They are also Musalman converts from this caste

Gaum (*Bo*) a village, (*Bad. Pow.* I 21)

Gaur Brahmins *Gaur* Brahmins of village Badli, Delhi Province, are governed by their personal law, namely, Hindu Law and not by customary law. (134 I C 302=32 P L.R 284=A.I R. 1931 Lah 491)

Gaurasa (*C P*) land receiving manure and refuse of the village (*Bad Pow.* II, 428)

Gautama A great Hindu Sage and writer of an important Smriti that bears his name

Gavankar (*Tel*) The headman of a village,

Gavelkind A Tenure or Custom, annexed and belonging to lands in Kent, whereby the lands of the father are equally divided at his death among all his sons, or the land of the brother among all the brethren, if he have no issue of his own. (Litt 210. *Tomlin's Law Dic*)

GAVELKIND —"In the County of Kent, where lands and tenements were holden in Gavel-kinds, there, by the Custom and Use out of mind of man, the issues male ought equally to inherit..for every son is as great a Gentleman as the eldest son is" (Litt S 210 *Termes de la Ley Cowel Jacob*: 2 Bl. Com. 84)

"Gawahshud." The word *gawashud* appearing above signature in a will—Effect *See* 109 I C 835= A I R 1928 Oudh 67.

Gayalu (*Tel*) Land unfit for cultivation.

Gayari (*H*) Unclaimed land left by a deceased share-holder, and which comes under the management of the malguzar

GAYARI (*H*) lands which lapsed to the Raja by escheat on failure of heirs (*Bad. Pow.* i. 239)

Gaz; a yard the *'illahi' gaz,' i.e.* the divine, or standard yard, was the unit of measure in the Mogul empire. (*Bad Pow* I, 257)

"Gazette" defined (*See also* OFFICIAL GAZETTE.. Bur. Act 1,1898, s. 2(24), E.B.&.A. Act 1, 1909, s 5

Gazette.

(26), P. Act 1,1898, s. 2 (21), U P. Act 1,1904, s 4 (18).

GAZETTE "Gazette generally means the official Gazette, published under the authority of the Government (*R.* v *Hold*, 5 T R. 439) It is a Publication of an official character which contains government notifications, lists of public appointments and honours, legal notices, etc

The OFFICIAL GAZETTER is a Government book, Publication or newspaper, which appears on a fixed day or days in every week and is the official organ for the publication of Royal Proclamations, Government orders and regulations, Government circulars, Rules, and Bye-laws, and other public notices

"Many people there are in this kingdom who never see a Gazette to the day of their deaths, and very mischievous would be the consequences if they were bound by a notice inserted in it." Lord Kenyon, *Graham* v *Hope* (1794), 1 Peake, N P Ca 155

Gazetted Published in the official Gazette, published under authority.

"Gazetted officer" defined Act 14, 1887, S. 2 (1) (*b*)

Gazetteer The geographical dictionary, or the historic account, or the general description of any place, district or province

DISTRICT AND PROVINCIAL GAZETTERS are *quasi* Government publications giving important particulars respecting the district or Province concerned

Gedata (*Karn*) Ploughing or tillage

Geddara (*Karn.*) A ploughed field.

Gehunhari (*C.P*) from gehun (H), wheat, land that is adapted to grow wheat (*Bad Pow* ii 429)

Gender In all Acts "unless the contrary intention appears, words importing the Masculine Gender shall include Females. *See* Indian General Clauses Act and English Interpretation Act

The pronoun he and its derivatives are used of any person whether male or female (Penal Code, S 8)

Gender, Sex The gender is that distinction in words which marks the distinction of sex in things There are, therefore, three genders, but only two sexes By the inflections of words are denoted whether things are of this or that sex or of no sex. The genders are divided into masculine, feminine, and neuter, and animals are divided into male and female sex. (*Crabb*)

Genealogy Account of descent from ancestor by enumeration of intermediate persons, pedigree.

General. Principal, universal, common to all, or to the greatest number. Relating to a genus or kind, pertaining to a whole class or order, belonging to a whole rather than to a part, having a relation to all, that which pertains to a majority of the individuals which compose a genus or whole, widely spread, not specific, vague, indefinite, lax in signification Sometimes the word is used as synonymous with "public," meaning merely that which concerns a multitude of persons. Chief with unrestricted or supreme authority in respect of any matter or department (as) Adjutant General, Attorney General; Advocate General, Post Master General, Registrar General etc

General average loss

GENERAL, UNIVERSAL. The general rule admits of many exceptions the universal rule admits of none. Human government has the general good for its object, the government of Providence is directed to universal good General is opposed to particular, and universal to individual

General acceptance. (*Of a Bill of Exchange*) An absolute acceptance precisely in conformity to the tenor of the bill

General Act An Act of the legislature which regards the whole country or community, as contrasted with a local or special Act.

General agent One authorised to transact all his principal's business, or all his business of a particular class

A person who is authorised by his principal to execute all deeds, sign all contracts, or purchase all goods required in a particular trade, business, or employment.

General assets Of a company means, the funds available for payment of the general creditors.

General assignment An assignment of all the assignor's property, or one for the benefit of all his creditors.

General average A contribution made by the proprietors in general of a ship or cargo towards the loss sustained by any individual of their number whose property has been voluntarily sacrificed for the common safety

The term "general Average is used indiscriminately, sometimes to denote the kind of loss which gives a claim to general average contribution, and sometimes to denote such contribution itself, in order to prevent confusion it is better to use the term General Average Loss when speaking of the former, and general average contribution when speaking of the latter" (2 Arn 1020. Lowndes, 210, *Stroude*, 802)

'The captain when he determines on the *general Average* act, is the agent for all parties interested, the occasion makes him their agent, and if, in doing the act, he causes direct injury to the property of any one of them, it must be taken that the others, there and then, promise to contribute to make it good" (*per* Bignam, J, *Anglo-Argentine Agency* v. *Temperley Co*, 1899, 2 Q B 403)

General average contribution is defined to be a contribution by all the parties in a sea adventure to make the loss sustained by one of their number on account of sacrifices voluntarily made of part of the ship or cargo to save the residue and the lives of those on board from as impending peril, or for extraordinary expense necessarily incurred by one or more of the parties for the general benefit of all the interests embarked in the enterprise. "The object of general Average Contribution is to indemnify the person making the general Average Sacrifice against so much of the loss caused directly thereby as does not fall to his own proportionate share" (*per* Bowen L J *Svensden* v. *Wallace*, 53 L.J. Q B. 393; 13 Q B D. 84)

General average loss Is loss arising out of Extraordinary Sacrifices made, or Extraordinary Expenses incurred, for the preservation or Joint Benefit

General average.

of Ship and Cargo. (Lawrence, J, in *Birkely* v. *Presgrave*, I East, 220; *per* Brett, *M R Svensden* v *Wallace*, 13 Q B D 74 citing Arnold Maritime Insurance.)

General average as per foreign statement "Policies on Cargoes destined to foreign ports sometimes contain a provision that the underwriter is 'to pay general Average as per Foreign Statement if so made up,' or to the like effect. Where this is inserted, the underwriters are bound by a foreign adjustment in accordance with the law in force where it is made, although its effect may be to treat as General Average, what according to English law, would be Particular Average" (I Maude & P. 492, n (g) citing *Harris* v. *Scaramanga*, L R 7 C P 481)

In *Mavro* v *Ocean Mar Insrce* Cockburn, C J, said, "In a policy of Marine Insurance, *General Average as per foreign Statement*' appears to be this—the under writer is only to be liable for a General Average, but what is General Average is to be determined by the law of the foreign place to which the ship is bound."

"A GENERAL AVERAGE SACRIFICE is an Extraordinary Sacrifice voluntarily made in the hour of peril for the common preservation of ship and cargo" (*per* Bowen, L J, *Svensden* v *Wallace*, 55 L J Q B 393, 13 Q B D 84)

General character The estimation in which a person is held in the community where he lives.

General control "General control" in S 15-A of the Sind Courts Act does not refer to administrative control only but refers to both administrative and judicial powers of supervision over Courts subordinate to the appellate jurisdiction of the High Court (24 S L R 277=A I R 1930 Sind 265 (F B))

General Count A count which states in a general way the plaintiff's claim.

"General custom or right" defined Act, 1, 1872, S. 48, *expln*

General damages Such damages as necessarily result from the injury complained of as contrasted with special damages

General demurrer (*in Pleading*) A demurrer framed in general terms without showing specifically the nature of the objection

General estate The joint family property of the father and sons, which passes by survivorship to the sons on the death of the father, does not form "the general estate" of the deceased trustee (father) within the meaning of Art 98, Limitation Act 1908. [20 M L J. 613=33 M 308=8 M L T 321=7 Ind Cas. 898]

General exceptions (*in Criminal Law*) Under this head are classified in the India Penal Code (Ss. 76-106) and Sir James Stephen's Digest of the Criminal Law, 6th ed, pp 20 29, a series of provisions which must be read by into every subsequent substantive portion of the Code and point out how acts or omissions which in terms come within the definition of an offence are in substance excepted therefrom as being either justifiable or exempt from punishment. Such are acts by persons mentally or physically incapable of any crimes or of certain crimes, mistakes of fact which exclude criminal intention, exercise of public or private rights or duties which justify or excuse the persons exercising them, against any criminal proceeding for consequent death or injury. (*See* Steph. Dig Cr Law, 6th ed, 20-29; and Mayne Ind Cr Law, 1896, 41-54 295-428 where the subject is admirably handled with reference both to English and Indian law, *Ency. of the Laws of England*)

General reputation

General issue A short general plea denying the allegations contained in the plaint.

GENERAL ISSUE Was the term used to designate a Defence which "denied at once the whole declaration, without offering any special matter whereby to evade it" (3 Bl Com 305)

General legacy A pecuniary legacy payable out of the general assets of a testator.

General lien The right which the bailee of a chattel has to retain possession of it from the owner, under certain circumstances.

"General meeting" defined Act 11, 1876, S 3

"GENERAL MEETING" in the Imperial Bank Act means the annual meeting of the shareholders of the Bank Act XLVII of 1920 (Imperial Bank of India) S 2, cl d

"General officer commanding division" defined Act 7, 1903, S 2 (*d*) (sub-Act 5, 1909).

The expression '*General Officer Commanding the District*' means the officer for the time being in command of the forces in a District.] Act VII of 1903 (Works of defence) S 2 (d).

"General officer of the command" defined Act 5, 1869, Pt I, cl (*e*) (16)

General partnership A partnership in which the parties carry on all their trade and business for the joint benefit and profit of all the parties concerned whether the capital stock be limited or not, or the contributions thereto be equal or unequal.

"General police district" defined Act 24, 1859, S 1, Act 5, 1861, S 1

The words "general police district" shall embrace any presidency province or place, or any part of any presidency, province or place, in which the Police Act shall be ordered to take effect, Police Act (V of 1861) S 1

General power. Unless a contrary intention appears a general testamentary gift includes property over which he has a General Power of Appointment (S 27 Eng Wills Act, 1837, *Arrey* v. *Bower* 56 L J Ch 742

"General reputation" *See* 1 L B.R. 90 *See* Cr P. Code, Ss 110-117.

The general reputation of a man is that which he bears among his fellow townsmen, or in the neighbourhood in which he lives. [110 I.C. 674 (2)=29 Cr. L.J 738 (2)=29 Punj L.R. 539]

Mere suspicion of complicity in this or that isolated offence is not evidence of general reputation. A person cannot be put upon security merely upon the ground that he was suspected by the Police six times of having committed various burglaries [9 Lah. 586=29 Punj.L.R. 443=109 I C. 127 (1)=29 Cr L J 479 (1)=10 A.I Cr R 214.]

General sessions.

General sessions as used in S 4 of 17 Geo 2, c 38 (Poor Law), "is another word for quarter sessions in contradistinction to a special sessions, every quarter sessions being a general sessions." *R* v *London Justices* (1812), 15 East, 633 See Archbold, Quarter Sessions (5th ed), p. 1

General ship A ship employed as a general carrier

General statute A statute relating to the whole community or concerning all persons generally, as distinguished from a private or special statute.

General verdict. Verdict delivered orally by a juror in civil actions in which they find generally "for the plaintiff" or "for the defendant"

General warranty A covenant whereby the grantor warrants and agrees to defend the title to the premises conveyed against all persons whatsoever as distinguished from a "special warranty" against persons claiming "by or from" the grantor.

General words (*in a Contract*) especially if it is found in a printed Form, may be controlled by the main object and intent of the contract(per *Herschell, C., Glynn* v. *Margetson*, 1893, A.C 351)

General words (*in a conveyance*) General words in conveyance do not create rights, they only pass such rights as they comprise and as were existing at the date of the conveyance (*Baring* v *Abington*, (1892), 2 Ch. 374)

General words of abuse may not be defamatory, but to speak of a person that he is a beast and a pig in his conduct is defamatory [29 C W N 904=42 C L J 178=90 I C 387=26 Cr L.J. 1539=A.I R. 1925 Cal. 1121]

General, nihil certi implicat. A general expression implies nothing certain.

Generalia specialibus non derogant (*Jenk Cent* 120) A maxim meaning "general things do not derogate from special "

A general provision relating to meetings and the formalities to be served in connection therewith does not become inapplicable *in toto* to a particular meeting mentioned in another section, simply because some of the language of the general section is not appropriate to a meeting of the later description. [54 Bom. 902=130 I C. 385=32 Bom L R. 1252=A.I R 1930 Bom 554.]

Applicability of the maxim to statements by accused to Police *See* 54 Cal 237=99 I C 227=28 Cr.L.J. 99=A.I R. 1927 Cal. 17.

Generalia verba sunt generaliter intelligenda. General words are to be understood generally.

Generalibus specialia derogant (*H.* 51). Special things derogate from general.

Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa (8 *Rep.* 154)· A general clause does not extend to those things which are before specially provided for.

Generalis regula generaliter est intelligenda. A maxim meaning "General rules must be generally understood."

Gerens

Generalissimo Commander of combined military and naval force or of several armies

Generality· comprehensiveness. "Generality is different from 'Comprehensiveness Although it is enacted that a Schedule to an Act is not to restrict the generality of the operative part, the recital may still control its comprehensiveness" (per *Coleridge, J., Walsh* v *Trevanion*, 19 L J Q B. 461)

Generation A whole body of persons living, average time at which children are ready to replace parents, reckoned at 30 years

Generation, Age Generation is said of the persons who live during any particular period, and Age is said of the period itself Those who are born at the same time constitute the generation, that period of time which comprehends the age of man is the age there may, therefore, be many generations springing up in the course of an age

Generation to generation The expression "generation to generation" shows that a heritable estate is given [76 I C 324=A I R 1923 Cal 351 *See also* 7 All 516, 519, 3 I A. 92=1 C. 391=25 W R 239]

Genesis First Book of old Testament, origin, mode of formation or generation

Geni warg or Sirkar Geni warg (*Kan*) Escheated or forfeited warg given originally on lease—now on the same footing as other wargs.

Gens (*Lat*) A class or clan, a people or nation.

Gentleman. "Gentlemen, be those whom their blood and race doth make noble and known" It is of the duties of "the Prince to honour virtue where he doth find it, to make gentlemen, esquires, knights, barons, earls, marquises, and dukes, where he seeth virtue able to bear that honour, or merits and deserves it, and so it hath always been used among us But ordinarily, the King doth only make knights and create barons or higher degrees for, as for gentlemen, they be made good cheap in England For whosoever studieth the laws of the realm, who studieth in the Universities, who professeth liberal sciences, and, to be short who can live idly and without manual labour and will bear the port, charge and countenance of gentlemen, he shall be called master, for that is the title which men give to esquires and other gentlemen, and shall be taken for a gentleman". (Cowel Jacob 6 Encyc 65, *Tomlin's Law Dic*) "This title is applied generally to those who have nothing to do, and can live idly" (per *Pollock, C B. Allen* v *Thompson*, 25 L J Ex. 250).

Gentoo. (Indian) One of the aborigines of India. At Madras in the early days of the East India Company, the English men used this term to designate the language and people of Tellingana, or Natives of India generally (as) Gentoo code. (*Fifth report*).

Genuine. Not spurious or counterfeit (as) genuine coins as distinguished from counterfeit coins (27 I C. 1.)

Genus. A general class or division, comprising several species, a man's lineage, or direct descendants. (*Kenny*).

Gerens. (*Lat.*) Bearing, (as) *gerens datum* (bearing date).

Geographical

Geographical The phrase "not being a Geographical Name" used in respect of a trade mark prohibition does not connote that no place or places can be found bearing the same name as the word, the general test is, Does the Word, in ordinary parlance, suggest a Geographical Name? Therefore, neither "Monkey", "Magnet," "St Paul," nor "Magnolia," is, in this connection, a Geographical Name, though each is the name of place (*Re Magnolia Metal Co*, 1897, 2 Ch. 371).

George (*St.*) Patron Saint of England.

Germicide Substance having the power of destroying disease germs.

Gerontocracy Government by, or governing body of, old men.

Gerontoxon An ulcer of the cornea, of frequent occurrence in old age.

Gestation period The rule of Mahomedan law regarding gestation is a rule of evidence within the meaning of S 2, Evidence Act, and the Courts are not bound by the rule of Mahomedan law in this respect. To such case S. 112, Evidence Act, applies, (76 P R. 1891 and A I R. 1923 A 570, *Rel on*) 120 I.C. 495=A.I R. 1930 Lah. 97.

Get. To "get" Minerals is synonymous with to "win" them (*Ramsden* v. *Yeates*, 50 L J.M C. 135 *Stroude.*)

To GET, GAIN, OBTAIN, PROCURE. *Get* is not only the most general in its sense, but its application, it may be substituted in almost every case for the other terms, for we may say to get or obtain a reward, to get or procure a book, The word *gain* is peculiarly applicable to whatever comes to us fortuitously; what we gain constitutes our good fortune, we gain a victory, or we gain a cause; the result in both cases may be independent of our exertions. To *obtain* and *procure* exclude the idea of chance, and suppose exertions directed to a specific end but the former may include the exertions of others, the latter is particularly employed for one's own personal exertions A person *obtains* a situation through the recommendation of a friend he *procures* a situation by applying for it

Gevari. Land specially fertile for growing wheat.

"Ghair." The word *ghair* means stranger 4 Luck 452=120 I.C. 287=A.I.R. 1929 Oudh 193.

GHAIR (*A*), except, not: negative prefix, used in various ways. *e g.* Ghair-maurusi, "not hereditary" the ordinary, or tenant at will, (Upper India) (*Bad Pow* ii. 704.)

Ghair-abad, not cultivated, or inhabited. (*Bad Pow*)

Ghair-band-o-bast. Unsettled—applied to lands not included in the revenue assessment

Ghair-dasta, or dasti. Exempt from Government imposts

Ghair-hazir. Absent, not in attendance

Ghair-haziri Absence being away especially when called for, as in Court.

Ghair-jama. Not paying revenue, rent-free

Ghastly Grim

Ghairhi-kharch, Expenses of various kinds incurred by a village, or on account of establishments and collections.

Ghair khiraj Not paying tribute or revenue, rent free lands, etc

Ghairmahdi (*H*) A sect of Shiah Musalmans who hold that the Mahdi has already come, in the person of Muhammad Mahdi, who was born at Jaunpur, near Benares in 1443 A D

Ghair marank Low river lands based on sand and unable to support vegetation in the dry months

Ghair-mashrut Unconditional, applied to grants of land, &c, without any stipulations of service, or the like, being attached to them.

Ghair-maurusi Not holding by hereditary descent, a tenant or farmer, not inherited, acquired

Ghair-mazrua. Uncultivated land

Ghair-mazun. An absolute slave, one not allowed to do any work on his own account. (Mohamadan Law)

Ghair-mumkin. Unculturable. Land which has for any reason become unculturable such as land under Roads, buildings, streams, canals, tanks or the like or land which is barren sand or barren (Land Revenue Assessment Rules, 1929.)

Ghair Sanadi. Extra, extraordinary, contingent, not included in the sanad or grant.

Ghair-Tirni-Gizar Not paying tirni.

Ghair-vekenni. Resumption of an allowance of land given up to the Ryots being the tenth of a bigha

Ghalib-uz-zan. (*Mahomedan Law term.*) Strong presumption,

Gharib-parwar. (*Arabic.*) Protector of the poor. A common form of address to a superior, both orally and as a heading to petitions.

Gharkhed the personal or private holding of a chief or landlord, (*Bad. Pow.* iii. 283.)

Ghar Terige. House Tax—tenure conferring proprietary rights in house-sites in towns (*Kan*)

Gharbari Gosavis The Gharbari Gosavis are a fraternity within the Sudra caste Gharbari means house-holder, and the literal translation of the two words is "house-holder ascetics"—that is, they are married ascetics, having certain of the customs and practices of ascetics, necessarily modified by the fact of marriage and its consequences Except so far as their particular customs apply, they are governed by the usual law as to Hindoos. [22 L W. 355=(1925) M.W N. 414=88 I.C. 343=A.I.R. 1925 P.C. 127=21 N L R 127.]

Ghasawat describes a custom in Cachar, under the system of joint cultivation, whereby on a member defaulting in his Land Revenue payments, another paid and took over his holding. (*Bad. Pow.* iii. 439.)

Ghastly. Grim. *Ghastly* is the same word as ghostly, hence the predominant idea is that of a supernatural or deathlike pallor, from which the signification has been extended to denote simply

Ghat

deadly, horrible, as, "ghastly wounds" *Grim* is, on the other hand, essentially connected with life and the expression of the countenance of man or beast Surliness, ferocity, and gravity, combined into a fixed and rigid expression, would constitute *grimness* (as) a "grim fight" (*Smith Syn Dis*)

Ghat · a hill range, a mountain pass; a ravine or passage leading into the country above or beyond. (*Bad Pow* 1, 9) also used to denote bathing or landing places in big rivers (as) the Jagannath Ghat on the Hooghly. The word "ghat" used in S. 30 of the Bengal Municipal Act was not intended to include a burning ground The term "ghat" does not include any portion of the sub-soil and cannot consequently apply to the burning ground. [4 C.L J 343 (355)=10 C.W.N. 1044=33 C 1290]

Ghats · (the eastern and western) Mountain ranges in South India (*Bad Pow.* i 89 (M) iii 10, note)

Ghatta · (*P.*) A caste formed of persons outcasted from the Baniya caste and of their descendants There is a further sub-division called Ghattaeka-Ghatta, formed similarly of out-caste from the Ghattas.

'Ghattu thamulu', meaning of *See* (1913) M W N. 551=16 I.C 208, 1 L W. 333=22 I C. 972

Ghatwali. a grant to ghatwal, a chief or other person who applied the Land Revenue to support a force for protecting the passes and preventing raids from hill tribes on to the plains (*Bad Pow* i 532) Tenures in (Ben) 1 583, 595 'jagirs' (Berar), iii. 379 [51 I.A. 37 (50 4)=3 Pat 183=A I.R 1924 P C. 5=28 C W.N 351=31 M L T 27=79 I C 825=5 Pat L.T. 171]

Ghatwali tenure in Beerbhoom,—Ghatwali tenures in Beerbhum are tenures to be held in perpetuity, and are descendible from generation to generation subject to certain conditions and obligations, and it would be inconsistent with the true character of these tenures to hold that the Legislature intended that they should devolve on issue of the body only, and not on heirs generally according to the law which may govern such succession. (10 W.R. 401)

Ghatwali tenure. By their very nature the *ghatwalis* were inalienable; this is not affected or altered by Regulation 29 of 1814 139 I.C 853=13 Pat L.T. 224=A I R 1933 Pat 117. Birbhum *ghatwali* tenures though hereditary are liable to be forfeited on the dismissal of the holder thereof 3 P. 673=84 I.C. 405=A I R. 1924 Pat. 616 The incidents that attach to the tenure known as [*Ghatwali* are (1) That it is impartible and permanent (2) That it descends by lineal primogeniture and (3) that it is alienable at least with the consent of the Zemindar 4 Pat L T 473=1923 P H C.C 161=2 Pat 685=A I R. 1923 Pat 453 A *Ghatwali tenure* is inalienable and indivisible and cannot be sold in execution of a decree against the person of the incumbent of the office of *ghatwali* for the time being, (9 C. 187 and 10 M.I.A 16 *Ref.*) Neither by the terms of the grant nor by the general law applying to such *ghatwali* tenures is an actual appointment of the next heir to be *ghatwali* in the room of his predecessor requisite, nor is actual performance of the stipulated *ghatwali* services from time to time necessary. Readiness and willingness to perform them when required may

Ghori

be inferred where there is no proof of refusal to perform and where performance within a reasonable time, if required, is not shown to have become impossible [34 M L T. 27=5 Pat L T 171=3 Pat 183 =28 C W.N 351=A I R 1924 P C 5 (P C), 142 I C. 673=1933 Pat 52, 1933 Pat 57]

Ghatwali Villages After referring to various reports describing the nature and incidents of the *Ghatwally* tenure in different districts, their Lordships concluded 'Though the nature and extent of the right of the *Ghatwals* in the *Ghatwally* villages may be doubtful, and probably differed in different districts and in different families, there clearly was some ancient law or usage by which these lands were appropriated to reward the services of *Ghatwals*, services which, although they would include the performance of duties of police were quite as much in their origin of a military as of a civil character, and would require the appointment of a very different class of persons from ordinary police officers" [(1855) 6 M I A 101=4 W R 77 (P.C)=1 Suth 248 =1 Sar 505]

Ghatwals The *Ghatwals* (of Kharagpure) are dependent talookdars within the meaning of Reg 8 of 1793 (3 C 251.)

Ghaus. (*Arabic*) A fakir of the very highest sanctity The ardour of devotion of a ghaus, according to vulgar tradition, is such that in the act of worship his head and limbs fall asunder

Ghazb (*A*) Violence Force

Ghazi (*Arabic*) One who takes part in ghazu, which originally meant a plundering raid, but in the time of Muhammad came to mean an expedition against infidels, one who fights for the faith, a champion ready to fall fighting without hope of victory. Mahamadan anti—infidel fanatic.

Ghee Clarified butter, in which state they preserve that article for plenary purposes. (*Fifth report.*) *Ghee* is not included in the phrase 'other milk, products' [Bom C.t Mun Act S. 412-A. (b)] 53 B. 627=31 Bom.L R 581=1929 B 274]

Gheianee The name of a class of Sikhs reckoned both learned and pious.

Ghilzai The most important, after the Duranis, of the tribes of Afghanistan. They occupy the high mountainous territory extending from a little north of Kandahar up to Kabul and along the Kabul river as far as Jalalabad They are Sunni Muhammadans and their language is Pashto.

Gholar name of a clay soil (local P. J.) (*Bad. Pow*)

Ghorabandi; a land tenure (*Ben*) (*Bad. Pow.* i. 541.)

Ghorawala. (*H.*) A horseman, a groom.

Ghorcharha. A horseman, a trooper.

Ghori. The name of a succession of dynasties, called also the Afghan or the Pathan dynasties, which reigned at Delhi from the beginning of the thirteenth century till they were overthrown by the Moghuls in the middle of the sixteenth. They take their name from Ghor, the capital of the first Afghan

Ghosi.

invader, Shahab ud-din, or Muhammad and the dynasty was founded by his Viceroy, Kutab-ud-din.

Ghosi. A pastoral tribe in the Punjab, allied to the Ahirs

Ghoulish. The words *"ghaulish", "tortures" and "hellish"* when applied in a newspaper article to Ordinances passed by the Government fall within the mischief which the Ordinance is intended to repress They stir up hatred against the Government established by law and therefore constitute an offence. (139 I C 777=33 Cr L J 902=1932 Cr C 554 =A I.R 1932 Sind 107)]

Ghulam (*Arabic*) The son of a female slave, a slave The word is often used in composition to form a Muhammadan proper name, as Ghulam Hussein, *i e*, slave of Hussein.

Ghumao (*Pj*) (from Ghumana—to turn the plough) a land measure of varying size, originally connected with the allotment of land by ploughs, and measuring by the length of furrow made before turning. (*Bad Pow ii* 558)

Ghuslkhana (*H*) A bathing room, that part of a palace often consisting of many elaborately ornamented chambers and passages, used for bathing.

Gibbet. It was used in ancient times to expose the dead body of a malefactor when the Court could lawfully add that ignominy to the capital sentence

Gichuvali (*Karn*) Farming, agriculture

"Gift" defined Act 4, 1882, S 122.

Gift. A voluntary conveyance, that is, a conveyance not founded on consideration of money or money's worth

"GIFT" is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee Act IV of 1882 (Transfer of Property) S. 122

A gift is the act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person without any consideration. Gifts are of two kinds. (1) Gifts *inter vivos*, and (2) gifts *causa mortis*.

Esher, M R. referring to the meaning of *"gift"* said —"Suppose the proposing donor offers the thing saying 'I give you this thing—take it,' and the other says 'No, I will not take it now, I will take it tomorrow',—I think the proposing donor could not, in the meantime, say correctly to a third person, 'I gave this just now to my son, or my friend.' The answer of the third person would (I think rightly be, 'You cannot say you gave it him just now, you have it now in your hand All you can say is, that you are going to give it to him to-morrow if then he will take it.' I have come to the conclusion that in ordinary English language and in legal effect, there cannot be a 'gift' without a giving and taking. The giving and taking are the two contemporaneous, reciprocal, acts which constitute a 'gift' They are necessary part of the proposition that there has been a 'gift.' They are not evidence to prove that there has been a gift, but facts to be proved to constitute the proposition that there has been a gift."

Giras

Gift and will. One of the tests to be applied, for the purpose of seeing whether the document is a will or not, is whether it is revocable. If the document is revocable, it must be construed as a will [86 I C 8 =21 M L W. 45=A I R 1925 Mad. 471]

GIFT, PRESENT, DONATION The *gift* is an act of generosity or condescension, the *present* is an act of kindness, courtesy, or respect The *gift* passes from the rich to the poor, from the high to the low, and creates an obligation, the *present* passes either between equals, or from the inferior to the superior. The *gift* is private, and benefits the individual, the *donation* is public, and serves some general purpose what is given to relieve the necessities of any poor person is a *gift*, what is given to support an institution is a *donation*.

GIFT, ENDOWMENT, TALENT When we speak of a *gift*, we refer in our minds to a giver, when we speak of an *endowment* we refer in our minds to the receiver, when we speak of a *talent* we only think of its intrinsic quality.

AN ORAL GIFT of moveable property must be "accompanied by delivery of possession" There must be a giving and taking" (Wms P. P. 33 *Irons* v *Small-piece*. 2 B & Ald 551)

"Gift made in contemplation of death" defined. Act 10, 1865, S 178.

Gifts before the nuptial fire Under the Hindu law, "gifts before the nuptial fire" is only a term to signify all gifts during the continuance of the marriage ceremonies 16 W R 115 Such gifts made to the bride constitute her sridhanam property

Gild " 'Gild' hath divers significations, as some times a Tribute, other times an Amercement, thirdly a fraternity or company by the King's license" (*Termes de la Ley Cowel Jacob*)

Gild and silver " 'Gild and silver,' as applied to coin, include casing with gold or silver respectively, and washing and colouring by any means what soever with any wash or materials capable of producing the appearance of gold or silver respectively" (*Steph* Cr 310)

Giltedged security or stock Such investment as trustees prefer or restricted to, in respect of trust funds.

Gin Machine for separating cotton from its seeds, also used to denote spirit distilled from grain or malt

GIN (*In Mining*) "a *'gin'* is a windlass fixed in the ground and worked by a horse for the purpose of drawing materials from the mine" (*Moc.* S. 246 n. 8)

Ginning and pressing Cotton is a manufacturing process as defined by S. 2 (4) of the Factories Act [I.L R 1937 Bom 175=166 I C. 736=38 Cr.L J. 304=38 Bom L R 1181=A I R. 1937 Bom 52]

Giranih (*Bom*) land taken on mortgage by a surety for Land Revenue, to cover defaults, and allowed to be held rev-free by the State. (cf. vechania and dabania) (*Bad. Pow. iii.* 302.)

Giras (*mouthful*) originally applied to the provisions in land or money made for the younger sons of noble houses, now a political allowance in cash paid to certain families. (*Bad Pow. iii* 280.)

Girasiya.

Girasiya . properly a chief holding such a provision for life; applied generally in later times to land held by chiefs (Ahmadabad and Kaira), as opposed to Khalsa, that held by the chief ruler. Then applied to indicate that certain chiefs out of possession, were paid a kind of black-mail to preserve the neighbouring lands from their depredations. Now applied to designate descendants of certain chiefs who receive a cash (political) allowance in Bombay. (*Bad Pow in* 281)

Girdavari Harvest inspection

Girl A female generally under the age of 16 years (*Stroude.*)

Girwi. There is nothing in the word *girwi* to restrict it to a usufructury mortgage. [48 A. 292=92 I.C. 772=A.I R. 1926 A 506.]

Give. Make another the recipient of something, bestow gratuitously.

To GIVE, GRANT, BESTOW. We *give* money, clothes, food, or whatever is transferable *granting* is confined to such objects as afford pleasure or convenience, they may consist of transferable property or not, bestowing is applied to such objects only as are necessary to supply wants, which always consist of that which is transferable We *give* what is liked or not liked, asked for or unasked for we *grant* that only which is wished for and requested Children may *give* to their parents and parents to their children, kings to their subjects or subjects to their kings, but monarchs only *grant* to their subjects, or parents to their children, and superiors in general *bestow* upon their dependent that which they cannot provide for themselves.

"GIVE" includes a case of giving away property by way of wakf. (111 I.C 583=1928 A. 516.)

To GIVE, AFFORD A person is said to *give* money without any regard to the state of his finances he is said to *afford* what he gives, when one wishes to define his pecuniary condition.

To GIVE, PRESENT, OFFER, EXHIBIT To *give* is the familiar term which designates the ordinary transfer of property. to *present* is a term of respect, to *offer* is an act of humility or solemnity, it bespeaks the movement of the heart, which impels to the making of transfer or gift, We *give* to our domestics, we *present* to a person what we think agreeable, we *offer* what we think acceptable what is *given* is supposed to be ours; what we *offer* is supposed to be at our command, what we *present* need not be either our own or at our command: we *give* a person not only our external property, but our esteem our confidence, our company, and the like, an ambassador *presents* his credentials at Court, a subject *offers* his services to his king. We speak of *giving* a person an assurance, of *presenting* an address, and *offering* an apology: of *giving* a reception, *presenting* a figure, or *offering* an insult To *exhibit* is properly applied of setting forth to view, likewise, that which is *exhibited* is more striking than what is presented or offered.

Give up. Abandon, deliver, renounce hope of, devote or addict to.

To GIVE UP, DELIVER, SURRENDER, YIELD, CEDE, CONCEDE We *give up* our house to the accommodation of our friends; we *deliver* property into the hands of the owner To *give up* is a colloquial substitute for either *surrender or yield* A man *gives up* his place, his right, his claim, and the like, he *surrenders* a fortress, a vessel, or his property to his creditors. *Cede* is properly to surrender by virtue of a treaty. we may *surrender* town as an act of necessity, but the *cession* of a country is purely a political transaction. thus, generals frequently *surrender* such towns as they are not able to defend, and governments *cede* such countries as they find it not convenient to retain To *concede*, which is but a variation of cede, is a mode of yielding which may be either an act of discretion or courtesy, as when a government *concedes* to the demands of the people certain privileges or when an individual *concedes* any point in dispute for the sake of peace.

To GIVE UP, ABANDON, RESIGN, FOREGO. To *give up* and *abandon* both denote a positive decision of the mind, but the former may be the act of the understanding or the will, the latter is more commonly the act of the will and the passions. to *give up* is applied to familiar cases, *abandon* to matters of importance: one *gives up* an idea, and intention, a plan, and the like, one *abandons* a project, a scheme, a measure of government A man *gives up* his situation by a positive act of his choice, he *resigns* his office when he feels it inconvenient to hold it. *Forego* which signifies to let go, is comparable with *resign*, inasmuch as it expresses a passive action, but we resign that which we have, and we forego that which we might have

Given (In Art 44, Cl (a), Stamp Act) *See* 10 C 274, per *Mitter, J*

Gives Information The expression "gives information" in S 203, Penal Code, (Act XLV of 1860) means "volunteers information" [6 S L R. 143=14 Cr L J 256=19 I C 508 (509)]

"Giving a satisfactory account of oneself" (in S 109, Cr P Code) [*See* 155 I C. 729=15 Pat L.T. 836=A.I . 1935 Pat. 69]

"Giving false evidence" defined Act 45, 1860, S. 191

"GIVING OR FABRICATING FALSE EVIDENCE" *See* 9 C. P.L R Cr 5

"Giving satisfactory account of oneself." The words "give satisfactory account of himself" in S. 109, Cr. P Code, do not mean that the person should satisfy the magistrate that he spends his time or leisure hours in a satisfactory manner (8 A L J 1097=12 I C 304=12 Cr L J 536)

Gladiator. Man trained to fight with sword or other weapon at ancient Rome, Political or other champion in argument

Glanders Contageous house disease with swellings below jaw and mucous discharge from nostril.

Glands. Soft bodies diffused over the system, and generally secreting some fluid

Glanville. The author of the most ancient treatise on English Law, written in Latin, about 1181.

Glaring. Conspicuous, patent.

GLARING, BAREFACED. Glaring designates the thing, barefaced characterizes the person: a glaring falsehood is that which strikes the observer in an instant

Glaucoma.

to be falsehood; a barefaced lie or falsehood betrays the effrontery of him who utters it.

Glaucoma. An eye disease

Gleba. (*In old English Law*) Church lands to which the advowson of a church is annexed

Glebe, glebeland Church land Glebe is land belonging to a Parish Church, beside the Tythe." (*Cowel.*)

Glebe house. "Glebe House," means, a house of residence belonging to a Benefice

Glory, Honour, Fame *Glory* attends great deeds, *honour* attends the discharge of duty. *Fame* is the result of meritorious success in the more select but less showy walks of life We speak of the *glory* of the conqueror, the *honour* of the gentleman, the *fame* of the scholar and the philanthropist. (*Smith Syn Dis.*)

Glossa. (*Lat.*) A gloss, an explanation or interpretation.

Glossa viperina est quae corrodit viscera textus That is a viperous gloss, which eats out the bowels of the text

Glossary Explanations of abstruse or obsolete or technical terms, a partial dictionary

Glossator. Medieval commentator on civil or canon Law.

Glossitis. Inflammation of the tongue

Glottis The narrow opening at the top of the trachea, or windpipe.

Glycerine A sweet fluid, obtained from fatty matters, and much employed in pharmacy

Goalpara (*Assam*), account of the dist (*Bad. Pow.* iii 430)

Goamatti. (*Assam*), said to mean "body-land," an allotment (formerly) to each cultivator or "paik" consisting of a house site and garden (bari) and a piece of 'rupit' or rice land (*Bad Pow* iii 400)

Goankar (*Karn.*) The headman of a village.

Goat "Goats, be usual engines erected and built with perculleses and doors of timber, stone, or brick, invented first in Lower Germany and afterwards brought into England and used there by limitation, and experience hath given so great approbation of them as they are now, and that with good reason and cause inducing the same, accounted the most useful instruments for draining the waters out of the land into the sea." (*Callis*, 91)

God Supreme being, creator and Ruler of the Universe, object of divine worship as having power nature and human fortunes.

God's acre An ancient name for a churchyard or burial ground indicating its sacred character as to its use, but not importing a spiritual tenure.

God child Baptized person in relation to his god parent.

God daughter. Female god child.

God father. Male god parent.

God mother. Female god parent.

Gond

God son. Male god child.

Goddess. Female deity

God-like. Like, that of a god

GODLIKE, DIVINE, HEAVENLY. As divine is opposed to human, so is heavenly to earthly, the term Divine Being distinguishes the Creator from all other beings, but a heavenly being denotes the angels or inhabitants of heaven, in distinction from earthly beings or the inhabitants of earth

God's penny (*In old English Law*) Earnest money.

Godly 'So far as I am able to discover" 'Godly, and Pious,' as applied to Trusts or Uses, had, in early times, much the same significance Their meaning was not limited to objects of a religious or elemosinary character, but embraced all objects which a well-disposed person might promote from motives of philanthorpy" (*per* Ld Watson, *Income Tax Commrs* v *Pemsel.*)

Godly learning Trust for the promotion of "GODLY LEARNING," without more means that the instruction to be given is to be in conformity, with the doctrines of the Church or religion as by law established (Re Ilminster School, 2 D G. & J 535) or to which the donor belonged.

Godiyabhumi (*Tel*) Stony soil

Godown. Storage, warehouse for goods

Goha Village road for cattle to pass.

"Going armed." *See* Act XI of 1878 (Arms) Ss 4, 13 L B R (1893—1900), 284

Gold "Gold," does not always mean pure gold, but merely what in common parlance is called gold (*Young* v. *Cook*, 47 L J M C. 28, 3 Ex D 101)

Gold Precious yellow metal, chief metal out of which the coins of the largest denomination are made

GOLD, GOLDEN, These terms are both employed as epithets, but, Gold is the substantive used in composition, and Golden the adjective, in ordinary use The former is strictly applied to the metal of which the thing is made, as a gold cup, or a gold coin, but the latter to whatever appertains to gold, whether properly or figuratively. as the golden crown, the golden age, or a golden harvest

Gold Bonds Bonds payable in gold coin.

Gold mine —See *Att-Gen* v *Morgan* (1891), Ch 432.

Gold or Silver, in 30 & 31 Vict c 90, s 1, does not mean "pure gold or pure silver, but merely what is ordinarily called gold or silver" *Young* v *Cook* (1877) 3 Ex. D 105.

Goldsmiths' notes. (*In Old English Law.*) Bankers' notes, originally so called, because the bankers of London were goldsmiths also.

Gonchalu (*Karn*) A man set to watch a field.

Gond: Relics of ancient kingdoms in Central Provinces (*Bad-Pow.* ii, 370, 441), Village institutions. (*Bad. Pow* ii 443).

od, Valid; sufficient in law, effectual; unnable; responsible, solvent; able to pay an nt specified; of a value corresponding with its ., collectible, commendable, worthy, morally lent, having the right qualities, satisfactory

od, Goodness *Good* and *Goodness* are abstract ., drawn from the same word, the former to e the thing that is *good*, the latter the inherent property of persons or things All *good* comes God, whose *goodness* towards his creatures is inded The *good* we do is determined by the ncy of the action, but our *goodness* in doing it ermined by the motives of our actions

od, benefit, Advantage. We say of a charman, that he does much *good*, or that he ws *benefits* upon this or that individual In like er when speaking of particular communities or ty at large, we may say that it is for the *good* iciety or for the *good* of mankind that every ubmits to the sacrifice of some portion of his al liberty, but it is for the *benefit* of the poorer s that the charitably disposed employ their y in charity A *benefit* is a positive and direct an *advantage* is an adventitious and indirect the *benefit* serves to supply some want, to ve some evil, and afford some sort of relief, *vantage* serves to promote some ulterior object

ood and sufficient cause." Their Lordships ot say that "other good and sufficient cause" in xception to S 14 of Bengal Reg. 3 of 1793 are words so comprehensive that they might by bility extend to anything that may in the ordimeaning of those words constitute "a good and ient cause" [8 M I A 225=3 W.R 31=1 Suth 1 Sar 749] *See also* 12 M I A. 292=12 W.R.) 6

e words "other good and sufficient cause" in 3) of S 18 of Bengal Reg 2 of 1803 must de insanity (whether there has been a commissi of lunacy or committee of the Estate appointed, y analogous measure, or not) (7 M I A 104 =4 W R 111=1 Suth 287=1 Sar 600)

od Behaviour Surety for the Good behaviour ety for the peace, or good behaviour of a ct towards the King and the people. (*Tomlin's Dic* See Crim Pro Code, Sec 107) The term ies the exact carriage or behaviour of a subject King and his Leige People to which men some-, for their loose demeanor, are bound, and he s bound to this is more strictly bound than to eace, for the Peace is not broken without an l Affray, Battery &c, but this may be forfeited e number of a man's company or his weapons *mes de la Ley*)

od Bye.—Farewell, [God be with you.]

od Cause, in 36 & 37 Vict. c. 66 (Judicature), , includes, but is not confined to, everything for h the party is responsible connected "with the ution or conduct of the suit, and calculated to ion unnecessary litigation and expense." *Huxley L Ry* (1889), 14 App. Cas. 26, at p. 33 (Lord on), and see *Bostack* v *Ramsey U.D.C.* (1900) B 616

OD CAUSE. The "Good Cause" which will enable udge to deprive a successful litigant of his costs ves the idea of misconduct or improper claim

Good faith.

on his part in or in relation to the litigation. (*Jones* v. *Curling*, 53 L J.Q B 373, 13 Q B.D 262)

Good and bad If the bad is not separable from the good the whole is bad [34 C.L J 253=66 I.C. 342=A I R 1922 Cal 399]

"Good and Sufficient Cause" for delay in taking certain legal steps would include the Lunacy of the applicant (*Troup* v *East India Co*, 6 W R. 373) *See* Limitation Act, S 5 and Notes)

Good Character Good general reputation for those qualities of mind or morals impressed on a person by nature or habit, and distinguishing him from other persons, as, reputation for chastity, veracity, peaceableness, etc.

GOOD CHARACTER —In *Erle J.* referring to a certificate of good character given to man who was known to be cohabiting with a woman not married to him, said.—"Character must mean the estimation in which a man is held by those who are acquainted with him You cannot pry into the secrets of a man's conduct" (*Stroude*)

Good Condition.—What is "Good Condition" in respect of demised premises, is "to be viewed with regard to the class of tenements to which the demised one belongs" (*Per* Fry, J, *Saner* v *Bilton*, 47 L.J Ch 270)

GOOD CONDUCT AND GOOD BEHAVIOUR. We speak of a man's good behaviour in the social circle, of his *good conduct* in his family, as a citizen, or in life. *Good conduct* is meritorious and virtuous. *Good behaviour* may be natural or artificial The conduct has relation to the station of men's lives, or the circumstances in which they are placed. *Good conduct* will include right behaviour as a part of it, and a proper demeanour will flow necessarily out of it (*Smith Syn Dic*)

Good consideration A consideration of blood, or of natural love and affection (as compared with valuable consideration)

"Good debts." Is opposed to bad debts *See* 45 M L.J 233=18 L W. 99=1923 M.W N 867=A I R 1923 Mad 679

Good delivery (*Stock Exchange term*) This term indicates that a security is in proper form and condition.

"Good faith" defined Act 45 of 1860, S 52. Act 9 of 1908, S 2 (7) Act 10 of 1897, S 3 (20) Ben Act 1 of 1899, S 3 (17) Bom Act 1 of 1904, S. 3 (20) Bur Act 1 of 1898, S 2 (25). E. B. & A. Act 1 1909, S. 5 (21) Mad. Act 1 of 1891, S. 3 (11). P. Act 1 of 1898, S 2 (22), U. P. Act 1 of 1904, S. 4 (17).

GOOD FAITH Honesty, absence of fraud, collusion or deceit

Nothing is said to be done or believed in good faith which is done or believed without due care and attention (Penal Code, S 52).

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not Act X of 1897 (General Clauses) S. 3 (20); Eng Bill of Exchange Act, 1882, S. 90

Nothing shall be deemed to be done in good faith which is not done with due care and attention. Act IX of 1908 (Limitation), S 2 (7)

Good faith

Under the definition of the term in the Limitation Act "nothing shall be deemed to be done in good faith which is not done with due care and attention" This is a stricter definition than the one adopted in S. 3 (20) of the General Clauses Act, 1897 under which "a thing shall be deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not." 13 I C 260, *See also* 1 Bom. 269 (Good faith and notice)

The words "good faith" have no technical legal signification, but are to be taken in their ordinary acceptation, and mean simply honesty in belief purpose, or conduct Cf. *Butcher* v *Stead*, 1875, L R 7 H L 839, *In re* Avery, (1887)36 Ch.D. 307, *Ex parte* Watson (1888) 21 Q B D 301.

It is sufficient if there be "good faith" in S 55, Presidency Towns Insolvency Act (III of 1909) on the part of the purchaser; it is not necessary that both parties to the transaction should act "in good faith" (14 M.L.T. 150=20 I C. 901)

'Good faith' in S 13 of the Oudh Laws Act (XVIII of 1876), is not negatived by the payment of a price above the market-value where the vendee may have special reasons for desiring to acquire the property, except perhaps where in order to gratify a pre-existing grudge against a possible pre-emptor the vendee seeks to acquire property for the purpose of injuring or annoying the pre-emptor and agrees to pay an abnormally high price with that object (9 I.C 58)

BELIEF IN GOOD FAITH Where a man has consciously avoided making an enquiry on any matter, he may nevertheless be said to have a belief on that matter but that belief would in such a case not be a belief in good faith [3 I C 415 (416)=13 C.W N 931]

Good Friday That day being the Friday immediately preceding Easter day—which, from the earliest times, the Church has directed to be kept as a day of fasting and humiliating in commemoration of the Crucification of our Lord Good Friday is a Bank holiday. (6 *Ency. of the Laws of England* 399)

Good man. Master of the house.

Goodness, Virtue *Goodness* is natural and without effort It is instinctive virtue as *virtue* is trained or practised goodness Hence, in some sort, *goodness* may be without *virtue*, and *virtue* without *goodness* The tenderness of feeling shown by many children is *goodness* not *virtue*. To abstain from theft in a thief would be *virtue*, not *goodness* *Goodness* is often used in a specific sense, as equivalent to kindness or benevolence. (*Smith Syn Dis*)

Good order "In good order and condition" used in respect of goods in a bill of lading is an admission against the shipowner; and although if it be further stated "weight, contents, and value unknown" the admission remains that the goods appeared to be in good condition outside (*The Peter Der Grosse*)

Good repair. 'Good repair used in respect of a building or a lease or other document means, such a state of repair as will satisfy a respectable occupant using the premises fairly, but not that state of repair which an owner or tenant might fancy" (per *Kindersley, V. C., Cooke* v. *Cholmondeley*, 4 Drew. 328.)

Good ship. In *Small* v *Gibson*, 20 L J Q B. 153 at P. 156 *Parke, B.*, said "The term 'good' is a mere common declaratory expression, and it is going very far to say it means, not only that the vessel is tight staunch, and sufficiently found in stores, etc, but is provided also with a competent master and crew"

Good title A perfect title, free and clear from any legal exception or charge or encumbrance thereon In a contract for sale, the term means, such a title as will be forced on a purchaser in an action of ejectment by any claimant. (*Jeakes* v *White*, 21 L J Ex 265)

Good wife Mistress of the house.

Good-will. The benefit which arises from the establishment of particular trades or occupations Intrinsic value of the good repute and custom of an established trade or business.

The good will of a business means every affirmative advantage, as contrasted with negative advantage that has been acquired in carrying on the business, whether connected with the premises of the business or its name or style and everything connected with or carrying with it the benefit of the business *Cruttwell* v *Lye*, (1810) 17 Ves. 335, *Trego* v *Huet*, (1896) A. C 7, considered, *Churton* v *Douglas*, [(1859) 28 L.J. Ch 84, foll. A I R 1929 Sind 85=110 I C 639=23 S.L R. 471]

Every positive advantage that has been acquired by the old firm in carrying on the business whether connected with the premises in which the business was carried on or with the name or any other matter, carrying with it the benefit of the business It is the connection thus formed together with the circumstances whether of habit or otherwise which tend to make it permanent that constitute the goodwill (21 C.W.N. 979=39 I.C. 177)

"GOOD-WILL would include the probability that the old customers will resort to the old place" (*per* Cotton L J., *Pearson* v *Pearson*, 54 L J Ch 41) *See* Indian Partnership Act 1932 But "generally speaking it means much more than that Often it happens that the Goodwill is the very substance and life of the business, without which the business would yield little or no fruit." (*per* Ld Macnaghten, *Trego* v *Hunt, Inf*), "it is the attractive force which brings in custom" (*Inl Rev* v *Muller*, 70 L J K B 680, 1901, A.C. 224) *See also* 27 I C 483=19 C W N 1

"The chief difficulty in considering the law of good will is to find out the exact meaning of the term. There are few who do not understand what it is intended to convey, and there is seldom any difficulty in stating in any concrete case what is covered by a conveyance of the goodwill of a business. When, however, an abstract definition is attempted, the difficulty arises. It is submitted that an abstract definition is all but impossible, and that the word "goodwill" bears no more precise a signification in law than does the term "business," "concern" and many others that could be named When the lawyer has to consider the meaning of the term, he must take into consideration the class of business being dealt with in each particular instance. If this be the right view, the definitions (or rather description) to be found in various judgments are all reconcilable In *Cruttwell* v *Lye*, 1810, 187 Ves 335; 34 E R. 129, Lord Eldon said that goodwill is nothing more than the probability that the old customer will resort to the old place; the trade, the goodwill of which was in question in that case, was the trade of a waggoner, in the habit of carrying goods from one place to another, the value of the goodwill which depended

on the probability that those in the neighbourhood desiring to have parcels carried would in future go to the spot where in the past they knew that a waggoner was in the habit of taking parcels and starting Later, in *Churton* v *Doughlas*, 1859, 28 L.J Ch 841 Johns 174, 70 E R 385; Wood, V.-C. said that Lord Eldon did not mean to confine the rights summed up in the term "goodwill" to the advantage of occupying premises to which customers were in the habit of going, and he then proceeds, to give his own definition, namely, "Goodwill," I apprehended, must mean every advantage . that has been acquired by the old firm by carrying on its business, everything connected with the premises, and the name of the firm, and everything connected with or carrying with it the benefit of the business" In an earlier case (*England* v. *Downes*, 1844, 6 Beav 269; 49 E R 829) goodwill was treated as a probability that persons would return to a certain house of business in consequence of the way in which the business had been conducted in the past In *Gmesi* v *Cooper & Co*, 1880 14 Ch D, at p 599, Sir George Jessel treated the goodwill of a stone merchant's business as being the personal connection with buyers and sellers and the market generally, the same judge said that the goodwill of a public house consisted of the habit of customers resorting to the place (*Stuart* v *Gladstone*, 1879, 10 Ch D at p 658, *Ex parte* Punnett, 1880, 16 Ch.D 226, whilst he all but denied the possibility that an East India Commission merchant could have a good will attached to his business (*Stuart* v *Gladstone supra*) It has been doubted whether there can be any "goodwill" to the business of a professional man, but there seems no reason why its existence should be in every case denied, though in many instances its value must be small In *Austen* v *Boys*, 1858, 27 L J Ch 714, Lord Cranworth thought the term "goodwill" wholly inapplicable to the business of a solicitor, but it is submitted that his Lordship directed his attention too closely to that variety of goodwill often spoken of as "local goodwill", if for "goodwill" the paraphrase "connection" be used, this seems clear In fact considerable sums are paid for the right to continue a solicitor's business, the papers impending matters, and the introduction to clients being the outward sign of what, if not strictly goodwill, is something singularly like it (see also *Arundell* v *Bell*, 1883, 49 L T 345) In *May* v *Thomson*, 1882, 20 C D, 705, 718, Sir George Jessel had to consider the sale of a medical practice, and said that when we talk of the sale of non-dispensing medical practice we are really talking of the sale of the introduction to the patient, and the length, the character, and the duration of the introduction are every thing There is a saleable good will in a stockbroker's business, and in the absence of words to the contrary in any articles of partnership the goodwill must be sold and the proceeds accounted for (*Hill* v *Fearis*, (1905) 1 Ch. 466.) The various statements to the cases above quoted show that the term "goodwill" varies with the class of business in connection with which it is used It may mean the right to carry on the trade in a fixed locality, as in the case of a public house business or the business of a carrier plying from one fixed terminus to another. (*Ex parte* Punnett, supra; *Crutwell* v. *Lye*. supra); it may be the right to represent oneself as the owner of a business which has a reputation independently of the exact place where it is carried on. (*Churton* v. *Douglas*, supra; *Trego* v. *Hunt*, infra), it may be personal connection arising from knowledge

of a particular market (Gmesi, supra), it may be the right of introduction to those accustomed to do business with a particular person (*May* v *Thomson*, supra) Lord Lindley's description seems the most comprehensive, namely the benefit arising from connection and reputation" (Lindley on Partnership, 7th ed. (1905), p 146) Though perhaps somewhat uncertain in its nature, goodwill is property" (*Inland Revenue* v *Angus*, 1889, 23 Q B D 579; *Benjamin Brooke & Co* v *Inland Revenue*, (1896) 2 Q.B 356; 6 Ency of the Laws of England 402)

'Goods" defined ("*See also* cotton goods" Act 9, 1872, S 76, Act 11, 1876, S 3, Act 41, 1889, S 2 Act 9, 1890, S 3, Act, 2 1896, S 3, Bom Act 6, 1879 S 3, Bom Act 6, 1886, S. 2. Bom, Act. 5, 1888, S. 2, Mad Act 3, 1885, S 3, Mad Act 2, 1905, S. 5.

The word "goods" in the Sale of Goods Act means and includes every kind of moveable property Act IX of 1872 (Contract), S 76, *See also* Sale of Goods Act (III of 1930), S. 3.

"Goods" means anything which is the subject of trade or manufacture Act IV of 1889 (*Merchandise Marks*), S 2, cl 4

"Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried. Act XXVI of 1925 (*Carriage of Goods by sea*) Sch. Art I, Cl (*c*)

"Goods" includes also bullion, wares and merchandise, Act XLVII of 1920 (*Imperial Bank of India*), S 2, cl (*e.*)

"Goods" shall include wares and merchandise of every description, Ben Act III of 1890 (Port Calcutta), S 3, cl 4.

"Goods" includes inanimate things of every kind; Act IX of 1890 (Railways), S 5, cl 9

Goods, in 2 & 3 Vict c 71 (Metropolitan Police), S 40, includes "dogs" *R* v *Slade* (1888), 16 Cox. Cas 496 The word is not there synonymous with chattels, a dog not being a chattel. *R* v *Robinson* (1859), Bell, Cr Cas 34

Goods in 19 & 20 Vict c 60 (Mercantile Law), S 5, includes horses *Young* v *Giffen* (1858), 21 Dunlop (Sc) 87.

Goods in the English Sale of Goods Act 1893 (56 & 57 Vict c 71), S. 62, "includes all chattels personal other than things in action and money and in Scotland all corporeal movables except money. The term includes emblements, industrial growing crops, and things attached to and forming part of the soil which are agreed to be severed before sale or under the contract of sale"

Goods in S 2 of the County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), does not include passengers' luggage, and is used only in reference to carriage under bills of lading. *R* v *Judge of City of London Court* (1883) 12 Q B D 115.

A machinery fixed to the ground does not fall within the scope of the word "goods" in S 16 (3) of the Provincial Insolvency Act (III of 1907). (14 I.C 447=6 L B R 44)

Books are "goods" within the meaning of the Merchandise Marks Act. [31 M. 512=17 M.L.J. 490; *see also* 26 Cal. 232.]

Goods and Chattels

Shares in a company are "goods." 28 Bom.L R. 777=94 I C 824=50 Bom 360=30 C W N 890=53 I. A 92=A I R 1926 P C 38=51 M L J 1 (P.C) The term "goods" used in S. 178, Contract Act is sufficiently wide to include share certificates 27 Bom L R 514=A I R 1925 Bom 314 Share certificates are movable property and are therefore 'goods' 23 Bom L R 1144=66 I C 726=46 Bom 489=A I R 1922 Bom 303, 6 L B R 44=14 I C 447, 92 I C 9

Goods and chattels The term "goods" is not so wide as "chattels" for it applies to inanimate objects, and does not include animals or chattels real, as a lease for years of house or land, which "chattels" does include. It has however been held that "Goods" and "Chattels" are synonymous expressions "If one devise to J S all his 'Goods', or all his "Chattels', by either of these is devised as much as by both of them" (Touch 447 Wms Exs 1040, 1041)

The words 'goods and chattels' in the Provincial Small Cause Court Act do not include fixtures 4 C 946=4 C L.R. 460 (10 B L.R. 448, 8 B L.R 508, *ref to*)

GOODS, FURNITURE, CHATTELS, MOVEABLES, EFFECTS *Goods* comprehends more than *furniture*, including not only that which is adapted for the domestic purposes of a family, but also every thing which is of value to a person, the chairs and tables are a part of *furniture*, papers books and money, are included among his *goods* *Chattels*, is a term not in ordinary use, but still, sufficiently employed to deserve notice It comprehends that species of goods which is in a special manner separated from one's person and house, a man's cattle, his implements of husbandry, the partial rights which he has in land or buildings, are all comprehended under *chattels* *Moveables* comprehends all the other terms in the limited application to property, as far as it admits of being removed from one place to the other, it is opposed either to fixtures, when speaking of furniture, or to land as contrasted with goods and *chattels* *Effects* is a term of nearly as extensive a signification as *goods*, but not so extensive an application whatever a man has that is of any supposed value, or convertible into money, is entitled his *goods*, whatever a man has that can effect, produce, or bring forth money by sale, is entitled his *effects* (*Crabb*)

GOODS, CHATTELS, COMMODITY, MERCHANDISE, WARES, FFFECTS, PROPERTY, POSSESSION *Goods* is employed in the sense of transferable articles of property, such as are intended for sale, or might realize a money value if sold *Effects* represent the personal estate, even down to the smallest matters in use

Chattels is a wider term than Goods or Effects and comprises every kind of property except the freehold and what is parcel of it Chattels are moveable goods, as horses, plate, money etc A *commodity* is any movable article valuable by money, but is restricted to articles of necessity. *Merchandise* is the generic term for all articles of trade, considered as such in the aggregate; while *Wares* is the sum of articles of a particular kind *Possession* is that of which a man is, as a fact, possessed, whether rightfully or not, or irrespectively of the mode in which he may have acquired it.

Property is that which is properly one's own, and, in the absence of any qualifying expressions, would be taken to imply a legal title to possession.

Gratuity.

Article is a specific and relative term It is such a commodity as may be brought under a particular head; as articles of food, furniture, clothing, decoration, and the like (*Smith Syn. Dis*)

Goods bargained and sold A phrase used to designate the action brought on a contract of sale, where the purchaser has not accepted delivery of the goods

GOODS, POSSESSIONS, PROPERTY Those who abound in the *goods* of this world are not always the happiest, he who is anxious for earthly *possessions* forgets that they are but transitory and dependent upon a thousand contingencies, those who are anxious for great *property* are not always scrupulous about the means by which it is to be obtained The purity of a man's Christian character is in danger from an overweening attachment to earthly *goods*, no wise man will boast of the multitude of his *possessions*, when he reflects that if they do not leave him, the time is not far distant when he must leave them, the validity of one's claim to *property* which comes by inheritance is better founded than any other

"Goods of well known kind" (In S 115, Contract Act) meaning of (59 Cal 928=140 I C 877=1932 Cal 879)

"Goods produced" defined Act 2 of 1896, S 6, Expln

Goods sold and delivered A phrase used to indicate the action brought when the sale and delivery of goods furnish the cause

Goods, wares and Merchandise A phrase covering generally, all classes of personal property

Goonthan (*Bom*) The village site or place for houses, abadi (*Bad Pow iii* 246, 350)

Gopalpur tea gardens Tea gardens of Gopalpur Tea Estate are agricultural lands [46 M L J 536 =5 Lah 50=51 I A 11=79 I C 946=29 C W N 395 =A I R 1924 P.C 1 (P C)]

Goraha-Bisen A clan or land owning class in Oudh (*Bad Pow ii* 227)

Gorait (*Ben and Bihar*) A village watchman (*Bad Pow i* 594, 602 note)

Gorru (*Tel*) A land measure equal to 125 kuntas, or 45,375 square yards, or 3 1-8 acres also an instrument of husbandry, used as a sort of harrow, or as a drill-plough, or sometimes for weeding after the grain is in stalk

Gosavis Gosavis are included in the category of Wanaprasthas Some of them have adopted the custom of marriage and Gharbari Gosavis form a part of this sect They are governed by the ordinary laws of inheritance under Hindu law unless custom is proved to the contrary (142 I C 70)

Granulations Grain-like fleshy bodies which form upon ulcers, filling up and promoting the healing of the sores.

Gratuity. Bounty to an officer on retirement, money present to an inferior for services

GRATUITY, RECOMPENSE. They both imply a gift, and a gift by way of return for some supposed service; but the *gratuity* is independent of all expec-

Goshanashin.

tation as well as right: the *recompense* is founded upon some admissible claim Those who wish to confer a favour in a delicate manner, will sometimes do it under the shape of a *gratuity*. those who overrate their services, will in all probability be disappointed in the *recompense* they receive.

Goshanashin (*H*) A Muhammadan ascetic The term is also sometimes used for pardanashin.

Gospel Christian revelation, tidings preached by Christ

Gospel oath. Oath taken or sworn on the Bible

Goswami A *Ballavachariya Goswami* has specific interest in the temple, idol and other property held by him capable of being partitioned or transferred A gift by such *Goswami* to another *Goswami* or his successor-in office is not invalid or contrary to customs and usages of the cult (28 I C 715)

Got. A clan a subdivision of a 'quam' or tribe• (*Bad Pow. ii* 671)

Gotraja Means related as sapindas, as samanodakas, as persons descended from one person and as having one common rishi in the order mentioned

Gotraja sapinda 'Male agnate' denotes a gotraja sapinda' "*Gotraja sapinda*" means a blood relation belonging to the same *gotra* Blood relations or sapindas may be related either through males or through females *Prima facie* sapindas who are related through an unbroken line of male descent are *gotraja sapindas* for by virtue of such unbroken relationship they must be of the same *gotra* [41 C W N 1126=46 L W. 806=39 Bom L R, 1014=169 I C 551=A I R 1937 P C 242=(1937) 2 M L J 711 (P C)]

Gotrs sadharanam stvakva (*in Hindu Law*) Means he who having left the country in which all the joint family resides, lives in a very distant country and the other members of the family have after partitioning, taken all the estate in ignorance of his existence Such a person after return should be given half a share of the property already divided (*Smriti Chandrika.*)

Goung (*Gaung*) (*Burma.*) Head, a headman of a police 'circuit' (*Bad Pow iii* 528)

Goutama. A great Hindu Sage and writer of an important Smriti that bears his name

Govern, rule, regulate. *Govern* is to exercise power or authority with judgment and knowledge; hence govern is never taken by itself in a bad sense. *Rule* denotes no more than control and direction by superior authority or power, however exercised *Rule* is exercised over the wills and actions of men only The despot *rules*, the constitutional monarch *governs* *Govern* implies a subject of some importance *Rule* is applicable to trivial things as well. *Regulate* denotes the exercise of a controlling power over force already in action or progress; as, to *regulate* finances It denotes less dignity and authority than *rule* or *govern*, but closer care and management, and the exercise of judgment and address The wise man will *govern* his passions, while he *rules* his conduct and carefully *regulates* his expenditure and his affairs (*Smith Syn Dis*)

"Governing body" nefined. Act 21 of 1860, S. 16.

Government.

"Government" defined This word is used in connection with other words (as) Government of India; Governor, Governor-General, Lieutenant-Governor, Local Governmert) Act 37, 1850, S 23; Act 30 of 1852, S 12, Act 45 of 1860, Ss 19, 263 A. Act 17 of 1864, S 1 Act 12 of 1874, S. 3 Act 13 of 1885, S. 31. Act 18 of 1887, S 18 Act 9 of 1890, S 137 Act 10 of 1897, S 3 (21) Act 8 of 1904, S. 2 Act 11 of 1913, S 4 Ben Act 1 of 1899, S 3 Bur Act 1 of 1898, S. 2. E B. & A Act 1 of 1909, S 5 Mad Act 5 of 1882, S 2 P Act 1 of 1898, S 2 Reg Act 1 of 1888, S. 11

"When civil society is once formed, government at the same time results of course, as necessary to preserve and to keep that society in order. Unless some superior be constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a state of nature without any judge upon earth to define their rights and redress their wrongs But as all the members which compose this society were naturally equal, it may be asked in whose hands are the reins of government to be entrusted? To this the general answer is easy; but the application of it to particular cases has occasioned one half of those mischiefs, which are apt to proceed from misguided political zeal In general, all mankind will agree that government should be reposed in such persons, in whom those qualities are most likely to be found, the perfection of which is among the attributes of him who is emphatically styled The Supreme Being, the three great requisites of wisdom, of goodness, and of power· wisdom to discern the real interest of the community; goodness to endeavour always to pursue that real interest; and strength or power to carry this knowledge and intention into action These are the natural foundations of Sovereignty, and these are the requisites that ought to be found in every well constituted frame of government How the several forms of government we now see in the world at first actually began, is matter of great uncertainty, and has occasioned infinite disputes However they began, or by what right soever they subsist, there is and must be in all of them a Supreme, irresistible, absolute, uncontrolled authority, in which the rights of Sovereignty reside And this authority is placed in those hands wherein the qualities requisite for supremacy, wisdom, goodness, and power, are the most likely to be found" (*Tomlin's Law Dic*)

"GOVERNMENT" "Government" or "the Government" shall include the Local Government as well as the Government of India Act X of 1897 (General Clauses), S 3 (21)

Government is not the same as Secretary of State (1933 A L J 796=1933 A 466.)

'Government', meaning of. *See* 17 O.C. 99=23 I.C. 935.

"God appointed a Ruler over every people, when he divided nations of the whole earth. And therefore if a people will refuse all government, it were against the law of God, and yet if a popular state will receive a monarchy it stands well with the law of God"—*Hobart, C J., Bruton* v. *Morris* (1614), Lord Hobart's Rep 149.

GOVERNMENT, ADMINISTRATION. *Government* has a more extensive meaning than *administration* the former includes every exercise of authority, while *administration* implies only that exercise of autho,

rity which consists in putting the laws or will of another in force. When we speak of the *Government*, as it respects the persons, it implies the whole body of constituted authorities, and the *administration*, only that part which puts in execution the intentions of the whole: the *government* of a country therefore may remain unaltered, while the *administration* undergoes many changes it is the business of the *government* to make treaties of peace and war, and without a *government* it is impossible for any people to negotiate it is the business of the *administration* to administer justice, to regulate the finances and to direct all the complicated concerns of a nation, without an *administration* all public business would be at a stand

The words "administration established" are used in the same sense as the words "Government established by law" and have the same meaning as the latter expression [18 Lah 445=38 Cr L J. 898=39 P.L R. 782=170 I C 439=A.I.R 1937 Lah 513 (S B)]

To GOVERN, RULE, REGULATE. The exercise of authority enters more or less into the signification of these terms, but to *govern* implies the exercise likewise of judgment and knowledge To *rule* implies rather the unqualified exercise of power, the making the will the rule, a king *governs* his people by means of wise laws and an upright administration, a *despot* rules over a nation according to his arbitrary decision, if he have no principle his *rule* becomes an oppressive tyranny These terms are applied either to persons or things persons govern or rule others, or they govern, rule, or *regulate* things.

Regulate is a species of governing simply by judgment, the word is applicable to things of minor moment Where the force of authority is not so requisite· one governs the affairs of a nation, we *regulate* the concerns of an individual We govern our passions, but we regulate our affections

Government and Court of Wards The Government and the Court of Wards are in no sense identical, and the Court of Wards cannot be regarded as merely a department of Government The Court of wards is a statutory body, and though in Bengal the Board of Revenue is the Court of Wards, yet that is not enough to make the possession of Government the possession of a ward of the Court of Wards (2 N W P 379, *ref*) [14 C W N 317=11 C L J 375=3 I. C 15]

"Government Land," defined, Mad. Act 4, 1897, S 3; Bom Act 1, 1865, S. 35

Government lands The term 'Government land' in section 35 of the Survey Act (Bom 1 of 1865), means land belonging to Government, *i e*, land of which Government is the proprietor, and does not include land in which the proprietary rights in the soil vest in a private individual, whether or not it be subject to payment of assessment to Government (1 B. 352.)

"Government of India," defined Act 45, 1860, S 16; Act 10, 1897, S 3 (22); Ben. Act 1, 1899, S 3; Bom Act 1, 1904, S 3, Bur Act 1 1898, S 2; E B & A. Act, 1, 1909, S. 5; A. Act 1, 1898, S. 2, U. P Act 1, 1904, S. 4.

The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively (Penal Code, S. 16, Gen. Cl. Act, 1897, S 3)

The term *"Government of India"* as used in S 42 of the Government of India Act means not the Governor-General in Council, but the superintendence, direction and control of the country (28 B 314 =6 Bom L.R. 65)

Government orders. Illegal commands of the Government can have no more effect than the dictates of a lawless mob which the officer in charge has no power to resist [26 I A 16 (28)=22 M. 270 (282)=3 C W N 161=7 Sar 459]

"Government Pleader," defined, Act 14, 1882, S 2, Act 5, 1898, S 2.

"GOVERNMENT PLEADER" includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by the Civil Procedure Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader, Act V of 1908 (Civ. Pro Code, S 2, cl 7)

"Government Provident Fund," defined, Act 9, 1897, S 2 (2).

"GOVERNMENT PROVIDENT FUND" means a Provident Fund, other than a Railway Provident Fund, constituted by the authority of the Government for any class or classes of its employees or of persons employed in educational institutions or employed by bodies existing solely for educational purposes, Act XIX of 1925 (Provident Funds) S 2, cl (d)

Government regulation The words "Government regulations and restrictions" do not include local regulations made by the Calcutta Port authorities and affecting the time or manner of loading in the port [54 Cal 84=53 I A 230=1926 M W N 882 =99 I C 581=31 C W N 317=26 M L W 1=38 M L T 9=A I.R 1926 P C. 121 (P.C.)]

'GOVERNMENT REGULATION' does not include rules by Calcutta Port Authorities [31 C W N 317=99 I.C 581=26 L.W 1=38 M L.T. (P C) 9=54 Cal 84]

"Government security," defined (*See also* Public Securities) Act 13, 1886, S 3 (1)

"GOVERNMENT SECURITY," means promissory notes (including treasury bills), stock-certificates, bearer bonds and all other securities issued by the Governor General in Council or by any Local Government in respect of any loan contracted either before or after the passing of the Indian Securities Act, but does not include a currency note Act X of 1920 (Securities) S 2, cl (a)

"Government ward," defined Act 17, 1885, S 3 (1), Reg. I, 1888, S 3 (2).

"Governor," defined 33-4 V. c. 14, S 17, 33-4 V. c. 52, S 26; 33-4 V. c 90, S 30; 36 7 V c 88, S 2. 41-2 V c 73, S. 7, 44-5 V. c. 69, Pt 4 (S. 39, 44 5 V c 58, S. 190 (27); 47-8 V. c. 31, S. 18; 52-3 V. c 63, S 18 (6)

Governor of a British possession, in the Naturalisation Act, 1870 (c. 14), S. 17 includes "any person exercising the chief authority in such possession" Governor means "any person or persons administering the government of a British possession, and includes the Governor General of India." Extradition Act, 1870 (c. 52), S. 26. Governor as to Canada

Governor-General

and India, means the Governor General or any person for the time being having his power, as to any other British possession, the officer for the time being administering the government of the possession (Int. Act 1889 (c. 63), S. 18 (6))

"**Governor-General**," defined 4 5 V c 58, S 190 (26)

"**Governor-General in Council**," defined See Government of India Act

"GOVERNOR-GENERAL IN COUNCIL," means the Governor General in Executive Council, Government of India Act 9 & 10 Geo V Ch 101, S 134, cl 1

"GOVERNOR IN COUNCIL," means a Governor in Executive Council, Government of India Act (9 & 10 Geo V Ch 101, S 134 (2))

Govinda Raja. A writer on Ancient Hindu Law who wrote commentary on Manu Dharma Sastra.

Grace Signifies concession not claimable as of right.

GRACE, FAVOUR. *Grace* denotes a benefit gratuitously conferred or a service gratuitously rendered *Favour* has in it more of personal affection and interest, the sign of desire for the well being of the person favoured. *Grace* excludes right and strict merit *Favour* is preference of persons for any cause *Grace* is removed from justice, and *favour* from impartiality *Grace* excludes equivalent, but does not exclude partial deserving *Favour* supposes no merit beyond pleasing One may grant *grace* to an enemy, one shows *favour*, or confers *favours* only on those one loves. (*Smith Syn Dis*)

GRACE (*Acts of Grace*) Acts of parliament for a general and free pardon, are called Acts of Grace (*Tomlin's Law Dic*)

ACT OF GRACE Pardon by Act of Parliament or the Legislature

"BY THE GRACE OF GOD" A term appended to Royal titles

Grace Days. A period of three days allowed by law or mercantile custom beyond the fixed day of payment for a bill of exchange or note.

GRACIOUS, MERCIFUL, KIND The words "*Gracious*" and "*Kind*" differ not so much in essence as in exhibition the *gracious* being the kind as shown to inferiors, while *kindness* may be towards any. It has in it an element of condescension *Graciousness* can only be shown to beings of some moral dignity and capacity, who may be able to appreciate the nature and value of actions, *kindness* may be shown towards dumb animals. *Kindness* is a duty in all. *Graciousness* rather implies such *kindness* as in excess of the mere demands of duty (*Smith. Syn. Dis*)

Grade of a court, depends on the pecuniary or other limitations of the jurisdiction of the particular court 134 I C. 273=1931 Nag 127 (19 Bom 127 *Rel on*).

The Small Cause Court is of inferior grade to the Court of the First class Subordinate Judge. (19 B 127.)

Grading. Cleansing of the bottom of a ship.

Gradual Accretion. An accretion to be gradual must be by gradual, slow and imperceptible means so

Grama-terige

as to render identification practically impossible (18 Ind Cas 855)

Graduates Scholars who have taken degrees in an university Those not having taken any degree are called Under graduates (*Tomlin's Law Dic*)

Grain, (*a measure of weight*) The twenty-fourth part of a penny weight (Merch Dict *Tomlin's Law Dic*)

GRAIN, is also applied to food grains The expression 'grain' is confined popularly to seed or cereal plants, Dal does not come under the heading of grain (58 Cal 955=134 I C 914=32 Cr.L J. 1235= A I R 1931 Cal 705)

Gramadhikari (*S*) The headman of a village (*Bad Pow* Vol I, 253)

Gramadhipathi (*S*) The headman of a village, commonly charged also by the Government with the general control of it, and the collection of the revenue.

Grama-hissebu (*Tel*) The general account of the collection and balance due delivered to the landlord at the time of settlement

Grama kanakan (*Tam*), Grama karnam (*Tel*) The village accountant

Grama kanthamu (*Tel*) A part of ground in a village for building huts upon

Grama kaval (*Tam*) The village watch

Grama lekhak An old name for the village writer, and accountant patwari (*Bad Pow*)

Gramalu mulu (*Tel*) An allowance given by villagers to Brahmans of a quantity of rice with the husk at the time of harvest

Gramam (*Mal & S*) a village generally, (*Bad Pow* 1 21, iii, 157) Applied in Malabar to a Brahmanical colony or collection of houses (*Moore Mal Law*) The term is equivalent to Agraharam in the Carnatic, a Brahman village At the time of Parasuram's gift of the country to the Brahmans, 64 Gramams were established from Goa to Cape Comorin, to these were attached all the Sudra Villages (Graene cited in *I og Mal Man*)

Grama-maniam (*Tam*) A certain extent of land enjoyed rent free by a hereditary proprietor of part of the village lands, as a personal privilege attached to such a share

Grama-merai (*Tam*) Allowances of a portion of the crop to the village officers and servants

Gramanattam or Grama Natham (*Tam*) Ground set apart, on which the house of a village may be built See 16 M L T. 48

Gramani. (*Tam*) The headman of a village.

Grama-otti-shettu (*Mal*) The mortgage deed of a village.

Gramasamishti-bhumi (*Tel*) Land possessed by the villagers conjointly—Samudayam land.

Grama-terige (*Karn.*) A fine levied in Mysore on ryots who have left their own villages and settled in others.

Gramastan

Gramastan (*Tam.*) The headman a chief man of a village

Gramattan-maniam A grant of rent-free land to the head of a village, in addition to his own share of the common property paying revenue *see* Gramamaniam

Gramattan-sutantram Fee and privileges enjoyed by the headman of a village

Gramopadhya Village priest who officiates in marriage and other ceremonies among villagers. (40 Bom 112=17 Bom L R 950=31 I C 448)

Gram Saranjam or mal saranjam lands. [10 M I A 16=1 W R (P C) 26=1 Suth 542=2 Sar 54]

Grand bill of sale (*In English Law*) The name of an instrument used for the transfer of a ship while she is at sea

'**Grandchildren**" defined, Act 10, 1865, S 86, Act 21, 1870, S 6, Act 39, 1925, S. 99.

The word "*grandchildren*" applies only to lineal descendants in the second degree of the person whose grandchildren" are spoken of, Act XXXIX of 1925 (*Succession*) S 99 (*b*)

Grandhavari (*Mal*) A register of documents or agreements relating to lands held by tenants under their Janmis It is drawn up on palm leaves and kept by the Janmis (*Moore Mal Law*) It is a book formed of the leaves of the Kudappana palm or Talipot tree in which Janmis register their agreements respecting land with their tenants or mortgagees. Where it is kept it is said to be a register which may be safely referred to as authenticating an agreement otherwise doubtful, but it is not now kept up so much as it used to be (*Log Mal Man*)

Grand distress (*Old English Law*) A process which formerly issued where a defendant or tenant after being summoned, neglected to appear, its object being to compel an appearance by distraining goods and profits of lands

Grand Jury. "The jury which finds bills of indictment before Justices of Peace, and gaol-delivery, or of Oyer and Terminer, &c They ought only to hear witnesses for the King and to find a bill on probable evidence, because it is but an accusation, and the party is to be put upon his trial afterwards" (*Tomlin's Law Dic*)

A grand jury is an informing and accusing body rather than a judicial tribunal

Grand larceny. A stealing of property above a certain value, the sum being variously fixed by statutes

Grange A building where corn or grain is kept and stored, a barn, or granary, "By the name of Grange, Grangia, a house or edifice, not only where corn is stored up like as in barns, but necessary places for husbandry also, as stables for hay and horses, and stables and styles for other cattle, and a curtilege, and the close wherein it standeth, shall pass; and it is a French word and signifieth the same as we take it" (*Co Litt 5a*)

Grant. An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases.

Grantee

"This word is taken largely where any thing is granted or passed from one to another And in this sense it doth comprehend feofments, bargains and sales, gifts, leases, charges, and the like, for he that doth give, or sell, doth grant also And thus it is sometimes in writing or by deed, and sometimes it is by word without writing But the word being taken more strictly and properly, it is the grant, conveyance, or gift, by writing of such an incorporeal thing as lieth in grant, and not in livery, and cannot be given or granted by word only without deed Or it is the grant by such persons as cannot pass anything from them but by deed, as the King, bodies corporate, &c And this albeit it may be made by other most proper to this purpose" (*Touch 228*)

In construing a grant the circumstances in which it was made are relevant considerations [48 I A 135=43 A 297 (302)=19 A L J 433=74 O C 118=(1921) M W N 349=29 M L T 409=34 C L J 113=14 L W 380=60 I C 907=40 M L J 577]

The rules of English law as to real property in England can afford no guidance as to what has passed under an Indian grant [56 I A 223=52 Mad 538=33 C W N 725=27 A L J 702=31 Bom L R 866=6 O W N 503=30 L W 9=1929 M W N 442=50 C L J 30=117 I C 481=I R (1929) P C 249=A I R 1929 P C 152=57 M L J 64]

A grant in respect of its amplitude is always construed (unless it be a Crown grant) against the grantor [54 I A 196=54 C 586=(1927) M W N 437=31 C W N 885=39 M L T 170=26 L W 642=101 I C 359 (2)=A I R 1927 P C 117=53 M L J 117]

CROWN GRANTS—Beneficial construction in favour of grantor *See* 29 M L J 389=15 M L T. 277

CROWN GRANT AND ZEMINDARI GRANT Difference between. *See* 26 M L J 99

"GRANT, BARGAIN, AND SELL Words used in instruments of conveyance of real estate.

GRANT, BESTOW, CONFER Honours, distinctions, favours, privileges are *conferred* Goods, gifts, endowments are *bestowed* Requests, prayers, privileges favours, gifts, allowances, opportunities are *granted*. A peculiar sense attaches to the word Grant as a legal term, as a piece of land granted to a noble or religious house So Blackstone speaks of "the transfer of property by sale, grant, or conveyance" (*Smith Syn. Dis*)

"**Grant of certificate**" (*in the Succession Certificate Act*) The extension of a certificate under S 10, Act VII of 1889 to additional debts is not the grant of a certificate within the meaning of S 19, Succession Certificate Act, (25 M 634)

"**Grant of money or land-revenue**" defined, Act 23, 1871, S 3

The expression "*grant of money or land revenue*" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office Act XXIII of 1871 (*Pensions*) S 3. These words should not be construed as applicable only to rights in the nature of pensions. These words should be taken to extend to rights such as a toda-giras-haks (5 B 408=8 I A. 77=4 P C J 230)

"**Grantee**" defined, Act, 1, 1869, S. 2 (sub U. P. Act 3, 1910, S, 2)

GRANTEE A person to whom a grant is made; every person to whom an estate or interest passes in

Granth

or by any deed, one who takes by any species of conveyance, the purchaser of an estate, a legal representative of the assignor or grantor, in regard to the thing assigned or granted

Granth (*P*) A book, but especially the Holy Book of the Sikhs. (*Adi Granth*)

Granthi (*P*) A reader of the Sikh scriptures One or more granthis were appointed to each Sikh regiment

Granting The "granting" of an (Execution) application under C P Code includes the issue of a process for execution of the decree (16 C 744)

Grantor A person who gives, bestows, or concedes a thing, one who makes a grant, the proper and customary word to designate the party who conveys by deed, and in legal parlance is understood to be the party who makes and executes a deed or conveyance, the most common and comprehensive word used to mean one who transfers, by any mode of conveyance, property in houses or lands

Graphology Study of handwriting, especially as guide to character

Grassia *See* Girasiya

Grassias—Kasbatis—Tenures of They (the Grassias were ancient Rajput proprietors, and, before the cession of the Ahmedabad Zillah by the Gaekwar to the British Government stood to their native Sovereigns in that relation, their lands being cultivated by raiyat tenants from year to year and at will They and the mewassies were clearly distinguishable from the Kasbatis The last named held their lands by contract, neither by sanad nor by defiance, and there was no analogy between the holdings of the grassias and those of the Kasbatis [42 I A 229=39 B 625 (660-1)=19 C W N 1087=18 M L T 179=17 Bom L R 730=13 A L J 953=2 L W 731=1915 M W N 563=30 I C 303=29 M L J 242]

"Gratification" defined Act 45 of 1860, S 161, expln

"GRATIFICATION" The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money (Penal Code, S 161)

Gratuitous Without valuable or legal consideration A term applied to voluntary deeds of conveyance.

Gratuitous, Voluntary *Gratuitous* is opposed to that which is obligatory. *Voluntary* is opposed to that which is compulsory A gift is *gratuitous* when it flows entirely from the free will of the giver independently of right an offer is *voluntary* which flows from the free will, independently of all external constraint

GRATUITOUS, VOLUNTARY, WILLING *Gratuitous* means given without equivalent or recompense, granted irrespectively of claim, or where none exists *Voluntary* is more restricted in its sense than willing, having the negative signification of not done under compulsion A *voluntary* benefit is one which is given with freedom of will, a gratuitous benefit is one which has been purchased by nothing on the part of the receiver (*Smith Syn Dis*)

Gratuitous bailment "Gratuitous" bailment signifies that "the bailee is to have the use and enjoyment of the subject-matter of the bailment for his own benefit and advantage, without payment of hire or reward to the bailor" (*Coggs v Bernard*, 2 Raym I d 916 Paine on Bailments)

Great seal

Gratuitous deeds Are such as are made without good and legal consideration (*Tomlin's Law Dic*)

Gratuity 21 M L J 641=11 I C 509 (P C)

GRATUITY, GIFT *Gift* being simply a thing given, *gratuity* is a certain kind of gift It is commonly expected as due, but could not be enforced as a legal term (*Smith Syn. Dis*)

Grava "Grava signifieth a little wood, in old deeds and hirst or hurst a wood, and so doth holt and shawe" (Underwood) (*Co. Litt* 4-b; *Jacob*)

Grave Hole dug for burial of corpses, mound or monument over place of burial

GRAVE, TOMB, SEPULCHRE. These terms have a certain propriety of application "to sink into the *grave*" is an expression that carries the thoughts where the body must rest in death, consequently to death itself "to inscribe on the *tomb*, or to encircle the tomb with flowers," carries our thoughts to the external of that place in which the body is interred To *inter* in a sepulchre, reminds us of a place in which bodies are deposited, or by a figure, where any thing may be buried

Gravestone A stone laid over a grave, or erected near it (commonly at its head), in memory of the dead

Grave yard. Burial ground Once a plot of land has been proved to be a graveyard the zemindar has no right left at all for the simple reason that the graveyard becomes a wakf for the purpose of burying the dead The zemindar cannot interfere with the use of the land as graveyard so long as it is used for this purpose and he can neither graze cattle upon the graveyard nor can he use it for any other purpose whatsoever [149 I C 966=3 A W R 347=1934 A L J 248=A I R 1934 A 335]

Graving dock Dock where ships are cleaned

Great Large, big, more than ordinary important, distinguished (as) the great powers

GREAT, LARGE, BIG *Great* is used generally in the improper sense, *large* and *big* are used only occasionally a noise, a distance, a multitude, a number, a power, and the like, is termed *great*, but not *large* we may, however, speak of a *large* portion, a *large* share, a *large* quantity, or of a mind *big* with conception, or of an event *big* with the fate of nations

Great Britain The United Kingdoms of England and Scotland

Great bear Great Britain

Great charter Magna Charta

Great day The day of judgment

Great Powers The chief military and Political states—especially, France, Germany, Russia, Italy, Japan, The United States, Great Britain

Great seal. Signifies the great seal of the United Kingdom

Greenbacks

Greenbacks. The term greenback is the popular and almost exclusive name applied to all treasury issues, and is not applied to any species of paper currency

Green goods A slang term for counterfeit money.

Gregorian calendar Refers to the correction of the calender by Julian 1582 (*See* calendar)

Grenade. Explosive shell thrown by hand or shot from rifle-barrel

Grievance Ground of complaint

GRIEVANCE, HARDSHIP *Grievance* is in general taken for that which is done by another to grieve or distress. *Hardship* is a particular kind of grievance that presses upon individuals There are national *grievances*, though not national *hardships* An infraction of one's rights, an act of violence or oppression are *grievances* to those who are exposed to them, whether as individuals or bodies of men an unequal distribution of labour, a partial indulgence of one to the detriment of another, constitute the hardship The weight of taxes, levied in order to support an unjust war, will be esteemed a *grievance* the partiality and caprice of the Collector in making it fall with unequal weight upon particular persons will be regarded as a peculiar *hardship* Men seek a redress of their *grievances* from some higher power than that by which they are inflicted they endure their *hardships* until an opportunity offers of getting them removed (*Crabb*)

"It is better private men should have some injustice done them, than a public *grievance* should not be redressed This is usually pleaded in defence of all those *hardships* which fall on particular persons, on particular occasions which could not be foreseen when the law was made" (*Spectator*)

A *grievance* is a mental hardship, or a *hardship* as dwelt upon in the mind Heavy taxation is a *hardship* when viewed in its pauperizing effects, a *grievance* as furnishing ground of complaint against a government or an administration *Hardship* comes from a force stronger than ourselves, whether from nature or from man *Grievance* may exist between equals Among civilized nations one may have a *grievance* against another, where *Hardship* could not be predicted, yet the national *grievance* might be such as to entail hardship upon individuals (*Smith Syn Dis.*)

Grievous bodily harm This term does not always and necessarily connote "that it should be either permanent or dangerous, if it be such as seriously interferes with comfort or health it is sufficient" (per *Willes, J., R* v. *Ashman*, I. F. & F 88, whv.)

"Grievous hurt" defined (*See also* Voluntarily causing grievous hurt) Act 45, 1860, S 320

GRIEVOUS HURT The following kinds of hurt only are designated as "grievous" *First.*—Emasculation *Secondly*—Permanent privation of the sight of either eye *Thirdly*—Permanent privation of the hearing of either ear *Fourthly*—Privation of any member of joint *Fifthly*—Destruction or permanent impairing of the powers of any member or joint *Sixthly*—Permanent disfiguration of the head or face. *Seventhly*—Fracture or dislocation of a bone

Gross Neglect

or tooth. *Eighthly*—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits. (Penal Code, S 320)

Groats The allowance to prisoners kept in execution for debt, is vulgarly so called (*Tomlin's Law Dic*)

Grocers "Were formerly those who ingrossed merchandise It is now a particular and well known trade" (*Tomlin's Law Dic*) A grocer is a dealer in spices, sugar and domestic sugar Formerly "Grocers were merchants that engrossed all merchandize vendible, but now it is a particular and well-known trade" (*Cowel*)

Grocery The trade of a grocer

Groceries A term which may include all such goods and merchandise as are usually kept in such stores as are called dry goods and grocery stores

Gronna "A deep pit where turfs are dug to burn" (1 *Mon Angl* 243 *Jacob*)

Gross Whole, entire, total, without deduction, taking in the whole, having no deduction or abatement

"Gross value is different from 'Value' It is, though a convenient, an inaccurate expression, like 'gross profits' The difference between what a thing costs and the larger sum it sells for is not profit if the buying and selling are attended with expense to the trader Value is not value" (per *Ld Bramwell Dobbs* v *Frand Junc. W W Co*, 53 L J Q B 52, 9 App Ca 49)

Gross, Total The gross implies that from which nothing has been taken the total signifies that to which nothing need be added The gross weight in trade is applicable to any article, the whole of which good or bad pure or dross, is included in opposition to the net weight, the total amount supposes all to be included which ought to form a part, in opposition to any smaller amounts or subdivisions

"Gross Estimated Rental," "the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes

"Gross income," defined Act 10, 1892, S 2 (2).

"GROSS INCOME" includes all receipts of every kind in produce or cash, except money borrowed, recoveries of principal and the proceeds of sale of immoveable property or of moveable property properly classed as capital: Act X of 1892 (Government Management of Private Estates) S 2, cl 2

GROSS INCOME The expression *"gross income* received in or from the city" in the proviso to Rule 7 of Sch IV of the Madras City Municipal Act does not include income arising out of business transacted outside Madras, the proceeds whereof are transmitted to and received by the agents of the Incorporated Company in Madras [46 M L J. 505=20 L W 347= A I R. 1924 Mad 754]

Gross Neglect. The expression *"gross neglect"* finds no place in the Indian Criminal Codes. The codified Criminal Law of India does not render a mere casual inadvertance of duty criminal, but such neglect of duty as either directly results in loss of

Gross negligence

life or injury to person (Ss 304-A, 337 and 338, I P. Code, and in certain special cases) or such neglect as endangers life or property (Ss 279 to 289, I P. Code, Ss 102 and 128 of the Indian Railways Act) *Kennedy, J C and Rupchand Bilaram, A J.C.*) *F C Woodward* v *Crown* (18 S L.R 199=A I R 1925 Sind 233 *See also* 6 Rang 423=111 I C. 105=A I R 1928 Rang 136)

"Gross negligence," "sometimes called 'Wilful Blindness" is the same thing as 'Negligence', with the addition of a vituperative epithet" (per *Rolfe, B Wilson* v *Brett*, 11 M W 115, 116).

"Gross Rent" "Gross Rent" is the annual rent which a tenant might reasonably be expected to pay for an hereditament if the landlord undertook to bear the expenses necessary to maintain the hereditament in a state to command that rent (35 Ind Cas 589=31 M L.J. 315=(1916) M W.N. 130)

Ground Rent, if unexplained, is to be understood a rent less than the Rack-Rent of the premises, its proper meaning is the rent at which land is let for the purpose of improvement by building (*Steward* v *Allist on*, 1 Mer 26)

IN GROSS. A thing or right *"In Gross"*, is one that is independent of anything else *(Cowel)*

"IN GROSS" AND "APPENDANT" A power "is Appendant when the estate created by its exercise overreaches and affects the estate and interest of the Donee of the power, It is *in Gross* when the estate so created is beyond, and does not affect, the estate or interest of such Donee" (*Farwell*, 9)

Ground A term used in the sense of foundation, basis, support, but often used as synonymous with land

Groundage Charge for space occupied by a ship while in port.

Group A number of persons or things existing or brought together with or without interrelation, orderly form, or arrangement

Grove. Character of 117 I C 616=1929 A 557

"Growing crops" defined U. P Act 1, 1901, S 4 (20)

A crop which exists in contemplation of law from the time the seed is deposited in the ground until after it is harvested, an interest in land As used in reference to levy of execution on any growing crop it imports that the crop is not come to maturity, but is green or not made

A "growing crop' necessarily means a crop which is in existence and which is in the process of coming to fruition (171 I C 553=A I R. 1937 Nag 289)

Grub Stake. A peculiar and novel character of contract, common in the early mining history, where two parties enter into a common venture, one furnishing the grub and the other the labor, in prospecting for valuable mining properties, a contract by the terms of which one party is to furnish the necessary provisions, tools, powder, etc, and the other party agrees to prospect and locate mineral lands, and do the work necessary to the location of mining claims thereon, the interest thus acquired in the property to be held jointly by the parties.

Guaranty.

"Guarantee" defined. *See* Continuing guarantee, Contract of guarantee, *See* 5 S.L R. 192=15 I.C. 757.

Guarantee Guaranty "A Guarantee is a collateral engagement to answer for the Debt, Default, or Miscarriage, of another person"

Guarantee and Indemnity "A *Guarantee* is a promise to another *qua* Creditor to secure the payment of a debt payable to him, whereas an *Indemnity* is a promise to another *qua* Debtor to secure the repayment of a debt payable by him" *Dane* v *Mortgage Insrce*, 1894, 1 Q.B 55, 63 L J Q B 144, *Harburd Co* v *Martin*, 71 L J K.B. 529, 1902, 1 K.B. 778).

The contract of guarantee, or, as it is sometimes called, the contract of principal and surety, which may be defined as a contract to pay a debt or perform a duty in the event of another person, who is primarily liable, not paying such debt or performing such duty, is apt to be confounded with other contracts, in particular with the contracts of indemnity and insurance Many definitions of guarantee include indemnity, the right of contribution, the contract of insurance, and contract of a *del credere agent.* There is a sense in which the contract of indemnity includes guarantee, it has been remarked that every promise to become answerable for the debt or default of another may be expressed as an indemnity (*Green* v *Cresswell*, 1839, 10 Ad. & E, p. 458) But a distinction exists between a promise to pay the creditor if the principal debtor makes default and a promise to keep a person, who has entered, or is about to enter, into a contract of liability indemnified against that liability, independently of the question whether a third person makes default or not (*Guild* v *Conard*, 1894, 2 Q B, p 896 *Thomas* v *Cook*, 1828, 8 Barn & Cress, 732, 32 R R 520; De Colyar on Guarantees, 3rd ed, Troop on the Validity of Verbal Agreements, Fell on the Mercantile Guarantees

Guarantee Broker, 8 S.L R. 112

Guarantee Fund Reserve fund set apart to meet possible losses.

Guarantee insurance is a guarantee against loss in cases a person named shall make a designated default or be guilty of specified conduct.

Guarantee Society A company which guarantees employers from loss in respect of the defaults, omissions or malpractices of employees.

Guaranteed In a Charter Party the use of the word "Guaranteed" "has no technical meaning. It is no more than 'I have promised' and means probably that the ship shall be ready" (or whatever be the thing guaranteed), "provided she be not prevented by the expected perils" (per *Willes, J, Barker* v. *M'Andrew*, 34 L J C P 194).

"Guaranteed Company" defined 42-3 V. c. 41, S 1.

Guaranteed Stock Stock, the interest on which, or the principal, or both, is guaranteed

Guaranty (See *Guarantee*) A promise to answer for the payment of some debt or the performance of some duty in the case of the failure of another person, who, in the first instance, is liable to such payment or performance

Guaranty

ABSOLUTE GUARANTY. An absolute guaranty is one by which the guarantor is bound immediately upon the principal failing to perform his contract without further steps taken by any one or without further conditions to be performed

CONDITIONAL GUARANTY Where the guaranty is not enforceable immediately upon the default of the principal debtor but the guarantee is obliged to take some steps to fix the liability under the guaranty, such as diligently prosecuting the claim against the principal debtor, the guaranty is a conditional one

CONTINUING GUARANTY Continuing guaranties are those unrestricted guaranties which continue in force until revoked

GENERAL GUARANTY A general guaranty is one for acceptance by the public generally, and is so written that any one to whom it is presented may act upon it, and having done so, may hold the guarantor responsible thereon. A general guaranty is also defined as one in which none of the terms are fixed in the writing and to which the law therefore adds the condition that there shall be due and unsuccessful diligence used by the creditor to collect the claim from the principal debtor unless it is apparent that all diligence would be without avail

LIMITED GUARANTY Limited guaranties are those in which the guarantor specifies a time during which the guaranty shall operate or fixes a maximum amount of liability

SPECIAL GUARANTY A special guaranty is one on which the guarantor is responsible only to the person addressed in the writing itself

TEMPORARY GUARANTY Temporary guaranties are those in which the guarantor limits the time during which the credit may be extended on the faith of the guaranty

UNLIMITED GUARANTY An unlimited guaranty is one which is unlimited either as to time or amount, or as to both time and amount

PARTIES TO GUARANTY The one executing the guaranty is called the *guarantor*, the one to whom the guaranty is given is the *guarantee* or creditor, and the person whose debt, conduct, or contract is guarantied is known as the *principal* or *principal debtor*

Guard. Protector, escort, official in charge of a train (Railway guard), soldiers protecting place or person, a separate portion of an army (as advance guard, rear guard, mount guard etc)

GUARD-ROOM Room for use of military guards or for securing prisoners

GUARD, GUARDIAN Of these *Guard* is applied both to persons and things, *Guardian*, less often to things, and more commonly to persons But a more marked difference is that *Guard* denotes a protector against, physical danger, violence, theft, and the like, *Guardian*, against the interests of persons, especially during youth or minority, when they are too inexperienced to manage their own affairs (*Smith Syn Dis.*)

Guard is applied either to persons or things, *guardian* only to persons In application to persons, the *guard* is temporary, the *guardian* is fixed and permanent the *guard* only guards against external evils. the *guardian* takes upon him the office of parent counsellor, and director when a house is in

Guardian

danger of being attacked, a person may sit up as a *guard*; when a parent is dead, a *guardian* supplies his place, we expect from a *guard* nothing but human assistance, but from our *guardian angel* we may expect supernatural assistance (*Crabb*)

GUARD, SENTINEL *Sentinel* is properly a species of *guard* in the time of a campaign, any one may be set as guard over property, who is empowered to keep off every intruder by force, but the *sentinel* acts in the army as the watch rather to observe the motions of the enemy than to repel any force. The *guard* acts on ordinary occasions, the sentinel in moments of danger

TO GUARD, DEFEND, WATCH, To *guard*, in its largest sense, comprehends both watching and defending, that is, both the preventing the attack and the resisting it when it is made In the restricted sense, to *guard* is properly to keep off an enemy, to *defend* is to drive him away when he makes the attack The soldier *guards* the palace of the king in time of peace and *defends* his country in time of war *Watch*, like *guard*, consists in looking to the danger, but it does not necessarily imply the use of any means to prevent the danger, he who watches may only give an alarm

TO GUARD AGAINST, TAKE HEED Both these terms imply express care on the part of agent, but the former is used with regard to external or internal evils, the latter only wish regard to internal or mental evils in an enemy's country it is essential to be particularly on one's *guard*, for fear of a surprise, in difficult matters, where we are liable to err, it is of importance to *take heed* lest we run from one extreme to another

"**Guardian**" defined (*See also* Lawful guardian, Act 13, 1880, S 2 (3), Act 8, 1890, S 4 (2), Ben. Act 5, 1880, S 2, Bom Act 3, 1874, S 4, Bom Act 1, 1877, S. 2 (2), Bom Act 4, 1879, S 2 (2), Bom Act 1 1892, S 40 (6) Mad Act 4, 1884, S 3 (*viii*), Mad Act 5, 1884, S 3 (*iv*).

GUARDIAN One who hath the charge or custody of any person or thing, but commonly he who hath the custody and education of such persons as are not of sufficient discretion to guide themselves and their own affairs, as children and idiots, (*Blount Tomlin's Law Dic*)

A guardian, in the popular sense of one who guards, preserves, or secures, is the generic term applied in legal usage to a person whose duty it is to protect the rights, whether of person or property, of some other person, his ward, who, as in the case of minors is conclusively presumed to incompetent to manage his affairs

"GUARDIAN" includes, any person who "has for the time being the charge of, or control over," a Child (42 & 43 V c 49, S 49, 47 & 48 V c 19, S. 9).

"Guardian" means a person having the care of the person of a minor or of his property, or of both his person and property Act 8 of 1890 (Guardians and Wards) S 4, cl 2

"Guardian" means a relation or other person to whom the care, nature or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nature or custody of any child, or in case of dispute the holder of a certificate of guardianship from a competent Court. Bom Act 3 of 1874 (Hereditary offices), S. 4.

Guardian

"Guardian" includes any person who has accepted or assumed the care or custody of any child: Vaccination Act 13 of 1880, S 2

An infant may have several Guardians he may have a guardian of the Person, or a Guardian in Socage, or in Gavel kind, or if he has a Copyhold estate, a Guardian according to the custom of the manor, but generally the word Guardian means, Guardians of the Person (per *Jessell, M R Rimington* v *Hartley*, 14 Ch D, 632)

The word "guardian" is used in a very wide sense and does not necessarily mean a guardian duly appointed or declared by Court Any person who has the care of the person of the minor is a guardian of the person and any person who has the care of the property of the minor is a guardian of the property [54 All 128=137 I.C 219=1932 A L J 21=A I R 1932 All 215 *See also* 17 Bom 566]

"GUARDIAN APPOINTED OR DECLARED" The clause "a guardian appointed or declared by an authority competent in his behalf", as used in C P Code, if applies to a guardian appointed or declared by the will of a Hindu father (8 Bom L.R 522, 31 Bom 413)

Guardians, Board of *See* Int. Act, 1889 (c 63), S 16 (1), (3)

Guardian of any hospital, in 13 Eliz c 10, S 2, includes lay persons, and extends to secular institutions *Governors of Magdalen Hospital* v *Knotts* (1878, 8 Ch D 724)

Guardians of the Peace Those that have the keeping of the peace, wardens or conservators thereof (*Tomlin's Law Dic*)

Guardians of the Poor. For the better administration of the poor law, the whole of England and Wales, is divided into districts of varying size and population, called unions In each union there is a body, called a Board of Guardians, which administers the poor law in that district The statutory definition of a "poor law union" is in fact, any parish or union of parishes for which there is a separate Board of Guardians" for the poor (52 and 53, Vict c 63, s. 16.)

"Guardianship" (Office of a guardian)

Gudhaja (*Hindu law*) Is the son secretly born in the house

Gudhaja son (*Hindu law*) Is one secretly brought forth in the husband's house A son of hidden origin

Gudikattu (*Tel*) The whole extent of land attached to a temple, or a statement exhibiting it

Gudikattu dowle Gudikattu dowle means entire assessment (13 I A 32=9 M 307 (316)=4 Sar. 696.)

Gudivaram (Kudivaram (*Tel*) The ryot's share of the crop

Guess Estimate without calculation or measurement; form hypothesis about

TO GUESS, CONJECTURE, DIVINE We *guess* that a thing actually is, we *conjecture* that which may be we *guess* that it is a certain hour, we *conjecture* as to the meaning of a person's actions. *Guessing* is opposed to the certain knowledge of a thing, *conjecturing* is opposed to the full conviction of a thing. a

Guild

child *guesses* at that portion of his lesson which he has not properly learned, a fanciful person employes *conjecture* where he cannot draw any positive conclusion

To *guess* and to *conjecture* are natural acts of the mind. to *divine*, in its proper sense, is a supernatural act, impostors in our time presume to *divine* in matters that are set above the reach of human comprehension

GUESS, CONJECTURE, DIVINATION, SUPPOSITION, HYPOTHESIS, SURMISE To *Guess* is to make a statement upon what is unknown, with the hope of being right, if by lucky chance only, this is in the strictest sense a *guess*, if with a very slight amount of knowledge, which is just sufficient to incline the scale of probability, this is a *Conjecture* An historian or a diplomatist who is furnished with inadequate evidence for knowledge, *conjectures* motives and consequences as best he may.

Supposition belongs to that of which part is known and part unknown. To imagine with probability, to infer from evidence, which, though not complete, is the best that can be had, is *supposition*. *Supposition* has in it much more of rational inference than *Guess or Conjecture Hypothesis*, similarly, is a supposition, as the ground work of argument or of action, but is technically employed of philosophical supposition, learned or scientific theories. *Divination* is literally a term of ancient augury for the gathering the will of heaven, either naturally by a divine inspiration, or artifically from certain manifestations, in this sense, *divination* precedes *prediction Surmise* is a conjecture of a matter of fact. (*Smith Syn. Dis*)

Guest In the term "Guest" are included a Traveller, passenger, wayfarer and such like person, who, by himself, or his beast, has been however temporarily, accepted to, and remains under, hospitality within an Inn or its Curtilage (Caylye's Case, 1 Sm L.C. 141)

Guga (*P*) The name of a pir or saint to whom offerings are made to avert danger from snakes By his shrines are erected, right and left, smaller shrines to Narsingh his diwan, and Goraknath his Guru

Gugari-bil (*Karn.*) Pasture ground granted rent-free to a headman.

Guide. Directing principle, standard

GUIDE, RULE *Doctrine* The *Bible* is our best guide for moral practice its *doctrines*, as interpreted in the articles of the Christian church, are the best rule of *faith*

Guild Society for mutual aid or with common object or passing common interests

GUILD "A fraternity or company, because every one was to pay something toward the charge and support of the company. The original of these guilds and fraternities is said to be from the old Saxon law, by which neighbours entered into an association and became bound for each other, to bring forth him who committed any crime, or make satisfaction to the party injured, for which purpose they raised a sum of money among themselves, and put into a common stock, whereout a pecuniary compensation was made according to the quality of the offence committed From hence came our fraternities and

Guild Hall

guilds, and they were in use in this kingdom long before any formal licenses were granted for them, though at this day they are a company combined together, with orders and laws made by themselves, by the princes's licence. (*Camd Tomlin's Law Dic.*)

Guild-Hall. The chief hall of the city of London, for the Meeting of the Lord Mayor and Commonalty of the city, making laws and ordinances, holding of Courts &c It also signifies the chief Hall of other cities and corporate towns (*Tomlin's Law Dic*) "Guildhall," has been defined to mean the land, offices, courts, and buildings commonly called the Guildhall, and the officers, courts, and buildings adjoining or appurtenant thereto, which now are used by, or may hereafter be erected for the use of, the Corporation or of any Committee, Commission, or Society, appointed by them." (Lon Bg. Act, 1894)

Guild-Socialism. System by which the resources, methods and profits of each industry should be controlled by a council of its members.

Guillotine Beheading machine, In Parliamentary practice, a method of preventing obstruction by fixing times for voting on parts of a Bill

Guilt. Culpability, Having committed the offence in question

Guiltless Innocent of the offence charged

Guilty. Culpable, Criminal, having committed an offence There is no difference between the expressions "found guilt" and "convict" 58 Bom 37 =35 Bom L.R 1018=146 I C 1=1933 Bom 461 (F.B)

GUILTLESS, INNOCENT *Guiltless*, without guilt, is more than *innocent innocence*, extends no further than the quality of not hurting by any direct act, *guiltless* comprehends the quality of not intending to hurt. it is possible, therefore, to be *innocent* without being *guiltless*, though not vice versa. he who wishes for the death of another is not *guiltless*, though he may be *innocent* of the crime of murder *Guiltless* seems to regard a man's general condition, *innocent* his particular condition no man is *guiltless* in the sight of God, for no man is exempt from the guilt of sin, but he may be *innocent* in the sight of men, or *innocent* in of all such intentional offences as render him obnoxious to his fellow creatures.

Guinea. A gold coin worth twenty-one shillings.

Gujar. The name of a tribe supposed to have come from Eastern Tartary and to have settled in and about Peshawar about 100 B C Some centuries later, they moved further south, and gave their name to the district of Gujarat in the Punjab and also to the Province of Gujarat on the West Coast They are now a numerous body of cultivators and cowherds in the Punjab and the North-West Provinces, and generally resemble the Jats and Ahirs, but are far inferior to the former as cultivators and in industry. The Gujars of the Kangra hills keep herds of buffaloes and cultivate scarcely at all As the Gujars have given their name to Gujarat, so again persons of any caste who have migrated from that province are called elsewhere Gujars, such emigrants are usually traders (*Bad Pow* Vol I, 141, II, 671; III, 261)

Gurges.

Gulivina-Pummu (*Karn*) Tax on each plough.

Gumashta Lit Agent.

Gumashta Kanungo is an agent or deputy of the Kanungo

Gumashta pandya (*Berar*), stipendiary village accountant (*Bad-Pow* III, 384)

Gummi (*Karn*) A large basket for storing grain.

Gun "Gun", includes, a Firearm of any description, and an Air gun or any other kind of gun from which any shot, bullet, or other missile, can be discharged and also includes a small toy pistol "as a Firearm" (*Campbell* v *Hadley*, 40 J. P 756)

Gun is a metal tube for throwing missiles with gunpowder etc, cannon

Gun-boat Small warship with heavy guns

Gun-bus Aeroplane carrying gun

Gun carriage Carriage or wheeled support for gun

Gunchi-patta A lease taken out in the name of two or more ryots in partnership,

Gun-cotton Cotton steeped in nitric or sulphuric acid, used for blasting

Gun fire Firing of morning or evening gun at stated hour to show time of the day

Gun-house Shelter for gun and gunner in action.

Gun metal Alloy of copper and tin or Zinc, formerly used for making guns

Gun-powder Explosive of salt-petre, sulphur and charcoal

Gun-powder-plot A plot to blow up Parliament, Nov 5th 1605, which eventually failed.

Gun room in warship-room for junior officers, or room used as lieutenants mess-room

Gun running Illegal bringing of guns into dependent country

Gun-shot Range of gun.

Gun shy Frightened at report of gun

Gunner Officer attached to artillery. Warrant officer in charge of battery's magazine etc

Gunnegaii (*Karn*) A fine, especially for stealing ears of corn

Gunpowder "includes" Gun cotton and any other Explosive Matter used for the discharge of Fire-arms"

Gunta (*Tel*) A square land measure equal to 121 square yards or the 40th part of an acre

Guntaka (*Tel.*) A sort of harrow or implement for levelling ploughed ground. A sowing machine.

Gunth. (*Kumaon Hills, N W P*), free land for support of a temple. (*Bad Pow. ii.* 314)

Gurges "Gurges a deep pit of water, a gors or fulfe, consisteth of water and land; and therefore by the grant thereof by that name the soil doth pass.

Gurikar.

"By the name of Stagnum a pool, or *Gurges* a gulf, the water, land, and fish in the water, will pass" (*Touch* 95)

Gurikar (*Karn*) The headman of a village

Guru (*S*) Hindu Spiritual teacher

Gurumata (*P*) The advice of the Guru, the name of the diet, or conclave of the Sikh leaders, held annually at Amritsar in times subsequent to the Gurus

Gurumukhi The language of the Sikh gurus, but applied most commonly to the modification of the Devanagari alphabet which they used

Gut Bowels or entrails, intestine, "a portion of the animal form as a necessary part of its constitution" (per *Ridley, J, London Co* v *Hirsch*, 81 L T 449)

Gutta (*Karn Tel*) Farm, lease, rent

Guttagadu (*Tel*) A renter, a farmer

Gutter Channel at side of street carrying off rain water

Gutter Sewer A Gutter is of a less size and of a narrower passage and current, than a Sewer is, and is the diminutive of a sewer, and the difference between them is, That a Sewer, a common public stream and a Gutter is a straight private running water, and the use of a Sewer is common, and of a Gutter peculiar" (*Callis*, 80)

Guttige (*Karn*) Assessment, rental on land

Guttige dar (*Karn*) One who rents from Government the lands of a village, one who farms the revenue

Guttigehola (*Karn*) A rental field

Guttu Principal house or houses in a Seeme or Chieftain's province (*Kan*) (*Sun Mal Law*)

Guzara The guzara is a sort of subordinate zamindari, or under proprietary tenure carved out in the estate, but this fact will not make the widow of a guzaradar who has been expressly given only a life-estate under a family arrangement, a talukdar (146 I C 710=10 O W N 844=A I R 1933 Oudh 439)

GUZARA whether constitutes encumbrance on talukdar's property 13 R D 813

Guzara (*local, Hazara, Pj*), an allotment or possession of waste for grazing and wood-cutting necessary for subsistence (*guzarna to pass life, P*), (*Bad Pow* 695 *note*)

Guzaradar, is not a tenant 13 R.D 813

Guzashta a peculiar tenure in Bihar. (*Bad Pow* 588.)

Guzazht (*Persian*) Past, gone by, applied to land sub-let by the proprietor, also to accounts or transactions of a past year

"Gyani" The word "gyani" implies a person possessing too much wisdom to worship idols 14 Pat L T. 415=A I R. 1933 Pat 449

Gymkhana Public place for display of athletics

Gynaecology Science of woman's disease

Gynocracy. (*or Gynaecocracy*) Female rule

Habeas corpus.

Gypsy. The gypsies (*whose origin is uncertain*) are a population of a nomadic character dwelling in tents or caravans and scattered over England, on the continent of Europe, Northern Asia, and America. In modern times they have shown an increased tendency to assimilate themselves with the populations among whom their lot is cast, but they still exist in most countries as a distinct body of people Ency of the Laws of England, As to the gypsies generally, *see* Hoyland, Hystory of Gypsies, article "Gypsy" in British Encyclopaedia, and the authorities there cited, Coke, Institutes, Hale, Pleas of the Crown Black Com Reeves, Hist. Eng. Law. *Hans Gross Criminal Investigation*

H

H B M An abbreviation of His (or Her) Britannic Majesty

H E An abbreviation of His or Her Excellency, the title of Viceroys and Governors in Indian Provinces and their wives

H H An abbreviation of Her Highness or His Highness

H I H His (or Her) Imperial Highness

H. M His (or Her) Majesty

H M S His (or Her) Majesty's ship

H R H His (or Her) Royal Highness.

H S. H His (or Her) Serene Highness.

Habeas corpus. Writ requiring body of person to be brought before Judge or into Court The subject's writ of right, in cases where he is aggrieved by illegal imprisonment Founded on the Common Law, and secured by various statutes, of which the most powerful, is emphatically styled The Habeas Corpus Act, and is at least next in importance, if not indeed as relates to modern times, superior in its beneficial effect to Magna Carta, (*See 2* Inst 55 (615), 4 Inst 182, Cro Jac. 543, 2 Ro. Ab 69. Com. Journ April 1st 1628 (*Tomlin's Law Dic*)

"Next to Personal Security, the law of England regards, asserts, and preserves, the personal liberty of individuals against all imprisonment or restraint, unless by due course of law,—This is a right strictly natural, and the laws of England have never abridged it without sufficient cause nor can it ever be abridged in this kingdom at the mere discretion of the magistrate, without the explicit permission of the laws The language of the Great Charter, is that no freeman shall be taken or imprisoned, but by the lawful judgment of his equals, or by the law of the land (Mag C c. *29*) And many subsequent old statutes expressly direct, that no man shall be taken or imprisoned by suggestion or petition to the King or his Council, unless it be by legal indictment, or the process of the Common law" (*Tomlin's Law Dic.*)

"The ancient prerogative writ of habeas corpus takes its name from the two mandatory words *habeas, corpus*, which it contained at the time when it, in common with all forms of legal process, was framed in Latin. The general purpose of these writ, as their name indicates, was to obtain the production of an individual." (*Ency. of the Laws of England.*)

Habemus optimum.

The history of the writ of habeas corpus is lost in antiquity It was in use before Magna Charta, and exists in England as a part of the common law It is intended and well adapted to effect the great object secured in England by Magna Charta, and made a part of the Constitution, that no person shall be deprived of his liberty without the process of law. This writ cannot be abrogated or its efficiency curtailed by legislative action The privilege of the writ cannot even be temporarily suspended, except for the safety of the state, in cases of rebellion or invasion (49 *Am Rep* 505, 19 *Am. Rep* 211)

Habemus optimum testem confitentem reum (Fost Cr. L 243) (*a*) In the various treatises upon the law of evidence will be found remarks as to the weight which should be attached to the confession of a party Respecting the above maxim, Lord Stowell has observed, that, "What is taken *pro confesso* is taken as indubitable truth The plea of guilty by the party accused shuts out all further inquiry *Habemus confitentem reum* is demonstration, *unless indirect motives can be assigned to it*" *Mortimer* v *Mortimer*, 2 Hagg 315

A maxim meaning—"We have the best witness in an accused who confesses the charge"

Habendum (*Lat*) (In conveyancing) The clause usually following the granting part of the premises of a deed which defines the extent of the ownership in the thing granted to be held by the grantee "The office of the Habendum is to limit the estate so that the general implication of the estate which by construction of law passeth in the Premises is by the Habendum controlled and qualified" (*Termes de la Ley Bl Com* 298 *Wms R P*)

Haberdasher. A dealer in miscellaneous goods and merchandizes apparently derived from avoirdupois corruptly written Habber-de-pois, the weight with which goods of all sorts were weighed which were not weighed by Troy weight, these being very numerous, Haber-de poisery, or Haberdashery was gradually applied to any mixture of various articles of merchandize (*Tomlin's Law Dic*) The word signifies a dealer in small articles of dress etc

GUARANTEE: UNDERTAKES: PROMISE The word "guarantee" in strict law is only used in relation to the default of a person other than the promisor, the word may be construed as merely equivalent to 'promise' or 'undertake' as its ordinary meaning in a Charter Party (See *Strand's Judicial Dictionary*, 2nd ed Vol II, page 842) [5 S L R 192=15 I C 757(767).]

TO GUARANTEE, BE SECURITY, BE RESPONSIBLE, WARRANT To *guarantee* and *be security* have respect to what is done for others, to be responsible respects what is done by one's self or others to warrant, what is done by one's self only. To *guarantee* is applied to matters of public or private interest; to *be security*, to private matters only. The larger governments frequently *guarantee* for the performance of stipulations entered into by minor powers, one man *becomes security* to another for the payment of a sum of money by a third person *Guarantee* may be taken for the person or thing that guarantees One is *security* for another in pecuniary concerns, Masters are *responsible* for the conduct of their servants, a gaoler is *responsible* for the safe custody of the prisoner, every man is *responsible* for that which is placed under his charge. To *warrant* is

Habitation.

applied to commercial transactions one *warrants* the goodness of any commodity that is sold. The *warrant* serves to indemnify against loss

Habit. Settled tendency or practice, mental constitution The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts The words by *'habit'* and *'habitually'* imply frequent practice or use Those words are used in S 110, Cr P Code, in the sense of depravity of character as evidenced by the frequent repetition or commission of offences mentioned in the section (6 Pat 1=100 I C. 967=1927 Pat. 126)

"Habit is the disposition of a person toward a certain thing". It need not be the uniform or unvarying rule, but, to be a habit, it must be the ordinary course of conduct—the general rule or custom

The word "habit" has a clear, well-understood meaning, being nearly the same as "custom", and cannot be applied to a single act

"When we speak of the habits of a person, we refer to his customary conduct, to pursue which he has acquired a tendency from frequent repetition of the same acts It would be incorrect to say that a man has a habit of anything from a single act"

"HABIT OF USING INTOXICATING LIQUORS", means more than an occasional or incidental use

Habitable That can be inhabited, 'habitable', applied to a room, means, a room constructed or adapted to be Inhabited"

HABITABLE, is, what is reasonably fit for the occupation of a tenant of the class which occupies it

"**Habitable room**" defined, Ben. Act 3, 1899, S 3 (19)

Habitancy The term "habitancy" expresses the fact of residence at a place with the intent to regard and make it a home

The word "habitancy" is more comprehensive than "domicile" In some respects, "habitancy" includes "domicile," and embraces citizenship and municipal relations. (*Words and Phrases*)

Habitation Place of abode.

Where one stops for a long time in a place for the management of his business affairs, while he resided with his family at another place, he has simply a habitation at the former place, and not a domicile.

HABITATION, ABODE, DOMICILE. *Habitation* is a place which one inhabits, not necessarily a house or tenement of any kind *Abode* has the same sense, but with a less direct reference to the constant passing of one's life there *Habitation* is the natural or habitual place of abode *Domicile* adds to the idea of habitation and abode a relationship to society and civil government, and is consequently a term rather technical than conversational. An *abode* is pleasant or unpleasant, convenient or inconvenient. A *habitation* is suitable or unsuitable, healthy or unhealthy, commodious or otherwise *Habitation* points more directly than abode to furnishing necessary shelter and protection The words are the *abodes* of birds, their nests are their *habitations*. The legal force of the term *domicile* is a residence at a particular place, with positive or presumptive proof of an intention to remain there. (*Smith. Syn. Dis.*)

Habitual.

Habitual. Constant, customary, addicted to a specified habit

"HABITUAL" means formed or acquired by or resulting from habit, frequent use or custom, formed by repeated impressions.

Habitual Carnal Intercourse In the phrase "habitual carnal intercourse", the word "habitual" should be understood in its common acceptation

The term "habitual criminal" may be applied to any one who has been previously more than twice convicted of crime, sentenced, and committed to prison

Habitual Cruel and Inhuman Treatment If the treatment is persistently cruel and inhuman, and is occasionally characterized by personal violence, so as to beget the apprehension that it is liable to occur again at any time, it is sufficient to constitute "Habitual cruel and inhuman treatment"

Habitual dealing in Slaves A person who habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, is said to be habitually dealing in slaves (*See* Penal Code, S 371)

Habitual Drunkard An habitual drunkard is one who has formed the habit, and indulged in it, of drinking to excess and becoming intoxicated, whether daily or continuously or periodically, with sober intervals of a greater or less extent.

An habitual drunkard is one who makes it a habit, or who habitually becomes intoxicated by the voluntary use of intoxicating liquors

Bouvier defines an habitual drunkard to be a person given to inebriety or the excessive use of intoxicating drinks, who has lost the power or will, by frequent indulgence, to control his appetite for it 'Habitual drunkenness,' said *Harrison, J.*, 'or the degree or the course of intemperance that amounts to it, cannot be exactly defined We may, however, say, in general terms, that one is addicted to habitual drunkenness who has a fixed habit of frequently getting drunk, and he may be so addicted though he may not oftener be drunk than sober, and he may be sober for weeks'

An habitual drunkard is a person whose habits of drunkenness are confirmed and continual

A person who indulges in alcoholic intoxicants to such an extent as to impair the mind and produce *senile dementia* is an habitual drunkard

Habitual Drunkenness or Intoxication. The terms "habitual drunkenness," "habitual intemperance," "habitual intoxication, and continued habits of intoxication" are equivalent and capable of the same definition, and are defined as the fixed and irresistible habit of getting drunk

Habitual Insanity Habitual insanity is such insanity as is, in its nature, continuous and chronic (*Words & Phrases*)

Habitual Intemperance, "The phrase 'habitual intemperance' means the custom or habit of getting drunk; the constant indulgence in such stimulants as wine, brandy, and whisky, whereby intoxication is produced, not the ordinary use, but the habitual use, of them The habit should be actual or confirmed It may be intermittent It need not be continuous, or even of daily occurrence" (*Words & Phrases*)

Hadbote.

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business

Habitual Offender. *See* Cr. P. Code, S 110, 75 I C 764=1924 Nag 19

Habitual thief. Habit has to be proved by an aggregate of acts and it would strain the provision of S 110 if it were to be held that a man being suspected mainly by the police in four thefts after he had been acquitted on a charge of theft amounted to sufficient evidence of habit [10 Lah L J 317=10 A I Cr R 355=109 I C. 510=29 Cr L J 574]

The word "habit" means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. "Habitually" must be taken to mean repeatedly or persistently [75 I C. 764=25 Cr L.J 60=A I R 1924 Nag 19]

Habitually The term "*habitually*" means, "Usually," "generally," or "according to custom." It does not refer to the frequency of the occasions but rather to the invariability of the practice, (27 Bom. L R 1031=A I R 1925 Bom 429)

"Hackney-carriage" defined, Act 14, 1879, s. 2, Ben Act 2, 1891, s 3 (2), Mad. Act 3, 1879, s 3.

"HACKNEY-CARRIAGE" means any wheeled vehicle drawn by animals and used for the conveyance of passengers, which is kept, or offered, or plies, for hire Hackney Carriage Act (XIV of 1879) S 2 It is a carriage exposed for Hire to the public, whether standing in the public street, or exposed for public use in a private gateway The test is whether the Carriage is held out for the general accommodation of the public" (Per *Lush, J., Bateson v. Oddy*, 43 L J M C 131)

Hackney carriage, Hackney coach, in the Town Police Clauses Act, 1847, Ss 37, 38, 40—52, 54, 58, 60—67, includes an omnibus as defined by the Town Police Clauses Act, 1889 (c, 14), S 3 *Vide* same Act, S 4 (1). *Hawkins v Edwards*, (1901) 2 K B 169, *Yorkshire (Woollen District) Electric Tramways Co. v Ellis*, (1905) 1 K B 396 The term in 51 & 52 Vict. c 7 (Inland Revenue), S 4, includes an omnibus running along a fixed route. *Hickman v. Birch* (1890), 24 Q B D 172

"Hack-stable" defined Mad Act 4, 1884, S. 3 (*xiv*).

Had. (A), a boundary had-shikani (complaint of aggression or 'breaking bounds).' In the Derajat (Pj), used to mean the confines or territories of a tribe or tribal section=ilaqa (*Bad Pow* Vol II, 653)

HAD The word "had" in S. 92 of Act X of 1859 (Bengal Rent) does not mean actually issued, but granted. 4 B.L R (F B) 82=13 W.R. (F.B.) 3

Hada or Hadana. (*Karn*) A moderate quantity of rain, so as to fit the soil for sowing

Hada-vadamare (*Karn*) A heavy fall of rain, such as to saturate the soil

Hadbote. (*In Saxon law*) A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders.

Hadd

Hadd (*H*) Punishment, Chastisement, especially by the infliction of lashes

Hadd Sikandri Same as Daryabanna

Haddu-patrika (*Tel*) A statement of boundaries

Haematuria A passage of blood with the urine, which may proceed from the bladder or kidneys

Haematemesis Bleeding from or into the stomach, the vomitting of blood

Haemoptysis Bleeding from the lungs, generally an indication of consumption or ulceration of the blood vessels of the lungs

Haemorrhoids. Piles, with effusion of blood

Haemostasia Stagnation of the blood.

Haeredes extranei Strange or foreign heirs, heirs not subject to the power of testator

Haeredes Heredes (*Lat*) Heirs

Haeredes necessarii Necessary heirs, a term applied to the slaves of a testator

Haeredes sui et necessarii One's own (or proper) and necessary heirs

Haeredi magis parcendum est (D 31, 1 47)

Haeredipeta (*Old English Law*) An heritance seeker

Haereditas (*Lat*) An inheritance, an estate by descent or succession

Haereditas ab intestato (*Lat*) Succession from an intestate

Haereditas alia corporalis, alia incorporalis One kind of inheritance is corporeal, another incorporeal

Haereditas, alia corporalis, alia, incorporalis, corporalis est, quae tangi potest et videri, incorporalis quae tangi non potest nec videri (*Co Litt* 2), A maxim meaning, Inheritance, some corporal, others incorporeal, corporeal is that which can be touched and seen, incorporeal, that which can neither be touched nor seen

Haereditas est successio in universum jusquod defunctus habuerat (*Co Litt* 237) A maxim meaning, Inheritance is the succession to every right which was possessed by the late possessor.

Haereditas jacens A fallen or prostrate inheritance, an inheritance in abeyance or expectation

Haereditas nihil aliud est, quam successio in universum jus quod defunctus habuerit (D 50 17 62) The right of inheritance is nothing else than the faculty of succeeding to all the rights of the deceased.

Haereditas nunquam ascendit A maxim meaning Inheritance never ascends

Haeredum appellatione veniunt haeredes haeredum in infinitum (*Co, Litt* 9)—By the title of heirs come the heirs of heirs in infinitum.

Haeres., heres (*Lat*) An heir, a person who takes an estate of inheritance by the Act of God and right of blood.

Haeres astratrius. An heir in actual possession.

Hague Tribunal, Hague conference

Haeres de facto Heir from fact, an heir, *i e*, from the deed or act of the ancestor without, or against right

Haeredem Deus facit, non homo God makes the heir, not man

Haeres est aut jure proprietatis aut jure representationis (3 Rep 40) A maxim meaning "An heir is by right of property, or by right of representation"

Haeres est eadem persona cum antecessore pars antecessoris (*Co Litt* 22) A maxim meaning, "The heir is the same person with his ancestor, a part of his ancestor"

Haeres est nomen collectivium (1 *Vent* 215) A maxim meaning, Heir is a collective name

Haeres est nomen juris, filius est nomen naturae (*Bac M Reg* 11) A maxim meaning "Heir is a name of law, son is a name of nature"

Haeres ex asse An heir to the whole estate, a sole heir

Haeres extraneous A strange or foreign heir

Haeres factus An heir made by will

Haeres fidei commissarius The person for whose benefit an estate was given to another by will

Haeres fiduciarius A fiduciary heir or heir in trust; a person constituted heir to an estate by will in trust for the benefit of another

Haeres legitimus est quem nuptiae demonstrant A maxim meaning "the lawful heir is he whom wedlock shows so to be"

Haeres minor uno et viginti annis non respondebit nisi in casu dotis (*Moor*, 348) A maxim meaning, An heir minor under twenty-one years of age is not answerable, except in case of dower

Haeres natus An heir born, a person born heir, as distinguished from one made heir

Haeres necessarius. A necessary heir, a slave made an heir

Haeres suus A proper heir, literally one's own heir

Haftam (*P =seventh*) (Ben), popular name for Reg VII of 1799, one of the early (obnoxious tenant Regulations (*Bad Pow* Vol I, 634)

Hage, Hageya, Hagevu. (*Karn.*) A grain pit a subterranean granary

Hagmuqa bazat The words *Hagmuqa bazat* indicate plainly no more than the familiar occupancy right under the Bengal Tenancy Act and do not imply any permanent sort of interest carrying the incidence and right of heritability. (1 3 I.C. 415=17 Pat L T 202=A I R. 1936 Pat 384)

Hague Tribunal Hague conference. The Court of Arbitration established by the Hague Peace Conference of 1899. The object of the establishment was to facilitate the immediate recourse to arbitration for the settlement of international differences by providing a permanent court "accessible at all times, and acting, in default of agreement to the contrary between the parties, in accordance with the rules of procedure inserted in the convention." The court is

Hail Insurance.

given jurisdiction over all arbitration cases, provided the parties do not agree to institute a special tribunal Each power signing, the Convention selects four persons of known competency on questions of international law and of the highest moral reputation These persons form the members of the court, and their names are inscribed upon a list which is notified to the contracting powers When a case to be arbitrated arises between two of the signatory powers, the arbitrators must be chosen from the above mentioned list, each party appointing two arbitrators who together choose an umpire (1 Scott 274-318, 423-424) Article in British Encyclopaedia, "Arbitration" (*International*) by Montague Crackanthrope, K C , The Peace Conference at the Hague and its Bearings on International Law and Policy, by Frederick W Holls, D C L A Collection of the various Schemes which have been propounded and of instances since 1815, by W Evans Darby, L L D , Secretary of the Peace Society, Review of Reviews, August, 15, 1899, by W T Stead)

Hail Insurance A species of insurance providing indemnity against loss of crops through the action of hail storms

Hainu (*Karn*) The period between May and September—that of the heavy rains

Hainu-gadde (*Karn*) Wet lands for sowing rice during the monsoon

Hainu-pairu (*Karn*) Corn standing in the heavy wet weather

"Haisiyat tax". Nature of *See* 23 N L R 161

Haj (*A*) Pilgrimage, especially the pilgrimage to Mecca

Hajam ayajodi (*Karn*) Tax levied on the land assigned to the village barber

Haji. (*H.*) One who has performed the Haj.

Hajib-nuksan, (*A*) In Mohammadan law, partial exclusion with respect to inheritance, or substitution of one share for another, as in the case of a wife, who, where there are no children, has a fourth share, but where there are any, only an eighth. (*Wil Gl* 193).

Hajir, (*A*) In law, annulment, disqualification, the invalidity of acts done by a minor, an idiot, a slave, or the like, that is by persons incompetent to act for themselves by virtue of immature years, defective intellect, or dependent situation (*Wil. Gl* 193)

Hakabo (Sindh) (haq=right and ab=water), a certain rate levied to cover cost of canal-clearing, instead of the old forced labour (*Bad. Pow* III 334)

Hakdar One who possesses a hak, one entitled to a share.

Hakikat Chauhaddi Bundi papers Hakikat Chauhaddi Bundi papers are boundary papers prepared by the owners of the estates and submitted to Government (26 C.L.J. 590 (P.C). *Foll*). [65 I C 866=34 C L J. 141=A I R. 1921 Cal 687; *See also* 43 I. C. 361=22 M L.T. 438=26 C.L.J. 590=1918 M W.N 28=20 Bom.L.R. 49.]

The word "Chowhuddibandi" means "boundary" and the 'hakikat Chowhuddibandi" papers may, therefore, be properly described as the boundary papers. They appear from their form to have been returns which apparently were required for the year 1799 They were made by the owners of the estates in question and sent in to the Government Whether they were made for other years is not certain Even the exact purpose for which they were prepared is not clear, but it may be accepted that they were not voluntary They were made on a Government form in pursuance of a Government request and to afford the Government for their purpose satisfactory information upon the various questions to which they furnish answers the first of these questions, after the statement of a number of mouzahs, being as to their boundaries Most information is to be gathered from the boundary papers These give descriptions of the different mouzahs with their different boundaries and, as there appears to have been no correction whatever made in the statements, and no document is forthcoming from the Government showing that the returns were questioned, they must, as between the Government and the Zemindars, be accepted as *prima facie* accurate, and the boundaries so given, unless shown to be erroneous, ought to be regarded as the boundaries of the mouzahs forming part of the estates [43 I C 361=22 M L T 438=26 C L J 590=(1918) M W N 28=20 Bom L R 49]

Hakim (*A*) A sage, a physician A Governor, a Judge, a Muhammadan magistrate, Commander, ruler, master The governing authority in a province (*Fifth report*)

Hakimali a grant for support of younger sons, or of the relations of the Raja, or a lord (Ch Nagpur, Ben), (*Bad Pow* I 580)

Hakk. A just claim, right, or due

Hakk dar One who possesses a right.

Hakkal (*Karn*) Tax for dry cultivation on Government waste (*Sun Mal Law*)

Hakkalu (*Karn.*) Gleanings of corn, rice cultivation carried on on high ground without the aid of reservoirs of water

"Hak talukdari" (*in Punjab*) means the dues which the Khan is entitled to receive in respect of land of which he is the superior landowner from the inferior landowners thereof, and which have been commuted, under section 146 of the Punjab Land-revenue Act, 1887, into a fixed percentage of the land-revenue. Pun Regn IV of 1902 (Ziri) S 2, cl d.

Hal a land measure=4 82 acres (*Bad Pow* II 437)

Hal-abadi (=now, i e recently cultiv), of new land, as opposed to that under the old P.S (Sylhet) (*Bad Pow* III. 444, 5)

Halakat. (*H.*) Homicide.

Haldaree. A tax on marriages, an item of the abwab or cesses. (*Fifth Report*)

Hal-hasila (Ben), a tenant holding when the rent is according to the crop obtained (hasil) at each harvest (hal, now, for the time being): (*Bad Pow* I 60.)

Half. One of two equal or corresponding parts into which a thing is divided,

Half.

Half

"HALF," when used in a conveyance which conveys the half of any particular piece of property, means an undivided half

Half a Year A "Half a year" is not the same as "six months" but means half the days of a year and containeth 182 days, the odd hours in legal computation, are rejected' (*Co Litt* 135b *Redman*, 441, in *Woodf.* (374) a half-year is stated to be 183 days),

Half and Half "Half and half between the parties," as used in a declaration that the capital stock of a corporation should be divided into a certain number of shares, and divided half and half between the parties, should be construed to mean equally divided between the parties, although there may be three or more parties," (*Words & Phrases*)

Half-anna A copper coin worth six pies

Half-binding (*of a law book*) is binding with leather back and corners, with cloth or paper sides

Half Blood "Kindred of the half blood, "as used in an Act, providing that kindred of the half blood in the same degree, should be construed to include kindred of the half blood in any degree

The children of the same mother, but who have different fathers, are no less brothers and sisters of the half blood than are the children of a common father, but who have different mothers

Half-blooded Born of different races

Half brother (or sister) Brother (or sister) by one parent only

Half-caste A term applied to a child of European father and Indian mother.

Half-crown An English coin worth 2sh. 6*d*.

Half holiday (*in a factory*) means day in which the latter half is allowed as a holiday.

Half Mast high (*of flag*) Lowered to half height of mast as a mark of respect to the illustrious dead

Half Notes (A practice among merchants) In remitting money, business men sometimes forward half-notes forwarding the other halves on the first being acknowledged

Half pay Reduced allowance of an officer (especially applied to army or navy officer) when retired or not in actual service.

Half-penny A bronze coin worth half a penny

Half pilotage Half pilotage is compensation for services which a pilot has put himself in readiness to perform by labor, risk, and cost, and had offered to perform (*Words & Phrases.*)

Half Rupee A silver coin worth eight annas.

Half Sister A half sister is a woman who has the same father or the same mother with another.

Half-Sovereign A gold coin worth one half of a Sovereign

Half timer Child who attends school for half the usual school time, earning some little money in the other half.

Half truth Statement that conveys only part of the truth. "*Half truths* are sometimes worse than untruths."

Halsara.

Half year The period of one hundred and eighty two days the odd hours being rejected

Half-yearly "Half-yearly" payments, in respect of rents means two equal half-yearly payments (Doe d *Harries* v *Morse*, 3 L J Ex 70)

GO HALVES. Share equally

Hali (*H*) A bondsman, one serving as a laborer in payment of a debt until the debt is discharged (*Mac Mhn Law*)

Hali (*Pj*), from hal=plough, a ploughman (*Bad-Pow* II 703)

Hali-dakhal (*H*, *Karn*) Increase of the actual assessment

Halka A village circuit, a boundary line which includes all the lands and dwellings of a village or hamlet, a circle or estate including many villages

Halkadar A rural notable in charge of a circle of villages

Hall, a large public room in a palace, building for students having or not having university privileges, large room for a meeting or public purposes

HALL AND LIBRARY, "A Library is a perfectly well-known thing and is essentially different from a Hall, which is generally a place that is used for some business purposes connected with the general objects of the Society, Company, or Corporation, which possesses it, whereas a Library is a place devoted to books, reading and study I cannot help thinking that if any body were asked to describe the buildings constituting either the buildings of the Middle Temple or of Lincoln's Inn or of any College or University, he would say that they consisted (amongst other things) of Lecture Rooms, a Hall, and a Library, and I do not think that any person would describe a building which contained a Library without the specific use of the expression" [(per *Wills, J*, *Styles* v *Middle Temple*, 68 L J Q B 161)

Hall Mark An official stamp affixed by goldsmith upon articles made of silver or gold as an evidence of genuineness, generally a mark of the genuineness of any article

Halla (*Karn*) A water-course, a rever-bed

Hall Marks Special marks impressed upon gold and silver articles, testifying to their genuineness and value

Hallage (*In old English Law*) A toll due for goods or merchandise vended in a hall, a toll due to the Lord of a fair or market, for commodities vended in the common hall of the place

Halli (*Karn.*) A small village or hamlet.

Hallucination "The word 'hallucination' is defined according to lexicographers, as an error, a blunder, a mistake, a fallacy, and, when used in describing the condition of a person, does not necessarily carry an imputation of insanity"

"HALLUCINATIONS" are also used in respect of certain errors of eyesight, hearing, and the like, as where the patient imagines that he sees an object when there is none, or hears a voice when no sound strikes his ear

Halsara (*Ajmer*), a customary mode of 'dry' cultivation. (*Bad-Pow.* II, 351.)

Hamavi.

Hamavi. A commentary on Ashbah-Nazair by Ahmed bin Mohamed-ul-Hamavi, a work of authority on Mahamadan Law

'Hamesha' The word 'hamesha', (always or for ever), used in a will, award, or order of Court or other document does not *per se* extend the interest given thereby beyond the life of the person who is named The word is not inconsistent with limiting the interest given, but the circumstances under which the instrument is made, or the subsequent conduct of the parties, may show the intention with sufficient certainty to enable the Court to presume that the grant was perpetual [3 Bom L R 307 (P C)=23 A 324=11 M L.J. 160=28 I A 65=5 C.W N 569]

Hamlet. "Hamlet" and "vill" are in common acceptation used as synonymous terms, a small village, generally attached to another and sometimes larger village.

Hammer Auctioner's mallet indicating by rap that the article put up for auction has been sold

"A hammer is a tool or instrument ordinarily used by one man in the performance of manual labor It may be made an essential part of machinery, when intended to be and is operated by means thereof, but, when disconnected from any other mechanical appliances, and operated singly by muscular strength directly applied, such tool or instrument is not machinery in its most comprehensive signification, or in the meaning of an Act providing that an employer is liable for injuries to an employee when the injury is caused by any defect in the machinery used in the business of the master or employer

SOLD UNDER THE HAMMER Sold by an officer at law or auctioneer at public auction.

TO BRING TO HAMMER. To put up for sale at public auction

Hammered (*In Stock Exchange*) This is a method of proclaiming a defaulter, when a member is unable to meet his engagements in time

Hamsai-gramamu (*H, Tel.*) A neighbouring village.

"Hamshira" Though in its literal significance, "*hamshira*" means "a sister by the same milk", the word might also be used loosely in common parlance for a sister who is not a sister of the full blood (1935 A.W R. 1197)

"Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi School of Mussalman law. Act VI of 1913 (*Mussalman Wakf Validating*), S. 2, cl. 2.

Hanchugolu (*Karn*) A wooden seal used by Government officers in Mysore when the farmers divide their corn on the threshing-floor

Hand A person's signature (as), a document under one's hand and seal, a style of writing (as) a legible hand, a lenial measure of the height of horses 4 inches

Hand bill. Printed notices (as, of advertisement of Sale by public auction) circulated by hand.

"The word "handbill," in its usual acceptance is synonymous with the words "printed circular."

Handle.

Hand cart Cart drawn or pushed by hands.

Hand cuffs Pair of metal rings, generally made of iron, joined by short chain, for securing prisoner's hands

Handgrith, Hangrith (*In Saxon and old English Law,*) Peace or protection given by the King with his own hand

Handkerchief The phrase "handkerchiefs or mufflers composed wholly or in part of silk," in the Tariff Act includes mufflers composed of cotton and silk, though the cotton is the component material of chief value

Hand made Made by hand as opposed to machine made

Hand maid Female servant attached to gentlewomen

Hand money. Money paid on hand to bind a bargain

Hand sale A synonym for Earnest (2 Bl Com 448), and is not more often spoken as "handsel," or "hansel" Handsale was a sale made or confirmed by striking hands, the price or earnest given immediately after or instead of striking hands

"Handsome Present" for services would mean reasonable recompense for those services (*Jewry* v *Busk*, 5 Taunt 302)

"Hands up" Direction to persons in an assembly to hold up their hands as a sign of assent etc

Hand to hand (*of conflict*), at close quarters.

Hand writing Writing with the hand, specially of a particular person

CHANGE HANDS (*of property*) Pass from one person to another by gift, sale, etc

"LAY HANDS ON" To touch or seize (as) sheriff laying hands on a judgment-debtor to execute a warrant of arrest

"TO GIVE ONE'S HAND TO" signifies a pledge of marriage

Handicraft Manual skill, manual art or trade In the Workshop Regulation Act "'Handicraft' means any Manual Labour exercised by way of Trade or for purposes of Gain in or incidental to the making of any Article or part of an Article, or in or incidental to the altering repairing, ornamenting finishing or otherwise adapting for sale, any Article" (S 4)

Handicraftsman Is a skilled Workman [(per *Brett, L J., Morgan* v *London Gen Omnibus Co*, 53 L.J,Q B 352, and means much the same thing as "artifician"

Handi-work. Work done or thing made by the hands or by the personal agency of any person

Handle "To handle" is defined by the Standard Dictionary as to use the hands upon; to turn, adjust, examine, or feel with the hands, to manage contrive, or direct with the hands, to use, to ply, to wield, to manipulate, as to handle a musket or oar By the Century Dictionary (1889) it is defined as "to touch or feel with the hand, or to use the hand or hands upon; to manage by hand; use or wield with manual

Handle.

skill, ply, manipulate, act upon or control by the hand, in general, to manage, direct, control" By Webster's Dictionary (1894) it is defined as "to touch, to manage in using to wield, often to manage skillfully" From the foregoing definitions, it will be seen that, while the word may be synonymous with such words as "ply", "wield", and "manipulate," none of such words, nor all of them, are its verbal equivalent It is a more comprehensive term and includes not only the act of plying, wielding, and manipulating, but touching, using the hands upon, acting upon or controlling by the hands, and other acts

"TO HANDLE A COMMODITY" means to buy and sell such commodity, and the power to HANDLL A FUND implies the power to use it in making purchases and to sell the thing, etc, for the purpose of changing the investment

HANDLING AND HAULING The words "*handling*" and "*hauling*" are not synonymous words Hauling is a transportation, while handling involves touching, holding, moving, or managing with the hand

HANDLING AND TRANSPORTING '*Transporting*" means to carry, bear, or convey from one place or country to another, while *handling* is the act of touching, moving, or managing with the hand

Handsome "*Handsome gratuity*", as used in a will, is void for uncertainty In some cases it was taken to mean reasonable compunction

Handwriting The term "handwriting' includes generally whatever a party has written with his hand, and not merely his common and usual style of chirography

"HANDWRITING" is the cast or form of writing peculiar to each hand or person

Hane (*Karn*) A grain measure of eighty rupees weight

Hanefi (*Or Hanafi*) The first of four Sunni schools that was founded by Abu Hanifa Most of the Sunnis of Northern and Western India are of this school, and so are the Turks It is the most conservative of all, and permits no modification of old doctrine to adapt it to modern life

Hang To remain undetermined, to be in suspense The word is also used to denote the infliction of capital punishment by suspension (as) to hang a murderer

Hanging Pending; during the pendency

Hans. The name of a cultivating tribe in the Punjab, they are Musalmans, and claim to be of Qureshi origin

Hanse (*Lat*) *Hansa* (*Gothic*) A society of merchants formed for the good usage and safe passage of merchandise from kingdom to kingdom, a commercial confederacy.

Haor (*Sylhet*), a depression in the soil, liable to remain flooded. (*Bad Pow* iii 448)

Happen, come to pass by chance or otherwise

HAPPEN The word "happen" is defined by the words to fall out, to befall, to come unexpectedly"

Whatever comes to pass happens, whether regularly in the course of things, or particularly and out of the order whatever chances, happens altogether

Haq-ul-Tahsil

without concert, intention, and often without relation to any other thing

TO HAPPEN, CHANCE Whatever comes to pass *happens*, whether regularly in the course of things, or particularly and out of the order, whatever *chances* happens altogether without concert, intention, and often without relation to any other thing Accidents *happen* daily which no human foresight could prevent, instances of *chance* escapes are not uncommon

Happiness "Happiness', as used in determining the question whether the happiness and welfare of certain children are more liable to be promoted, in the custody of the mother or the father, does not mean the pleasure of remaining with the parent they love, as compared with the temporary pain of separation, but means that more permanent enjoyment of life which attends upon, and is almost identical with, welfare

"Haq" and "Kabze" "Haq" (right) and "kabze' (possession) would seem to denote the incidents of a permanent tenure (125 I C, 193=A I R 1929 Sind 61)

Haq buha *Haq buha* is a village cess A suit to recover the same is maintainable only in a revenue Court (31 P I R 954)

'Haq i-chaharun' is the customary due payable to the Zemindar on the transfer by sale of house property, the Zemindar's right is to a share of the purchase money can be realised by him as well from the vendee as from the vendor 20 A L J, 646=44 All 739=69 I C 99=A I R 1922 All 370 The zamindar's right is to a share of the purchase money, it is not merely a right to claim that share from the vendor It is, therefore, incumbent on the purchaser, if he would acquit himself of all liability to see that the zemindar is satisfied in respect of his dues, and he cannot discharge himself by a payment to the vendor (23 All 209 *foll*) 20 A L J 64=44 A 739=4 U P L R (A) 197=A I R 1922 All 370 A vendee as well as a vendor is liable to the payment of haq-i chaharun (A I R 1937 Oudh 316, *Foll*) 105 I C 15=A I R 1927 Oudh 557 By "Haqq i-chaharam" is meant one-fourth as the purchase money due to the proprietor of a Mohalla on the sale of a house situated in it, based on custom, not a contract (2 A 358)

Haqiyat Haqiyat means rights in immoveable property and though it is usually used in connection with landed property it may as well be applied to house property *Bawa Singh* v *Lachman Singh*. (24 P R 1911=186 P L R 1911=10 I C 850=56 P.W R 1911)

Haq-mihat (*Jhansi, N W P.*), the headman's *ex-officio* holding of land of 'watan', (*Bad Pow* ii. 121) 75 P W R 1910=6 I C 1003

Haqqi milk i-khud Means right, title and interest "*Haq murtahim*", meaning of *see* 5 O.W N 1041

"Haq murafiq" The words "Haq murafiq" do not necessarily mean the right of redemption They mean the right, title and interest 10 O W.N 1166= A I R 1933 Oudh 535

Haq-shufa (*A*) the right of pre emption. (*Bad. Pow.* ii 626)

Haq ul-Tahsil. Fee realised from assignees of land revenue for collection of the revenue payable to them.

Haq Zamindari.

Haq-zamindari the overlord's or 'superior proprietor's dues from the inferior (*Sindh and S Pr*) (*Bad Pow* III 322, 342)

Har (*N.W P*), the zones or belts of land, at different distances from the village centre, recognized as differing in character and value (N W P), *See* gauhan manjha, &c., used as the basis of soil rent rate assessment (*Bad Pow* II 57)

Harale Pattadi, (*Karn*) A commutation tax paid by dealers in lamp oil, in consideration of exemption from the visits of the officers of the Sair revenue (*Mysore Wil. Gl* 200)

Haralu pattadi, (*Karn*) Tax on oildealers, (*Wil Gl* 200)

Haram, (*H*) Sacred, forbidden, closed to promiscuous access hence applied to female connexion or relative, a concubine, also to the private or woman's apartments, Haram attached to the palace of a Nawab, also to the sacred circuit round the temple at Mecca (*Wil. Gl* 200)

Harampattuta (*Tel*) Gathering ears of corn

Harass "Injure" and "injury" are words having numerous and comprehensive popular meanings, as well as having a legal import A line may be drawn between these words and the word "harass", excluding the latter from being comprehended within the word "injure" or "injury" The synonyms of "harass" are To weary, tire, perplex, distress tease, vex, molest, trouble, disturb They all have relation to mental annoyance, and a troubling of the spirit

Harbongka Raj, (*H*) Civil disorders, mal administration the rule of Harbong, a Raja so named, said to have ruled at a place opposite to Allahabad, on the bank of the Ganges, thence termed Harbingpur, and of whose silliness and unfitness for Government many traditional anecdotes and proverbial phrases bear record (Elliot *Wil. Gloss* 200)

"Harbour" defined, 57 8 V c 60, S 742, Act 45, 1860, S 216 B Mad Act 2, 1905, S 5 (5)

Harbour (Noun) "Harbor", in its most strict and proper sense, means a safe station for a ship, a place of refuge, shelter, rest

"A harbor, in its usual and ordinary sense, means an indentation in the coast of a lake, river, sea, or ocean extending into the country in such a manner as to form an inlet or bay, and sufficiently narrow between the headlands to afford protection to vessels against the wind and storm upon the waters"

HARBOUR A haven, or a space of deep water sheltered to afford a safe anchorage for ships Harbours are "places (whether artificial or natural) to shelter ships from the violence of the sea, and where ships are brought for commercial purposes to load and unload goods (and passengers), and quays are a necessary part of them (*I ord Esher, R* v *Hannam*, (1886)2 T L R 234) They are thus equivalent to ports (see *Assheton Smith* v *Owen*, 20 T.L.R 755, (1906), 1 Ch 179, (1907) 23 T L R 385 (H L) or havens and the terms may be considered as interchangeable

HARBOR, HAVEN, PORT A *haven* is a natural harbor, a *port* is an artificial harbor We characterize an *harbor* as commodious; a *haven* as snug and secure;

Hard Cases.

a *port* as safe and easy of access. A commercial country profits by the excellence and number of its *harbors*, it values itself on the security of its *havens* and increases the number of its *ports* accordingly A vessel goes into a *harbor* only for a season, it remains in a *haven* for a permanency it seeks a *port* as the destination of its voyage Merchantmen are perpetually going in and out of a *harbor*, a distressed vessel, at a distance from home, seeks some *haven* in which it may winter, the weary mariner looks to the *port* not as the termination of his labour, but as the commencement of all his enjoyments

Harbour Authority In the English Merchant Shipping Act *"Harbour Authority"*, is defined to "include all persons, or bodies of persons corporate or incorporate, being proprietors of, or intrusted with the duty or invested with the power of, constructing, improving, managing, regulating, maintaining or lighting, a harbour" (S 742)

Harbour, (*Harbouring offenders*) To "harbour' used in respect of harbouring offenders means, to give such persons shelter, or to permit them to congregate, even though it be only to take part in a "friendly lead" for the purpose of raising a legitimate subscription (*Marshall* v *Fox*, L R 6 Q.B 370)

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment is said to harbour such offender (Penal Code, S 212)

Harbor In construing a statute making the harboring or concealing of an offender a crime, it was said that the word "harbor" is defined by Worcester "To entertain, to shelter, to rescue, to receive clandestinely and without lawful authority" By Webster, "To shelter, to rescue, to secure, to secrete, as to harbor a thief" The word in a statute only apply when the person is harbored or concealed with knowledge that he is an offender

'Harboring" means a fraudulent concealment, and hence, where slaves or prisoners ran away, and were found in the possession of defendant, who openly maintained them, and gave notice to plaintiff that he would do so until they were recovered by law' there was no harboring (*Words and Phrases*)

Harbor Line "A harbor line is the line of a harbor It marks the boundary of a certain part of the public waters which is reserved for a harbor

'Harbouring' offender, meaning of *See* 11 C L J 109=5 I C 311

TO HARBOR, SHELTER, LODGE One *harbors* that which ought not to find room anywhere, one *shelters* that which cannot find security elsewhere, one *lodges* that which wants a resting place Thieves, traitors, conspirators, are *harbored* by those who have an interest in securing them from detection, either the wicked or the unfortunate may be *sheltered* from the evil with which they are threatened, travellers are *lodged* as occasion may require

Hard Cases A phrase used to indicate decisions which, to meet a case of hardship to a party, are not entirely consonant with the true principle of law It is said "Hard cases make bad law" See *Bouvier*, 71 *Ame. Dec* 409,

Hard Labor

Hard labor. As used in sentencing convicted persons, ordinary industry at some mechanical trade

A sentence condemning a prisoner to hard labor in the penitentiary does not signify that the labor shall be of unusual severity, but means no more than that it is compulsory and continuous during the term of imprisonment It does not subject the person to any other than legal punishment, or to labor of any other kind or degree than must have been endured if the word "hard" had been omitted, the penitentiary, being not a mere place for improvement but involving subjection to involuntary or compulsory labor during the continuance of the sentence.

Hard Money Hard money is a coin of the precious metals, of a certain weight and fineness, with the government's stamp thereon, denoting its value as a medium of exchange or currency

Hardof (*Oudh*), Landlord settlements in Oudh, (*Bad.-Pow* II 23)

Hardpan "Hardpan" is used among farmers and well diggers to denote a hard, earthy substance, composed of gravel, sand, and clay, very compact, nearly impervious to water, and too hard to be excavated by the spade It is such compact, indurated, or cemented earth, sand, gravel, or conglomerate, which could not be dug with a spade or shovel In short, "hardpan" and indurated earth or gravel" means the same thing

"Hardware" The word "hardware', in octroi rates of Municipality does not include electric fans It comes much more nearly under the terms of machinery" [148 I C 508=3 A W R 239=1934 A L J 761=A I R 1934 All 550]

Hari, or Haree (*Ben*) A servant of the lowest class, a sweeper, also called Haddaka or Harraka, Hadika, Harika, formerly employed also as village watchman (Ben Reg xxii 1793, 13) In the Glossary of the fifth report we have Harees, derived from the Haris, a defender, and explained, a petty officer of police, a guard, a sentinel (*Wil Gloss* 201)

Haria the 'victims' field (Bo), see (*Bad-Pow* 301,) *Haria* is land granted to the relations of persons killed in an affray between two villages, by the authorities of that village or similar land rent-free granted to the families of Bhats who had destroyed themselves on the violation of engagements for which they have been sureties (*Wil Gloss* 201)

Harigolu A circular basket of stout wickerwork eight or ten feet in diameter, composed of interlaced bamboo laths and covered with buffalo hides used for crossing rivers

Harita. A great Hindu Sage and writer of an important Smriti that bears his name

Harki (*Mar*) Money given by a successful litigant to the court, in token of his gratitude, money paid to one who has brought back a lost article or presented to the family and dependents on any occasion of rejoicing (*Wil. Gloss* 201)

Harmal A plant, *pegnum harmala*

Harmat-musaha rat (*A*) In law the prohibition of marriage with different women on account of their mutual affinity. (*Wil Gl* 200.)

Hasb-ul-Wasuli

Harmonize The difference between the words "harmonize" and "reconcile" is not sufficiently substantial to render it error for the trial Court to instruct the jury that, if they found the evidence apparently conflicting, it is their duty to "harmonize" it (*Words & Phrases*)

Harmony A provision, that rules and regulations made under an Act should be in harmony with the provisions of the Act means that no such rule or regulation shall do violence either to the declared law or to the policy or manifest purpose of the Act The word "Harmony" in this connection does not mean an exact coincidence in all possible points of comparison (9 *Mo App* 255, 260)

"Harray and Henry, "An act of the Legislature was passed, attainting certain persons of treason among them, Henry Gordon It appeared that he had been baptized and had always been called and known by the name of Harry Harry Gordon failed to appear in compliance with the proclamation, and the Legislature then passed a law entitled "An act for the attainer of Henry Gordon" *Held*, that the names Harry and Henry were not the same names, the court saying "The use of names is to describe the individual so as to distinguish him from some other person, and therefore, where two names have the same original derivation, or where one is an abbreviationer corruption of the other, but both are taken, promiscuously and according to common use, to be the same, though differing in sound, the use of one for the other is not a material misnomer, but if the name be wholly mistaken if it be repugnant to truth the misnomer is fatal" (10 *Fed. Cas* 798 citing, *Rex* v *Roberts*, 2 Strange, 1214)

Harsh and unconscionable, in sect 1 of the Money Lenders Act, 1900 (63 & 64 Vict c 51) *Samuel* v *Newbold*, (1906) App Cas 461, *Carringtons Limited* v *Smith*, (1906) 1 K B 79, *Bonnard* v *Dott*, (1906) 1 Ch 740

Harth penny, Hearth penny (*In old English law*) A tax or tribute of a penny, imposed on every hearth or house.

'Hasab rasad khewat' Where a village is subject to river action and in which the revenue assessment is a fluctuating one, the words "hasab rasad khewat" in respect of that village mean division according to the area of the Khewat holdings at the time of Settlement, which includes lands submerged under water and not according to the land revenue payable by the proprietors at the time of the partition [69 P.R 1913 =18 I C 137=57 P L R 1913=86 P.W.R 1913. *See also* A I.R 1935 Lah 446]

Hasarani (*Karn.*) A tax levied in Mysore on betel-leaf, plantain leaf, and other vegetable leaves

Hasarvane (*Karn*) A tax levied from the peasants, in commutation of supplies of green leaves which they were formerly obliged to furnish to the Government Officers

Hasaru (*Karn.*) Green, fresh, standing corn or pasturage.

Hasb ul-wasuli (*H*) A term formerly used in revenue accounts to designate items of an uncertain value, of which no estimate can be computed, and which are entered only after their actual receipt

Hasb-ul-Wasul-l-Marocha

applied also formerly to small villages in the Mongir district paying revenue direct to government Fifth Rep, 240 (*Wil Gloss* 201)

Hasb-ul-wasul-l Marocha (*H*) Lit. agreeably to customary realizations, an item of revenue in the early Bengal accounts, levied especially in Dinajpur and Rangpur, being an estimated amount of receipts from fees on marriages (*Wil, Gloss.* 201)

Hashia-Gawah (*H*) A witness to the execution of a deed. (*Wil Gloss* 201,)

Hasho-ninhai (*H*) Deductions from the total revenue entered on the credit side of the account with the Government (*Wil Gloss* 201)

Hasilat The word 'Hasilat' does not mean land revenue but the produce of the land (47 P.W R 1913 =19 I C. 612=191 P.L R. 1913)

Hasil-l-bazar (*H*) Market dues, revenue from duties on markets (*Wil Gloss* 202)

Haslm-navis (*Mar*) A public officer under the Peshwa's government, who kept a muster roll of the ordinary train of retainers attached to different chiefs of the garrisons, of the forts,and the irregular militia (*Wil Gloss* 201)

"Has Notice" The words "has notice," mean has knowledge or information "and not has received a formal notice. [17 C.W N 440=16 C L J 131=15 I C 430]

Hassanzai The name of a Pathan tribe settled in the mountains east of the Indus but west of the N W. Frontier They number about 8000 fighting men

Hastabood (*or Hast-o-bud*) Literally, what is and was A comparative account An examination by measurement of the assets of resources of the country, made immediately previous to the harvest. Also, in a more general sense a detailed enquiry into the value of lands financially considered (Fifth report) *Hast o-bus*, (*H*) A comparative account, showing the present and past produce of an estate, an examination of the assets or resources of a country, made before the harvest, and sometimes after measurement of the lands a detailed statements of any lands yielding revenue the rent roll of a village signed yearly by the Patwari, the common form is an abstract of each Ryot's account specifying his tenure, the amount of revenue payable by him, the quantity of land in or out of cultivation, and the amount of revenue realized or in arrear (*Wil Gloss.* 202.)

Hasten Cause haste, accelerate, make haste

To HASTEN, ACCELERATE, SPEED, EXPEDITE, DISPATCH. The word *speed* includes not only quick but forward movement He who goes with speed goes effectually forward, and comes to his journey's end the soonest This idea is excluded from the term *haste*, which may often be a planless, unsuitable quickness Hence the proverb, "The more *haste*, the worse *speed*" We do every thing in our power to *expedite* a business, we *dispatch* a great deal of business within a given time *Expedition* is requisite for one who executes, *dispatch* is most important for one who determines and directs. An inferior officer must proceed with *expedition* to fulfil the orders or *execute* the purposes of his commander, a general or minister or state *dispatches* the concerns of planning, directing, and instructing We speak only of *expediting* a thing, but we may speak of *dispatching* a person, as well as a thing

Hasuge (*Karn*) Dividing, sharing, as corn, etc

"Hatari" meaning of (*Bad Pow* III. 481)

Hate. To have a strong dislike to a person or thing

To HATE, DETEST. Joseph's brethren hated him because he was more beloved than they, we detest a traitor to his country because of the enormity of his offence. God hates sin, and on that account punishes sinners, conscientious men detest all fraud, and therefore cautiously avoid being concerned in it.

Hath-chitthi. (*H*) A letter or note written or avouched by the hand of a letter from a person of station, either in his own hand, or signed by him, not bearing his seal only, a printed form given to the heads of a village in the opium districts by the Deputy Collector, specifying the persons who engage to grow the poppy, and the agreement (*Wil Gloss* 202.)

Hathi an elephant a carpenter (*Bad Pow.* I. 271)

Hath-rakhai, putting a village 'under the hand,' in the protection of a powerful neighbouring landlord. (*Bad -Pow*)

HATH-RAKHAI, (compare 'the deposit village in Oudh) (*Bad Pow* II 219.)

Hath-vari (*Karn*) A tax on cotton formerly levied in kind, since commuted for a money tax (*Wil Gloss* 203)

Hatred Active dislike, enmity, ill-will (as, hatred of an enemy)

HATRED, ENMITY, ILL-WILL, RANCOR *Hatred* is not contended with merely wishing ill to others, but derives its whole happiness for their misery or destruction, *enmity*, on the contrary, is limited in its operations to particular circumstances *hatred* on the other hand, is frequently confined to the feeling of the individual, but *enmity* consists as much in the action as the feeling He who is possessed with *hatred* is happy when the object of his passion is miserable, and is miserable when he is happy, but the hater is not always instrumental in causing his misery or destroying his happiness he who is inflamed with *enmity* is more active in disturbing the peace of his enemy, but oftener displayes his temper in trifling than in important matters *Ill-will*, as the word denotes, lies only in the mind, and is indefinite in its signification that it admits of every conceivable degree When the will is evilly directed towards another in ever so small a degree it constitutes ill-will *Rancor* signifies staleness, a species of bitter deep-rooted enmity

Hatti-sunka (*Karn*) A tax on cotton growers levied when the produce is sold (*Wil Gloss* 203)

Haulage Charges for the use of trucks,wagons, or carriages, from one point to another.

Hauling The words "handling" and "hauling" are not synonymous words Hauling is a transportation, while handling involves touching, holding, moving, or managing with the hand,

Hauling.

Haut.

Haut A weekly market, held on stated days, also a bazaar; a daily market. (*Fifth Eeport*).

Have Possess, hold in possession.

To HAVE, POSSESS To *have* is sometimes to have in one's hand or within one's reach, but to *possess* is to have as one's own To *have* is sometimes to have the right to, to belong, to *possess* is to have by one and at one's command a debtor *has* the property which he has surrendered to his creditor, but he cannot be said to *possess* it, because he has it not within his reach and at his disposal we are not necessarily masters of that which we *have*, although we always are of that which we *possess* to *have* is sometimes only temporary, to *possess* is mostly permanent we *have* money which we are perpetually disposing of. we *possess* lands which we keep for a permanency

"That I spent, that I had,

That I gave, that I have,

That I left, that I lost."

HAVE To possess corporally,

Have and hold is a common phrase used in conveyancing

A devise of certain lots to a granddaughter, to have and to hold to her, my said granddaughter, her heirs and assigns for ever," vests in the granddaughter a fee simple,

"Have been acting as such" The words "have been acting as such" in S 109 of the Evidence Act would be applicable even when there is only one single instance proved This would therefore be sufficient to bring about the relationship of landlord and tenant so as to throw the onus of proving the contrary on the other party (154 I C 753=7 R M 489=40 L W 810=A I R 1935 Mad 268)

Haveli or haweli, a palace, mansion, 'haveli-lands' (M &c) crown lands, those reserved for the supply of the privy purse (*Bad Pow* III 7, 17, 137) Haveli or "*Havelly* means house habitation, domain In Bengal the term is applied to such lands as are held by a Zemindar for his own benefit, but at Madras it designates such as are under the immediate management of government, without the intervention of Zemindars or Faghiredars, the revenues of which are either farmed out on short leases or collected by its own officers without any other agency (*Fifth Report*)' The term when applied to lands in the Madras Presidency is intended to indicate that the lands are reserved for the zemindar's personal use and are not available for grant in the ordinary way (142 I.C 744=A I R 1933 Mad 462)

Haven (*See* Harbour) Hale defines a Haven as "a part of the sea within certain necks of land which are more safe than roads for the riding or anchoring of ships, whereby they are protected almost on every side from the violence of the winds, and not far off from the convenience of the port, as Milfod Haven, Plymouth Haven, Falmouth Haven, and the like, whereof some are larger, some straiter, some purely made up by nature, some made or at least helped by art" (First Treatise, Moore, Foreshore, 319, 367)

"Haven" is defined by Lord Hale to be "a place for the receipt and safe riding of ships, so situated and secured by land circumjacent that the vessels there-

Hawker

by ride and anchor safely, and are fully protected by the adjacent lands from danger of violent winds"

Havili-gramamulu (Tel.) Villages formerly retained under the management of the officers of the Nawab of the Carnatic

"Having an interest in the trust" The "interest" of the parties here contemplated in S 92, C P Code, must be the "interest" that is threatened or infringed (33 B 509=11 Bom L R 85)

Hawala, a tenure (Ben) connected with waste-reclamation, has sub-tenures, 'nim-hawala,' 'ausat-nim-hawala,' &c (*Bad. Pow* 1 548, 50)

Hawaladar, *H* One holding any office or trust In the East of Bengal a sub-renter, the occupant of a Hawala a steward or agent for the management of a village a native officer of the Indian army, subordinate to the Subahdar Amongst the Marathas the term was variously applied, but in all it conveyed the notion of trust, deputation, or delegated authority as the chief of a company of guards, guides, or messengers, a principal officer in a fort under the commandant, whose duty it was to appoint the guards, patrols, sometimes, also the commandant himself a subordinate revenue officer, a kind of deputy of the Mamlatdar, who was charged with the collection and remittance of the revenue of the district, and empowered to administer justice in petty complaints an assistant of the Patil, or head of the village, in the collection of the revenue, and in police matters In the Dakhina, and also at one time apparently in Hindustan, an officer appointed by the Government, or the farmer of the revenue, to prevent any abstraction of the crop, or its removal from the Public threshing floor, until the revenue was paid. (*Wil Gloss* 204)

Hawaldari, *H* The office of tenure of a Hawaldar, also applied to a charge made to the villages for the expense of subordinate revenue officers sent to watch or to attach the crops (*Wil Gloss* 204)

Hawk, Hawker One who hawks about (*i e*) carries goods from place to place for sale

'Hawkers' are a sort of deceitful fellows that go from place to place buying and selling small articles and merchandise, that ought to be uttered in open Market (Cowel, cited *Morrill* v *State*, 38 Wis. 437),

A hawker is a trader who goes from place to place or along the streets of a town, selling the goods which he carries with him, although it is generally understood from the word that a hawker also seeks for purchasers, either by outcry, as the derivation of the word would seem to indicate, or by attracting notice and attention to them as goods for sale by actual exposure or exhibition of them by placards or labels, or by some conventional signal or noise

One who in his own person goes from house to house with his goods, and offers them for sale, is a hawker

CANVASSERS OF BOOKS or publications on the street, or from house to house, taking orders for future delivery, are not hawkers.

"Hawker," cannot be construed to include one driving a grocer's wagon to the grocer's customers, taking their orders, and afterwards delivering the goods ordered.

Hawk-Hawker

Hawkers and Pedlers, frequently classed with petty chapmen, trickers, etc, are itinerant dealers who trade They are now to some extent subject to certain statutory restrictions

A hawker is a peddler who cries out his goods, although for all purposes the terms are considered synonymous

The words "hawkers" and "peddlers" are used synonymously and interchangeably in Acts, requiring hawkers and peddlers to take out a certain license, and the terms include such person as are ordinarily and popularly understood to be such

"The words "peddler" and "hawker" have a settled meaning, independently of statutory definition The former is an itinerant trader—a person who sells small wares, which he carries with him in travelling about from place to place--while the latter is also a trader who goes from place to place, or along the streets of a town, selling the goods which he carries with him, although it is generally understood from the word that a hawker seeks for purchasers either by outcry, as the derivation of the word would seem to indicate, or by attracting notice and attention to the goods as being for sale, by actual exposure or exhibition of them, by cards or labels, or by conventional signals or signs

Peddler or hawker, within the generally accepted meaning of the word, is a small retail dealer who carries his merchandise with him, travelling from place to place or from house to house, exposing his or his principal's goods for sale and selling them It is immaterial that the goods are bartered instead of sold, that the sale is a conditional one, or that it is on the instalment plan A single act of selling does not, however, make the seller a peddler It is not necessary that the seller cry his goods in the street

HAWKER, PEDDLER, DRUMMER, ITINERANT VENDOR, MERCHANT A peddler is to be distinguished from a drummer and from a merchant who has a place of business

The term "itinerant vendor," or its equivalent, is often used as synonymous with "peddler," although usually the former is defined by statute as one who hires, leases, or occupies a building for a limited time, that is, a merchant who goes from town to town but not from house to house

PERSONS SELLING BY SAMPLE OR ORDER One who sells by order or sample, but does not deliver the articles sold at the time of the sale, such as a drummer, book canvasser, or a merchant who has a store and solicits orders, is not a peddler. A single or occasional sale and delivery from his samples does not make him a hawker or peddler

PERSONS DELIVERING GOODS SOLD One delivering goods previously sold by himself or another is not a peddler

PERSONS WHO PEDDLE AS AN INCIDENT TO THEIR BUSINESS Persons who raise or produce what they sell, such as farmers and butchers, have been held not to be peddlers (*Rul case law*)

'Hawrah', meaning of, in a mortgage-deed *See* 45 P R. 1913=17 I C 677

Hay. The word "hay,' does not import whether it was hay from natural grass, or from grass sown and cultivated.

Hazl

HAY AND GRASS The term "hay" means the flora of a meadow after it is severed, and is therefore distinguished from the term "grass," which is the hay before it is severed and cured

Haybote, heybote. Hedgebote an allowance of wood to a tenant for repairing his hedges or fences.

Hazara (*Persian*). (From the Persian Hazar, a thousand, the tribe being said to be the descendants of a thousand slaves purchased by a king of Balkh) A large Persian-speaking Shiah tribe of Afghanistan, settled in the hilly country between Kabul and Herat. They are of good disposition, and are much oppressed by their neighbours, to whom (says Burnes) they are hewers of wood and drawers of water They also keep sheep and make carpets. They have no paramount head

Hazard To engage in a wager of any kind is a hazard, within the meaning of that word as used in an Act subjecting to fine one who shall engage in any hazard or game on which money is bet, won, or lost

The word "hazard", in its ordinary sense, means chance, luck or accident, rather than mere uncertainty or contingency

The mutual 'hazards" assumed by parties when they enter into a partnership relation, and which qualify the terms of partnership agreements, includes sickness, which is the act of God, temporary absence or death, or other casualties.

Hazardous "Hazardous," as used in an Act authorizing a board of health to abate nuisances, sources of foulness, or causes of sickness *hazardous* to the public health, means simply dangerous or perilous

The terms "hazardous" and extrahazardous," as used in an insurance policy authorizing the insured premises to be used for hazardous and extrahazardous purposes, have no technical meaning, and must be taken in their ordinary and popular meaning, of dangerous and extradangerous

Hazardous insurance Insurance effected on the life or property of an individual which is in unusual or peculiar danger

Hazari (*Persian*) A commander of a thousand either actually or nominally as an honorary title.

Hazarmal contract In the case of Hazarmal contracts, as distinguished from forward delivery contracts, no date for delivery is fixed but the expectations of the purchaser and the vendors are that delivery could be demanded and given as soon as possible, if the goods are ready, or after they become ready (95 I C 188=A I R 1926 Nag. 410.)

Haziri (*H*) Presence, a muster-roll Also the name of breakfast

Hazir Zamin (*A*) Surety or bail for appearance (*Mac. Mhn Law*)

Hazl (*H*) Joking, Jesting (*Mac Mah. Law*). Jesting applied in Mohammadan law to a contract publicly executed, as if of full force and validity, but which the parties are secretly engaged shall be of no effect if afterwards one of them pretend that the transaction was *bona fide*, the assertion of the other to the contrary annuls the engagement. (*Wil. Gloss*, 206).

Hazrat.

Hazrat (*A*) Presence, dignity, a title of honour A title given to a prince or person of rank, equivalent to Your Majesty, Your Highness, Your Excellency (*Wil Gloss* 205)

He The pronoun "he" when used in any Code, includes a female as well as a male, unless there is some express declaration to the contrary

The word "he," when used in the Revenue act, includes male, female, company, corporation, firm, society, singular or plural number.

"He or they paying freight" "In Bills of Lading engaging the Master to deliver goods to the consignees or assignees a clause to the effect that 'he or they paying freight' is generally introduced which is for the benefit of the Master only, and does not cast upon him the duty of obtaining at his peril the freight from the consignees at the time of the delivery" (I Maude & P 386, 387, citing *Weguelin* v *Cellier*, L,R. 6 H L 286, *Stroude*)

Head Chief, leading, principal, the upper part or principal source of a stream

Head Upper part of a man's body containing mouth sense organs and brain, seat of intellect, thought and imagination

Head of Department Heads of departments may be taken to mean members of the Cabinet, or chief officers of departments of Government.

"Head of a family" defined Bom. Act 3, 1874, S 4

THE HEAD OF A FAMILY is a person in charge of a family, which is a collective body of persons living in one house under one head or management The relations between them must be of a permanent and domestic character, not that of those abiding temporality together as strangers

"The head of a family primarily is the husband or father One may be such head, however, without being either Thus, a mother may become such upon the death of the husband So a son having mother, brothers, and sisters, or either, depending on him for a support and living, in a household which he controls, might be such head, and yet in each case he must, for the purpose of this inquiry, stand in the place of a father—he must be the master, in law, of the family"

The phrase "head of a family," will include any person who has charge of children, relatives, or others living with such person

While a marriage *de jure* exists, the husband is the head of a family, though his family may consist only of a wife who has left him

A woman who has never been married and has no children is not a family, and cannot be head of a family

An unmarried man residing with his mother, and supporting his mother, is the head of that family

'Head of family' Whether includes females *See* 31 I.C. 35.

"HEAD OF A FAMILY" includes the chief representative of each branch of a family. Bom Act III of 1874 (Hereditary offices) S. 4

Health.

Head of a family. Householder who provides for a family (as) father of children or husband in the case of a family consisting of husband and wife If father be dead, mother may be head of the family (1 *Ame Rep* 441)

Head of the Office The words "head of the office" in S 23 of the Court-Fees Act do not refer to the head of the office of a Court, at any rate to the head of the office of a High Court, but to the head of one of the public offices as, for instance, the Board of Revenue [(12 A. 129 (F B)=10 A W.N 39.)]

Head of Stream or creak The head of a stream, meaning the origin thereof, is seldom to be found in a spring or fountain whose centre can be readily taken, but in a swamp overspreading several acres of ground, through which the water flows in guts of various directions

The "head of creak" means the source of the longest branch, unless general reputation has given the appellation to another.

"Head of the village" defined Mad Reg 4, 1816, S 3

Headache Where, in an application for life insurance a general question precedes an enumeration of specific disorders inquired about, and directs the attention to such of them as are properly called diseases, a negative answer by the insured to a question whether he has "headaches" is not a misrepresentation, by reason of the fact that, when he is overworked, he is subject to headaches The question concerning headaches has, no reference to occasional and temporary attacks of that character, which proceed from overwork, and evidence no vice in the constitution, but rather the result of casual causes.

Head line (in a newspaper) line at the top of a page containing title, sub-title etc, of news or article,

Headman" defined Bur Act 6, 1907, S 4 (1), Reg. 1, 1895, S 2 (4), Reg, 5, 1896, S 2 (6)

"HEADMAN" means the person appointed to be the headman of a village tract. Bur. Act VI of 1907 (*Burma Villages*) S. 4, Cl. 1

"Headman" means the chief or head of any hill-tribe, or clan or village or group of clans or villages, and includes a *Duwa* and an *Akyi* Bur Regn. I of 1895 (*Kachin Hill tribes*), S 2. cl 4.

"HEADMAN" means the chief or head of any clan or village inhabitants, and includes a council of chiefs or elders Bur Regn, V of 1896 (*Chin Hills*), S 2, cl 6

Headquarters In reference to the place of business of a corporation, "headquarters" is synonymous with the words "principal office."

"Heads of charge to jury" meaning of. 91 I.C 225=27 Cr L J 49.

Health Freedom from sickness or suffering; a right to the enjoyment of which is one of the absolute rights of persons. (*Kenny.*)

"HEALTH", "in good health." In a Life Policy, a statement that the assured is "in Health", or "in good Health", "can never mean that he has not the seeds of dis-order in him · we are all born with the seeds of mortality in us. A man subject to the gout is a

Health Insurance.

Life capable of being insured if he has no sickness at the time to make it an unequal contract" [(per *Mansfield C.J*, *Willis* v *Poole*, Park, 935)

Health Insurance Indemnity to persons for expense and loss of time occasioned by disease

"Health Officer" defined Ben Act, 4, 1871, S 1, Mad Act 3, 1904, S. 3 (13)

Healthy "The term properly applies to a condition of the body, and not to the mind We do not say that a person has a healthy mind when we wish to convey the idea of a sound intellect, nor do we say that a person has an unhealthy mind when we wish to convey the idea of a weak intellect"

"The word 'healthy', in its ordinary acceptation, means free from disease or bodily ailment, or a state of the system not peculiarly susceptible or liable to disease or bodily ailments" A defect in the structure of the little fingers can be no more a want of soundness in health, in the ordinary acceptation of the term "health," than myopia, or shortness of sight.

HEALTHY, WHOLESOME *Healthy* or *Healthful* stands to *Wholesome* as the positive to the negative, The former promotes or increases our bodily strength, the latter does no harm to our physical constitution *Unwholesome* food disorganizes the functions of the body, *healthy* air and recreation improve the physical powers (*Smith Syn. Dis*)

HEALTHY, WHOLESOME, SALUBRIOUS, SALUTARY.

Climates are *healthy* or unhealthy,according to the constitution of the person, water is a *wholesome* beverage, bread is a *wholesome* diet for man, the air and climate of southern France has been long famed for its *salubrity*, and has, induced many invalids to repair thither for the benefit of their health, the effects have not been equally *salutary* in all cases

Heap, Accumulate, Amass The farmer *heaps*, but does not *accumulate*, corn, unless he buys it up from different quarters for storing But by industry and good fortune he *accumulates* wealth. *Amass* is to accumulate in large quantities what is of substantial value, for the purpose of creating a store or fund; as to *amass* wealth or learning. (*Smith Syn Dis.*)

Hear, Hearing In legal phraseology "hear" a cause means, to hear and determine it And "unless there be something which by natural intendment, or otherwise, would cut down the meaning there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there And further unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure" [(*per* Ld Blackburn, *Re* Green, 51 L J.Q B 44)]

The words "HEAR THE ARGUMENT" does not mean that the justices shall literally hear the argument, but means that the argument shall be considered by the Court

Hear (TO), in the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), S 9, in the expression

"Hearing of the suit

"requires the judge to hear the matter of the representation," means to "hear and finally determine the whole matter" Per Lord Selborne in *Green* v. *Lord Penzance* (1881), 6 App. Cas 669

When two or more are to *"hear and determine,"* they must sit together not separately (Burn's Justice, Introd, Dwar, Stat, 670)

TO HEAR, HEARKEN, OVERHEAR We *hear* sounds, we *hearken* for the sense, we *overhear* the words a quick ear *hears* the smallest sound, a willing mind *hearkens* to what is said, a prying curiosity leads to *overhearing*.

HEAR AND DETERMINE Authority to hear and determine a cause is jurisdiction to try and decide all the questions involved in the controversy

The power to hear and determine is an essential ingredient of original jurisdiction, and the authority to examine and correct errors is the distinguishing characteristic of appellate power To hear and determine a criminal case is to proceed to try the case and pass sentence.

The words "hear and determine" refer to judical determination after the hearing and weighing of testimony on both sides, and do not generally include an *ex parte* proceeding

"Heard and finally decided" [*See* C P Code, S 11] To support a plea of *res judicata*, it is not enough that the parties are the same, and that the same matter is in issue. The matter must have been "heard and finally decided" [24 C 616 (P.C.)=24 I A 50 *See also* 8 A 282, 30 M L J. 379, 15 I.C. 229, 28 Mad 338; 25 Cal 262 (273)]

Where an appellate Court confirms the decree of the first Court on the strength of the oath of a party to the suit on a question of fact, the decree of the appellate Court is none the less a final adjudication, 24 M 444, *see also* 36 Mad 287, but *see* 5 Mad. 529.

Heard from "Heard from," as used when saying that one person has not heard from another, refers to some direct personal communication by letter or otherwise

In an action for divorce under an Act which declare that absence for three years without being heard of is a ground for divorce, proof that the party had not been *"heard from"* is not equivalent to proof that the party had not been *"heard of."* (*Words and Phrases*)

'Heard in person' meaning of. (1937) *2 M L J* 189

Hearing The trial of a suit is called a "hearing" and, technically considered, this includes not only the introduction of the evidence and arguments of the solicitors, but the pronouncing of the decree by the Chancellor

HEARING A term, properly applied to the argument and consideration of the case at the several stages of its orderly progress, and, when applied to that upon which the case is absolutely determined, it is qualified by the word "final"

"Hearing of the suit" Meaning of. *See* A.I.R. 1936 Lah 280 *See also* 51 I.A 321 (325)=4 P. 61=29 C W N 391=A.I R 1924 P C. 198=20 L.W. 491=35 M L.T 143=26 Bom.L.R 1129=22 A.L.J 990=5 Pat.L.T. 623=40 C.L.J, 439=1 O.W.N. 629=10 O, &

Hearing.

A L R 1033=1924 M W N 707=81 I C. 747=47 M L J. 441

'Hearing' The word "hearing" has not been defined in the Civil Procedure, but it is obvious that it is used in the different rules with a view to state the different purposes for which a date for hearing of the suit is fixed [63 I C 570=1922 P H C C 81= 6 P L J 650=2 P L T 572=A I R 1922 Pat 252]

Whether the term "hearing' in O 17, R 2, C P. Code, extends to occasions when interlocutory applications are being dealt with? [4 Pat 61=35 M L T 143=20 L W 491=L R 5 P C 171=26 Bom L R 1129=22 A L J 990=5 Pat L T 623=81 I.C 747= (1924) M W N 707=40 C L J 439=1 O W N 629= 10 O & A I R 1033=29 C W N 391=51 I A 321=A I.R 1924 P C 198=47 M L J 441 (P C)]

Hearing Trial The hearing or trial must be taken to include all the proceedings taken to determine a case, and the first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused In Wharton's Law Lexicon the meaning of the word is given 'as the investigation of a controversy" (10 Ind Cas 380, 382)

Hearing upon the merits, in S 44 of the offences against the Person Act, 1861 (24 & 25 Vict c 100), necessary to give justices jurisdiction to give a certificate of dismissal of a summons for assault, does not include a hearing of the defendant's account of the facts after the plaintiff has given notice that he does not intend to proceed upon the summons *Reed* v *Nutt* (1890), 24 Q B D 669, Lords Coleridge and Esher The words "upon the merits" inserted in the Act of 1861 appear to limit the jurisdiction which justices had been decided to have under the earlier Act, 9 Geo 4, C 31, S 7 *See Tenniculffe* v *Tedd* (1848), 5 C B 553, and *Vaughton* v *Bradshaw* (1860), 9 C B N S 103

Hearsay What one hears, (but does not know to be true), Gossip "In its legal sense 'Hearsay' Evidence is all evidence which does not derive its value solely from the credit given to the witness himself but which rests also, in part, on the veracityand competence of some other person" (*Taylor on Evidence*, 9th Ed, 368)

Hearsay evidence. The term 'hearsay," says Mr. Greenleaf, "is used in reference to that which is written as well as that which is spoken, and in its legal sense denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but rests also in part on the veracity and competency of some other person"

Hearse. A hearse is a carriage for conveying the dead to the grave.

Heart disease "Heart disease," within the meaning of a question in an application for a life policy whether the applicant's parents, etc, have been afflicted with consumption, scrofula, insanity, epilepsy, disease of the heart, or *other* hereditary disease, is to be construed only as an inquiry whether such relatives have been afflicted by such disease in hereditary form, the word "other" in the question plainly indicating that the inquiry is so limited

Heat of passion Passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts It has no application to passion or anger which comes from an old grudge where there is no immediate cause or provocation

The term "heat of passion," used to characterize murder in the second degree, is not used in its technical sense, but as a condition of mind, contradistinguished from a cool state of blood

By "heat of passion" is meant passion or anger suddenly aroused at the time, by some immediate reasonable provocation by words or acts of deceased at the time

The heat of passion that will take away the malice from an act manifestly dangerous to human life, and reduce homicide to manslaughter, must be caused by lawful provocation

Heathen Pagan Gentile The distinction at present prevailing between Heathen and Pagan is that the former is a creed, the latter a superstitious worship *Heathen* superstitions and *pagan* idolatries When used as an epithet, *Heathen* has always an unfavourable sense Not so *Pagan* as *pagan* art or architecture is employed to designate those simply which Christianity has had no influence in producing. *Gentile* is a national term expressing those who were not converted to Christianity *Pagan*, an individual term denoting those who remained idolaters in spite of Christianity (*Smith Syn Dis*)

Heavy Stock Stock of railways handling heavy goods traffic

Heb An appreciation of Hebrews

Hechchu (*Tel*, *Karn*) Increase, excess, superiority, increase of rent or taxes

Hedgebote An allowance to a tenant of wood for repairing hedges or fences

Heed Concern oneself about, take notice of, carefully

HELD CARE, ATTENTION When a young man enters the world, he must take *heed* lest he be not ensnared by his companions into vicious practices, in a slippery path we must take *care* that we do not fall A good child gives *heed* to his parents when they caution him against any dangerous for false step, he pays *attention* to the lesson which is set him to learn

Hegira. The epoch or account of time used by the Arabians and the Turks, who begin the Mahamadan era from the day that Mahomet was compelled to escape from Mecca to Medina. (15th July. 622 A D.)

Heinous, Flagitious, Flagrant, Atrocious. *Flagrant* intensify specific kinds of action, *Flagitious* and *Atrocious* are simply applicable to actions So *flagitious* or *atrocious* deeds, *heinous* cruelty a *flagrant* blunder *Flagitious* expresses the badness of the deed, *Atrocious*, the badness of the motive, as one of violent and energetic evil We say *atrocious* tyrant, a *heinous* offence, a *flagitious* character (*Smith Syn Dis*)

"Heir" defined (*See also* Senior heir) Act 27 1866, S 2, Act 1, 1869, S, 2 (sub, U P Act 3, 1910, S 2), Act 24, 1870, S 2, Act 21, 1881, S. 3, Act 22, 1886, S. 48 (2). *See also* 1937 R.D, 17.

Heir.

Heir is a person who inherits or may by law inherit.

"To heir an estate" is a common expression, which means "to take as heir, to inherit."

At common law an heir is he who is born in lawful wedlock, and upon whom the law casts the estate in lands, tenements, immediately on the death of the ancestor.

The heirs of a decedent are those of his kindred on whom the law, immediately on his decease, casts the estate in real property

An heir is one who takes by descent.

The word "heir" not only means one to whom an estate has descended from his immediate ancestor, but includes one who has inherited through several successive descents.

The word "heirs," as used in a will giving property to the heirs of testator's children, should be construed as descriptive of a class of beneficiaries

In a will written in English, the word "heirs" would naturally include heirs as at the date of the testator's death, subject always to a contrary intention declared in the will [49 I.A. 323=49 Cal. 1005=29 C.W.N 199=69 I.C 323=37 C.L J 420=25 Bom L.R 625=A.I.R. 1922 P C 311=45 M.L J 572 (P.C.).]

The word "heirs" used in the Sanad, was construed to mean heirs of the grantee according to the ordinary rules of inheritance, [2 M. 128=7 I.A 38= 6 C.L R. 152 (P C.)]

In S 7 of Reg XXIX of 1802, the term "heirs" means persons who, in the event of death, would inherit from their preceding incumbent. (4 M 338, 9 M 283)

"HEIR" means the person for the time being entitled as heir to a (deceased person) thakur Bom. Act XXI of 1881 (*Incumbered estates* (*Broach* v. *Kaira*), S 3.

"Heir" means a person who has inherited or inherits otherwise than as a widow or a mother, an estate whether before or after the commencement of this (U. P. Estates) Act; U. P. Act I of 1869 (*Estates*), S. 2.

The word "heir" is often used loosely in transactions of Mitakshara family entered into by karta of the family and should not be limited to heirs of the *de facto* karta only. [9 Pat. 747=I.R. 1930 Pat. 603= 126 I C. 299=A.I.R. 1930 Pat. 301.]

There are many cases in which a non-technical meaning has been placed on the word "heir" in order to arrive at the true intent of a testator, or grantor, or parties to some particular contract.

Heirs and Assigns The addition of "and Assigns" to "heir" have now no special conveyancing value,—"HEIRS" alone passes the full estate. (*Wms. R P.* 121, 58), *see also* Pollock and Maitland's Hist. Engl Law, vol. II, pp. 14 and 16; The word "assigns" is not a word of limitation; it only imports that a man takes an assignable estate. (*Osborne* v. *Rowlett*, (1880), 13 Ch. D. 774)

A grant to one and his heirs and assigns is apt and appropriate to pass a fee simple absolutely.

Heir-at-law.

Heirs—Issue—Children. The words "children," "issue" and "heirs" are not synonymous terms. They are technical terms and have each acquired a peculiar and appropriate meaning.

There is doubtless a technical difference in the meaning of the two words "heirs" and "children", and yet in common speech they are often used as synonymous The technical distinction between the terms is not to be resorted to in the construction of a will, except in nicely balanced cases

"When the general term "heirs" is used in a will, it will be construed to mean 'child' or 'children,' if the context shows that such was the intent of the testator"

Where the words "children" and "heirs" are used in the same instrument in speaking of the same persons, the word "heirs" will be construed to mean "children"; such usage being treated as sufficient evidence of the intention to use the word "heirs" in the sense of "children."

"Heir and Devisee". *See* Act XXVII of 1866 (Trustees) S. 2.

"Heirs" is sometimes used to mean devisees, legatees, or distributees, when it appears from the will that such was the obvious intention of the testator.

HEIR AND LEGATEE The word "heirs," as used in the residuary clause of a will providing that "the balance of my estate shall be equally divided among all the heirs herein named", should be construed as synonymous with "legatees," and to refer to those heirs who took under the will

HEIRS AND DISTRIBUTEES The term "heir" has as no legal signification in respect to persons entitled to succeed to the personal property of the intestate. These are now usually signified in judicial proceedings, as well as in judicial decisions, by the term "distributees."

'Heirs and representatives'. The words *'heirs and representatives'* are words of limitation and not of purchase, that is they are merely intended to express the absolute state conferred on donee as distinguished from life estates, [45 All. 596=50 I.A. 265=26 O.C. 257=76 I.C. 922=A.I.R. 1923 P.C. 160= 47 M.L.J. 260 (P.C.)]

Heir Apparent. A person whose right of inheritance is indefeasible, provided he outlives the ancestor, as the eldest son, who must by the common law in England, become the heir of his father on his death.

Heir-at-law. One to whom the law gives the inheritance, on account of his proximity of blood.

"HEIRS-AT-LAW," in its general definition, "is not limited to children It may be used, and often is used, in cases where there are no children, and as including parents, brothers and sisters," etc.

The phrase "heirs-at-law" means the same as "heirs general." They are the kindred by blood of a deceased intestate, who inherit his land; those upon whom the law of descent casts the title Such persons take the land by operation of that law and according to it.

It is well settled that in construing wills the words "heirs-at-law," or "issue," will be given either their

large or restricted sense as best exemplifies the wishes of the testator.

The words "heirs", "heirs-at-law," or "lawful heirs," when used in a will giving property to one with remainder to his heirs, etc, will be construed to mean heirs or issue living at the death of the person named as ancestor

Heir by custom. One whose right of inheritance depends on a particular and local custom

Heir by devise One to whom lands are devised

Heirs, Executors, Administrators and Assigns These words mean all persons claiming or having the right to claim under the person to whom it refers whether by Deed, Will, or otherwise (Per *Lord Hatherley* in *Pride* v *Bubb*, 41 L J. Ch. 109.)

Heir general An heir who generally represents the deceased and succeeds to everything not specially provided to other heirs

Heirs, lineal and collateral Heirs may be lineal or collateral. In certain contingencies brothers, sisters, parents, and even kindred in the remotest degree, are heirs at law.

The word "heirs" is one of the strongest and most expressive terms in the law, and when employed it will be given its settled legal meaning, unless the context shows in the clearest and most decisive manner that the parties who used it intended that it should have some other meaning Heirs and lineal and collateral, but the generic term includes both classes.

Heir of line One who succeeds lineally by right of blood (*Kenny*)

Heir of provision One who succeeds as heirs by virtue of a particular provision in a deed or instrument (*Kenny*)

Heir of the Body A term of technical import, meaning such of the issue of offspring of a person as may by law inherit The term is equivalent to bodily heirs, and in its technical sense includes all persons who successively answer to this description, and hence it embraces the whole line of lineal descendants, to the most remote generation

The expressions " 'Heirs of the body' and 'Issue' are far from being synonymous The former are properly words of Limitation whereas the latter term is, in its primary sense, a word of purchase. (*Stroude*)

'HEIRS OF THE PRECEDING KARNAM" in S 7 of the Karnam's Regulation mean his next of kin according to the order of succession of the several grades of legal heirs, and not heirs in the order of succession to undivided divisible ancestral property.(18 M. 420)

Heir Presumptive A term which applies to those who will probably inherit from a live ancestor, a person who, if the ancestor should die immediately would succeed to the estate, but whose right of inheritance may be defeated by the birth of a nearer heir; he who has the present presumption in his favour, that he will be heir, but which presumption may be excluded by the intervention of somebody who has a nearer title.

APPOINTED HEIR. A person who is appointed as heir does not thereby lose his right to succeed

collaterally in the family of his natural father and does not hence get a right to succeed collaterally in the family of the person appointing him among the Jats of Jagraon, Ludhiana District, an appointed heir is not disentitled to succeed collaterally in his natural family and is not entitled to succeed collaterally in his adoptive father's family, [177 P L.R. 1914=40 P R 1914=71 P W.R 1914=24 I C 894]

"LAWFUL HEIRS" means the heirs designated by the law to take from their ancestors.

In common parlance the terms, heirs-at-law and lawful heirs, are used indiscriminately as synonymous and convertible

The term "heirs" is synonymous with "lawful heirs," or "right heirs."

The terms "lawful heirs," "right heirs," and "heirs" are synonymous. Their signification is fixed by the law, and when they are used in a deed or will, without any superadded words or phrases indicating a different meaning, they are always understood to be used according to their legal acceptation

"LEGAL HEIRS" as used in the phrase "his children or legal heirs, "are equivalent to "descendants," and the entire phrase has the force of the word "issue."

PROSPECTIVE HEIR The words "prospective heir" mean an heir apparent or presumptive, that is, one who has a chance or possibility of inheriting an estate should he survive his ancestor. There is a distinction, however, between the last two terms An heir presumptive is one who would be the heir if the ancestor were to die at the contemplated time, but whose possibility of inheritance may be destroyed by the birth of some one more nearly related, as well as by his death before the ancestor An heir apparent is one who is sure to inherit if the ancestor dies in his lifetime

Heirlooms Such personal chattels as pass on their owner's death, by force of a special custom, to his heir, along with his inheritance, and not to his executor or administrators

"In some places chattels as heirs-looms (as the best bed, table, pot, pan, cart and other dead chattels movable) may go to the heir" (*Co Litt* 18*b*)

"HEIRLOOMS, is any place of house hold stuff which, by the custom of some countries, having belonged to a house for certain descents, goes with the house, after the death of the owner, unto the Heir, and not to the Executors" (*Termes de la Ley.*)

The term is also used to denote personal property that has been in the family for generations.

The ancient jewels of the Crown are *heirlooms* (Fitz Abr, Exors " 108, *Co. Litt* 18*b*) The owner of *heirlooms* may dispose of them in his lifetime, though not by will (Cro. (3) 344; 2 Black. Com, 429.)

In popular language the term *"heirloom"* is generally applied to place, pictures, furniture, or other articles, which have been assigned by deed of settlement or bequeathed by will to trustees, in trust to permit the same to be used and enjoyed by the persons for the time being in possession, under the settlement or will, of the mansion house in which

Heirship

the articles may be placed. *See also* Wms. Exors, Wms. Pers. Pro., (*Ency of the Laws of England.*)

Heirship "Representation" and "heirship," though they may produce the same result, are not the same thing, and it is not necessary that a person should be the heir of another in order to be his representative "Heirship" is the result, while "representation" is but a process through which that result is produced

Held, in 30 & 31 Vict c 131, s. 40, has no specific technical meaning, but simply means "that the contributory has had his name upon the register as the holder of the shares for the period in question" *Per* Chitty, J, *Re Wala Company* (1883), 21 Ch D. 857

"As a technical term, 'held' embraces two ideas—that of actual possession of some subject of dominion or property, and that of being invested with legal title or right to hold or claim such possession. We speak of lands being held in fee, or for a term of years, or by adverse possession, meaning that possession is had of these lands under claims to such possession of the nature described by these terms. So we speak of a legal title being held in respect to land, that expression not necessarily implying the actual possession of the land to which such title relates."

The word "held" in the phrase 'lands held by coparceners, joint tenants, or tenants in common," in statutes relating to the partition of such lands, "has always been construed as denoting a present possession, either actual or constructive" Such is the import of the words authorizing the partition of such lands

HELD WITH, in Lands Clauses Act, 1845 (8 & 9 Vict. c 18), Ss 49, 63, applies to lands not immediately contiguous to the lands compulsorily taken. *Cowper Essex* v *Acton L.B* (1889) 14 App Cas. 167 "They are not words of art. They are ordinary language, and must be understood with reference to their object." Lord Bramwell, *loc cit*, 168.

"Held by him as Sir"—The words "held by him as sir, in S 7 of the Rent Act, must be construed to mean land belonging to him, or to which he was entitled, as sir, and not necessarily land in his possession, and as liberal an interpretation should be given to these words as is consistent with the canons of construction (8 A. 256.)

Held in Trust A fire insurance risk taken on property held in trust by those insured refers to that property of which the insured had the care and custody intrusted to them as representatives of others, and for which they were responsible to the owner.

"Held under attachment." 1 I.A. 89=12 B.L R. 297=3 Sar 338.

Helleborine. An alkaloid, employed in pharmacy, and obtained from the root of the Christmas Rose.

Help. "Help," as used in a contract whereby one of the parties agreed "to find help" for a specified work means only such manual labour as might be reasonably needed in order to accomplish the work. It does not bind the party to pay for the use of an apparatus furnished by the other party to the agreement which considerably facilitated the work in question.

Hemeralopia Loss of sight at night.

Hereafter.

Hemicrania Neuralgic pain on only one side of the head

Hemiopia Partial vision, in which the whole of any object cannot be seen at one time.

"Hemp" defined Act 12,1896, s, 3 (*k*), Bom Act 5,1878, s 3 (9)

'HEMP" means any variety of the hemp plant from which intoxicating drugs can be produced Excise Act (12 of 1896), S 3

Hence "Hence" is sometimes the equivalent of "so," "therefore", it is used as a term of inference.

Henceforth "Henceforth," as used in a bond on condition that if the receiver should henceforth, faithfully discharge the duties of his trust as such receiver, the obligation should be void, is a word of futurity, and upon the face of the bond there could be based no liability for the past failure of the trustee to discharge his duties under the trust.

Henceforward "Henceforward", as used in municipal resolution providing for the taxation of tenants or land, does not necessarily convey the idea of perpetuity It means no more than "hereafter", which may import a permanent or a temporary arrangement, according to the general tenor of the instrument and the nature of the subject-matter about which it is used.

Henchman. A "henchman" is not, according to the ordinary meaning of the word, a policeman The word signifies servant, page, or hangeron.

Hennumula Property of females (*Kan*). prevalent among Moplas—Alıyasantana—*See also* Stri-Sothu (*Sun Mal Law*)

Henwat, one of the local harvests (ripe in December), Oudh (*Bad Pow.* II 197.)

Herald Regulated armorial bearings.

Heraldry Science of heraldic or armorial bearings. *See* Edmondson's.

HERALDRY. Twiss, The Law of Nations, p 60; Rye's Records and Record Searching.

Herbage "The green pasture and fruit of the earth, provided by the nature for the bite or food of cattle It is also used for a liberty that a person hath to feed his cattle in the ground of another person; or in the forest, &c" Cromp. Jurisd 197 (*Tomlin's Law Dic*)

Her children. The words "her children," "our children," and "my children," used by a testator in making devises or bequests to his wife and his children, mean substantially the same, and constitute no ground for any distinction, or a different construction of the gift than the usual acceptation of the term "children."

Herd, "Herd" is defined by Webster as a number of beasts assembled together.

Hereafter. The terms "now" and "hereafter" signify time present and to come, and from the period at which they are used

The word "hereafter" used as an adverb, does not necessarily refer to unlimited time. Like the word "after," it is not used in common parlance for such

Hereafter

purpose, it is not a synonym, for "forever", it rather indicates the direction in time, merely, to which the context refers, and is limited by it. The duration of the "hereafter" is usually expressed by some other word, or is inferred from the context In fact the mind does not rest satisfied with the use of the word "hereafter" in such a case, but naturally inquires and expects to hear in addition how long the hereafter is to last

In the construction of statutes the word "hereafter" shall mean any time after the day on which the statute takes effect.

"Hereafter to be valued and declared" in a Marine Insurance—Meaning of See *Inglis* v. *Stock* 10 App. Ca 269=54 L J.Q B 586.

"Hereby" *See* 28 I.C 149=5 C W.N. 443.

HEREBY "Hereby acknowledged," as used in a receipt, constituted an acknowledgment of the receipt of the sum named as of the day when the receipt was made, and cannot be construed as merely an acknowledgment that at certain times in the past the signer had borrowed the sum named in the receipt.

Hereditaments "Hereditament is the largest word of all in that kind, for whatsoever may be inherited is an hereditament, be it corporeal or incorporeal, real or personal, or mixt" (*Co Litt*, s. 6 a.)

HERFDITAMENT. Anything that may be inherited, whether a thing corporeal or incorporeal, real, personal or mixed.

HEREDITAMENTS, are all such immoveable things, whether corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance, and which, if they are not otherwise devised, descend to him that is next heir, and fall not to the executor as chattels do. *See* Stat 32 Hen. 8 Cap 2 It is a word of every great extent, comprehending whatever may be inherited or come to the Heir, be it real, personal or mixed (Co. Lit. 6, 16) And by the grant of hereditaments in conveyances, manors, houses, and lands of all sorts, rent, services, advowsons, &c. pass. (*Co Litt.* 16 *Tomlin's Law Dic*)

The word "hereditaments" is more extensive in its signification than "land" or "tenement," and signifies anything capable of being inherited, and as applied to really is divided into corporeal and incorporeal.

In its ordinary acceptation it is applied to houses and other buildings, yet in its proper legal sense it signifies everything that may be holden It not only includes land, but rents and other interests.

HERFDITAMENTS, in 38 Geo. 3, c. 5 (Land Tax) s 4, includes a railway tunnel, which is an interest in land, and not a mere easement through it. *Met. Rail. Co* v. *Fowler* (1893), 1 Q B 165, (1893), App. Cas. 416.

Hereditaments of any tenure, in the Lands Clauses Act, 1845 (8 & 9 Vict c 18), s. 3, includes incorporeal hereditaments. *G W.R.* v. *Swindon Rail. Co.* (1884), 9 App. Cas. 787, 809.

HEREDITAMENT TITLE TO, in County Court Act, 1888, (c. 43), s. 56, is defined as including *land* and

Herein.

a leasehold interest therein. *Tomkins* v *Jones* (1889), 22 Q B D 599 The word is not used as describing the *quantum* of interest, but as describing the subject-matter itself—viz., the land. Bowen, L.J, at p 602

CORPOREAL HEREDITAMENTS are such as are tangible, visible and as may pass by livery of seisin.

INCORPOREAL HEREDITAMENTS are such as are not capable of manual delivery of feoffment, but lie only in grant. (*Kenny*)

Hereditary Diseases. "Hereditary," as used in an answer in an application for a life insurance policy, that the applicant's parents and other relatives have not been affected with consumption, scrofula, insanity, etc., or other hereditary diseases, is to be construed as applying to all the designated diseases, and to be, in effect, a statement that the parents and other designated persons were not affected with other hereditary diseases of the classes named, or other hereditary diseases.

"Hereditary office" defined, Bom. Act 3, 1874 S 4.

"HEREDITARY OFFICE" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village-police, or with the settlement of boundaries, or other matters of civil administration the expression includes such office even where the services originally appertaining to it have ceased to be demanded. Bom. Act III of 1874 (Hereditary offices), S. 4.

Mulla office is not hereditary 139 I.C. 210=1932 Bom. 456

"Hereditary tenure" defined, Ben. Reg 37, 1793 S. 15.

Heregeld (*In old English Law.*) A tribute or tax levied for the maintenance of an army.

"Herein" The words of S 2 of the T P. Act "Nothing herein contained shall be deemed to affect any transfer in execution of a decree" only mean nothing contained in S 2 and not nothing contained in the Transfer of Property Act shall affect execution sale. 9 I.C 840

HEREIN. The meaning of the word "Herein" as used in legal phraseology, is to be determined by the context. It may refer to the section, the chapter, or the entire enactment in which it is used; and this rule is applicable to the construction of a document as well as of the statute.

The authority to 'herein' determine the cause is jurisdiction to try and decide all of the cases involved in the controversy.

Herein: hereinafter. "Where a testator, by his will, charges his lands with the payment of the legacies "hereinafter" bequeathed, the charge does not extend to legacies bequeathed by a Codicil" (I. Jarm. 95, *Stroude.*)

"HERFIN", "HEREBY", AND "HEREINAFTER" are synonyms confining the thing spoken of to the matter on hand. (*Gillooly* v *Plunkett*, 9 L.R. Ir. 324).

HEREIN PROVIDED FOR the phrase "herein provided for," as used in Statutes, generally, if not always

Hereinafter.

refers to the act, chapter, or title, but not to the section of the act in which it is found

Hereinafter. "Hereinafter," as used in a general denial of every allegation of the complaint not 'hereinafter' specifically admitted, is to be construed as embracing "all that follows, and authorizes the plaintiffs to avail themselves of any admissions therein contained"

"HEREINAFTER NAMED" as used in a will to describe executors as hereinafter named, refers to those finally named by operative words.

Hereinbefore contained, in 30 and 31 Vict c 127 (Railway Companies), S *23*, is ambiguous, and may mean "before contained in this Act," or "before contained in this section," therefore, which of the two meanings in the proper one must be discovered "from the context and the general scheme of the Act." *Re Cambrian Rail Co* (1868), 3 Ch App *297 See also* 9 I C. 840.

Heresy Opinion contrary to orthodox doctrines of the church or religion, or contrary to the generally accepted doctrine on any subject "Heresy, consists not in a total denial of religion but of some of its essential doctrines, publicly and obstinately avowed." [4 *Bl Com* 44 (45).] It is false opinion repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the accepted religious faith or at least of most high importance" (1 Hawk P C, c. 2 1. *Tomlin's Law Dict*) *See* Lindwood, Prov, Gibs Codex, Hawkins Pleas of the Crown, Black Com, Phillimore, Eccl Law, Stephen, Hist Crim Law. Professor Mitland, Law Quarterly Review, vol ii p 153, article "The Deacon and the Jewess, or Apostasy at Canon Law," and article Canon Law.

Heresy, heterodoxy. To be of a different persuasion is *heterodoxy* to have a faith of one's own is *heresy*, the heterodoxy characterizes the opinions formed.

HERESY, HETERODOXY, SCHISM *Heresy* is a new opinion in religion set up by an individual or a sect against the old, and is taken to relate to fundamental and vital points *Heterodoxy* is a milder term, and denotes slighter deviations or defects in the creed, for which the person is not necessarily responsible *Schism* is a rending of external unity or religious communion, of which heresy is often the cause (*Smith Syn Dis*)

Heretic. Holder of an unorthodox opinion in matters of religion. "By the ancient Ecclesiastical Laws of this Realm, no man could be convicted of Heresy (being High Treason against the Almighty) but by the Archbishop and all the Clergy of that Province in their General Council of Convocation. But 2 H. 4, c 15 gave the Bishop in his Diocese, power to condemn an Heretick." (Caudrey's Case, 5 Rep XXIIb, XXIIIa) It is an ecclesiastical offence which consists in "a false opinion repugnant to some point of Doctrine clearly revealed in Scripture, and either absolutely essential to the Christian Faith, or, at least, of most high importance" (Jacob citing I Hawk. P.C. 2, S. 1, *Phil. Ecc. Law*, 842.)

Heretofore. In a will devising all testator's real estate to a certain beneficiary, and bequeathing other property to other beneficiaries to equalize what "he

Hiba.

has heretofore" given the first beneficiary, "heretofore' should be construed to mean "hereinbefore."

The words "heretofore contracted," in a treaty, referring to debts, meant entered into at any period of time before the date of the treaty, without regard to the length or distance of time.

The use of "heretofore" in a statute which expressly declares that it shall apply to proceedings heretofore had, will be construed to give the statute a retrospective effect, it being used in contrast with the word "hereafter."

Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day when such statute shall take effect

Heriot A 'heriot" goes with the reversion, as well as rent, and the grantee of the reversion shall have it (*Jacob's Law Dict*) The beast thus becomes attached to the free-hold

"Heritable and transferable property" defined, Bom Act 5 of 1879, S. *73*.

Heritable rights. Rights of the heir, rights to land or whatever may be intimately connected with land or other immoveable property

Heritage (*in Hindu Law*) The term Heritage (Daya signifies that wealth which becomes the property of another, solely by reason of relation to the owner (*Mit Inheritance*)

HERITAGE The term "heritage" was used in the Norman law to designate real estate.

"Her Majesty" defined. (*See also* Queen), 7-8V. c 12, S 20, Act 10, 1897, S 3 (23) Bom Act 3, 1886 S. 3 (8), Mad Act 1, 1891, S 3 (13), Reg. 3, 1897, S 2

"Her Majesty's Military Forces" defined, 57 8 V. c 45, S 4.

"Her Majesty's Naval Forces" defined, 57-8 V. c 45, S 4.

"Her Majesty's regular forces" defined, 44-5 V. c 58, S. 190 (8)

Hermaphrodite. A human being combining the characteristics of both sexes, "To call a Dancing Mistress "an Hermaphrodite is not actionable, for girls are taught dancing by men as often as by women" (Odgers, 75, citing *Wetherhead* v. *Armitage* 2 Lev 233, 3 Salk 328)

Hernia. By this term is distinguished that condition of the abdomen in which the bowel protrudes through the parietes or walls, commonly called "rupture."

Herus dat ut servus faciat. The master gives (wages) that the servant may do (the work.)

Hesitate. To show indecision, to be reluctant to do 'I do not hesitate to guarantee', means to say, 'I represent'" (per *Coleridge, J*, *Gerhard* v. *Bates*, 2 E & B 482) (*se*) "I do not feel reluctant to guarantee."

Hiba (*H.*) A gift in law, a perfect gift, one accompanied by delivery and acceptance. A gift on a death-bed is considered a bequest (*Wil Gloss*)

Hiba.

HIBA-BIL-IWUZ is a gift for which a return or consideration is exchanged, as when a man gives his property to his wife in exchange for her claim of dower [I L R 1937 All 285=1937 A L.R 39=166 I C 439=A I R 1937 All 25]

Hiba ba shart ul Iwuz, (*A*) A gift on stipulation or promise of a consideration Hibeb ba shart-ul-Iwuz is said to resemble a sale in the first stage only, that is, before the consideration for which the gift is made has been received, and the seizin of the donor and donee is therefore a requisite condition (*Mac Mhn Law*)

Hibadar (*H*) The receiver of a gift, the donee.

Hibamusha (*H*) Gift of undefined or undivided property, which is not valid until the property has been separated, and transferred to the Donee

Hibanamah (*H*) A deed of gift

Hibeh bil Iwuz (*A*) A gift for a consideration Hibeh bil Iwaz is said to resemble a sale in all its properties, and the same conditions attach to it, and the mutual seizin of the donee is not, in all cases, necessary (*Mac Mhn Law*)

Hiccough or **Hiccup,** is due to a contraction of the diaphragm or muscular floor of the chest

Hidad (*A*) Mourning In law, the mourning of a widow for her husband, total abstinence from the use of ornaments, and of perfumes. (*Wil Gloss*)

Hidayah "The *Hidayah* is a well known work on Muhammadan Law. There is an English version of it, made by Mr. Charles Hamilton, and published in the year 1791 The Kazee-ool-Koozat, in his catalogue describes it in the following terms "The *Hidayah* is a commentary upon the Bidayut-ool-Moobtudee, and both the text and comment were composed by Shykh Boorhan-oo Deen Alee, son of Abu Bukr The general arrangement, and divisions of it, are adopted from the Jama i-Sugheer of Imam Mohummud It is celebrated amongst the learned for its selection of law cases, and connection of them with the proofs and arguments by which they have been determined Wherefore in every age it has been esteemed by lawyers, many of whom have written comments and annotations upon it (Harrington's Analysis of the Ben. Reg Vol. I, pp. 237—239)

Hide, Hyde Mesne of land, as much as would support one free family and dependents. One plowland or a hide of land is not of any certain content, but as much as a plough can by course of husbandry plough in a year A plow-land may contain a messuage, wood, meadow and pasture, because by them the plowmen and the cattle belonging to the plow are maintained" (*Co Littl.* 69a, *Termes de la Ley*)

The word 'hide" is defined hy Webster to be the "skin of an animal, either raw or dressed, more generally applied to the undressed skins of the larger domestic animals, as oxen, horses," etc.

Hide (*Verb*) To conceal from view; to keep secret.

HIDE: CONCEAL SECRETE COVER: SCREEN SHELTER: SHIELD. To *hide* is a more simple and, as it were, natural movement, To *conceal* is more deliberate and reflexive. When suddenly surprised men *hide* what they do not wish to be seen in their possession They *conceal* it beforehand if they anticipate a visit of inspection. *Secrete* is never used in other than a physical sense, and denotes the specific and purposed hiding of what is of a movable nature. *Screen* is to place in relation to an interposed obstacle for the purpose of protection or concealment To *shelter* is very nearly the same as *Screen Screening* is partial shelter To *screen* from harm, to *shelter* from attacks, to *screen* from the sun or the wind, to *shelter* from the storm and blast, to *screen* from blame, to *shelter* from violence *Shield,* while it bears generally the same meaning as screen and shelter, involves more the idea of personal effort, and voluntary action It is to interpose for the purpose of protection or defence ¾ Generally speaking arrangements *screen,* circumstances *shelter,* persons *shield* (*Smith Syn Dis*)

Hidel or Hidell (*in old English Law*) Signifies a place of Protection, as a Sanctuary (*Cowell*)

High A term indicating superior quality or upward tendency, exalted rank, intense.

High is a relative term A thing is said to be "high" when compared to other structures A structure is said to be "high" according to the use to which it is to be put.

High, in one of its significations, is used to denote that which is common, open, and public Thus every road or way or navigable river which is used freely by the public is a highway

High and low water mark [*See* High water Mark] Between "high and low water-mark" means medium high and low water mark i e half way between the spring tide and neap tide high and low water-marks respectively (*Webber* v *Richards,* 10 L J Q.B 203, 1 G & D 114).

High church Party giving high place to the authority of priest hood, saving grace of sacraments etc

High constable A ministerial officer otherwise called Chief constable.

"High Court" defined 48 9 V. c 25, S 2, Act 17, 1864, S 1, Act 10, 1865, S 3, Act 15, 1865, S 2, Act 21, 1866, S 3, Act 27, 1866, S 2, Act 28, 1866, S 1, Act 4, 1869, S 3 (1), Act 2 1877, S 1, Act 10, 1882, Ss 4 (1) 266, Act 14, 1882, S 614, Act 5, 1888, Ss 4 (10), 50 (4), Act 11, 1889, S 3 (4), Act 14, 1891, S. 3, Act 7, 1892, S 2 (3); Act 12, 1893, S 3 (2), Act 10, 1897, S 3 (24), Act 15, 1903, S 2, N & O. Act, 1 1887, S 2 (17), Reg 7, 1886, S 1 of Sch Reg 5, 1893, Ss. 4 (1), 10, Reg 1, 1894, S. 10 (*a*) Reg 8, 1896, Sch cl 1

High Court or High Court of Justice or High Court of Judicature. *See* English Int. Act, 1889, S. 13 (3).

HIGH COURT OF JUSTICE OR HIGH COURT OF JUDICATURE is one of the main divisions of the supreme Court or Superior Courts of Judicature.

"High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates 10 of Act 1897 (General Clauses) S. 3 (24).

High Court.

High Court.

The term "High Court" in Ss 117 and 120, C P Code, includes a single Judge of the High Court exercising the functions of that Court. 20 M. 407=6 M L J 125.

"High Court" means the highest Civil Court of appeal in any local area Act 5 of 1917 (Destruction of Records) S 2, cl 2.

High Court decisions. A Court which is subordinate to a High Court is bound to follow the decision in law of a Bench of that Court unless the decision of the Bench has been overruled by a decision of a Full Bench of that Court or unless it has been overruled expressly or impliedly on an appeal to His Majesty in Council, or unless the law has been altered by a subsequent Act of the legislature [(1915) 42 I A 155=37 A 359 (366)=13 A.L J 721=19 C W. N. 841=22 C L J. 190=17 Bom L R 549=18 M L T. 61=2 L W 881=(1915) M.W N 514=29 I C 617=29 M L J 63]

High Crimes and Misdemeanors "High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet, owing to some technical circumstance, did not fall within the definition of felony."

High diligence. *High or great diligence* is that with which prudent persons take care of their own concerns. It differs from *common or ordinary diligence*, which is that which men in general exert with respect to their own concerns' or *slight diligence*, which is that with which persons of less than common diligence, or, indeed, of any prudence at all, take care of their own concerns

High explosive Having very violent local effect much used in shells in modern warfare

High lands Mountainous country

High lived "High lived" when used in reference to a horse, does not necessarily imply that it was vicious and dangerous for persons accustomed to handling horses. It is a term frequently applied to horses which are just the opposite

When a horse is high spirited it does not necessarily follow that he has vicious propensities, and hence its use in the information given by a foreman to an employee, who was to use the horse, is not sufficient to warn him of the vicious and dangerous habits of the horse

Highness. A title of honour given to princes and certain other persons of high rank In England it belongs exclusively to members of the Royal Family (as) His or Her Royal Highness. Prior to the reign of Henry VIII the sovereign himself was called Highness but that monarch adopted the title of Majesty, which has been used by English sovereigns ever since The title Highness is, however used by most of the rulers of the Native States in India and also some other princes exercising sovereign powers as, for example, the Khedive of Egypt and the Sultan of Zanzibar. (*Ency of the Laws of England.*)

High priest. Chief priest—Especially of Jews

High road. Main road

High School. "High School" may be defined as a school where the higher branches of a common school education are taught.

A high school is a school "which is designed for scholars who have passed through the primary grades, and are supposed to be able to read, write, and spell correctly. Many, if not most, of the high schools are in fact preparatory schools for the university, and the course of study determined with regard to that object"

High Seas. Seas that are open to all, and represent the entire sea-space beyond the three miles limit of the shore The expression includes all ocean seas, bays, channels, rivers, creeks and waters below low water-mark, and where great ships could go, with the exception only of such parts of such oceans, &c as were within the body of some country (28 H 8, c 15, 4 Inst 134, Con Dig. Adm. E, I, 7)

"In other matters than crimes connected with admiralty jurisdiction it may be important at times to discriminate between the sea and the high sea, but in crimes the seas or the high seas or the ocean means much the same"

The term "high sea" is the same as the ocean or main sea It means that part of the sea which lies without the body of the country, and is distinguished from the term "sea," which includes arms or branches of the sea which may lie within the body of the country

High street Common name for the chief street in a small town.

High treason. Treason against the sovereign as distinguished from petit treason which formerly might be committed against a subject. "High Treason is forming and displaying by any overt act, or by publishing any printing or writing, an intention to kill or destroy the King or Queen or to do him or her any bodily harm, tending to death or destruction maim or wounding, imprisonment or restrain" (*Step Cr. Law*)

High water and low water *High water*, is the line marked by the periodical flow of the Tide, excluding the advance of waters above that line by winds or storms or freshets or floods, *Low Water*, is the further receding point of Ebb Tide (*Howard* v *Ingersell*, 13 *Howard*, 423, 417)

"High water mark" defined Act 11, 1853, S 8, Act 15, 1879, S 2, Act 10, 1889, S 4 (4), Ben. Act 4, 1887, S. 2, Bom. Act 5, 1879, S 37 *Expln.*, Bom. Act 6, 1886 S 2 (2), Bom Act 5, 1888, S. 2 (*b*).

The upland boundary of tide and shore lands is the line of ordinary high-water mark

High water mark in a river or stream is the point to which the water usually rises in an ordinary season of high water

HIGH-WATER MARK The mark which the sea makes on the shore at high-water of ordinary tides,

High-water mark is the part of sea shore to which the waves ordinarily reach when the tide is at its highest (4 *Ame Rec.* 155).

"High-water-mark" means a line drawn through the highest points reached by ordinary spring-tides at any season of the year Bur. Act 4 of 1905 (Burma Port) S 4, cl 3.

High-water-mark. See *Smart* v. *Sura Town Board*, (1893), App. Cas 301.

Highest bidder The highest bidder in a sale of property to be sold to the highest bidder must be

Highest bidder.

understood to mean the "person who makes the highest bid in good faith"

"HIGHEST BIDDER," as used with reference to the sale of real estate under a judicial order of sale, means the highest *bona fide* bidder, and, unless there be at a sale more than one such bidder, the sale cannot be made to the highest bidder, because there is only one, with whom there can be no comparison The word "highest" is used in order that there should be no sale unless there should be a real competition.

Sale of property to the highest bidder, etc, means not merely to the highest bidder, but to the best bidder, and hence, if the highest bidder was unable to pay, the auctioneer would be authorized to make an offer to the next highest

"Highest degree of care and diligence" is an expression to measure the care and diligence which a very prudent man would exert in that business under all circumstances

"**Highway**" defined. *See* Public Highway

HIGHWAY A way leading from one Market-town or Inhabited Place to another Inhabited Place, which is common to all the Queen's subject" (per *Coleridge C J*, *Bailey* v *Jamieson*, I C P. D 332). A public passage for the King's people for which reason it is called the King's Highway" (*Tomlin's Law Dic*) A highway is a way along which the public generally has a right to pass If the public has a right to pass on foot only, the way is a *public Footpath*, if the public has a right to ride or lead a horse along the way, it is a *Bridle Path* if the public has a right to drive cattle along the way, it is a *Driftway* if the public has the right to drive in carts or carriages along the way, it is a *High road* In each case the extent of the right of public is determined principally by antecedent user (*Ballard* v *Dyson*, 1808, 1 Taun 279, 9 R R 779, *Henning* v *Burnet*, 1852, 8 Ex Rep 187)

If a bridge spans a stream at the crossing of a highway, and *within* the limits of the highway, it is to be regarded as a part of the highway.

A bridge which is constantly travelled by pedestrians and used by families and others, and crossed by people daily, is a public highway

Bridges are but streets or highways over water

"A road or canal constructed by the public or a corporation is a public highway for the public benefit If the public have a right to passage thereon by paying a reasonable stipulated uniform toll, its exaction does not make its use private."

Public highways include turnpikes, railroads, and bridges used as thoroughfares, and the charge of a toll over them in no way affects their character as public highways. They are public because of the right of the public to use them

A stream which, in its natural condition, is capable of being used for immediate purpose of navigation, must also be regarded as a public highway.

HIGHWAY BY WATER The term "highways by water" has been given to that class of navigable streams, fresh as well as salt, which are of common or public use for the carriage of boats and lighters.

Highway, Easement, Thoroughfare Street.

The right of the public to use the highway is in no case an easement, for there is no dominant tenement. It is a public right, enjoyed by all subjects of the Crown. A navigable river may be a tidal navigable river generally is a highway; a walk or towing path along the bank of a river may be highway (*Greenwich Board of Works* v. *Maudslay* 1870, L R 5 Q B. 3 7, *Grand Junction Canal Co.* v *Petty*, 1888, 21 Q B D 237, so may a bridge over a river. A highway is not necessarily a thoroughfare (see *Butler* v. *Jamieson*, 1876, 1 Q P D 329, A street is almost a highway, but not necessarily so. Ency. of the Laws of England; 47 I A 25=38 M L.J. 455

"In the case of an ordinary *Highway* although it may be of a varying and unequal width running between fences one on each side, the right of passage or way generally extends to the whole space between the fences and the public are entitled to the use of the entire extent of it as the highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers" *R* v *United Kingdom Telegraph Co.*, 31 L.J M C 166, 6 L T 378

Highway man One who robs on highway

Highway Robbery Robbery being the forcibly and dishonestly taking from the person of another of goods or money to any value by violence or putting him in fear, to make it highway robbery it is only necessary further to prove that it was committed on or near a highway.

Hijra (*H*) Departure from one's country separation of friends or lovers, whence it gives name to the departure or flight of Mohammad from Mecca to Medina, which was constituted the commencement of the Mohammadan era this event took place on the night of Thursday the 15th of July, A D. 622 The usual era therefore reckons from the dawn of the 16th of July (*Wils Gloss*)

Hikin Grant by Hikin Effect of (21 I C 204)

Hilary term One of the four annual terms of the English Courts of Common Law.

"Hill Tract" defined, Reg 1, 1895, S 2, cl 1

"Hill Tribe" defined Reg 1, 1895, S 2, cl 2

Hina-vadi (S) A person who, in a court of law, abandons his original ground of action, and asserts something different a witness who prevaricates and contradicts himself, and whose testimony is therefore inadmissible (*Wil Gloss* 208)

Hinder Impede, obstruct, prevent.

The word "hinder," as used in a statute declaring that every conveyance or assignment of any estate or interest in lands, goods, or things in action made to hinder, delay, or defraud creditors, is substantially synonymous with the terms "delay" and "defraud" as there used.

The words "OBSTRUCT," "HINDER" AND "PREVENT", are synonymous.

TO HINDER, PREVENT. To *hinder* is an act of the moment, it supposes no design; *prevent* is a premeditated act, deliberated upon, and adopted for general purposes; the former is applied only to the movements of any particular individual, the latter to events and circumstances. I *hinder* a person who is running

Hinder

if I lay hold of his arm and make him walk, it is the object of every good government to *prevent* offences rather than to punish offenders.

"HINDER AND DELAY," as used in a statute relating to conveyance to hinder and delay creditors, is to do something which is an attempt to defraud, rather than a successful fraud, to put some obstacle in the path or interpose some time unjustifiably before the creditor can realize on the debtor's property.

Hindi. An Indian vernacular language, the language spoken by far the largest portion of the population in Northern India, the language, which next to English, appears to be one commonly understood throughout India

Hindu The Term "Hindu" with regard to the application of Hindu Law includes not only those who are Hindu by religion but also those who are commonly known as such

HINDU. Dr Whitley Stokes has pointed out that the collocation of the words Hindu, Mahomedan, or Budhist makes it reasonably plain that the term Hindu is used as a theological term and denotes only persons who profess any faith of the Brahminical religion or the religion of Puranas (Anglo-Indian Code Volume I, 483) 8 I C 41 (43)=15 C W N, 158 In the Indian Succession Act the term "Hindu" is used in the same wide sense as in the earlier enactments, and includes "Sikhs" 31 C 11 (P C)=30 I A. 249=7 C W N. 895=5 Bom L R 845=13 M L J 381 [A Sikh or Hindu becoming a Brahmo does not cease to be a Hindu (*Ibid*)] A Hindu, who has embraced the Christian faith and continues to be a Christian up to the time of his death is not a Hindu 8 I.C 41 (42)

Hindu Law The Hindu Law to be administered by the Courts consists of shastras which claim divine sanction and are followed by the Brahmins generally, and also of the usages or approved habitual practices of those communities whose caste status depends upon the degree of conformity of their usages to shastras, 20 M L J, 49=7 M L.T. 17=5 I.C. 42=33 M. 342 The system of personal law administered to Hindus in British India. It is not the general law of India or of any defined region It is a law applied and administered to certain castes, classes, or families as their special personal laws

HINDU LAW (*Rules of Interpretation*) The disquisitions of the Mimansa bear a close resemblance to juridical questions, and the Hindu Law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other. The logic of the Mimansa is the logic of the law, the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles, and from the cases decided the principles may be collected A well-worded arrangement of them would constitute the philosophy of the law, and this is, in truth, what has been attempted in the Mimansa. This is the view of Colebrooke on Jaimini's rules. It will be found that the rules, which are generally made use of by English lawyers in the interpretation of statutes, are also generally applicable in regard to Hindu Law The rules of Jaimini were meant for sacrifices and ceremonial observances, but in regard to Vyavahara or positive law, they seem to have little application. All the Commentators, except Jimutavahana, thought so. (*Ghose Hindu Law* 1026.)

Hindu Law.

Hindu Law (*Sources of.*) "The whole Veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the (Veda further), also the customs of holy men, and (finally) self-satisfaction But by Sruti (revelation) is meant the Veda, and by Smriti (tradition) the Institutes of the sacred law, those two must not be called into question in any matter, since from those two the sacred law shone forth.

The Veda, the sacred tradition (Smriti), the customs of virtuous men, and one's own pleasure, they declare to be visibly the four-fold means of defining the sacred law

Hindu Law—Texts and authorities To see for what purpose an ancient text is cited in the Dayabhaga or in the Mithakshara, it is necessary to refer to the verses immediately preceding those in which the text is cited, for there is nothing more likely to mislead than to read a single paragraph from the Dayabhaga or Mithakshara alone without studying the whole chapter, and in some cases, even without studying several chapters of the same treatise [7 I A 115=5 C. 776 (783)=6 C L R. 322=4 Sar 103=3 Suth 765]

Nothing is more certain than that in dealing with the same ancient texts, the Hindu commentators have often drawn opposite conclusions [7 I A 115=5 C 776 (786)=6 C L R 322=4 Sar 103=3 Suth 765]

Authority of Hindu Law Texts and of text writers indicated *See* 29 M L J 434 (P C.), 37 All 359 (P. C), 7 A L J 927=7 I C 418

Hindu Law—Maxims of Interpretation of Texts Jaimini enunciates the following rules of interpretation of Hindu Law texts

1. Obligatory and non-obligatory texts must be distinguished

2 Established and approved usage has the force of law without reference to the causes which brought it into existence.

3 Foreign words must be understood in the sense in which they are used in the language from which they are borrowed

4 Every word and sentence must have some meaning and purpose attached to it or as *Tarika* more pithily puts it—"more words more meaning."

5 The construction which makes the meaning shorter and simpler is to be preferred which is another way of saying that more should not be assumed that the words expressly convey.

6 No word or sentence should be ascribed a different meaning at one and the same place

7 All words must be understood to bear their primary meaning

8 An effort must be made to reconcile contradictions (*i e.*) Law favours a benignant construction.

9 When contradictions are inevitable one has an option to adopt any construction

10 All construction must be contextual.

11. All words should be given their natural meaning, unless the context justifies their use as terms of art.

12. In case of two Shastras in the same Code laying down different rules the latter supersedes the earlier rule.

Hindu Law

13 No rule is enforceable unless it is conformable to current custom

14. A judicial rule supersedes the mere Shastric rule

15 The legislature is supreme and it can make or unmake all laws (*Gour Hindu Law*)

16 In the event of a conflict between the ancient text-writers and the commentators, the opinion of the latter should be accepted [62 I A 139=1935 A L J 816=155 I C 330=A I R 1935 P C. 57=68 M L J 673 (P C)]

The Hindu Law contains its own principles of exposition and questions arising under it cannot be determined on abstract reasoning or analogies borrowed from the other systems of laws but must depend for their decisions on the rules and doctrines enunciated by its own law-givers and recognised expounders [42 Cal 384=27 M L J 333=18 C W N 1151=1 L W 831=16 M L T 447=1914 M W N 8= 10 N L R 112=16 Bom L R 86=12 A L J. 1281=20 C L J 57]

'Hindu undivided family' meaning of *See* 64 I A 28=(1937) 1 M L J 312 (P C)

Hinduism The religion of the Hindus

Hindustan defined, (*Bad. Pow. Act* 9)

Hindustan Northern India, also a term applied to the whole of India

Hindustani Language of Hindustan, pertaining to Hindustan

Hint Suggestion Intimation Insinuation Innuendo *Hint* and *Suggest* have ordinarily reference to practical assistance and directions, *Hint* referring to the present or the past, and *Suggestion* to the future, a *Hint* of danger, a *Suggestion* how to avoid it. But *Hint* rather concerns matters of knowledge, matters of conduct To *intimate* meant at first to share secretly or privately, in which sense it is at present obsolete It now means to give obscure or indirect notice, or to suggest apart from others It is in this point that *Intimate* differs from *Hint* and *Suggest*, which relate to the affairs of the person to whom the hint or suggestion is made, while *Intimate* may relate primarily to the mind or intentions of him who makes the intimation I give another a *Hint*, or make him a *Suggestion*, *Intimate* my own wishes or purpose But the subject of the *Intimation* is commonly one in which the other is personally concerned

To *Insinuate* is to introduce gradually and artfully, to state by remote allusion Like *Hint*, it comes commonly from a wish to impart a fact or an impression without incurring the responsibility of plainly stating it

An *Innuendo* is a law term, expressing a manner of indicating by a nod a person or thing meant, when otherwise there was some uncertainty, and is now used much in the same sense as *Insinuation*, but as more expressive of specific aim at personal character and conduct, and is couched in language of double meaning, as *Insinuation* is couched in language of indirect application (*Smith Syn Dis*)

Hiranya Kesin A great Hindu Sage and writer of an important Smriti.

Hire. Compensation for the use of a thing or for labour or for services It does not always consist in a stipulated reward A Hackney Carriage may be said to ply for hire if it carries "a Notice saying it is placed at the disposal of the public free of charge, but that voluntary contributions to support it will be welcomed" (*Cooks* v *Mayner*, 70 L.T. 403; 58 J. P 104; 17 Cox C C 745.)

Hiring Agreement.

To hire is to engage in service for a stipulated reward, as to a hire a servant, or to hire labourers by the day or month; to engage a man for temporary service for wages

The word "hiring" implies a request and a contract for a compensation, and has but this one meaning when used in the ordinary affairs and business of life.

"HIRING" AND "LETTING" are used to designate the lending of property other than money for a compensation.

Hiring is a contract by which one gives to another the temporary possession and use of property other than money for reward, and the latter agrees to return the same to the former at a future time

HIRE, LEASE Where the charter of a corporation organized for the transportation of passengers in railroad cars constructed and to be owned by such company authorized it to lease or hire its cars, or any of them, and other personal property, to railroad companies, the terms "lease" and "hire" are equivalent words

HIRING AND BORROWING Blackstone gives the distinction between hiring and borrowing thus Hiring and borrowing are contracts by which a qualified property may be transferred to the hirer or borrower, in which there is only this difference. that hiring is always for a price, a stipend, or additional recompense, borrowing may be merely gratuitous.

Hire Purchase A system by which goods are obtained on hire This becomes the absolute property of the hirer on paying the last of the instalments stipulated to be paid by him, but until then he cannot deal with the goods, having no ownership in them *See* 133 I C 159=1931 All. 759, 158 I C 1001, 1935 Mad 603=69 M L J. 69

A hire purchase agreement is not an agreement of sale until the condition specified therein is fulfilled. 7 S.L R 103=23 I C 801. *See also* 17 Bom.L R. 670.

Hirer One who hires a thing.

By "hirer" we understand one who by contract acquires the right to use a thing belonging to an other

Hireling · Mercenary *Hireling* is one who serves or acts for hire, and is not necessarily a term of venality, though never one of honour. *Mercenary* is also one who serves for wages, but is employed exclusively in a bad sense when used of the character, though not so when used of the employment. *Hired soldiers*, called *mercenaries*, may earn their wages honourably. (*Smith Syn. Dis*)

Hiring agreement and Hire purchase agreement "A *hiring agreement* relating to moveable property is an arrangement (often embodied in a document) between two parties, the one the hirer, the other the owner (or lessor) whereby the owner agrees to lend and the hirer to hire certain chattels in

His.

return for a consideration, usually money, payable by instalments at fixed dates, the goods to be returned on demand or at a specified time A *hire-purchase agreement* is a development of this It usually provides that on the due payment of all the instalments the property shall become the property of the hirer and the agreement shall then terminate, but that so long as any of the instalments remain unpaid the chattels shall remain the property of the owner *See* Story on Bailments, Jones on Bailments; Beven on Negligence, (*Ency. of the Laws of England*)

His. "His," as used in a suit against several persons, charging that "defendant did keep in his possession," etc, refers to each of the defendants, notwithstanding one of them was a woman. "His" includes "her"

His-Fare. As applied to a passenger in a Railway payment of "His Fare" means the fare by the train, and for the class of carriage in which the passenger travels, a traveller travelling in 2nd class with 3rd class ticket would not have paid 'his fare", though he has paid" "a fare" (*Gillingham* v *Walker*, 29 W R 896, *Stroude*)

"His hand" A letter written by a trustee's solicitor in his own name is not a "Writing under his (i e the Trustee's) hand" (*Wilson* v. *Wallani*, 49 L J Ex 437, *Stroude*)

"His Wife" A Power to appoint to "his Wife", will generally mean "his then Wife"

Hisab-i-Batai Accounts kept by the village accountants, in which the partitioning system prevails of the particulars of the settlement between the village and the Government.

Hissa, (*H*) A share, a part, a lot a portion, a share of revenue or rent. (*Wil. Gloss* 209)

Hissa-chuk, (*Kalkot, Pj*), a kind of tenant, (*Bad. Pow ii* 674)

Hissadar (*H*) A share-holder, a co parcener, one who pays his share of the revenue to the state or to a zamindar.

Hissadar Deh The word *Hissadar Deh* as used in this *Wajib-ul-arz* means a sharer in the village. (11 Ind Cas 305 (306)=8 A L.J 1072)

'Hissadar Karibi' means nearness and space *See* 6 I C. 702

The words *"Hissadar Karibi"* In a *Wajib-ul-arz* relate to nearness in space and not to nearness in relationship 9 Ind Cas 276 (277), 9 Ind Cas 494 (495) The expression 'hissedar karbi' by itself is ambiguous and may apply either to a co-sharer who is nearer in space or a co sharer nearer in blood relationship. The particular meaning to be given to it depends upon context. [4 L.B. A. Civ. 550=84 I C 701=A.I R 1924 All. 456]

Hissadar Sharik Milkiat. The expression "Hissadar Sharik Milkiat" means co-sharer in the property sold (11 Ind. Cas 576)

"Hissadar Sharik Mouza" In a *Wajil-ul urza*, mean another co sharer in the village and not merely a co sharer in that one of the mahals into which the village was subsequently divided, of which mahal the property sold is a part. (9 I. C. 23 (24).)

Hoc voce

Hissa hakimi (*H.*) The share of the produce of the land or revenue to which the King or Government is entitled. Compare Melwaram

Hissab Nameh, (*P.*) A deed of partition (*Mac. Mhn Law*)

Hissa raiyati (*H*) The ryot's share of the produce Compare Kudiwaram

Hissawari. A *hissawari* prepared in consequence of a demand by the Collector under S 30, Bengal Land Registration Act, is not admissible under S 35 of the Evidence Act as it is not a public or other official book, register or record. (59 I.C 8=1919 P H C C. 323)

Hissedaran Patti Deh In a *Wazib-ul arz* were interpreted as meaning co-sharers in the same patti, (9 I. C 856 (857))

Hissedaran shikmi Hissedaran shikmi means co sharers in the same khata, the khata being a smaller sub division of a patti (5 A.L.J 52, *Diss*) [79 I C 612=46 All 148=5 L R A Civ. 36=A.I.R. 1924 All. 375]

'His Sendarani i deh' *See* 8 I C. 527

"History-ticket" (*in respect of a prisoner*) means the ticket exhibiting such information as is required in respect of each prisoner by the Prisoners Act or the rules thereunder, Prisons Act (IX of 1894), S 3.

Hittalu-manedalu (*Coorg*), a plot of land for house, yard, garden, &c in the homestead, (*Bad. Pow. iii* 472)

HOARD, TREASURE, We *hoard* that which we believe may stand us in good stead, we *treasure* that which is intrinsically valuable, or on which we personally place a value. (*Smith Syn Dis.*)

Hoarding. Fence inclosing a house and materials while buildings are at work "It is inaccurate if it is to be understood as, necessarily, meaning something of a mere temporary character" (*Metropolitan Assn.* v. *Petch*, 5 C B N S 509) Thing used for posting wills etc.

Hobali (*hobli*), a grouping of family holdings for Land Revenue purposes, invented by the Mysore sultans where there are no 'villages. (*Bad.-Pow* iii. 34.) A division of a district, a sub-division of a taluk

HOBALI (*Mal*) A term introduced into Malabar by the Muhammadan Government It is in Malabar a sub-division of a taluk comprehending several Desams or villages It corresponds with Magani in Canara and with Maganum on the Eastern Coast.

Hoc intuitu. (*Lat*) With this expectation

Hoc loco (*Lat*) In this place.

Hoc nominee (*Lat*) In this name

Hoc quidem perquam durum es sed ita lex scripta est. Hard may be the law, yet it should be given effect to.

Hoc servalutur quod initio conveni ent That shall be preserved which is useful in the beginning.

Hoc voce (*Lat.*) Under this word.

Hog

Hog The word "hog," as used in a statute prohibiting cattle and hog stealing, being a general term, is intended to comprehend all the different species of the hog kind

A pig four or five months old is properly termed a hog.

Hoghenehyne (*in Saxon Law*) an inmate, one belonging to the family or household a guest "Is he who cometh guest-wise to a house and there lyeth the third night, after which time he is accounted one of his Family in whose house he lyeth,—and if he offend the King's Peace his host must be answerable for him" (*Termes de la Ley*)

Hola (*Karn*) A field in general, one in which any grain is grown except rice.

Holadabele. (*Karn*) A field of standing corn, a crop.

Holadasara (*Karn*) Disputes about boundaries

"**Hold**" defined Act 27, 1866, S 2

HOLD The phrase "to hold" is defined by Webster to stop, to confine, to restrain from escape, to keep fast, to retain And it is said that to hold rarely or never signifies the first act of seizing or falling on, but the act of retaining the thing when seized on or confined

To "hold" means to retain, to keep When used in relation to land, it embraces the idea of actual possession When used in the habendum clause of a deed, it includes the twofold idea of actual possession of the thing, and being invested with the legal title.

TO HOLD, KEEP, DETAIN, RETAIN. A servant *holds* a thing in his hand for it to be seen, but he does not *keep* it, he gives it to his master, who puts it into his pocket, and consequently *keeps*, but does not *hold* it A thing may be *held* in the hand, or *kept* in the hand, in the former case, the pressure of the hand is an essential part of the action, but in the latter case it is simply a contingent part of the action, the hand *holds*, but the person *keeps* it What is *held* is fixed in position, but what is *kept* is left loose, or otherwise, at the will of the individual Things are *held* by men in their hands, by beasts in their claws or mouths, by birds in their beaks, things are *kept* by people either about their persons or in their houses, according to convenience

Detain and *retain* are modes of keeping, the former signifies keeping back what belongs to another, the latter signifies keeping a long time for one's own purpose A person may be either *held, kept, detained,* or *retained*, when he is *held* he is held contrary to his will by the hand of another, as suspected persons are held by the officers of justice, that they may not make their escape a man is *kept* in prison until his innocence is proved, or a child is *kept* at school, until he has finished his education. he is *detained* if he be kept away from any place to which he is going, or from any person to whom he belongs, one is *detained* by business, so as to be prevented attending to an appointment a person is *retained* who is kept for a continuance in the service of another, as some servants are said to be *retained,* while others are dismissed (*Crabb*)

HOLD, ARREST, DETAIN, KEEP To *Hold* as used in a purely physical sense is to cause to remain in a fixed position or relation.

Holder

To *Arrest* is to exercise a holding power upon what is in action, movement, or progress.

To *Detain* is a milder term than Arrest, the result being physical, but the cause not necessarily so, as, to be detained by important business.

Keep is to hold in some desirable relation to one's self, whether direct possession or not, against separating or depriving forces, and hence often the sense of guardianship. (*Smith Syn Dis*)

TO HOLD, SUPPORT, MAINTAIN These terms are all applied to the opinions with a similar distinction. Opinions are *held* and *maintained* as one's own, they are *supported* when they are another's We *hold* and *maintain* whatever we believe. We *support* the belief or doctrine of another, or what we ourselves have asserted and maintained at a former time. (*Crabb*)

Hold Court When a Judge holds Court, he directs, controls, and governs it as the chief officer, and this is also the meaning of the word "preside."

"**Hold land**" to, defined Bom Act 5, 1879, S. 3 (10)

Hold over The holding over constitutes merely an enlargement of the term, and the lease is applied thereto with the same force as though it had been re-executed

Hold up "Holding up," when used in relation to an attack on a train, is distinctly and universally understood to mean the forcible detention of a train, with intent to commit a robbery or some other felony

"**Holder**" defined *N B* This word is also used in combination with other words (as) Decree-holder, Inferior holder, Landholder, Settlement-holder, Shareholder, Inferior holder, Tenure-holder, Holder for value etc Act 26, 1881, S 8; Act 9, 1886, S 2(1), Bom Act 2, 1863, S 16(*f*), Bom Act 7, 1863, S 32 (*f*), Bom Act 3, 1874, S 15 (4), Bom. Act 5, 1879, S 3 (11) Reg 1, 1899, S 3 (6)

HOLDER "Holder" as defined in the Land Revenue Code (Bombay Act V of 1879) is wide enough to include even a tenant who has entered into possession under an occupant 7 I C 919 (950); 12 Bom L R 707=14 I C 473=14 Bom L R 124=36 Bom. 315

The term 'holder," as used in the negotiable instrument law, means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof

"HOLDER" is a word of similar import to "bearer," and by either of these words a note may be made negotiable by delivery.

The word "holder," is a policy of insurance providing that the same may be converted into cash, "at the option of the holder, at any time after the expiration of 15 years from the date herein," etc, means the person to whom the policy is by its terms payable—the owner thereof

The terms "HOLDER AND HIS HEIR" throughout the Chota Nagpore Encumbered Estate Acts, are used in the sense of the holder of the property at the time of the determination of the debts under S. 8 of the Act, and his heir. (27 C. 464=4 C.W N. 158).

Holder

Holder for the time being. "The words 'Holder for the time being,—in a debenture,—are, identical with the words "to Bearer," (*per* Malins, V C, Marseilles Imperial Land Co, 40 L.J. Ch. 96.)

Holder for value "Every Indorsee of a Bill has his own title and that of each intermediate party, and if he or any of such parties gave value for the bill, without fraud, he is a Holder for Value" (*per* Abinger C.B., *Isaac* v *Farrer*, I M. & W. 69, 5 L J Ex. 96.)

Where value has at any time been given for the instrument, the holder is deemed a holder for value, in respect to all parties who became such prior to that time

"Holder in due course" defined. Act 26, 1881, S 9.

It is also well settled that a pledgee or mortgagee of property is a holder for value.

A holder in due course is one who holds the instrument free from any defect of the title of prior parties

"HOLDER IN DUE COURSE" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof, if payable to order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title Act XXVI of 1881 (Negotiable Instruments) S 9, 122 I.C. 34=1930 M 197.

"Holder of an estate or tenure" defined. (*See also* Tenure-holder) Ben Act 9, 1880, S. 4 Ben. Act 8, 1895, S 2 (*c*).

"Holder of land" defined. (*See also* Landholder) Ben. Act 6, 1880, S 3.

Holder of a note or Bill of Exchange One to whom a note or bill of exchange has been made over (*i.e*) who is the endorsee or payee of it and who has lawful possession of it for the time being.

"Holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. Act XXVI of 1881 (Negotiable Instruments) S 8

HOLDER OF PROMISSORY NOTE AND TRANSFEREE OF THE SAME. The transferee of a negotible instrument under the general law would not be in the privileged position of a "holder" under the Negotiable Instrument Act XXIV of 1881, Ss. 46, 47, 48, but would merely be in the position of the transferee of an ordinary chattel and have no better title than his transferor 14 I.C 720 (721)=16 C.W.N. 666.

Holder of power. The "holder of a power," as used in relation to powers, is the person in whom a power is vested, whether by grant, devise, or reservation.

"Holder of the village," The expression "holder of the village" in the concluding para of S 216 of

Holding out in the law of Partnership.

Act V of 1876, Bombay Land Revenue Code must be read as meaning "the holder of the assessment or any part thereof of an alienated village," 18 B. 525.

"Holding" defined (*See also* Adjoining holding) Act 27, 1866, S 2, Act 19, 1883, S 3 (7), Act 8, 1885, S 3 (9), Act 22, 1886, S. 37, *explⁿ* 1, Act 16, 1887, S 4 (9), Act 17, 1887, S. 3 (3), Act 11, 1898, S 2 (3), Ben. Act 5, 1876, S 6 (4), Ben Act 9, 1880, S 4, Ben. Act 3, 1884, S 6 (3), Ben. Act 6, 1908, S 3 (xii), Bom Act 5, 1879, Ss 3 (12), 47, 64 Mad Act 1, 1908, S 3 (3), U P. Act 2, 1901, S 4 (9), Reg 1, 1899, S. 3 (5). *See* 116 I C. 637=1929 Cal. 201 6 I C. 410, 25 Cal 917=2 C W.N 44.

"Hold" and "holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession futurity or expectancy in any immoveable property. Act XXVII of 1866 (Trustees), S 2.

"Holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners Punj Act XVII of 1887 (Land Revenue) S 3, cl 3

"HOLDING" means land held under one title or agreement and surrounded by one set of boundaries Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding. Ben Act III of 1884 (Municipal) S 6, cl. 3

An undivided share of the howla does not come within the definition of the word "holding" within the Bengal Tenancy Act (VIII of 1885), S 30 [16 C. W N 877=16 C.L.J. 9=15 I.C. 453 (454).]

When an undivided share in lands is leased to a raiyat, such share does not amount to a holding within the definition of the term in the Bengal Tenancy Act 1885, 2 C.L.J. 10 *See also* 11 C L J 524

The term "holding" in the Bengal Municipal Act S 6, cl. (3) means land held by an occupier under one title or agreement and surrounded by one set of boundaries. 15 I.C 548 (549).

HOLDING AND OCCUPATION "There is a material difference between a Holding and an Occupation. A person may hold though he does not occupy. A Tenant is a person who *holds* of another, he does not necessarily, *occupy*" (*Per* Littledale, J., *R* v. *Ditcheat*, cited Tenant).

DISTINCT HOLDINGS. Undivided shares in parcels of land cannot constitute distinct 'holdings" within the meaning of Bengal Tenancy Act. 25 C. 917 (N) =1 C.W N. 521.

Holding company A corporation organized to hold the stock of another or other corporation (*Bouvier.*)

"Holding of the raiyat" defined Act 10, 1859, S. 6.

Holding out. By "holding out a woman to be the wife of another" is meant that the purported husband by language and conduct leads the world to believe that the parties are living, and associating themselves together as husband and wife.

Holding out in the law of Partnership.

Holding over.

Holding over. The expression "holding over" means that the relation of landlord and tenant continued with the assent of both parties, and the overt act, by which the relation might be continued, are either the receipt of rent by the landlord, or his assenting to the continuance of the tenancy by other acts or words (34 C 396=11 C W N 826)

A mere delay on the part of the landlord in instituting the suit for ejectment, after the expiry of the lease, does not constitute "holding over." (*Ibid.*)

When lessees hold over after the expiry of the lease they must be considered to hold on the terms stipulated for in the lease (97 I C 412=A I R. 1926 Cal. 1239)

Holehola (*Karn*) Dry land, land that cannot be easily watered by artificial means, and dependent upon rain for water, unfit therefore for rice lands

Holi (*H*) A popular festival of the Hindus, the proper season of which is the ten days preceding the full moon of Phalgun, but it is usually observed only for the last three or four days terminating with the full moon

"**Holiday**" defined *See* Public holiday

HOLIDAY Holiday may be defined as a consecrated day, a religious festival, and a day on which the ordinary occupations are suspended, a day of exemption or cessation from work, a day of festivity, recreation, or amusement Generally the term "*Holiday*" does not include Sunday (*Phillips* v *Innes*, 4 Cl & F 234).

"Holiday," as used in an Act enacting that certain days shall be legal holidays, cannot be construed as indicating an intent to assimilate the status of the days so named to that of Sunday. "Holiday," in its present conventional meaning, is scarcely applicable to Sunday. When the statute declares certain days to be legal holidays, it does not permit a reference to the legal status of Sunday to discover its meaning

Holiness Religious goodness, sanctity The title of the pope and other heads of Religious organisations.

HOLINESS, SANCTITY *Holiness* is to the mind of a man what sanctity is to his exterior *Holiness* is a thing not to be affected but *sanctity*, consisting in externals, is from its very nature exposed to falsehood

Holobu (*Karn*) A field or ground fit for cultivation also limit, boundary

Holographic will. A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself

Holy Perfect in a moral sense, pure in heart; set apart to sacred use, religious.

HOLY, PIOUS, DEVOUT, RELIGIOUS A strong regard to the Supreme Being is expressed by all these epithets, but *holy* conveys the most comprehensive idea, *pious* and *devout* designate most fervour of mind, *religious* is the most general and abstract in its signification.

Holy orders are the orders or dignities of the church Archbishops, bishops, priests, and deacons are said to be in Holy orders.

Home.

'Those members of the Church who by ordination are distinguished from the laity possess holy orders Ordination consists in the laying on of hands by a bishop (or bishops), with the proper form of prayer in the case of a deacon, a priest, or bishop, as the case may be Canon law draws a distinction between the superior orders of a bishop, priest, or deacon, and the inferior orders of a sub-deacon, exorcist, or reader, but these latter are not at present recognised as distinct orders in the Church of England (*Ency of the Laws of England*) *See* Gibs Codex, Phillimore Eccl Law, 2nd ed., Blunt on the Book of Common Prayer

Homa (*S*) Sacrificial offering to the gods

CHATHURTHI HOMA is an essential ceremony in Hindu marriage, and it is only on the performance of the *Chathurthi Homa* that the wife becomes one with the husband and takes his *gotra*, (*Ghose Hindu Law* 789)

Homage Is a French word derived from home because, when the tenant does his service to the Lord, he says, I become your man (Co Lit 64 *Tomlin's Law Dic*)

Homage is of two kinds —(1) Homage by Ligeance, which is inherent and inseparable from every subject, (2) Homage by reason of Tenure

HOMAGE FEALTY COURT *Homage* was the act by which a feudal inferior professed himself to be the man or subject of the feudal lord *Fealty* was the fidelity of such a tenant, and, more strictly, a lower species of homage made by oath on the part of such tenants as were bound to personal service *Court* is to endeavour to gain favour by such demeanour or acts as are practised at the courts of princes In present parlance, we pay *homage* to men of excellence, virtue, or power, or, by a figure of speech, to the excellences themselves, we show *fealty* to principles by which we have professed to be guided, or to persons who are not so far our superiors as is implied in *Homage* And we pay *court* when we desire personal favour, consulting the character and humour of the person to whom we pay it (*Smith Syn Dis*)

Home There is in law no substantial difference between the meaning of the words "home" and "domicile"

The home is the place where men permanently reside, and to which they intend to return when away from it.

A person's home may be in his own house or his hired lodgings.

The word "home" suggests relations differing in breadth and strength, though not in kind, when applied, on the one hand, to a farmer who has resided since his birth, and expects to reside until his death, on the same spot, and, on the other hand, to the clergyman, whose home may change in two years or to the railroad laborer, whose home may change in two months.

"HOME" AND 'DOMICILE' "may, and generally do, mean the same thing, but a home may be relinquished and abandoned, while the domicile of the party, upon which many civil rights and duties depend, may, in legal contemplation, remain"

The home of a person is where the person turns for social life, where his family, if he has one usu-

Home

ally dwells, and to which his mind turns when away, and where he has the present purpose of returning and remaining It is not the place where a man happens to be temporarily residing, even though it be with his family, for a man may, for convenience sake, have a temporary residence and quasi home, which is not his home and residence proper, and, unless he has abandoned the latter for the former, with the intention of remaining permanently from it, the newly chosen residence is not his domicile.

The term "RESIDENCE OR HOME," when used with reference to a corporation, means the place where it is located by or under the authority of its charter It has no power to change its home or residence or its citizenship.

Home .Domicile, dwelling-house, dwelling-place, house or place in which one resides, some permanent abode or residence where the person residing intends to remain, place of abode, place of constant or permanent residence, the place where one and his family habitually dwell, which they may leave for temporary purposes, and to which they return when the occasion for absence no longer exists, the place where one keeps his effects, his chest, etc, the place where one permanently resides, and to which he intends to return when away from it, the place where a person turns for social life, where his family, if he has one, usually dwells, and to which his mind turns when away, and where being a relative one, its meaning must often necessarily depend on the context.

HOME. A "passage home", to a seaman (S 186, Merchant Shipping Act, 1894, means a passage to the Port from which he originally shipped or to some other Port in the United Kingdom to which he agrees to go and includes an obligation to provide him with reasonable maintenance during the passage" [per *Esher, M R Edwards* v *Steet*, (1897), 2 Q.B. 327, 66 L.Q.B 690).

Home Company The term "home company," as used in an Act relating to home life and accident insurance companies, designates those life, accident, or life and accident insurance companies incorporated and formed in this state.

Home company. A company incorporated and formed within the state.

Home consumption The term denotes goods consumed in the country of their production, or imported goods stored in a bonded warehouse until duty is paid.

Home Factor A factor is called a "home factor" when he resides in the same state or country with his principal.

Home Office. The term 'home office' of a company means its principal office within the state or country in which it is incorporated or formed

Home Port. "Home Port," is contradistinguished from "foreign port," within the meaning of the rule of law that for repairs done or supplies furnished to a maritime vessel in a foreign port the law will, if there be no special contract, imply a lien on the vessel.

Homeopathic Specific. A homeopathic specific is a remedy pertaining to homeopathy which exerts

Homestead law.

a special action in the prevention or cure of a disease

Homeopathy is a medical theory aiming at producing in a patient affections similar in their nature to those from which he is suffering on the principle of "like curing like."

Home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort (2 Inst. 228). A maxim meaning, a man shall not be punished for suing out writs in the King's Court whether he has a right or a wrong.

Home port The port at or nearest to which the owner of a vessel, if there be but one, or, if more than one, the managing owner usually resides, any place or port where the owner happens to be with his vessel.

Homesteads A homestead is the dwelling-house constituting the family residence, together with the land upon which it is situated and the appurtenances connected therewith The word, "homestead" in the Bombay Bhagdari Act (1862) denotes the dwelling house of a Hindu householder of the cultivating class (21 B 588)

The word "homestead" means the actual habitation of the tenure-holders It does not mean or include a bare piece of land with no structures thereon which had been used as a dwelling-house years before by the tenure-holder or some of the tenure-holders. (41 C W N 85)

"HOME-TRADE-PASSENGERSHIP" defined 57-8, V, c. 60, S 742.

"HOME-TRADESHIP" defined 57 8, V. c 60, S 742, Act I of 1859, S 118.

HOMESTEAD. A "homestead" means the home place—the place where the home is—and such is its legal acceptation at the present day. It is the home, the house, and the adjoining land where the head of the family dwells—the homefarm.

The term "homestead" includes dwelling-houses in which families reside, with the usual and customary appurtenances, including different buildings of every kind necessary or convenient for family use, and lands for the purpose thereof If situated in the country, it may include a garden or farm. If situated in town, it may include one or more lots, or one or more blocks In either case it is limited by extent, merely

"HOMESTEAD" is defined to be a person's dwelling-place, with that part of his land and property which is about and contiguous to it.

"HOMESTEAD" means the seat or mansion, and embraces the idea of actual occupancy.

Homestead farm. The words "homestead farm" have not acquired a definite signification in the law. They may have a broader signification than homestead. It does not necessarily consist of a dwelling-house and land actually contiguous to it. The land may be detached, and yet be so intimately connected with the dwelling as in effect to constitute a part of it.

Homestead law The homestead law was so called as it was "a beneficient provision for the protection and maintenance of the wife and children

Homestead right

against the neglect and improvidence of the father and husband"

Homestead laws (which exempt homesteads from attachment and sale in execution of decrees) are enacted as a matter of public policy, in the interest of humanity, that, though a citizen may be overtaken by reverse of fortune, he and those of his household shall not be homeless, without shelter, raiment and food. The state is concerned that the citizens shall not be divested of means of support and reduced to pauperism The policy of the law is that families shall not be deprived of shelter and reasonable comforts

Homestead right The right of homestead is a quality annexed to land whereby an estate is exempt from sale under execution for a debt

HOMESTEAD RIGHT The homestead right is the right to hold and use the land free from execution for debt In other words, the homestead is the land itself, the homestead right is the right of the owner to hold the land exempt from execution, while the homestead exemption is a quality attached to the land by virtue of said right

Homicidal mania "Homicidal mania" is a term sometimes used to designate moral insanity.

"We are obliged by the force of authority to say to you that there is such a disease known to the law as "homicidal insanity" What it is, or in what it consists, no lawyer or judge has ever yet been able to explain with precision. Physicians, especially those having charge of the insane, gradually, it would seem, come to the conclusion that all wicked men are mad, and many of the judges have so far fallen into the same error as to render it possible for any man to escape the penalty which the law affixes to crime. We do not intend to be understood as expressing the opinion that in some instances human beings are not afflicted with a homicidal mania, but we do intend to say that a defense consisting exclusively of this species of insanity has frequently been made the means by which a notorious offender has escaped punishment What, then, is that form of disease, denominated "homicidal mania," which will excuse one for having committed a murder. Chief Justice Gibson calls it "that unseen ligament pressing on the mind, and drawing it to consequences which it sees, but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance"—an irresistible inclination to kill" (5 *Wkly Notes Cas* 424, *Am. Words and Phrases*, 3339)

"Homicide" defined This word is used in combination with other words (as) culpable homicide, culpable homicide not amounting to murder. (*See* Penal Code, S 300

HOMICIDE is the killing of man by man, or through agencies or instruments, animate or inanimate, put into action by man. "Homicide, as it is legally taken, is when one is slain with a man's will, but not with malice prepensed" (*Co Lstt.* 287*b*; *Termes de la Ley.*)

"HOMICIDE is the killing of a human being by a human being. A child becomes a human being with in the meaning of this definition, when it has completely proceeded in a living state from the body of its mother, whether it has or has not breathed, and whether the navel string has or has not been divided, and the killing of such a child is homicide, whether it is killed by injuries inflicted before, during, or after, birth A living child in its mother's womb, or a child in the act of birth, even though such child may have breathed, is not a human being within the meaning of this definition and the killing of such a child is not homicide" (*Step Cr* 151)

HOMICIDE is the destruction of the life of one human being, either by himself, or by the act, procurement, or culpable omission of another

Homicide by misadventure "Homicide by misadventure" is a term used to denote the accidental killing of another where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct

Homicide in self-defence Homicide in self-defence is homicide committed in the defence of one's own life or that of his family, relatives, or dependents, where the law permits such defence.

Homicidium vel hominis caedium, est hominis occisio ab homine facta (3 *Inst* 54) A maxim meaning, homicide or slaughter of a man, is the killing of a man by a man

Homo potest esse habilis et inhabilis diversis temporibus (5 *Co* 98) A maxim meaning, a man may be capable and incapable at different times

Homo vocabulum est natu-rae, persona juris civilis. Man is a term of nature, person of civil law.

Honest belief. "Honest belief," as used in an instruction making the right of plaintiff to cross the tracks of a railway company to depend on his honest belief that it was safe to do so, means such a belief as has a reasonable basis

Honest claim "Honest claim," as used in the statement that the compromise of a disputed claim is a good consideration for a compromise, if the claim is an honest one, means "a claim which the claimant does not know is unsubstantial, or such that he does not know facts which show that his claim is a bad one."

Honesty "According to the best lexicographers the words 'truth' 'veracity,' and 'honesty' are almost synonymous, very nearly the same definitions being given to each of the words.

HONESTY. "Honesty," as used in an offer by defendant, in a prosecution for carnal knowledge of a girl under age of consent, to prove his reputation for morality, virtue, and honesty of living, means chastity The word "honesty," from the Latin 'honestus," is essentially a word that takes its meaning from its context Primarily it means suitable, becoming, or decent, meaning that obviously lend themselves to divers contexts. In moneyed transactions it means financial integrity; in affairs of state it means loyalty; in matters of friendship it means steadfastness, and so on

Honor. "Honored" is used when the bills were paid, and not when they were accepted

"Honorable." The term "honorable" is less a matter of description than a mere honorary distinc-

Honorably bound.

tion, applying to those who are members of the Council. *Quaere*, whether the Court can insist upon the term "honorable" being stated in the plaint in describing the defendant (12 B L R 443=18 W R 301=3 Sar 165=2 Suth 689=7 M.J 340)

Honorably bound The use of the words "I shall consider myself honourably bound," in a written proposition from a creditor to a debtor does not show that the creditor does not intend to bind himself legally to do as he agrees

Honorarium "Honorarium" is a voluntary donation in consideration of services which admit of no compensation in money

HONORARIUM Something given in gratitude for services rendered

'HONORARIUM.' 'Honorarium' *prima facie* implies a gratuitous payment, but it also means a fee for services rendered The meaning depends on the context (45 L W. 297=171 I C 518=A I R 1937 Mad 379=(1937) 1 M.L.J. 511)

Honorary The word "honorary," is a resolution of a board of health that the office of engineer to such board shall be "honorary," means without profit, fee or reward, and in consideration of the honor conferred by holding a position of responsibility and trust If a recompense was to be received or a payment made, either by salary or otherwise, the office would not be "honorary" alone, but one of emolument also

"Honorary Assistant Commissioner" defined Act 13, 1879, S 15

Honorary Magistrate" defined Reg 5, 1886, S. 2 (3).

"Honorary Munsif" defined. U. P Act 2, 1896, S 3 (1)

"HONORARY MUNSIF" means a person invested with powers of an Honorary Munsif under this Act [U. P Act II of 1896 (Honorary Munsifs) S 3, cl 1.]

'Honour,' meaning of 3 Bom L R 396.

Honour · Debt of honour. "When a man writes, 'I promise to pay the above as a Debt of Honour', he does not mean to admit that it is a debt which may be enforced against him at law" (per *Brett, J*, *Maccord* v. *Osborne*, cited.)

Honour. Titles of, Dignities. Titles of Honour or Dignities are certain personal distinctions or titles held or conferred by the sovereign If any difference is to be observed between them, the dignity is the honour itself, the title of honour is the description of the person who bears it, an earldom being the dignity, the title earl is the title of honour; but it is usual to speak either of the dignity of an earldom or of an earl (*See* Coke, Inst, Part II, ii, p 665, Inst. iv p 362, Selden, tit "Hon" Black Com, 2 Stephen, Com, bk, iv ch. ix, Com, Dig, tit "Dignity," p 403, *Ency of the Laws of England*)

"Honourably acquitted." The expression "honourably acquitted" is one which is unknown to Courts of justice Apparently it is a form of order used in Courts-martial and other extra judicial tribunals. Where on a prosecution for alleged misappropriation, the Court accepted the explanation of the accused and decided that he was not guilty of any misappropriation, the acquittal is full and complete and presumably in the language of the Government authorities, "honourable." (61 Cal 168)

Horse.

A person cannot be said to have been 'honourably acquitted' within the meaning of R. 54 (*a*), Chapter VIII of the Fundamental Rules, if he is acquitted merely because the facts proved did not bring him within the letter of the law (165 I.C. 583=1936 O.W N. 1102=A I R 1937 Oudh 45.)

Hookah (*A*) An apparatus for smooking, consisting of a box in which the tobacco burns, a vessel of water through which the smoke passes, and a long pliant pipe through which it is conveyed to the mouth

Hop beer Whether the term "hop beer" designates an intoxicating liquor is a question of fact.

Hope The word "hope," as used in a will, in a clause stating that the testator *hopes* a legatee will make a certain disposition of the fund bequeathed, is a word of intention, which the Court will carry into effect, as if the testator had used an absolute word of devise in trust

"Hope of recovery" The words "No hope of Recovery", in respect of a dying declaration to make it admissible in evidence, means that "there must be an expectation of impending and almost immediate death from the causes then operating with "no hope whatever" in the mind of the declarant that he will recover if the declarant states he has no hope "at present," the declaration is inadmissible (*R.* v. *Jenkins*, L R I C C.R 187, *Stroude*)

HOQUQ DAKHILDARI The expression 'Hoquq Dakhildari' is used for occupancy rights of agricultural land but it literally only means a right to possession (12 R D. 90=9 L.R. 41 (Rev)=A.I.R 1928 A. 169)

Horasat kal. Lease of waste land.

Horaswasti (*Karn.*) The private land held by temples in Mysore as their own property.

Hore (*Karn.*) A burthen such as may be carried on the head, an allowance of grain to village servants, a load of grain, the quantity varies.

Horehullu (*Karn.*) A tax on cultivators who pay in kind, in lieu of straw formerly contributed to the Government

"Horse" defined (*See also* Animal,) 44, 5 V. c. 58 S 190 (40), Act 16, 1861, S 21, Act 2, 1901, s 2 (*c*), Ben Act 2, 1891, S 3 (3), Mad Act 3, 1879 S, 3. Mad Act 3, 1904, S 3 (14), Mad Act 4, 1884, S 3 (*vi*), Mad Act 5, 1884, S. 3 (*vi*).

HORSE A term used in several senses embracing within its meaning an ass, a colt, a filly, a gelding, a jackass, a mare; a mule, or a stallion

"Horse includes a Mule", and applies to any beast of whatever description used for burden or draught, or for carrying persons (*Army Act*, 1881, S 190)

"Horse" is the generic name of the equine species. The word is sometimes used as a generic name including all animals of the horse kind.

Horse

The word "horse," includes animals of both sexes and of all ages

The term "horse," as distinguished from "colt," means a horse old enough to be worked

Horse dealer. "Person who buys and sells horses as a trade, occupation, and means of livelihood" (36 V c 20 S. 13)

Horse flesh includes the flesh of asses and mules, and also means, horse flesh, cooked or uncooked, alone or accompanied by or mixed with any other substance." (52 & 53 V c 11, S 7)

Horse power The draught power of a horse, the unit of measurement introduced by Watt for estimating the power of the steam-engine

"Horticulture" means the cultivation of a garden or the science of cultivating, or managing garden, including growing flowers, fruits and vegetables If a lease was for the purpose of gathering fruits from the trees on the land, the lease was not for horticultural purposes [Agra H C.R (F B) 15, Ed 1874 11, relied upon. 17 C L J 411=20 I C 332]

Horticultural land defined Act 8, 1885, S 171, *expln* (Ins Ben. Act 1, 1907, S 56)

Hosagame New cultivation Lands granted on Darkhast after British conquest (*Kan.*). Land recently brought under cultivation (*Sun Mal Law*)

Hoshali-patta (*Karn*) A fine or tax formerly imposed upon the village servants for not recovering a stray horse belonging to a headman or paligar

Hosier, Draper 'A draper sells materials while a hosier sells articles for wear" (*per* Channell, J, *Bailey* v *Skinner*).

Hosiery. The term "hosiery," as used in the Tariff Act is a word of more general signification than "stockings."

Hospitals A hospital is an institution for the reception and care of sick, wonded, infirm, or aged persons,

"Hospital is a word of wider and more variable meaning than Dispensary, and primarily, signifies a place built for the reception of the sick, or the support of the aged or infirm, poor. It has been used in Great Britain, in some instances, to denote anInstitution in which poor children are fed and educated. But that is not the ordinary meaning of the word" [*per* Watson, J., *Dilworth* v. *Commrs of Stamps*, (1899) A.C. 107, 68 L.J.P.C. 4].

HOSPITAL, in 38 Geo. 3 c. 5, S 25, includes not only hospitals in the legal sense of the word (S. 3), but also hospitals in the popular sense of the word *Colchester* (*Lord*) v. *Kewney*, (1876) L.R. 1 Ex 377]

HOSPITAL [OR CHARITY SCHOOL], in the House Tax Acts, 1808 (48 Geo. 3, c. 55, Sch, B) and 1851 (14 & 15 Vict c 36) The character of such a place for the purpose of exemption from inhabited house duty depends on the character of and uses of the school or other buildings at the time of the assessment, and not upon their character at the times of the passing of the Acts under which the taxation is authorised to be made or the exemption is claimed [*Governors of Charterhouse* v. *Lamarque*, (1890) 25 Q.B,D. 121 and see *Charterhouse School* v *Gayler*, (1896) 1 Q.B. 437, *Cawse* v *Nottingham Hospital Committee*, (1891) 1 Q B 585, *Musgrave* v *Dundee Royal Lunatic Asylum*, (1895) 22 Rettie (Sc) 784 See also *Ormskirk Union* v *Chorlton Union*, (1903) 2 K B. 498 (C A)]

Hostile.

"There is no manner of difference between a college and an hospital, except only in degree, an Hospital is for those that are poor and mean and low and sickly, a college is for another sort of indigent persons, but it hath another intent,—to study in and breed up persons in the world that have not otherwise to live" (*per* Holt, C J, *Philips* v *Bury*, 2 T R 353)

By a HOSPITAL is meant rather an institution for the relief of the sick or aged than one for the maintenance and education of children (*Colchester* v *Kenny*, 35 L J Ex 206)

"Hospital port-dues" defined Act 15 1908, S 49.

PUBLIC HOSPITALS A hospital created and endowed by the government for general charity is a public corporation, and a public hospital may be defined in general as an institution owned by the public and devoted chiefly to public uses and purposes

PRIVATE HOSPITALS A private hospital is one founded and maintained by a private person or corporation, the state or municipality having no voice in the management or control of its property or the formation of rules for its government

Hospitium Among the Romans, on either side of the spacious mansions of the wealthy patricians, were small apartments, known as the "hospitium," or place for the entertainment of strangers

Host, army, armament *Host* denotes an opposing or hostile force of indefinite number, not strictly organized, hence, generally, a very numerous collection *Army* is composed of a definite number of organized soldiers *Armament* is a term which draws the attention primarily to the equipment, and secondarily to the force It is a body of forces equipped for war, and is applicable both to sea and land forces Musketry, artillery, and all munitions of war are implied in an *armament* (*Smith. Syn. Dis.*)

Hostage A person given up to an enemy as a security for the due performance of a contract between belligerent powers.

Hostel "Hostel" was a word applied to signify large houses in France, built upon a scale sufficiently extensive to enable their owners to discharge the duties of hospitality Its modern use is an inn; sometimes used to denote an extra collegiate hall for students, with provision for boarding and lodging.

Hostes sunt qui nobis vel quibus nos bellum decernimus caeteri proditores vel praedones sunt (7 Co 24). A maxim meaning, enemies are those with whom we are at war, all others are traitors or robbers

Hostile In order to obtain leave to cross-examine, all that is necessary is that the witness's testimony should have been adverse to the party calling him and that the value of the witness's testimony is to be judged in the light of the results of such cross-examination. It is unreasonable that the good or

Hostile possession.

bad faith of a witness instead of being judged by the test of cross-examination should be held to be prejudged by the mere fact that cross-examination is permitted Meaning of the word 'hostile' discussed [35 Cr L J 240=146 I C 993=14 Pat L T. 494=A I. R 1933 Pat 517]

Hostile possession "Hostile possession," when applied to the possession of an occupant of an estate holding adversely, is not to be construed as meaning ill-will, or that he is in any sense an enemy of the person holding the legal title, but means an occupant who holds and is in possession as owner, and therefore against all other claimants

Hostile witness The mere fact that a witness before the Sessions Court make statements, relating to part of the prosecution case different from that made by him before the committing Magistrate does not necessarily make him a hostile witness (61 Cal 399=38 C W N 659=152 I C 44=35 Cr L J 1479= A I R 1934 Cal 636)

A hostile witness is a witness who, from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court [Sir *J P Wilde, Coles* v *Coles and Brown,* (1866) L R. 1 P & D 71]

Hostler "Hostler" was the title of the officer in a monastery charged with the entertainment of guests. It was also the Norman word for inn-keeper, and was in use in England until about the time of Elizabeth When the keeping of horses at livery became a distinct occupation, it was the term for the keeper of a livery stable, and afterwards of the groom who had charge of the stables of an inn

Hotchpot. Hotchpot is the bringing together of all the estate of an intestate with the advancements he has made to his children in order that the same may be divided in accordance with the statutes of distribution Its equivalent in the civil law is collation

"This word is, in English, a pudding, for in this pudding is not commonly put one thing alone, but one thing with other things together" (*Litt* s 267.)

Hotchpot is the blending and mixing of property belonging to different persons in order to divide it equally It does not mean that property or money advanced by a parent shall, on the distribution of the estate of the parent in kind or specie, be thrown in with the property which has descended, but that it is to be estimated and charged against the party according to its value at the time the advancement was made.

Hotel Ordinarily a hotel connotes the business carried on by a person though sometimes the term is also used with regard to premises but it is only owing to their association with the original business carried on by them Where a person purchased the materials and gardens in which a hotel had been run, *held,* that the vendee did not purchase the goodwill of the business or the right to use the name in which the hotel business had been carried on and that the vendee could continue the business under the original name at some other place (133 I C 891=32 P L R 542=A.I.R 1931 Lah. 650. *See also* 15 Bom. 530)

HOTEL A hotel is a place where the proprietor makes it his business to furnish food or lodging, or both, to travellers or other persons.

House.

HOTEL AND HOSTEL. The word "hotel" is not to be confounded with the old word "hostel", which is a synonym for what is now termed an inn The modern word is introduced from the French, and rather implies a house to which people resort for lodgings [*Smith* v *Scott,* (1832) 9 Bing. 14]

HOTEL, TAVERN, INN "The words *'Hotel'* and *'Tavern'* are undergoing a change in their meaning, there being Temperance Hotels and Temperance Taverns as well as houses for the sale of excisable liquors" (per *Chitty, L J , Webb* v. *Fagotti,* 79 L.T 684)

"Hotel," "tavern," and "inn," are properly applied to places kept for the entertainment of travellers and casual guests, as distinguished from a boarding house, which is kept principally for the residence of permanent boarders

The term 'inn,' 'tavern,' or 'hotel,' does not properly designate a mere lodging house, although the keeper thereof may send out and procure cooked food for his guests

Hotel bill A contract guaranteeing the payment of a hotel bill includes a bill for boarding, and lodging, but may not include one for billiards, cigars, and liquors

Hotel keeper The keeper of a private lodging house, who also furnishes her guests with provisions at a profit, is a 'hotel-keeper.'

A hotel keeper is a person who receives and entertains as guests those who choose to visit his house and it would not include one who merely keeps a restaurant where meals are furnished

Hotelleries "Hotelleries" is a name which has been in use in France several centuries, and is still in use to some extent as a common term for inns of the better class. (*Words and Phrases*)

Hottuhana (*Karn*) A tax on the husk on the threshing-floor which is set apart for the cattle of the ryots.

Hounslow-heath. A large heath containing 4293 acres of ground, and extending into several parishes; so much thereof as if in the King's inheritance, and fit for pasture, meadow, or other several grounds, shall be of the nature of copy hold lands; or the steward of the manor may let it for twenty-one years, etc , and the lessees may improve the same. (Stat 37 H 8. c. c. 2; *Tomlin's Law Dic.)*

Hour. (*Hora*) Is a certain space of time of sixty minutes, twenty-four of which make the natural day. It is not material at what hour of the day one is born (*Co. Lit.* 135 , *Tomlin's Law Dic.*) The law does not take into account fractions of a day

Houri (*A*) A nymph of the paradise of Islam. "There shall be the houris with large dark eyes like close-kept pearls, a recompense for their labours past."

Housage A fee paid for housing goods by a carrier, or at a wharf or quay, etc. (*Shep Epit.* 1725. *Tomlin's Law Dic.)*

"House" defined (*See also* Common gaming-house.) Act 20, 1856, S. 6 (1) , Act 2, 1880, S. 6 , Act

House

19, 1884, S 2 (4), Ben Act 5, 1876, S 6 (5), Ben Act 3, 1884, S 6, (4), Ben Act 2, 1888, S 3, Mad Act 5, 1884, S 3 (xiii), N & O Act 1, 1891, S. 2 (*d*), Reg 1, 1883, S 2

HOUSE A place of dwelling or habitation. also a family or household (*Tomlin's Law Dic*)

'A house,' containeth (as hath been said) the buildings, curtelage, orchard, and garden (*Co. Litt* 56*a*, 56*b*)

"By the grant of a *house* the estovers appendant thereunto will pass" (*Touch* 89) also "the doors, windows, locks, and keys do pass as parcel of it, albeit at the time of the grant they be actually severed from the house," also "the ground whereon it doth stand doth pass." (*Touch*, 90)

"A hundred years ago there was not much difficulty in saying what was a '*house*', but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that 'house' has acquired an artificial meaning and the word is no longer the expression of a simple idea To ascertain its meaning one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute" [per *Halsbury, C*, *Grant* v *Langston*, (1900) A C 390, 69 L J C 68] "Formerly houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses one above the other They are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground, as in the case of ordinary houses" [per *Jessel, M R*, *Yorkshire Insrce* v *Clayton*, 8 Q B D 424, 51 L J. Q B 84, cited with approval by *Halsbury, C, and Ld Brampton* in *Grant* v *Langston* (1900) A.C 390]

The term 'house' embraces not merely the structure or building, but includes also adjacent buildings cartilage, garden, courtyard, orchard and all that is necessary for the convenient occupation of the house, but not that, which is only for the personal use and convenience of the occupier [7 I C 436 (440)].

In the ordinary acceptance of the term, house includes the materials and not the site only (71 I C 19=A.I.R. 1923 All 438)

The term 'house' *prima facie* means a dwelling-house It means a house intended for human habitation.

A building divided into floors and apartments, with four walls, a roof, a door, and chimneys, would be considered, in ordinary parlance between man and man, as a 'house.'

The word 'house' clearly means a building in the ordinary sense of the word, and such building need not necessarily be always for the habitation of man or beast.

The term 'house,' in the statute in reference to gambling houses, includes a boat equipped to carry on gambling business

The word 'house' is sometimes used as an equivalent expression for the word 'firm.'

House

'House,' meaning of *See* 12 C L J 525=7 I.C. 436

"House" includes schools, also factories and other buildings in which persons are employed [Bur Act XIX of 1884 (Rangoon Water Works), S 2, Cl 4]

"House" includes any hut, shop, warehouse or building, [Ben Act III of 1884 (Municipal), S 6, Cl 4]

HOUSE imputes a place of residence, but is a wider term than dwelling house [*Lewin* v *End*, (1906) App Cas 299] As to whether a block of flats is a house, see *Kimber* v *Admans*, (1900) 1 Ch. 412, *Rogers* v *Hosegood*, (1900) 2 Ch 389 (C A)

HOUSE in the Lands Clauses Act, 1845 (8 & 9 Vict c 18), S 92, means "all which would with a reasonable latitude of construction pass under the description of 'house' or 'messuage' in a deed or will" [*Steele* v *Midland Rail*, (1866) 1 Ch App 275, *Cf Barnes* v *Southsea Rail Co*, (1884), 27 Ch D 536, 542]

HOUSE in the House Tax Acts See *Grant* v *Langston*, (1900) App Cas 383

HOUSE in criminal statutes, means "a permanent building in which the tenant, or the owner and his family, dwells or lives It must not be a mere tent or booth, as in a market, it must be a permanent building" [In *Chapman* v *Royal Bank*, (1881) 7 Q B 140, Huddleston, B]

HOUSE in Metrop. Man Act, 1855, S 105, includes all land upon which there is a building which is, or may be, used for the habitation of man [*Wright* v *Ingle* (1885), 16 Q B D 390, Esher, M R. See *Honsey District Council* v *Smith*, (1897) 1 Ch 843 (C A)]

HOUSE, FAMILY, LINEAGE, RACE, STOCK. *Family* denotes those who descend from one common progenitor, hence the term may be applied to the whole human race or "*family* or man" *Family* is more used of the middle classes *House* of those of the highest quality *Lineage* is that common line of descent which constitutes the house or family *Race* is more comprehensive, indefinite, and broad, as, the human *race*, the Caucasian or Mongolian *race*—indicating masses of men ethnologically one. *Stock* is an analogous term, in which the descendants or children are referred to their parents or ancestors (*Smith Syn Dis*)

HOUSES IN MALABAR There are different names for them in Malabar according to castes

MANA Nambutiripadu's house.

ILLAM Nambutiri's house.

KOVILAKAM OR KOTTARAM Raja's house.

IDAM OR KUTTALA Naduvali's house.

VIDU Nayar's house.

PUSHPOTTU OR PISHARAM OR VARYAM. Houses of Ambalavasai or servants of the pagoda, expressive of their caste.

VARYAM House of Chakkyar

MATHAM House of Chaliar or weavers

KUDI House of Mappilla.

PIDIKA. House of Tiyan etc., etc., (*Log. Mal Man*)

House boat.

House boat. "House Boat,' includes any Pleasure Boat which is decked or otherwise structurally covered in, and which is, or is capable of being, used as a place of habitation (whether by day and night, or the one or the other), or as a place for accommodating or receiving persons for purposes of shelter, recreation, entertainment or refreshment, or of witnessing events, or as club premises, or as offices, or as a kitchen, pantry, or store place"

House bote A compound of house and bote, an allowance of necessary timber out of the lord's lands, for the repairing and support of a house or tenement (*Tomlin's Law Dic*)

"House-breaking" defined Act 45, 1860, S 445

"House-breaking by night" defined Act 45, 1860, S 446

"House gully" defined, Bom. Act 3, 1888, S. 3 (v)

"HOUSE-GULLY" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cesspool or other receptacle for filthy or polluted matter, to municipal servants or to person employed in the cleansing thereof or in the removal of such matter therefrom [Bom Act III of 1888 (City Bom Municipal), S 3, cl (v),]

'Household' is the definition of the Latin 'familia.' The approved definition of 'household' is a 'number of persons dwelling under the same roof and composing a family, and by extension all who are under one domestic head'

'HOUSEHOLD' means persons who dwell together as a family The term 'household' includes all the dwellers in a house under the common control of one person Inmates of a house, domestic establishment

HOUSEHOLD, is frequently used as a qualifying adjective before words like furnitures, goods, effects, etc

Household effects A will bequeathing testator's furniture and other household effects to his wife does not include coffee in a bag, wine in bottles, and brandy in a cask, laid in by the testator for the current use and consumption of himself and family

Household furniture 'Household furniture' embraces everything in the house which has usually been enjoyed therewith

An exemption of household furniture from attachment in execution is not strictly limited to such furniture as may be absolutely necessary, but where the value is not so great as to be evidence of extravagance, it does not cease to be household furniture because it may be greater in amount than is required for the immediate need of the family

A WILL OF 'HOUSEHOLD FURNITURE AND OTHER HOUSEHOLD EFFECTS' comprises all the property in the house and on the premises intended for use, for consumption therein, or for the ornamentation thereof, so that pistols, a melodeon, paintings, an organ, a parrot, books, wine, and liquors will pass, but not a pony, cow, or fowling pieces.

House of Ill-fame

Household goods Household goods "mean every article of a permanent nature which is not consumed in its enjoyment."

"HOUSEHOLD GOODS" embrace articles of a permanent nature—that is, articles of household use which are not consumed in their enjoyment—that are used or purchased or otherwise acquired by a person for his house, but not goods in the way of his trade

"Household goods will only include things in domestic use, and not what a testator has in way of trade"

"Household servant" Meaning of. (1937) 1 M L J. 329

Household stuff 'Household stuff' comprises everything that contributes to the convenience of the householder or ornamentation of the house.

Householder Master or chief of a family, one who keeps house with his family.

A householder is defined to be a master or chief of a family, which family occupies a dwelling house

The term 'householder' means the occupier of a house, being the head or master, and having and providing for a house It implies in its terms the idea of a domestic establishment or the management of a household

The term 'householder' does not mean simply a house-keeper, but also a master or chief of a family.

The word 'house-keeper' will generally be understood to have reference to a person who performs services in the taking care of a house in connection with the inmates residing therein

HOUSEHOLDER Householder will not include a lodger or temporary inmate.

House-keeper. One who keeps or occupies a house, as distinguished from a mere border or lodger

House of Commons One of the constituent parts of the English Parliament

House of Correction A 'house of correction' as its name indicates, 'is designed for the reformation of youthful criminals'

THE HOUSE OF CORRECTION (*in old England*) is chiefly for the punishing of idle and disorderly persons, parents of bastard children, beggars, servants running away, trespassers, rogues, wagabonds, etc Poor persons refusing to work are to be there whipped, and set to work and labour, and any person who lives extravagantly, having no visible estate to support him, may be sent to the house of correction and set at work there, and may be continued there until he gives the justice satisfaction in respect to his living, but not be whipped. A person ought to be convicted of vagrancy, etc, before he is ordered to be whipped. (2 Bulst 351 Sid 281; *Tomlin's Law Dic.*)

House of Ill-fame Generally speaking, a house of ill-fame is a disorderly house, and a bawdy house or house of ill-fame is a public or common nuisance *per se*.

House of Ill-fame

A house of ill fame is 'a house kept for the convenience and shelter of persons desiring unlawful sexual intercourse, and in which such intercourse is practised'

To constitute a house one of ill-fame, it is not necessary that it be kept for lucre and gain

The term 'house of ill-fame' was said to be synonymous with 'bawdy house' It is a species of disorderly house

House of Legislature 'House,' as used in a statute relating to Legislative assemblies must of necessity be construed to denote the members of such houses

House of Lords The Upper House of Legislature in Great Britain. The House of Lords, as at present existing is composed of members who sit in virtue of various qualifications—some because a remote ancestor was summoned toParliament by the sovereign and sat in obedience to the summons, others by reason of Letters Patent to themselves or to one of their ancestors, others again by force of particular statutes [*See* Anson, Law and Custom of the Constitution (Part I, 3rd ed) Collins, Proceedings on Claims concerning Baronies by Writt, Gruise on Dignities, Lords 'Commitees' Reports on the Dignity of a Peer 1820 1829, Pike Constitutional History of the House of Lords, May, Parliamentary Practice]

House of refuse Prison for juvenile delinquents (55 *Ame Rep* 456)

"House productive of rent' defined Act 20, 1891, S 62 (5)

House property. Business premises such as shops, offices, godowns, etc, are not included in the terms "house property" as used in S 8 of the Income-Tax Act, 1918, before its amendment in 1920 (11 L B R 781=67 I.C 781=1 Bur L J 46)

"House rent" includes shop rent (5 Nag L-J 241 =A I.R 1922 Nag 15)

"House-trespass" defined (*N B*—This term is also used in combination with other words (as) Lurking house-trespass, Lurking house-trespass by night) Act 45, 1860, S. 442

However The word 'however' in a deed or will indicates an alternative intention, a contrast with the previous clause, and a modification of it under certain circumstances

Hubstones. Hubstones are useful appliances used in streets to keep trucks in their proper places and prevent them from sliding into places where they may receive and do damage.

Hubub(*pl A*) Cesses, extra charges, term used in Bihar (occasionally in Pj.) (*Bad Pow I* 605)

Huckster The term 'huckster' signifies a petty dealer and retailer of small articles of provisions, nuts, etc

Huckstering 'Huckstering' is a business carried on by persons who go from house to house buying from the farmer and afterwards, selling either to customers or to dealers at wholesale and retail.

Human dwelling

Hue and cry. The hue and cry (hutesium et clamour) is the old common law process of pursuing with hornand voice, on horse or foot, from vill to vill felons or such as have dangerously wounded another (As to the early history of the hue and cry, see *Pollock and Maitland, Hist Eng Law,* vol II, p 576 *See also* Stubbs, Select Charters, Pollock and Maitland Hist Eng Law, Hale, Pleas of the Crown, Hawkins, Pleas of the Crown, Black Com, Stephen Com) The term signifies "to shout or cry aloud" "If the party robbed, or any in the company of one robbed or murdered come to constable of the next town and desire him to raise the hue and cry, that is make the complaint known, and follow the pursuit after the offender, describing the party, and showing as near as he can which way he went, the constable ought forthwith to call upon the parish for and in seeking the felon, and if he be not found there, then to give the next constable notice, and the next, until the offender be apprehended" (Bracton, lib. 3 tract 2 cap 5, *Tomlin's Law Dic*)

HUE AND CRY, says Blackstone, is the old Common Law process, of pursuing with horn and with voice, all felons and such as have dangerously wounded another (Bract 1, 3, tr 2 c 1, 1, *Tomlin's Law Dic*)

Hujra An Afghan institution, described as a sort of club where the male inhabitants of a village assemble to smoke and gossip The spot chosen is generally the foot of a large tree in a central position with water at hand Here travellers are received and entertained and there is a regular attendant to keep the place in order

Huka An Indian pipe

Hukami, grants (Rev-free) made by the 'hukam' (pl of hakim) or State officers, as opposed to those formally made by Royal order The Regulations of 1793, called such grants 'Badshahi' (Royal) and 'nonbadshahi' respectively (*Bad Pow.* I 425))

Hukamnama (*H*) A written order, a written award or judgment, the decree of a Civil Court Among the Sikhs, the Guru's requisition for contributions was so called

"Hukkudarh" The word only means right or title and is no word of amplitude to confer an absolute estate on a Hindu widow (117 I C 289=A I R 1929 Mad 691)

Hukumat-ul-adl, (*A*) An award of equity. An arbitrary atonement (*Mac Mhn Law.*)

Hullu. Grass, straw, hay.

Hullu-bannı A tax on grass in the rice fields, levied from those who bring their flocks to graze in them

Human care and foresight is the equivalent to the term 'utmost care and diligence,' which means all the care and diligence possible in the nature of the case

"Human dwelling" The determining factor to find out whether a place is a human dwelling or not within the meaning of S 442, I P. Code, is not the' existence of the shutters or the fact that the door was shut or open at the time of entry by the accused but the nature of the structure as a whole and the purpose for which it was intended to be and was being used (121 I C. 427=31 Cr.L J. 268=1930 Cr,C. 474=A.I R 1930 Lah. 414.)

Human Law.

Human Law Human laws, as distinguished from divine laws, are those having man for their author

Humane Humane denotes what may rightly be expected of mankind at its best in the treatment of sentient beings

Humbug A humbug is an imposition, imposture, deception As a verb, 'humbug' signifies to impose upon, to cozen, to swindle, an implied intention to misrepresent, by the assertion of what is not the actual condition, or the suppression or concealment of what is

Humorous. The long bone of the arm reaching from the shoulder to the elbow

Humour Fluids of the body A term usually employed to indicate such fluids in a vitiated condition

Hundawan (*H.*) Mar Price paid for a bill of exchange, rate of exchange, premium or discount on remittance by bill (*Wil Gloss* 212)

Hundi (*H*) A bill of exchange

Hundige surka (*Kam*) A tax paid by merchants on piece-goods brought from the weavers (*Wil Gloss* 212)

Hundred. An old territorial division composed of a cluster of townships, and intermediate between the township and the shire The origin of the hundred has formed the subject of much conjecture, but the theory which has found most acceptance is that it was originally due to the association of a hundred men for purposes of defence, and that it was only at a later date that the name was used to denote a territorial division (*See* Stubbs, Constitutional History of England, 1874, ed., Vol 1, pp 96-108, Pollock and Maitland, History of Eng Law, Vol I, pp 543-547, *Ency of the Laws of England*, *Tomlin's Law Dic.*)

"HUNDRED" is a part of a shire properly so called because it contained 10 Tythings either because at first there were a hundred Families in each Hundred, or else found the King a hundred able Men for his wars" (*Cowel*, *Terms de la Ley*)

Hundred-Court (*in old English Law*) is only a larger court-baron, being held for all the inhabitants of a particular hundred instead of a manor The free suitors are here the judges, and the steward the registrar, as in the case of Court baron (*Tomlin's Law Dic*) According to Blackstone, its institution, was probably coeval with that of *hundreds* themselves introduced, though not invented, by Alfred, being derived from the polity of the ancient Germans (*See* 1 Comm. Introd. *Tomlin's Law Dic*)

PER HUNDRED "Per Hundred" in a contract may by special usage mean some other figure than 100; *e g*, six score (*Smith* v. *Wilson*, 1 L J K B. 194)

Hung The term 'hung', or sentencing a man to be hung, means to suspend him by the neck until he is dead

Hunger. Desire to eat Hunger is no excuse for theft (1 Hale Pl Cr 54, 4 Bla Com. 31)

Hurt

Hunt hunting Means (to go in pursuit of wild animals, to engage in the chase (*Vide* Murray's Dictionary & Webster's Dictionary) 7 Ind. Cas 450.

"Hunting, shooting, fishing, and sporting," include things generally hunted, shot, fished or sported after in contradistinction to small birds and things of a similar character, *e g*, rats and sparrows (per *Willes, J*, *Jeffryes* v *Evans*, 34 L J C.P 261)

Hurricane A 'hurricane' is a storm or wind of extraordinary violence sufficient to throw down buildings, it is often an "act of god"

The words 'TORNADO' and 'HURRICANE' are synonymous, and mean a violent storm, distinguished by the vehemence of the wind and its sudden changes

Every hurricane is a storm, but every storm is not a hurricane A high wind, less violent than what ordinarily would be termed a 'hurricane,' would still be a storm, if accompanied by the destructive agencies, such as snow, hail, or excessive rain

Hurricane Insurance A form of indemnity against loss or damage to property through the action of hurricanes or violent storms.

"Hurt" defined. [*N B* This word is used in connection with other words (as) Grievous hurt, Voluntarily causing hurt, Voluntarily causing grievous hurt], Act 45, 1860, S 319

HURT Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt" (Penal Code, S 319)

The word 'hurt' includes both physical and mental pain

Blackstone defines a nuisance as being anything to the hurt or annoyance of another By 'hurt or annoyance' here is meant, not a physical injury necessarily, but an injury to the owner or possessor of premises as respects his dealings with or his mode of enjoying them

HURT, DAMAGE, INJURY, HARM *Hurt* is physical injury causing pain, and is applied to animals as having a sensitive life, and to plants as being quasi-sensitive

Some degree of physical violence is implied in *Hurt* A subtle noxious influence would *injure*, but not *hurt* The constitution might be *injured* or *harmed*, but not *hurt*, by residence in an unhealthy locality

Damage is harm externally inflicted on what is of value, as, trees, movable property, crops, personal reputation A slave so severely *hurt* as to lose the use of a *limb* is *damaged*, as being a valuable commodity but the term is not employed of bodily *injury* to persons in general

Harm is that sort of hurt which causes trouble, difficulty, inconvenience, loss, or impedes the desirable growth, operation, progress, and issue of things *Harm* is that which contradicts or counteracts well-being, and is unfavourable to the proper energy of what has activity *Harm* is as wide a term as *Injury*, from which it differs but slightly But *harm* is more general than *injury*, more vague and less specific hence *harm* is often undefined or undefinable *injury* (*Smith Syn. Dis*)

HURT, BRUISE, WOUND In commenting on a declaration that plaintiff was "hurt, bruised and wound-

ed," the Court said. "The word 'hurt' is so general as to give no information 'Bruised' is more definite, but does not indicate necessarily or generally more than a temporary contusion, which may be on any part of the person, light or severe, but seldom more than temporary in effect 'Wound' is any temporary breaking of the skin, and is no more definite than the other words"

Husaini Brahman (*H*) The name of a community of fakirs of the Beshara order. They follow the Atharwa Veda, but adopt all the doctrines of Islam that are not contrary to it The men dress like Mussalmans, the women like Hindus. Most of their customs are Muhammadan, and they observe the Ramzan fast, but they wear the tila Their patron saint is Khaja Moin-ud-din Chishti of Ajmer. They practise astrology and palmistry

"Husband" defined. (*See also* Native husband), Act 15, 1865, S 2

"HUSBAND" may, by context, include a reputed husband (V per Ld. Cairns, *Hill* v *Crook*, 42 L.J Ch 716, L.R 6 H L. 285).

'Husband', as used in the will of a woman who had obtained a void divorce from a legal husband, and whoafterwards went through a form of marriage with another man, with whom she lived, the will reciting that the testatrix was the wife of the person with whom she had thus lived, and providing as follows 'I give and bequeath to my husband one-half of my personal property," is construed to mean the person with whom the testatrix has been living up to the time of her death and not her legal husband

Husband and Wife are made so by marriage, and being thus joined, are accounted but one person in law. (*Tomlin's Law Dic*) "In the eye of the law no doubt, man and wife are, for many purposes, one but that is a strong figurative expression, and cannot be so dealt with as that all the consequences must follow which would result from its being literally true" [*Maule, J, Wenman* v *Ash*, (1853) C.B 844 "By the laws of England, by the laws of Christianity, and by the constitution of society, when there is a difference of opinion between husband and wife, it is the duty of the wife to submit to the husband [Malins, V C, *In re* Agar-Ellis *Agar-Ellis* v *Lascelles* (1878), L R. 10 C D 55 *See* Lush on Husband and Wife, Macqueen on Husband Wife, Eversley, Domestic Relations, Edward and Hamilton, Law of Husband and Wife, Crawley, Husband and Wife, and among older treatises, Clancy, Husband and Wife, Roper Husband and Wife, 1849, Benthams Essay on Marriage]

The word 'access" between husband and wife means no more than opportunity of intercourse and does not imply actual co-habitation [12 Rang 243=3 A W R 319=38 C W.N 427=1934 A L.J 250=59 C L J 126=36 Bom L R. 394=147 I C 891=39 L W 244=A I R 1934 P C 49=66 M L J 288 (P C) *See also* 61 M.L J 878, 1935 Lah 628, 1934 Mad. 310]

HUSBAND AND WIFE—FORGIVENESS AND RECONCILIATION BETWEEN If I might be permitted to borrow an illustration from poetry, the distinction between forgiveness and reconciliation is nowhere more strikingly shown than by a poet who, more than most other men, has sounded the depths of human feeling, and

who supposes the question put to the husband of an adulteress

"Then did you freely, from your heart forgive?" to which he replies

"Sure, as I hope before my judge to live,

Sure, as the Saviour died upon the tree,

For all who sin-for that dear wretch and me,

Whom never more, on earth, will I *forsake* or *see*" (Crabbe's "Tales of the Hall," b 12) Lord Chelmsford, L C, *Keats* v *Keats and another*, (1859) 7 W R 378, 5 Jur (N S) Part 1 (1859), p 178.

HUSBAND, SPOUSE The *husband* designates the physical quality, the *spouse* the social connection The *husband* answers to the wife, as the man to the woman The *spouse* answers to the spouse as one party to another The *spouse* is the higher, more spiritual term, the *husband* is the head of the wife, over whom he has legal rights The *spouse* is the partner of the wife in moral as well as natural union. (*Smith Syn Dis*)

Husbandry In the phrase "According to the best rules of Husbandry practised in the neighbourhood," *'Husbandry,'* is equally applicable to a Market Garden as to a farm arable or pasture" [per *Kekewich, J Meux* v *Cobley*, (1892) 2 Ch. 261]

"HUSBANDRY" Webster defines to be the business of a farmer comprehending agriculture or tillage of the ground, the raising, managing, and fattening of cattle and other domestic animals, the management of the dairy and whatever the land produces, and is equivalent to 'agriculture' in its general sense

Hush money is money paid for and in consideration of an arrangement by a private person not to prosecute, or to desist from, stifle or stay, a prosecution for any offence, which involves a public injury, such an arrangement is void as being against the public interest in the administration of justice, nor will sanction by the judge improve the legal value of such a contract [*Jones* v *Merionethshire P B Building Society*, (1892) 1 Ch 173, *Vint* v *Local Board*, (1890) 45 Ch D 351, *Bawlings* v *Coal Consumer's Association*, (1884) 43 L J M C 111.]

"Hut" defined Ben Act 2 of 1888, S. 3, Ben Act 1 of 1893, S 3 (1)

Huttari. The name of the great national festival of the kodagas and holeyas, held in honour of the rice harvest.

Huttu-garu-gouda. (*Karn*) The headman of a village who is a native of it.

Huttuvali (*Karn*) The produce of a garden or field or of any trade, the amount of an assessment, rent, income, revenue

Huttuvali-kami (*Karn.*) Remission of assessment on account of deficient produce.

Huzur (*H.*) The presence, the royal presence, the presence of a superior authority, as of a judge or collector of revenue, the person of the prince or functionary, also the place where he presides, the hall of audience, the court, also abstractly, the state, government (*Wil. Gloss.* 205.)

Huzur-tahsil.

Huzur-tahsil (*H*) Collection of the revenue by the chief fiscal officer of the government, without the intervention of a third party In the early days of British authority the term was applied to land paying revenue to the chief authority in a province, as distinguished from those paying it to the head of a zilla, or sub-division of a province or Collectorate, thence termed Tahsil-zila (*Wil Gloss* 206.)

Huzurtahsil-i-daftar (*H*) An office in Calcutta before the permanent settlement, in which revenues paid direct to government were received (*Wil Gloss.*)

Huzuri (*P*) Relating to the presence, or chief station of authority. (*Mac Mhn Law*)

HUZURI, of or belonging to the Huzur (lit. the 'presence'), the chief seat or headquarters of authority, estates that paid revenue direct to the state treasury, not subordinate to a Zamindar (Ben) (*Bad Pow* Vol I, 525)

Huzzoor The presence. The seat of a government, or of the European authority in a collectorship (*Fifth report*)

'Huzur Dep -Collector,' the (Sindh) (*Bad Pow* III, 345 *note*)

Hydatid A transparent bladder or vessel on the body, filled with water, as in dropsy Also a stage in the development of tape-worms

Hydegild (*in old English Law*) "Is the price or ransom to be paid for the saving of his skin from being beaten" (*Termes de la ley*)

Hydraulic mining Hydraulic mining is mining by means of the application of water under pressure, through a nozzle, against a natural bank

Hydrocele A dropsical condition of the scrotum, due to inflammation of the serous lining membrane

Hydronephrosis. Dropsy of the kidneys

Hydropathy. That method of treatment in medicine in which the external application of water, by bandages, compresses, douches, the body and trunk, pack and baths, hot and cold, is relied on, the administration of hot and cold water, medicated or otherwise, internally, being supplementary

Hydrophobia Disease caused by the bite of animals, dogs, wolves, and cars, in a rabid state

Hydrous "Hydrous" is a scientific term, indicating the presence of water

Hygeia The Greek word 'hygeia' means health When the daughter of Aesculapius was deified as the goddess of health, she was named Hygeia The Latin word 'salus' means health, and this name also was given to the Roman goddess of health Both words passed into the English language The name of the divinity was confined to the Greek form The derivatives of 'salus' came into common use The Greek word for health was at first appropriated mainly, if not wholly, to medical literature, but within the past century it has passed with many derivatives into common use.

HYGEIA is a word of peculiar value. By reason of its passage into general literature from the medical

Hypodermic.

it has a significance which the derivatives of 'salus fail to express The idea conveyed by salubrity and salubrious is quite distinct from that conveyed by hygeia and hygienic.

Hypnotism Artificial catalepsy, induced or artificial somnambulism, a method of artificially inducing sleep (*Bouvier*) "The phenomena of hypnotism have formed the subject of exhaustive discussion among English and Continental medical jurists, and several cases turning upon them have also come before American Courts (*e g.* the *Cynaski Case*,(1894) N Y. Med Leg Jo, vol xiii at p 51 and Vol xiv at p 150, where the facts are stated and considered and the *Motorious Eyrand Case* in Paris) The chief medico legal questions to which hypnotism gives rise, are—(1) The capacity of hypnotic subjects to make wills, to contract, to marry, and to give evidence, (2) the degree of credibility which the testimony of such subjects possesses; and (3) how far there is danger of them receiving and acting upon criminal suggestion" (On this subject, *see* the article "Hypnotism" in Hack Tucke s Dictionary of Psychological Medicine, and authorities there cited, Moll of Hypnotism, and Kingsbury on Hypnotic Suggestion, *Ency. of the Laws of England.*)

Hypothecary action. An hypothecary action is a real action which the creditor brings against the property which has been hypothecated to him by his debt or in order to have it seized and sold for the payment of his debt

Hypothecate. A contract by which specified property is hypothecated for the performance of an act, signifies that possession is not an incident of the mortgage, and the fact of possession is entirely distinct from the contract of hypothecation

Hypothecation Hypothecation is defined as "a right which a creditor has over a thing belonging to another, and which consists in the power to cause it to be sold in order to be paid his claim out of the proceeds"

Hypothesis A hypothesis is a supposition; a proposition or principle which is supposed or taken for granted in order to draw a conclusion or inference for proof of the point in question, something not proved, but assumed for the purpose of argument, or to account for a fact or an occurrence It being a mere supposition, there are no other limits to hypotheses than those or the human imagination In law, the meaning of the term does not vary from its usual significance

Hypothetical question The meaning of the word 'hypothetical' is that it supposes—assumes—something for the time being The facts are assumed for the purpose of the question

The fact that a question is a hypothetical one implies that the truth of some statement of facts is assumed for a particular purpose

Hypocrite To say that a person is a hypocrite is a Libel by itself It needs no innuendo. (*Thorley* v *Kerry*, 4 Taunt. 355)

Hypodermic Underneath the skin, the term used to denote the administration of medicines subcutaneously, by means of a perforating needle and injecting syringe.

Hypothecated

"Hypothecated" defined Act 10, 1859, S 112.

Hypothecation bond (*In Maritime Law*) applies to a bond given in the contract of bottomry

Hyth or hythe is a port or little haven to load or unload Wares (*Cowel*) A port, wharf or small haven used for the purpose of embarking or landing merchandise (*Blount*)

Hyum The term is correctly Kayamsuvarnadaya Fixed rent A term used in Coimbatore to designate rates paid in money, either permanently fixed, or subject to small variation (*Wil Gloss*. 5th Rep)

I

I e Id est. That is.

I O U The three letters followed by a designated sum evidence an acknowledgment of a debt

"I Promise" "Where a note runs 'I promise to pay' and is signed by two or more persons, it is deemed to be their joint and several Note" (*per* Wightman, J, *R* v *Silkstone*, Put Reg) It is to be construed as the several promise of each of the signers, as well as the joint promise of all

"I will see you paid" "These words indicate an original and independent agreement to pay, as distinguished from a guarantee for payment" (*Birkmyr* v *Darnell*, 1 Salk 27, 1 Sm L C 335)

Ibi semper debet fieri triatio, ubi juratores meliorem possunt habere notitiam A trial should always be had where the jury can get the best information

Ibid Ibidem in the same place In the same book or passage, in the same place

Ibra (*or Ibraa*) (*H*) Remission, release, acquittance, relinquishment of claim (*Wil Gloss* 212, *Mac Mhn Law*)

Ibra-nama (*H*) A written acquittance or relinquishment of claim (*Wil Gloss*. 212)

"Ice-bound" These words used in respect of a ship does not necessarily mean that the ship cannot move at all But it means that she cannot move so as to get out of the ice" (per *Esher, M R*, *Sunderland S S Co* v *North of England Insrce*, 14 The Reports 198, 1 Times Rep 106)

Ichor A thin watery humour discharged from an ulcer, acrid and irritating

Iconoclasm Breaking of images or idols

Iconoclast Breaker of images or idols, one who assails cherished beliefs

Iconography Treatise on pictures or statutary, book whose essence is pictures, representation through pictures

Id idem (*Lat*) the same

Id est (*Lat*) That is

Id or Aid (*H*) A festival or holy observance among the Mohammadans but the term is especially applicable to two such occasions, the Idin or Eidein, which are enjoined by texts of the koran, and are, therefore farz, or absolute, others are termed sunnat or traditional (*Wil. Gloss* 213) The two principal ones are called the Idal-fitr and the Bakr-id.

Idem est facere

Id certum est quod certum reddi potest That is certain which can be reduced to a certainty

Id possumus quod de jure possumus We are able to do that which one can do lawfully

Id quod est magis remotum non trahit ad se quod est magis junctum sed e contrario in omni casu That which is more remote does not draw to itself that which is nearer, but the contrary in every case

Id, quod nostrum est, sine facto nostro ad alium transferri non potest What belongs to us cannot be transferred to another without our consent

Id solum nostrum quod debitis deductis nostrum est That only is ours which remains to us after deduction of debts

Id tantum possumus quod de jure possumus. We can do that only which we can lawfully do

Id-al-fitr (*A*) The festival of breaking fast, the great Muhammadan holiday held on the 1st day of Shawal, when the Ramzan fast is broken.

Idapadu (*Mal*) Means the authority exercised by the family inhabiting the idam who also controlled the pagodas of Urile Bhagavati (goddess of the Ur, village) and of Muvanti Kali (the tutelar deity of Calicut) lying within their limits. (*Log Mal Man.*)

Iddat "A free woman married by a valid contract should keep iddat for the death of her husband during four months and ten days when she is not pregnant, whatever be her age, whether she is a child or full grown, and whether her husband had arrived at maturity or not... .. If she is pregnant, the iddat is the largest of the two periods, that is, it is prolonged to delivery, if that should not occur till after the expiration of four months and ten days from her husband's death, whereas if she is delivered before the expiration of that time she is to wait for its completion," [1 I C 894 (895).]

Idea An object of the mind existing in apprehension, thought or conception

IDEA, NOTION, CONCEPTION, PERCEPTION, SENSATION The perceiving of something external by the mind through the senses is called a *sensation*, the image as it exists in the mind as a matter of reflexion is an *idea* When two or more ideas are combined so that the expression of them would take the form of an affirmation, this is a *notion* *Conception* is a conscious act of the understanding, assimilating objects or impressions

Sensation is physical, and *perception* that operation of the mind in regard to external things which follows and is based upon sensation (*Smith. Syn Dis*)

Idem (*abbreviation Id*) (in reference) means the same author on authority

Idem agens et patiens esse non potest. To be at once the person acting and the person acted upon is impossible

Idem est facere et non prohibere cum possis. It is the same thing to do a thing as not to prohibit it when in your power.

Idem est nihil.

Idem est nihil dicere et insufficienter dicere. It is the same thing to say nothing and not to say enough

Idem est non esse et non apparere A maxim meaning, Not to be and not to appear are the same

Idem est non probari et non esse non deficit jussed probatio What is not proved and what does not exist, are the same, it is not a defect of the law, but of proof

Idem est scire aut scire debere aut potuisse To be bound to know or to be able to know is same as to know

Idem semper antecedenti proximo refertur *Idem* always relates to the next antecedent

Idem sonans "Idem sonans" means "of the same sound," or sounding the same"

The rule of *idem sonans* is that absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal, that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient designation of the individual referred to, and no advantage can be taken of the clercial error (64 Am St Rep 191.)

The doctrine of idem sonans has been much enlarged by modern decisions to conform to the growing rule that a variance, to be material, should be such as has misled the opposite party to his prejudice (*Words and Phrases*)

Identification Proof in a legal proceeding that a person, document, or other thing is that which it is alleged to be

Identification of persons and things. It is the practice of the police where they have in custody a person suspected of crime or possession of goods supposed to have been criminally or unlawfully obtained to place the prisoner among persons of a similar appearance, and the goods with other like goods, and ask the prosecutor or other person to pick out the person or goods See Taylor on Evidence, Archbold's Criminal Pleading, and Stephen's Digest of Evidence, *Ency. of the Laws of England*

Identitas vera colligitur ex multitudine signorum True identity is collected from a number of signs

Identity (*In Patent Law*) Such sameness between two designs, invention or combinations as well constitute the one an infringement of the patent granted to the other

"IDENTITY OF DESIGN," as used in relation to design patent, means sameness of appearance, or, in other words, sameness of effect upon the eye It is not necessary that the appearance should be the same to the eye of an expert, the test is the eye of an ordinary observer of men generally, of observers of ordinary acuteness, bringing to the examination of the article upon which the design has been placed that degree of observation which men of ordinary intelligence give

Idle and disorderly persons

"To constitute 'IDENTITY OF INVENTION," and therefore infringement, not only must the result obtained be the same, but, in case the means used for its attainment is a combination of known elements the elements combined in both cases must be the same, and combined in the same way, so that each element shall perform the same function provided, however, that the differences alleged are not merely colourable according to the rule forbidding the use of known equivalents"

Ideo. Therefore

Ideo consideratum est 'Ideo consideratum est,' as used in the entry of judgment, means, 'therefore it is considered'

Ides. The calendar of the Romans had a peculiar arrangement They gave particular names to three days of the month The first was called the "calends" In the four months of March, May, July, and October the seventh day was called 'nones and in the four former the fifteenth days were called *'ides,'* and in the last the thirteenth were thus called (as) "Ides of March" (*Shakespeare*)

Ideology. Science of ideas, visionary speculation

Ides (*Lat.*) The 15th of March, May, July and October, the 13th day of the other months

Idiocy A total absence of all mind from birth, Extreme mental imbecility

Idiosyncrasy Mental or physical constitution or feeling peculiar to a person

Idiot, is defined by Coke (Beverley's Case, 1 Jac 1 4 Co Rep 124) as one "who from his nativity, by a perpetual infirmity, is *non compos mentis,*" and by Hale (1 P C 29) as *"fatuity, a natwitate vel dementia naturalis"* An "'Idiot,' is one that is "a fool natural from his birth and knoweth not how to account or number twenty pence, or cannot name his father or mother, nor of what age himself is, or such like easy and common matters, so that it appeareth he hath no manner of understanding, of reason, or Government of himself, what is for his profit or disprofit, etc" (*Termes de la Ley*)

An *Idiot,* or natural fool, is one that hath had no understanding from his nativity, and therefore is by law presumed never likely to attain any. (*Tomlin's Law Dic*) *See* Archbold's Lunacy, Wood Renton on Lunacy, and as to criteria of idiocy, Pope on Lunacy, Ency of the Laws of England)

IDIOT FOOL An *Idiot* is one who is destitute of the ordinary intellectual powers of man He is a born *fool,* the mental condition being commonly accompanied by some defect in the physical wisdom. *Fool* is capable of other meaning, denoting, *e g*, a person of very languid mind and sluggish comprehension, or one who lives contrary to the principles of practical wisdom (*Smith Syn Dis*)

"Idle and disorderly persons" These words include "able-bodied men who can work but will not because they are on strike, and so become indigent, but do not refer to their wives and children" [*A G v. Merthyr Tydfil,* (1900) 1 Ch 516, 69 L J Ch 299]

IDIOT AND LUNATIC The differentiating mark between idiocy and lunacy is that the former is a

Idle and disorderly persons

natural (a nativitate) while the latter is an acquired or supervening (accidentalis, adventitia) incapacity

"IDIOTS AND MADMEN" Under the Hindu law, the words "idiots and madmen" do not include persons merely of weak intellect, in the sense that they are not up to the ordinary standard of human intelligence or that they are not endued with the business capacity to manage their affairs properly [12 A 530 =10 A W N 110 (1 M H.C R 214, D) *See also* 13 C W N 805 (810)

Idol Image of deity as object of worship, object of great reverence and devotion (as) idol of the people, idol of the theatre

There may be purposes for which an idol considered with reference to the material substance of which it is composed, may be regarded as moveable property In this way it may be the subject of theft But an image considered as a legal or spiritual entity cannot properly be said to be the subject of gift What is probably true is that for certain purposes at any rate the office of manager or shebait of a deity may be regarded as property and the office will carry with it all such rights as property pertaining thereto, including the right to the custody of the image In a loose way, therefore, the gift or transfer of the office may perhaps be spoken of as a gift or transfer of the image or the deity [77 I C 833=27 C W N 684=A,I R 1923 Cal 708]

Idolater Worshipper of idols, devout admirer

Idu (*Tam.*) Quality, applied especially to land or soil

Kadaiyidu Land of the lower quality

Talaiyidu Land of the first quality

Idumupairu (Tel) Land which pays rent on a crop unconditionally.

If The word "If" in a stipulation generally creates a condition precedent See *Broomfield* v *Crowder*, 1 Bos & Paul N S 313 and 326

"If any" Meaning of 20 S L R 34=A I R 1926 Sind 1

"IF A PERSON APPLIES" These words in the proviso to S 310-A, C P Code (1882) must be taken in their liberal and primary meaning [5 O C 137 (138).]

"IF HE SHOULD DIE," in a will is to be construed as "When he should die," and not as importing a contingency, but as giving a remainder after the death. (*Smart* v *Clark*, 3 Russ 375)

IF IT BE CONCEDED The phrase, "if it be conceded," as used in a judicial opinion, may generally, though not always, be taken as indicating that what is said upon the point referred to is not to be understood as the expression of an absolute, final conclusion, but as signifying that there is at least a tinge of obiter in what is thus qualified

"IF NO APPLICATION HAS BEEN MADE TO SET ASIDE THE AWARD" in S 522 of the Civil Procedure Code (Act XIV of 1882) is clearly comprehensive enough to cover a case wherein the ground of attack is that no award is valid in law, and refers to a contingency other than the remission of an award. [17 I. C. 7 (8.)]

Ignorantia excusatur.

Ignominy. 'Ignominy' is defined to be public disgrace, infamy, reproach, or dishonor.

Ignorance Ignorance of a particular fact—that is, want of knowledge of that fact—consists in this: that the mind, though sound, and capable of receiving an impression, has never acted upon that subject, because that subject has never been brought to the notice of the perceptive faculties

The terms 'IGNORANCE' AND 'MISTAKE,' in legal contemplation, do not import the same significance, and should not be confounded Ignorance implies a total want of knowledge in reference to the subject-matter, mistake admits a knowledge, but implies a wrong conclusion

IGNORANCE (OF LAW) Want of knowledge of the law shall not excuse any man from the penalty of it. Every person is bound at his peril to take notice of what the law of the realm is and Ignorance of it, though it be invincible, where a man affirms that he hath done all that in him lies to know the law, will not excuse him (*Plowd* 343. *Tomlin's Law Dic.*)

IGNORANCE OF LAW, within the meaning of the rule that ignorance of law will not excuse, is to be construed as meaning ignorance of the laws of one's own country or state Ignorance of the law is ordinarily very much of an excuse as leads to a reduction of the sentence though it cannot lead to an acquittal. [24 N L R 110=109 I C 334=29 Cr L J. 506=A.I R 1928 Nag 188]

THERE IS A CLEAR AND PRACTICAL DISTINCTION BETWEEN IGNORANCE AND MISTAKE OF THE LAW. Much of the confusion in the books upon this subject has grown out of a confounding of the two. It may be conceded that at first view the distinction is not apparent, but upon close inspection it becomes quite obvious It has been ridiculed as a quibble, but it has been taken by able men and acted upon by eminent courts Ignorance implies passiveness, mistake implies action. Ignorance does not pretend to knowledge, but mistake assumes to know Ignorance may be the result of laches, which is criminal, mistake argues diligence, which is commendable. Mere ignorance is no mistake, yet a mistake always involves ignorance, but not that alone. (*Words and Phrases*)

In holding that a transaction may be set aside by reason of mistake of law, but not by reason of ignorance of law, it was said that "all the difficulty and confusion which have grown out of the application of the maxim, 'Ignorantia juris non excusat,' appear to me to have originated in confounding the terms 'ignorance' and 'mistake' The former is passive, and does not presume to reason, and, unless we were permitted to dive into the secret recesses of the heart, its presence is incapable of proof, but the latter presumes to know, when it does not, and supplies palpable evidence of its existence. (*Ibid.*)

A mere ignorance of the law is not susceptible of proof, and therefore cannot be relieved, but a mistake of law may be proved, and, when proved, relief may be afforded.

Ignorantia eorum quae quis scire tenetur non excusat. Ignorance of those things which one is bound to know excuses not.

Ignorantia excusatur, non juris sed facti. Ignorance of fact may excuse, but not ignorance of law.

Ignorantia facti

Ignorantia facti excusat, ignorantia juris non-excusat. Ignorance of the fact excuses, ignorance of the law excuses not

Ignorantia facti excusat, ignorantia juris (quod que quetenetur scire) neminem excusat A maxim meaning ignorance of fact excuses, ignorance of law (which every one is presumed to know) excuses no one

Ignorantia judicis est calamitas innocentis The ignorance of the judge is the misfortune of the innocent

"Ignorantia juris non-excusat" Ignorance of law is no excuse Ignorance of law, though insufficient as an excuse, it may extenuate the offence in particular cases.(59 I.C. 33=22 Cr L J 1=1 Lah 440)

Ignorantia juris, quod quisque scire tenetur, neminem excusat Ignorance of the law which every one is bound to know excuses no one

Ignorantia juris sui non praejudicat juri Ignorance of one's right does not prejudice the right.

Ignorantia legis neminem excusat Ignorance of law excuses no one

Ignorantia praesumitur ubi scientia non probatur Ignorance is presumed where knowledge is not proved

Ignorare legis est lata culpa To be ignorant of the law is gross neglect

Ignoratis terminis, ignoratur et ars Terms being unknown, the art also is unknown

Ignore To reject as false or ungrounded, refuse to take notice of, reject

Ignotum per Ignotius (*Lat*) Explanation which is more obscure that the thing it explains

I. H S (*Abbr*) Jesus

Ihsan. (*A.*) In Mohammadan law, a person who is a free sane adult of chaste reputation, and of the Mohammadan faith, and who is therefore entitled to demand punishment for adultery committed with respect to him or her so charaterized. (*Wil Gloss.* 214.)

Ihtasab. (*H*) Superintendence of police, supervision of weights and measures in a market, *see* Muhtasi. (*Wil. Gloss*)

Ihtimam (*A.*), a 'charge' the sphere of the Zamindar's duty (Ben) (*Bad. Pow.* I. 258). Care, superintendence, trust, responsibility, the trust or jurisdiction of a Zamindar over certain variable divisions of a province, under the Mohammadan government of Bengal, equivalent to a Zamindari thus, Burdwan, Rajshahi, are in early financial reports designated as Ihtiman In Chittagong the term denotes a tenure similar, but subordinate, to a Taluk, and usually of small extent. (*Wil Gloss*)

Ijab (*A*) A verbal offer.

Ijab-i-kabul. (*P*) Acceptance of a verbal gift

Ijara (*A*) A lease or farm of land, or of the public revenue, or of customs or the like. A farm, particularly of the revenue of a district. (*Fifth report*), used of any farming lease, farm of rents (Ben) the system of collecting Land Revenue through Taluqdars as opposed to the 'amam' *khas*, or direct system (Oudh) [*Bad Pow* II 206, 211 *note*. certain long leases (Berar), *Bad Pow* III 380.]

Ijaradar or Ijardar A farmer of the public revenue whether of a single village or a large area, or of customs, excise or other source of revenue. The holder of a farm, a farmer of the revenues of a district (*Fifth report*)

Ijardari (*H.*) Farming, contracting for rent or revenue, an abwab or cess formerly levied on lands or districts let out in farm for the benefit of the farmer or contractor. (*Wil Gloss* 214)

Ijarah A farm, particularly of the revenue of a district.

Ijarahdar. (*See Ijaradar.*) The holder of a farm A farmer of the revenues of a district.

Ijara-nama. (*H*) A lease, any document under which a lease or farm is held, also a conditional deed of sale of a slave in Tirhut. (*Wil Gloss*)

Ijardari-patta (*Hindi*) A lease for a farm, giving authority to the holder to occupy and cultivate, or receive the rents of an estate (*Wil Gloss* 214)

Ijarpat (*M*) The sanad or public document given to a farmer or contractor, the paper given at the annual settlement of the revenue in the Maratha province to the head Patil, setting forth the gross amount of revenue due for that year by his village, the sum remaining to be paid after deducting remissions and the instalments by which the balance is to be paid. (*Wil Gloss*)

Ijazat-nama (*H*) Any written order or permission, also commonly applied in Mohammadan diction to the anumati-patra of Hindu law, or the written permission of a husband to his wife to adopt a son after his decease (*Wil Gloss* 214.)

Ijma (*A*) An assemblage, a Court; a dogmatic opinion delivered by a council of doctors

'Ijmal' Per *Chapman, J*—The word 'Ijmal' in Bihar means a residuary share It means simply 'joint' (2 Pat L.J. 402=40 I C. 13=2 Pat L W. 229)

Ijmali (*H*) Held in common (as an estate) undivided, not partitioned, settled in common with two or more parties (*Wil Gloss*)

Ijran (*Kumaon, N W P*) Local term for casual (not permanent) cult (*Bad. Pow* II, 309)

Ikbal Daawa, (*A*) Confession of judgment An acknowledgment of want of right in the subject-matter of a suit (*Mac. Mhn Law.*)

Ikrah. (*A*) Homicide by compulsion. (*Mac. Mhn. Law*)

Ikrar The word ikrar which is often interpreted "Agreement" is an ambiguous word. (72 I C. 491= A.I R. 1923 All 488.)

Ikrar-nama. (*H.*) A deed of assent or acknowledgment in general.

Ikrar-nama

Ikrar-nama-salasi. A deed of arbitration.

Ikrar Nameh See (*Ikrar Nama.*) (*P.*) A written acknowledgment. (*Mac. Mhn Law*) A deed of assent or acknowledgment in general In the North-West Provinces it applies especially to the engagement entered into with government by the Malguzar and coparceners of a village it is to specify the mode of paying the revenue now the shares are to be distributed, the shares whether held in common or in severalty, the number, functions, privileges of the Lambardars, the items of the sayer, rights of irrigation, extent and appropriation of waste cultivable land, and the number, duties, and pay of the village servants it is to be signed by all the Lambardars and as many Pattidars as possible, to be attested by the Patwari and karungos, and finally confirmed by the signature of the settlement officer, after being read out before him in open Court in the presence of the subscribing parties (*Wil Gloss* 216)

Iktyar Nameh. (*P*) A voluntary deed (*Mac Mhn. Law*)

Iladarawara (*Karn*) A mortgage of land with possession, sometimes for a stipulated period, the rent taking place of all interest on the loan, as well as providing for the Government revenue, the land to be redeemable on payment of the debt

Ilahi (*H*) Divine, the title of the era instituted by the emperor Akbar, commencing with the first year of his reign, A H 963, A D 1556, although found in the coins of Akbar and his immediate successors, it never obtained currency, and is now obsolete (*Wil Gloss* 216)

Ilaka or Ilaqa, or Ilakha (*H*) Dependency, connexion, a property, an estate, a district, a jurisdiction (*Wil Gloss* 216) Claim, right, title, a department, an office

Ilakadar (*H*) The person who engages, either on his own account or as the representative of others for the payment of the assessed revenue upon a district or village (*Wil Gloss.* 216) A rural notable in charge of a circle of villages.

Ilam Announcing, proclaiming, making known

ILAM=(*A proclamation*), lands not included in the Permanent Settlement (Sylhet). (*Bad Pow* III 444, 446)

Ilam-nama A summons, a citation, the first process issued against a defendant in a civil suit

Ilangadutariju Land left waste for ten years

Ilanji A tank, a large tank

Ilaralu (*Tel.*) The thatched roofs of barns or granaries

Ilaqa (See *Ilaka*) A tribal settlement, area allotted to a section of a tribe under a chief (*Bad Pow*, II, 636), generally for a 'district,' part of a pargana etc.

Ilaura. Customary fee payable by the tenant to the senior anandravans of a Nambudri jenmi (*Sun Mal Law.*)

Ilavan (*Mal.*) The name of the Tiyan in the Palghat and Temmalapuram Districts in common

Illam

parlance, who are aborigines of Malabar, the Tiyar or Tivar are believed not to have been the aborigines of Malabar, but to have come from an island (Ceylon), bringing with them the cocoanut tree

Ildarwar. Usufructuary mortgage (Kan) (*Sun Mal Law*)

Ilet A small island

Iliac passion (*in Medic*) A distressing ailment in which, owing to the obstruction of the bowels, the food returns to the stomach, and is afterwards vomited

Ilium (*in Med Jur*) The last portion of the small intestines, hence also illac region.

Ill 'Ill' is defined to be 'sick, indisposed, diseased, disordered'

ILL, in S 17 of the Indictable Offences Act, 1848 (11 and 12 Vict, c 42), may include the case of a woman who is pregnant, [*R* v. *Wellings* (1878) 3 Q. B D 426, or who has been recently confined. *R.* v. *Marsella*, (1901) 17 T L R 164]

Ill advised. Injudicious.

Ill blood Chronic enmity

Ill fame Bad reputation (as) house of ill fame

'Ill fame is not necessarily criminal, therefore a witness may be compelled to testify as to her ill fame provided the character of her ill fame is such as impeaches her veracity, but not if the ill fame is founded on a mere prejudice If such ill fame arises from a want of veracity or chastity, then it may be shown, because those are defects that render a female witness less worthy of belief.

Ill gotten Gained by evil means

Ill judged Unwise

Ill starred Unlucky.

Ill treat Treat badly or with cruelty

Ill use. Use or treat badly

Ill will A desire to injure or harm a person

Illakkur (*Mal*) Illam, a house, kur, partition, share It means the private property of a Raja which descend to his heirs He relinquishes this property to his nephew or next heir upon his giving up one official dignity for a higher step. Not that he absolutely gives up all control over it, but this arrangement is made to distinguish and separate it from the public property of the official station he has just held, and to prevent its being claimed by his successor in it (*Log Mal Man.*)

Illam or Illom. (*Mal.*) An ordinary house in Malabar

NAMES OF DIFFERENT HOUSES IN MALABAR ILLAM. The house of an ordinary Nambudiri. The house of a Nambudripad is usually termed *mana*, of a Rajah or Tirumalpad *Kovilagam*, of a Nayar *vidu*, of a Tiyan or Iluvan *kudi*, of a Cheruman *chala* and of a Mappilla *pidika*. (*Moore Mal. Law.*)

Illam or mana of Nambudiri corresponds to Tarwad among Nayars.

Illatom adoption.

Illatom adoption (See *Adoption*) The adoption of a son in-law as son which has become rooted in the districts of Bellary, Cuddapah, Kurnool, Nellore, and the North and South Arcot Districts of the Madras Presidency The relationship of *illatom*, commence as soon as a person is admitted into the family, with a view to marrying him to the daughter of the taker though the marriage takes place after the latter's death An illatom son-in-law (among Hindus) is not coparcener with his father He is not thus on the same footing as a son born The existence of an aurasa son does not preclude the possibility of an illatom adoption It is scarcely accurate to speak of an illatom son-in-law as an adopted son in any sense, and the analogy of sonship cannot be carried to the extent of importing into this relationship, all the incidents attached to recognized sonship under the Hindu Law The descendants of an illatom son-in law cannot, therefore, claim, as a matter of law and apart from proof of custom, rights of collateral inheritance in preference to the reversioners of the last male-holder of an estate 154 I.C 424=7 R M 425=40 L W 724=A I R 1935 Mad. 3 (2)=67 M L.J 706 The practice of illatom adoption among the Reddys, Kapus and Kammas of the Madras Presidency, though opposed to the strict rules of Hindu Law, has nevertheless been recognized as valid by custom. The object is temporal, not spiritual. Since it is a departure from the Hindu Law, it lies upon the party claiming to override the provisions of Hindu Law to strictly substantiate his claim To constitute a person an illatom, a specific agreement is necessary It is not sufficient merely to show he lived in his father in-law's house, assisted his widow or managed the properties Further, even where an illatom adoption has taken place, it does not follow that in every case the adopted son takes the place of the natural son in every respect What his rights should be in regard to the properties of his father-in-law is a matter of agreement between the parties and has to be set up and proved in each case [(4 Mad *272*, 26 I.C 54, *affirmed* in 42 Mad 805 A I.R 1930 Mad 883, 29 I C 54 and 13 I C. 866, *Ref*) 10 Mys L J. 352=37 Mys.H.C R. 320.]

Where a person is taken into a family *illatom* with a view to marrying him to the daughter of the taker, the *illatom* is not rendered invalid by the mere fact that the marriage is celebrated after the death of the taker [(4 M *272*, *exp*) (1911) 2 M. W N. 193=11 I C. 25]

"Illegal" defined. Act 45, 1860, S. 43

Illegal. Contrary to law.

The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action and a person is said to be "legally bound to do" whatever it is illegal in him to omit. (Penal Code, S. 43.)

The word "illegal" has an extensive meaning, including anything and everything which is prohibited by law which constitutes an offence and which furnishes the basis for a civil suit ending in damages (1929 Cr C. 663=A I R 1929 A. 935)

Illegal, as being in restraint of trade. See *Swaine* v *Wilson*, (1889) 24 Q B.D. 257, *Warburton* v. *Huddersfield Industrial Society*, (1892) 1 Q B 817; *Chamberlain's Wharf, Ltd.* v. *Smith*, (1900) 2 Ch 605 (C A); *Howden* v. *Yorkshire Miners' Association*, (1903) 1 K B 308 (C.A)

Illegal practices at elections

Illegal contract There is a wide distinction between that class of contracts which are unlawful in the sense that the law will not enforce them, and which we usually term 'void' contracts, and that other class which are designated as 'illegal' contracts Money paid in furtherance of an illegal contract cannot be recovered back, but it is otherwise as to money paid in furtherance of a contract which by statute is void, but not illegal, as in the case of contracts void under the statutes of frauds

Illegal dealing, in S 17 of the Licensing Act, 1874 (37 and 38 V c 49), includes buying as well as selling intoxicants [*M'Kenzie* v *Day* (1893) 1 Q B. 289]

Illegal Unlawful The word "illegal" has been given a very wide meaning and it has the same meaning as "unlawful" (9 Pat. 725=128 I C 141= 32 Cr L J 87=12 Pat L T 97=A I R 1930 Pat. 593.)

ILLEGAL, UNLAWFUL." *See* 24 C 494=1 C W N. 274

ILLEGAL, VOID The term "illegal" is very near to, but not the same as, void, and "where a thing is only "illegal" qua *A*, it is inoperative as against him and yet may be binding on *B*" (per *Alderson, B., Job* v *Lamb*, 11 Ex. 542)

Illegal evidence Mr Justice White, in discussing the use of the words 'illegal evidence' in the sentence, "It is elementary that the admission of illegal evidence after objection necessitates reversal' said "it undoubtedly means such evidence as is prejudicial to the defendant," 'the mere illegal introduction of irrelevant evidence does not necessarily constitute reversible error" (*Words and Phrases*)

Illegal gaming The words 'gaming,' 'illegal gaming,' or 'unlawful gaming' includes every act punishable under any law relative to lotteries, the buying and selling of pools, or registering of bets.

Illegal interest The term 'illegal interest' is synonymous with and means 'usury'

"Illegal omission" defined Madras Act 1, 1891, S 3 (36)

Illegal practices at elections Illegal practices are certain offences in relation to elections are forbidden by the Corrupt and Illegal Practices Prevention Acts (*See* 45 & 46 Vict. c 51 and 58 and Vict. c. 40) In the case of an illegal practice the offence consists in the doing of the prohibited act, the motive or intention with which the act was done is immaterial An ILLEGAL PRACTICE IS THUS DISTINGUISHABLE FROM A CORRUPT PRACTICE, to the commission of which a corrupt intent is an essential An illegal practice is an act prohibited by the legislature, whether it be done honestly or dishonestly, the question involved being not one of intention, but whether, in point of fact, the enactments have been contravened (*See* Barroe-in-Furnasse, (1886) 4 O'M & H. 77, Walsall, 1892, *ibid* 129, *See* Rogers on Election, O'Malley and Hardcastle's Reports of Election. Petitions, Returns of controverted Elections, printed by order of the House of Commons, Dorasami Iyangar's Mun. Manual

Illegal transaction.

Illegal transaction. An illegal intention coupled with an act criminal or prohibited by law.

Illegality Illegality signifies that which is contrary to the principles of law, and denotes a complete defect in the proceedings

Illegality and irregularity An 'irregularity' is a want of adherence to some prescribed rule or mode of proceeding, and consists in omitting to do some thing that is necessary for the due and orderly conducting of a suit, or doing it in an unreasonable time or improper manner An "illegality," on the other hand, is properly predicable of radical defects only, and signifies that which is contrary to the principles of law as distinguished from mere rules of procedure It denotes a complete defect in jurisdiction or proceedings

"Illegally." 5 Luck. 739=127 I.C. 243=1930 Oudh 317

Illegitimate. Not legitimate, bastard

Illness Ill health, sickness

Illegitimate child It is impossible to treat the illegitimate sons born of a Christian father and a Hindu woman living in adultery with him as the sons of a Sudra father (8 M I A 400=1 Suth P C 452=1 Sar. P C 797)

Illegitimation. Act of illegitimating, bastardizing

Illicit. Prohibited by law, unlawful

ILLICIT. The word 'illicit', as its derivation indicates, means that which is unlawful or forbidden by the law.

Illicit cohabitation Illicit means unlawful or forbidden, and co-habitation means the living together as man and wife

It is a state of living together in which illicit sexual intercourse is inferable.

Illicitum collegium. (*Lat.*) An unlawful corporation or company.

Illicit distillery An illicit distillery is one carried on without a compliance with the provisions of the law relating to excise or taxes on spirituous liquors.

Illicit connection 'Illicit connection,' as used in the statute defining seduction, is equivalent to "sexual intercourse"

Illness. [*See* Ill] 'Illness" as used in an application for a life insurance policy requiring the applicant to give full particulars of any illness which he had since childhood, means a disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously, and not a mere temporary indisposition, which does not tend to undermine or weakens the constitution of the insured.

The meaning of "illness" comes into question in law in several connections, *e g*, what degree of illness lets in proof of depositions when the illness of a witness is sufficient ground for the postponement of a trial. [*See* Sickness]

Imbargo.

Illotom Adoption. *See* Adoption—Illatom adoption

Illud quod alias licitum non est, necessitas facit licitum, et necessitas inducit privilegium quod jure privatur That which is not otherwise lawful necessity makes lawful, and necessity makes a privilege which supersedes the law.

Illud quod alteri unitur extinguitur, neque amplius per se vacare licet That which is united to another is extinguished, nor can it be any more independent

Ilukku Private property of a Raja. He relinquishes his management in favour of his nephew where he gives up his official dignity for a higher step (*Sun Mal. Law.*)

Illusion Deceptive appearance

Illusory appointment Such an appointment or disposition of property under a power as is merely nominal and not substantial

Illusory appointments. *See* Act 11 Geo 4. and 1 Will 4 C 43, entitled "an Act to amend the law relating to illusory appointments"

Illustrate Make clear by examples, drawings, etc

Illustration An illustration is defined as a pictorial or other representation placed in a book or other publication to elucidate the text Illustrations to sections of an Act are examples of the application of the principle of the sections to concrete cases

"Illustrious" A title of honour bestowed by the Roman Emperors on officers of the Empire of the highest rank, and applied in later times as a prefix to the families of certain royal princes and other dignitaries.

Iluvan Tiyans in the Palghat Taluk are known as Illuvans They follow Makkathayam (See *Moo Mal Law*)

Image An *image* is something representing a corporeal subject, or, according to Dr Lushington, "a representation of anything that has, is, or might be supposed to live," usually applied to the representation of objects of divine worship *Images* in Churches include paintings, pictures, and painted windows, but monuments, symbols, and ornaments are not included

Imaginary damages The term 'imaginary damages' is used to designate damages in excess of compensatory damages, which are allowed as a punishment of the wrongdoer It is synonymous with the terms "exemplary," "vindictive," and "punitive" damages

Imamia. (*H*) The Shia sect, from their recognising the twelve Imams. (*Wil Gloss.* 217)

Imbargo. A stop, stay, arrest upon ships or merchandize, by public authority This arrest of shipping is commonly of the ships of foreigners in time of war and difference with States to whom they are belonging This term has also a mere extensive signification, for ships are frequently detained to serve a prince in an expedition, and for this end have their lading taken out without any regard to the colours they bear, or the government to whose subjects they belong. (*Tomlin's Law Dic.*) The King may grant *Imbargoes* on ships, or

Imbecile

employ the ships of his subjects, in time of danger, for the service and defence of the nation Prohibiting commerce in the time of war, or a plague, pestilence, etc. is a kind of Imbargo on shipping (*Tomlin's Law Dic*)

Imbecile An imbecile is one destitute of strength, either of body or mind, weak, feeble, impotent, decrepit.

Imbecility (*in Med Jur.*) A form of mental disease consisting in mental deficiency.

IMBECILITY is defined as the quality of being imbecile, feebleness of mind; feebleness of body or mind. Absolute imbecility implies a total want of reason and a total loss of memory.

IMBECILITY, IDIOCY, LUNACY Imbecility is that infirmity of mind which, as distinguished from idiocy or lunacy, is usually incident to extreme age, and is generally the result of a gradual decay of the mental faculties The line which marks the boundary between capacity and imbecility is sufficient to define.

Imbezzle. To steal, pilfer, or purloin, or where a person entrusted with goods, wastes and diminishes them (*Tomlin's Law Dic*)

Imbroglio An intricate or complicated situation, an embarrassing state of things

Imitate To follow as a pattern, model or example, to copy.

IMITATE, COPY, COUNTERFEIT. We *imitate* persons, character, conduct, writing, painting, speaking, actions works, of art, and so forth, when we try to identify ourselves with the spirit and character of the agents and performers, so as to act or work in their manner. We *copy* when we can servilely assimilate our acts to those of others, or simply reproduce their productions We *counterfeit* when we so produce that the production is referred to a false authorship, or that it shall not be what it pretends to be. The merit of *copy* is in exactness *Counterfeit* productions are only to be condemned One may *imitate* yet keep one's own originality not so with *copying* (*Smith Syn. Dis.*)

IMITATE, FOLLOW. We *imitate* objects, persons, actions, we *follow* guides, influences, dictates of reason, impulses, and propensities. There is a difference between *following* an example and *imitating* an example To *imitate* an example is to have an example as a model or pattern to be imitated. To *follow* an example is secondary and in exact, for we can only follow an example when we regard it in a derived sense as a guide. We *imitate* example when we do the same things, we *follow* an example when we do like things. One *follows* a guide or a rule, one *imitates* a type or model. (*Smith. Syn Dis*)

Imitation Butter. For the purpose of the Acts relating to Foods and Drugs imitation butter, includes every article, substitute, or compound other than that produced from pure milk or cream from the same, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or cream from the same.

Imitation Jewelry. 'Imitation jewelry need not necessarily be a counterfeit—that is, it need not be

Immediate.

an exact simulation—of a particular article which it is intended to take the place of. If by a pleasing combination of appropriate materials, by an attractive arrangement of parts, an article is produced bearing a general resemblance to real jewelry ornaments and suitable for similar uses, it may fairly be called imitation jewelry

"Imlak." Per *Stuart, C J*—The word imlak is an Arabic word of the same root as malik and means property That which a man owns as malik is his imlak.

Per *Hasan, J*—The word imlak is only a grammatical variation of the word milkiat, the last word connoting ownership in the subjective sense. Malik denotes possessive case, that is one possessed of ownership. Imlak is the plural objective case, that is the things in which ownership is possessed milk is the singular. They are words of known legal import and must have their legal effect when used in a will. (96 I C 47=2 Luck. 507=3 O W.N. Sup 56=29 O C. 176=13 O L J 762=A.I R. 1926 Oudh 431)

Immanu (*Karn*) Lands yielding two crops of rice in a year.

Immaterial Not material, essential or necessary; not important or pertinent, not decisive

Immaterial allegation or averment An immaterial averment is one alleging with needless particularity or unnecessary circumstances what is immaterial and unnecessary, and which might properly have been stated more generally and without such circumstances or particulars, or, in other words, it is a statement of unnecessary particulars in connection with, and as descriptive of, what is material.

An 'immaterial allegation,' as the term is used with reference to pleadings, is an averment which may be stricken from the pleading without leaving it insufficient

Immaterial averment An allegation which may be stricken from a pleading A statement of unnecessary particulars in connection with and descriptive of what is material

Immaterial issue. An issue made by the pleadings joined on a point which is not decisive of the rights of the parties in the cause An issue taken upon some collateral matter, the decision of which will not settle the question in dispute between the parties in action.

An immaterial issue is where a material allegation in the pleadings is not reversed, but an issue is taken on some other point, which, though decided by the Court will not determine, the merits of the cause.

Immaterial matter Immaterial matter in a pleading is anything stated therein which, if established on the trial, would not entitle a party to, or aid him to obtain, the relief demanded, or sustain the defence pleaded.

Immediate. Direct, as opposed to consequential. Webster defines 'immediate' as meaning, among other things, acting with nothing interposed or between or without the intervention of another object as a cause.

The ordinary and general signification of the term 'immediate' is 'not separated from its object by any medium: directly related, nearest.'

Immediate approach.

Immediate approach in 8 & 9 Vict c. 20, s 46, does not apply to that part of a highway which has been lowered for the purpose of carrying a railway bridge over it [*London & N W Rail Co* v. *Sherton*, (1864) 5 B & S 559]

Immediate Cause The term 'immediate cause,' in speaking of the contributory negligence of a plaintiff as being the immediate cause of his injury, is synonymous with the phrase 'proximate cause'

Immediate Danger. 'Immediate danger,' as used in a charge to jury stating the person carrying concealed weapons must be found guilty thereof, unless he had reasonable ground to believe his person or property in immediate danger from violence or crime, must be construed to mean such danger as is then and there about to be inflicted

Immediate death; Instantaneous death If an injury severs some of the principal blood vessel and causes the person injured to bleed to death, his death may be regarded as immediate, though not instantaneous. When it is said that the death must be immediate, it is not meant that it must follow the injury within a period of time too brief to be perceptible. If a blow upon the head produces unconsciousness and renders the person injured incapable of intelligent thought or speech or action, and he so remains for several minutes, and then dies, his death may very properly be considered as immediate, though not instantaneous The words 'instantaneous' and 'immediate,' as used in reference to such death, do not mean precisely the same thing, but the word 'immediate' is more comprehensive and elastic in its meaning Of course,an instantaneous death is an immediate death, but an immediate death is not necessarily and in all cases an instantaneous death

Immediate delivery As used in relation to sale of property, the expression 'immediate delivery' means such a delivery as the circumstances permit, taking into consideration the nature of the property, its situation at the time of the sale, the position or location of the parties at that time, their distance from the property sold, and the acts necessary to be done to complete the collection of the property What might be regarded as an immediate delivery of one kind of property might not be an immediate delivery of another kind

'IMMEDIATE DELIVERY' when used in a contract requiring immediate delivery of goods, ordinarily means delivery forthwith

Immediate descent Descent without any intervening link of relationship.

Immediate family Where the object of an association, as stated in its charter and constitution, was to create a fund for the benefit of its members or their 'immediate families,' a married daughter of a member, not living with her father, and a brother of such member residing with him, may be included in the designation 'immediate family' (*Words and Phrases*).

Immediate neighbourhood 'Immediate neighbourhood,' as used in a contract in which defendant, on the sale of a lot to plaintiff, agrees not to construct or erect any flats in plaintiffs immediate neighbourhood, includes the locality to the lot sold.

Immediately.

Immediate notice. 'Immediate' is defined as without any time intervening, without any delay. It is often used, like similar expressions, with less strictness than the literal meaning requires, as 'an immediate answer' Thus, in a bond requiring immediate notice of an accident, it is evident that the word was not used in its literal sense

As used in an indemnity bond requiring immediate notice of any defalcation, a delay of six or eight days, where no prejudice resulted, is not, as a matter of law, other than immediate notice In a case of such a character some time may elapse after a well-grounded suspicion before a person ought, in prudence, to make any charge of fraud or dishonesty. Mere laches is not enough Knowledge of a defalcation frequently depends upon a long train of events, or the examination of extended accounts Unjust inferences and false accusations are always to be avoided It is only of acts which may create a loss for which the surety is responsible—that is, a loss arising from fraud or dishonesty—that immediate notice is exacted

Immediate payment In construing a contract for the sale of land, in the absence of special words or circumstances indicating a different intent, a stipulation for 'immediate payment' or 'payment down' will be held to mean payment at the time when the deed is made out and executed

Immediate possession An offer to grant a lease with "immediate" possession if required does not point out the commencement of the term [*Rock Portland Cement Co* v *Wilson*, (1882) 52 L J.Ch. 214].

Immediate view and presence "Immediate view and presence", as used in an Act providing that every Court of record shall have power to punish as for criminal contempt persons guilty of contemptuous, etc, behaviour committed during its sitting, in its 'immediate view and presence,' are words of limitation, and exclude the idea of constructive presence. The immediate view and presence, within the meaning of the Act, does not extend beyond the range of vision of the Judge, and the term applies only to such contempts as are committed in the face of the Court The act of an attorney in indorsing on the back of a check given in payment of a fine imposed for a previous contempt that it was illegal and unjust, which indorsement the Judge subsequently saw, was not committed within the immediate view and presence of the Court, within the meaning of the Act.

Immediately. It has two meanings—one indicating the relation of cause and effect, and the other the absence of time between two events. In the former sense, it means proximately, as opposed to "mediately;" without intervention of anything. In the latter sense, it means at once, in an instant, instantaneously.

'IMMEDIATELY' is defined to be without unnecessary or unexcusable delay, under all the circumstances.

'IMMEDIATELY' is a term not necessarily importing the exclusion of any interval of time—a word of not very definite signification—and is governed by its grammatical connections and the context.

"IMMEDIATELY" implies that the act to be done "should be done with all convenient Speed" (per

Immediately.

Rolfe, B., Thompson v. *Ibson*, 10 L.J. Ex. 243). Although this word, in strictness, excludes all mean times, "yet to make good the deeds and intents of parties it shall be construed as meaning such convenient time as is reasonably requisite for doing the thing" (*Pybus* v *Mitford*, 2 Lev. 77). In respect of a provision that a Judge's certificate shall be given "*immediately*", the word that "does not mean ten minutes or a quarter or half an hour, but such a lapse of time as exclusive of the possibility of other business intervening to alter the impression made on the Judge's mind." 'Immediately,' as used in a letter relating to the purchase of land, and stating that the purchaser would pay down a certain amount immediately, only means that the payment would be prompt, and is in contradistinction to a credit payment

IMMEDIATELY; FORTHWITH, AS SOON AS POSSIBLE The word 'immediately,' which is defined by Bouvier as implying, strictly, not deferred by any lapse of time, but, as usually employed, meaning, rather, within a reasonable time, having due regard to the nature and circumstances of the case, is no stronger than the word 'forthwith,' or the expression 'as soon as possible'

The legal signification of the word 'immediately' is generally much the same as that of 'forthwith'

IMMEDIATELY, WITHIN A REASONABLE TIME The term 'immediately,' when used in speaking of an act required to be immediately performed, is stronger than the expression 'within a reasonable time,' yet many circumstances might arise where an act to be done within a reasonable time must be done immediately.

An award directing payment of costs immediately after the execution of the award means within a reasonable time after such notice.

'Immediately,' as used in an ordinance requiring that advertisement of impounded animals be made immediately, does not mean instantaneously, and a delay of five days, in order to discover the owner of the animals, is not so unreasonable as to invalidate a sale under the advertisement

A direction to a factor to sell goods immediately is not shown to be broken by a delay of 15 days, where nothing is proved as to the state of the market

Immediately after, in 6 Geo 4, c. 50, s 34, means "within a reasonable time." [*Christie* v *Richardson*, (1842) 10 M & W 688, and see *Grace* v *Clinch*, (1843) 4 Q. B 609, *Toms* v. *Wilson*, (1863) 4 B & S 453, also see *Forthwith.*]

"Immediately subordinate" magistrate. *See* 7 W. R. Cr. Cir 1.

Immemorial. From a time whereof the memory of man is not to the contrary. Ancient, beyond memory of living men.

Immemorial possession. Immemorial possession is that of which no man living has seen the beginning, and the existence of which he has learned from his elders.

Immemorial use. "Immemorial use is a use time out of mind, or from a time whereof the memory of man does not run to be country."

Immoveable property

Immigrant. One who immigrates (*i e*) comes into the country as settler therein

Imminent Immediate, about to happen; on the instant

The word 'imminent' conveys usually some idea of 'immediate'—of something to happen upon the instant. But conceding this to be so in general sense, yet it does not mean an instant consummation.

'IMMINENT' denotes something that is ready to fall or happen on the instant, as imminent danger of one's life

Imminent danger 'Imminent danger,' sufficient to justify the taking of life in self-defence, means such an overt, actual demonstration as makes killing necessary to self-preservation, though it is not necessary that danger should in fact exist There must be such danger as might appear to defendant's comprehension, as a reasonable man, to require the taking of life The apprehension of danger by the accused must be on grounds sufficient to satisfy a reasonable man that his life or limbs were in peril, or that great bodily harm was about to be inflicted on him

In *United States* v *Outerbridge* (*U S.*), 27 Fed Cas 390, Mr Justice Field, in defining 'imminent danger' says "By 'imminent danger' is meant immediate danger, one that must be instantly met, one that cannot be guarded against by calling on the assistance of others or the protection of the law.

Immobilia situm sequuntur Immovables follow the law of their locality

Immobilis Immovable

Immoral Contrary to public welfare; against public morals, morally wrong or evil, dissolute

'IMMORAL' as defined in the Standard Dictionary, is hostile to the welfare of the general public

IMMORAL ACTS, CONDUCT, AND HABITS, in the Clergy Discipline Act, 1892, considered [*Beneficed Clerk* v. *Lee*, (1896) App Cas 226]

"Immovable property" defined, (*See also* Real estate) Act 10, 1865, S 3, Act 27, 1866, S 2, Act 28, 1866, S 1, Act 4, 1882, S 3, Act 10, 1892, S 2 (1), Act 10, 1897, S 3 (25), Act 16, 1908, S. 2, Ben Act 5, 1876, S 6 (6); Ben. Act 9, 1880, S 4, Ben Act 3, 1884, S 6 (5), Ben Act 1899, S 3; Bom Act 6, 1879, S 3 (11), Bom Act 3, 1886, S 3 (16), Bom Act. 1, 1904, S. 3, Mad Act 1, 1891, S 3 (14), Reg 2 1897, S. 2, P. Act 1, 1898, S 2, P Act 2, 1903, S. 3; U. P. Act 3, 1892, S 2, U. P Act 3, 1904, S. 4, Reg. 2, 1897, S. 3

"IMMOVABLE PROPERTY" shall include land benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, [Act X of 1897 (General clauses), S. 3 (25); does not include standing timber, growing crops or grass [Act IV of 1882 (Transfer of Property), S. 3]

"IMMOVEABLE PROPERTY" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass. [Act X of

Immoveable property.

1892 (Government Management of Private Estates), S. 2, Cl. (1)]

"IMMOVABLE PROPERTY" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein. [Act XXVII of 1866 (Trustees), S. 2]

"IMMOVEABLE PROPERTY" includes wharfage-rights and all other rights exercisable on, over, or in respect of any land, wharf, dock, or pier [Bom Act VI of 1879, Port Trust (Bom), S 3, cl 11]

Real or immoveable property consists of (1) land, (2) that which is affixed to land, (3) that which is incidental or appurtenant to land, (4) that which is immovable by law.

Under the Civil Procedure Code and Limitation Act standing crops have repeatedly been held to be immoveable property So long as the crops are on the ground, they must be regarded as immoveable property When these are served from the land they become moveable property. [*See* 32 Cal 459, 22 C 877]

The right of a person to fish in waters belonging to another comes within the definition of "immoveable property" in the General Clauses Act (1868), S 2, cl 5 being a benefit arising out of the land covered with water [*See* 24 C. 449, *see also* 19 Cal 544 (F.B.), 17 Cal 541]

According to S. 9, Act I of 1877 (Specific Relief), a right of way is not regarded as "immoveable property." (23 B. 673)

The words "immoveable property" mentioned in S. 58, Transfer of Property Act, denote not only the property itself as distinguished from any equity of redemption which the mortgagor might at the time possess in the said property, but include the rights of the mortgagor in the property mortgaged at the time of the second mortgage or, in other words, his equity of redemption in such property (22 C 33) The equity of redemption in mortgaged property is immoveable property. (21 B. 226)

The term "immoveable property" as used in Art 145 of Limitation Act, includes money, and is not restricted in its application to cases where property is recoverable *in specie* [6 C L.J 535 (28 I A. 227=24 A. 27, 8 B 17, 11 B 133, 22 C. 877, 22 M 478, *R*) *See also* 31 Cal 519, *Contra* 37 Mad 175.]

The term "immoveable property" in S 1, cl 12, Act XIV of 1859, is not identical with "lands or houses." The term comprehends certainly all that would be real property according to English law and possibly more. Where the term is not defined by the legislature, it must, when the question concerns the rights of Hindus, be taken to include whatever the Hindu law classes as immoveable although not such in the ordinary acceptation of the word [10 B H.C. R. 281=13 B L.R 254=21 W.R 178=1 I.A. 34 (P C)]

IMMOVEABLE PROPERTY as used in Hindu Law explained and discussed [9 B.H.C.R. 99, 10 B.H.C. R. 281 (285) ; 6 Bom. 546 (F.B.), 23 Bom. 22 (31), 15 M.L.J. 30]

A grove consisting of a *shisham* and *nim* trees, which are only timber trees, is not immoveable property as defined by S 3 of the T. P. Act. (1937 A.W. R 648)

Impair.

The interest of the mortgagee in the mortgaged property is manifestly a 'benefit to arise out of land," and is therefore itself immovable property. [12 Rang 370=151 I C. 519=A.I.R 1934 Rang. 250 (F B)]

Immoveables. "By a devise of immoveables do pass leases, rents, grass, and the like but not any of those things that do pass by the devise of moveables, but debts will not pass by either of these devises" (Sheppard, Touchstone, 477. *See also* Immovable)

Immunity A personal favour granted by law contrary to the general rule.

An immunity is a right peculiar to some individual or body, an exemption from some general duty or burden, a personal benefit or favour granted by law contrary to the general rule.

"An immunity has been defined as an exemption from any charge, duty, tax or imposition "

The term 'immunity' is an apt one to describe an exemption from taxation

IMMUNITY, EXEMPTION. *Immunity* is a dispensation from an onerous charge. *Exemption* is an exception from a common obligation *Immunity* in its primary sense is seldom used, but of matters of jurisprudence and finance. It is an *exemption* from civil charges and fiscal dues *Exemption* as extended to all kinds of charges, dues, duties, obligations, hence an *exemption* from cares, vices, diseases in the moral and the physical order of things. *Immunity* is properly a title or condition by virtue for which persons or things are withdrawn from certain civil or social burdens. *Immunity* is primarily applicable to those exemptions which are enjoyed by corporations, communities, cities, or orders of persons. *Exemption* to private privileges is either personal or in connection with certain offices *Immunity* relates specially to persons enjoying it. *Exemption* to advantages enjoyed (*Smith Syn Dis*)

Immutable Unchangeable

Imp. Little devil, child of the devil

Impair. To diminish in quality, value, excellence or strength of a thing

The word 'impair' means to make worse; to weaken, to enfeeble. To make or become worse or less, to lessen, reduce or diminish the quantity or quality

IMPAIR, INJURE Impair seems to be in regard to injure as the species to the genus, what is impaired is injured, but what is injured is not necessarily impaired. To impair is a progressive mode of injuring. an injury may take place either by degrees or by an instantaneous act straining of the eyes impairs the sight, but a blow injures rather than impairs the eye. A man's health may be injured rather than impaired by a fall. A person's circumstances are impaired by a succession of misfortunes; they are injured by a sudden turn of fortune (*Crab.*)

To *impair* is to *injure* in a lasting manner, so that though the detriment be but partial, it is permanent. We hear that a friend has received an *injury* in the eye; we hope that his eyesight will not be *impaired.*

Impairing obligation of contracts.

Hence *injury* is of bodies themselves, *impairing* is of their value, their utility, or their properties. (*Smith. Syn. Dis.*)

Impairing the obligation of contracts Abrogating or lessening the means of enforcement of a contract.

A law which impairs the obligation of a contract is one which renders the contract in itself less valuable or less enforceable, whether by changing its terms and stipulations, its legal qualities and conditions, or by regulating the remedy for its enforcement.

The provision of the Federal Constitution that no law impairing the obligation of contracts shall ever be passed, does not forbid a state from legislating, within its discretion to reduce the rate of interest upon judgments previously obtained in its Courts, as the judgment-creditor has no contract whatever in that respect with the judgment-debtor, and as the former's right to receive, and the latter's obligation to pay, exist only as to such an amount of interest as the state chooses to prescribe as a penalty or liquidated damage for the non-payment of the judgment. (*Words and Phrases*)

The word 'impair' is familiar to every one, and means, according to the standard writers simply 'to diminish, to injure, to make worse,' etc It is remarkable that in framing the provision of the U S Federal Constitution providing that no law should be passed, 'impairing the obligation of any contract,' the convention did not use the term 'lessen' or 'decrease' or 'destroy,' but one more comprehensive, which prohibited making worse in any respect a contract legitimate in its creation The object, then, of its provision, may have been to establish an important principle, and that was the entire inviolability of contracts (*Words and Phrases*)

Impale Transfix body upon a stake—especially as capital punishment

Impanel To make a list of those who have been selected for jury duty signifies the writing and entering into a parchment schedule, by the sheriff, the names of a jury (*Tomlin's Law Dic*)

'IMPANEL' means the right to enter the names of the jury on a list or piece of parchment called a 'panel', to form or enrol as a list of jurors in a court of justice

Impartial "According to the definition of our standard lexicographers, a man who is impartial is one who is not biassed in favor of one party more than another, who is indifferent, unprejudiced, disinterested, as an impartial judge or arbitrator The primary idea contained in this definition is freedom from personal bias, indifference between the parties as persons; nor prejudiced against one or the other, disinterested as between them."

"IMPARTIAL" means not partial, not favouring one party more than another; unprejudiced, disinterested; equitable; just.

Impartial juror. The term 'impartial juror' means an impartial man, 'one who extends to his fellow men the humane presumptions of the law, and keeps his mind in such condition with reference to the accused that guilt must be affirmatively and conclusively shown before he is willing to convict."

There can be no intention to exclude persons who read newspapers, and it was never intended that an opinion formed from such information should necessarily disqualify such a person as a juror. The mere fact that a juror has a settled impression as to the prisoner's guilt, resulting from information from almost any source, except personal knowledge of the facts, does not necessarily render the juror incompetent Ordinarily, where a juror testifies that he believes, and the court finds as a fact, that he would, if selected, render an impartial verdict upon the evidence, he is an impartial juror. Consequently the general rule is that the Court may, if satisfied that a juror is impartial, admit him to serve, though he has formed an opinion based upon reading news paper statements or reports, or upon hearsay, but not upon conversations with witnesses, or reading reports of their testimony or hearing them testify, provided he further states on oath that he feels able, notwithstanding his opinion, to render an impartial verdict.

Impartial jury 'Impartial', 'as applied to a jury, means not favouring a party or an individual because of the emotions of the human mind, heart, or affections It means that, to be impartial, the party, his cause, or the issues involved in his cause, should not, must not, be prejudged.

The term 'impartial jury' as used in an Act guaranteeing to the accused 'a speedy public trial by an impartial jury," means that the jurors shall be indifferent between the parties. It is essential that every juryman should be wholly free even from the suspicion of bias

Impartially The word 'impartially' in an Act requiring certain public officers to take an oath that they will perform the duties of their appointment 'impartially and according to the best of their ability' is not of the same meaning as the term with fidelity,' and therefore the latter term cannot be substituted in the oath.

The word 'impartially' is included in the term 'faithfully.'

The words 'FAITHFULLY, FAIRLY, AND IMPARTIALLY' would mean more than faithfully alone

Impartible estate. An *impartible estate or Zemindary* is the creature of custom, and it is of its essence that coparcenary in it does not exist [(1918) 45 I A 148=41 M 778 (783-4)=24 M L T 276=(1918) M. W.N 922=23 C.W.N. 173=28 C L J 428=20 Bom L. R 1056=16 A L J 833=5 Pat L.W. 267=47 I C. 354 =35 M.L J 392 (P C).]

A joint family with an impartible estate descending according to a rule of lineal primogeniture with right of maintenance and other privileges for the junior members cannot be established in modern times [52 I.A. 83=48 M 254=6 P L.T. 133=21 L.W 439=(1925) M W N. 330=27 Bom L R. 735=3 P L R. 126=23 A L J, 746=29 C W.N 846=6 L.R.P C. 143= A I,R. 1925 P C. 49=87 I.C. 333=48 M.L.J. 83(P C)]

Survivorship cannot obtain in a Raj enjoyed and inherited by one sole member of a family from its very nature, and there can be no community of interest [12 M.I A. 523=12 W R. (P C) 21=3 B L, R (P C.) 13=2 Suth. 243=2 Sar. 523,]

Impartibility and inalienability.

Impartibility and inalienability It cannot be laid dawn that, as a matter of law, the impartibility of a raj makes it inalienable. The question of inalienability is one depending upon family custom, which requires to be proved [(1881) 8 I.A. 248=8 C. 199 (208)=4 Sar 290]

Property, though impartible, may be alienable [36 I A 176 (183)=36 C 913 (952 3)=6 M L T 68=10 C L J 223=13 C W.N 1013=11 Bom L R 901=6 A L. J 847=4 I.C. 2=19 M L J. 567]

An impartible estate is alienable, in the absence of proof of custom restricting alienation [30 Bom.L R 115=32 C W N 481=27 I W 802=5 O W N. 93=106 I C 646 (2)=47 C L J 134=54 M.L J 6]

Impartible property in Hindu Law Sacrificial gains, land, written documents, food, water, and women are indivisible among kinsmen even to the thousand degree (*Ushana* cited in *Smriti Chandrika*)

Property recorded in a document, what is settled for (common) religious purpose, (bells, etc) water, women, what is hereditary corrody, worn clothes, ornaments, what is not suitable (for partition), such things being enjoyed by the coparceners in a manner suited to the occasion The path for cows, the carriage, road clothes that are actually worn on the body, (prayojya) what is requisite for use, (books, etc), or what is intended for arts should not be divided, so Vrihaspati declares (*Katyayana* cited, in the *Ratnakara*)

A place of sacrifice, or an object of worship, land securities, conveyance, dressed food, water and women are not divisible among those of the same gotra or family though distant by a thousand generations (*Vyasa* cited in *Kalpataru and Ratnakara*)

Impawn To put in pawn, pledge.

Impeach, Impeachment "To impeach, as applied to a person, is to accuse, to blame, to censure him. It includes the imputation of wrong doing To impeach his official report or conduct is to show that it was occasioned by some partiality, bias, prejudice, inattention to or unfaithfulness in the discharge of that duty, or that it was based on such error that the existence of such influence may be justly inferred from the extraordinary character or grossness of the error'

Impeachment, is the accusation and prosecution of a person for treason, or other crimes and misdemeanours *Impeachment* is the prosecution of a peer or commoner by the House of Commons, at the bar of the House of Lords for treason, high crimes, or misdemeanours The object of prosecution by impeachment in England is to reach high and potent offenders such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organisation and powers of those tribunals These prosecutions are therefore conducted by the representatives of the nation, in their public capacity, in the face of the nation, and on a responsibility which is at once felt and reverenced by the whole community

An *Impeachment* before the Lords by the Commons of Great Britain, in parliament, is a prosecution that hath been frequently put in practice, being a presentment to the most high and supreme Court of Criminal jurisdiction, by the most solemn grand inquest of the whole kingdom. (1 Hal P. C. 150, *Tomlin's Law Dic*) On the *Impeachment* of Warren Hastings for his conduct as Governor-General of India, the trial of which lasted, by adjournment, for several years, from 1787 to 1794, it was solemnly determined that an impeachment is not abated, or put an end to, by the prerogation or dissolution of parliament And an Act was passed to prevent prerogation or dissolution from having the effect of putting a stop to the previous proceedings in the House of Commons. (*Tomlin's Law Dic*) *See also* May, Parliamentary Practice, Pike, Const Hist of House of Lords, Hallam, Eng Const, *Ency of the Laws of England*)

Impeachment of Annuities "Anything that operates as a hindrance, let, impediment, or obstruction to the making of the profits out of which the annuity is to arise amounts to an impeachment thereof"

Impeachment of waste. Liability for waste, an action for waste or to restrain it.

"Waste" and "impeachment of waste' are technical terms, and are found in conveyances of real estate They are entirely inapplicable to personality "Waste," says Blackstone, "is a spoil or destruction of houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that has the remainder or reversion in fee simple or fee tail 'Impeachment of waste' signifies a restraint from committing waste upon lands or tenements, or a demand or compensation for waste done by a tenant, who has but a particular estate in the lands granted, and therefore no right to commit waste All tenants for life or any less estate are liable to be impeached for waste, unless they hold without impeachment of waste In the latter case they may commit waste without being questioned, or any demand for compensation for the waste done"

Impeachment of witness Accusation of a witness of want of veracity

The word "impeach," when used in reference to a witness, signifies to discredit, or to show or prove that he is unreliable or unworthy of belief "Where he has been successfully impeached, and his evidence has not been, either in whole or in part, corroborated by other credible testimony in the cause, it is within the province of the Court or jury trying the issue to entirely disregard his testimony."

'Impeachment,' as applied to the impeachment of a witness in a legal proceeding, means an attack on the person's credibility as a witness A mere conflict between a witness's testimony and the testimony of another witness in regard to some fact is not an impeachment of the former

Impede. 'Impede' is not synonymous with 'obstruct'. An obstacle, which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. 'Obstruct' means 'to prevent, to close up'

'IMPEDE,' as used in an Act requiring railroad crossings to be made so as not to impede the passage or transportation of persons or property along the highway, means so as not to unnecessarily interfere with the highway.

Impediment

Impediment. In the act of incorporation of a railroad company, providing that such railroad should be so constructed as not to obstruct or impede the free use of any public road, street, lane, or bridge, impediment' is almost synonymous with 'obstruction' except that it is seldom, if ever, used to signify an entire blocking up of the way. It is an obstacle, not an impassable barrier. An obstruction is anything set in the way, whether it totally closes the passage or only hinders and retards passage

Impediments in Law Legal disabilities, persons under Impediments are those within age, *non-compos mentis*, in prison, beyond sea, etc by whom by a saving in several laws, have time to claim and prosecute their rights, after the Impediments are removed (*Tomlin's Law Dic. See also* Limitation Act, S 6)

Impending 'Impending' denotes something that hangs suspended over us, and may remain so indefinitely, the fact that Asiatic cholera had touched the ports of the Southern Europe, some 3,000 miles away, does not constitute impending danger, so as to authorize extraordinary caution for the protection of public health, justifying such measures as may be adopted in the presence of great and imminent peril by reason of impending pestilence

"Impending danger" meaning of See *Jolly* v *North Staffordshire Tramway Co*, Times, July 27, 1887, and *Downing* v *Birmingham and Midland Trams*, (1888) 5 T L R 40

Imperative Mandatory, commanding

Imperative statute Same as mandatory statute.

The distinction between a "directory statute" and an "imperative statute" is that a statute is directory when the provisions contain mere matters of direction, and nothing more, but not so when they are followed by such words as "that anything done contrary to such provision shall be null and void to all interests", these words giving direct, positive, and absolute prohibition A statute directing the mode of proceeding by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of the proceedings, unless so declared by statute

Imperator. (*Lat*) An emperor

'Imperceptible" (*in respect of Alluvion and Diluvion* "Unless trodden by cattle, many years must elapse before lands formed by Alluvion would be hard enough or sufficiently wide to be used beneficially by any one but the owner of the lands adjoining As soon as alluvial lands arise above the water the cattle from the adjoining lands will give them consistency by treading on them, and prepare them for grass or agriculture by the manure which they will drop on them

When they are but a yard wide the owner of the adjoining lands may render them productive. Thus, lands which are of no use to the King will be useful to the owner of the adjoining lands, and he will acquire a title to them on the same principle that all titles to lands have been acquired by individuals, *viz*, by Occupation and Improvement." Per *Best, C J*, in *Abbott, C. J*, delivering the judgment of the Court said,—"Imperceptible" must be understood as expressive only of the manner of the accretion, and as

Imperfection

meaning imperceptible in its progress, not imperceptible after a long lapse of time" (*R* v. *Yarborough*, 3 B & C. 107, *Seth, A. G* v. *Chambers*, 4 D G. & J 70, 71.)

"Imperceptible," as used in a rule of law which gives to the riparian owner of land accretions which accrue by small and imperceptible degree (2 B. Comm. 261), refers only to the manner of accretion. It means imperceptible in progress, and not imperceptible after a long lapse of time.

Imperfect Not perfect, not complete in all its parts, wanting a part, defective, deficient

Imperfect delegation A substitution of debtors without discharging the original one (*Ballantine*)

Imperfect obligations Obligations resting in conscience for performance The term 'imperfect obligation' is used to designate obligations which depend for their fulfilment only upon the will and conscience of those upon whom they rest.

If the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an 'imperfect obligation,' and creates no right of action, nor has it any legal operation The duty of exercising gratitude, charity, and the other merely moral duties is an example of this kind of obligation

"Imperfect ownership". Ownership is imperfect when it is to terminate at a certain time on a condition, or if the thing which is the object of it, being an immovable, is charged with any right towards a third person, as a usufruct, use, or servitude

"Imperfect partition" defined Act 18, 1881, S 136 (3), Reg 1, 1886, S 96, U P. Act 3, 1901, S 136 *See 23* C 514, 32 C 1036=1 C L J 421.

Imperfect rights Rights existing in behalf of one who is himself not free from fault

Imperfect title. An imperfect title is one which requires a further exercise of the granting power to pass the complete title in land,which does not convey full and absolute dominion.

Imperfect trust An unexecuted trust

Imperfect war Hostilities may exist between two nations, confined in nature and extent, being limited as to places, persons, and things; and this is termed 'imperfect war,' because those who are authorized to commit hostilities act under special authority and can go no further than the extent of their commission

Imperfection Quality of being incomplete or faulty.

Imperfection, Defect, Fault, Vice. The word *imperfection* is the most unqualified term of all there may be imperfection in regard to our Maker, or there may be imperfection in regard to what we conceive of perfection and in this case, the term simply and generally implies whatever falls short in any degree or manner of perfection *Defect* is a positive degree of imperfection, it is contrary both to our ideas of perfection of our particular intention thus, there may be a defect in the materials of which a thing is made, or a defect in the mode of making it: the term defect, however, whether said of persons or things, characterizes rather the object

than the agent. *Fault*, on the other hand, when said of things, always refers to the agent thus we may say there is a defect in the glass, or a defect in the spring, but there is a fault in the workmanship, or a fault in the putting together, and the like *Vice*, with regard to things, is properly a serious or radical defect

IMPERFECTION, WEAKNESS, FRAILTY, FAILING, FOIBLE For our *imperfections* we must seek superior aid, we must be most on our guard against those *weaknesses* to which the softness or susceptibility of our minds may most expose us, and against those frailties into which the violence of our evil passions may bring us towards the *failings* and *foibles* of others we may be indulgent, but should be ambitious to correct them in ourselves

Imperial The primary signification of 'imperial' was 'pertaining to supreme authority, royal, sovereign, supreme' It had a like meaning with the adjective 'royal,' 'kingly,' 'princely,' indicating, however, a more exalted authority Like those terms, it has also come to be employed to designate that which is of imposing size or of great excellence

This title, "Imperial" which originally belonged exclusively to the Holy Roman Empire which was dissolved in 1806, has in modern times been in great measure treated as synonymous with royal, although strictly it denotes a title superior to the kingly dignity, as the proper meaning of emperor is the chief of a confederation of states, some of which may have kings as their immediate rulers In England the title "imperial" has been little used till recent years, and is now applied to the confederation of the colonies and the dominion with England as the mother country.

Imperial Parliament The English Parliament

Imperitia culpae adnumeratur Want of skill is reckoned as a fault, negligence for which one professes skill makes him responsible.

Imperium (*Lat*) Power, authority

Impersonalitas non concludit nec ligat Impersonality neither concludes nor binds.

Impertinence, Impertinent (*In pleadings*). Impertinence is described by Lord Chief Baron Gilbert to be where the records of the Court are stuffed with long recitals or any digressions of the matter of fact which are altogether unnecessary and totally immaterial to the matter in hand

'IMPERTINENCE' consists in setting forth what is not necessary to be set forth An answer or a plaint or petition ought not ordinarily to set forth deeds in full, but only so much thereof as is material to the point in question.

An answer ought not to go outside of the plaint and state what is not material or relevent to the case stated in the plaint Long recitals, stories, conversations, and insinuations tending to scandal are impertinent So facts not material to the decision are impertinent, and, if reproachful, are scandalous.

Impertinent. That which is not relevant or pertinent.

Impi. Body of Kaffir warriors

Impier. (*Lat*) An umpire. (*Bouv. Law Dict.*)

Impiety Want of piety

IMPIOUS, IRRELIGIOUS, PROFANE *Irreligious* is negative *Impious* and *Profane* are positive. A man under no influence of religion is *irreligious*. *Impious* denotes a defiant irreligion, and a disposition to do dishonour to what religious men hold in veneration, especially as regards the character, works, or dealings of the supreme being. As *Impious* relates more commonly to the thoughts, so *Profane* to the words or acts of men *Profanity* is irreverance in speech about sacred things. *Impious* thoughts, *irreligious* persons or books, *profane* language

"Somewhat allied to this (blasphemy), though in an inferior degree, is the offence of profane and common swearing or cursing"—Blackstone. (*Smith Syn Dis.*)

Implead "To sue or prosecute by course of law" (*Tomlin's Law Dic.*)

To make one a party to an action or suit

Implements Things necessary in any trade or mystery, without which the work cannot be performed also the furniture of an house, as all household goods, implements, etc And implements of household, as, tables, presses, cupboards, bedsteads, wainscot, and the like In this sense, we find this often used in gifts and conveyances of moveables. (*Termes de la Ley, Tomlin's Law Dic*)

An exemption statutes, providing that the "implements of the debtor's trade" shall be exempt from execution, means the tools of a mechanic carrying on his business To come within this class the debtor must be a mechanic in contradistinction to a manufacturer, and the implements must be tools in contradistinction to machinery, and the trade must consist in the production of articles for the supply of the neighbourhood or particular customers in contradistinction to such as are intended for sale in the market

"TOOLS AND IMPLEMENTS," within the meaning of the statute exempting from execution the tools and implements include various machines for making the articles, owned by the debtor and used in his shop, although he employs four or five men to help him

"TOOLS, IMPLEMENTS, AND FIXTURES," within the meaning of a statute exempting from execution tools implements, and fixtures necessary for carrying on the trade or business of a debtor, includes a clock, stove, screen, pitcher, and table cover belonging to a milliner, if they are necessary for carrying on the business.

"IMPLEMENTS, INSTRUMENTS, AND TOOLS OF TRADE, OCCUPATION, OR EMPLOYMENT," as used in Tariff Act includes trained snakes, imported by a professional snake charmer, to be used in exhibition of skill in that profession, and which were not for sale. (*Words and Phrases*)

Implements of husbandry, "Implements and utensils of husbandry," of a farmer which are exempt from attachment are not confined to the tools used by the debtor in any one branch of farming but exempt all his necessary tools used in diversified farming

Implements of husbandry

A threshing machine or a threshing outfit is such an 'implement of husbandry.'

A steam engine, used exclusively for working a threshing machine, belonging to the same owner and passing a turnpike gate at the same time with the threshing machine, but in a separate cart, is an 'implement of husbandry,' within the meaning of an Act exempting implements of husbandry from attachment in execution of decrees

Article used for making jaggery are implements of husbandry and hence are not subject to attachment. 20 Bom.L R 1211=A I R 1924 Bom 294

Implicate Involve, entangle (as) to implicate a person in a charge or crime

TO IMPLICATE, INVOLVE People are said to be *implicated* who have taken ever so small a share in a transaction, but they are *involved* only when they are deeply concerned the former is likewise especially applied to criminal transactions, the latter to those things which are in themselves troublesome thus a man is *implicated* in the guilt of robbery who should stand by and see it done, without interfering for its prevention, as law-suits are of all things the most intricate and harassing, he who is engaged in one is properly *involved* in it, he who is unable to pay his creditors is said to be *involved* in debt

Implication The implication or inference which may arise in the construction of statutes is of something not expressly declared, but arise out of that which is directly or expressly declared therein

IMPLICATION Is such a strong probability that an intention to the contrary cannot be supposed.

IMPLICATION. (*Necessary implication*) A necessary inference of something not directly declared, between parties in deeds, agreements, &c, arising from what is admitted or expressed When the law giveth anything to a man, it giveth, implicitly (or rather impliedly) whatsoever is necessary for enjoying the same (*Tomlin's Law Dic*)

It is a maxim of law that an heir at law can only be disinherited by express devise or necessary implication, and that implication has been defined to be such a strong probability that an intention to the contrary cannot be supposed.

Implication of law By 'grants or reservations by implication of law' is meant such as the law implies from the circumstances, and which are not found by construction in a contract The familiar instance of a reservation by implication of law is a way of necessity.

Implied abrogation The repeal of a statute by a new one which is quite to the contrary.

Implied acceptance An 'implied acceptance,' as the term is used in speaking of the implied acceptance of a street or highway, arises in cases where the public authorities have done acts recognizing the existence of a public highway, and treated it as one of the public ways of a locality. When control of a way is assumed by the authorities representing a public corporation, the acceptance will be implied.

IMPLIED ACCEPTANCE (*Of bill of exchange*) is an acceptance by the drawee of a bill of exchange which the law implies from his conduct.

Implied contract

Implied agreement It is sometimes said that the law implies an agreement. Strictly speaking this is inaccurate. The agreement though not fully expressed in words, is nevertheless a genuine agreement of the parties It is implied only in this, that it is to be inferred from the acts or conduct of the parties, instead of from their spoken words. The engagement is signified by conduct, instead of words

Implied assumpsit "Implied assumpsit" is an undertaking presumed in law to have been made by a party by his conduct, though he has not made an express promise The law implies a promise or contract to do that which a party is legally bound to perform, and where by law a duty is imposed a promise will be implied.

"**Implied authority**" defined. Act 9, 1872, S. 187

Implied condition. One not expressed but implied by law

IMPLIED CONDITION, in 48 & 49 Vict c 62, S 12 (Housing of the Working Classes), does not mean a mere warranty *Walker* v. *Hobbs* (1889), 23 Q B D 458 *See* now 53 & 54 Vict c 70, S 75 [See *Condition, Warranty*]

Implied confession In 2 Hawk, P C p 469, it is said that an implied confession arises where a defendant, in a case not capital, doth not directly own himself guilty, but in a manner admits it by yielding to the King's mercy and desiring to submit to a small fine, in which case, if the court think fit to accept such submission, and make an entry to that effect without putting him to a direct confession or plea, the defendant shall not be estopped to plead not guilty to an action for the same fact, as he shall be where there is a plea of guilty Perhaps the only difference between this plea, where it is received, and the plea of guilty, is that while the latter is a solemn confession, which may bind the defendant in other proceedings, the former is held to be a confession only for the purpose of the particular case (*Words and Phrases*)

Implied consent 'Implied consent' is defined to be that manifested by signs, actions, or facts, or by inaction, silence, or other conduct which raises a presumption that the consent has been given

Implied contract Such a contract as the law presumes a man to have promised to perform.

'IMPLIED CONTRACTS' are such as reason and justice dictate, and which the law presumes from the relations and circumstances of the parties.

"IMPLIED CONTRACTS" are those which the law raises or presumes by reason of some value or service rendered, and because common justice requires it. As a general principle it may be stated that one who knowingly takes the benefit of the service of another or the use of his property, not under an express contract or engagement, impliedly promises to make reasonable compensation.

"An implied contract is one which the law infers from the facts and circumstances of a case, but it will not be inferred in any case where an express contract would for any reason be invalid."

An implied contract is a matter of inference or deduction. It creates an obligation akin to duty,

Implied contract.

and differs from an express contract, which is one whose terms are stated in parol or in writing.

IMPLIED CONTRACT (In Limitation Act (XV of 1877), Art 115) is used in the sense in which it is understood in English Law and not according to the definition in the Contract Act Whenever an agent contracts on behalf of a principal, there is an implied contract that he has authority to contract on behalf of the principal (21 I C 65)

IMPLIED CONTRACT AND EXPRESS CONTRACT "An express contract is one to which the minds of the parties have assented, while implied contracts are those implied by law from the facts and circumstances of the transaction, although they are even against the consent of the party to be bound The distinction between an express contract and an implied one is that in one the liability arises directly from the contract, while in the other the contract is implied, or arises from the liability"

IMPLIED CONTRACTS, QUASI CONTRACTS, CONSTRUCTIVE CONTRACTS All true contracts grow out of the intention of the parties to transactions, and where this intention may be inferred, implied, or presumed from circumstances really existing, the contract thus ascertained is implied They are sometimes called "quasi contracts" and "constructive contracts"

Implied covenant One which the law implies from the nature of the transaction

IMPLIED COVENANTS are those inferred by legal construction from the use of certain words of conveyance

IMPLIED COVENANTS are such as the law creates or implies in the absence of express stipulation They not infrequently spring from the duties and liabilities arising out of express covenants They depend for their existence on the intendment or implication of the law, and are such as the law raises from the relations of the contracting parties to each other, in respect to the contract, in the absence of any express agreement on the subject.

Implied Dedication An implied dedication, which arises from operation of law from the conduct of the owner of the property, rests upon the broad commonlaw doctrine of equitable estoppel It does not assume a grant, but that the owner, by his conduct or his acquiescence in the use by the public of the land for the specified purpose, is estopped from interfering or preventing the public from continuing the use

Implied Easement An implied easement is an easement resting upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted

Implied Invitation "Implied invitation is part of the law of negligence, by which an obligation to use reasonable care arises from the conduct of the parties Its essence is that the defendant knew or ought to have known that something that he was doing or permitting to be done might give rise in an

Implied powers.

ordinary discerning mind to a natural belief that he intended that to be done which his conduct had led the plaintiff to believe that he intended It is not enough that the user believed that the use was intended He must bring his belief home to the owner by pointing to some act or conduct of his that afforded a reasonable basis for such a belief". The fact a railroad company had uncoupled cars, and allowed an opening to remain between the cars, and that the opening had been used as a passage way by the employees without molestation, was held not an invitation which a servant could act on

In a legal sense, to come under an implied invitation, as distinguished from the mere license, the visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on there There must be some mutuality of interests in the subject to which the visitor's business relates, although the particular thing which is the subject of the visit may not be for the benefit of the occupant

Implied License An implied license is one which is presumed to have been given from the words, acts or passive acquiescence of the party authorized to give it Such a license must be established by clear proof, and is not to be inferred from equivocal declarations or acts of the owner

Implied malice Is Malice which the law infers from or imputes to certain acts

IMPLIED MALICE is malice not positively, but inferentially, appearing Sometimes it is defined as malice which does not appear at all, but is imputed by law

Implied malice is an inference of the law from any deliberate and cruel act by one person against another

"Malice is implied by law from any deliberate cruel act committed by one person against another suddenly, without any, or without considerable, provocation"

"IMPLIED MALICE", with reference to libel and slander, is that which is raised as a matter of law by the use of the words, libellous *per se*, when the occasion is not privileged

Probably the phrase "EXPRESS MALICE" is identical with "MALICE IN FACT,' and 'IMPLIED MALICE' identical with 'MALICE IN LAW'

Implied malice is that which is inferred from the act, or, in case of slander, from the publication of the false language It is synonymous with 'malice in law'

Implied notice Implied notice may be knowledge imputed impliedly by collateral facts of such a nature as to cast on the party the legal duty of not being wilfully or negligently ignorant of all proper inferences to be drawn from such facts.

Notice is of two kinds, actual and constructive, Actual notice may be either express or implied. If the one, it is established by direct evidence, if the other, by proof of circumstances from which it is inferable as a fact.

Implied powers Implied powers are such as are necessary to carry into effect those which are ex-

Implied powers

pressly granted, and which must therefore be presumed to have been within the intention of the grant

Implied powers of a Corporation exist only to enable a corporation to carry out the express powers granted—that is, to accomplish the purpose of its existence—and can in no case avail to enlarge the express powers, and thereby warrant it to devote its efforts and capital to other purposes than such as its character expressly authorises, or to enlarge in collateral enterprises not directly, but only remotely, connected with its specific corporate purposes A power which the law will regard as existing by implication must be one in a sense necessary—that is, needful, suitable and proper to accomplish the object of the grant—and one that is directly and immediately appropriate to the execution of the specific powers, and not one that has but a slight, indirect or remote relation to the specific purposes of the Corporation

"Implied promise", defined, Act 9, 1872, s 9.

IMPLIED PROMISE The law recognises two kinds of promises express and implied promises The first is the express stipulation of the party making it to do or not to do a particular thing The second, the law presumes from some benefit received by the party against whom it is raised

Implied ratification An implied ratification frequently arises from the acceptance of benefits which are the result of the unauthorised acts, for, when one with full knowledge receives the profits or benefits, he may be presumed to have ratified and accepted the conditions by which they are effected

The authorities all agree that, although ratification by a principal of an agent's unauthorised acts may be implied, as well as expressed, nevertheless there can be no ratification binding on the principal which was not made with the full knowledge of all the material circumstances of the case

"Implied Release", defined Act, 5, 1882, s 38, Expln II

Implied revocation The revocation of a will is implied when the existence of the intention of the testator to revoke is presumed and inferred from some subsequent act or event

Implied term (of a contract) A stipulation not expressed in a written contract should not be implied because the Court thinks it would be reasonable to do so Such an implication can be made only if, on a consideration of the terms of the contract in a reasonable and business manner, the Court is satisfied that it should necessarily have been intended by the parties when the contract was made (*Hamlyn* v *Wood*, (1891) 3 Q B 488, *Lazarus* v *Cairn Line of Steamships, Ltd*, 106 T L R. 378, *Ref*) 128 I.C 849=32 L.W. 522=1930 M.W N. 921=1931 M. 65=59 M L. J. 839.

Implied trust. A trust raised by operation of law

Implied trusts are such as are inferred by law from the nature of the transaction of the conduct of the parties

IMPLIED TRUSTS are those that arise when trusts are not directly or expressly declared in terms, but

Import

Courts from the whole transaction and the words used, imply or infer that it was the intention of the parties to create a trust

"IMPLIED TRUST" are defined by Judge Story as those which are deducible from the nature of the transaction as a matter of clear intention, though not found in the words of the parties or which are superinduced upon the transaction by operation of law as matter of equity, independent of the particular intention of the parties. Implied trusts are other trusts than express trusts and are created by implication or presumption of law.

Implied waiver A waiver is implied whenever it may be reasonably and fairly inferred from the act or omission or silence of the party who has the power of waiving

Implied warranty. A warranty which is presumed by law

Every warranty in a sale of goods is a promise that the article is so and when this promise may be implied by the contract of the vendor, or may result from the nature and circumstances of the sale, it is then called an "implied warranty"

An implied warranty is simply a warranty that the articles sold, when there is no express warranty, is merchantable and fit for the purpose for which it is intended

"Import" defined Act 1 of 1878, S 3, Act 4 of 1882, S 4 (6), Act 12 of 1886, S 3 (3), Act 12 of 1896, S 3 (*e*), Bom Act 5 of 1873, S. 3 (10), Mad Act 1 of 1866, S 3 (15)

"IMPORT" means to bring into British India by sea or land Explosives Act (IV of 1884), S 4.

"IMPORT" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government Opium Act (1 of 1878), S 3

"IMPORT" includes removal into one Province of British India from another Excise Act (XII of 1896), S 3

Import—Importation Goods are not imported within the meaning of statutes fixing an important duty, until their arrival at the port of entry.

The literal meaning of "importation" is to bring in with intent to land. It means a bringing into some port, harbour, or haven, with an intent to land the goods there It takes place when the vessel arrives at a port of entry, intending there to discharge her cargo

The term 'import" means to bring into a country merchandise from abroad, and is the direct converse of the term "export" which means to carry from a state or country, as wares in commerce The term "export" signifies etymologically "to carry out" and "import" means "to bring in" Its commercial meaning is directly contrary to the term "export"

Goods brought into the country from abroad The importation of certain goods, as unauthorised reprints of copyright books, false coin, and indecent or obscene prints, is expressly forbidden and with regard to certain other goods, such as wine, spirits,

Import

and tobacco, restrictions are imposed as to the place and manner of their importation.

"IMPORT" Meaning of 11 Bom L R 221=33 B. 383=1 I C. 343.

Importance. The quality of being important, (*i e.*) of great consequence

IMPORTANCE CONSEQUENCE WEIGHT MOMENT It is of *importance* for a letter to go off on a certain day, for the affairs of an individual may be more or less affected by it, an hour's delay sometimes in the departure of a military expedition may be of such *consequence* as to determine the fate of a battle The term *weight* implies a positively great degree of importance. The counsels of a nation are always *weighty*, because they involve the interests of so many. *Moment* is that importance which a thing has from the power in itself to produce effects, or to determine interests it is applicable, therefore, only to such things as are connected with our prosperity or happiness. when used without any adjunct, it implies a great degree of importance, but may be modified in various ways; as a thing of no moment, or small moment, or great moment "It is a matter of no small *moment* for every one to choose that course of conduct which will stand the test of deathbed reflection"

The term "important ca e" within the meaning of an Act providing that, where it appears to the court that a fair and impartial trial of an issue of fact triable by a jury cannot be had without a struck jury or that the importance or intricacy of the case requires such a jury, the Court must make an order, upon notice directing a special jury for the trial of the issue. was held not to characterize an action which was of importance only to the immediate parties

Important case. Where public officers have been libelled for acts done in their official capacity, suits brought by them in vindication of their characters have been deemed important

"Importation" defined Act 11 of 1878, S 6, *Expln* Act 12 of 1886, S 3 (3)

IMPORTATION The bringing goods and merchandize into the kingdom from other nations (*Tomlin's Law Dic*) Importation does not mean only importation from outside the territory but it also means from any district of the said territory into another district of the same (23 Cr L J 732=1924 L. 160)

Importer. One who causes imports to be brought in.

The term "importer" does not include a person who purchases goods from an importer after they have been brought within the boundaries and jurisdiction.

The term "importer" does not include one who receives from an importer.

'Importing,' meaning of the term. *See* 41 Cal 545=22 I C. 179.

Imports. Articles imported from foreign countries. They are the articles themselves which are brought into the country.

Impossible.

As the term "imports" was used in a statute fixing an *ad valorem* duty on imports, it meant the goods "arriving or coming within the limits of a port" It includes nothing which are not actually brought within state limits.

Importunity Persistent solicitation.

Importunate Persistent, pressing in solicitation.

"IMPORTUNITY" (to invalidate a Will), "in its correct legal acceptation, must be in such a degree as to take away from the testator free agency, it must be such importunity as he is too weak to resist, such as will render the act no longer the act of the deceased, not the free act of a capable testator." (Wms Exs 39, citing *Kindleside* v. *Harrison*, 2 Phil Ecc 551, 552, *Stroude*, 917.)

Impose "Imposed by a law" is equivalent to the expression "imposed under a law"

Any tax authorised by the legislature for whatever purpose and however ascertained, which is fixed in its amount or is assessed and collected by the instrumentality provided for it is in effect *imposed* by law on the person who is bound to pay it, whether it be laid directly or indirectly upon him

Imposition An import, a tax, a tribute

The term "imposition" in a corporation charter, in which the Corporation is exempt from any imposition whatever, includes every kind of enforced contribution to the public treasury

Impossibility "A thing which is impossible in law, is all one with a thing impossible in nature. and if any thing in a bond or deed is impossible to be done, such deed, etc is void." (*Tomlin's Law Dic*)

Impossibility of performance Impossibility of performance sufficient to excuse the non-performance of an executory contract means "an impossibility consisting in the nature of the thing to be done and not in the inability of the party to do it. If what is agreed to be done is possible and lawful, it must be done Difficulty or improbability of accomplishing the undertaking will not avail the defendant It must be shown that the thing cannot by any means be effected Nothing short of this will excuse nonperformance

There is a marked distinction between a DISABILITY OR INABILITY OF A PARTY TO PERFORM A CONTRACT, and the absolute and inherent impossibility of performance, in the true sense. To excuse performance of a contract on the ground of impossibility of performance, the impossibility must be more than merely a great inconvenience or hardship, or mere impracticability.

If the thing is such notorious physical impossibility which, if it was known to be so by both parties at the time of the making of the contract, will avoid the contract, unless the promisor had taken upon himself to warrant that it was possible. *Willes, J.. Clifford* v. *Watts*, L.R 5 C.P. 585, Addison on Contracts, Chitty on Contract

Impossible "It is said we cannot define 'Impossibility' of discharging duties. Certainly not. Any definition would be either so wide as to be nugatory, or too narrow to fit the ever varying events of

human life. Neither can we define other terms applicable to human conduct,—such as, 'Honesty,' or 'Good faith, or Malice,' or to come nearer to the present case (Judicial Separation) 'Danger' 'Reasonable apprehension,' 'Cruelty' itself. Such rudimentary terms elude *a priori* definition, they can be illustrated but not defined; they must be applied to the circumstances of each case by the judge of facts', (per *Ld. Hobhouse, Russell* v *Russell*, 1897, A C. 436.)

'IMPOSSIBLE' meaning of. 9 M L T. 88=8 I C 565.

Impossible contract One in which a party undertakes the performance of an act impossible in its nature.

Impossibilium nulla obligatio est There is no obligation to perform impossible things

Impost. "Tax received by the prince, for such merchandizes as are brought into any haven within his dominions, from foreign nations," (*Tomlin's Law Dic.*)

An impost is a custom or tax levied on articles brought into a country, or things imported

'IMPOST' is a duty on imported goods and merchandise In a large sense, it is any tax or imposition Duties and imposts were properly intended to comprehend every species of tax or contribution not included under the ordinary term "taxes and excises" (*Termes de la ley*, *Brown* v *Maryland*, 12 Wheaton, 437.)

Shut up in pound (as, cattle), confiscate (Impounding unstamped or insufficiently stamped documents.)

'IMPOSTS,' 'TAXES,' AND 'DUTIES.' These words as used in Taxing Statutes must be confined to the idea which they commonly and ordinarily present to the mind—as tax intended to fill the public coffers for the payment of the national debts and promotion of the general welfare of a country.

Cowell says that impost is distinguished from custom, because custom is, rather, profit which the prince makes on goods shipped out, but Madison considered the terms 'duties' aud 'imposts,' as synonymous. (*Words and Phrases.*)

Impostors (*Religious*) Those who falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgments. (*Tomlin's Law Dic*)

IMPOSTOR, DECEIVER. An *Impostor* is a deceiver of the public, while *Deceiver* might be of the public or of a private individual. Any one who *deceives* by word or deed is a *deceiver*. An *impostor* assumes a false appearance, and impersonates what is not truly his. An *impostor* acts for his own benefit, a *deceiver* may act simply for the injury of another (*Smith Syn. Dis*)

Impotency. Incapacity for sexual intercourse. 28 Am. Dec. 448. note.

IMPOTENCY. 'Impotency,' as a cause for divorce, means an incurable defect, and not every temporary

or occasional incapacity, but permanent and lasting inability for copulation and procreation.

The word 'barrenness' is in no sense the synonym of impotency.'

Impotent Powerless, decrepit, without power of sexual intercourse.

Impotentia excusat legem A maxim meaning 'Impotency excuses law', the impossibility of doing what is required by the law excuses from the performance

Impound To keep in the custody of the law.

Impound as relating to the 'impounding' of cattle implies an inclosed space

Impracticable 'Impracticable' is defined as incapable of being effected from lack of adequate means, impossible of performance; not feasible.

IMPRACTICABLE · IMPOSSIBLE. "In matters of business a thing is said to be *Impossible* when it is not practicable, and a thing is *Impracticable* when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling when he has dropped it into deep water, though it might be possible, by some very expensive contrivance, to recover it. So, if a ship sustains such extensive damage that it would not be reasonably practicable to repair her, seeing that the expense of repairs would be such that no man of common sense would incur the outlay, the ship is said to be totally lost" (per *Maule, J., Moss* v. *Smith*, 9 C B 103, 19 L J, C P. 228 cited with approval by *Ld Blackburn*, *Shepherd* v *Henderson*, 7 App Ca 69, 70).

Imprescriptible rights Rights unattainable by prescription

Impressed stamp. "Impressed stamp" includes (*a*) labels affixed and impressed by the proper officer, and (*b*) stamps embossed or engraved on stamped paper, Act II of 1899 (*Stamp*) S 2 (13)

Impression An image fixed on the mind, a belief, act of impressing or making a mark by force or pressure applied (as) impression produced on wax by a seal.

IMPRESSION INDENTATION: MARK: PRINT: STAMP. In its physical sense, *Impression* is a mark made by pressure, either on the surface, or so as to penetrate below the surface of a body. It is of a distinct outline. *Indentation* is a mark as of a tooth, either a sharp depression by violence of the surface of a solid body, or a lateral notching of it, as in the indentations of a saw *Mark* is more general, and may be cut, coloured, pressed, smeared, or produced in any way which causes a visible trace. *Print* is an impression of definite outline, as the print of feet upon sand, but implying less force and depth than impression Stamp is commonly employed at present of merely superficial impression, generally with colouring matter as, to stamp a letter. Sometimes, however, it is of stronger force; so that the characteristic meaning of Stamp is rather a formal, official, or symbolical impression. *Impression* may be made by any part of the body, or by an instrument. *Indentation* commonly implies an instrument. *Mark* is indefinite. *Print* may be either, and *Stamp* usually

denotes an instrument A Stamp is a characteristic mark impressed (*Smith Syn Dis*)

IMPRESSION—BELIEF—OPINION An impression of a defendant in a prosecution for theft that he had a claim to the property taken is not equivalent to an honest belief, so as to be a defence, since this might amount to a vague notion, unaccompanied with the honesty of conviction

An impression formed by one called as a juror, so as to disqualify him to be sworn as a juror, means an *impression or opinion* regarding the case which is strong enough to prevent a candid judgment on his part upon a full hearing of the evidence A mere opinion or belief as to the facts, unconfirmed, or not strong enough to prevent the juror from rendering an unbiased verdict in consideration of all the evidence, is not such an impression as will prevent him from being sworn.

On the examination of a juror in answer to the question, 'Now, on the assumption that the facts were true, as you read them in the paper, you formed an opinion, did you not?' he answered 'Well, I think not I formed an impression' Commenting on this, the Court said "The word 'Impression,' if it can properly be applied to a mental operation, does not reach the strength of an opinion An opinion is a conviction which is based, and must be based, upon testimony. An impression is a mere fancy or lodgment in the mind, which is not based upon testimony, and the existence of which cannot be traced to proof, and in this case the juror himself distinguished between an opinion and an impression by insisting that he had not formed an opinion, and did not entertain any at the time, but that it was a mere impression'

Impression, First A case of first impression is one upon which there is no authority to guide the Court to a decision, and which therefore the Court has to decide according to what it thinks just and expedient

Impressment Seizure for public service or use.

IMPRESSMENT (*Carriages, Animals, Vessels*) The obligation to provide carriages, animals, and drivers, upon the requisition of military officers, for moving regimental baggage, provisions of troops on the march, and stores, or in cases of emergency, for conveying the officers, soldiers servants, women, and children, and other persons of and belong to bodies of troops, is regulated by the Army Act, 1881, 44 & 45 Vict c 58 (Ss. 112, 121.) (*Ency of the Laws of England*) Foster, Crim Law, 164, Prendergast, Navy 1852, pp 78, 130 Stubbs, Const Hist ii 283, Clode, Military Forces, Manual of Military Law, War Office, 189)

IMPRESSMENT (*in Milit Law*) Imprisonment of men for military service within or without the realm was at one time resorted to, and seems to have been considered within the Royal prerogative, but was declared illegal in 1640 (16 Car 1 C. 28) The history of this subject is to be found in the Manual of Military Law (1903 issue, Ch. ix p 196)

Imprest. "The King's money was sometimes issued by way of prest, or imprest either out of the receipt of exchequer, the wardrobe, or some other of the king's treasuries. Imprest seems to have been of the nature of a concreditum or accommodatum. And when a man had money imprested to him he immediately became accountable to the Crown for the same" (1 *Madox, Hist Exchequer*, 387)

Imprest Money Money paid on enlisting soldiers [See *Prest money*] *Tomlin's Law Dic*

Imprimatur. A licence to print a work. Such a license was required when the censorship of the press existed

Imprimis. Firstly, principally; first

In a will which states that 'imprimis I bequeath certain property,' and which is then followed by other bequests, the word 'imprimis' does not give preference to the bequest introduced by such word

Lord Hardwicke, in *Lewin* v *Lewin*, 2 Ves. 415, said "that 'imprimis,' or 'in the first place' 'I give a legacy,' amounts only to the order in which testator expressed his gifts in the will

Imprison. Put into prison.

'IMPRISON' means 'to confine, to incarcerate, to shut up or restrain one of his liberty.' *See* 1 L B R 42 *See also* 2 M H C 396.

"Imprisonment" defined (*See also* Wrongful Confinement) Act 10, 1897, S 3 (26), Bom Act 3, 1886, S. 3 (14), Mad. Act 1, 1880, S 1, Mad. Act 5, 1882, S 2, Mad Act 1, 1886, S 3 (6), Mad Act 3, 1888, S 3, Mad Act 4, 1889, S 3 (*o*) Mad. Act 1, 1891, S. 3 (15), N & O Act 1, 1887, S 2 (20)

"IMPRISONMENT" is defined as the deprivation of the liberty of another without his consent.

An imprisonment is a forcible detention of a man's person or control over his movements, so that, where a party accompanies an officer without any constraint, it will not amount to an imprisonment.

Imprisonment is something more than mere loss of freedom It includes the notion of restraint within limits defined by wall or any exterior barrier.

In ordinary practice, words are sufficient to constitute an imprisonment if they impose a restraint upon the person He is not obliged to incur the risk of personal violence and insult by resisting until actual violence be used

"Imprisonment' is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or cage in the streets, or in a man's own house, as well as in the common gaol, and in all these places the party so restrained is said to be a Prisoner so long as he hath not his liberty freely to go at all times to all places whither he will, without bail or mainprise or otherwise." (*Termes de la Ley*). *R.* v. *Pelham*, 8 Q.B. 963. *Imprisonment* is the restraint of a man's liberty under the custody of another, and extends not only to a gaol, but to a house, stocks, or where a man is held in the street, for in all these cases the party so restrained is said to be a prisoner, so long as he hath not his liberty freely to go shout his business, as at other times, Co, Litt. 253 A man is technically imprisoned (in prison) when he is taken into custody or deprived of his freedom. He is not imprisoned by being prevented from passing in a particular direction, *e.g.* by

Imprisonment.

obstruction of a highway, or by being forced to leave particular land, *e g* by ejectment as a trespasser. "He must be to some extent the captive or chained in the open" (3 Black Com, 127, *Bird* v *Jones*, 1845 7 Q B. 742, 68 R R. 564) No person is to be imprisoned, but as the law directs either by command and lawful order of a court or by lawful warrant, or the King's writ, by which one may be lawfully detained to answer the law (2 Inst 46=3 Inst 209 *Tomlin's Law Dic*)

Imprisonment is a form of slavery, and the law will not permit a man to enslave himself even by the most solemn engagement The right to personal liberty is so sacred that he cannot part with it by consent, although he may forfeit it by crime He cannot barter away his liberty, nor be deprived of it without due process of law. He cannot give his own body in pledge, nor consent that a court may imprison him unless he pays certain debt. He cannot put himself in contempt by promising that a failure to do a certain thing may be punishable as for contempt, when it would not otherwise be thus punishable He cannot consent to be thus imprisoned, any more than he can consent to be assaulted, or to forfeit one of his members, or a 'pound of flesh' Such engagements cannot be enforced by any court because security of the person is sacred and is protected by law against any violence, unless inflicted by command of the law itself

It is not an imprisonment of a vagrant or pauper child for the state to detain such child at one of the state industrial schools, any more than its detention in the poorhouse, nor the detention of any child at any boarding school by one standing for the time in *loco parentis* to the child Parental authority implies restraint, not imprisonment, and every school must necessarily exercise some measure of the parental power of restraint over children committed to it, and when the state, as *parens patriae*, is compelled by the misfortune of a child to assume for its parental duty, and to charge itself with its nurture, it is compelled also to assume parental authority over it This authority must necessarily be delegated to those to whom the state delegates the nurture and education of the child And in exercising a wholesome parental restraint over the child, it can be properly said to imprison the child no more than the tenderest parent exercising like power of restraint over children

'Imprisonment,' as used in criminal statutes, alone and unqualified, does not mean imprisonment at hard labor, but means any other confinement than the latter.

"Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code Act X of 1897 (General clauses) S. 3 (26). *See also* 5 Mys.L J. 172.

IMPRISONMENT, PENAL SERVITUDE, TRANSPORTATION. Penal Servitude, the statutory substitute for transportation, technically involves imprisonment, but is distinct in its nature and incidents from the common law imprisonment, or imprisonment as now understood with reference to sentences for crime.

"IMPRISONMENT AS WELL AS FINE" meaning of. *See* L.B.R. (1893—1900), 494.

Improved Design

The words 'CONFINED,' 'IMPRISONED,' 'IN CUSTODY,' 'CONFINEMENT,' AND 'IMPRISONMENT' refer not only to the actual, corporeal and forcible detention of a person, but likewise to any and all coercive measures, by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detain him within certain limits

Imprisonment for Debt The word 'imprisonment for debt' have a well defined and well-known meaning, and have never been understood or held to apply to criminal proceedings

The imprisonment for debt is imprisonment upon process in civil actions, the object and sole purpose of which is the collection of debts

Improper-Improperly When applied to human conduct 'improper' is defined to be such conduct as a man of ordinary and reasonable care and prudence would not, under the circumstances, have been guilty of

"Improper" means "wrongful" (*per* Brett, M.R in The Warkworth, 1884 53 L.J D & Ad 66)

"**Improper discharge**," meaning of [1937 A L. J. 294=1937 A W.R. 261=168 I C 958=38 Cr L J 659= 1937 A L R 431=A I R 1937 All 373]

Improper Influence. 'Improper influence is that dominion acquired by any person over a mind of sanity for general purposes, and of sufficeint soundness and discretion to regulate his affairs in general, which prevents the exercise of his discretion and destroys his free will

By the words 'improper influence' as used in the statement that a 'voluntary confession' must not be extorted by any sort of threats or violence, nor obtained by any direct or implied promises, or the exercise of any 'improper influence,' is meant influence exercised by threats or promises

Improper Liberties. To take 'improper liberties' may mean no more than the undue familiarities in some states of society considered altogether compatible with the strictest virtue.

Improper Navigation Any navigation of a vessel when she is not in a fit condition to be navigated with safety to herself or her cargo is improper navigation.

The term includes something improperly done with the ship or part of the ship in the course of a voyage and an omission properly to navigate the ship (*See* per Willes J, *Good* v *London Steamship Owners Assn*, L R 6 C. P 569)

Improve The charter of a corporation, declaring that its object is to improve, sell, lease or otherwise dispose of real estate, means 'the performance of any act, whether on or off the land, the direct and proximate tendency of which is to benefit the property or enhance its value"

Improved design. The law provides that a patent may be granted for a new and original design Held, that, where a patent was granted for a new and improved design, the term 'improved, as so used, should be construed to mean a new and distinctive design. It should be an improvement as compared with the term 'new,' it means that the design should be original.

Improved land

"Improved land" defined Ben. Act 6, 1880, S 3. IMPROVED LAND In *Clarke* v *Phelps* (*N Y*) terms 'improved or cultivated land, 'as used in the law as to laying out of highways, says "These terms are to be taken in the popular sense, according to the general understanding of the community, when distinguishing what is called wild lands, or land in a state of nature, from that which has been cultivated and improved. To improve and cultivate may be considered synonymous To cultivate is defined as to improve the product of the earth by manual industry When speaking of improved land, it is generally understood to be such as has been reclaimed is used for the purpose of husbandry, and is cultivated as such, whether the appropriation is for tillage, meadow, or pasture'

Improved method. If part of a method be new so as to produce a result that, as a whole, is new, it may be called a new or improved method, within the meaning of the patent laws.

"Improvement" defined Act 12, 1881, S. 44, *Expln*, Act 9, 1883, S 3 (8), Act 19, 1883, S 4 (2), Act 8, 1885, S 76; Act 22, 1886, S 26, Act 16, 1887, S. 4 (19), Mad Act 1, 1887, S. 3, Pun. Act 5, 1912, S. 3

For the purposes of the Bengal Tenancy Act, the term *"improvement,"* used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it Ben. Act VIII of 1885 (Tenancy), S 76

Cocoanuts are fruits, cocoanut trees are fruit trees and a cocoanut plantation is therefore a fruit garden and constitutes an improvement [I L R (1937) Mad 364=1936 M.W.N 1362=168 I C 24=45 L W 15= A.I.R. 1937 Mad 254=(1937) 1 M.L J 233 (F B)]

Improvements See *Re Mundy's Estates* (1891), 1 Ch. 399, *Re Byng's Estates* (1892), 2 Ch 219

"IMPROVEMENTS" If includes wells, 115 I C 637= 1929 A 544

Improvement (*In Patent Law*) As applied to machinery an improvement is where a specified machine already exists, and an addition or alteration is made to produce the same effect in a better manner, or some new combination is added to produce some better results. In such cases the patent can only be for the improvements or new combination Curtis's on Patents, 8, 22.

An improvement, within the meaning of the patent law, often consists in the introduction of a new element into an old machine.

'IMPROVEMENT' AND 'INVENTION' are not convertible terms An improvement is not necessarily an invention, while an invention is *prima facie* an improvement An where the most favourable construction that can be given to a patent is that the article constitutes an improvement over prior inventions, but it embodies no new principle or mode of operation not utilized before by other inventors, there is no invention.

In accordance with law

Improvement (*Of land*) "Esecriche, in his Dictionary, divides improvements on land into three classes—necessary, beneficial, and voluntary. Necessary are those made to prevent the loss or deterioration of the property, as repairs on an edifice threatened with ruin, or an embankment to secure lands from overflow Beneficial are such as, though they are not devised to preserve the property, yet enhance its value or rent, as the planting of trees, vineyards; the construction of wine presses, granaries, stables, etc The voluntary are those which serve merely for ornament, as paintings, flower beds, etc.'

"Improvements" (*On land*). 24 L.W. 803=51 M. L.J. 880

Improperly 'Improperly' in S. 437 of Cr P. Code does not mean perverse A discharge based on a lenient view of the evidence is not improper. But impropriety does imply that the order could not have been passed, if the Magistrate had taken a reasonable view of all the circumstances of the case (1937 M W N 1240)

Improvidence Within the meaning of a statute which declares that no person shall be deemed competent to serve as an executor who shall be adjudged incompetent by the subrogate to execute the duties of such trust by reason of drunkenness, improvidence, or want of understanding, the improvidence which renders a man incompetent signifies want of care and foresight in the management of whatever may be put under his control, without prudence, care, and foresight, property, whatever may be its kind or quality, is sure to go to decay and diminish in value. The improvidence which the law, in such cases has in contemplation as a ground of exclusion is that want of care and foresight in the management of property which would be likely to render the estate and the effects of the intestate unsafe and liable to loss or to be diminished in value by improvidence in case administration should be committed to such improvident person It means habits of mind and conduct, rendering him generally and under all ordinary circumstances unfit for the trust or employment in question.

" 'IMPROVIDENCE' is defined to be a want of care and foresight in the management of property. The symptoms of an improvident temperament would evidently be carelessness, indifference, prodigality, or wastefulness and negligence, in reference to the care, management, and preservation of the property in charge'

Impunitas continuum affectum fribuit delinquenti Impunity offers a continual bait to a delinquent

Impunitas semper ad deteriora invitat. Impunity always invites to greater crimes.

Impure milk. The words 'impure milk,' as used in the act relating to the sale thereof, includes any milk obtained from animals fed on distillery waster or any substance in a state of putrefaction.

In Into, within; among.

"In accordance with law." [*See* Limitation Act, Art 182] The phrase. "In accordance with law" in article 182, Sch. I, Limitation Act (1908) is adjective not only to the words "to the proper Court for

In accordance with law.

execution," but also to the words "to take some steps in execution." (22 B 83.)

The words "in accordance with law," in Act 182 S 1, Limitation Act, 1908, mean in accordance with the law relating to the execution of the decree. (20 C. 388.)

'In accordance with the form" The obligation of the phrase is so exigent that if a transaction by way of Security on chattels cannot, from its nature, be made "*in Accordance with the Form*" it cannot be made at all (*Re Townsend*, Ex. p *Parsons*, 55 L J Q B. 137)

In addition, Where a legacy given by a codicil is expressed to be "in addition" to one given by the testator to the same legatee in his will, the presumption is that the additional legacy is to be paid precisely in the same manner as the original, this construction, however, may be controlled by the context (*See* 1 Jarman, Wills, *Ency of the Laws of England.*)

In Advance of Calls (*Commerce.*) This phrase refers to payments made by share-holders prior to call

In adversum. (*Lat.*) Against an adverse party

In aequa manu In equal hand.

In aequali jure In equal right

In aequali jure melior est conditio possidentis When the parties have equal rights, the condition of the possessor is the better

In alta proditione nullus potest esse accessorius sed principalis solummodo. In high treason, no one can be an accessory, all are principals.

In ambigua voce legis ea potius accipienda est significatio, quae vitio caret, praesertim cum etiam voluntas legis ex hoc colligi possit In an ambiguous law that interpretation shall be preferred which is most consonant to equity, especially where it is in conformity with the general design of the legislature

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. When there are ambiguous expressions, the intention of him who uses them is especially to be regarded

In ambiguo sermone none utrumque dicimus sed id duntaxat quod volumus. When the language we use is ambiguous, we do not use it in a double sense, but in the sense in which we mean it.

In Anglia non est interregnum There can be no interregnum in England.

"In any case"—in S. 167, Evidence Act also includes criminal trials. 19 Bom. 479.

In atrocioribus delictis punitur affectus licet non sequatur effectus. In more atrocious crimes, the intent is punished though the effect does not follow.

In autre droit In another's right, that is, in a representative capacity. An executor who sues for a debt due to his testator is said to sue in *autre droit.*

In Ballast. (*A Nautical term*) A ship is in ballast when not having any cargo, she carries some weighty substances for stability.

In consimili.

In bank With all judges of the court sitting.

In being. Held to include a child in *utero.*

An unborn child after conception, if it was subsequently born alive, and so far advanced to maturity as to be capable of living, is considered as 'in case' from the time of its conception, where it is for the benefit of the child that it should be so considered

In board. (*In Maritime Law*) this term is contrasted with "out board" The term is applied to cargo so placed as not to project over the board.

In bonis defuncti Among the goods of the deceased.

In camera In chambers, in private, In the judge's private room, not in open court.

In capita By heads, per capita

In case "*In case of need*". "Referee in case of Need," of a Bill of Exchange, is a person to whom the Holder may resort if the Bill is dishonoured (*Re Leeds Banking Co, Ex. p. Prange*, 33 L.J. Ch. 33).

"In case it shall appear", in S 50 of the Insolvent Act (II & 12 Victoria C 21) must mean in case it shall appear by legal evidence that the person to be punished has committed the specific crime he is said to have committed, and that before any person can be punished under that section, he must be shown by legal evidence to have committed on some specific occasion, one or other of the offences enumerated in the section (17 Cal. 209)

In casu extremae necessitatis omnia sunt communia In cases of extreme necessity, everything is in common.

In certa pro nullis habentur Things uncertain are held for nothing.

Incerta quantitas vitiat actum. An uncertain quantity vitiates the act,

Incivile est, nisi tota lege prospecta, una aliqua particula ejus proposita judicare vel respondere It is improper, unless the whole law has been examined, to give judgment or advice upon a view of a single clause of it.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare. It is improper to pass an opinion on any part of a passage without examining the whole.

In civilibus ministerium excusat in criminalibus non item. In civil matters agency (or service) excuses, but no so in criminal matters.

In commodato haec pactio, ne dolus praestetur rata non est. If in a contract for a loan there is inserted a clause that fraud should not be accounted of, such clause is void.

In common. Jointly (as) Tenants in common.

In communi. In common.

In conjunctivis oportet utramque partem esse veram. In conjunctives each part must be true.

In consimili casu, consimile debet esse remedium. In similar cases, the remedy should be similar.

In consideratione.

In consideratione legis. In contemplation of law.

In consuetudinibus non diuturnitas temporis sed soliditas raionis est consideranda. In customs, not the length of time but the strength of the reason should be considered.

In contempt. The status of one who has committed a contempt and has not expiated his offence.

In contractibus, benigna, in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est In contracts, the interpretation or construction should be liberal, in wills more liberal in restitutions most liberal

In contractibus tacite insunt quae sunt moris et consuetudinis In contracts, those things which are of custom and usage are tacitly implied.

In contrahenda venditione, ambiguum pactum contra venditorem interpretandum est In negotiating a sale, an ambiguous agreement is to be interpreted against the seller.

In conventionibus contrahentium voluntatem potius quam verba spectari placuit. In agreement the rule is to regard the intention of the contracting parties rather than their words.

In corpore. In substance

In criminalibus sufficit generalis malitia intentionis cum facto paris gradus In criminal cases, a general malice of intention is sufficient, with an act of corresponding degree.

In criminalibus voluntas reputabitur pro facto. In criminal acts, the will will be taken for the deed.

In cujes rei testimonium (*Lat*) In witness whereof.

In custodia legis In the custody of the law, under the control of the Court

In damno In damage

In delicto In default.

In Depot. A bill of lading providing that a railroad company should be liable for the loss of the goods while 'in depot' does not include cotton placed on the platform of a compress company to be compressed

In diem For a day.

In disjunctivis sufficit alteram partem esse veram In disjunctives, it is sufficient if either part be true.

In dubiis benigniora praeferenda sunt In doubtful matters, the more favourable are to be preferred

In dubiis magis dignum est accipiendum. In doubtful cases, the more worthy is to be taken.

In dubiis non praesumitur pro testamento In doubtful cases, there is no presumption in favour of the will.

In dubio. (*Lat.*) In doubt; in a doubtful case.

In dubio haec legis constructio quam verba ostendunt. In a doubtful case, that is the construction of the law which the words indicate.

In forma pauperis.

In dubio pars mitior est sequenda. In doubt, the gentler course is to be followed.

In dubio, pro lege fori In a doubtful case, the law of the forum is to be preferred

In dubio sequendum quod tutius est. In doubt, the safer course is to be adopted

"In due course of law". *See* 29 B 213=7 Bom L. R. 12 (14)

In effect In force or operation

In eo quod plus sit semper inest et minus The less is always included in the greater

In equity In a court of equity, through proceedings in equity

In esse In being, in actual existence, as opposed to in posse, which signifies a thing that is not but may be A child *en ventre sa mere* is a thing in *posse*, but in law is considered as *in esse* for all purposes which are for his benefit (*Doe* v. *Clarke*, 1795, 2 Black, H 399).

In Exercise When anything is done under a power "in Exercise of every Power or Authority' thereunto Enabling and there are two or more Powers under which the thing might be done, that Power which is the more favourable to the Donee should be presumed to be the one executed, especially if it is the first in point of time (*Lonsdale* v *Crawfurd*, 69 L J Ch 686)

In expositione instrumentorum, mala grammatica, quod fieri potest, vitanda est In the construction of instruments, bad grammar is to be avoided as much as possible.

In extenso. At length

In extremis Near death, about to die.

'IN EXTREMIS' is used in law to denote such condition as will dispense with an oath, so as to authorize unsworn declarations made by a person since deceased, just before death, and with knowledge that he was about to die, admissible in evidence.

In facto In fact, indeed.

In facto quod se habet ad bonum et malum magis de bona quam de malo lex intendit In a deed which may be considered good or bad, the law looks more to the good than to the bad.

In favorabilibus magis attenditur quod prodest quam quod nocet. In things favoured, what does good is more regarded than what does harm

In favorem vitae, libertatis, et innocentiae omnia praesumuntur. In favour of life, liberty, and innocence, all things are to be presumed.

In fictione furis semper subsistit aequitas. In a legal fiction equity always exists.

In fictione juris semper aequitas existit A legal fiction is always consistent with equity.

In force In effect.

In forma pauperis. As a pauper, *i.e*, relieved of the payment of court costs. As a poor person unable to pay court fees.

In forma pauperis.

A suitor, who from poverty is unable to avail himself of the ordinary forms of the Court, has from a very early period in the history of our law, been entitled, upon satisfying the Court of his want of means, to obtain an order for leave to sue in *forma pauperis* Such order conferred on the pauper immunity from payment of the ordinary fees of the Court *See* C P Code, O 33, Annual Practice, 1907, pp 172-176, Bacon's Abridgment of the Law, 8th ed, tit "Pauper", Chitty's Archbold's Practice, Chitty's Forms, Daniell's Chancery Practice, Daniell's Forms Morgan and Wurtzburg on Costs, 1882, pp 371-377, Morgan's Chancery Acts and Orders, Seton's Judgments and Orders, Sidney Smith's Practice of the Court of Chancery, Tidds Practice

In foro conscientiae In the tribunal of conscience, in a Court of equity

In foro ecclesiastico In the ecclesiastical Court.

In foro saeculari In a secular Court.

In fraudem legis In fraud of the law.

In full A receipt in favor of an administrator by several persons next of kind to the deceased, etc, acknowledging the receipt of their distributive shares '*in full*,' should be construed as *prima facie* evidence only of such payment. Adding the words 'in full' to the receipt does not make it conclusive, since a receipt is regarded as nothing more than evidence of payment, which may be explained or controlled by other evidence

The words 'in full' as used in a receipt in full, are subject to explanation, and, when so explained, ought to be interpreted with reference to it.

'IN FULL,' as used in the codicil of a will providing that property given in the codicil to a certain beneficiary shall be in full of all bequests to him, should be construed to mean 'in lieu of.'

In full life Alive both civility and physically.

In futuro In the future

In generalibus versatur error Error dwells in general expressions.

In genere quicumque aliquid dicit, sive actor sive reus necesse est ut probat In general, whoever alleges anything, whether plaintiff or defendant, must prove it.

"In Good faith" [*See Bona fides*, Good faith] The meaning of "in good faith" T. P 53 T, P Act is, without being a party to any design on the part of the transfer or to defeat or delay his creditors. (24 C. 825=1 C W.N. 665.)

Mere knowledge of an impending execution against a transferor is not sufficient to make the transferee a transferee otherwise than *in good faith*, when he does not share the intention of the transferor to defeat or delay his creditors. (24 C 825=1 C W.N 665.)

In gremio legis (lit, "in the bosom of the law") A figurative expression to express that a thing is under the protection of law; In the lap of the law.

In gross. Not appendant or appurtenant to any land, but personal, (as) Easement in gross.

In jure proprio.

A deed conveying a certain tract of land containing a certain number of acres, more or less, and not setting out metes and bounds by courses and distances, but reciting that the tract of land is 'sold in gross' and not by the acre, is synonymous with a contract of hazard, and precludes any claim of abatement in the purchase money

In haeredes non solent transire actiones quae paenales ex maleficio sunt Penal actions arising from anything of a criminal nature do not pass to heirs

"In his absence." The words "in his absence" in S 199 of the Code of Criminal Procedure, refer to the original entrustment and not to the time of the complaint, and the restriction is not intended to afford immunity to an offender but to prevent a person unconnected with the woman from giving publicity to a matter which neither the husband not the guardian is willing to agitate. (35 Ind Cas. 667= 17 Cr L J 363)

In his enim quae sunt favorabilia animae quamvis sunt damnosa rebus, fiat aliquando extentio statuti. In things that are favourable to the spirit, though injurious to property, an extension of the statute should sometimes be made.

"In his own right" Where under a company's articles, the requisite qualification for the office of director is the holding by a person of a certain number of shares 'in his own right," it is not necessary that the shares should be held by such person as beneficial owner. (*Pulbrook* v. *Richmond Consolidated Mining Co*, (1878), 19 Ch D 610) Jessel, M R said, "the Company cannot look behind the Register as to the beneficial interest

In his quae de jure communi omnibus conceduntur consuetudo alicujus partiae vel loci non est alleganda In those things which by common right are conceded to all, the custom of a particular country or place is not to be alleged.

'In his view" The words "*in his view*" in S 39 Cr P. Code mean 'in the presence of" or "within the sight of" A person who is found hiding in the house of another cannot be arrested by a private person under S 59, as the hiding alone does not amount to a non-bailable and cognizable offence [89 I C 1030 (2)=26 Cr L J 1402 (2)]

In hoc In this

In hunc modum. In this manner

In infinitum Without limit

In initio In the beginning

In integrum Anew.

In judiciis minori aetati succurritur. In judicial proceedings infancy is favored.

In judicio. In Court.

In judicio non creditur nisi juratis. In law, no one is credited unless he is sworn.

In jure. In law; in right.

In jure non remota causa, sed proxima, spectatur. In law the proximate, and not the remote, cause is to be regarded.

In jure proprio. In one's own right.

In kind

In kind In the same or similar commodity or kind of goods, (as, Rent in kind)

In law. Implied by law, presumed by law.

IN LAW. To restore from outlawry

"**In lieu of.**" A legacy given "in lieu of" a previous gift to the same legatee is to be raised out of the same fund and is subject to the same conditions as the original gift (*Crowder* v *Clowes*, (1794), 2 Ves. Jun. 449; 30 E R 719)

'IN LIEU OF' signifies 'instead of,' 'in place of,' and, as used in a bill of sale reciting that it is given 'in lieu of' a certain chattel mortgage, shows that it was intended simply as security for the debt due to him, and was intended to take the place of the chattel mortgage.

In litem. In or during the litigation.

In loco. In the place, (as) in loco parentis

In loco parentis In the place of a parent

The proper definition of a "person in loco parentis" to a child, is a person who means to put himself in the situation of a lawful father to the child, with reference to the office and duty of making provision for the child, or, as defined by Sir William Grant, M R, it is a person assuming the parental character and discharging parental duties

In majore summa continetur minor. In the greater sum is contained the less.

In majorem cautelam. In greater caution.

In maleficiis voluntas spectatur non exitus In offences, the intention is regarded, not the event

In maleficio ratihabitio mandato comparatur In a tort, ratification is equivalent to authority.

In maxima potentia minima licentia. In the greatest power there is the least liberty.

In Memorium In memory of.

In mercibus illicitis non sit commercium. There should be no commerce in illicit goods.

In mercy. Liable to amercement

In mora. In delay, in default

In my possession The use of the phrase 'in my possession' in a bequest of 'stock in my possession," is sufficient to render the bequest specific, and to show that testator intended to devise the specific property, and not a quantity or species of the thing bequeathed.

In novo casu novum remedium apponendum est. In a new state of facts a new legal remedy must be applied.

In nubibus. In the clouds; in abeyance.

In nullius bonis. In the goods of no one.

In obscuris inspici solere quod verisimilius est, aut quod plerumque fieri solet Where there is obscurity, we usually regard what is probable or what is generally done.

In obscuris quod minimum est sequimur In obscure cases, we follow that which is least so.

In paper.

In odium spoliatoris omnia praesumuntur. All things are presumed against a wrong doer.

In omni actione ubi duae concurrunt districtiones videlicet *in rem* et *in personam* illa districtio tenenda est quae magis timetur et magis ligat In every action where two distresses concur, that is *in rem* and *in personam*, that is to be chosen which is most dreaded, and which binds most firmly.

In omni re nascitur res quae ipsam rem exterminat In every thing, the thing is born which destroyes the thing, itself.

In omnibus In all things.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In every contract, whether nominate or innominate, there is implied an exchange i e, a consideration

In omnibus obligationibus, in quibus dies non ponitur, praesenti die debetur In all obligations, when no time is fixed for the performance, the thing is due immediately.

In omnibus poenalibus judiciis, et aetati et imprudentiae succurritur. In all trials for penal offences, allowance is made for youth and lack of discretion.

In omnibus quidem maxime tamen in jure aequitas spectanda sit In all affairs indeed, but principally in those which concern the administration of justice, equity should be regarded

In operation A statute declaring in full force the ordinances of a city or other corporation 'in operation' at its date does not embrace one which had been judicially pronounced by superior court to be inoperative before its passage According to Webster and the best lexicographers, 'operation' is defined to be the exertion of power, physical, mechanical, or moral, action, as of an army or fleet, movement of machinery. An ordinance which has been pronounced a nullity by a court of competent jurisdiction, and the proceedings under it set aside as illegal, cannot be said to be in operation, that is, working for the corporation. Instead of being in progress its motion was completely arrested. (*Words and Phrases*)

In or About A bequest of furniture and other household effects "in or about" the testator's dwelling house includes a number of articles on ground (about forty acres) appertaining to the house, such as hayricks, chicken and sheep troughs, store pigs poultry and carriages (In re *Labron, Johnson* v. *Johnson*, 1884, 29 Sol. J. 147).

In Order. The words "In order to" or "In order that," are used to intensify "with Intent" (*A. G.* v. *Sillem*, 2 H. & C. 525.)

In pace Dei et regis. In the peace of God and the King.

In paenalibus causis benignius interpretandum est. In penal cases, the more favorable interpretation is to be made.

In pais. Out of court.

In paper. Not yet in the record. (*See* 3 Bl. Comm. 406; Ballantine.)

In pari causa.

In pari causa. In a similar case, under like conditions

In pari causa potior est conditio possidentis. When two parties have equal rights, the advantage is in favor of the one having possession.

In pari delicto. In equal fault.

IN PARI DELICTO The rule is well settled, as to executed contracts, that if the parties be in 'pari delicto' they will be left where they have placed themselves. They do not come into court with clean hands If, however, one party is but an instrument in the hands of another, then they cannot be said to be in *pari delicto* In Story's Eq Jurisprudence, vol 1, 300, he says. "And, indeed, in cases where both parties are in *delicto*, concurring in an illegal act, it does not always follow that they stand in *pari delicto*, for there may be, and very often are, very different degrees in their guilt One party may act under circumstances of opposition, oppression, hardship undue influence, or great inequality of condition or age, so that his guilt may be far less in degree than that of his associate in the offence'

In pari delicto potior est conditio defendentis (et possidentis), Where both parties are equally in fault, the condition of the defendant is preferable

In pari delicto potior est conditio possidentis Where the parties are equally in the wrong, the condition of the possessor is better Where a certain person transferred her land to a near relative *benami* in order to defeat her creditor and continued in possession of the same for a long period and subsequently the heirs of the *benamidar* turned her out of possession by asserting their rights and the rightful owner brought a suit for a declaration of her title and for possession and mesne profits, *held* that the original transfer was tainted with fraud and that the maxim *in pari delicto potior est conditio possidentis* would apply to the case *Held* on the facts that the original owner was entitled to the possession of the property, for damages and mesne profits but not for a declaration of her title to the land. (4 Rang. 429= 99 I C 949=A I R 1927 Rang 86 *See also* 30 Bom L R 1539, 59 I C 285=16 N L R 129, 4 Luck 669= A.I R 1930 Oudh 196, 1936 R.D 474)

In pari materia On the same subject

IN PARI MATERIA. Statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things.

"The phrase 'statutes in pari materia' is applicable to private statutes or general laws made at different times, but in reference to the same subject Thus the English laws concerning paupers and their bankruptcy act are constructed together as if they were one statute, and as forming a united system.

Statutes that are in pari materia are to be construed as though they had originally constituted one enactment.

In pari passu On equal footing.

In patiendo. In suffering, in permitting.

In payment of. A receipt on the foot of an account, reciting that certain notes are received 'in payment of the above account' construed not to mean that the notes were taken in absolute payment thereof, but only to mean that the proceeds of the notes would be applied on the account when collected.

In promptu

In pendente. In suspense.

In perpetuity Maintenance grant—Grant made with the use of the words "*as proprietor*," "*for ever*" "*in perpetuity*." "*generation after generation*" (dawam wahamesha naslan bad naslan batnan ba batanan ba ikhtiar malikana) effect of. [3 O.W N 102 (Sub)= 97 I C 897=1926 Oudh 561.]

In perpetuum For ever.

In perpetuum rei testimonium In perpetual testimony of the thing

In person. Without counsel in the conduct of one's action or defence

In personam Against the person

Proceedings in personam 'are proceedings which seek the recovery of a personal judgment'

An action *in personam* is distinct from a personal action, both in the sense in which that term is used in the maxim 'actio personalis moritur cum persona," and in its sense at common law, which was an action to recover personal property or to enforce a contract or recover damages for its breach, or to recover damages for a tort (3 Black Com 11)

In pios usus For religious use

In place (*In Mining Law*) Rock or matter is said to be "in place" when it remains as nature placed it (i e) unsevered from the circumjacent rock or matter

In plena vita In full life.

In pleno lumine In full light, in day time.

In posse In possibility; in potentiality Possibility of being, as opposed to in esse in a state of being A child en ventre sa mere is a child in posse, but the law regards it as in esse for all purposes which are its benefit. (*Doe d, Clarke* v. *Clarke*, 1795, 2 Black H 399, 3 R R. 430).

In posterum In future.

In praesenti. At present, to take effect at once

In praesentia In the presence

In praeparatoriis ad judicium favetur actori. In things preparatory before trial, the plaintiff is favored.

In praesentia majoris cessat potentia minoris. In the presence of the major the power of the minor ceases.

In praesentia majoris potestatis, minor potestas cessat In the presence of the superior power, the minor power ceases

In pretio emptionis et venditionis naturaliter licet contrahentibus se circumvenire. In the price of buying and selling, it is naturally allowed to the contracting parties to overreach each other.

In primis. In the first place, at first.

In principio In the beginning.

In promptu. 'Impromptu; in readiness.

In proportion to.

In proportion to 'In proportion to its value' in an Act requiring that all property shall be taxed in proportion to its value, only means that no species of property from which tax may be collected shall be taxed higher than any other species of property, and does not operate to preclude the Legislature from exempting certain property from taxation

In propria causa nemo judex No one can be judge in his own cause

In propria persona In one's own person or behalf

In proximo gradu In the next, or nearest, degree

In quo quis delinquit, in eo de jure est puniendus In whatever thing one offends, in that he is rightfully to be punished

In re In the matter, in the transaction

"This phrase is much used in certain legal proceedings, particularly in Chancery and bankruptcy matters which are not begun by action in the ordinary way, to indicate the particular estate or matter which is the subject of litigation"

In re aliena In another's affair or property

In re communi neminem dominorum jure facere quicquam, invito altero, posse One co-proprietor can exercise no authority over the common property against the will of the other

In re dubia benigniorem interpretationem sequi, non minus justius est, quam tutius In a doubtful case, to follow the milder interpretation is not less the more just than it is the safer course

In re dubia magis infitiatio quam affirmatio intelligenda In a doubtful matter, the negative is to be understood rather than the affirmative.

In re lupanari, testes lupanares admittentur In a matter concerning brothel, prostitutes are admitted as witnesses.

In re pari, potiorem causam esse prohibentis constat Where a thing is owned in common, it is agreed that the cause of him prohibiting (its use) is the stronger

In re propria In one's own business

In re propria iniquum admodum est alicui licentiam tribuere sententiae It is extremely unjust that any one should be judge in his own cause

In rebus In matters, in transactions

In rebus manifestis errat qui actoritates legum allegat, quia perspicua vera non sunt probanda He errs who alleges the authorities of law in things manifest, because obvious truths need not be proved

In receipt "The expression "in receipt" of the rents and 'profits of any land' or estate when used in an Act in conjunction with the words 'in possession of the land,' denote, not the receipt of rent from a tenant but, the receipt of the actual proceeds of the land (*Sug R P, Statutes*, 2 ed, 48. *Grant* v *Ellis*, III L J Ex 228)

"In relation to" *See* 101 I C 708=1927 Cal 478

In satisfactionibus.

In rem. Against the King, against the property, not against a person

This term is derived from the Roman law, but is not used in English law in precisely the same sense as in that law Indeed, Bracton, limits proceedings *in rem* to actions to obtain possession of *res* by which he understood real actions, (*Bigelow* on Estoppel 42, 43)

A proceeding *in rem* is a proceeding instituted against a thing, and not against a person

A proceeding *in rem*, in a strict sense, is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants but in a larger and more general sense the term 'proceeding in rem' is applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein

A judgment *in rem* is generally said to be a judgment declaratory of the status of some subject-matter, whether this be a person, or a thing Thus the probate of a will fixes the status of the document as a will, so a decree establishing or dissolving a marriage is a judgment *in rem*, because it fixes the status of the person A judgment or forfeiture against specified articles of goods for violation of the revenue laws is a judgment *in rem* In such case the judgment is conclusive against all the world, and, if the expression 'strictly in rem' may be applied to any class of cases, it should be confined to such as these Chief Justice Marshall says 'I have always understood that where a process is to be served on the thing itself, and where the mere possession of the thing itself, by the service of a process and making proclamation, authorizes the court to decide upon it without notice to any individual whatever, it is a proceeding *in rem*, to which all the world are parties * * * The claimant if a party, whether he speaks or is silent, whether he asserts his claim or abandons it' But usage has distinguished as proceedings *in rem* a class of cases in which, while the seizure of the thing will be in aid of jurisdiction, yet it is essential that some form of notice be given to the particular person or persons. The proceeding thus assumes a phase of actions *in personam*, and a judment will not be binding upon any one who was not before the court

In render Such as the tenant had to yield to the landlord, *e g*, rent

In republica maxime conservanda sunt jura belli In the state, the laws of war are to be especially observed

In restitutionem non in paenam, haeres succedit. The heir succeeds to the restitution, not the penalty

In restitutionibus benignissima interpretatio facienda est. The most favourable construction is to be made in restitutions

In reum natura In the nature of things.

In rixa. In quarrel

In satisfactionibus non permittitur amplius fieri quam semel factum est In payments, more must not be received than has been received once for all.

In scaccario

In scaccario. In the exchequer

In scrinio judicis. Among the judge's notes, *i e*, not in the record

In session. This term expresses that the judge is on the bench in the discharge of judicial functions and that the court term has not yet adjourned.

The words 'while the court was 'in session' expressed not only the idea that at the time the judge was sitting on the bench and engaged in the discharge of official functions, but was also open to the construction of meaning that the court had convened for a term and not adjourned

In so doing The phrase 'in so doing,' as used in an indictment that the defendant committed an assault with the intent in so doing of committing murder, is equivalent to the words 'then and there,' and means that the defendant then and there made an assault with the intent to commit murder.

In solido As a whole, for the whole sum, jointly and severally.

Pothier, in his treatise on Obligations (Paragraph 261), says "An obligation is contracted *in solido* on the part of the debtors when each of them is pledged for the whole, but so that a payment by one liberates them all'

In solidum As a whole, for the whole

In solo In the soil, on the land.

In solutum In payment

In specie In kind

In statu quo In the same state, without change

'In statu quo' means being placed in the same position in which the party was at the time of the inception of a contract which is sought to be rescinded

In statu quo ante bellum In the state in which it was before the war.

In statu quo ante fuit In the state in which it was before.

In stipulationibus cum quaeritur quid actum sit, verba contra stipulatorem interpretanda sunt In contracts, when the question is what was agreed upon, the terms are to be interpreted against the party offering them

In stipulationibus id tempus spectatur quo contrahimus In agreements, reference is had to the time at which they were made.

In stirpes. According to roots

In store The expression 'in store' as used in an instrument reciting that the person signing the instrument received of G so many bushels of wheat in store, is to be construed as showing a contract of bailment, and not a sale of the wheat

In stricto jure In strict law.

"In such a place" "If one grant all his goods *in such a place*, by this grant nothing doth pass but the goods that are in such a place at the time of the grant, and not other goods that shall be there afterwards" (*Touch* 98).

In the custody of any Court.

In such case The words 'in such case' with which S. 74 of Registration Act opens, are equivalent to saying, "when, under the last preceding S 73, an application has been presented to the Registrar within thirty days after the making of the order of refusal by the Sub-Registrar." (24 A. 402=22 A.W. N. 99)

In summa On the whole

In suo quisque negotio hebetior est quam in alieno Every one is more dull in his own business than in that of another

In superficie Superficially.

In suspenso In suspense.

In terrorem In terror, as a threat.

In terrorem populi To the terror of the people.

In testamentis plenius testatoris intentionem scrutamur In testaments, we should seek diligently the will of the testator 'In the (construction of) wills we are chiefly to seek for the intention of the testator' (*Trayner Leg Max*)

In testamentis plenius voluntates testantium interpretantur In testaments, the will of the testator should be liberally construed

In testamentis ratio tacita non debet considerari sed verba solum spectari debent, adeo per divinationem montis a verbis recedere durum est A maxim meaning "In wills an unexpressed meaning ought not to be considered, but the words alone ought to be looked to, so hard is it to recede from the words by guessing at the intention" (*Black L Dict*)

In testimonium In testimony or witness whereof.

"In that behalf" is a phrase of wide signification' (*per* Pollock, *C B*, *Garby* v. *Harris*, 21 L J. Ex 160)

"In the absence of a contract to the contrary," in S 82 of the Transfer of Property Act do not necessarily refer to a contract to the contrary executed at the time of the mortgage

A covenant contained in a sale-deed namely, "If any dispute arise through me in respect of the land, I shall have it settled," is not a contract to the contrary so as to exclude a covenant of title (22 Ind Cas 42)

In the book As used in the recording Acts, is a term meaning in the records (*Handley* v. *Howe*, 22 Me 560, 563, *Ame*)

In the course of business The expression "in the course of business" in S. 32 (2) of the Evidence Act, means in the way that business (which may be of a purely private or even trivial nature) is conducted. It has no connection with a course of business, which suggests a series of acts of business; the section would therefore apply to an act or of acts of a simple and private nature. (167 I C 30=44 L.W 681=A.I.R. 1937 Mad 19.)

'In the custody of any Court. The words 'in the custody' of any Court imply actual custody. (7 M. 47.)

In the event

In the event. 'In the event, however,' as used in a will bequeathing a sum of money to the children of testator's sister, providing that 'in the event, however,' of the death of such children, refers to a future, not a past, event.

In the first place Such phrases as "In the first place" used in a will "are merely introductory words of form, denoting the commencement of the testamentary act, or, if they have any meaning only, denote the order of payment, not the fund out of which payment is to be made" (2 Jarm. 588), nor do they imply priority of payment (*Nash* v *Dillon*, 1 Moll 236 2 Jarm 587-590) As to the meaning of the phrase "In the next place", *see also* Re *Hardy*, 50 L J Ch. 241, *Stroude*)

In the form A statutory permission that a thing or matter shall be "in the form" or to the "effect" or "to the like effect" prescribed means that the form must be strictly and literally followed (*Henry* v *Armitage*, 53 L J Q B 111).

"In the neighbourhood" in S 28 of Bom. Act VII of 1867 do not exclude the operation of the Police at or within the places of public worship for the purpose of preserving order and regulating traffic (7 B H C Cr 2)

In the ordinary course of business in S 32 (2) of the Evidence Act (1 of 1872) indicates the current routine of the business which was usually followed by the person whose declaration it is sought to introduce. (11 I C 854=4 Bur L.T 185)

This phrase indicates the current routine of business which was usually followed by the person whose declaration it is sought to introduce and does not apply to any particular transaction of an exceptional kind such as the execution of a deed of mortgage but to the business or professional employment in which the declarant was ordinarily or habitually engaged (1 I C 376 (377)=13 C W.N 71)

"In the presence of" In the sight of See *Hughes* v. *Com*, 41 S W 294, 296, 19 Ky L.Rep 497.

In the second instance Where an indorser indorsed a note, 'to be liable in the second instance,' such words should be construed to make a suit against the maker of the note a condition precedent to the indorser's liability

"In the service and pay of Government" *See* 28 C 344=4 C W N. 798.

In the vicinity of Etymologically and by common understanding, this phrase means "in the neighbourhood." In *Langley* v *Barnstead*, 63 N H 246, 247, the court said, "Whether a place is in the vicinity or the neighbourhood of another place depends upon no arbitrary rule of distance or typography"

"In the way of school discipline." *See* 5 C.P.L. R.Cr. 31

In toto. Altogether, wholly; entirely.

In toto et pars continetur. A maxim meaning "A part is included in the whole" (*Bouvier L. Dict.*).

In traditionibus chartarum non quod dictum sed quod factum est inspicitur. A maxim meaning

Inaam

in the delivery of deeds not what was said but what was done must be looked at

In transit. Goods are 'in transit' so long as they are on their passage, and until they come into the actual or constructive possession of the vendee, or of some person acting for him

Opium which is being carried about from place to place in a boat is no doubt "in transit" although the boat may be temporarily anchored or otherwise fastened. [2 I C 546=5 L B R. 56 (F B)]

In transition In transit, on the way or passage, while passing from one place to another

In transitu. (*See* Stoppage in transitu) During the transit, or removal from one place to another (*Bouvier L Dict*)

In trust. The use of the term 'in trust in a will rebuts the idea that an absolute estate was intended to be granted to the person mentioned.

In utero matris In the mother's womb

In ventre sa mere In the mother's womb A child *in ventre sa mere* is to be considered as born. [10 Lah 713=116 I C. 545=1929 L. 254 (2)]

In veram quantitatem fide jussor teneatur, nisi procerta quantitate accessit Let the surety be holden for the true quantity unless he agrees for a certain quantity

In verbis non verba sed res et ratio quaerenda est In words not the words, but the thing and the meaning is to be inquired into

In view of 'In view of all the circumstances,' as used in a definition of ordinary care as that degree of care which ought reasonably to be expected from a person of ordinary prudence *in view of all the circumstances*, is not substantially different from 'under like circumstances.'

In vita In life

In vocibus videndum non a quo sed ad quid sumatur In discourses, it is to be considered not from what, but to what, it is advanced

"In writing" 'Duly made *in writing*,' means duly signed by the contracting party, (*per* Jessel *M R. Firmstone's Case*, 44 L J Ch. 618, L R 20 Eq 521).

Inaam (*II*) A gift, a benefaction in general a gift by a superior to an inferior (26 M.L J. 99, 1 L. W 197) *Sanadi-Inam* A grant emanating from the ruling power of the time of the grant, free from all Government exactions, in perpetuity and validified by Sanad or official deed of grant A cash allowance paid out of the land revenue generally in return for specific duties

Devasthanam Inams are lands assigned for the support of religious establishments, whether Hindu or Mohammadan, and for the keeping up of temples, shrines, mosques

Dharmadaya Inams are lands appropriated to religious persons, as an act of charity, by the heads of the Government, and by the village committees, some of these are of considerable antiquity, and are frequently confirmed by Danapatras, grants inscribed on copper plates.

Inams.

Dahangi Inams, numerous but limited assignments to a variety of village artificers and servants, musicians, dancers, and the family of individuals who have lost their lives in the service of the state or the village

Bedıga or Kattubadi Inamu (*Tel*) An assignment of land at an assessment, which varies with the produce

Bil-makhta-inamu. (*Tel*) A grant of land at a fixed assessment

Sarva-dumbala inamu. (*Tel*) A grant of land wholly rent-free.

Goan-nisbat-Inam. (*Mar*) A mortgage, or grant of land made by the villagers to liquidate, a debt incurred by the village for public expenses

Jangam Inam Land granted by villages inhabited by lingaits to their priests (*Wil Gloss* 218)

Srotriyadınamu (*Karn*) Grant of land at a fixed assessment.

Terige-illada-inamu (*Karn*) An allotment of land rent free.

Watandari Inams or assignments to the village officers and servants Besides these classifications, which are especially applicable to the Maratha countries, a variety of terms occur in relation to the designation of Inams, either of local or general applicability (*Wil Gloss* 218)

Inaam (*H.*) A gift, a benefaction in general, a gift to a superior to an inferior In India, and especially in the south, and amongst the Marathas, the term was especially applied to grants of land held rent-free, and in hereditary and perpetual occupation the tenure came in time to be qualified by the reservation of a portion of the accessible revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment, the term was also vaguely applied to grants of rent-free land, without preference perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities and are again distinguishable by peculiar reservations, or by their being applicable to different objects

Sanadi-inam is a grant emanating from the ruling power of the time of the grant free from all government exactions, in perpetuity, and validified by Sanad, or official deed of grant. it usually comprises land included in the village area, but which is uncultivated, or has been abandoned; and it is subject to the Haks, or dues of the village functionaries It may be granted sometimes with a reservation of a half, a third, or a fourth of the Government claim known as Inam-nimai, I. tijai and I chauthai (*Wil. Gloss* 217)

Gan-nisbat-inam Lands granted rent-free by the village out of its own lands, the loss or deduction thence accruing to the government assessment being made good by the village community. [*Wil Gloss See also* 36 Bom 639=39 I A 202=23 M.L J. 383 (P.C.).

Karnam service inam. *See* 52 Mad 6=1929 Mad 93.

Kulkarni service inam, 31 Bom.L.R. 935 (F.B.).

Private service inam, public service inam. 117 I. C. 292=1929 M. 399.

Inability.

Khushbas inam 113 I C. 254.

Vadilki inam, *Kadim* inam, 113 I C 620.

Shrothriem. 56 I.A. 146=52 M. 453=56 M.L.J. 730 (P C.).

Shankalap and Marwat inam in Oudh 3 Luck. 636

The phrase *"Inam"* lands in the Madras Estates Land Act (I of 1908), S. 3, Cl 2 (*d*), is also applicable to a few acres in a whole village, and there is nothing to show that the whole village should necessarily have been granted in inam. (23 I C 859)

There is no presumption of law that an *inam* grant of a village is *prima facie* a grant of the land revenue only The terms of the grant, and whole circumstances connected therewith have to be looked into. [39 M L J. 629=12 L W 576=61 I C 597=28 M.L.T 389]

INAM DISTINGUISHED FROM SARANJAM 53 B 12=115 I C 369=1929 B 14.

INAM—'MAJOR' AND 'MINOR' Technically, a major inam is a whole village or more than one village, and a minor inam is something less than a village [63 M. L.J 649=1932 P C 238 (P C)]

INAM TITLE DEEDS do not confer title if none such existed before (30 M L T 334=70 I C 642)

Inamdar. Holder of any thing as a favour, the holder of an inam. A person in the possession of rent free, or favourably rented lands or in the enjoyment, under the assignment thereof, of the Government dues of a particular portion of land, granted for charity, etc.

Inaamat (*H.*) A gift, a benefaction, an assignment of rent-free land (*Wil Gloss* 218)

Inaam-i-altamgha (*H*) A grant of rent-free land under royal seal (*Wil Gloss* 218)

Inaam Izafat A stipendiary grant. Lands or the produce thereof, granted free from tax in remuneration for services rendered.

Inaam i-kanungo (*H.*) An assignment of rent-free land to the village accountant. (*Wil. Gloss.* 218.)

Inaam-patta (*Mar*) A deed of grant, a document conveying an assignment of rent-free land. (*Wil Gloss* 218)

Inaam sanad A patent or written authority for holding Inaam lands.

Inability Inability is defined as the state of being unable, physically, mentally or morally, want of ability, lack of power, capacity, or means, and, as used in reference to the power of a Deputy Commissioner during the absence of inability of the Commissioner to transact any ordinary duties of the Commissioner, is not confined to simple physical inability to examine the bill and sign the approval, but may depend on the necessities growing out of such pressure of other official business as renders it impossible for the commissioner to attend to all the work of the office.

The term 'inability,' as used in a contract for the employment of a teacher, providing that, if by his inability or negligence the interests of the school suffer, the school board may annul the contract, means the same as 'incompetency.'

Inability

Inability to maintain itself *The inability to maintain itself* in S 488, Criminal Procedure Code (Act V of 1898) referred to in the section relates to the absence of sufficient maturity of physical and mental development in the child rendering it in consequence unable to earn its living by its own efforts and does not refer to inability through poverty or absence of means [21 I C 469 (470)]

'Inability to pay' and 'insolvency' are synonymous, but solvency does not mean ability to pay at all times, under all circumstances, and everywhere on demand, nor does it require that a person should have in his possession the amount of money necessary to pay all claims against him Difficulty in paying particular demands is not insolvency

INABILITY TO SUE AND DISABILITY TO SUE, distinction between *See* 6 Bom L R 639, 29 B 68

Inaccessible Whether or not a witness beyond the jurisdiction of the state is 'inaccessible,' in the sense in which that word issued in Acts relating to the procuring of his evidence is, in each particular case, a question for determination by the trial Judge in the exercise of a sound discretion

Inadequacy Inadequacy of remedy at law to entitle a party to equitable relief, exists where the case made demands preventive relief, as, for instance, the prevention of multiplicity of suits, or the prevention of irreparable injury The mere assertion that the apprehended acts will inflict irreparable injury is not enough, but facts must be alleged from which the Court may reasonably infer that such would be the result

The expression 'inadequacy of remedy by damages' means that the damages obtainable at law are not such compensation as will in effect, though not *in specie*, place the parties in the position in which they formerly stood

Damages are called inadequate within the definition of irreparable injury, when those which can be obtained at law are not such as will compensate and place the parties in a position in which they formerly stood

Inadequacy of price Inadequate price is a term applied to indicate a want of sufficient consideration for a thing sold, or such a price as under ordinary circumstances would be insufficient (*Bouv Law Dict*)

The 'inadequacy of price,' which of itself will justify a Court in setting aside a transfer of realty is defined as an inequality so strong, gross, and manifest that it must be impossible to state it to a man of common sense without producing an exclamation at the inequality of it

Inadmissible Not receivable as evidence

Inadvertence 'Inadvertence' is a lack of heedfulness or attention

'INADVERTENCE' AND 'MISTAKE' are not convertible terms (per *Smith, L J* in *Re Piers*, 1898, 1 Q B 631).

The word "means, "the opposite of deliberate action, and does not include a deliberate election founded on misinformation as to the facts It means that the doer never really meant to do what he did, he was not aware of what he was doing" "per *Wright, J* Lb , approved on appeal, 1898, 1 Q B 627, 67 L J. Q.B 519)

Inauguration.

Inakkumuri (*Mal*) Same as Enak (*Sun Mal. Man*) There are two kinds of deeds of this denomination A mortgagee making over land to another person in mortgage gives him an Inakkumuri, or certificate that he has received a sum of money from the second mortgagee and has made over the land to him and calls upon the Janmi to confirm him in the same tenure which he himself possessed If this certificate be shown to the Janmi, he has a right to demand Sakshi for the renewal of the deed, but the second mortgagee often withholds the production of the deeds in order to avoid payment of the renewal money That is also called an Inakkumuri which a Janmi gives to a mortgagee when he has sold the Janmam right of the mortgaged land to a third person In it he refers the mortgagee to the purchaser for the future responsibility for the Kanam money (*Log Mal Man*)

Inalienable. (In a gift to a married woman) amounts to a restraint on anticipation (*Steedman* v *Poole*, 6 Hare, 193

Inam (*Inam, Enaum, &c*) [See *Inam*] (A favour of reward), a holding free of L R , often including the right in the land also tenures in Madras *See Bad Pow in* 81, 140 'enfranchisement' of inams. *See Bad Pow in* 82

In ambigua voce legis ea potius accipienda est significatio quae vitio caret, praesertim cum etiam voluntas legis ex hoc colligi possit (*Bac— Max Reg*, 3), In an ambiguous expression of law, that signification is to be preferred which is consonant with equity especially when the spirit of the law can be collected from that

In ambiguis orationibus maxime sententia spectanda est ejus, qui eas protulisset. (*D.* 50, 17. 96) In ambiguous expressions the intention of him who used them should especially be regarded.

In Anglia non est interregnum (*Jenk Cent* 205) In England there is no interregnum The sovereign always exists, the person only is changed.

Inangan (*Mal*) A kinsman. Members of the same caste between whom Sambandham is allowed are said to be Inangans

Inappreciable So "inconsiderable an amount as to be incapable of value or price" (per *Talfourd, J*, *Embrey* v *Owen*, 20 L J Ex 212, 6 Ex 353) (as) in the case of an inappreciable abstraction of the water of a stream or channel

Parke, B , said " The word 'unappreciable' is one of a new coinage, not to be found in Johnson's Dictionary, Richardson's or Webster's The word 'appreciate' first appears in the edition of Johnson by Todd, in 1827, with the explanation "To estimate and value" (per *Bowen, L J* , in *Brunsden* v. *Humphrey*, 14 Q B D 150).

Inarasi. Grain of an inferior quality separated from the good by winnowing

Inauguration The act of inaugurating or admitting a person to an office with solemnity, begin an undertaking, initiate public use of a building etc. with solemn ceremony The installation of a high officer of state.

Inauguration.

INAUGURATE, INITIATE We *initiate* when we do something which is of the nature of a first act in a series of proceedings, which are of a continuous character We *Inaugurate* when we formally or solemnly set such proceedings in motion or progress He who *inaugurates* must have personal or official weight that he may give sanction to what is begun He who *initiates* must have skill and tact that he may give to the proceeding the most suitable and favourable commencement (*Smith Syn Dis*)

Incapable The phrases 'incompetent,' 'mentally incompetent,' and 'incapable,' as used in the chapter relating to guardians of insane and incompetent persons, shall be construed to mean any person who, though not insane, is by reason of old age, disease, weakness of mind, or from any other cause, unable unassisted to properly manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

INCAPABLE. Wanting in capacity or ability

Incapable Incompetent *Incapable* is an absolute term, denoting inadequate mental, or physical, or moral power, or general unfitness or insusceptibility *Incompetent* denotes a specific and relative incapacity as to a given task, duty office, or undertaking An incompetent person, an incapable subject (*Smith Syn Dis*)

"Incapable of giving evidence" The incapacity to give evidence mentioned in S 33 of the Evidence Act need not be a permanent one, something short of permanent incapacity might satisfy the words of the section "incapable of giving evidence" 6 C 774= 8 C L R 124, (4 C L R 504, *Diss, see also* 21 Cal 955)

Incapable of working 'Incapable of working,' as used in the by-laws of a mutual benefit association providing a certain benefit to persons so disabled by sickness as to be incapable of working, applies to a person, though by unreasonable, excessive, and harmful effort and exertion he succeeds in working for two days, and then by reason thereof suffers a relapse.

Incapacity Incapacity to contract, either wholly or in part, may arise from a variety of causes These are summarised by Sir W Anson (Law of Contracts) thus (1) Political or Professional status, (2) infancy, (3) artificiality of construction, as in the case of corporations, (4) lunacy or drunkenness

INCAPACITY 'Incapacity,' as used in a will wherein testatrix left certain property to a nephew for the purpose of a collegiate education, with the declaration that, if through his own disinclination or incapacity he should fail to carry out the intention, then the money should pass to another, does not mean the death of the beneficiary while at college and before graduating Of course, his death would make him incapable of graduating; if it was meant that he would not graduate because he might die before doing so, and his death, which prevented him from graduating, whatever he might have done if his life had been spared, is not included in the word

Incarnate. Embody in flesh, the living embodiment of

Incestuous.

Incaute factum pro non facto habetur. An act done carelessly is held as not done.

Incendiary One committing or attempting arson or the burning of a building Burning of houses maliciously (*Tomlin's Law Dic*) guilty of malicious setting fire to property.

Incendiary shell is one filled with materials for causing fire instead of an explosion.

Incendium aere alieno non exuit debitorem A fire does not exonerate a debtor from a debt

Inception Initial stage

An inception of a note is when it was first given or when it first became the evidence of the existing contract It has no legal inception until it is delivered to some person as evidence of a subsisting debt Merely writing and signing a note, and retaining it in the hands of the drawer, forms no contract

Incest is sexual intercourse between persons who are within the prohibited degrees of affinity or consanguinity Incest may be defined as sexual commerce, either habitual or in a single instance, and either under a form of marrigge or without it, between persons too nearly related in consanguinity or affinity to be entitled to intermarry

INCEST The commonly accepted legal meaning of 'fornication' is illicit sexual connection between a man and woman as husband and wife, not being such The offence is limited to a man and single woman, thus creating a clear distinction between 'fornication' and 'adultery,' which latter crime can be committed only by a married man or with a married woman. The crime of rape may be committed upon an unmarried woman, not the wife of the defendant The crime of incest can be committed only with a woman of certain consanguinity or relationship with the man The crimes of incest, adultery, and fornication differ, therefore, only as to the persons, while the crime of rape differs from the other crimes against chastity both as to the person and the manner of sexual connection, as by force and against the will of the woman

The crime is incest only where the carnal connection is by mutual consent, and if the intercourse was accomplished by force the crime is rape, and not incest

"In the year 1650, when the ruling powers in England found it for their interest to put on the semblance of a very extraordinary strictness and purity of morals, Incest and wilful adultery were made capital crimes But at the Restoration, when men, from an abhorrence of the hypocrisy of the late times, fell into a contrary extreme of licentiousness, it was not thought proper to renew a law of such unfashionable rigour And these offences have been ever since left to the feeble coercion of the Spiritual Court, according to the rules of the Canon Law." (4 Comm 64· *Tomlin's Law Dic.*) Hammick on Marriage, Geary on Marriage, Phillimore, Eccl. Law, Browne and Powles on Divorce)

Incestuous The word 'incestuous' is an adjective, and qualifies a noun, whether it stands for a person or thing, and attaches to it the character of incest An incestuous person is one guilty of incest. An incestuous cohabitation or sexual intercourse is a cohabitation or sexual intercourse between persons

Incestuous

related within the degrees of consanguinity within which in the degrees of consanguinity within which marriage is prohibited So the term 'incestuous, is proper term to apply to a marriage which is contrac ted between parties related to each other in the degrees within which such contracts are prohibited by law.

"**Incestuous adultery**" defined Act 4, 1869, S. 3 (6)

INCESTUOUS ADULTERY Incest committed by a married person

"INCESTUOUS ADULTERY" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity. Act IV of 1869 (Divorce), S. 3, cl 6

Incestuous bastardy Bastardy in the commission of, or resulting from, incest.

'Incestuous connection,' according to Worcester means 'sexual intercourse between persons who by reason of consanguinity or affinity cannot lawfully be united'

Inch One-twelth part of a foot

Inchoate Imperfect incipient not completely formed incomplete, unfinish (as) incohate instrument, incohate contract

Inchoate Interest An inchoate interest in real estate is not a present interest therein, and therefore is not the subject of grant or conveyance

Incidence. Falling on or contract with a thing (as) Incidence of taxation

Incident That which follows the principal things '*Incident*' is a thing necessarily depending upon, appertaining to, or following another that is more worthy or principal Thus timber trees are incident to the freehold, and so is a right of way

"A thing appertaining to or following another as a more worthy or principal" (*Co Litt* 151*b*) Thus, a Court baron is incident to a manor, rent to a revision, and distress to rent

'Burrill's Law Dictionary' defines 'incident' as belonging appertaining to, following, depending upon another thing as more worthy * * * A thing may be necessarily or inseparately incident to another, or usually so' Webster defines it thus 'Something necessarily appertaining to or depending on another, which is termed the principal'

"INCIDENT OF CONTRACT INCONSISTENT WITH PROVISIONS OF ACT" S 1 of the Contract Act of 1872 provides —'But nothing herein contained shall affect any incident of any contract not inconsistent with the provisions of this Act" *Held* that a term of a contract could not be inconsistent with the provisions of the Act of 1872 if it was implied, while it would not be inconsistent if it were expressed in the contract. (18 I A 121=18 C 620 (630-1).

Incidental A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water course, or of a passage for light, air, or heat, from or across the land of another.

Incivile est.

Incidental business The necessary and incidental business referred to in the articles of association of a corporation, which state that its business shall be the manufacture of clothing of every description, and the sale of clothing so manufactured, and the transaction and sale of all other business necessary and incidental to such manufacture and sale of clothing, does not include a purely mercantile business, such as the buying and selling of ready-made clothing

Incidental expenses. The adjective 'incidental,' as used in appropriation bills to qualify the word "expenses," has a technical and well-understood meaning It is usual for administrative or executive body to enumerative the principal classes of expenditure which they authorize, such as hire, fuel, light, postage, telegram, etc., and then to make a small appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen, and which it would be useless to specify more accurately For such disbursements a round sum is appropriated under the head of 'incidental expenses'

The phrase 'incidental expenses,' when used in an appropriation will include expenses of postage, printing, and stationery

Incidental labor As used in mechanic's lien statutes, allowing liens for work and labor performed in the construction, repair, etc, of a building, and other work and labor incidental thereto, the term 'incidental' means labor directly done for, and connected with or actually incorporated into, the building or improvement It will not do to extend the protection given to services indirectly and remotely associated with the construction work

Incidental power An 'incidental power' is one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has a slight or remote relation to it.

Incidental purposes In a meeting of an Educational or School Board a tax for a certain amount was voted for 'incidental purposes,' in addition to one for teachers' wages and one for building a schoolhouse *Held*, that the words 'incidental purposes' should be construed as synonymous with, and to mean the same thing as, 'for repairs, fuel, and appendages,' as gathered from the context.

Incise Make a cut into (as) incised wound.

Incite Stir or urge to do an act.

To incite is defined by Webster as 'to move to action, to stir up, to arouse, to spur on' Thus an instruction containing the words 'requested, advised, and incited' was held equivalent to the statutory, words 'aid, abet, or procure'

Incitement. (In News papers incitement to Violence Act (VII of 1908), S. 3) means "to move to action, to stir up, to stimulate, to instigate or to encourage" [2 I C. 285 (286)=36 Cal. 405=13 C.W.N. 672=9 C L J 143=9 Cr L J. 545.]

Incivile Unjustly, improperly.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare. It is unfair, unless the whole of an opinion has been examined, to judge of any certain part of it.

Inclination

Inclination. Propensity, liking, or affection to or for a thing.

INCLINATION, TENDENCY, PROPENSITY, PRONENESS

Inclination is always at the command of the understanding; it is our duty therefore to suppress the first risings of any inclination to extravagance, intemperance, or any irregularity as *tendency* refers to the thing rather than the person, it is our business to avoid that which has a tendency to evil *Propensity* will soon get the mastery of best principles and the firmest resolution.

Inclination dip. The term 'inclination dip' is used in the mining law to designate a dip, 'as to its inclination from a perpendicular to a horizontal, as so many degrees from the perpendicular or from the horizontal. A vein is thus described as having a dip of 20 degrees, 30 degrees' etc

Inclose Webster defines inclosed' to mean 'surrounded shut in, confined on all sides'

'Inclose' and 'include' are words of common derivation, and have several common significations, of which one is 'to confine within'

Inclosed lands. Fenced lands, Lands which are actually inclosed within fences (*Tapsell* v *Crosskey*, 10 L J Ex 188) 'Inclosed,' when applied to lands, as defined by Webster, is 'separated from common grounds by a fence' Worcester defines it as 'parted off or shut in by a fence, set off, as private property' Inclosed lands, therefore, are lands surrounded by a fence.

Inclosure A fence, the extinction of common

'INCLOSURE' means a tract of land surrounded by an actual fence

An inclosure imports land inclosed with something more than the imaginary boundary line. There should be some visible or tangible obstruction, such as a hedge, fence, ditch, or something equivalent, for the protection of the premises against encroachment by cattle.

'INCLOSURE,' as used in a statute authorizing a person to impound any beast found in his inclosure causing damage, means more than the word close,' which embraces land possessed by a party, though inclosed only by imaginary lines 'Inclosure' signifies land inclosed with some visible and tangible obstruction, such as a fence, hedge, ditch, etc

"Includes" The word "includes" is a phrase of extension and not of restrictive definition. It is not equivalent to "means" "Include" is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the Statute, and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include It may be equivalent to 'mean and include," and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. 8 Bom L.R. 457. *See also* 16 Bom 537, 13 Bom.L.R. 494; 8 Cal. 534, 9 B.H.C R 99, 2 Mad 5

Webster defines the word 'include' as synonymous with 'comprise,' 'comprehend' or 'contain,' and

Incognito

gives this apt example. 'The word duty includes what we owe to God, to our fellow men, and to ourselves. It also includes a tax payable to the government'

The word "includes" in S 3 (a) of the Land Acquisition (I of 1894) shows that the Legislature intended to lump together in one single expression "land" several things or particulars such as, the soil, the buildings on it, any charges on it, and other interests in it, all which a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require (34 B 618=12 Bom L.R 34=5 Ind Cas, 621.)

De Souza, A J C—It is a well-known rule of interpretation that the word "includes" is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it, to add to the general clause a species which does not naturally belong to it. (*State* v *Montello Salt Co*, 98 Pac 549, *Rel on.* Per *Aston, A J C*—The phrase "shall include" must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (*Dilworth* v *Commissioner of Stamps*, (1899) A C 99, *Foll*) [111 I C 865=22 S L R 3.9=29 Cr L J 945=A I R. 1928 Sind 149 (F B)]

INCLUDE, in 24 and 25 Vict c 99 (Coinage Offences), S 1, "if not identical with, or put for," the word "mean" Per Lord Coleridge, *R* v *Hermann*, (1879), 4 Q.B D 288

"Include" is equivalent in meaning to "comprise" (*per* Stirling, J, Re Wells, 58 L J Ch. 840).

"Includes"—"Means" The use of the word "includes" shows, that the term indicated is not by any means intended to be exhaustive. When the Legislature intends to speak exhaustively it uses the word "mean" or ',means". *Balvantrav* v. *Purushotam*, 9 B H C R. 99

"Including all interests" A man who, being the owner of land, grants a lease in perpetuity, carves a subordinate interest out of his own and does not annihilate his interest, and the words "the entire zamindari including all interests therein" do not increase the corpus of the subject of the lease (36 Cal 1003 and A I R. 1917 P C 163, *Ref.*) [111 I C 345=48 C L J 268=55 I A 320=26 A L.J. 1233=33 C W N 7=28 M L W, 855=56 Cal. 1=A I.R. 1928 P. C 234=55 M L J 456 (P C.)]

Inclusio unius est exclusio alterius The inclusion of one is the exclusion of another.

Inclusive. Embracing · comprehensive.

Incognito (Dipl). A sovereign travelling incognito though he enjoys as sovereign the right of exterritoriality is entitled to be treated as private person, if he so wishes But when he chooses to put an end to such incognito, he is entitled to all the prerogatives of a sovereign. Thus the King of Holland in 1873 was condemned by a police Court in Switzerland to a fine, which was at once annulled on his making known his royal position (Rivier, Droit des Gens, Paris, 1896, 1, 418, *see also* Hall, Intern,

Incognito

Law, 5th ed, pp 170, 171, *Ency of the Laws of England*) In diplomacy a distinction is made between simple and strict *incognito*, the former being a diplomatic fiction used to dispense with ceremonial functions

In *Mighell* v *The Sultan of Johore*, who was sued in England under the *incognito of* Albert Baker [(1894) 1 Q B 149], an order for substituted service was set aside and all proceedings stayed, on proof by the defendant that he exercised in his country "without question the usual attributes," of a sovereign ruler It was contended that, inasmuch as a foreign sovereign may submit to the jurisdiction of the Courts of this country, and the Sultan of Johore had taken an assumed name and acted as a private individual, he had submitted to the jurisdiction, and could not claim his prerogative as a sovereign "I am of opinion," said Lopes, L J, "That no such inference can be drawn In my judgment the only mode in which a sovereign can submit to the jurisdiction is by a submission in the face of the Court, as, for example, by appearance to a writ That he intended to waive his rights by taking an assumed name cannot be inferred"

INCOGNITO Unknown, person whose name and identity is concealed, person with concealed name.

Incoherent Wanting cohesion or agreement, logically disconnected.

INCOHERENT INCONGRUOUS INCONSISTENT INCOMPATIBLE *Incompatible* is applied to the essential attributes of things It is reason which decides upon *inconsistency*, taste upon *incongruity*, experience upon *incompatibility*, and judgment upon *incoherency* (*Smith Syn Dis*)

Incolas domicilium facit Residence creates domicil.

Incombustible. Not capable of easily catching fire, not easily set alight

INCOMBUSTIBLE The words 'fire proof' and 'of incombustible materials' are often used in connection with houses that are not absolutely proof against fires, but are intended as referring to houses built of brick, stone, iron or other material, on the outside, so as to form barriers that will resist the action of ordinary fires

Incombustible material, in 18 and 19 Vict c 122 (Metropolitan Building Act), S 19, sub-S 1, was held to mean wholly incombustible, and not partly combustible and partly incombustible, however safe in fact as a roofing the material may be *Payne* v *Wright* (1892), 1 Q B 104 *See also* S 61 of the London Building Act, 1894 (57 & 58 Vict c ccxiii), also the Local Municipal Acts

"Income" defined. (*See also* Gross income, Source of income), Act 2, 1856, S. 3 (5), Income-Tax Act 1922

INCOME The return in money from business, labour, capital investments, gain, profit That which comes in to a person as payment for labour, or services rendered in some office, or as gain from lands, the investment of capital, etc.

'Income is defined as that gain which proceeds from labor, business, or property of any kind, the profits of commerce or business.'

Income

"INCOME" signifies "what comes in" (per *Selborne, C, Jones* v *Ogle*, 42 L J Ch 336). 'It is as large a word as can be used" to denote a person's receipts" (per *Jessel, M R Re Huggins*, 51 L J Ch 938) Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc A I R 1921 Mad 427 (S B) *Ref.* 124 I C 511=1930 M W N. 29=31 M L W 438=A I. R 1930 Mad 626=58 M L J 337. The term "income" signifies that comes in The entire income of land is "income" within the meaning of the Income-Tax Act In the matter of assessment of tax on income the Collector has power to decide what is the income and what are the outgoings which ought to be legitimately deducted 3 P L T 125=A I.R 1922 Pat. 361. The word "income" in the absence of any statutory definition means net income for the purpose of profession tax 130 I C 152=26 N L R 379=A I.R. 1931 Nag 45=34 C W N 887

Income, in the New Brunswick Act, 31 Vict c 36 S 4, must be construed "in its natural and commonly accepted sense as the balance of gain over loss" *Lawless* v *Sullivan*, (1881), 6 App. Cas 384 *Cf Commissioners of Taxes* v *Kirk*, (1900), App Cas 588, decided on the New South Wales Income-Tax Act, in S 53 of the Bankruptcy Act, 1883, is *ejusdem generis* with "salary," and does not include prospective personal earnings *Ex parte Benwell* (1884), 14 Q B D 309, *Ex parte Lloyd* (1891), 2 Q B. 231, *Ex parte Shine* (1892), 1 Q B 522, *Ex parte Roberts* (1900), 1 Q B 122 In the Income-Tax Acts, does not include the advantage of occupying a house *virtute officii*, unless the occupant has power to let the house *Tennant* v *Smith* (1892), App. Cas 150

As to the meaning of "Income" *See 27* M 547=14 M L J 410=26 N L R 379=1931 Nag 45=2 A.L.J. 568

"INCOME" IN THE INCOME-TAX Act connotes a periodical monetary return coming in with some sort of regularity from definite sources The source is not necessarily one which is expected to be continuously productive but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. [61 S L R 432=171 I C 375=A.I.R 1937 S 234]

INCOME IN THE MUNICIPAL ACTS. The word "income" which occurs throughout Sch (A) of the District Municipalities Act (IV of 1884), must be taken to mean "the net income" or profits derived from the business and not the gross income or receipts There is nothing in the context in Sch A to the Act or in any other part of the Act, which would lead to the conclusion that the word "income" is there used otherwise than its natural and commonly accepted sense as denoting the profits or net income derived from the business *27* M. 547. Income —Meaning—Net income or gross income. *See* 54 M L J 603 The word "income" in the absence of any statutory definition means not income for the purpose of profession tax. (26 N.L R. 379.)

'INCOME' AND 'PROFITS' DISTINCTION BETWEEN. In the wide sense, 'income' when contrasted with 'capital' means and includes not only income in its strict meaning, but also profits and gains. But in the strict sense, "income" as contrasted, not with 'capital' but with 'profits' or 'gains' means a periodical monetary return coming in, and accruing to the assessee inde-

Income

pendently, and not as the nett proceeds, of a business carried on by the assessee In this sense 'income' connotes incomings without regard to outgoings Profits are "the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of carrying those receipts" [11 Rang 521=148 I C 633=A.I R 1934 Rang. 27 (S B)]

Income Distinguished from 'profits' *See* 52 M 640=118 I C. 107=1929 M. 387=56 M L J 481 (F B.).

"Income or Profit" Profit or income can mean only the balance after deducting charges and losses and not mere gross receipts. (4 Bom L R 384)

Income "accruing" and "arising" Per *Cunliffe, J* —There is no real difference in law between the words 'accruing' and 'arising' the double expression connotes the source from which the right to obtain money springs The expression is used in contradistinction to the word 'received' 6 Rang 598 (F.B)

"INCOME OF PROPERTY" AND "BUSINESS"—Assessable under the category "Property" and "business" distinguished(55 Cal 1057=32 C W.N 413=1928 Cal. 456)

Income-tax "Income-Tax' is a tax on Income It is not meant to be a tax on anything else It is one tax, not a collection of taxes essentially distinct There is no difference in kind, between the duties of Income-tax assessed under one schedule and those assessed under another Schedule of the Act One man has fixed property, another lives by his wits, each contributes to the tax if his income is above the prescribed limit The standard of assessment varies according to the nature of the source from which Taxable Income is derived, that is all" (per *Ld Macnaghten, London Co.* v. *AG &* 70 L J Q.B 80 *See* Dowell, Income Tax Laws Highmore, Inland Revenue Regulation Acts, Peacock, Income Tax Acts, Pratt Income Tax Buchan, Taxation of Foreign Income, 1905 Indian Income-Tax Act, Rules and Manual

Income-tax has always been regarded as a typical example of a direct tax There is a marked distinction between a tax on gross income and a tax on income which for taxation purposes means gains and profits There may be considerable gross revenues but no income taxable by an income-tax in the accepted sense. [111 I.C. 216=A I R 1928 P C 282 (P C)]

A second income-tax cannot be imposed though a tax on professions, trades or callings can be imposed If the method of assessment in reality makes the tax one on income it is illegal and *ultra vires* even though it purports to be a tax on persons practising a profession or carrying on a trade or calling The tax which can be imposed without the sanction of the Governor-General in Council, on professions, trades or callings must be one which is not a second tax on the incomes of such persons, *i e* , there must be a flat rate imposed by the tax on each profession, trade or calling, or rather on all persons practising a particular profession or carrying on a particular trade or calling. (9 Lah. 340=29 Punj.L.R. 177=106 I C 882 =A.I R. 1928 Lah. 53.)

"Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5 Act XI of 1922 (Income tax), S. 2, Cl 7.

Incontestable.

Incommodious In referring to an allegation in the pleadings as to causing nuisance by rendering the plaintiff's Coffee-house "Unhealthy and Incommodious" Brett, J , said,—"When we speak as lawyers we do not always use words in their ordinary and popular signification, and we shall not be doing violence to language by holding that 'Incommodious' sufficiently describes Annoyance by bad smells." (*Benjamin* v. *Storr*, 43 L J C.P 162, L R 9 C P 400 Stroude)

Incommodum non solvit argumentum An inconvenience does not settle an argument

Incompetency The state of being incompetent, inadmissibility as evidence

Incompetent Unqualified, ineligible, unfit, inadmissible as evidence

Incompetent—Incompetency One is incompetent who is wanting in the requisite qualifications for the business intrusted to him

Incompetent evidence. There is no material difference between 'incompetent' and 'not admissible,' under the rules of evidence

Incompleteness, in 5 & 6 Vict c 55 (Railways), S 6, is not confined merely to what is 'not finished," but may be used as to "anything imperfect or incomplete" *Att Gen* v *Great Western Rail Co* (1876) 4 Ch D. 739

Inconclusive Not conclusive, subject to disproof.

Incongruity The quality of not in keeping with a thing , or being out of place In *Rowles* v *Mason*, 1612, *2* Brownl 200 it was said that "tithes cannot be appurtenant to a manor, inasmuch that it is *incongruent*, and turbary cannot be appurtenant to land, in so much as it is *incongruant*, but it ought to be to a house"

Inconsistent When an Act says that its provisions are to be observed except so far as they may be "Inconsistent" with another or a previous statute, the Inconsistency connoted must be one "so at variance with the machinery and procedure indicated by the previous Act that, if that obligation were added, the machinery of the previous Act would not work" (per *Fry, L J.* in *Re Knight and Tabernacle Bg Socy*, 60 L J Q B 633, 65 L T 550)

Inconsistent—Inconsistency. Things are said to be inconsistent when they are contrary the one to the other, so that one infers the negation, destruction or falsity of the other

'Inconsistency' implies opposition, antagonism, repugnance One definition of 'inconsistency' given by the lexicons is repugnance, and one definition given of 'repugnance' is inconsistency, These words, though not exactly synonymous, may be, and often are, used interchangeably

Inconsistent Clauses Where there are two clauses in a deed, of which the latter is contradictory to the former, then the former shall stand (per *Nicholas, B* , in *Cather* v *Merrick*, 1657, Hard, 94, *In re Webber's Settlement*, 1850, 17 Sim. 222, 60 E.R. 1114)

Incontestable That cannot be disputed or contested. This word when used in respect of life policy

Incontestable.

does not make it valid if it is contrary to law, *e g* if the insured had no Insurable Interest in the Life (*Anctil* v. *Manufacturers' Life Insrce*, 1889, A,C. 604, 68 L J. P C 123, 81 L.T. 279.)

INCONTESTABLE The term 'incontestable' as used in a life insurance policy providing that the policy shall be incontestable, means indisputable, and amounts to a guaranty that no objection shall be taken to defeat the policy on the death of the person whose life is insured

Incontinence Unlawful indulgence in sexual intercourse

Incontinent—Incontinency. 'Incontinency' means want of restraint in regard to sexual indulgence

The term 'incontinent' when generally applied to a female, cannot be understood to mean anything else than that she is unchaste

Incontrovertible Webster defines 'incontrovertible' to mean too clear and certain to admit of dispute.

INCONTROVERTIBLE. INDUBITABLE UNQUESTIONABLE. INDISPUTABLE UNDENIABLE. IRREFRAGABLE *Incontrovertible* is employed of statements, views, or opinion evidence and the like, but not of simple facts, *Indubitable*, of facts and assertions, *unquestionable*, of propositions, *Indisputable*, of rights and claims also, *Undeniable*, of statements, *Irrefragable*, of evidence and arguments (*Sm Syn.*)

Inconvertible Paper Currency Paper money which cannot be exchanged on demand for cash to its full nominal value Such currency is generally at a discount in the market

Incorporalia bello non adquiruntur Incorporeal things are not acquired by war.

Incorporate. To form or unite into a corporation either by character or by statute

An Act which is repealed and in part re-enacted by a subsequent and consolidating Act is thereby "incorporated" with the latter Act (*Re Ellison*, 8 E. G. M. & H 62 25 L J. Ch 379)

Incorporated Company The term 'incorporated company' is defined as a corporation formed for the purpose of carrying on a business for profit, and, while it is true that an incorporated city or town is a corporation, yet it is not a company in any sense, so that a municipal corporation is not an incorporated company

Incorporated town An incorporated town is not a village, city, or township, within the meaning of a statute authorizing villages, cities, and townships to issue bonds in aid of a railroad.

The word 'town' is sometimes employed to designate a township, but the term 'incorporated town' is seldom, if ever, employed to embrace such a body.

Incorporation The act of incorporating.

INCORPORATION is an expression in the law principally used in the following connections.

BY ACT OF PARLIAMENT—as for a Company or Municipal Corporations

Incorporeal Hereditaments.

BY ROYAL CHARTER—as the Incorporation of the East India Company

OF COMPANY—by Registration under the Companies Act

OF RAILWAY COMPANY—or Tramway Company under the Railway or Tramway Act.

OF DOCUMENTS IN WILLS A will may consist of more than one document, to the original will duly executed may be attached one or more codicils, also duly executed, and the original will and the codicils must be read together The codicils are said to be incorporated with the will

Incorporation of company. The act or process of forming or creating a company

Incorporeal. Intangible, without substance, as a right. Without body, not of a material nature, the opposite of corporeal.

Incorporeal Chattel An 'incorporeal chattel means an interest arising out of personal property, as an incorporeal hereditament is an interest or right issuing out of land,

Incorporeal Chattels and Incorporeal hereditaments. Incorporeal chattels in English Law are such incorporeal things as pass on their owner's death according to the mode of devolution, which are characteristic of chattels that is to say to his executor, if he left a will, or if he dies intestate, to his administrator, not his heir The distinction between corporeal and incorporeal things, which was imported from Roman into English law, was not so much applied to chattels as to hereditaments. (*See* Williams, Pers. Prop, Law Quarterly Review ix,311, x 143, 303; xi, 64, 223, 238 *Ency of the Laws of England.*)

Incorporeal Hereditament Incorporeal hereditaments are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation A species of incorporeal hereditaments is that of ways, or the right of going over another man's ground

INCORPOREAL HEREDITAMENT Is "a right issuing out of a thing corporate, whether real or personal, or concerning or annexed to, or exercisable within, the same It is not the thing, corporate itself, which may consist in lands, houses, jewels, or the like, but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels" (2 Kerr's Blackstone 4 ed, 16 cited and applied by Cotton, L.J. *Re Christmas*, 55 L.J,Ch 880.)

Incorporeal Hereditaments and corporal hereditaments By incorporeal hereditaments is meant such immoveables as, besides passing to the heir and not to the personal representative, are also by their nature intangible and invisible, "Corporeal hereditaments are the substance which may be always seen, or always handled; incorporeal hereditaments are but a sort of accident which inhere in, and are supported by, that substance, and may belong or not belong to it without any visible alteration therein. Their existence is merely in idea and abstracted contemplation, though their effects and profits may be frequently objects of our bodily senses" (2 Black Com 20.)

Incorporeal property.

Incorporeal property Intangible property. choses in action.

Incorporeal real property. Incorporeal real property is defined to be the right issuing out of or annexed to a thing corporeal, and consists of the right to have some part only of the produce or benefit or the corporeal property, or to exercise a right or have an easement or privilege or advantage over or out of it.

Incorporeal thing. Incorporeal things are such as are not manifest to the senses, and which are conceived only by understanding—such as the rights of inheritance, servitudes, and obligations.

Increase Growth; enlargement, multiplication (of men, animals, plants), crops "All the Issue, Increase, and Progeny, of the sheep" does not, under the word "Increase," include additions to the flock made by purchase, but means the natural increase or offspring of the original sheep. (*Webster* v. *Power*, 34 L J P C 9, L R. 2 P C. 69).

Webster defines the word 'increase' as that which is added to the original stock by augmentation or growth, produce, profit, interest, progeny, issue offspring. The Century Dictionary defines it as the amount or number added to the original stock, or by which the original stock is augmented, increment, profit, interest, produce, offspring The Standard Dictionary defines it as (1) produce, as of crops, (2) increment by generation; progeny, (3) commercial or financial increment profit, interest. A chattel mortgage of sheep and the increase thereof therefore covers the wool thereafter shorn from such sheep (83 Fed 964, 974.)

To Increase, Grow We can increase a thing, though not properly grow a thing, because we can make it larger by whatever means we please but when it grows it makes itself larger. "Trade increases" bespeaks the simple fact of its becoming larger; but "trade grows" implies that gradual increase which flows from the natural concurrence of circumstances.

Increase, Addition, Accession, Augmentation *Addition* is to increase as the means to the end, the *addition* is the artificial mode of making two things into one: the *increase* is the result, when the value of one figure is added to another, the sum is *increased*, hence a man's treasures experience an *increase* by the addition of other parts to the main stock *Addition* is an intentional mode of increasing, *accession* is an accidental mode, one thing is an *accession* takes place of itself, it is the coming or joining of one thing to another so as to *increase* the whole. A merchant *increases* his property by adding his gains in trade every year to the mass, but he receives an *accession* of property either by inheritance or any other contingency. In the same manner a monarch *increases* his dominions by adding one territory to another, or by various *accessions* of territory which fall to his lot. *Augmentation* is another term for increase, which differs less in sense than in application, the latter is generally applied to all objects that admit such a change, but the former is applied only to objects of higher import or cases of a less familiar nature.

Increase of hazard. Some alteration or change in the situation or condition of insured property which tends to increase the risk.

Incumbrance.

Increment. Increase, profit (as) accretion to land, progeny of sheep etc.

"Increment to island,' defined. Ben Act 4, 1868, S. 2.

Incrementa. (*Lat.*) Additions.

Incrementum. Increase

Incriminate To charge with crime.

Incriminating circumstance One which tends to show that a crime has been committed or that some particular person committed it.

Incriminating Evidence "You must answer any questions that are not ensnaring questions." Wright. L.C J. Trial of the seven Bishops (1688), 12 How, St Tr 310.

Incroachment (*See also* encroachment) "An unlawful gaining upon the right or possession of another man As where a man sets his hedge or wall too far into the ground of his neighbour, that lies next to him, he is said to make encroachment upon him, and a rent is said to be encroached, when the lord by distress or otherwise compels his tenant to pay more than he owns, and so of services &c, (*Tomlin's Law Dic*)

Incubus. Nightmare, evil spirit visiting sleeper.

Inculcate. 'To inculcate' means to impress by frequent admonitions, to teach and enforce by frequent admonitions, to urge on the mind, and, as used in the charter of a corporation, stating that one of the objects and purposes of the corporation is to inculcate just and equitable principles of trade, it becomes the duty of the corporation to do some act to fulfil such purpose, and, where it has failed to do so, it cannot try a member for a proceeding inconsistent with the just and equitable principles of trade.

Inculpate. To incriminate, to accuse of crime or fault.

Inculpatory Incriminatory, Accusing.

Incumbent One authorised by law to discharge the duties of an office

Incumbent (*Eccles*). The word "incumbent" is a general word describing the holders of parochial benefices. It will include a rector, vicar, and perpetual curate. The word signifies "diligently resident." *See* Lind Prov.; Gibs. Cod; Ayliffe, Par., Watson Clergyman's Law, Degge, Parson's Counsellor, Phillimore, Eccl. Law, Cripps, Law of the Church and Clergy; Black Com, *Ency of the Law of England*).

Incumber-Incumbrance. 'Incumber' means to load with debts, as an estate is incumbered with mortgages or with a wife's dower, or charge for maintenance

"Incumbrance" defined (*See also* Registered and Notified Incumbrance) Act 19, 1873, S 3 (7); Act 17, 1876, S 2; Act 8, 1885, S. 161 (*a*); Act 17, 1887, S 3 (16); Bom. Act 6, 1888, S. 2 (1) (*e*)

Incumbrance. "A Claim, Lien, or Liability, attached to property'; (*per* Romer, L., *Jones* v. *Barnett*, 68 L J. Ch. 247, 248, 1899, 1 Ch. 620).

Incumbrance

Incumbrance or Encumbrance, is a burdensome and troublesome load, a burden, obstruction, an impediment, anything that impedes motion or action, or renders it difficult or laborious, clog, hindrance, check, a word used as synonymous with "obstruction;" a burden or charge upon property, a legal claim or lien upon an estate which may diminish its value, a liability resting upon an estate, anything that impairs the use or transfer of property; an embarrassment of an estate or property so that it cannot be disposed of without being subject to it As applied to an estate in land, it may fairly include whatever charges, burdens, obstructs, or impairs its use, or prevents or impedes its transfer.

An incumbrance is defined to be 'a burden on land' depreciative of its value, such as a lien, easement, or servitude, which, though adverse to the interest of the landowner, does not conflict with his conveyance of the land in fee

Incumbrances on lands are liens which, *proprio vigore*, bind the realty, which fasten upon and follow it into the hands of all purchasers, who take it with notice of their existence, and which may be enforced by a sale of the property. They are called 'incumbrances' because they rest as a burden on the title until they are removed by payment or release.

The word 'incumbrances,' when applied to incumbrances on real estate, includes mortgages.

A right of passage is included in the term "incumbrance" in S. 16 of the Land Acquisition Act 41 Bom 291=43 I A 310=21 M.L T 1=19 Bom L R 48=15 A L.J. 63=(1917) M W.N. 83=21 C.W N 447=25 C L J. 209=38 I.C. 923 (P.C). The word incumbrance as defined in the Gujarat Taluqdars Act VI of 1888, Act does not include a decree for the recovery of money from a Talukdar or from the estate of a deceased Taluqdar in the hands of his heir (1 Bom L R. 154)

Incumbrance. The "incumbrance" under S 71 of the Assam Land and Revenue Regulation includes not merely an incumbrance created by the previous holder, but also an incumbrance created by his acquiescence or laches either wilful or arising from negligence. 26 C. 194=3 C W.N 108 An exchange of land is an incumbrance within the meaning of S 161 of Act VIII of 1885 (Bengal Tenancy) 23 Cal 254, *See also* A.I.R. 1937 Cal. 36.

The purchase of a share of an estate does not amount to an incumbrance within the meaning of S. 54, Revenue sale law 7 C L.J. 20-21, 29 C. 223=6 C W.N 375

Incumbrance, in Ss 159 and 161 of the Bengal Tenancy Act (VIII of 1885) includes a statutory title acquired by adverse possession of the land of a defaulting tenant (14 Ind. Cas, 349 (350)=16 C.W. N 831)

"*Incumbrance*" means a charge upon or claim against land arising out of a private grant or contract. Pun Act XVII of 1887 (Land Revenue) S. 3, Cl. 16.

The term "*incumbrance*" used with a reference to atenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein. Ben. Act VIII of 1885 (Tenancy) S. 161.

Indebtedness.

"*Incumbrance*" includes a mortgage, charge, usufructuary grant and any interest other than that of an ordinary tenant or of an alienee or taluqdar, and "incumbrancer" means a person in whom an incumbrance vests; Bom Act VI of 1888 (Guzarat Taluqdars) S. 2, Cl. (*e*).

"Incumbrancer" defined Bom. Act 6, 1888, S 2 (1) (*e*). *Encumbrancer* is the holder of an encumbrance or charge on property.

Incur To become subject to or liable for by act or operation of law.

The word 'incur' means brought on.

INCUR The word 'incur' is an inappropriate one, in connection with the word 'obligation,' if the latter word is limited to a case of contract Men contract debts. They incur liabilities. In the one case they act affirmatively. In the other the liability is incurred or cast upon them by act or operation of law

Incurable disease or Achikitsya Roga. (*Hindu Law*). An incurable disease which operates to disinherit must be clearly shown to be one beyond the skill of medical science. Dropsy is not such an incurable disease. The original Sanscrit word is very expressive, "achikitsyaroga". Apart from what Hindu sages and law givers may have said on this matter, dropsy as such is not an incurable disease It is brought about by an unnatural collection of serous fluid in any cavity of the body, or in the subcutaneous tissues. It may be a temporary ailment yielding to treatment (4 Ind Cas. 786 (788) 5 N L R. 161)

Incurred The word "incur" is constantly used in the sense of meeting with, of being exposed to, of being liable to and in that sense a talukdar may be said to *incur* a debt. [(1887) 14 I A. 89=11 B 551 (565-6)=5 Sar. 16.]

Incurramentum. Liability to fine or amercement. Any penalty to which a person may be subject. The word is sometimes written as "incurrementum," and sometimes as "incurrimentum"

Incursion Invasion, sudden attack.

Indebitatus. (*Lat*) Indebted.

Indebtedness. The state of being in debt.

A party becomes indebted when he enters into an obligation to pay.

Ordinarily the term 'indebtedness' imports a sum of money arising upon a contract, express or implied. In its more general sense, it is defined to be that which is due from one person to another, whether money, goods, or services; that which one person is bound to pay or perform to another.

A bond is not an indebtedness or liability. It is only an evidence or representation of the indebtedness.

Indebtedness the condition of owing money; also the amount owed; something due to a person, of which payment is liable to be exacted; the state of being by voluntary obligation, express or implied, under legal liability to pay in the present or at some future time for something already received, or for some thing yet to be furnished or rendered It is a word of large meaning, and must be construed in every case in accord with its context. When used in its strict

Indebtedness.

legal significance, the word applies only to a pecuniary obligation arising from a contract, express or implied, but given its plainest and most literal signification, it includes every obligation by which one person is bound to pay money, goods, or services to another As the equivalent to "obligation," the term may include county warrants and bonds, or the bonds and mortgages of a corporation. As applied to municipal corporations, the term means what the corporation owes, irrespective of the demands it may hold against others.

INDEBTED, OBLIGED. *Indebted* is in reference to what may have been received from or done for us by others It is a much stronger term than *Obliged* *Obliged* always indicates some amount of favour received, and gratitude due, though the favour may be very slight, and cannot be very great; as, to be obliged by an act of substantial kindness, or a piece of common courtsey. (*Smith. Syn Dic.*).

Inde datae leges ne fortior omina posset. A maxim meaning, "Laws were made lest the stronger should be all powerful

Indebitum Not due, not owing.

Indecency. An act against good behaviour and just delicacy.

Any *indecent exhibition* in public is indictable as a public nuisance at common law, if calculated to cause scandal, shock modesty, or corrupt morals The place in which the indecency takes place must be a place of public resort, or even a place not open to the public in which a number of persons may be offended and several see it. (*R* v *Sedley*, 1663, 17 St Tr 155 M,; *R* v. *Webb*, 1848, 18 L J M C 39, *R* v *Thallman* 1863, 33 L J M C 58, *R* v *Holmes*, 1853, 22 L.J M.C. 142, *R* v *Harris*, 1870, L.R. 1 C,C.R 282, *R*. v. *Wellard*, 1884, 14 Q.B D. 63) 'Indecent' means that which is offensive to modesty and delicacy,and in the postal laws making indecent matter unavailable, was intended to exclude such matter as would disseminate immorality in any form.

INDECENT, IMMODEST, INDELICATE. *Indecency* and *immodesty* violate the fundamental principles of morality, the former however in external matters, as dress, words, and looks, the latter in conduct and disposition. A person may be indecent for want of either knowing or thinking better but a female cannot be immodest without radical corruption of principle. *Indecency* may be a partial, *immodesty* is a positive and entire breach of the moral law. *Indecency* belongs to both sexes, *immodesty* is peculiarly applicable to the misconduct of females. It is *indecent* for females to expose their persons. it is *indelicate* for females to engage in masculine exercises.

Indecent exposure. An exhibition of one's private parts.

The phrase 'indecent exposure of the person,' in its well-settled and accepted signification, means the exhibition of such parts of the person as modesty or a sense of self respect requires to be kept usually covered.

Indecent liberties. 'Indecent and improper liberties with the person of a child' means such liberties as the common sense of society would regard as indecent and improper, and to constitute the offence

Indemnitee

the liberties taken with the person of the child need not have been with her private parts.

Indecent publications. 'Indecent' is defined as 'not decent, unfit to be seen or heard' The word is used in such sense in an Act prohibiting the transmission in the mails of any obscene, lewed, or lascivilous book, pamphlet, etc, or other publication of an indecent character

Indecently The word 'indecently' has no definite legal meaning, and its meaning depends upon the connection in which it is used

Indecorous 'Indecorous' means impolite, or a violation of good manners or improper breeding. It is broad enough to cover the slightest departure from the most polished politeness to conduct which is vulgar and insulting. It does not necessarily, nor indeed generally, involve an insult

Indefeasible Not subject to being defeated or avoided *See* 27 A L J. 1111=1929 A 703.

Indefeasible estate in fee simple. The covenant that the grantor is seised of an indefeasible estate in fee simple is a covenant of perfect title

Indefeasible interest. 51 A. 629=119 I.C. 503= 1929 A. 300

Indefensus. (*Lat.*) Not defended, not denied. "One that is impleaded and refuses to make answer" (*Tomlin's Law Dict*)

Indefinite failure of issue Failure of issue generally, without any specification as to the time thereof

An 'indefinite failure of issue' means a failure of issue whenever it may happen, sooner or later, without any fixed, certain, definite period within which it must happen

Indefinite imprisonment A sentence to pay a fine, and 'that the sheriff do keep you in custody until the judgment of the court is complied with,' is not in itself a violation of a section forbidding 'indefinite imprisonment.' The sentence, with award of process, does not necessarily create any imprisonment, the custody adjudged under such sentence being a mode of executing the sentence, that is, enforcing the payment of the fine.

Indefinite punishment An uncertain punishment.

Indefinite Trust. A private, as distinguished from charitable, trust, must be certain and definite A trust in favour of charities, on the other hand, will be effectuated although the testator may have left uncertain the particular mode by which his intention is to be carried out.

Indefinitum equipollet universali The undefined is equivalent to the whole.

Indefinitum supplet locum universalis. The undefined supplies the place of the whole.

Indemnify. To save harmless, to secure against loss or damage. To secure against damage, loss, injury, or penalty. To compensate for loss or injury, to reimburse, to remunerate.

Indemnitee. One who is indemnified.

Indemnitor.

(ndemnitor The person who has given an indemnity

"**Indemnity**" defined. *See* Contract of indemnity

INDEMNITY. Formal legal acceptance of responsibility against damage or loss

Indemnity may be defined as the obligation or duty resting on one person to make good any loss or damage another has incurred while acting at his request or for his benefit

Indemnity springs from contract express or implied.

DISTINGUISHED FROM CONTRACT TO PAY A clear distinction is made also between bonds or contracts conditioned to pay a certain sum of money or to do a certain act and bonds or contracts conditioned to indemnify A cause of action accrues on a bond or contract to do a certain act as soon as there is a default in performance, whether the obligee or promisee has suffered damage or not, whereas in the case of a bond or contract conditioned to indemnify damage must be shown before the party indemnified is entitled to recover.

Indemnity and guarantee. Indemnity a contract, express or implied, "to keep a person who has entered, or is about to enter, into a contract of liability indemnified against the liability independently of the question whether a third person makes default or not (*per* Davey, L J , in *Guild* v *Conrad*, (1894) 2 Q B 896) , it differs from a guarantee which is" a promise to pay the creditor if the principal debtor makes default in payment"

Indents Orders for goods, orders from distant countries for goods specifying particulars and prices

Indenture A deed to which two or more persons are parties and in which they enter into reciprocal obligations (contrast with deedpoll) *Indenture* is a writing containing some contract, agreement or conveyance between two or more persons, being indented in the top answerable to another part, which hath the same contents. (*Co. Litt* 229 *Tomlin's Law Dic.*) *Indenture* implies that the document is a Deed, and sealed by the parties. (*Litt* S. 217)

Independent A politician who is independent of any party. Sometimes these independents themselves form a separate party.

Independent contract One, the enforcement of which does not depend upon the performance of any other contract

INDEPENDENT CONTRACTS. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations.

Independent contractor. One who, exercising an independent employment, contracts to do a piece of work according to his own methods, and without being subject to his employer's control, except as to the result of the work.

An independent contractor is one who renders service in the course of an occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished.

Independent covenants A covenant the enforcement of which is not dependent upon the performance of another covenant.

INDEPENDENT COVENANT. An 'independent covenant,' is where either party may recover damages from the other for the injury he may have received for a breach of the covenants in his favour, and it is no excuse for the defendant to allege a breach of the covenant on the part of the plaintiff.

'**Independent Deputy Collector**" defined Act 6, 1853, S. 5

An independent Deputy Collector is an officer appointed by Government to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not. Ben Act VI of 1853 (Rent Recovery), S 5

"**Independent Taluk**" defined Ben Reg. 19, 1793, S 7. *See also* 23 C W N. 149.

Independenter se habet assecuratio a viaggio navis The voyage insured is an independent or distinct thing from the voyage of the ship.

Indeterminate Uncertain, not fixed.

Indeterminate sentence An uncertain or indefinite sentence for crime

Index A table of references pointing out the volume and page where an article, subject or other matter may be found.

'Webster defines "India" 'to be that which points out, that which indicates or manifests. One great function of an index is to render the contents of a book readily accessible "

The proper office of the index is what its name imports—to point to the record.

Index animi sermo est Speech is the index of mind

"**India**" defined. (*See also* British India) 44-5 V c 58, S. 190 (21) , 47-8 V c 31, S. 18, 52-3 V. c 63, S 18 (5) , 53 V. c. 4, S. 9 (1) , Act 1, 1859, S 118 Act 20, 1863, S. 24 , Act 5, 1869, Pt. I, cl (*e*) (15) , (ins. Act 12, 1894, S. 4) , Act 10, 1897, S 3 (27) : Bur. Act 1,1898, S 2 , E. B & A, 1, 1909, S. 5; P Act, 1, 1898, S. 2, Bur Act, 1, 1898, S 2 (31) , E B. and A, Act 1, 1909, S. 5 (34) ; P. Act 1,1898, S. 2 (28) , U. P. Act 4, 1910, S 3 (15).

INDIA. For legal purposes the term "India" means (1) British India, and (2) territories of any native prince or chief under the suzerainty of His Majesty, exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General (*see* the English Interpretation Act, 1889, 52 & 53 Vict c. 63, S. 18, sub-s (5) and the Indian General Clauses Act (10 of 1897), S 3.

As to the laws in force in Native States, *see* Macpherson's British Enactments in force in Native States, 6 Vols., Calcutta, 1899-1900. For treatises with Indian Native States, *see* Aitchison's Collection of Treatises, Engagements, and Sanads relating to Indian and Neighbouring Countries, and for accounts

India.

of the relations between the British Government and these States from the historical and political point of view, *see* Lee Warner's Protected Native States of India, and Tupper's "Our Indian Protectorate." (*Ency. of the Laws of England*)

"India" shall mean British India, together with any territories of any Native Prince or Chief under the suzeraimty of Her Majesty exercised through the Governor-General of India or through any Governor or other officers subordinate to the Governor General of India Act X of 1897 (General Clauses) S. 3 (27)

The word "India" shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vict, c 106, entitled "An Act for the better Government of India" Act XX of 1863 (Religious Endowment) S. 24

"**India Act**" defined, P. Act 1, 1898, S. 2 (29).

India, British. See Int. Act, 1889 (c 63), S. 18 (4), (5).

India office. One of the Department of the British Government, the head of which is the Secretary of State for India

India rubber. 'India rubber, is a generic name for gums having qualities of caoutchouc.

"**India stock**" defined, 48-9 V. c 25, S 2.

INDIA STOCK. Is Stock created under the authority of a number of Acts of Parliament, and issued by the Secretary of State in Council of India charged on the Revenues of India.

Indiaman Ship in Indian trade

Indian Inhabitant of India. Pertaining to India.

Indian Christian. Member of the Indian Civil Service.

"INDIAN CHRISTIAN" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion, Act XXXIX of 1925 (Succession) S. 2 (*d*) Act III of 1913 (Administrator-General) S. 4, Cl 4

Indian civilian. Member of the Indian Civil Service

"**Indian Civil Service** The Civil department of the government of British India, embracing certain judicial, revenue, and secretariat officers, formerly known as the Covenanted Civil Service. See the Manual of Rules and Regulations applicable to members of the service, and the India Office List (*Annual*).

Indian Income-Tax. The expression "*Indian income tax*" means income-tax and super-tax charged in accordance with the provisions of the Income-Tax Act, Act XI of 1922 (Income-tax), S. 49, Cl 2 (a).

"**Indian Marine Court**" defined, Act 14, 1887, S 2 (1) (*h*).

"INDIAN MARINE COURT" means an Indian Marine Court held under the Marine Act; Marine Act (XIV of 1887) S. 2.

"**Indian Railway Company**" defined. (*See also* Railway Company). 48-9 V. c 25, S. 2, 57-8 V. c. 12, S. 2.

Indictment.

Indian rate of tax. The expression "*Indian rate of tax*" means the amount of the Indian income-tax divided by the income on which it was charged; Act XI of 1922 (Income-tax) S 49, Cl. 2 (*b*)

"**Indian Reserve Forces**" defined, Act 2, 1901 S. 2 (*d*).

"**Indian soldier**" means any person subject to the Indian Army Act, 1911, Act IV of 1925 (Soldiers Litigation) S 2, Cl (*b*)

"**Indian Waters**" defined, 47-8 V c 38, S 3.

The term "includes, the High Seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and all Territorial Waters between those limits'

Indicia Plural of Indicium, a symbol: token: sign or mark.

Indict To charge one with crime by indictment or information.

Indictable offence A felony.

Indicted. "When any one is accused before a Court for some offence, either criminal or penal, he is said to be indicted thereof." (*Cowel, Tomlin's Law Dic*)

Indictee One against whom an indictment has been found

Indictio. An indictment, a proclamation.

Indictment "Indictment," is a Bill or Declaration in due form of law, exhibited by way of accusation against one for some offence either criminal or penal, and presented before a Judge or Officer that hath power to punish the offence." (*Termes de la Ley*) *See also* Arch Cr Pl, 1 Steph Hist Crim. Law, 273-295, Bowen-Rowlands, Criminal Procedure

INDICTMENT is a general remedy for the redress of public injuries, and may be filed in all cases where an offence is created and punishment imposed, authorizing in such cases penal actions.

An indictment is a brief narrative of the offence charged, which must contain a certain description of the crime and the facts necessary to constitute it.

"I think it is clear that in old times the word '*Indictment*' included any charge made by an inquest which had power to make the inquiry and that when the charge made by them was reduced into writing it was called an 'Indictment'. And the reason of the thing, is, that in all charges of felony the preliminary step is that 12 men should be sworn to make the inquiry. The ordinary case is that of Grand Jurors. They are sworn, and when they find some charge it is reduced into writing and becomes a record of the Court In practice, it is brought to them in the shape of a Bill, and they write upon the back of it either. 'A True Bill' or 'No Bill, but when it is thus in the shape of a record, it appears in the present tense, 'the Jurors &c present,' as in the old times they would have come into Court, and would have said, 'We present', &c and their presentment would afterwards have been put into writing. The Coroner has authority to make an inquiry by the Jury upon the dead body; but the accusation by such jury is equally an accusation as that of the grand jury, and the judgment upon the one is like a judgment upon the

other" (*per* Blackburn, J., *R* v. *Ingham*, 33 L.J.Q B. 189)

Indictment, in S. 6 of the Offences against the Person Act, 1861 (24 & 25 Vict c. 100), applies to coroners' inquisitions. *R* v. *Ingham* (1864), 5 B & S 272, in 26 & 27 Vict c 29 (Corrupt Practices), S 7, does not include an *ex officio* information filed by the Attorney-General. *R.* v *Slator* (1881), 8 Q B.D. 264.

Indictments and Informations There can be no conviction or punishment for a crime without a formal and sufficient accusation. In the absence thereof a court acquires no jurisdiction, whatever, and if it assumes jurisdiction, a trial and conviction are a nullity The accusation must charge an offence, it must charge the particular offence for which the accused is tried and convicted, and it must be made in the particular form and mode required by law

Indictor One who causes another to be indicted.

Indies India and the adjacent regions and islands (as) East Indies and West Indies.

Indifferent. Neutral as to the parties or subject matter concerned in a controversy

'INDIFFERENT,' as used in respect to a person standing indifferent in a pending cause, means that the mind of such person is in a state of neutrality as respects the person and the matter to be tried, that there exists no bias for or against either party in the mind of the juror, calculated to operate upon him, that he comes to the trial with a mind uncommitted, and prepared to weigh the evidence in impartial scales

INDIFFERENT, UNCONCERNED, REGARDLESS A wise man is *indifferent* about the applause of the multitude as religion should be the object of our concern, if we are *unconcerned* about anything connected with it, the fault is in ourselves, a good parent will never be *unconcerned* about the religious education of his children whatever tends to increase our knowledge or to add to the comfort of others ought to excite our regard, if therefore we are *regardless* of these things, we betray a culpable want of feeling, a good child will never be *regardless* of the admonition of a parent

Indigent Needy, poor, destitute of means of decent or comfortable existence.

A person is indigent who is destitute of property or means of comfortable subsistence, one who is needy or poor

Indigent daughter In the Hindu Law of Succession to sridhana property of a woman the indecent married daughter succeeds in preference to richer married daughters Where neither of the two daughters of a deceased Hindu had any property of any considerable value of her own, but the father-in-law of one of them was in a better position than that of the other, the court held that the daughter who had a poorer father in-law was comparatively poorer than the other and was entitled to succeed to her father's property 4 Ind. Cas. 566.

Indignity Unworthy treatment; insult.

INDIGNITY, INSULT. *Indignity* respects the feeling and condition of the person offended: *insult* respects the temper of the offending party We measure the

indignity in our own mind, it depends upon the consciousness we have of our own worth. we measure the *insult* by the disposition which is discovered in another to degrade us. Persons in high stations are peculiarly exposed to *indignities*: persons in every station may be exposed to *insults*. The royal family of France suffered every *indignity* which vulgar rage could devise, whenever people harbour animosities towards each other, they are apt to discover them by offering *insults* when they have the opportunity.

Indirect confession The term, 'indirect confessions' is used in the criminal law to designate confessions inferred from the conduct, etc, of the accused.

Indirect contempt Indirect contempt of court occurs where the alleged contempt is not committed in the presence of the Court

Indirect evidence is circumstantial evidence

Indirect or circumstantial evidence is that which tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed.

Indirect evidence is that which tends to establish the fact in dispute by proving another, and which, though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence.

Indirect tax Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes.

It is tax levied on commodities, a tax indirectly paid by the consumer

All taxes are usually divided into two classes—those which are direct, and those which are indirect, that under the former denomination are included taxes on land or real property, and under the latter taxes on consumption

All taxes on expenses or consumption are indirect taxes.

Indispensable evidence Evidence without which a certain fact cannot be proved

Indispensable party. Indispensable parties are those who not only have an interest in the subject-matter of the controversy, but an interest of such nature that a final decree cannot be made without either affecting their interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.

It is a general rule that, where a party is directly affected by a decree, he is an indispensable party to the suit, and the Courts only depart from the rule when the parties are so numerous that it would be inconvenient or impossible to comply with it.

Indisposed. The word has two meanings It may mean unwilling to do an act, or it may mean unable to do the act. As used in a commission issued for the purpose of taking a deposition as follows: 'And it being represented to our said Court that M F. is indisposed, so that she cannot travel to said Court,' etc It is construed to mean unable to travel,

Indisposition.

Indisposition. State of being indisposed; temporary illness; disorder as regards health.

INDISPOSITION, ILLNESS *Indisposition* is a slight disorder of the healthy functions of the body. *Illness* is continuous indisposition (*Smith. Syn. Dis.*)

Indisputable title. The term 'indisputable title' as used in the covenants for a conveyance, requires a complete, connected paper title, and where an important link is wanting in the chain a title cannot be said to be indisputable.

Indistinct Not distinct, confused, obscure The evidence of an eye witness whose vision or observation is indistinct is not entitled to great weight.

INDISTINCT, CONFUSED Sounds are indistinct which reach our ears only in part, but they are confused if they come in great numbers and out of all order We see objects indistinctly, we cannot see all the features by which they would be distinguished from all objects, we see them confusedly when every part is so blended with the other that no one feature can be distinguished, by means of great distance objects become indistinct, from a defect in sight objects become more confused

Inditee. Indicatee, one against whom an indictment has been found

Individual *In re* Holt, 1896, 1 Ch 711 Lindley, L J, said, "In metaphorical language, an imaginary person may, perhaps, be called an 'Individual', but such a use of the word is unusual, and to my mind rather fanciful It is hardly to be supposed that the legislature meant 'Individual' to be taken in a fanciful or metaphorical sense, or meant it to denote an imaginary person who has not, and never had, any real existence I do not think that such words as 'Hamlet,' 'Sam Weller,' 'Jupiter,' 'Venus', &c, can be called Names of Individuals"

An individual is one entity, one distinct being, a single one, and when spoken of the human kind means one man or one woman. To individualize is to single out from the species

"Individually" The word "individually" in R. 6 of O 30, Civil Procedure Code is not synonymous with "in person" (108 I C 528=A.I.R 1928 Lah 528)

Indivisible Incapable of division

Indivisible property in Hindu Law. The learned say that Kshema is Putra or an act of charity (like digging a tank is the cause of preserving the good that has been got) and that Yoga is Ishta or a sacrificial act (which is the cause of getting the good that has not been got these are declared to be indivisible, and so are also a couch and a seat (*Ghose* 624)

Indivisibility of Mortgage Doctrine of indivisibility of mortgages discussed. A mortgagor cannot be compelled to redeem the whole of the mortgaged property. He is bound to pay the whole of the mortgage debt before he can redeem any portion of the mortgaged property. But subject to this condition there is nothing to prevent his relinquishment of the right to redeem one portion of the property while suing to redeem other portions 54 Bom. 625=128 I C 417=32 Bom L R 1096=A.I.R. 1930 Bom. 466 (F B.).

Indorsement in blank.

Indo. Indian (as) Indo-European or Indo-Germanic languages.

"Indorse" defined, Act 26, 1881, S. 16

INDORSE, was held to be equivalent to "sign" *R. v. Cowper*, (1889) 24 Q.B D 62, *see* Int Act, 1889, S. 20.

The legal meaning of the term 'indorse' means putting a name on the back of any instrument or paper

"Indorsed" defined; Act 16, 1908, S 2.

Indorsee One to whom a negotiable instrument is indorsed

Indorsee in due course One who in good faith in the ordinary course of business, for value, before its apparent maturity or presumptive dishonour, and without knowledge of its actual dishonour, acquires a negotiable instrument indorsed to him, generally, or payable to bearer

"Indorsement" defined, Act 26, 1881, S 15, Act 16, 1908, S 2

INDORSEMENT. Anything written on the back side of a deed, thus, receipts for consideration money, and the sealing and delivery, &c on the back of deeds, are called Indorsements. On sealing of a bond anything may be indorsed or subscribed upon the back thereof, as part of the condition, and the Indorsement and that shall stand together (*Moor 679 Tomlin's Law Dic*) The act of one who writes his name upon a negotiable instrument, otherwise than as maker, or acceptor, and delivers it with his name thereon to another person, is called 'indorsement'

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser" Act XXVI of 1881 (Negotiable Instruments) S 15 "A proper Indorsement or transfer of a bill or note can only be made by one who has a right to the instrument and who thereby transmits the right, and also incurs certain well-known and well-defined liabilities" (per *Ld. Watson, Steele* v. *M'Kinlay*, 5 App. Ca 782)

"Indorsement in blank" defined, Act 26, 1881 S 16.

INDORSEMENT IN BLANK. An indorsement in blank is made by the mere writing of the indorser's name on the back of the bill, without the mention of the name of any person in whose favor the indorsement is made.

INDORSEMENT "IN BLANK" AND "IN FULL"—"ENDORSEE." If the indorser (of a bill of exchange or promissory note signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument. The provisions of the Neg Ins. Act relating to a

Indorsement in full.

payee shall apply with the necessary modifications to an indorsee Act XXVI of 1881 (Negotiable Instruments), S 16.

"Indorsement in full" defined Act 26, 1881, S 16

INDORSEMENT IN FULL. An indorsement which mentions the name of the person in whose favor it is made is called an 'indorsement in full'

Indorsement without recourse An indorsement of a negotiable instrument with the words "without recourse" after the indorsee's name, thus rendering him not liable as an indorser

"Indorser" defined, Act 26, 1881, S 15

INDORSER One who indorses a negotiable instrument.

An indorser is one who by his signature transfers the legal interest in a note.

Under the commercial law an indorser is the payee, who, acquiring from the maker, indorses the note to convey title to another, the indorsee, and the indorsee becomes indorser when he in turn places his name on the note to transfer it.

Indubitable. 'Indubitable proof' means evidence that is not only found credible, but of such weight and directness as to make out the facts alleged beyond a doubt

The law that an oral agreement to vary a written instrument must be established by 'clear, precise, and indubitable proof' means that it must be found that the witnesses are credible, that they distinctly remember the facts to which they testify, and that they narrate the details exactly, and that their statements are true

Indubitable Unquestionable Indisputable Undeniable Incontrovertible Irrefragable When a fact is supported by such evidence as admits of no kind of doubt, it is termed indubitable, when the truth of an assertion rests on the authority of a man whose character for integrity stands unimpeached, it is termed unquestionable authority, when a thing is believed to exist on the evidence of every man's senses, it is termed undeniable, when a sentiment has always been held as either true or false without dispute, it is termed indisputable, when arguments have never been controverted, they are termed incontrovertible, and when they have never been satisfactorily answered, they are termed irrefragable.

Induce To prevail on, to bring about to pursuade An 'Inducement" may amount to a Bargain. "If a man is induced to do a thing upon the faith of a sum being paid to him, that amounts to a Bargain between the parties, whether the word describing the transaction be 'Inducement,' or 'Bargain" (*per* Hatherley, C J, *Bayspoole* v. *Collins*, 6 Ch 234) An inducement is what induces. *Inducement* is what is alleged as a motive or incitement to a thing, the term is used specially in several cases, viz Inducement to actions, to a traverse in pleadings, a fact or offence committed, &c. (Crn. Jac. 548. 2 Mod. 70 *Tomlin's Law Dic*)

In an indictment for obtaining goods under false pretences, alleging that defendant induced prosecutor to sell certain goods to them, 'induced' means moved, urged, or instigated.

Inducement. (*in pleadings*) A pleading often contains some prefatory averments which are necessary to introduce and explain the material facts alleged These are called "matters of inducement" Such are averments stating who the parties are, how they are connected, and other surrounding circumstances leading up to the matters in dispute These introductory averments should be stated as concisely as possible (Odgers, Pleading)

INDUCEMENT. In pleading the 'inducement' is the statement of matter which is introductory to the principal subject of the plea itself, and which is necessary to explain or elucidate it

Inducement Allurement. It is not easy to give an exhaustive definition, within reasonable terms, of exactly what is meant by the words, 'allurement or inducement' that legally operate to constitute an invitation to enter the premises of another. Mere temptation does not form such an inducement In *Sweeny* v *Old Colony & N R Co*, 92 87 Am. Dec 644, a railroad company that had made a private crossing over its track, and allowed the public to use, it as a highway, and stationed a flagman there, was held liable to one injured, who, using due care, was induced to cross by a signal from the flagman that it was safe

Induction This word is most commonly used for the giving possession to an Incumbent of his Church by leading him into it and delivering him the keys by the Commissary or Bishops Deputy, and by his ringing one of the Bells" (*Cowel*; 1 Bl Com. 391, Jacob)

Indulgence A remission of punishment for sins granted by the church

Industrial. Of or pertaining to an industry

Industrial maintenance A system by which each industry should provide for its own unemployed

Industrial Employment or occupation "Employment or occupation for, or in the performance of, any Manual Labour, or the Superintendence of any such labour, or the working, management, or superintendence, or machinery or other appliances, or Animals, used in the prosecution of any work" (See *Eng Fatal Accidents Inquiry Act*, 1895, S 7), *See also* Report (Vol 1) of the Departmental Committee on English Reformatory and Industrial Schools 1896, Appendix III, Annual Reports of the Inspector of the English Reformatory and Industrial Schools, Hornby's Reformatory and Industrial Schools of Acts.

"Industrial process." *See* 45 M L J 555=18 L. W 618=75 I C. 691=33 M.L.T. (H C) 234=A I R 1924 Mad 375 (1).

Industrial pursuit. Industrial pursuits includes a mercantile business for the sale of goods, mining supplies, etc. The term 'industrial pursuit' is a very broad expression.

Industrial school. School where children are taught any trade, business, or other avocation.

Industry.

Industry 'Industry' is defined by lexicographers to be habitual diligence in any employment, either bodily or mental, and is as applicable to the sale of goods, which is the chief business of a merchant, as to the transportation of goods, which is the chief business of an express carrier

Inebriate One who so habitually indulges in intoxicating liquors as to render him mentally incompetent safely to transact his ordinary business.

INEBRIATE An inebriate is any person who habitually, whether continuously or periodically, indulges in the use of intoxicating liquors to such an extent as to stupefy his mind and to render him incompetent to transact ordinary business with safety to his estate, provided the habit of so indulging in such use shall have been at the time of the inquisition of at least one year's standing see Blackwell, Habitual Inebriates Acts, Paine's Inebriates Acts, the Annual Report of the Inspector of Retreats, (*Ency of the Laws of England*)

Inebriation 'Inebriation' is a word nearly synonymous with "ebriety" and intoxication,' and is expressive of that state or condition which inevitably follows from taking into the body, by swallowing or drinking, excessive quantities of intoxicating liquors.

Ineffectual. The word "ineffectual" in an Act, providing that a mortgage thereafter executed on a homestead (exempted from attachment or alienation) is *ineffectual* until the exemption has been cancelled, seems to have been chosen to express that the mortgage was ineffectual to cancel the exemption It is not equivalent to "void" for it will be seen that it is ineffectual only until the exemption has been cancelled.

Inefficiency The word 'inefficiency" used in respect of a Police Officer, is sufficiently broad to include the inability of the officer to read or write the English language or the language of the District.

Ineligible Not qualified to hold office

The word "ineligible" means not eligible, disqualifying, not qualified to be chosen to an office

The term "ineligible" as used in a judicial opinion declaring that an alien was ineligible to office, should be construed to mean that he was ineligible to hold the office and not to mean that he could not be elected to the office, and hence, in case his disability is removed before the commencement of the term of office for which he was elected, he will be entitled to enter upon and hold such office.

Ineligibility Lack of legal qualifications for an office

Inequitable, Pomeroy (2 Pom Eq Jur 803) says the terms "fraud" and "fraudulent" as used by the Courts in speaking of equitable estoppels, are virtually synonymous with 'unconscientious" or "inequitable."

Inesse potest donationi, modus, conditio sive causa; ut modus est, si conditio; quia causa. In a gift there may be manner, condition and cause, as (ut), introduces a manner, if (si), a condition, because (quia), a cause.

Infamous conduct.

Inevitable accident. Is synonymous with act of God

In the Virgil, 1843, 2 Rob W. 201, at p 205 Dr. Lushington, discussing the meaning of this term in connection with a collision at sea, said. "In my apprehension, an inevitable accident in point of law is this, namely, that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and maritime skill" *See* this definition was approved by the Privy Council in The Marpesia, 1872, L R. 4 P.C 212, by Fry, L J, in the Merchant Prince, (1892) P 190, and in the Schvan (1892) P 432, 434) There is no distinction as regards inevitable accident between cases which occur on land and those which occur at sea. (The Schwan (1892) p 432) An 'Inevitable Accident" is the same thing as an "Unavoidable Accident" (The Marpesia' L R 4 P C. 212) Mansfield, C J, said, "Unavoidable Accident,' means an Accident physically unavoidable *Morris* v *Smith*, 3 Doug 279 An act of God is an inevitable accident without the intervention of man, some casualty which human foresight could not discern and from the consequences of which no human protection could be provided

It will not comprise anything arising from the acts or defaults of either of the contracting parties This phrase does not apply to anything known when the deed or contract is executed (*Jervis* v. *Tomkinson*, 26 L J Ex, 41).

An inevitable accident is an event which happens not only without the concurrence of the will of man, but in spite of all efforts on his part to prevent it

An 'inevitable accident" is a catastrophe occurring without any intervention of man

The plea of *inevitable accident* is a good defence to actions for negligence and trespass, but if relied on it must be specially pleaded (*Winchilsea* v *Beckly*, 1886, 2 T L R 300)

Inevitable casualty Inevitable casualty is an accident which happens without the slightest degree of negligence

Infamia (*Lat*) Infamy, disgrace.

Infamia facti Infamy of one supposed to be guilty of infamous crime.

Infamia juris Disgrace on conviction of crime

Infamia juris "means infamy established by law as the consequence of crime"

Infamous Of ill fame, shameful.

INFAMOUS Webster gives, as synonymous of "infamous" "detestable", "odious", "scandalous", "disgraceful", "base", "vile", "shameful", "ignominious".

"Infamous" means "without fame or good report".

Infamous Conduct Medical practitioners are liable to be struck off the register for conduct which is infamous in a professional sense. "If a Medical Man in the pursuit of his profession has done something with regard to it which will reasonably be regarded as disgraceful, or dishonourable, by his professional brethren of good repute and competency then it is open to the General Medical Council, if that be shown, to say that he has been guilty of

Infamous crime

'Infamous conduct in a Professional respect,'" within S. 29, 21 & 22 V c 90" *Esher, M R, and Davey, L J, Allinson* v *Gn. Med Council*, 1894, I Q B 750).

Infamous crime An "infamous crime" includes an offence implying such a condition of moral principles as carries with it the idea of a total disregard of the obligation of an oath.

"The abominable crime of Buggery, committed either with mankind or with beast, and every Assault with intent to commit the said abominable crime and every Attempt or Endeavour to commit the said abominable crime, and every Solicitation, Persuasion promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an "Infamous Crime", (s 46, Eng, Larceny Act, 1861)

INFAMOUS, SCANDALOUS *Infamous* and *scandalous* are both said of that which is calculated to excite great displeasure in the minds of all who hear it, and to degrade the offenders in the general estimation, but the *infamous* seems to be that which produces greater publicity, and more general reprehension, than the *scandalous*, consequently is that which is more serious in its nature, and a greater violation of good morals. Many of the leaders in the French revolution rendered themselves *infamous* by their violence, their rapine, and their murders, the trick which was played upon the subscribers to the South Sea Company was a *scandalous* fraud

Infamy. Ill fame, bad conduct, vile nature.

INFAMY, IGNOMINY, OPPROBRIUM The idea of discredit or disgrace in the highest possible degree is common to all these terms, but *infamy* is that which attaches more to the thing than to the person, *ignominy* is thrown upon the person, and *opprobrium* is thrown upon the agent rather than the action *Infamy* causes either the person or thing to be ill spoken of by all, abhorrence of both is expressed by every mouth, *ignominy* causes the name and the person to be held in contempt it becomes debased in the eyes of others *opprobrium* causes the person to be spoken of in severe terms of reproach, and to be shunted as something polluted The *infamy* of a traitorous proceeding is increased by the addition of ingratitude, the *ignominy* of a public punishment is increased by the wickedness of the offender *opprobrium* sometimes falls upon the innocence when circumstances seem to convict them of guilt

Infancy The state of an infant

Infans non multum a furioso distat An infant does not differ much from a lunatic.

Infant An infant is a person who has not arrived at the age fixed by law as the time when a person is presumed to have reached full maturity and becomes able to exercise all the rights and powers of the citizen

Infantia (*Lat*) Childhood to the age of seven years.

Infanticide is murder of new born child especially with the consent of the mother.

INFANTICIDE is murder or manslaughter according to the presence or absence of deliveration

Inferential

Infantry Foot soldiers.

Infants Upon attaining eighteen or twenty-one years of age (in certain cases See Indian Majority Act) a person is said to "attain full age" or "attain his or her majority" Until the attainment of that age a man or woman is an infant or minor, and the period between birth and the attainment of full age is the period of infancy or minority Mathews' Children and Young Persons, Eversley's Domestic Relation, Benjamin on Infants, Trevelyan on Minors) 'The law knows of no distinction between Infants of tender and of mature years" (per Parke, b, *Morgan* v *Thorne*, 7 M. & W 408).

Infant school School for young children.

Infection "Infection" is the subtle or virulent matter proceeding from diseased bodies and imparting the same to others

CONTAGION DISTINGUISHED "Infection" and "contagion" are nearly synonymous, the only difference being, not in the infectious or contagious matter, but in the manner of its communication Infection is communicated from the sick to the well by a morbid exhalation diffused in the air. Contagion is communicated by actual contact.

"Infectious Disease", means, any of the following Diseases, *viz*, Small Pox, Cholera, Diphtheria, Membranous Croup, Erysipelas, the disease known as Scarlatina or Scarlet Fever, and the Fevers known by any of the following names, Typhus, Typhoid, Enteric, Relapsing, Continued, or Puerperal, and Includes as respects any particular District, any Infection Disease which has been so declared by the Local Authority of the District in manner provided by Law See Eng Infec Dis Act. S. 6, Eng Pub Health Act, 1936, Stroude 963

An "infectious" disease is one originating from a cause acting by hidden influences or through the pollution of water or the atmosphere or from the various dejections from animals as distinguished from a "contagious" disease, which is communicated by contract or bodily exhalation

Infeftment. Same as Enfeoffment

Inference A deduction or conclusion from known facts

An inference is nothing more than a permissible deduction from the evidence.

An inference is the conclusion drawn by reason from premises established by proof In a sense, it is the thing proved Guesswork is not inference.

An inference is a deduction which the reason of the Judge or jury makes from the facts proved, without an express direction of law to that effect.

PRESUMPTION DISTINGUISHED. "A presumed fact" is one taken for granted and accepted as a result of human experience and general knowledge, while an 'inference' is the conclusion drawn from the proof or admission of circumstances which, by reason of the same human experience and knowledge, would naturally lead to it.

Inferential Deducible or inferable from proved facts

Inferential fact.

Inferential fact. An "inferential fact" is an inference or conclusion from evidence. It is true such conclusions are not conclusions of law, but they are inferences or conclusions of fact.

Inferior. Less in power or authority, subordinate.

An "inferior" is one who in relation to another has less power and is below him, one who is bound to obey another. He who makes the law is the superior, he who is bound to obey it the inferior.

Inferior Courts. The words "inferior Courts" are applied to Courts of special and limited authority, erected on such principles that their proceedings must show jurisdiction.

A Court is inferior to another when it is placed under the supervisory or appellate control of such other Court. A Court of limited jurisdiction is also inferior to a Court of general jurisdiction

This expression "*Inferior Courts*" Came into use as a means of distinguishing between the superior Courts and other Courts, also of the Courts of Common law, over which the superior Courts exercised a supervisory jurisdiction by writs of mandamus, certiorari or prohibition, or similar writs. "Inferior Courts", include, County Courts, Civil Bill Courts, and all Courts in England and Ireland having jurisdiction to hear and determine Civil Causes, other than the High Courts, of Justice, and in Ireland, Courts of Petty Sessions, and the Court of Bankruptcy, and in Scotland Sheriffs Court and the Courts held under the Small Debts and Debts Recovery Acts" English Inferior Court Judgments Extension Act, 1882, 45 & 46 V c 31, S 2 In India, Small Cause Courts would come under the category of inferior Courts

Inferior Criminal Court. The District Registrar is not within the meaning of S 435 of Criminal Procedure Code, Act (V of 1898), 'an inferior Criminal Court' to the High Court.

"Inferior holder" defined Bom Act 5, 1879, S 3 (14)

Inferior judge Judge presiding over inferior Courts. Sheriff, or Sheriff Substitute, Justice or Justices of the Peace, or Magistrate or Magistrates" are all Inferior judges. (45 & 46 V C. 31, S 2)

Inferior proprietor" defined U P. Act 3. 1904, S 2 (2)

The expression "*inferior proprietor*" includes a mukarraridar, a manzuridar, and a holder of a revenue-free mahal, U. P Act III of 1904 (*Benares family domais*), S. 2, Cl. 2.

Inferior Tradesmen. A surgeon or apothecary is not to be classed as a "*inferior Tradesmen*" who were prohibited from hunting on certain grounds by an old English Act *Buxton* v *Mingay*, 2 Wils K B 70 *Noel J* said,—"In my own opinion a Surgeon is the fittest person in the world to be in the field with gentlemen a-hunting for I remember the Master of a Pack of hounds had his neck dislocated by a fall from his horse when out a--hunting and if a Surgeon had not been near him when the accident happened, who pulled his neck right, the gentleman would, most certainly, have lost his life" There is however a known distinction universally agreed to between

Inflammatory

Tradesmen with respect to superior and inferior, as Master, and Journeyman, and Apprentice." (*Cited in Stroude*)

Infernal machine Explosive apparatus for criminal distinction of life, property etc.

Infidel. An infidel, according to christian idea, is one who does not believe the Bible or that Jesus Christ was the true Messiah

INFIDEL An "infidel" is one who does not believe in a god, or, if he does, does not think that he will either reward or punish him in the world to come

Infinite Bounders, endless, not limited by number

Infinitum in jure eprobatur. That which is infinite is reprehensible in law.

Infirmity. Physical weakness, especially from old age. The term connotes "some permanent Disease, Accident, or something of that kind" (*per* Kekewich, J Re Buck, 65 L J Ch 884)

An "infirmity" is defined as an imperfection or weakness, especially a disease, a malady, but where the insured in a life policy warranted that he never had any bodily or mental infirmity, the Court, in construing the word "infirmity", said "Giving to the word the largest meaning, to include every ailment, that flesh is heir to, and the result would be to warrant that the deceased had never had any disease, either trivial or temporary. Such a construction of the word is too unreasonable to be tolerated, but as the insurance was against accident, and death resulted therefrom within 90 days the warranty that the insured had and did not have any infirmity should be construed as meaning any infirmity that increased the risk or accident, or a risk of death therefrom in case an injury was sustained

"Infirmities or diseases", within the meaning of a life and accident policy, exempting the insurer from liability for any bodily injury happening directly or indirectly in consequence of bodily infirmities or disease, does not include insanity, during the time of which the insured, while unconscious of what he is doing, kills himself

Inflammatory. A charge to the grand jury, after assuming that the crime of bribery had been committed, and that it was the duty of the jurors to indict therefor, concluded as follows. "There comes up from the people a command for a forward march all along the line of your duty You should give heed to that cry, for it comes from the patient and long-suffering endurance which has at last reached its limit" An attorney for a person indicated by such grand jury moved to quash the indictment on the ground that the charge was 'inflammatory", whereupon he was promptly adjudged guilty of contempt of Court *Ileld*, that the adjective "inflammatory" as here used, is derived from the verb "inflame", which is thus defined by Webster, "(1) To set on fire, to kindle, to cause to flame (2) To excite or increase, as passion or appetite; to enkindle into a violent passion. (3) To exaggerate, aggravate in description (4) To heat, to excite excessive action in the blood vessels. (5) To provoke, to irritate, to anger. (6) To increase, to exasperate (7) To increase, to augment". And, as so defined the

Inflate

term" inflammatory" as applied to the charge, was a merited criticism.

Inflate Raise prices artificially

Inflated currency Abnormally increased state's currency, especially by large issue of inconvertible paper currency

Inflict. Deal, deliver forcibly, (as) to inflict a blow, pain, or penalty "To inflict grievous bodily harm," means, 'the direct causing of some grievous injury to the body itself with a weapon, as by a cut with a knife, or without a weapon, as by a blow with a fist or by pushing a person down" (*R* v *Clarence*, 58 L J. M.C 18). Knowingly suffering from a veneral disease and yet having connection with, and imparting the disease to, one of the opposite sex who is ignorant that the embracer is so suffering is not to "*inflict grievous Bodily Harm*" "If a man by a grasp of the hand infects another with small pox it is impossible to trace out in detail the connection between the act and the disease, and it would, I think, be an unnatural use of language to say that a man by such an Act '*inflicted*' small pox on another. It would be wrong in interpreting an Act of Parliament to lay much stress upon etymology, but I may just observe that 'inflicting' is derived from *infligo*, to which, in Facciolati's Lexicon, three Italian and three Latin equivalents are given all meaning, 'to strike' (per *Stephen, J R* v *Clarence*, 58 L. J. M C 18, 19, 22 Q B D 23)

Influence, defined *See* [UNDUE INFLUENCE] Ascendency, moral power, action invisibly exercised upon another

"The word 'influence' means to use the party's endeavours, though he may not be able to carry his point."

Inform To give information, especially in accusation

INFORM: ACQUAINT APPRISE ADVISE I *inform* a man when I simply tell him a fact which he did not know before I *acquaint* him with that of which I furnish him with all the details. So I *inform* him of the fact, and *acquaint* him with the particulars of it I *apprise* him of what particularly concerns him to know, whether it be good or evil, or a danger, or a probability of any sort I *advise* him of that which I impart to him formally officially, or as in duty bound, of what occurs in due course, or in the way of business. (*Smith Syn Dis*)

Informal Lacking in due form

Informality Absence of or non-observance of due or prescribed form Setting aside a decision or order for "Informality" does not exclusively mean that there was something informal appearing on the face of the decision or order, it often means nothing more than that the decision to quash did not proceed upon the merits (*R. v Cottingham*, 4 L J M C 65.)

Within the meaning of a statute providing that no indictment shall be quashed for any informality, the word "informality" means a deviation in charging the necessary facts and circumstances constituting the offence, from the well-approved forms of expression, and a substitution in lieu thereof or other terms, which, nevertheless, make the charge in as

Information

plain, intelligible, and explicit language, as if it had been made in the usual approved form

Informant, is the giver of information, this term is often used to describe a person by whom an information is laid to recover a penalty imposed by statute when it is recoverable by criminal or quasi criminal proceedings.

INFORMANT, INFORMER These two epithets, from the verb to inform, have acquired by their application an important distinction The *informant* being he who informs for the benefit of others, and the *Informer* to the molestation of others What the *informant* communicates is for the benefit of the individual, and what the *informer* communicates is for the benefit of the whole The *informant* is thanked for his civility in making the communication, the *informer* undergoes a great deal of odium, but is thanked by not one, not even by those who employ him. We may all be *informants* in our turn, if we know of anything of which another may be informed, but none are *informers* who do not inform against the transgressors of any law

Information An information is a written accusation of crime preferred by the public prosecuting officer

"An information is an accusation or complaint exhibited against a person for some criminal offence, either immediately against the King, or against a private person, which, from its enormity or dangerous tendency, the public good requires to be restrained and punished" (Bacon, Abr, tit "Informations" *Tomlin's Law Dic*) An *information* has also been defined as a suggestion upon record by which, in certain cases, the matter of a suit is allowed to be brought before a Court of Justice (*see* Short on Informations, Chap 1. p. 1) It derives its name from the words which it gives the Court to understand and be informed of the facts which it alleges *see* 2 Hale, Pleas of Cr 148, 151, Comyns Dig tit "Information."

'INFORMATION' is of a two fold character, one granted by the Queen's Bench at the relation of a private person, and the other laid by the Attorney-General, *ex proprio motu*, as the officer of the Crown" (*per* Denman, J, *R* v *Slator*, 51 L J Q.B. 246) Comyns Digest, tit. "Information', Bacon Abridgment, tit "Informations", Hawkins Pleas of the Crown Vol II, ch 26, Gude, Crown Practice, Cole on Informations, 1843, Shortt on Informations (Criminal and Qu Warranto Short and Mellor, Crown Office Practice 1890, Archbold, Pleading and Evidence and Practice in Criminal Cases, *Ency. of the Laws of England*

"Information" as used in a public advertisement offering a reward to any person who would give such information as would lead to the conviction of a party who had robbed certain premises, comprehends every mode by which information can be conveyed that might have the effect of discovering and convicting the guilty person.

INFORMATION, INTELLIGENCE, NOTICE, ADVICE. *Information* and notice may be communicated by word of mouth or by writing, intelligence is mostly communicated by writing, or printing; *advices* are mostly sent by letter *information* is mostly an informal mode of communication; *notice, intelligence*, and *advice* are mostly formal communications A servant

Information and belief.

gives his master *information*, or one friend sends another *information* from the country, magistrates or officers give *notice* of such things as it concerns the public to know and to observe, spies give *intelligence* of all that passes under their notice, or *intelligence* is given in the public prints of all that passes worthy of notice, a military commander sends *advice* to his government of the operations which are going forward under his direction, or one merchant gives *advice* to another of the state of the market

Information and belief Allegations of a verified pleading are made on information and belief when positive knowledge is wanting

An averment upon *"information and belief"* is sufficient as to a fact within the defendant's knowledge and not within the plaintiff's [(1872) Sup I A 47=9 B.L.R. 377=18 W R 359=3 Sar 82=2 Suth 692]

Information and complaint Information, in 11 & 12 Vict c 43, was held not to be substantially different from "complaint" *Blake* v *Beech* (1876), 1 Ex D 320, *R* v. *Paget* (1881), 8 Q B D at p 155 (*Field, J*), but it is usually defined as applying to charges of a criminal character, which may end in a conviction, and complaint and proceedings before a magistrate which may end in an order to pay money or to do some act.

Information given to police Information given to a Village Magistrate cannot be regarded as 'information given to the Police' within S 250 of Criminal Procedure Code, Act (V of 1898). 13 Ind Cas. 221 (222).

INFORMATION DISTINGUISHED FROM STATEMENT (115 I.C. 1=1929 Lah 338)

'CREDIBLE INFORMATION', need not be sworn information (116 I.C 455 (1)=1929 Lah 720)

Informer. One who furnishes information for the prosecution of a crime.

INFORMER has primarily the same meaning as informant, but is most commonly applied (1) to accomplices in crime who turn King's evidence (2) to common informers, *i e* persons who institute legal proceedings with a view to recovering the reward offered by statute in such a case, irrespective of any particular grievance suffered by them through the breach of the statute.

"An 'informer' in the legal as well as the ordinary sense of the term, whether the information he gives applies to customs, internal revenue, criminal matters, or forfeitures for any other reason, is he who gives the information which leads directly to the seizure and condemnation, regardless of the questions of evidence furnished or interest taken in the prosecution".

It would not include one who merely communicates a vague rumour commonly known in commercial circles and elsewhere, that a person has committed frauds against the revenue laws, unless the person claiming to be such informer gives some information as to what frauds have been committed and some clue to their detection

DISTINCTION BETWEEN ACCOMPLICE AND INFORMER. In criminal cases the distinction between an informer and an accomplice assumes at times considerable

Infringing

importance, and in order to determine whether a witness who first associated with the wrong-doers and subsequently gave information to the police belongs to the first category or is an accomplice whose evidence cannot be accepted without corroboration it has to be seen whether the witness had entered into the conspiracy for the sole purpose of detecting and betraying it or whether he is a person who concurred fully in the criminal designs of his co-conspirators for a time and joined in the execution of those till either out of fear or for some other reasons he turned on his former associates and gave information to the police. If at the time when he joined the conspiracy he had no intention of bringing his associates to book but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice, and his position is not modified simply because later on he turns round and carries information to the police. [1928 Lah. 193=9 Lah 550=109 I C 593=29 Cr L J. 577, 10 Lah L J 262=110 I C 676=29 Cr L J 740=A I R. 1928 Lah 647]

Infortunium Misfortune; misadventure, accident.

INFORTUNIUM, HOMICIDE PER Homicide committed in the course of doing a lawful act, and without any intention of doing hurt, as, for example, when the head of an axe flies off while doing some work with it and kills a bystander. (*Ency of the Laws of England*)

Infra Below, within beneath.

Infra dig Beneath the dignity.

Infra dignitatem curiae Beneath the court's dignity

Infra regnum. Within the realm

Infraction. A breach or violation of a duty.

INFRACTION, INFRINGEMENT. Although these terms are connected by a common derivation, they are differently applied, *Infraction* being reserved for the violation of public rights and formal treaties, *Infringement* of minor, or else more personal and social claims The *infraction* of a treaty of commerce, the *infringement* upon one's neighbour's liberty or convenience an *infringement* of the laws of good society or good manners, infringement of copyright (*Smith. Syn Dis*)

Infringement The unlawful sale or use of a patented invention, or copyright The act of infringing, an unlawful trespass on a right or privilege.

Infringement is an unlawful making or selling or using of a patented invention.

Infringement: Colourable deviation Infringement is not avoided because, by some colourable variation or expedient, it merely impairs or narrows the function and usefulness of the patented device.

A devise is none the less an infringement because it contains an improvement upon the patented invention.

Infringing," when applied to a copy of a work in which copyright subsists means any copy, including any colourable imitation, made, or imported in contravention of the provisions of the Copyright Act (Copyright Act, S, 35)

Infringing

INFRINGEMENT, INFRACTION. Politeness, which teaches us what is due to every man in the smallest concerns, considers any unasked for interference in the private affairs of another as an *infringement* Equity, which enjoins on nations as well as individuals an attentive consideration to the interests of the whole, forbids the *infraction* of a treaty in any case

To INFRINGE, VIOLATE, TRANSGRESS Civil and moral laws are *infringed* by those who act in opposition to them, treaties and engagements are *violated* by those who do not hold them sacred the bounds which are prescribed by the moral law are *transgressed* by those who are guilty of any excess. It is the business of government to see that the rights and privileges of individuals or particular bodies be not *infringed*, treaties and compacts are first *violated* and then justified, the passions, when not kept under proper control, will ever hurry men on to *transgress* the limits of right reason.

Ingenious. Possessed of genius or unusual mental powers, talented, clever, intelligent

INGENIOUS CLEVER INVENTIVE. *Cleverness* is *ingenuity* of the body, as *ingenuity* is *cleverness* of the mind Men may contrive *ingeniously*, and manage cleverly *Inventive* expresses the active and practical side of *ingenuity*. The *ingenious* person sees readily, the *inventive* person projects, adapts and contrives (*Smith Syn Dis*)

Ingenuity One who perfects a device of confessed utility, which satisfactorily supplies a long existing and imperative need of any branch of industry, and which excels in operation and results other existing appliances, superseding them at home and abroad, and by its structure overcoming difficulties and objections which have for years baffled the ingenuity of his fellow craftsmen the world over, has proved that average mechanical skill was not equal to what he has accomplished The perfecting of such a device is the product of inventive faculty, not merely that of the inventor's training or vocation

Inglis (='*English*'), certain grants to invalided soldiers (Ben), (*Bad Pow* 1 597)

Ingots Ingots or billets of steel are the steel bars when taken from the moulds of a steel manufactory, the words being applied to the finished product as it is ready for shipping

Ingress Right of entrance. "A grant of a right of "ingress, egress, and regress" is a grant of a right of way from the *locus a quo* to the *locus ad quem*, and from the *locus ad quem* forth to any other spot to which the grantee may lawfully go or back to the *locus a quo*" (*Somerset* v *G W Rly*, 1882, 46 L.T 883).

Ingrosser In English Law an "Ingrosser is one that buyeth corn, grain, butter, cheese, fish, or other dead victuals, with an intent to sell the same again." (*Termes de la Ley.*)

Ingrossing Making a clear copy of a rough draft.

Ingrossing or regrating. The offence of ingrossing or regrating ought not to be extended, and would not meet with much countenance in these times, when the true principles of trade and commerce are better and more generally understood. [5 M.I.A. 109 =7 Moo.P.C 239=Perry O.C 232=1 Sar 403.]

The common law offence of ingrossing or regrating can be committed only with respect to the necessaries of life. [5 M I A. 109=7 Moor.P C. 239 =Perry O C 232=1 Sar 403]

Inhabit Dwell in, occupy. 'The word 'inhabit simply means to dwell in" (*per* Cave, J., in *Atkinson* v *Collard*, 55 L J. A.B 23)

'**Inhabitant**" defined Act 5, 1861, S 15 *expln*, Act 20, 1891, S. 3 (3), Bur. Act 3, 1898, S. 3 (4), Bur. Act 4, 1899, S 24, *expln*, Mad Act 4, 1881, S 3 (*vii*), Mad. Act 5, 1884, S. 3 (*ii*), U P. Act 1, 1900, S. 3 (5), Reg 5, 1886, S 2 (4), Reg 5, 1910, S. 2 (v)

INHABITANT. Person who inhabits a place. An '*Inhabitant*" of a place, speaking generally, is one who has his permanent home there (*R* v *Mitchell*, 10 East 511)

"By the term 'inhabitant' of a place or country, we understand one who has his domicile or fixed residence there, in opposition to one who is a mere sojourner or temporary resident"

The word "inhabitant" is synonymous with the word "resident".

The word "inhabitant" implies a more fixed and permanent abode than "resident".

In *A-G* v *Parker*, 1747, 3 Atk 576; 26 E R. 1132, where one of the questions was as to the persons entitled to nominate to a curacy, which right had been granted to the "Parishioners and inhabitants," Lord Hardwicke said (p. 577): "Inhabitant. .... takes in housekeepers, though not rated to the poor, takes in also persons who are not housekeepers, as, for instance, such who have gained a settlement and by that means become inhabitants" [see also *A-G* v *Clarke*, (1762), Amb 422, 27 E R 282]

"INHABITANT" used with reference to any local area includes any person ordinarily residing or carrying on business or owning or occupying immoveable property therein [U P. Act I of 1900 (Municipalities), S 3, Cl 5]

INHABITANT [in 11 Geo 3 c 29, is held to mean a "resident occupier" [*Downe* v. *Martyr*, (1828) 8 B & C 69, *R* v *Nicholson* (1810) 12 East, 342] In statutes relating to rates it means rateable occupier. In statutes relating to settlement it means resident. [*Wilson* v *Churchwardens of Sunderland*, (1864) 34 L.J.M.C 90, Erle, C J, and see Ryde on Rating (2nd ed.)] The word is synonymous with "occupier." [*R.* v *Tunstead*, (1790) 3 T R 523; *Att.-Gen.* v. *Parker*, (1747) 3 Atk. 576 [In 2 Inst. 702, Lord Coke says that under 22 Hen. 8, c 5, the word "inhabitants" includes those who occupy lands in the county though they do not reside there. See also *R.* v. *Hall* (1822), 1 B & C 136; *R.* v. *Mitchell* (1809), 10 East, 511]

Inhabitant occupier. See *Lewin* v. *End*, (1906) App. Cas. 299, *Kent* v. *Fittall*, (1906) 1 K.B. 60 (C. A.).

"**Inhabitant of Madras**". *Venkatasubba Rao, O. C.J.*—A person who ordinarily resides in the mofussil and has his home in the mofussil, but who owns a house in Madras for which he pays the rates, keeps

Inhabited dwelling house.

an estabishment there and resides in it during, his visits to the city at frequent intervals is an "inhabitant of Madras" within the meaning of Cl 22 of the Charter of the Supreme Court of Madras. (1936 M W.N. 1285=44 L.W 904=71 M L J. 873)

Inhabited dwelling-house, in the House Tax Act, 1851 (14 & 15 Vict. C 36), S 1, does not apply to a house only occupied during the day and where no one sleeps at night. Per Kelly, C B, in *Riley* v *Read*, (1879) 4 Ex D. 102. It includes a distinct flat or tenement in a large building separately let for residence. [*Att Gen* v *Westminster Mutual Tontine Chambers Association*, (1876) 1 Ex D 469 See also *Lord Walsingham* v. *Styles*, (1894) 3 Tax Cas 247, *Hoddinot* v *Home and Colonial Stores*, (1896) 1 Q B. 169]

"Inhabited room" defined Ben Act 3, 1899, S 3 (23).

In hand "Balance in hand", does not, necessarily connote that which is in the cash-box, it may simply be a statement of what has to be accounted for (*R* v. *Williams*, 79 L T. 739) A bequest of "all my Moneys *in hand*, would pass the balance with the Bankers (*Vaisey* v. *Reynolds*, cited Farming Stock)

Inherent powers Such as result from the very nature and such as are essential to the existence of the institution.

The Courts of justice possesses powers which were not given by legislation and which no legislation can take away. These are "inherent powers" resident in all Courts of superior jurisdiction These powers spring not from legislation but from the nature and constitution of the tribunals themselves Among the inherent powers of a Court of superior jurisdiction is that of maintaining its dignity, securing obedience to its process and rules protecting its officers and jurors from indignity and wrong, rebuking interference with the conduct of its business, and punishing unseemly behaviour.

The "inherent powers" of a Court are an unexpressed quantity and undeniable term, and Courts have indulged in more or less loose explanations concerning it. It must necessarily be that the Court has inherent power to preserve its existence to fully protect itself in the orderly administration of its business. Its inherent power will not carry it beyond this.

The power vested in a Court of maintaining its existence and dignity by punishing those who assume to treat it with contempt, has often been held an inherent one, and exists independently of statute

Inherent right. The Bill of Rights of one of the States of U. S., provides· "All men are created equally free and independent, and have certain inherent and inalienable rights amongst which are those of enjoying life and liberty, of acquiring possession and protecting property and reputation, and of pursuing their own happiness. To secure these rights Governments are instituted among men, deriving their just powers from the consent of the Government". The term "inherent and inalienable rights" as used in the said Bill of Rights, undoubtedly includes the right to purchase, lease and cultivate lands, and to perform honest labour for wages with which to support one's self and family.

Inheritance-tax.

Inherit To receive property as heir. "Inherit" means, succession by descent (*East* v *Twyford*, 9 Hare 729). To take by inheritance (18 M. l=A.I R 1925 Mad 497) To take, or to have, to become possessed of, to take as heir at law by descent or distribution, to descend.

INHERIT. The words "inherit" and "heir" in a technical sense, relate to right of succession to the real estate of a person dying intestate And when used in a statute, as well as in a will or other instrument, they will be taken to have been employed in their legal sense So it is held that the use of the words "inherit" and "heir" in statutes relative to legitimation and declaring that the persons legitimated shall become the heirs of the putative father and shall inherit in the same manner as if born in lawful wedlock, is to be construed as conferring upon the persons so legitimated all the rights of inheritance and succession that would attach to them had they been born in lawful wedlock

Inheritable blood Relationship by blood capable of transmitting an inheritance.

Inheritance. That which is or is to be inherited: whatever is transmitted by descent or succession, an estate descending to the heir, which has descended to the heir and been cast upon him by the operation of law, or which may descend or be inherited. The meaning of the word, however, may be controlled by the context

An inheritance is an estate descended to the heir immediately on the death of the ancestor by virtue of his right or representation as a descendant It is cast upon the latter by operation of law

'Inheritance" is the estate in real property which the law, immediately on the ancestor's decease, casts on the heir

"This word (*Inheritance*) is not only intended where a man hath lands or tenements by descent of inheritage, but also every fee simple or tail which a man hath by his purchase may be said an inheritance, because his heirs may inherit him" (*Litt. S.* 9. *Termes de la l ey*)

Property to which title is made out by gift is not property inherited within the meaning of the General Rules of Practice for Civil Courts in the United Provinces and is, therefore, not ancestral property. (35 I C 742=14 A L J. 669)

Inheritance Act The English statute of descent.

Inheritance tax A tax upon transmissions of property occasioned by the death of the owner (127 Am St Rep 1036)

"It is well settled that inheritance taxes are not taxes on property or persons, but on the transfer or passing of legacies or distributive shares For the privilege to bequeath property the state exacts a certain percentage thereof, which must be deducted before it reaches the hands of the beneficiary.

An inheritance tax is not one on property, but on the succession. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege—and therefore the authority which confers it may impose conditions upon it. From these provisions it is deduced that the states may tax the privilege, discriminate between relatives

Inhibit

and between these and strangers, and grant exemptions

Inhibit Prohibit, restrain, hinder, forbid the exercise of clerical functions

Inhibition (*Inhibitio*) A writ to forbid a judge from further proceeding in a cause depending before him, being in nature of a prohibition, See Stas 9 Ed 2 c 1, 24 Hen 8 c 12 F N G 39, An Inhibition is most commonly issued out of a higher court to an inferior, upon an appeal. (*Tomlins Law Dic*)

Inhuman treatment Inhuman treatment which is a sufficient foundation for a divorce is such conduct as endangers the plaintiff's life.

Inhuman treatment endangering life "Treatment endangering the life" of the wife, made a ground for divorce by statute, may be of such a nature either because of the physical violence involved, which in itself, endangers life, or because of the effect which it has on the wife in impairing her health Mere cruel treatment will not amount to it

The "inhuman treatment" endangering the life of a wife, to entitle her to a divorce, need not amount to barbarity, though "inhuman" may amount to barbarous and savage If the conduct is marked with cruelty, if it is cruel and unfeeling, indicating an absence of that kindness and tenderness that belongs to a human being, it is sufficient, if it endangers life Whatever form the treatment assume, if a continuance of it involve the health or life of the wife, it is inhuman treatment.

Inimical. Hostile.

Iniquissima pax est anteponenda justissimo bello The most unjust peace is to be preferred to the justest war

Iniquity Gross injustice, wickedness.

Iniquum est alios permittere, alios inhibere mercaturam It is inequitable to permit some to trade and to prohibit others.

Iniquum est aliquem rei sui esse judicem It is unjust for any one to be judge in his own cause.

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem It is against equity for freemen not to have the free disposal of their own property.

Initial (*Verb*) To make a mark or sign a document, etc. with initials or the initial letter of the person's name.

Initial carrier An "initial career" is the carrier first receiving the goods.

INITIALS It seems that initials intended to represent the name of the party to be charged are a sufficient signature within the Statute of Frauds (*Smith, Leading Cases*, 11th ed., vol I. 335)

Initials are not a name, and cannot be used for the Christian names of parties to actions, except in cases where parties inscribed by initial letters in bills of exchange, promissory notes or other written instruments.

Injunction pendente-lite.

Initialia testimonii. (*Scotch*) Preliminary examination of a witness.

Initiate Organize, set on foot, to admit a person into the mysteries of a science or secret society with rites and forms

Initiative. The prerogative of submitting proposed laws.

Initio (*Lat*) At the beginning (see Ab-initio).

"Injunction", defined *See* Temporary injunction, Permanent injunction.

INJUNCTION Authoritative order or judicial process restraining a person from wrongful act.

An injunction is a judicial process, by which one who has invaded or is threatening to invade the rights, legal or equitable, of another, is restrained from continuing or commencing such wrongful acts

An injunction is an order framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.

"Mr. Justice Story, in speaking of the writ of injunction, says that it may be described to be a judicial process whereby a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. *United States* v *Haggerty*, (U S) 116 Fed. 510, 515 (citing 2 Story Eq Jur. 861).

A writ of injunction may be said to be a process capable of more modifications than any other law It is so malleable that it may be molded to suit the various circumstances and occasions presented to a Court of equity. It may be special, preliminary, temporary, or perpetual, and it may be dissolved, reviewed, continued, extended, or contracted, in short, it is adapted and used by courts of equity as a process of preventing wrong between and preserving the rights of, the parties before them, and a court has jurisdiction to give an injunction even the force and effect of a right of possession where there is no adequate remedy at law

See Addison's Treatise on Contracts, Annual Practice, Chitty's Archbold's Practice, Daniell's Chancery Practice, Eden on Injunctions, Fry on Specific Performance of Contracts, Joyce on Injunctions, Kerr on Injunction, Pollock on Torts, Seton's Judgments and Orders Spence on the Equitable Jurisdiction of the Court of Chancery, Story's Commentaries on Equity Jurisprudence.

Injunction pendente lite. A temporary injunction to operate pending a hearing on the merits, or until the final decree is rendered

INJUNCTION AND RESTRAINING ORDERS. A restraining order is an order granted to maintain the subject of controversy in *statu quo* until the hearing of an application for a temporary injunction. Its purpose is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted, and it is not intended as an injunction *pendente lite*, hence its duration should be limited to such a reasonable time as may be necessary to notify the adverse party, especially where defendant is likely to be damaged by delay. A

Injunction.

restraining order ceases to be operative at the expiration of the time fixed by its terms

MANDATORY INJUNCTIONS. Mandatory injunctions command the performance of some positive act In the very great majority of cases injunction is a merely preventive remedy, and in proper cases courts have power to issue an injunction mandatory in its nature

PERPETUAL INJUNCTIONS A perpetual injunction is one granted by the judgment which finally disposes of the injunction suit.

PRELIMINARY OR INTERLOCUTORY INJUNCTIONS are those granted prior to the final hearing and determination of the trial, and continue until answer, or until the final hearing, or until the further order of the court They do not conclude the rights of the parties Their object is to maintain the *status quo*, to maintain property in its existing condition, to prevent further or impending injury not to determine the right itself

PREVENTIVE INJUNCTION Commands a party to refrain from doing an act Injunctions of this character necessarily operate upon an unperformed and unexecuted act and prevent a threatened but non-existent injury

TEMPORARY INJUNCTION Same as Preliminary Injunction.

Injure To injure means to do harm to, inflict damage or detriment upon, impair or deteriorate in any way, to do wrong, harm, impair "An intent to 'injure' in strictness, means more than an intent to do harm It connotes as intent to do wrongful harm" (per Bowen, L J, *Mogul Co* v *McGregor*, 58 L J, Q B 479).

Injures graves (*Lat*) Personal insults and reproachful language are included in the 'injures graves'—grievous insults

Injuria (*Lat*) By 'injuria' is meant a tortious act It need not be wilful and malicious, for, though it be accidental, if it be tortious, an action will lie

Injuria fit ei cui convicium dictum est, vel ed eo factum carmen famosum An injury is done to him of whom a reproachful thing is said, or concerning whom an infamous song is made.

Injuria non excusat injuriam. A wrong does not excuse a wrong

Injuria non praesumitur A wrong is not presumed

Injuria propria non cadet beneficium facientis. No one shall profit by his own wrong

Injuria servi dominum pertingit The master is liable for injury done by his servant

Injuria sine damnum and Damnum obsque injuria Injury without a damage and a damage without wrongful act *N B*. *Injuria obsque damno* means the same thing an actionable wrong not resulting in any legal damage

Injurious. Anything that is hurtful, disturbs happiness, impairs rights, or prevents the enjoyment of them is 'injurious,' and, if it causes displeasure

Injury.

or gives pain or unpleasant sensations, it is offensive The disturbing cause must be real, not fanciful, and something more than mere delicacy or fastidiousness but it need not necessarily be apparent to the senses of sight, smell, or hearing, for it may be injurious without offending either.

Injuriously affected 'Injuriously affected' is synonymous with and equivalent to 'damaged'

Land adjoining a road which is lowered by the act of a railroad company is land 'injuriously affected,' within the meaning of an act providing that compensation should be made in such cases

"INJURIOUSLY AFFECTED" Bramwell, B, said in *Mc Carthy* v *Metrop Bd of Works*, 42 L J C P 93, as follows —' The word 'Injuriously' does not mean 'Wrongfully' affected It means 'Hurtfully' or 'Damnously' affected As where we say of a man that he fell and injured his leg, we do not mean that his leg was wronged, but that it was hurt We mean he fell, and his leg was injuriously (that is to say) hurtfully affected"

INJURIOUSLY AFFECTED In Lands Clauses Act, 1845, S 68 and in Railways Clauses Act, 1845, s 6 (16) are *in pari materia*. See *Cowper Essex* v *Acton, L B* (1889) 14 App Cas 153, *Re* L.T & S Ry. Co (1889), 24 Q B D 44, Cripps on Compensation (4th ed), p. 118

"Injury", defined, Act 45, 1860, s. 44.

INJURY A tort, the unlawful infringement or privation of a right, the deprivation of a legal right, a wrong done to a person, any wrong or damage done to another, either in his person, rights, reputation or property, a wrongful act or tort which causes loss or harm to another, damage resulting from an unlawful act, or from a violation of a legal right The word is sometimes used in the sense of accident.

"INJURY (Injuria) is a wrong or damage to a man's person or goods The law punisheth Injuries, and so abhors them, that, in certain cases, it grants writs of anticipation for their prevention But the law will suffer a private injury rather than a public evil, and the act of God, or of the law doth Injury to none" (4 Rep 124, 10 Rep 148 (*Tomlin's Law Dic*)

INJURY 'An injury, legally speaking, consists of a wrong done to a person, or, in other words, a violation of his right'

The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property (Penal Code, S. 44)

"Injury" in S 189 of the Penal Code implies an illegal harm The mere threat to bring a legal complaint either before a Court or before the Police constable's superiors for the constable's action in stopping a motor car is no "injury". (6 Lah. 558=27 Punj L.R. 87=93 I.C 48)

An 'injury' is damage resulting from an unlawful act

'Injury' in its legal sense, means damage resulting from a violation of a legal right It is this violation of a legal right which renders the act wrongful in the eye of the law and makes it actionable.

Injuries.

Injuries, in the sense of wrongful invasions of a right, may be considered as of two kinds (1) Pecuniary and (2) non-pecuniary Pecuniary injuries are such as can be, and usually are, without difficulty estimated by a money standard Loss of real or personal property, or of its use, loss of time, and loss of services are examples of those kinds of injuries Non-pecuniary injuries are those for the measurement of which no money standard is or can be applicable As the books phrase it, damages in such cases are 'at large.' Bodily and mental pain and suffering are familiar examples of this class

As used in actions where error in a trial is presumed to be to the injury of a party, the word 'injury' means effect upon the result, and hence error without injury is not reversible.

INJURY, DAMAGE, HURT, HARM, MISCHIEF The idea of making a thing otherwise than it ought to be is common to these terms *Injury* is the most general term, simply implying what happens contrary to right, the rest are but modes of injury *damage* is that injury which takes away from the value of a thing, *hurt* is the injury which destroys the soundness or wholeness of a thing, *harm* is injury which is attended with trouble and inconvenience mischief is injury which interrupts the order and consistency of things It is an *injury* to society to let public offenders go free, young people do not always consider the *harm* which there may be in some of their most imprudent action, the *mischief* of disseminating free principles among the young and the ignorant, has been found to exceed all the good which might result from the superior cultivation of the human mind, and the more extended diffusion of knowledge

Injury and Damages There is a material distinction between 'damages' and 'injury' Injury is the wrongful act or tort which causes loss or harm to another Damages are allowed as an indemnity to the person who suffers loss or harm from the injury The word 'injury' denotes the illegal act The term 'damages' means the sum recoverable as amends for the wrong The words are sometimes used as synonymous terms, but they are in strictness words of widely different meaning

"Injury to property" The term connotes "a substantial physical injury to property" (*per* Fry, J, *Codhand* v *Ayscough*, 52 L J Q.B 99)

The phrases 'loss of property' and 'injury to property,' in connection with damages to freight shipped have not the same signification One means a total destruction or loss of property, the other means a partial loss or destruction, and in case of injury a value may yet remain in the property, equal to or exceeding the stipulated value.

"PERSONAL INJURY not causing death to the party," in S 89 of the Probate and Administration Act (V of 1881) refers only to physical injuries. (31 C 993=8 C W N 745)

Injustice. Unjust act, unfairness.

'Fraud' is deception practised by the party. 'Injustice' is the fault or error of the court They are not equivalent words in substance Fraud is always the result of contrivance and deception Injustice may be done by the negligence, mistake or omission of the court itself'

INJUSTICE, INJURY, WRONG The violation of justice, or a breach of the rule of right, constitutes *injustice*, but the quantum of ill which falls on the persons constitutes the *injury* Sometimes a person is dispossessed of his property by fraud or violence, this is an act of *injustice*, but it is not an *injury* if, in consequence of this act, he obtains friends who make it good to him beyond what he has lost, on the other hand, a person suffers very much through the inadvertence of another, which to him is a serious *injury* although the offender has not been guilty of *injustice* A *wrong* partakes both of *injustice* and *injury*, it is in fact an *injury* done by one person to another, in express violation of *justice* The man who seduces a woman from the path of virtue does her the greatest of all wrongs One repents of injustice, repairs injuries, and redresses wrong

Law suits I'd shun with as much studious care
As I would dens where hungry lions are,
And rather put up *injuries* than be
A plague to him who'd be a plague to me (*Pomfert*)

Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel responder. It is unjust to give judgment or advice concerning any particular clause of a law without having examined the whole law

Inkari. Declining to pay tirni.

Inlak Shows property owned (141 I C 199=9 O W N 660=1932 Mad 474)

"Inland" defined Act 6, 1898, S 2 (*b*).

INLAND Interior of a country, within a country (as) inland trade, inland duty, inland revenue

"INLAND". The expression *"inland,"* used in relation to a postal article, means—(*i*) posted in British India and addressed to any place in British India or to any place for which a Post Office is established by the Governor-General in Council beyond the limits of British India, or (*ii*) posted at any Post Office established by the Governor-General in Council beyond the limits of British India and addressed to any place for which any such Post Office is established or to any place in British India, Provided that the expression "inland" shall not apply to any class of postal articles which may be specified in this behalf by the Governor General in Council by notification in the Gazette of India, when posted in or addressed to any places or post offices which may be described in such notification [Act VI of 1898 (Post Office) S 2, cl (*b*).]

INLAND. Within a country, state, or territory within the same country. In Old English law 'inland' was used for that part which lay next to most convenient for the lord's mansion house, a within the view thereof, and which, therefore, h kept in his own hands for support of his family an for hospitality; in distinction from 'outland,' o 'utland,' which was the portion let to tenants (*Blac Law Dict*)

Inland Bill of Exchange. Kyd, in his treatise describes inland bills as those which pass betwee

Inland Bill of Exchange

persons residing in the same country. Evans (p. 2) states an inland bill to be one where the drawer and the drawee reside in the same kingdom. (15 Fed Cas 855, 857)

A bill of exchange, made by parties residing in the state and dated at a place therein, although in fact drawn outside the state, is correctly designated as an inland, and not a foreign, bill of exchange, (50 Am Dec. 422)

An *inland bill* of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state Any other bill is a *foreign bill*

"Inland instrument" defined Act 26, 1881, S 11

A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument [Act XXVI of 1881 (Negotiable Instruments) S 11]

Inland navigation Navigation on waters lying wholly within a state

Inland rivers The term 'inland rivers' is used to designate rivers into which the tide does not ebb or flow

"Inland steam-vessel" defined Act 6, 1884, S. 5 (4)

Inland trade A trade wholly managed at home in one country (*Tomlin's Law Dic*)

"Inland water" defined Act 6, 1884, S 5 (3) , Act 9, 1890, S 3 (3)

"INLAND WATER," means any canal, river, lake or navigable water in British India. [Act IX of 1890 (Railways) S 3 (3)]

Inmate Occupant of house, etc 'Inmates' are those persons of one family that are suffered to come and dwell in one cottage together with another family, by which the poor of the parish will be increased (*Termes de la Ley*) Even temporary occupiers of an Hotel (as) mere wayfarers lodging for a night's rest would be '*Inmates* of that hotel" (per *Russell, C J , R* v *Slade*, 65 L J M.C 109).

Inn Public house for lodging etc. for travellers An Inn is the same thing as a hotel and consists of a house in which travellers, passengers, wayfaring-men, and other such like casual guests, are accommodated with victuals and lodgings and whatever they reasonably desire, for themselves and their horses, at a reasonable price, while on their way (*V. R* v *Luellin*, 12 Mod 455). An inn is a house where a traveller is furnished, as a regular matter of business, with food and lodging while on his journey or a house of entertainment for travellers. The definition of "*inn*" in the English Innkeepers Liability Act, 1863, 26 & 27 Vict c. 41, is "any hotel, inn, tavern public house or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests" It would be open to a Court to find that many hotels do not hold themselves out as taking in all persons coming to them as travellers, according to the Custom of England" and so do not come under the classification of "Inns" [per *Esher, M. R., Lamond* v. *Richard*, (1897) 1.Q.B. 541 , 66 L.J. Q.B. 319) As to "Inns" see

Inns of Court.

Cayle's Case in Smith, L C , Bac Abr., "Inns" Comm Dig , Haycraft on Innkeepers, Story on Bailments, Jelf and Hurst, Law of Innkeepers, and Oliphant, Law of Horses, including the Law of Innkeepers. A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, will be construed to be an 'inn,' within the rules of law relating to the duties of the proprietors of inns to their guests

"A restaurant where meals are furnished is not an inn or tavern"

An inn is a place restored to by travellers for lodging and accommodation , a place provided for the lodging and entertainment of travellers The term does not include a saloon to which a person repaired temporarily to obtain a meal , nor can it include restaurants, since mere restaurants or eating houses are wanting in some of the requisites necessary to constitute them inn, as no lodging places are provided therein

"INN", "ALEHOUSE", "BOARDING HOUSE" "COFFEE HOUSE", ETC An *inn* is distinguishable from an alehouse, which is a mere drinking or refreshment house [Bac Abr "Inns" *R.* v *Rymer*, (1877) 2 Q. B. D 136], a boarding house or apartments (Vol I p 364), and a coffee house [*Doe* v *Laming*, (1814) 4 Camp at p 77 , 15 R R 728)

The question whether a house of entertainment is a public inn, a boarding-house, or a private house is a question of fact, to be determined, like any fact, upon all the evidence The profession of serving the public is often made by displaying a sign, but that is not necessary , the profession may be made by any method of soliciting the patronage of the public.

Innkeeper An innkeeper (anciently known as an hostler or holsteler is one who makes it his business to entertain travellers and passengers, and provide lodging and necessaries for them and their horses and attendants (Bac Abr , "Inns") An innkeeper is a person who publicly professes that he keeps an inn, and will receive therein all travellers who are willing to pay an adequate price, and who come in a situation in which they are fit to be received

A person is not an innkeeper who receives guests out of mere hospitality, or from motives among which gain is at most incidental, and not because he has regularly entered into the business of receiving guests.

An innkeeper must be prepared to entertain the traveller, that is, to supply him with both food and lodging. For this reason a house which supplies only food or drink, like a restaurant , a coffee-house, or a drinking saloon, or only lodging, like a lodging-house, or apartment hotel, or a sleeping-car is not an inn On the other hand it is not necessary that the inn should be perfectly equipped to supply all that a traveller might desire.

INNKEEPER AND KEEPER OF BOARDING-HOUSE The distinction between an innkeeper and the keeper of a boarding-house is that the latter, not having made a profession of willingness to serve the public, is at liberty to choose his guests, and to make special arrangements with them

Inns of Court. "The inns of Court are "voluntary societies, which for ages have submitted to

Inns of Court

government analogous to that of other seminaries of learning" [*Lord Mansfield, The King* v *Benchers of Gray's Inn*, (1780) Doug 354]

INNS OF COURT The four Inns of Court are situate in London, and, in English law, correspond with the Faculty of Advocates at Edinburgh in Scotch law, and with the four Inns at Dublin in Irish law The four Inns of Court are, now, the two Honourable Societies of the Temple (*viz*, the "Inner" and the "Middle" Temples), Lincoln's Inn, and Gray's Inn These four Inns of Court are the sole surviving constituent bodies of a great legal university which once existed in England The existence of this university is spoken of by Fortescue, by Stowe, and by Coke Inns of Court, (Hospitia Curiae) are so called, because the students therein, do not only study the law to enable them to practise in the Courts in Westminster, but also pursue such other studies, as may render them better qualified to serve the King in his Court (*Fortescue* c. 49)

Innavigability Unseaworthiness of a ship.

Innavigable Incapable of floating ships

Inner barrister, One who pleads within the bar

Innings Lands recovered from the sea by draining (*Cowel, Law Dict*)

Innocence Freedom from guilt The absence of guilt The law presumes in favor of innocence (*Black Law Dict*)

Innocent. Free from wrong doing

Innocent agent. An 'innocent agent,' in a sense that one may assist in the perpetration of a crime and may not be an accomplice, is one who does an unlawful act at the solicitation or request of another, but who from defect of understanding or in ignorance of the inculpatory facts, incurs no legal guilt A woman of mature years, in full possession of her faculties and of ordinary intelligence, who fraudulently undertook to assist a person in corruptly influencing her husband (a juror) as to his verdict, and who must have known that she was doing wrong, is not an innocent agent, but an accomplice

Innocent possession The term 'innocent possession' is not convertible in legal terminology with the term 'lawful possession' Intent does not enter into whether an act is unlawful or tortious, though it does as to whether it is innocent or criminal

Innocent purchaser An innocent purchaser is one who by an honest contract or agreement purchases property or acquires an interest therein, without knowledge or means of knowledge sufficient to charge him in law with knowledge of any infirmity in law in the title of the seller.

To be an innocent purchaser the vendee must in good faith pay a valuable consideration without notice of outstanding legal or equitable rights

Innocent shippers As in marine insurance the assured impliedly warrants that at the commencement of the voyage the ship is seaworthy, underwriters are not liable if it appears that the ship was not in fact seaworthy, and this whether the shipper knew of the unseaworthiness or not It is the practice, however, of underwriters on cargo, although they may to an action on a policy have a good defence in law founded on the unseaworthiness of a vessel, to pay insurers who are 'innocent shippers" —shippers ignorant of the fact that the vessel was unseaworthy [*Brooking* v *Maudslay*, (1888) 58 L J. Ch 852, *Shegh* v *Tyser* (1900) 2 Q B 336, Arnold Marine Insurance, 7th ed, 1901, S 689]

Innocent woman An innocent woman is one whose character is unsullied, that is, undefiled, not stained with moral turpitude

An innocent woman is one who has never had illicit intercourse with any man, and who is chaste, or pure, and it is not necessary that she have a mind free from lustful and lascivious desires

Innuendo Allusive, depreciatory remark or hint An Innuendo, is "a statement by the plaintiff in an action for Defamation" of the construction which he puts upon the words himself, and which he will endeavour to induce the jury to adopt at the trial" (Odgers, Pleadings, 160)

The office of the innuendo is merely to interpret the meaning of the language used Indeed, the word 'meaning' is a synonym of the word 'innuendo,' and so is the phrase 'that is to say'

An innuendo is an explanation of the meaning of the words published or spoken by a reference to facts previously ascertained by averment or otherwise

The purpose of an innuendo is to define the defamatory meaning which the plaintiff attaches to the words and to show how they came to have that meaning and how they relate to the plaintiff

"Inoculation" defined Act 13, 1880, S 2 (5), Bur Act 6, 1908, S 2, Mad Act 4, 1884, S 3 (*vii*), Mad Act 5, 1884, S 3 (*viii*)

"INOCULATION" means any operation performed with the object of producing the disease of small pox in any person by means of variolous matter. [Vaccination Act (XIII of 1880), S 2]

Inofficious 'Inofficious' is the equivalent of 'unnatural' The term is predicable of such instruments as ignore the moral claims upon the testator which the ties of kinship suggest When there is a glaring disregard by a testator of a child, especially if such child is helpless, by reason of infancy or disease, in favor of a stranger, a court, while saying that a man can do as he pleases with his property, will be alert in seeking for the presence of some influence which must have warped the judgment and controlled the will of the testator The testamentary act is so unlike the product of a healthy and independent mind that the act alone is strongly evidential of the existence of some extrinsic undue influence The probative force of such a testamentary act rises and falls in the degree of its unusuality and unreasonableness, and therefore the character and degree of probative force of extrinsic testimony required to prove undue influence must increase in the proportion that the unreasonableness of the testamentary act diminishes.

Inofficious testament A will omitting the testator's nearest relatives

The name 'inofficious testament' was used in the Roman law to designate a testament in which no mention was made of the heir.

Inofficious will.

Inofficious will is a testamentary instrument which wholly passes by those having strong natural claims on the testator "By the Roman Law, testaments might be set aside as being *inofficiosa* if they totall, passed by (without assigning a true and sufficient reason) any of the children of the testator, though it the child had any legacy, however small, it was a proof the testator had not lost his memory or his reason, which otherwise the law presumed But the law of England makes no such constrained suppositions of forgetfulness or insanity, and, therefore, though the heir or next-of kin be totally omitted, it admits *querela inofficiosa* to set aside such testaments" (Wms Exs 32, citing 2 Bl Com 503, *Wrench* v *Murray*, 3 Curt. 623)

Inops consilii. Without counsel

Inquest Legal or judicial inquiry, into a matter of fact (as) coroner's inquest "'Inquest' is that inquiry which is made generally by jurors criminal cases touching the matter in fact" (*Termes de la Ley*)

While in its broadest sense an inquest may include any judicial inquiry, its use is generally confined to an inquiry by jury The coroner's inquest has from the earliest period in the history of our law been held with a jury

Inquest of Lunacy. The primary object of an inquest of lunacy is not to benefit any particular individual, but to see whether the fact of mental incapacity exists, so that the state, through the courts, can take control

"Inquiring into the offence" These words in Criminal Procedure Code Act (V of 1898), S 337 (1), [13 I C 273 (274)]

"Inquiry" defined Act 5, 1898, Ss 4 (*k*), 428 *See also* Election Offences Enquiries Act, S 4

"INQUIRY" includes every inquiry other than a trial conducted under the Criminal Procedure Code by a Magistrate or Court (Criminal Procedure Code, 1898, S 4 *See also* 13 I C at p 274 The term includes a proceeding under S 145, Criminal Procedure Code)

"Inquiry", of a case is not differed till such time as Magistrate begins to record evidence It commences not with the lodging of the complaint or issue of process, but with the appearance of the accused before the Magistrate to answer the charges [134 I C. 361=33 Bom L R 668=1931 Bom 411]

An enquiry under the Criminal Procedure Code does not merely mean an enquiry into an offence its meaning is considerably wider and extends to enquiries into matters which are not offences Proceedings under S 145 of the Code are enquiries (1 I C 336) An "inquiry" in an action is not limited to what a man can see with his own eyes, it signifies a judicial inquiry with witnesses, therefore in a reference "for Inquiry and Report" the Referee may, and it is the invariable practice to, hear counsel and witnesses (*Wenlock* v *River Dee Co*, 19 Q B D 155; 56 L J Q.B 589 · 57 L T. 320, 35 W.R. 822)

INQUIRY AND TRIAL DISTINGUISHED An inquiry under the Code of Criminal Procedure is a proceeding distinct from a trial There is no definition of the word "inquiry" in the interpretation clause, S 4

Insane delusion

But there is this explanation of the term as used in the Code "(*k*) Enquiry includes every enquiry other than a trial conducted under this Code by a Magistrate or Court" 39 I A 1 5 (174)=39 C 953 (964) =16 C W N 865=16 C L J 231=1912 M W N 760 =12 M L T 171=10 A L J 193=14 Bom L R 717=13 Cr L J 693=16 I C 501=23 M L J 32 *See also* 1929 Pat 644 Trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged [1 I C 228 (235)]

Inquisition Official inquiry, investigation (In Eccl law) tribunal for suppression of heresy.

Ins and outs (*in politics*) Ministerial and opposition parties

Insane Mad, senseless

Insane—Insanity Insanity is the absence of ordinary reason, thought, and comprehension

Etymologically 'insanity' signifies unsoundness Lexically it signifies unsoundness of mind or derangement of the intellect In law, every mind is sound that can reason and will intelligently in any particular transaction and every mind is unsound or insane that cannot so reason or will The law investigates no further Whether this mental condition be congenital, or the result of arrested mental development, or of religious excitement or of physical disease, or of dissipation, or of old age, or of unknown causes, whether it be casual, temporary, or permanent, whether it be personal or hereditary, whether it be manifested in the mildest dimentia or mania—is expressed in law by the same word 'insanity' When this word occurs, unexplained or unlimited, in any statute, contract, or other legal document, it signifies any derangement of the mind that deprives it of the power to reason or will intelligently

"A human creature deprived of reason, and disordered in his senses is still an animal or instrument possessing strength and ability to commit violence; but he is no more so than a mere mechanical machine which, when put in motion, performs its powerful operations on all that comes in its way, without consciousness of its own effects, or responsibility for them In like manner, the man under the influence of real madness, has properly no will, but does what he is not conscious or sensible he is doing, and therefore cannot be made answerable for any consequences" [Lord Eskgrove. *Kinloch's Case*, (1795) 55 How St. Tr 1000]

Insane delusion Belief of facts which no reasonable person would have believed

An insane delusion is exhibited in the belief of facts which no rational person would believe, and the inability to be reasoned out of such belief.

'Insane delusion' is that diseased state or condition of mind which 'gives to airy nothing a local habitation and a name'

An insane delusion is not only one which is an error, but one in favour of the truth of which there is no evidence, but the clearest evidence often to the contrary. It must be a delusion of such character

Insanitary.

that no evidence or argument would have the slightest effect to remove

Insanitary Contrary to sanitary principles

Insanity Unsoundness of mind, mental derangement Madness.

INSANITY, TEST OF "Hamlet, being charged with "coinage of the brain" answers

"It is not madness That I have uttered, bring me to the test,

And I the matter will re word, which madness would gambol from"

Madness, then, varies and fluctuates it cannot "re-word—If the poet's observation be well founded, and though the Court would not at all rely upon it as an authority, yet it knows from the information of a most eminent physician that this test of madness, suggested by this passage, was found, by experiment in a recent case, to be strictly applicable, and discovered the lurking disease [Sir John Kicholl, *Groom* v *Thomas*, (1829) 2 Hagg Eccl Rep 452, 453]

Insanus est qui, abjecta ratione, omnia cum impetu et furore facit He is insane who, reason being thrown away, does everything with violence and rage.

Inscribe To write or mark or trace words, names or figures on paper, wood, metal, or stone, etc

Inscribed stock. Stock of which holders are simply registered, no certificate being issued to them

Insensible. Unintelligible.

Inside Innerside or part.

INSIDE, INTERIOR. The term Inside may be applied to bodies of any magnitude, small or large, Interior is peculiarly appropriate to bodies of great magnitude We may speak of the inside of nut-shell, but not of its interior on the other hand, we speak of the interior of St Paul's, or the interior of a palace

Inside of a week In less than a week

Insidious. Treacherous, crafty, subtle.

Insidious, treacherous The *insidious* man is not so bad as the *treacherous* man, for the former only lies in wait to ensnare us when we are off our guard, but the latter throws us off our guard by lulling us into a state of security, in order the more effectually to get us into his power The opponents to Christianity are fond of *insidious* attacks upon its sublime truths, because they have not always courage to proclaim their own shame, the *treachery* of some men depends for its success on the credulity of others, as in the case of the Trojans who listened to the tale of Sinon, the Grecian spy

Insight Mental penetration

Insight, inspection An inquisitive traveller tries to get an insight into the manners, customs, laws, and government of the countries which he visits; by inspection a master discovers the errors which are committed by his servants and sets them right.

Insolvency

Insignia Coats of arms, emblems of rank, badges or marks of office

Insinuate Bring oneself into favour gradually or subtly, hint.

TO INSINUATE, INGRATIATE Insinuate may be used in the improper sense for unconscious agents, ingratiate is always the act of a conscious agent. Water will insinuate itself into every body that is in the smallest degree porous, there are few persons of so much apathy that it may not be possible, one way or another, to ingratiate one's self into their favour

Insinuation, reflection Envious people throw out insinuations to the disparagement of those whose merits they dare not openly question, when friends quarrel, they deal largely in reflections on the past

Insinuation of a will The production of a will for probate

Insist Maintain (as) "insist that he is innocent", 'persist" is synonymous with "insist" (*Mawson* v. *Fletcher*, 39 L.J Ch. 583)

Insnare ensnare. To entrap

TO INSNARE, ENTRAP, ENTANGLE, ENVEIGLE *Insnare* and *entangle* are used either in the natural or moral sense, *entrap* mostly in the natural, *enveigle* only in the moral sense In the natural sense birds are *insnared* by means of bird-lime, nooses, or whatever else may deprive them of their liberty men and beasts are *entrapped* in whatever serves as a trap or an inclosure Insidious freethinkers make no scruple of *insnaring* the immature understanding by the proposal of such doubts and difficulties as shall shake their faith. When a man is *entangled* in the toils of a wicked woman, the more he plunges to get his liberty, the faster she binds him in her toils The practice of *enveigling* young persons of either sex into houses of ill-fame is not so frequent at present as it was in former times

Insoluble Without any additional words " 'Soluble', and 'Insoluble respectively mean, soluble and insoluble in Water" (*Stroude*, 981)

"Insolvency", defined Act 9, 1872, s 96, *expln.*

INSOLVENCY The term "Insolvency" denotes the state of one whose assets are insufficient to pay his debts, or his general inability to pay his debts But it is, however, frequently used in the more restricted sense to express the inability of a party to pay his debts as they become due in the ordinary course of business The condition of a person who is unable to pay his debts in full.

A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them [Act IX of 1872 (Contract), S 96]

INSOLVENCY, FAILURE, BANKRUPTCY Insolvency is a state failure, an act flowing out of that state, and bankruptcy an effect of that act. Insolvency is a condition or not being able to pay one's debts; failure is a cessation of business, from the want of means to carry it on; and bankruptcy is a legal surrender of all one's remaining goods into the hands of one's creditors in consequence of a real or supposed insolvency. (*Crab.*)

Insolvency.

BANKRUPTCY is the condition of insolvency, when it has passed into the recognition of the law, which deals with the case and its liabilities according to principles established by legislation, and these may vary in different nations. (*Smith Syn Dis*)

FAILURE, is an act or state consequent upon the positive or presumed insolvency being a cessation of business from want of means to carry it on It conveys no reproach

ACT OF INSOLVENCY "If there is one thing more than another upon which the Court is obliged and entitled to treat the words of the statute with great strictness, it is the definition of the acts of insolvency in an Insolvency Act. 34 C W N 1051=130 I C 877=A I R 1931 Cal 167 As to what are acts of Insolvency, *See* Presidency Towns Insolvency Act and Provincial Insolvency Act

ADJUDICATION OF INSOLVENCY "Adjudication of insolvency" is the term usually applied to the order of Court adjudging the party against whom or by whom the petition has been filed as an insolvent

IN CONTEMPLATION OF INSOLVENCY The words 'in contemplation of insolvency" as used in insolvent laws has been held to intend not only contemplation solely of being an insolvent, but also contemplation of actually stopping business because of insolvency and incapacity to carry it on, the contemplation of something more than a state of insolvency an act of insolvency, or an application to be declared an insolvent.

Insolvent. "An "Insolvent" is a person who cannot pay his debts in full" (per *Parke, B*, *Parker* v *Gossage*, 5 L J Ex 4.) The term "insolvent" may be employed to designate (1) a debtor whose assets are not sufficient to pay his debts, (2) a debtor who is not able to pay all his debts from his own means, or whose property is not in such a situation that all his debts may be collected out of it by legal process, or, as is more frequently the case, (3) a debtor who is not able to pay his debts in the usual course of business or meet his pecuniary engagements So too the term may be used as referring only to one who has been judicially declared to be insolvent

Whenever the adjective "insolvent" is used to define the condition of a decedent's estate it has the same signification as when used with respect to the final status of a living person

Insolvent circumstances "In Insolvent circumstances' has always been held to mean, insolvency to the extent of being unable to pay just debts in the ordinary course of trade and business" (per *Willes, J*, *R* v *Saddler's Co.*, 32 L J Q B 345, 10 H L Ca. 404)

By being in "insolvent circumstances" is meant that the whole property and credits are not equal in amount, at a fair, appraisement, to the debts due by the party.

"Insolvent corporation" has been defined to be one whose property is insufficient to satisfy its creditors, also one which is not able to pay its debts.

Insolvent Law. An "insolvent law" is a positive regulation made by the legislature to exonerate the person or property of a debtor and to relieve him from the pressure of creditors

Inspection Laws

"Insolvent partnership" has been defined both as one which has not sufficient property and effects to pay all of its debts and as one which is unable to pay its debts in the ordinary course of business

"Insolvent trader" is one who cannot pay his debts in the ordinary course of trade and business.

Insomnia Sleeplessness

Inspect. Power to 'inspect' documents, includes, generally, a right to take copies (*Mutter* v *Eastern & Midland Ry*, 57 L J Ch 615, 38 Ch D 92, 36 W R 401) Examine officially, look closely into

Inspect-Inspection. Webster defines 'inspect' to mean 'to look, to view or oversee for the purpose of examination, to look into, to view and examine for the purpose of ascertaining the quality or condition of the thing, to view and examine for the purpose of discovering and correcting errors, as to inspect the press or proof sheets of a book'

The 'inspection' of a machine or appliance, or of premises, to ascertain whether they are in good repair or in good condition, means a critical examination

'Inspection,' as defined in Bouvier's Law Dictionary, means the examination of certain articles made by law subject to such examination, so that they may be declared fit for commerce (17 Fed Cas 1302, 1303)

Inspection means to look upon, to examine for the purpose of determining the quality and detecting what is wrong, and is not necessarily confined to optical observation, but is ordinarily understood to embrace tests and examinations

INSPECTION, SUPERINTENDENCY, OVERSIGHT The officers of an army *inspect* the men, to see that they observe all the rules that have been laid down to them, a general or superior officer has the *superintendence* of any military operation. Fidelity is peculiarly wanted in an *inspector*, judgment and experience in a *superintendent* *Inspection* is said of things as well as persons, *Oversight* only of persons, one has the *inspection* of books in order to ascertain their accuracy, one has the *oversight* of persons to preventing irregularity there is an *inspector* of the customs, and an overseer of the poor

Inspection of documents. The preliminary examination of documents by the party opposing him who offers them in evidence

Inspection of Property By rules of Court, the Court or a judge may, upon the application of any party to a cause or matter, make an order for the inspection of any property or thing which is the subject of litigation and may for that purpose authorise any person to enter upon or into any land or building in the possession of any party before the Court. *See* the Annual Practice, notes to Order 50, Daniell's Chancery Practice, Daniell's Chancery Forms, Seton's Judgments and Orders Chitty's Archbold's Practice, Chitty's King's Bench Forms,, Civil Procedure Code

Inspection Laws. The object of inspection laws is to improve the quality of articles produced by the labour of the country, and fit them for exportation, or, it may be, for domestic use They act upon the

Inspection Laws.

subject before it becomes an article of foreign commerce or of inter provincial commerce and prepare it for that purpose

The office of inspection laws is to certify the quantity and quality of the articles inspected, whether imports or exports, for the protection of buyers and consumers

'Inspector" defined Act 15, 1887, S 3 (7), Act 9 1890, S 3 (8), Act 6, 1901, S 2 (1) (*i*), Act 5, 1910, S 2, Bur Act 2, 1910, S 3, Mad Act 4, 1889, S 3 (*h*).

The term is used in relation to various offices (as) Inspector of Factores, of Railways, of Boilers, of Police, of Prisons etc

"Inspector" (*Boilers Inspector*) means a person appointed under Steam Boilers Act to be an Inspector. Bur Act II of 1910 (Burma Steam Boilers and Prime movers), S 3.

"INSPECTOR" (*Police*) means an Inspector of Civil Police who has been appointed by the Inspector General of Police to be also an Inspector of Military Police Bur Act XV of 1887 (Military Police), S 3, cl 7.

"Inspector" means an Inspector of Railways appointed under the Railways Act Act IX of 1890 (Railways) S. 3, cl 8

"Inspector-General" defined Act 9, 1884, S 3 (7), Act 8, 1897, S 4 (*b*), Bom. Act, 4, 1890, S 3 (*a*).

"INSPECTOR-GENERAL" includes any officer appointed by the local government to perform all or any of the duties imposed by law on the Inspector General Reformatory Schools Act (VIII of 1897), S 4.

"Inspector-General" in the Prisons Act means the Inspector-General of Prisons Prisons Act (IX of 1894), S 3

"Inspector-General of Registration" defined Ben Act, 1, 1876, S 2

"INSPECTOR-GENERAL OF REGISTRATION" and "Registrar" respectively mean the officers so designated and appointed under the Indian Registration Act, or other law for the time being in force for the registration of documents Ben Act I of 1876 (Mahomedan Marriage and Divorce Registration) S 2

Installation The act of giving a person possession of an office, rank, or order with the customary ceremonial services. The ceremony of investing one with a public office

Instalment Any of the successive parts in which a sum is to be paid.

Instalments Partial payments on account of a larger sum

Instance A precedent, instigation, solicitation.

Instance, Court of first Original or trial Court.

Instant Precise moment, very short time (as) in an instant In consideration of law there is a priority of time even in an **"instant,"** so that a surviving joint tenant takes and is preferred before the devisee of his companion (*Co. Litt* 185b). *Termes de la Ley*)

Instigate

INSTANT. MOMENT Instantaneous relief is necessary on some occasions to preserve life, a moment's thought will furnish a ready wit with a suitable reply

Instant Death 'Instant death,' as used in a special finding, in an action for damages for death, that the death was of that nature commonly known as 'instant death,' may be applied to a death caused by an injury necessarily fatal, where death results in a few moments from it.

'Instantaneous' means done or occurring in an instant, or without the intervention of any perceptible portion of time, as the passage of electricity appears to be instantaneous

As used in reference to the death of a person caused by an injury, the words 'immediate' and 'instantaneous' do not mean precisely the same things, but the word 'immediate' is more comprehensive and elastic in its meaning An instantaneous death is an immediate death, but an immediate death is not necessarily in all cases an instantaneous death.

Instanter 'Instanter,' when used in a statute excludes all mesne time, and is not synonymous with 'then and there,' but means such convenient time as is reasonably necessary for doing the thing Some Legal lexicographers define it as being synonymous with 'within twenty-four hours' (*Words and Phrases*)

The term 'instanter,' as ordinarily used, is understood to mean instantly, immediately, or at once, but in an order that defendants plead 'instanter,' the term means within the judicial day then begun

Instantly at once, immediately, directly

'INSTANTLY,' say lexicographers—those who define it etymologically, and those who give its legal meaning —implies 'without any intervention of time', 'allows not a particle of delay', 'marks an interval too small to be appreciated'

"Instantly" occurring in a bill of sale has been read as synonymous with "immediately" *i e* within a reasonable time (*Massey* v *Sladen*, 1868, L R 4 Ex. 13).

Instead The ordinary and popular meaning of the word 'instead,' and the phrase 'in its stead,' is in the room of, in lieu of, in the place of They are expressions of substitution of one thing for another of equivalence

"Instead of" Although a gift by a council 'instead of', one given by the will implies some, it does not necessarily mean a total substitution Thus in *Doe d Murch* v *Merchant*, 1843, 6 Man. & G 813, 64 R R 853, the words in a codicil "instead of the devise and bequest in the will" were read as meaning "instead of so much one of the devise in the will as is incompatible with the disposition contained in the codicil" *Stroude, Ency of the Laws of England.*

"Instigate" defined Act 45, 1860, S 107, *expln.* 1

INSTIGATE. To 'instigate' means to stimulate or good to an action, especially a bad action. One of its synonyms is 'abet,' which means in law to aid, promote, or encourage the commission of an offence

Instigation.

Instigation Inciting, bringing about A Breach of Trust committed "at the Instigation or Request, or with the consent of a beneficiary connotes a Breach of Trust which beneficiary knows of (*Re Somerset*, (1894) 1 Ch 231)

Institute Set on foot, commence "Instituted," in respect of legal proceedings means, commenced" (*Blackborne* v *Blackborne*, 37 L J P & M 73, L R I P & M 563) To begin an action, to accuse, to appoint an heir by will A counter claim is a "*Proceeding instituted*" (*Hood-Barrs* v *Cathcart*, 1895 I Q B 873) "Instituted" in S 4 of the Deccan Agriculturists Act 1879 does not mean "heard and determined" (19 B. 46)

'Institute,' when applied to legal proceedings, signifies the commencement of the proceedings When we talk of 'instituting an action, we understand bringing an action

Criminal proceedings cannot be said to be 'instituted' until a formal charge is openly made against the accused by complaint before a magistrate

"Instituted" also means, established *e g*, a Society instituted for the purposes of Science, &c

INSTITUTE INSTITUTION That which is publicly established with authority is an *institution* But the word Institution has the particular meaning of an established, organized society *Institute* is similarly employed The difference seems to be that *Institution* being an old word in English and *Institute* in this sense being an adoption of the French Institute, which is a literary and philosophical society So among other *institutions* in large towns, literary, charitable, or commercial, we observe generally in these days a mechanics' *institute* (*Smith Syn Dis*)

Institute of International Law A body of international lawyers consisting of honorary members members, and associates The title of honorary member may be conferred on members or associates and on other persons who have distinguished themselves in the domain of international law It was formed in 1873 chiefly through the efforts of M. Rolin Jacquemyns, who had also founded the Revue de Droit International In this his circular to the leading European writers on international law M Rolin-Jacqumyns set forth that his object was to create a "permanent or academic body for the study and progress of international law" The official language of the Institute is French, and its meetings, which at one time were held annually, but for some years past have only been held every second year, take place wherever the members at the previous meeting decide to assemble Such meetings have been held at Ghent (twice), Geneva (twice), the Hague (twice,) Zurich, Paris (twice), Brussels (thrice), Oxford, Turin, Mucnish, Heidelberg, Lausanne, Hamburg, Cambridge, Venice, Copenhagen, Neuchatel, and Edinburgh, and several other places. (*See Ency of the Laws of England*)

Institutes Digest of jurisprudence (as) The Institutes of Justinian

INSTITUTES (*Coke's Institutes.*) A legal treatise by Sir Edward Coke in four parts The first part, which is the most valuable, is a reprint of Littleton's work on Tenures, with a commentary (usually cited as Coke upon Littleton, or Co Litt), the second part is an exposition of various statutes, the third part is a treatise on criminal law, and the fourth deals with the jurisdiction of the various courts of law

Instructions of Justinian An elementary treatise on Roman law written in the 6th century

Institution An establishment of a public character, a place where the business of a society is carried on, the organization itself

The word institution,' both in legal and colloquial use, admits of application to physical things One of its meaning, as defined in Webster's Dictionary is 'an establishment, especially of public character, or affecting a community' The term 'institution' is sometimes used as descriptive of an establishment or place where the business or operations of a society or association is carried on At other times it is used to designate the organized body'

"The word 'institution' properly means an organization organized or established for some specific purpose, though it is sometimes used in statutes and in common parlance in the sense of the building or establishment in which the business of such a society is carried on"

The word institution,' as used in an Act providing that institutions of education not used for gain shall be exempt from taxation, embraces not only the buildings and grounds so used, but includes the endowment and other funds of the school or corporation which is dedicated solely to the cause of education.

The 'institution of a legal proceeding in a court' plainly comprehends the filing of a proper plaint or complaint, process for bringing the necessary parties into court, and judicial inquiry according to the usual rules and practices of courts

Institution (*in Eccls Law.*) is the formal admission by the bishop of a cleric (who has been presented to the living) to the spiritual charge of benefice, being a rectory or a vicarage other than a perpetual curacy (Gibs Codex Phillimore, Eccl Law, Blunt, Church Law)

'Instroke"- Meaning of the words "instroke" and 'upstroke" with reference to mining law explained 20 C L J 512=27 I C 444 "The right of 'Instroke' is the converse of 'outstroke' and refers to the right of conveying Minerals from a demised mine to the surface through a pit or shaft in an adjoining mine 'Outstroke' is the right of conveying Minerals from an adjoining mine to the surface through a pit or shaft in the demised mine" (*Mac* S 231, *Whv*)

Instruct To give instructions to a jury, to direct, to advise

Instruction. The French equivalent of the English Preliminary examination of an accused person before a magistrate (*7 Ency of the Laws of England*, 306)

INSTRUCTION 'Instruction,' within the meaning of the rule that the necessaries which a husband is bound to provide for his wife includes instruction, etc, means some degree of education as taught in the schools.

Instruction.

Bouvier defines 'charge' to jury which is synonymous with 'instruction' thus 'charging a jury' is stating the precise principles of law applicable to the case immediately in question'

Instructions The information given to a counsel or solicitor, to enable him to conduct the client's case in Court The term is also applied to the directions or orders which an ambassador or other diplomatic agent receives from the Court by which he is accredited, for his own information and direction in his communications with the Government to which he is sent.

"INSTRUCTIONS" also means orders or directions of a superior or principal

"INSTRUCTIONS" TO AN ADVOCATE OR BARRISTER are not merely information as to the facts of the case, but constitute the authority of counsel to represent the client 6 Ind Cas 851 (854)

"Instrument" defined (*See also* assurance, Bill of Exchange, Bill of lading, cheque conveyance, currency note, Deed of Settlement, Document, Foreign instrument, Inland instrument, Mortgage deed, Negotiable Instrument, Power of attorney, Promissory note, will) Act 4, 1882, S 3, Act 2, 1899, S 2.

INSTRUMENT A term used for a deed, writ, or other legal proceeding or matter reduced to writing (*Tomlin's Law Dic*)

"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded Act II of 1899 (Stamp), S 2 (14)

An instrument is one who, or that which, is made a means or caused to serve a purpose.

The word 'instrument,' in a legal sense, is defined to be a writing as the means of giving formal expression to some act, a writing expressive of some act, contract, process, or proceeding, as a deed, contract, writ, etc 'A writing given as the means of creating, securing, modifying, or terminating a right, or affording evidence, a deed of conveyance, a grant, a patent, an indenture, etc' 'A formal legal writing, *e.g*, a record deed, or written instrument' Rep & L. Law Dict 'Anything reduced to writing, written instrument, or instrument of writing, more particularly, a document of formal or solemn character' *Instrument* is a word most frequently used to denote something reduced to writing, as a means of evidence, and a writing as the means of giving formal expression to some act, a writing expressive of some act, contract, process or proceeding, a writing containing any contract or order, a contract in writing, a formal legal writing, *e g*, a record, charter, deed or written agreement, a document of formal or solemn character It is a general name for bills, bonds, conveyances, leases, mortgages promissory notes, wills, and the like, but scarcely includes accounts, letters in ordinary correspondence, memoranda, and similar writings, where the creation of evidence to bind the party, or the establishment of an obligation or title, is not the primary motive.

In the law of evidence it has a still wider meaning, and includes not merely documents, but witnesses and things, animate and inanimate, which may be presented for inspection.

Instrument of gaming.

It has also the more general sense of a means of accomplishing something, a thing useful in the execution of a purpose, and is applied to one who, or that which, is made a means or caused to serve a purpose, a tool used for any work or purpose

The word "instrument" used in S 39 of Act VIII of 1890, Guardian and Wards Act should be confined to instruments *ejusdem generis* with a Will, and a decree passed by a civil Court is not an instrument within the contemplation of the section 18 Bom. 375

"Instrument" in T P Act means a non-testamentary instrument, Act IV of 1882 (Transfer of Property), S 3

INSTRUMENT in the Trustee Act, 1893 (56 & 57 Vict c 53), S 50, includes "Act of Parliament"

"DEED, WILL, OR OTHER WRITTEN INSTRUMENT" applies to "any written document under which any right or liability, whether legal or equitable, exists," (*Mason* v *Schuppisser*, 81 L T 147)

Instrument also means a material thing or mechanical devise for performing a work

INSTRUMENT, IMPLEMENT, TOOL The character of *tool* is simplicity, of an *implement* technical adaptation, of an *instrument* scientific ingenuity and effectiveness One speaks of the *tools* of a carpenter of the *implements* of husbandry, of the *instruments* of the astronomer The *implement* goes to perform a work with which it comes into physical contact, the *instrument* in a scientific invention for multiplying and enhancing the faculties and powers of men. (*Smith Syn Dis*)

'TOOLS AND INSTRUMENTS,' within the meaning of an Act exempting the tools and instruments necessary for the exercise of the trade or profession of the debtor from seizure, being intended to encourage such trade or profession by enabling the debtor to sustain himself and family by his own industry, include the books of professional men The lawbooks of a lawyer are perhaps not any less necessary to the proper exercise of his profession than the tools of a mechanic are to the latter, and enable him to carry on his trade

Instruments, ambiguous. Where an instrument may be construed either, as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly Act XXVI of 1881 (Negotiable Instruments), S 17

Instrument in writing —Transfers of shares in a company required by the articles of association to be by "instrument in writing," need not be by deed, whatever the practice of the company may have been on the subject (*in re* Tahiti Cotton Co., *Ex parte* Sargent, 1873 L R 17 Eq 273, *see also* Palmer, Company precedents, "when a contract may be made by any species of written instrument, the same strictness is not required as in formal *instruments under seal*" (per *Parke, B*, in *Hunter* v. *Parker*, 1840 7 Mee & W 322, at p 343; 56 R R. 730)

Instrument of evidence Any person or thing which may be presented in evidence for inspection

"Instrument of gaming" defined Act 21, 1857, (S. 59, Ben Act 4, 1866, S. 3, Ben. Act 2, 1867, S. 1, Ben.

Instrument of gaming.

Act 4, 1897, S, 3, Bur. Act 1, 1899, S 3 Bom. Act 1, 1890, S. 2.

INSTRUMENT OI GAMING A machine intended to assist persons in wagering on a race by enabling them to ascertain the state of bets made on the different horses is an 'instrument of gaming" *Tollet* v *Thomas*, 1874, 24 L T 508, but money is not *Watson* v *Martin*, 1864, 31 L J M C 50, *Hirst* v *Molesbrury*, 1870, 40 L.J M.C. 76) *See also* 17 Bom. 184

The expression *"instruments of gaming"* means and includes—(*a*) any cards, dice, counters, coins, gaming tables, gaming-cloths, gaming-boards or other articles devised or actually used for the purpose of gaming, (*b*) any boxes, receptacles, lists, papers, tickets or forms used for the purpose of the game of *it* or any other game or pretended game of a like nature Bur Act I of 1899 (Gambling) S 3, cl 3

"Instrument of partition" defined Act 1, 1879, S 3 (11)

"INSTRUMENT OF PARTITION" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue authority or any Civil Court and an award by any arbitrator directing a partition, Act II of 1899 (Stamp), S 2 (15)

'INSTRUMENT OF PARTITION' A decree for a partition is an instrument of partition (*vide*, S 2 (15) of the Stamp Act) and as such has got to be engrossed on stamp paper 40 P L R 2 An *"instrument of partition"* includes in its definition award by an arbitrator directing a partition A I R 1922 All 283

Instrument of title *See* Document of title Railway Receipts are not instruments of title within the meaning of S. 103 of the Indian Contract Act. 3 Bom L R 260 (266), 14 Bom 57

"Instrument of trust" defined Act 2, 1882, S 3.

INSTRUMENTS PAYABLE ON DEMAND A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand Act XXIV of 1881 (Negotiable Instruments) S. 19

"INSTRUMENT TO WHICH THIS ACT (SPEC RELIEF) APPLIES Act XIII of 1924 (Specified Instruments) Stamp Act, S 2, cl (*a*).

Instrumentality. "Suppose that a Solicitor is employed in a hotly contested action, and prepares the whole case of the plaintiff down to the moment of trial, and that just before the trial the plaintiff changes his solicitor, and then, owing to the exertions of the solicitor formerly employed he succeeds in the action Can it possibly be said that that success is not owing to the 'instrumentality' of the discharged solicitor" (*per* Kay, J, *Re Wadsworth*, 54 L J Ch. 647) In such a case the solicitor would be with that to a change for his costs and expenses on the property as property recovered through "his "Instrumentality" under S 23 & 24 Crc. C 127, S. 28

Insufficiency. Lack of form or substance in a pleading.

"Insufficient security" defined Act 4, 1882. S 66, *Expln* Act 5, 1882, S. 10, *Expln.*

Insurance.

"Insufficient Stamp" The words "insufficient stamp" in section C. P Code (O VII, R 11 (c), do not refer to nor include a wholly unstamped paper. (13 A 305=1891 A W.N 99)

Insult Affront, scornful abuse

'To insult,' says Webster, is to treat with abuse, insolence, or contempt, to commit an indignity upon, as to call a man a liar'

INSULI, AFFRONT, OUTRAGE, INDIGNITY, An *Insult* is never accompanied by violence, as at present used —this sense being reserved for assault *Affront* is a marked intentional, if not public, breach of politeness It lies more in manner than in words, and may be unaccompanied by words. It is more demonstrative and less bitter than insult. *Outrage* is gross and violent insult and indignity, or overhearing or cruel violation of the feelings or the person *Indignity* can only be practised upon persons claiming or entitled to high respect, the force of it depending on the contract between the worth or station of the person, and the treatment to which he is subjected An *insult* is an indolent attack It is more easy to imagine an *affront* where none was intended than an *insult* There never can be a justification of *insult* *Affront* is passive in its character, *insult* and *outrage* active Good men never *insult*, but it would be better to *affront* another or run the risk of doing so, than to appear to sympathise with him in what is disgraceful *Affront* does not exclude politeness, *Insult* does. (*Smith* Syn *Dis*)

"Insurable Interest," in respect of goods, "does not, necessarily imply a right to the whole, or a part, of a thing, nor, necessarily and exclusively, that which may be the subject of privation, but he having some relation to or concern in, the subject of the insurance, with relation of concern, by the happening of perils insured against, may be so affected as to produce a damage, detriment, or prejudice, to the person insuring and where a man is so circumstanced with respect to matters exposed to certain risks or damages he may be said to be interested in the safety of the thing To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence,—prejudice from its destruction" (*per* Lawrence, J, *Lucena* v *Craufurd*, 2 B & P N. S 302)

An 'insurable interest' in property is such an interest as shall make the loss of the property of pecuniary damage to the insured It is a right, benefit or advantage arising out of the property or dependent thereon, or any liability in respect thereof, or any relation to or concern therein, of such a nature that it might be so affected by the contemplated peril as to directly damnify the insured

Insurance or Assurance "A contract, by which a person, (who thence is termed the Insurer, or, from the form of the instrument, which is signed by him alone, the Underwriter) in consideration of a sum of money, technically called the Premium, becomes bound to secure a party against the risk of loss happening from certain events marked out by the contract The party deriving security from the contract is called the Insured, or more commonly Assured, and the contract itself is termed a Policy of Insurance"

"It has been conceived, from a passage in Suetonius that Claudius Caesar was the first who invested

this custom, of Assurance, but with greater probability, Savary, in his Dictionaries de commerce, title Assurance, thinks this custom was first introduced by the Jews in the year 1182, but whoever was the first contriver, or original inventor of the useful branch of business, it has been for many ages practised in the United Kingdom, and is supposed to have been introduced there by some Italians from Lombardy, and this being prior to the building of the Royal Exchange, they used to meet in a place where Lambard street now is, at a house they had called the Pawn House, or Lombard, for transacting business and as they were then the sole negotiators in Insurance, the policies made by others in after-times had a clause inserted, that those latter ones should have as much force and effect as those formerly made in Lombard-street" (*Tomlin's Law Dic*) A contract of "Insurance" is one uberrimoe fidei, and demands a full disclosure of all facts and circumstances affecting the risk and is vitiated by their non-disclosure, whether innocent or fraudulent (*Davies* v *London & Pro Mar Insrce*, 47 L J Ch 511, 8 Ch D 469)

Insurance policy Document effecting insurance issued by the insurer to the insured.

DIFFERENT KINDS OF INSURANCE ADVANCE INSURANCE A contract with an insurance company by which the insured in consideration of a gross sum paid to him by the company agrees to pay to the company certain specified periodical payments for a term of years or for life only, if life should terminate within that period, the making of such payment being secured by a bond and deed of trust or mortgages on real property and there being no provision for repayment of the principal sum in any event, is not a loan but a contract of insurance, and as such it is governed by the same rules of construction as are applied in the case of ordinary contracts of insurance

ASSESSMENT INSURANCE Assessment insurance is an insurance contract, the benefit of which is dependent on the collection of an assessment from persons holding similar contracts

CASUALTY INSURANCE, is one against loss arising from accidental injury to property

CREDIT INSURANCE, is one against loss due to failure of purchasers of goods to meet their obligations

DOUBLE INSURANCE, is where the same man is to receive two sums instead of one, or the same sum twice over, for the same loss, by reason of his having made two Insurance upon the same property 1 Burr 496 It makes no difference whether such Insurances are both or either made in the name of the Insurer, or of another person, if actually made on his account (*Park*, 285) These double Insurances are not void, but are considered as being made by the assured, to increase his security, the assured, therefore, shall receive only one satisfaction to the real amount of his loss and no more, which he may recover against which set of Underwriters he pleases And when one set of Underwriters pay the loss they may call upon the other Underwriters to contribute in proportion to the sums they have insured. (1 Black Rep. 416, 1 Burr 492. *Tomlin's Law Dic.*)

EMPLOYER'S LIABILITY INSURANCE, is one against loss arising from injury to employees while in the employ of the insurer.

ENDOWMENT INSURANCE. Endowment Insurance, which is a form of life insurance, is a contract to pay a certain sum to the insured if he lives a certain length of time, or if he dies before that time, to some other person indicated To constitute a contract one of endowment insurance the payment must be contingent upon the duration of human life

FIDELITY INSURANCE, is one against loss arising from the default or dishonesty of employees.

FIRE INSURANCE Insuring for a given period against loss to injury to specified property by fire.

LIFE INSURANCE The contract of life insurance is a mutual agreement by which one party undertakes to pay a given sum upon the happening of a particular event contingent upon the duration of human life in consideration of the payment of a smaller sum immediately, or in periodical payments To render a contract one of life insurance the payment must be contingent upon the duration of human life

MARINE INSURANCE, is one against loss by injury to ship, cargo, or fright by perils of the sea

TERM INSURANCE Insurance is none the less "life insurance" because it is not for the full term of the life of the insured, but for a term of years only, or until he shall arrive at a certain age

TITLE INSURANCE, is one against loss by reason of defective title or interest in land or real property

TONTINE INSURANCE Tontine insurance is a form of life insurance by which the policy-holder agrees, in common with the other policy-holders under the same plan, that no dividend, return premium, or surrender value shall be received for a term of years called the tontine period, the entire surplus from all sources being allowed to accumulate to the end of that period and then divided among all who have maintained their insurance in force.

"INSURANCE" OR "GUARANTEE," depends on the character of the Contract itself (*per* Romer, L.J. *Seaton* v *Heath*)

Insurance Agent Anyone who in any manner aids in the transaction of an insurance company's business

The term 'insurance agent' includes any acknowledged agent, surveyor, broker, or any other person who aids in any manner in transacting business.

Insurance Broker Insurance brokers are brokers who 'procure insurance and negotiable between insurers and insured

INSURANCE BROKER, is one who acts as a middleman between the insured and the company, and who solicits from the public under no employment from any special company.

Whoever acts or aids in any manner in negotiating contracts of insurance or reinsurance, or placing risks or effecting insurance or reinsurance, for any other person than himself, receiving compensation therefor, and is not the officer, member, or agent of the company or companies in which such insurance is effected, shall be deemed to be an insurance broker.

Insurance Company.

"Insurance Company" defined Act 6, 1882, S 3

"INSURANCE COMPANY," means any person who transacts in British India the business of effecting contracts of insurance against any risk, Act XX of 1928 (Insurance Companies), S 6.

"Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses Act VII of 1913 (Companies), S 2, cl 8

An 'insurance company' is an institution which undertakes to pay a sum of money on the death of the assured, or at another fixed time, in consideration of premiums, assessments, or payments made in any other way

Insurance Company and Mutual Benefit Society The distinguishing feature between insurance companies and mutual benefit societies is generally that the former contemplate gain, while the latter contemplate benevolence only

'Insurant" The term "insurant" is sometimes used to designate the person to whom an insurance policy is issued (*Stand Dict*)

Insure To make an insurance

Insured The person who obtains insurance of his person or property

The person indemnified by a contract of insurance is called the 'insured'

The 'insured' is the person on whose life a policy of insurance is effected

Whenever the word 'insured' occurs in a fire insurance policy, it shall be held to include the legal representative of the insured

"Insured" and "Assured" Although attempts have been made to distinguish between the words "insured" and "assured" and it has been contended that the former applies to the person whose life is insured, while the latter applies to the person for whose benefit the insurance is effected, there is no such distinction in the law On the contrary the terms are used interchangeably and their application is determined by the connection and context In *Connecticut Mut L Ins Co* v. *Luches*, 108 U S 498, 504, it was said "There are undoubtedly instances where this distinction between the terms assured and insured is observed, though we do not find any judicial consideration of it. The application of either term to the party for whose benefit the insurance is affected, or the party whose life is insured has generally depended upon its collocation and context in the policy"

Insurer The under-writer or insurance company with whom a contract of insurance is made

The person who undertakes to indemnify another by contract of insurance is called the 'insurer'

Insurgents. Rebels in arms against the Government of their country who have not been recognized by other contries as belligerents, One engaging in an insurrection, partaking of an insurrection

Insurrection Mutiny open and active opposition to the execution of law A rebellion of citizens or subjects of a country, or state against its Government,

Insurrection.

An insurrection is a rising against civil or political authority, the open and active opposition of a number of persons to the execution of law in a city or state, a rebellion, a revolt

The term 'insurrection' means an armed assembly of persons having intent to resist or subvert lawful authority

INSURRECTION, SEDITION, REBELLION, REVOLT The term *insurrection* is general, it is used in a good or bad sense, according to the nature of the power against which one rises up, *sedition* and *rebellion* are more specific. they are always taken in the bad sense of unallowed opposition to lawful authority. There may be an *insurrection* against usurped power, which is always justifiable but *sedition* and *rebellion* are levelled against power universally acknowledged to be legitimate *Insurrection* is always open, it is a rising up of many in a mass, but it does not imply any concerted or any specifically active measure, a united spirit of opposition as the moving cause is all that is comprehended in the meaning of the term *sedition* is either secret or open, according to circumstances, in popular governments it will be open and determined, in autocratic governments it is secretly organized, *rebellion* is the consummation of sedition, the scheme of opposition which has been digested in secrecy breaks out into open *hostilities*, and becomes *rebellion* The *insurrection* which was headed by Wat Tyler, in the time of Richard II, was an unhappy instance of widely extended delusion among the common people, the *insurrection* in Madrid, in the year 1808, against the infamous usurpation of Bonaparte, has led to the most important results that ever sprung from any commotion, Rome was the grand theatre of *seditions*, which were set on foot by the Tribunes England has been disgraced by one *rebellion*, which ended in the death of its king *Sedition* is common to all forms of government, *rebellion* exists properly in none but monarchical states, in which the allegiance that men owe to their sovereign requires to be broken with the utmost violence in order to be shaken off *Insurrections* may be made by nations against a foreign dominion, or by subjects against their government *sedition* and rebellion are carried on by subjects only against their government *revolt* is carried on only by nations against a foreign dominion, upon the death of Alexander the Great most of his conquered countries *revolted* from his successors (*Crab*)

INSURRECTION, SEDITION, REBELLION, REVOLT, REVOLUTION, MUTINY, DEFECTION, RIOT An *Insurrection* is a rising up of individuals against the laws of a community or state of the authority of the government. *Sedition* is, literally, a separation of the people. It is such a commotion in the State as manifests public discontent, without aiming at violent opposition to the laws *Rebellion* is employed by us in the sense of a rising of the whole or the great majority of a people against the supreme ruler of government being an extended insurrection or revolt A successful *rebellion* ends in a *revolt*, a permanent *revolt* in a *revolution* *Rebellion* and *revolt* are states of war, *revolution* is a state of peace, though on a new footing *Revolt* is commonly employed of important matters, *Rebellion* sometimes of things less important Hence *Rebellion* is more easily applicable to individuals and individual acts than *Revolt* *Revolution*, which is of the change in the political organisa-

Int

tion as supposes revolt successfully carried out. *Mutiny* is a movement of *revolt* against minor institutions or against military or naval authorities or commanders, as the mutiny of a regiment of a ship's crew *Insurrection, rebellion,* and *revolt,* may be universal or partial *Sedition* and mutiny are always partial *Revolution* always universal (*Smith. Syn Dis*)

Int. 'Int' as used in a note reciting, 'Int, at 6 o/o p a.,' is to be construed as an abbreviation for 'interest.'

Intaker A receiver of stolen goods The name was especially given to those in the northern parts of England who received the booty brought to them by their confederates Intakers are mentioned in the Statute 9 Hen v c 7 (*Ency of the Laws of England*)

Intelligence Office 'Intelligence offices' are certain offices established in some states of the U S of America for the obtaining of employment for female domestic servants or other laborers

Intemperance 'Intemperance' does not necessarily imply drunkenness It is defined to be the use of anything beyond moderation, but the word 'intoxicated' means to become inebriated or drunk

An occasional use of alcoholic liquors or opium by one insured in a life insurance company is not to be deemed 'intemperance,' but such person must indulge in them to such an extent as would be considered an excess.

The term 'intemperate', as used in a statute prohibiting the furnishing of liquor to a person of known intemperate habits, means any immoderate or excessive use of intoxicating liquors

A man of 'intemperate habits,' within the meaning of the statute prohibiting the sale of intoxicating liquors to such a man, is 'one who is in the habit of getting drunk now and then, or getting under the influence of liquor every once in a while'

Intend To 'intend' must be understood to mean the same with 'design' or 'contemplate'

Intendant, one who has the charge, management or direction of some offices, department or other public business

"Intend to defraud" [*See* Intent] The expression "*intend to defrud*" implies deceit and consequent injury or intended injury, *i e*, the infringement or intended infringement of some legal right possessed by the person deceived It does not necessarily imply that the person deceived should be deprived of property It includes deceit which causes or is likely to cause any damage or harm to the person deceived in respect of his property or otherwise A I R 1926 Lah 385 In order to constitute in point of law an intent to defraud, there must be a possibility of some person being defrauded by the wrongful act or there must be a possibility of some person being not only deceived but injured by the act. (11 Bom H C R 3, *Foll*) A I R 1930 Pat. 271.

"INTENDED TO BE DONE," *Chapman* v *Auckland Guardians* (1889), 23 Q B D 303.

"INTENDED TO DISPOSE OF THE BENEFICIAL INTEREST THEREIN." These words in S. 81 of the Trusts Act

Intention to dedicate for public use.

have reference to the disposal of the beneficial interest by transfer or Will 31 M. 187=18 M L J 168, *see also* 32 Mad 443

"Intending to register" The words 'person intending to register' in S 31 of the Registration Act include as well a party executing the document as the one in whose favour it is executed.

Intendment Intendment of the law is the understanding or intelligence of the law (*Co Litt. 78b*) that which the law intends or presumes

It is an *intendment of law* that every man is innocent until proved guilty, that every officer acts in his office with fidelity, that the children of a married woman born during wedlock are the children of her husband

Intendment of Law, (*intellectus legis*) The understanding intention, and true meaning of law Lord Coke says, the judges ought to judge according to the common intendment of law (1 Inst. 78. *Tomlin's Law Dic*)

Intent, Intention. In criminal law, as general rule, to involve guilt, the accused must have done or omitted some thing contrary to law, with intent also contrary to law It would revolutionise criminal law to say that criminal responsibility for conduct never depends on intention (*Quinn* v *Lethem,* (1901) A C 491, 533, Lord Lindley) The mere existence of the intention without commission of the act or the commission of the act without the intent, does not, as general rule, constitute crime In the case of civil wrongs, on the contrary, the general rule is that the motive of the defendant in breaking a contract or committing a tort, is immaterial on the question of legal liability

Intent Every sane person of the age of discretion is presumed to intend the natural and probable consequences of his own acts. Every actual consequence is a natural and probable consequence unless and until the contrary is affirmatively shown (66 I C 665=23 Cr L J 313=A I R 1922 Nag. 141)

Intention is the result of working of the brain, and can be gathered from judging the act and the circumstances under which it was done (4 Bur L T. 97=12 Cr L J 329=10 I C. 929)

Intention must be gathered from words used by the accused If the natural and inevitable consequence of such words is hatred or disaffection the intention must be presumed 32 Mad 384=5 M.L.T 393=9 Cr L J 456=2 I C. 33 *See also* 6 Pat. 627, 26 B 558=4 Bom L R. 280

So long as the intention is unequivocally conveyed it is not necessary for the use of any particular formula of words I L.R (1937) Nag. 363=169 I.C. 513 =A.I R 1937 Nag 165.

The word "intention" means that the act intended is in the future and the law makes relevant statements made by a conspirator with reference to the future The words 'in reference to their common intention' mean in reference to what at the time of the statement was intended in the future. 55 Bom. 839=134 I C 1238=33 Bom L R. 1159=A I.R. 1932 Bom. 56.

Intention to dedicate for public use. A person in dedicating land to public use may, of course, place

Intention to dedicate for public use

such limits as he wishes upon the dedication, if he makes those limits clear and definite That is to say he may announce to the public that a certain road is dedicated to it as access, say, to a particular building or for a paticular purpose But there can be no such thing in law as a public right of way, constituted by dedication to only a section of the public As Baron Parke said "There may be a dedication to the public for a limited purpose, as for a footway, horse-way, or drift-way, but there cannot be a dedication to a limited part of the public." 47 I A 25=1 Lah 117=18 A L J 466=11 L W. 579=22 Bom L R 563=13 P.L R 1920=28 M L T 1=25 C W N 122=32 C L J 471=56 I C 1=38 M.L J 455 On a question of intention of the owner of a soil to dedicate a highway to the public, a single act of interruption by the owner is of much more weight than many acts of enjoyment by the public (1919) 47 I.A 25=1 L 117=18 A L J 466=11 L.W, 579=22 Bom L R 563=13 P L R 1920=28 M L T 1 =25 C W N 122=32 C L J 471=56 I C 1=38 M L J. 455

INTENT AND ATTEMPT The distinction between an "Intent" and an "Attempt" to do a thing is, that the former implies the purpose only, while the latter implies that and also something done towards its accomplishment (*Prince* v *State*, 35 Ala 369, *State* v *Marshall*, 14 *Lb* 414)

Intentio caeca mala. A hidden intention is bad

Intentio inservire debet legibus, non leges intentioni Intentions ought to be subservient to the laws, not the laws to intentions (*Co Litt* 314 *b.*)

Intentio mea imponit nomen operi meo. My intent gives a name to my act

" 'Intention of the legislature,' is a common but very slippery phrase, which, popularly understood, may signify anything from Intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it In a Court of law or equity what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary Implication" (per *Ld Watson Re Salomon*, 1897, A.C 38, 66 L J,Ch 44)

Intentionally The term "intentionally" is used in the Evidence Act for the purpose of declaring the law in India to be precisely that of the law of England. 20 C 296 (P C.)=19 I A. 203.

A person who, by his declaration, act, or omission, had caused another to believe a thing to be true and to act upon that belief, must be held to have done so "intentionally" within the meaning of the statute, if a reasonable man would take the representation to be true, and believe it was meant that he should act upon it. 19 I A 203=20 C 296 (314—5)=6 Sar. 224 *See also* L.B.R. (1893—1900) 512

Inter. Between, among, in

Inter alias res gestae aliis non posse praejudicium facere saepe constitutum est. It has been often settled that things which took place between other parties cannot prejudice

Inter arma silent leges In time of war the laws are silent

Inter caste Existing between or concerning different castes

Inter caste marriage (*among Hindus*) The marriages of a *Brahmin* girl and a *Sudra* male is void 14 Bom L R. 547=16 I C 133

Where an Adi-Dravida woman who was married to a Hindu of the Sudra caste, applied under S 488, Cr P Code, for maintenance on behalf of herself and her child. *Held*, that the marriage was valid under the Hindu Law and the wife would be entitled to maintenance, on proof of neglect and refusal to maintain on the part of the husband 148 I C 921= 39 L W 439=35 Cr L J 852=1934 M W.N 185= A I.R 1934 Mad 323=66 M L J 543.

Inter change. To make an exchange, to put things in each other's place.

INTERCHANGE, EXCHANGE, RECIPROCITY Exchange consists of one act only an interchange consists of, many acts, an interchange is used only in the moral sense, , exchange is used mostly in the proper sense, an interchange of civilities keeps alive good will, an exchange of commodities is a convenient mode of trade.

Inter collegiate Existing or shared between different colleges.

Inter colonial Existing or shared between different colonies

Inter-commoning "Is where the Commons of two Manors lie together and the inhabitants of both have, time out of mind, depastured their cattle promiscuously in each" (*Cowel*, *Stroude.*)

Intercourse securities are such as are negotiated simultaneously in different contracts, and are dealt in at fixed rates of exchange

Inter state Between different states belonging to some central authority (as) interstate commerce.

Inter tribal Existing or shared between different tribes

Intercept Seize, catch or stop (letter etc.) in transmit (as) Interceptions of suspicious letters by Post Office.

Intercourse Social communication between individuals

INTERCOURSE, COMMUNICATION, CONNECTION, COMMERCE *Intercourse* and *commerce* subsist only between persons; *communication* and *connection* between persons and things. An *intercourse* with persons may be carried on in various forms, either by an *interchange* of civilities, which is a friendly intercourse, an *exchange* of commodities, which is a commercial intercourse, or an *exchange* of words, is a verbal and partial intercourse. a *communication* in this sense is a species of intercourse, namely, that which consists of a permanent intercourse, since one who has a regular intercourse for purposes of trade

Interdict.

with another is said to have a *connection* with him, or to stand in *connection* with him There may, therefore, be a partial *intercourse* or *communication* where there is no *connection*, nothing to bind or link the parties to each other but there cannot be a *connection* which is not kept up by continual *intercourse*

Interdict In the civil law, a prohibition nearly equivalent to injunction (*Tomlin's Law Dic*)

Interdict or Interdiction An ecclesiastical censure, prohibiting the administration of divine ceremonies (*Tomlin's Law Dic*)

Interdiction A word met in reports of cases involving French and other foreign law, the placing under disability of persons who, though not of unsound mind, are considered disqualified for the management of their property and business affairs (*see* French Civil Code, arts 489-512) Interdiction is derived from Roman Law, and the remedy exists in most legal system based on that law

Interdum venit ut exceptio quae prima facie justa videtur tamen inique noceat It sometimes happens that a plea which seems *prima facie* just, nevertheless is injurious and unequal

Interesse termini This is the name given to the inchoate right which the grant of a lease confers upon the lessee before entry (*Co Litt* 46*b*, 2 *Bl Com* 144) Such interest is not merely a bare right of action arising out of contract, but a right of property which gives him a cause of action against any person through whose act his entry or the delivery of possession to him may have been prevented (*Gillard* v *Cheshire Lines Committee*, 1884, 32 W R 943)

"Interest" defined This term is used in combination with other words—*See* Beneficial interest, Contingent interest, Protected interest, Vested interest, Simple interest, Compound interest

INTEREST Legal concern, right, pecuniary stake the legal concern of a person in the thing or property or in the right to some of the benefits or use from which the property is inseparable, such a right in or to a thing capable of being possessed or enjoyed as property which can be enforced by judicial proceedings The word is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied It may have even the same meaning as the phrase "right, title, and interest," but it has been said also to mean any right in the nature of property, but less than title The word is sometimes employed synonymous with estate, or property

'Interest means concern, advantage, good, share, portion, part, or participation'

A person interested is one having an interest, i.e, a right of property, or in the nature of property, less than title.

The word 'interest' is the broadest term applicable to claims in or upon real estate, in its ordinary signification among men of all classes It is broad enough to include any right, title, or estate in or lien upon real estate One who holds a mortgage upon a piece of land for half its value is commonly and truly said to be interested in it

Interest

The word "interest" according to its dictionary meaning is, no doubt, of wide amplitude and might in a general sense be treated as including even the right of a charge holder to enforce the charge against the property forming the subject of the charge 166 I C 477=9 R O 315=1937 O L R. 24=A I R 1937 Oudh 35 (F B). 8 Bom L R 947=5 Cr.L J 2, 8 I C 1146

The term "interest" in S 91(a) of the Transfer of Property Act means present interest 30 A 497=5 A L J 631=(1908) A W N 225 *See also* 5 C W N 83

The term "interests" in S 21 of the Land Acquisition Act means admitted interests 34 C 599

Under Order XXI, Rule 89, C P Code the only person in whose favour sale can be set aside is a person who owned the property or an interest therein by virtue of a title acquired before the sale 91 C 745 (746) 'Interest' in C P Code, O 33, R 5 *See* 47 L W 405

Interest Disqualification for It is a fundamental maxim of law that a person cannot be judge in a cause in which he is interested The leading case illustrating this is *Dimes* v *Grant Junction Canal Co*, 1852, 3 H L C 753, 10 E R 301. There the company filed a bill against the defendant, the case came first before the Vice-Chancellor, who granted the relief, and on appeal to the Lord Chancellor this order was affirmed It appears that the Lord Chancellor was a share holder in the company, and that this was not known to the defendant It was held that the Lord Chancellor, being interested in the cause, was disqualified from adjudicating upon it, his decree was therefore voidable, and ought to be reversed (*see also* Viner, Abr., "Chancery Law", *Egerton* v *Derby*, 1614, 12 Co Rep 114, *Brookes* v *Rivers*, 1660, Hard 503 *Bridgman* v *Holt* 1790, Show B C 111, 1 E R 76)

The term 'interest,' when applied to a Justice of the Peace being disqualified from hearing a case by reason of interest, means any interest, however small within the meaning of an Act which disqualifies a judge to sit in a cause in which he has an interest it is not the kind of interest which one feels in public proceedings or public measures which disqualifies It is a pecuniary or property interest, or one affecting the individual rights of the judge The judge must have such an interest in the suit that, in the event of its decision, he will either gain or lose in the pecuniary way, in order to disqualify him

The term 'interested in a result,' as being a disqualification for a judge to act as a presiding judge on the trial, means a pecuniary interest, and hence a judge of a Court is not disqualified from acting as presiding judge on the trial of a defendant charged with defaming such Court

It is a well-settled rule of the common law that, if a judge has any (the slightest) interest in the cause, he is disqualified from setting in it yet he was not by the common law disqualified from sitting in a cause in which he had been of counsel He may also, on an appeal, decide or take part in the decision of a cause determined by him when sitting in another tribunal It must follow from this as a matter of course that the fact that the presiding judge had been of counsel in the case did not necessarily render him

Interest in Land

interested in it, and much less would it follow merely from his having been of counsel in another cause involving the same title

A judge owning stock in a bank intervening in a proceeding before him, involving the validity of bonds held by the bank, is interested within the meaning of the statute, and disqualified.

Interest in Land is not to be confounded with a mere charge on land (*per* Page Wood, L J, *Franks* v *Bollans*, 3 Ch 718) INTEREST IN LAND, (1) in the Mortmain Acts 9 (Geo 2, c 36, and 51 & 52 Vict c 42), includes bonds issued by harbour trustees and secured on "rates, tolls, and rent" *In re David* (1890), 43 Ch D. 27 and Metropolitan Consolidated Stock *Re Crossley* (1897), 1 Ch. 928, but not a charge on a borough fund. *Re Thompson* (1890), 45 Ch. D 161 (2) In the Lands Clauses Acts See *Re Masters and G W.R* (1900), 2 Q B 677

Interest in the estate of the deceased The words "claiming to have any interest in the estate of the deceased" In S 69 of the Probate and Administration Act mean claiming to have any interest in the property left by the deceased" 28 C. 441

INSURABLE INTEREST 'Interest' (insurable) does not necessarily imply a right to the whole or part of the thing, not necessarily or exclusively that which may be the subject of privation, but he having some relation to or concern in the subject of the insurance, which relation or concern, by the happening of the perils insured against, may be so affected as to produce a damage, detriment, or prejudice to the party insuring To be 'interested' in the safety of a thing is to be so circumstanced in respect to it as to have benefit from its existence, prejudice from its destruction (101 Mo App 344.)

Interest reipublicae ne malefícia remaneant impunita It concerns the commonwealth that crimes do not remain unpunished

Interest reipublicae ne sua quis male utatur. It concerns the commonwealth that no one misuse his property.

Interest reipublicae quod homines conserventur It concerns the commonwealth that men be preserved

Interest reipublicae res judicatas non rescindi. It concerns the commonwealth that things adjudged be not rescinded.

Interest reipublicae suprema hominum testamenta rata haberi It concerns the commonwealth that men's last wills be sustained.

Interest reipublicae ut carceres sint in tuto. It concerns the commonwealth that prisons be secure

Interest reipublicae ut pax in regno conservetur, et quaecunque paci adversentur provide declinentur. It benefits the state to preserve peace in the kingdom, and prudently to decline whatever is adverse to it.

Interest reipublicae ut quilibet re sua beneutatur. It concerns the commonwealth that every one use his property properly.

Interest reipublicae ut sit finis litium Interest of the state is that there should be limit to law suits.

Interest on money

"INTERESTED IN" does not mean that which is "interesting to" the person from affection, curiosity, novelty, or the like, it means, having a direct pecuniary interest in the business or bargain, or, at least, some interest therein whereby the person's legal rights or liabilities are affected (*R* v *Bedfordshire*. 4 E. & B. 541, 542)

"INTERESTED IN THE PAYMENT OF MONEY WHICH ANOTHER IS BOUND BY LAW TO PAY" in S 69 of the Contract Act, may include the apprehension of any kind of loss or inconvenience and not merely the actual detriment capable of assessment in money (6 C W N 336, 21 C L J 311 *dist.* 33 M. 15, *doubted* 12 M I A 65 *foll*) 18 C W N 778=19 C L J. 72=21 I C 207, 19 M L J 750=4 I C. 1083=33 M. 232, 30 M. 35 =16 M L J 569

The words "*interested in the payment of money which another is bound by law to pay*" might include the appehension of any kind of loss or inconvenience or any detriment at any rate capable of being assessed in money. A I R 1937 Rang 350

"INTERESTED IN THE RESULT OF THE APPEAL". A party to the suit against whom the right of appeal has been barred by limitation so far as he is concerned is not a person "interested in the result of the appeal" within the meaning of O. 41, R. 20, C P. Code 171 I C. 315=A.I R. 1937 Sind 236

It cannot be laid down as an inflexible rule of interpretation that a party against whom a suit has been dismissed and as against whom the right of appeal has become barred is "interested in the result of the appeal" filed by the plaintiff within the meaning of O 41, R 20, C P. Code. 39 Bom L.R. 444=I L R (1937) Bom 602=171 I C. 536=A I R 1937 Bom 401, 1936 M W N 789=169 I.C 318=10 R M 2=A I R 1937 Mad. 228 *See also* 6 R. 29 (P.C)

"Interested person" defined. *See* PERSON INTERESTED.

Interest on Money The legal profit or recompense, on loans of money, to be taken from the borrower by the lender. (*Tomlin's Law Dic.*) Interest is payments stipulated to be made for the loan or use of money.

Interest is the compensation which is paid by the borrower of money to the lender for its use, and generally by a debtor to his creditor in recompense for his detention of the debt

Interest at common law is the legal damages or penalty for detention of money

Interest is to be regarded as incidental to the debt. Principal is always debt. Interest is an accessory or incident to the principal The principal is a fixed sum. The accessory is a constantly accruing one The former is the basis or substance from which the latter arises, and on which it rests.

Interest bears the same relation to money that rent does to land, wages to labor, and hire to a chattel It is considered as a necessary incident, the natural growth of money.

Unless there is anything repugnant in the subject or context "*Interest*" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought

to be recovered specifically by way of interest or otherwise Act X of 1918 (Usurious loans), S 2 (1).

Interest at 2 per cent means *prima facie* 2 per cent per mensem. 28 All 724 (P C).

COMPOUND INTEREST Compound interest is interest upon interest, where accrued interest is added to the principal sum and the whole treated as a new principal for the calculation of the interest for the next period.

It is to be observed, however, that there are two distinct methods of computing what is loosely termed compound interest. By the first method periodical rests are made and at each rest the principal and the accrued interest thereon is combined into new principal which bears interest until the next rest and so on, this method results in giving interest not only upon the principal and upon the interest on the principal, but also in giving interest upon the interest on the interest and so on *ad infinitum* until payment, and this is what is meant by "compound interest" when the term is used in its strict sense By the other method, the accrued interest is not combined with the principal but each instalment of interest on the principal becomes interest on the interest, and although this method is also some times called compound interest, it has been more correctly described as a middle course between simple and compound interest

CONVENTION INTFREST Conventional interest is that rate of interest agreed upon by the parties It may be greater or less than the legal rate, provided it does not exceed the highest rate which the laws of the state or country allow parties to contract for

LAWFUL INTEREST The term "lawful interest" as distinguished from "legal interest" means any rate of interest up to that fixed by statute as the maximum rate at which interest can be contracted for Where, however, there is no express stipulation as to a named rate the term ' lawful interest" is synonymous with legal interest

LEGAL INTEREST Legal interest is that rate of interest prescribed by the law of the state or country which will prevail in the absence of any special agreement between the parties.

Interest upon interest. The phrase "he shall pay interest on interest" occurring in a mortgage-deed is ambiguous, and does not necessarily connote a liability to pay compound interest Reading the document as a whole, these words fairly enough refer to interest to be borne by a sum in arrear, if that sum was payable as interest. To hold otherwise would lead to results, which clash with plain and clear objects and meaning of the natural and unambiguous provisions of the document. 107 I C 1=1928 M W.N. 91=47 C.L.J 183=30 Bom L.R 261 =27 M.L.W. 395=32 C.W N 569=26 A L.J. 468= A.I.R 1928 P.C. 35=54 M.L J. 82 (P.C).

The expression "interest on interest" used in mortgage deeds means compound interest 147 I.C 807=6 R.O. 303=10 O W.N. 915=A.I.R. 1933 Oudh 411.

INTEREST ON MORTGAGE. "The interest on mortgage" in S 86, Transfer of Property Act, is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also include interest which under the law, is

payable So, interest, after the time stipulated for payment, may be included as interest 21 C. 274 *See also* 17 A 581 (F.B)=15 A W N. 128, 24 Cal 699, 22 Bom 107, 18 Mad 48, 18 Mad 257.

SIMPLE INTERFST *Simple interest* is interest computed solely upon the principal.

Interest (*in Hindu Law*) In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal), on grain, fruit, wool, or hair, (and) beasts of burden, it must not be more than five times (the original amount) (*Manu cited in Ghose Hindu Law*, 532) If (the loan) remains outstanding for a long time, the principal may be doubled (after which interest ceases (*Gautama*).

Interest coupons Interest coupons are instruments of a peculiar nature. The title to them passes from hand to hand by mere delivery A transfer of possession is presumptively a transfer of title

Interest in Common An interest in common is one owned by several persons, not in joint ownership or partnership Every interest created in favour of several persons in their own right is an interest in common.

An interest in common is one owned by several persons, not in joint ownership or partnership Every interest created in favour of several persons in their own right, is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint interest

Interfere Middle, intervene, with person or things. "Every man's business is liable to be 'interfered with' by the action of another, and yet no action lies for such interference. Competition represents 'interference,' and yet it is in the interest of the community that it should exist A new invention utterly ousting an old trade would certainly 'interfere with' it Every organizer of a strike in order to obtain higher wages, 'interferes with, the employer carrying on his business, also every member of an employers' federation who persuades his co-employer to lockout his workmen must 'interfere with' those workmen Yet, I do not think it will be argued that an action can be maintained in either case on account of such interference" (*per* Ld James *Allen* v *Flood*, 1898, A C 179=67 L J Q B. 212, *See also* 26 All 40=23 C W N 163

Interim. Meanwhile, in the meantime (as) Interim receiver

Interim curator. A temporary guardian

Interim Dividends. Dividends that are paid on shares before the time of declaring the full dividend.

Interim factor. (*Scotch*) A temporary trustee of a bankrupt's estate.

Interim officer. An officer appointed temporarily.

Interim order. A temporary court order *e g*, Preliminary injunction. *Interim Order*, is an order made by the Court to have effect only for a time. Thus the Court or a judge may make an order for the interim preservation or custody of the subject

Inte rim receipt

matter of a disputed contract O. 50, R. 1, R S C. See Daniell's Chancery Practice, Seton's Judgments and Orders).

Interim receipt A receipt for money paid on account of a bond or other instrument to be delivered on full payment, or an informal receipt given at the time of payment to be followed by a proper and formal receipt later

Interior (*department of*). Department for home affairs in Government (as) Minister of the Interior.

Interlineation. "Interlineation", in respect of wills is not confined to something written between lines, it includes something put into one of the lines, but written on the line (*per* Hannen, P, *Bagshawe* v. *Canning*, 52 J P. 583).

Interlineation is the act of writing between the lines of an instrument A material interlineation, if made after the execution of a deed, will avoid it.

Interlocutor. A judgment or order of court.

Interlocutory 'Interlocutory,' in law, means, not that which decides the cause, but that which only settles some intervening matter relating to the cause

AN INTERLOCUTORY APPLICATION, is a request made to the court, or to a Judge for its interference in a matter arising in the progress of a cause or proceeding.

Interlocutory costs Costs awarded to a party by the court before judgment, during the progress of a cause

Both in law and equity there were interlocutory and final costs Those that were interlocutory were such as were allowed, taxable, and payable during the progress of the cause from time to time as different stages were reached, and those that were final were such as were not allowable, taxable, or payable until the case had been finally determined.

Interlocutory decree One made pending the cause, and before final hearing on the merits.

An 'interlocutory decree' is generally applied to decrees in which some matter either of law or of fact is directed preparatory to a final decision.

Interlocutory injunction. Injunction *pendente lite*

Interlocutory judgment. An order of court made in the progress of cause, requiring something to be done or observed, but not determining the controversy

An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some special question or default arising in the progress of the cause, but does not adjudge the ultimate rights of the parties, or finally put the case out of court.

Interlocutory order. An interlocutory order is one which is made pending the cause and before a final hearing on the merits.

An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit, and generally collateral to the issues formed by the pleadings and not connected with the final judgment.

Intern.

"INTERLOCUTORY ORDER", is not necessarily confined to an order made between writ and final judgment but it means an order other than a final order or judgment (*Smith* v *Cowell*, 6 Q B D 75)

Interlopers Persons who intercept the trade of a company of merchants. (*Merc Dict*) Applied principally and originally to those who infringed the charters of the East India Company. (*Tomlin's Law Dic*)

INTERLOPER · INTRUDER The *Interloper* was one who ran in between the legal trader and his trade, for the purpose of appropriating its profits and advantages The *Intruder* is one who pushes himself into a place or a society in an unwelcome manner, the *interloper* is an *intruder* with the further design of benefitting himself by the intrusion, which he seeks to establish for a continuance, while the *intruder* may possibly offend only once or momentarily (*Smith. Syn Dis*)

Interlude An 'interlude' is a 'short dramatic piece and generally accompanied with music,' though usually represented or performed between the acts of a longer performance

Intermeddle To interfere with or meddle with the concerns or business of others A provision that "no Court shall intermeddle" with an inferior Court does not oust the supervision of the High Canrt (*R.* v *Moreley*, 2 Burr 1041)

Intermeddling 'Intermeddling' is defined by Webster to mean 'to meddle with the affairs of others in which one has no concern, to meddle officiously, to interpose or interfere in property, to intermix'

Intermediary The broker or intermediary is he who is employed to negotiate a matter between two parties, and who, for that reason, is considered as the mandatory of both

"Intermediate adjustment of account" defined Reg 3, 1872, S 6, *Expln* (Ins. Reg 5, 1893, S 24)

"Intermediate landholder" I L R (1937) Mad. 498=167 I C 490=1937 M W N 7=(1937) 1 M L.J 91 (F.B).

Intermediate Order Accurately speaking, an order granted before entry of judgment is an intermediate order, while one granted thereafter is not.

An intermediate order is one made between the commencement of an action and the entry of a judgment from which the appeal is taken.

Interment. Burial.

Intermittent easement An easement only used or to be used at intervals

An 'intermittent easement' is one which is usable or used only at times

Intermixture of Goods It is only in those cases where an intermixture of goods has been caused by the wilful or unlawful act of one of the proprietors, and the several parcels have thereby become so combined or mingled together that they cannot be identified, that his interest in them is lost.

Intern To hold one as a political prisoner, the detention of ships, sailors, soldiers or property of a belligerent by a neutral nation, during hostilities.

Internal

Internal 'Inward, interior, pertaining to its own affairs or interest, domestic, as opposed to foreign' *Webst Dict*

Internal affairs. 'Internal affairs,' as used in an Act providing that nothing therein shall authorize a municipal corporation in a territory to incur any debt or obligation, except such as shall be necessary to the administration of its *internal affairs*, means such business as municipalities of like character are usually required to engage in to fulfil their proper functions and to effectuate the objects of their charter.

Internal Commerce Internal commerce 'which is carried on between man and man in a state, or between different parts of the same state, and it does not extend to or affect other states'

"Internal distribution" "Internal distribution" in a village by the village community is not an authorised distribution with S 70 (4) of the Canals Act if it is not formally approved or sanctioned by any canal authorities although they have merely accepted the distribution made by the villagers 22 Cr L J 203=60 I.C. 59=1 Lah. 604,

Internal Improvements. A term sometimes used as synonymous with "public improvements," in other words, improvements in which the government has embarked, as for instance the improvement of rivers and harbors, and of highways and channels for travel and commerce, and the term includes any kind of public works except those used by and for the state in the performance of its governmental functions. Broadly speaking the term may, according to the contest, include a public bridge, a canal, a court house, a ferry, or an irrigation system, etc The term may refer to such public improvements as may legitimately be aided by taxation

Internal revenue. All government revenue excepting duties on exports and imports.

International arbitration. Settlement of differences between states by judges of their own choice and on the basis of respect for law.

International Commerce International commerce is commerce between states or nations entirely foreign to each other

International Law The term, *International Law*, is in modern times generally understood as denoting the system of customary and conventional rules which regulate the conduct and intercourse of civilised States, and which are accepted by such States as of international obligation The expression *International law* is used in contradistinction from Municipal or national law, *i.e* the body of law of any particular State which in general, is of obligatory force only within the territorial limits of such State, or in relation to the subjects of such State beyond those limits.

INTERNATIONAL LAW "Writers on international law . . cannot make the law . . it must have received the assent of the nations who are to be bound by it. This assent may be express . or may be implied from established usage."—Cockburn, C.J, *The Queen* v. *Keyn*, "The Franconia" (1876), 2 L R. Ex. D. 202.

International Unions Are arrangements between States on different matters of International intercourse which lend themselves to joint operations. The existing unions chiefly relate to posts and telegraphs, industrial property, copyright, fisheries railway traffic, the customs tariffs, African slavery, metric measures, and the monetary system Berne, being the capital of the most central of the neutral European States, is the administrative centre of all these unions, with the exception of the Monetary Union, which is centralised at Brussels, and the Weights and Measures Union, whose office is in Paris. (See *Ency of the Laws of England*)

Internecine War. A war that is mutually distinctive

Interpellate To address with a question, especially in a formal or public manner,—used with respect to proceedings in the Legislature or in reference to questions by Court to counsel during an argument.

Interpleader, Interpleader is allowed, that the defendant may not be charged to two severally, where no default is in him (*Tomlin's Law Dic*) A remedy available to a person who is under liability for any debt, money, goods, or chattels in which he claims no interest, and for or in respect of which he is or expects to be sued by two or more parties making adverse claims thereto The cause of the interpleader being that a defendant shall not be charged to two severally where no default is in him (Viner's Abr Vol. ix, tit "Enterpleader," p 428)

Interpleader suit is defined to be "one where two or more persons severally claim the same debt, duty, or thing from the complainant under different titles or in separate interests and he, not claiming any title or interest therein himself, and not knowing to which of the claimants he ought of right to render the debt or duty or deliver the property, is either molested by an action, brought against him or fears that he may be compelled to interplead and state their several claims so that the court may adjudge to whom the matter or thing in controversy belongs" (*Adams* v *Dixon*, 65 Am. Dec 608) It should be made to appear that the plaintiffs has no other adequate remedy at law, for an interpleader suit will not be entertained where he has a clear and unembarrassed legal remedy. Thus it is not necessary to file a bill of interpleader where the holder of the fund is already a party to a suit brought by one of the claimants against the other to settle the right to the funds in his hands Also, where the fund is sufficient to meet the demands of all claimants there may be no occasion for an interpleader *See* Cababe on Interpleader, Merlin's Law and Practice of Interpleader

Interpolate Make insertions (generally misleading) in a book etc, interject a remark in a talk or discourse or debate.

Interpose. In a strictly narrow sense, to 'interpose a defence' in an action is to plead it or set it up by answer

Interpretare et concordare leges legibus est optimus interpretandi modus A maxim meaning "To interpret and reconcile laws so that they harmonize is the best mode of construction". (*Bouvier L. Dic*)

Interpretatio chartarum benigne facienda est ut res magis valeat quam pereat A maxim

Interpretatio fienda.

meaning "Charters (or deeds) are to be interpreted liberally so as rather to validate than nullify the transactions" (*Trayner Leg Max*)

Interpretatio fienda est ut res magis valeat quam pereat A maxim meaning "Such a construction is to be made that the subject may have an effect rather than none" (*Bouvier L. Dic*)

Interpretation The determination of the meaning of a writing, the art of finding out the true sense of any form of words, that is the sense in which their author intended to convey, and of enabling others to derive from them the same idea which the author intended to convey, the art of finding out or collecting the intention of a writer, either from his words, or from other conjecture, or from both, the use of some other signs or marks, besides the words of the speaker or writer, in order to collect his meaning, the mere finding of the true sense of the special form of words used (*Ame Cyc*)

'INTERPRETATION' "is the act of making intelligible what was before not understood, ambiguous, or not obvious It is the method by which the meaning of the language is ascertained Resort to interpretation is never to be had where the meaning is free from doubt.

"Common sense and good faith are the leading stars of all genuine interpretations In arriving at the meaning of the parties to a contract, the language must be given a reasonable interpretation If the language involving the intent of the parties is uncertain, an interpretation of it which is unreasonable and places one of the contracting parties at the mercy of the other must give way to one which is equitable And if one of the contracting parties has by artifice or duplicity in the use of language misled the other respecting its meaning, the sense in which the latter understood it will prevail in the interpretation of the language"

INTERPRETATION "The principle enunciated by Horne Tooke that a word has 'one meaning and one only', has no application to cases arising under statutes where construction or interpretation is required, except, perhaps, in scientific matters Worcester, in the preface to his dictionary, says: 'Though there may be found in Johnson's Dictionary many instances in which a distinction is made where there is little or no difference, yet the principle stated by Horne Tooke, that "a word has one meaning and one only" cannot be admitted without numerous exceptions Take, for example, some very common words . . the nouns, law, letter, line, post, though the different senses in which these words are used may be, in some measure, in accordance with one original meaning of each, yet a single definition of each of the words would afford but very inadequate explanation The original or etymological meaning of many words has become obsolete, and they have assumed a new or more modern meaning, many of which retain their etymological meaning, have other meaning annexed to them, many have both a literal and metaphorical meaning, and many both a common and technical meaning, all of which need explanation". The primary general sense of a word get often ramified into different senses It is only by attention to the different uses and applications of the word, we become able in most cases, to arrive at a satisfactory explanation of the manner in which

Interpretation of Statutes.

the same word comes to be used with different significations Professor Whitley says that, 'both historically and with regard to present usage, it is impossible to draw a hard and fast line between these two sides of the language, either with respect to words or to their individual senses,". *People* v *Buffalo*, 57 Hun (N. Y) 577, 579. 11 N Y Suppl. 314, 23 (*Ame. Cyc*)

" 'CONSTRUCTION' AND 'INTERPRETATION' are often used to convey the same meaning though technically they convey different meaning" (*Texas Banking etc, Co*, v *Co-Cohen*, 26 Am. Rep. 298.) "Interpretation differs from construction in this. that it is used for the purpose of ascertaining the true sense of any form of words while construction involve the drawing of conclusions regarding subjects that are not always included in the direct expression." (*Bloomer* v *Todd*, 3 Wash Terr 599, 612)

CLOSE INTERPRETATION, LITERAL INTERPRETATION. Close interpretation is adopted if just reasons, connected with the formation and character of the text, induces to take the words in their narrowest meaning This species of interpretation has generally been called "literal" but the term is inadmissible. *Black L. Dict*—quoting Lieber Leg & Pol Hermenutics 54

EXTENSIVE INTERPRETATION, called also "*liberal interpretation*", adopts a more comprehensive signification of the word (*Black L. Dict.*)

FREE OR UNRESTRICTED INTERPRETATION proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle

LIMITED OR RESTRICTED INTERPRETATION is when we are influenced by other principles than the strictly hermeneutic ones

PREDESTINED INTERPRETATION take place if the interpreter, labouring under a strong bias of mind, makes the text subservient to his preconceived views or desires This includes artful interpretation, by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended *Black L. Dict*—quoting Lieber Leg & Pol. Hermeneutics 60)

STRICT INTERPRETATION. (*See* Close Interpretation) The provisions of Penal and Taxing Statutes are to be strictly interpreted.

Interpretation, of Statutes, Deeds, Wills, &c It has been well observed that in respect of Laws, it is scarcely possible to express them in such terms as shall be free from all ambiguity Such a degree of precision is perhaps unattainable, and the want of clear and distinct idea of the object, or the want of views sufficiently comprehensive, or the defect of language, will constantly either incumber the regulation, or leave some part of the rules to be enforced; and the same inaccuracy must also inevitably prevail, even in the framing of private deeds, and hence rules of interpretation are required in order to insure just and uniform decisions, these rules are drawn from the general scope and intention of the instrument, from the nature of the transaction or circumstances, from the legal rights of the parties independent of the instrument or law in question, and from many other particulars. and a

Interpretation of Statutes

thorough knowledge of those rules of interpretation is the first ground of science in framing the laws or deeds required for each occasion, (*Tomlin's Law Dic*) By the *interpretation of a document* is meant the act of ascertaining what intentions the writer intended to convey to the reader by it, or, to use other words, what intentions are expressed in it.

Deeds and contracts of the people of India ought to be liberally construed The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses 6 M I A 393 (411)=18 W R 81=2 Suth. 29=1 Sar 552=Sevestre 253 N A deed in form cannot be treated as will except under special circumstances (*Patch* v *Shoer* 2 Dr and Sm. 589 *rel*) (1911) 2 M W N 382=12 I C 546 *Contemporanea expositio* as a guide to the interpretation of documents is often accompanied with danger and great care must be taken in its application 36 Bom 639=23 M L J 383=16 C W N. 1058=12 M L T 472=(1912) M W N 1140=14 Bom L R. 1226=17 C.L J 17=16 I C 239=39 I A 202 P C. *See* Maxwell on the Interpretation of Statutes, Hardcastle's Statute Law, Hawkins on the Interpretation of Wills, Jarman on Wills, Theobald on Wills, Wigram on Wills, Vaizey on Settlements, Elphinstone, Norton and Clerk on the Interpretation of Deeds, Norton on Deeds, and Beal, Cardinal Rules of Legal Interpretation)

Interpretation Act. (English) 1889, 52 & 53 Vict c 63 The full title of this Act is "An act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the language used in acts of parliament" This Act corresponds to the Indian General Clauses Act. This Act according to Hardcastle on Statutory Law (4th ed, by Craies, p. 9), "though mainly intended as an aid to the draftsman of future Acts, and to facilitate the expurgation and revision of the statute book, has given statutory authority to a series of rules of construction not as being inflexible rules of law, but as presumptively applicable, "unless a contrary intention appears"

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum In ambiguous things, such a construction should be made, that what is inconvenient and absurd may be avoided

Interpreter One who translates orally in their presence the words of persons speaking different languages. A person sworn by a court to interpret the testimony of a witness, when given in a language other than that commonly used by the court (*Jackson* v *French*, 20 Am. Dec 699)

An 'interpreter,' whether in the trial of a case in court or as interpreter of a witness giving his deposition must give his testimony under oath, and in either case an interpreter is a witness and distinguished from the person whose testimony he interprets

Inter provincial. Pertaining to the mutual relations of several provinces.

Interregnum. Internal when state has no normal ruler,—especially an internal or pause between two successive reigns "There cannot be any Interregnum in his country, by the policy of the constitution for the right of sovereignty is fully vested in the successor to the throne by the very descent of the crown." (*Tomlin's Law Dic*)

Interruption.

Interrogatories are particular questions in writing, demanded of witnesses or parties brought in to be examined in a case. These Interrogatories must be exhibited by the parties in the suit on each side; which are either direct for the party that produces them, or counter on behalf of the adverse party, and generally both Plaintiff and Defendant may exhibit *direct and counter, or cross Interrogatories* (*Tomlin's Law Dic*) *Interrogatories* are a set or series of written questions drawn up for the purpose of being propounded to a party in suit, a garnishee, or a witness whose testimony is taken on deposition, a series of formal written questions used in the judicial examination of a party or witness

'Where a man speaks upon a subject of his own accord, he naturally tells the whole of what he knows, but where he is examined on interrogatories formally administered to him, his answers are naturally confined to the particulars to which he is so interrogated, and as the examining party generally knows beforehand the scope of the witness's evidence, he has an opportunity of so shaping his questions as that they may elicit everything in his favour with which the witness is acquainted, and keep back everything of a contrary tendency"—Bayley, J, Berkeley Peerage Case (1811), 4 Camp 405

In Terrorem By way of threat, terror, or warning. (*Bouvier*) Certain conditions attached to gifts are said to be *in terrorem* and void if there is no gift over to some other person in the event of the original legatee refusing to comply with the condition Thus a legacy left to a single woman on condition that she will not marry is *in terrorem* merely, and void unless there is a gift over (*see* Theobald, Law of Wills, 5th ed, p 602)

Interrupt To stop or hinder by breaking in or upon, to prevent from proceeding to disturb (*Worcester Dict*)

Interruptio multiplex non tollit praescriptionem semel obtentam. A maxim meaning "Repeated interruptions do not defeat prescription once obtained" (2 *Inst* 654)

"Interruption" defined Act 15, 1877, S 26, *Expln* Act 5, 1882, S 15, *Expln* 11.

INTERRUPTION The occurrence of some act or fact, during the period of prescription, which is sufficient to arrest the running of the statute of limitations.

The term "interruption" refers to an adverse obstruction and not a mere discontinuance of user. 155 I C 833=60 C L J. 412=A.I R 1935 Cal 282.

Where the tenants of a village having a customary right to graze their cattle in certain uncultivable land, for ten specified months in every year; the fact that a custom has grown up by which the proprietors of the land exclude the cattle for the remaining two months does not constitute an "interruption" of the customary right, but only limits its duration. 11 I C 88 (89).

Interruption.

The word 'interruption" in cl (c) of section 108 of T P Act includes disturbance of possession by a person with a paramount title. 17 C W N. 960=19 I.C. 815 (816)

INTERRUPTION, in Ss 2, 3 of the Prescription Act (2 & 3 Will 4, c 71), does not mean "cessation," but such interruption as is mentioned in S 4 of the Act—*i e* an adverse obstruction, and not mere discontinuance of user *Hollins* v *Verney*(1884), 13 Q B D 304, at p 307 (*Lindley, L J*), *Smith* v. *Baxter* (1900), 2 Ch 138 (*Stirling, J*)

'INTERRUPTION,' 'DISTURBANCE,' and the like, in the covenant for Quiet Enjoyment, mean lawful interruption and disturbances only'. (Elph 483)

Inter se or Inter sese Between or among themselves.

Intersect To cross, literally, to cut into or between, a word which imports the intersection of one line with another

Interstate Pertaining to the mutual relations of the states, existing between or including, different states (*Webster Int Dict*)

Interstate Commerce Interstate commerce is commerce between two or more states of a federal union

INTERSTATE COMMERCE means the interchange of commodities between citizens of the different states

'Interstate commerce' is not business done within a state, but is business done between two or more states, or business commenced in one state and ended in another

The term 'interstate commerce' may be applied to the transportation of merchandise from a place in one state to a place in another.

Interval. Any dividing tract in space or time. Where an "Interval" of so many days has to elapse between two events the days are clear days, and have to be reckoned exclusive of both the days between which the interval is to elapse, (*Re Railway Sleepers Co* , 54 L J Ch 720)

Intervening Coming between, occurring in the meantime, interfere, modify the course of events.

Intervention (*In practice and proceeding*) The admission by leave of court of a person, not an original party to a suit or proceeding, as a party thereto for the protection of some right or interest alleged by him to be affected by such suit or proceeding.

In Patent Law *See* Bouvier p 1677.

In Admiralty Laws. See *Ibid.*

In Civil Law See *Ibid.*

In Ecclesiastical Law. See *Ibid.*

INTERVENTION in international law is the interference of one State in the affairs whether domestic or foreign, of another State, or as between other States, without their consent for the purpose either of maintaining or of altering the condition of things

Intifa.

within it *"Prima facie,"* says Hall, "intervention is a hostile act, because it constitutes an attack upon the independence of the State subjected to it. Nevertheless its position in law is somewhat equivocal Regarded from the point of view of the State intruded upon, it must always remain an act which if not consented to, an act of war. But from the point of view of the intervening power, it is not a means of obtaining redress for a wrong done, but a measure of prevention or of police, undertaken sometimes for the express purpose of avoiding war. In the case, moreover of intervention in the internal affairs of a State, or against a particular form of State life, it is frequently carried out in the interest of the Government or of persons belonging to the invaded State" (*Ency of the Laws of England*) Phillimore, Commentaries upon International Law, Holland, European Concert in the Eastern Question, Hall, Inter Law, Lawrence, The Principles of International Law, Wheaton, Elements of International Law

Interview Meeting of persons for purpose of discussion, meeting by a journalist of person whose views he wishes to ascertain for publication in the journal

INTERVIEW, MEETING. An *Interview* is, a mutually-recognised meeting between two or more persons, usually preconcerted, and for a purpose already known It involves a common matter of importance to both parties, which demands formal adjustment. (*Smith Syn Dis*)

Inter vivos Between living persons. (*Burrill.*)

"Intestacy" defined Act 10, 1865, S 25

INTESTACY is the condition of dying without having made any will

Intestacy Condition of a person possessed of property dying without having made a will

Intestatus decedit, qui aut omnio testamentum non facit aut non jure fecit, aut id quod fecerat ruptum irritumve factum est, aut nemo ex eo haeres existit He dies intestate who either has made no will at all or has not made it legally, or whose will which he had made has been annulled or become ineffectual, or to whom there is no living heir. (*Bouvier. L Dict.* Citing Inst. 3, 1, pr., Dig. 38, 16, 1)

Intestate A person who dies without making a will, the condition of dying without having made any will (*Den* v *Mugguway*, 15 N J L (*Ame.*) 330, 331) *See also* 16 Cal 556=16 I A, 53 (P C) *"Intestate"*, means and includes, "every person deceased who has left undisposed of by will the whole, or any portion, of the estate on which he might (if not subject to incapacity) have tested"

"Intestate Succession," means and includes, "succession in cases of partial, as well as of total, intestacy."

Intifa (*A*) Utility, Profit, Advantage. (*Mac, Mhn Law.*)

Intimacy

Intimacy A term which means nothing more than close and familiar acquaintance. In *McCarty* v *Coffin*, 34 Am. St. Rep 636, it is said "In its ordinary signification, and as generally applied to persons, the word 'intimacy' would be understood to mean a proper friendly relation of the parties, but as employed in a special sense it conveys the idea of an improper relation an intimacy at least disreputable and degrading"

INTIMACY Friendly relation of parties, frequently used to convey the idea of an improper relation, an intimacy atleast disreputable and degrading (34 *Ame. St Rep.* 636)

Intimate Close in friendship or acquaintance, familiar, confidential. (*Webster Int Dict*)

Intimation Making known, hinting, implying. A conclusion from something said (*Miller* v *Miller* 8 Am Dec 651.)

"Intimidation" defined *See* Criminal intimidation

INTIMIDATION is putting a man in fear with a view of inducing him to enter into a contract or to pay money, or to do or abstain from doing some other act The act of making one timid or fearful, by a declaration of an intention or determination to injure another by the commission of some unlawful act (*Payne* v *Western etc, R. Col*, 49 Am. Rep 666) "*Intimidation,*" includes, Any words or acts, intended and calculated to put any person in fear of any injury or danger to himself or to any member of his family or to any person in his employment, or in fear of any injury to or loss of property, business, employment, or means of living" (*Whelen* v *Fisher* 26 L.R. Ir 340) *See* Bullen and Leake, Piec Pl, Pollock, Contract, Leake, Contract)

'Intimidation,' as used in a declaration that a person by means of intimidation drove the customers of another from him and succeeded in breaking up his business, means the act of making one timid or fearful, by a declaration of an intention or determination to injure another by the commission of some unlawful act. If the act intended to be done is not unlawful, the effect thereof is not 'intimidation' in a legal sense.

INTIMIDATION COMPARED WITH "FORCE" "When one speaks of force, he means actual violence, and when he speaks of intimidation, he still means force not actual and direct butexerted upon the person wronged by operating upon his fears the fear of injury to his person, or character. Intimidation is constructive force" (*Long* v *State*, 12 Ga 293, 315, *Ame. Cyc*)

Intiqual The word Intiqal in a 'Wajib-ul-arz' is a word of very wide signification and covers all kinds of transfers, and includes a lease purporting to create a perpetual interest reserving merely a nominal rent 7 Ind Cas 930=7 A.L J 1022 *"Intiqual"* is a word of wide import and certainly includes a transfer by way of perpetual lease 100 I C 652. The word intiqual is a very general word and includes all classes of transfers. 35 I C. 210 The word 'intiqual" in the pre-emptive clause of the wajib-ul-arz covers all kinds of transfers including a mortgage 28 A 60=2 A.L J. 482=(1905) A.W N. 109.

Intoxicated

Intolerable Cruelty. The term 'intolerable cruelty' as used in a statute relating to divorce, imports barbarous, savage, and inhuman acts They must be of that character as to be, in fact, intolerable—not to be borne. 'Intolerable cruelty' has the same meaning as is given by English Courts to the term "extreme cruelty" in divorce statutes and is therefore to be treated as synonymous with that term

Intolerable severity 'Intolerable severity' and 'extreme cruelty,' 'as causes for divorce, are substantially identical'

Intoxicants is a word used as synonymous with intoxicating liquors.

Intoxicate Make drunk, elate This word relates generally to the use of strong drink.

Intoxicated—Intoxication A man is intoxicated whenever he is so much under the influence of spirituous or intoxicating liquors that it so operates upon him, that it so affects his acts or conduct or movement, that the public or parties coming in contact with him could readily see and know that it was affecting him in that respect A man to that extent under the influence of liquor that parties coming in contact with him or seeing him would readily know that he was under the influence of liquor by his conduct or his words or his movements would be sufficient to show that such party was intoxicated The word 'intoxicated' is synonymous with 'drunk,' and in the Standard Dictionary 'drunk' is defined as under the influence of intoxicating liquor to such an extent as to have lost the normal control of one's bodily and mental faculties, and commonly to evince a disposition to violence and quarrelsomeness

There are degrees of intoxication or drunkenness. A man is said to be dead drunk when he is perfectly unconscious, powerless He is said to be stupidly drunk when a kind of stupor comes over him He is said to be staggering drunk when he staggers in walking He is said to be foolishly drunk when he acts the fool All these are cases of drunkenness, of different degrees of drunkenness So it is a very common thing to say a man is badly intoxicated, and again that he is slightly intoxicated. There are degrees of drunkenness, and therefore many persons may say that a man was not intoxicated because he could walk straight, or he could get in and out of a wagon Whenever a man is under the influence of liquor, so as not to be entirely himself, he is intoxicated Although he can walk straight, attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of the liquor so as not to be himself so as to be excited from it, and not to possess that clearness of intellect and control of himself that he otherwise would have, he is intoxicated

'Intoxication' is a word nearly synonymous with 'inebriety,' or 'inebriation,' and is expressive of that state or condition which inevitably follows from taking into the body, by swallowing or drinking, excessive quantities of intoxicating liquors.

QUI PECCAT EBRIUS, LUAT SOBRIUS· Let him who sins when drunk, be punished when sober. Quoted in *Kendrick* v *Hopkins* (1580), Cary's Rep. 133

INTOXICATION, DRUNKENNESS INFATUATION Intoxication and drunkenness are used either in the proper

or the improper sense, infatuation in the improper sense only, intoxication is a general state, drunkenness a particular state, intoxication may be produced only by an immoderate indulgence in some intoxicating liquor a person may be intoxicated by the smell of strong liquors, or by vapours which produce a similar effect, he becomes drunken by the drinking of wine or other spirits. A person who is naturally intoxicated reels and is giddy, he who is in the moral sense intoxicated is disorderly and unsteady in his conduct. a drunken man is deprived of the use of all his senses, and in the moral sense he is bewildered and unable to collect himself an infatuated man is not merely foolish but wild, he carries his folly to the most extravagant pitch

Intoxicating Beverages 'Intoxicating beverages,' should be construed to include strong beer and ale.

Intoxicating Bitters 'Intoxicating bitters, is a liquor, generally a spirituous liquor, in which bitter herbs or roots are steeped

Intoxicating drinks The term, 'intoxicating drinks' is not necessarily synonymous with the expression 'spirituous, vinous, or malt liquors,' so that under the statute forbidding the sale of such liquors an indictment charging the sale of intoxicating drinks is not sufficient since there are intoxicating drinks which are not and do not contain spirituous, vinous, or malt liquors

'Intoxicating drug" defined. Act 12, 1896, S 3 (*f*), Act 7, 1906 S 2, Act 15, 1910, S 2 (*d*), Ben Act 5, 1909, S 2, Bom Act 5, 1878, S, 3 (9) E & A Act 1, 1910, S 3, Mad. Act 1, 1886, S 33 (13), U P 4, 1910, Ss 3 (12) 5

The expression "intoxicating drugs" means ganja, bhang, charas and every preparation and admixture of the same and includes every other drug which the Local Government may by Notification in the local official Gazette, declare to be included in this definition and every preparation and admixture of any such drug Excise Act (XII of 1896), S 3 27 B. 551=5 Bom.L.R. 498.

Intoxicating Liquor 'Intoxicating liquors' is a broad term, which embraces all liquors used as a beverage, which, when so used, will or may intoxicate.

In the absence of a statutory definition, this term is understood to include any liquor intended for use as a beverage or capable of being so used which contains such a proportion of alcohol that it will produce intoxication when imbibed in such quantities as it is practically possible for a man to drink (Intoxicating Liquor Cases, 37 Am. Rep 284) It is therefore permissible to show the proportion of alcohol contained in any liquor in dispute If this is very great, the courts may hold, without further evidence, that the liquor is "intoxicating", if extremely small they may hold that it is not within the meaning of that term. But otherwise the question must be determined upon testimony as to whether or not the liquor in question can and does actually produce intoxication when taken as a beverage (*Hewitt* v *People*, 87 Ill. App 367)

When this term is defined by statute, the courts are bound by it, and can neither enlarge nor restrict its signification, and any liquor which is named or

plainly included in the statute must be held intoxicating as a matter of law, without inquiry into its actual properties, and even though, as a matter of fact, it is not capable of producing intoxication.

A compound which is distinctively known and used as a drug, medicine, or toilet preparation, and which cannot practically be taken as a beverage for the sake of the alcohol which it contains, because of its repulsive taste or smell, because the effect of the alcohol is counteracted by other ingredients, or because of its systematic effects if taken in excessive doses, is not within the statutes relating to intoxicating liquors, no matter how large a proportion of alcohol it may contain, and on the other hand, a medicinal preparation which is capable of being used as a beverage, and which contains such a percentage of alcohol that it will produce intoxication if drunk to excess, is within the meaning of the term although it may contain other constituents which, either separately or in conjunction with alcohol, possess useful medicinal properties

A mixture of liquors is an *intoxicating liquor*, if it may be taken in sufficient quantity to produce intoxication, and it is reasonable to presume that it may be used as a substitute for the ordinary drinks (*State* v *Reynolds*, 5 Kan App, 515 *See* 23 *Ame. Cyc* 57-59) Examples of intoxicating liquors and beverage are Ale, Beer, Cider, Rum, Whisky, etc.

INTOXICATING LIQUORS AND SPIRITUOUS LIQUORS DISTINGUISHED.

SPIRITUOUS LIQUORS The term "Spirituous Liquors" is not synonymous with the term *"Intoxicating liquors,"* nor can the two expressions be used interchangeably All spirituous liquor is intoxicating, but there are varieties of intoxicating liquor which cannot properly be described as spirituous (*Com.* v *Gray*, 61 Am Dec 476). The latter term is properly restricted to such liquors as are produced by the process of distillation and does not include wine, ale, beer, or other liquors which are not the product of the still, unless, the terms of any statute extend its signification so as to make the term cover liquors which are not etymologically within its meaning.

BEER is not included in the designation of either "vinous" or "spirituous" liquors as these terms are used in the statutes.

BITTERS The various infusions called "bitters", containing alcohol together with bitter herbs, barks, or other medicinal ingredients, are subject to the laws regulating the sale of intoxicating liquors, if, notwithstanding the presence of the medicinal ingredients, they are capable of being used as beverages and contain sufficient alcohol to produce intoxication when so used, but not if they are incapable of being used as drinks and where the alcohol is merely a necessary preservative or vehicle for the other constituents (*King* v. *State*, 38 Am Rep 344)

CIDER is neither a "spirituous," "vinous," nor "malt" liquor. *State* v *Oliver*, 53 Am. Rep 79.

DRAM-SHOP. A dram-shop is a place where spirituous liquor is sold by the drink, and is commonly called a saloon, but the latter word has a much broader meaning.

Intoxicating liquor

FERMENTED BEER is a term applicable to some of the various kinds of beer, such as spruce beer, spring beer, ginger beer, molasses beer, etc.

FERMENTED LIQUORS. This term is applicable to liquors which contain alcohol produced by the process of alcoholic fermentation, such as wines, ale and beer These liquors are not properly described as "spirituous," but it is a presumption of law that fermented liquors are *intoxicating*

FRUITS PRESERVED IN SPIRITS The sale of fruit, preserved or flavoured with a small proportion of brandy or other liquor, as a confection or preserve, is not the sale of intoxicating liquor (*Rake* v *State*, 39 Ark 204) But the sale of "brandy peaches," "brandy cherries," or the like, where the article really sold is the brandy or other liquor, and it is intended to be used as a beverage, and the addition of a little fruit is merely a device to evade the law, would be sale of such liquors

LIQUOR OR LIQUORS Either of these terms, standing alone, is too wide to have a precise legal signification, unless explained by the context or by necessary inferences from the subject matter When thus explained, however, the terms are commonly understood as including all varieties of intoxicating beverages, whether spirituous, vinous, or malt

MALT LIQUORS This term, in its common and popular usage, includes such liquors as beer, ale, porter, and stout, but not distilled liquors although malt may enter into their composition, and is clearly inapplicable to wines and cider

VINOUS LIQUORS Vinous liquor means liquor made from the fermented juice of the grape

WHISKY COCKTAIL Courts take judicial notice that whisky cocktail, a compound of which whisky is the predominant element, is an intoxicating drink

Intra Within, by, near (*Burrill*)

Intraliminal In mining, a term which embraces all within its boundaries down to the centre of the earth (*Jeffeson Min Co* v *Ancharia Ireland Min etc, Co*, Cal 1904, 74 Pac 1070, 1073)

Intrastate commerce Commerce wholly within a state, a term which may include the duty of a common carrier to receive all proper goods offered to it, for the transportation, to make no undue discrimination between shippers of a like class, and to transport with reasonable expedition (*Swift* v *Philadelphia, etc, R Co*, 64 Fed 59, 68

Intra quatuor maria Within the four seas.

Intra vires. Within the powers or authority, as relates to corporations, a term applied to the discretion and acts of the board of directors which are within the scope of their lawful authority

In all things that a corporation may lawfully do, the discretion and acts of the board of directors are conclusively deemed to be those of the corporation. Such are called 'intra vires acts'

Intrinsic value "The 'intrinsic value' of a thing is its true, inherent, and essential value, not depending on accident, place, or persons, but the same every where and to every one."

Intrusion

INTRINSIC, REAL. Intrinsic, in Latin intrinsicus, signifies on the inside, that is, lying in the thing itself The value of a thing is either intrinsic or real, but the intrinsic value is said in regard to its extrinsic value, the real value in regard to the artificial, the intrinsic value of a book is that which it will fetch when sold in a regular way, in opposition to the extrinsic value, as being the gift of a friend.

Introduce To bring forward formally or in an official manner.

INTRODUCE, PRESENT To *introduce* is to bring forward one person to the presence of another as an equal to *present* is to do the same thing to one who is superior to the person presented or introduced Persons are *introduced* to the acquaintance of one another generally, they are *presented*, for instance, at court (*Smith Syn Dis*)

Introduce business An agent whose claim to commission is to depend on his "introducing business" must, in order to establish his claim to commission show that the particular business done out of which he seeks to claim it was the direct result of his agency "There must not only be a casual, there must also be a contractual, relation between the introduction and the ultimate transaction of sale" (per *Ld Watson*, *Toulmin* v *Millar*, 58 L T 86)

Introduced As applied to evidence, means given and admitted and considered in the cause (*Stair* v *Richardson*, 108 Indi 429, 431, *Ame*)

Introduction (*to a book or writing*) That part of it in which are detailed those facts which elucidate the subject

Introductory Serving to introduce something, prefatory, preliminary

INTRODUCTORY, PRELIMINARY, PREPARATORY In the case of the *Introductory* the proceeding commonly has a reference to thought and understanding while *preliminary* relates to matters of action *Preparatory* relates to the purpose rather than the object, or the doer rather than the deed In the *preparatory*, I do what will enable me the better to do something beyond (*Smith Syn Dis*)

Intromission A term partly legal, partly mercantile, signifying dealings in stock, goods, or cash of a principal coming into the hands of his agent, to be accounted for by the agent to his principal In scots law, it means, an intermeddling with the affairs or effects of another as in the case of executor *de son tort*

Intruder One who thrusts himself in, or enters where he has no right (*Webster Dict*), one who enters upon land without either right of possession or colour of title, one who, on the death of the ancestor, enters on the land unlawfully, before the heir can enter (*Bouvier*)

As the term is used when speaking of an intruder on lands, one who enters upon land without either right of possession or color of title is an intruder.

Intrusion Intrusion is one of the methods of ouster or dispossession of freeholds. Like abatement of freeholds it differs from other forms of ouster in that the wrongful entry by the stranger takes place not while the rightful owner is in possession, but while such possession is vacant.

Intrusion.

INTRUSION may be defined as the entry on land by a stranger upon the determination of a particular estate before, and so as to keep out of possession, the person entitled to the estate in such land expectant on such determination of the particular estate, *i e*, the reversioner or remainderman, and upon intrusion he no longer has seisin in law, but a mere right of entry (*Challis, R P.* at p 207)

INTRUSION DIFFERS FROM ABATEMENT in the fact that the person dispossessed by abatement is the heir at law or devisee

Intrust To deliver in trust, to confide to the care of, to commit to another with confidence in his fidelity (*Webster Dict*) A person is not "*intrusted with*" a thing if all that he has is access to it

Inure To come into use or effect, to serve to the use or benefit of

"Inure to his own benefit" As used in an Act providing that no sum of money due or to become due to any pensioner shall be liable to attachment if the same remains with the Pension Office, or is in corce of transmission to the pensioner entitled thereto, but shall inure to his own benefit, the phrase 'inure to his own benefit' means that the pensioner may use the money in any manner he may see proper for his own benefit and to secure the comfort of his family, free from attachments of creditors

Inutilis labor, et sine fructu, non est effectus legis A maxim meaning "useless labour and without fruit is not the effect of law" (*Bouvier L Dict.*).

Invalid The word 'invalid' has precisely the same meaning as the two words 'not valid.'

Invalid adoption. If an adoption is invalid the adopted son does not acquire any rights in adoptive family or forfeit his rights in the natural family. The adopted son who is *sui juris* at the time of the invalid adoption is not on that ground disentitled to claim his rights in the natural family. (58 Cal 745= I R 1931 Cal 677=133 I C 325=A.I R 1931 Cal 591)

Invasion Hostile inroad into another country, assailing, encroaching on other's rights This word, from a military point of view, necessarily supposes an organization and military power or force.

INVASION, INCURSION, IRRUPTION, INROAD. *Invasion* is said of that which passes in distant lands, Alexander invaded India, Hannibal crossed the Alps, and made an *invasion* into Italy, *incursion* is said of neighbouring states, the borderers on each side of the Tweed used to make frequent *incursions* into England or Scotland. *Invasian* is the act of a regular army, it is a systematic military movement · *irruption* is the irregular and impetuous movement of undisciplined troops *Invasion* may be partial and temporary, one *invades* from various causes, but not always from hostility to the inhabitants an *inroad* is made by a conqueror who determines to dispossess the existing occupier of the land. *invasion* is therefore to inroad only as a means to an end. He who *invades* a country, and gets possession of its strong places so as to have an entire command of the land, is said to

Invented

make *inroads* into that country, but since it is possible to get forcible possession of a country by other means beside that of a military entry, there may be an *inroad* where there is no express invasion. It is the peculiar excellence of the English constitution to guard against and remedy such *invasions* without disturbing the public peace.

Invective A violent or railing denunciation or accusation

INVECTIVE, ABUSE *Abuse* as compared with *Invective*, is more personal and coarse, being conveyed in harsh and unseemly terms, and dictated by angry feeling and bitter temper *Invective* is more commonly aimed at character or conduct, and may be conveyed in writing and in refined language, and dictated by indignation against what is in itself blameworthy It often, however means public abuse under such restraints as are imposed by position and education (*Smith, Syn Dis*)

Inveigle To decoy, to beguile, to entice, to seduce, to wheedle (*Webster Dict*), to persuade to something bad by deceptive arts or flattery, or by any artful or seductive means

Inveigle—Inveiglement 'To inveigle is to persuade to something bad or hurtful by deceptive arts or flattery, to wheedle, to allure, to entice, to seduce. (*Webster Dict*) In a legal sense (and in respect of processual law) it is to induce a party to come within the jurisdiction of the Court by some scheme, subterfuge, fraud, trick, device, or misrepresentation, that he may be served with process'

Invenions libellum famosum et non corruppens punitur. A maxim meaning "He who finds a libel and does not destroy it, is punished."

Invented Newly devised, newly manufactured "Invented" used in respect of an article implies the statement that the invention was new and that a particular person was its First Inventor (*Bowman* v *Taylor*, 2 A & E 274)

TO INVENT, FEIGN, FRAME, FABRICATE, FORGE. *Invent* is used for the production of new forms to real objects, or for the creation of unreal objects, or such as have no existence but in the mind, a play or a story is invented from what passes in the world, Mahomet's religion consists of nothing but inventions, the Heathen poets feigned all the tales and fables which constitute the mythology, are history of their deities To *frame* is a species of invention which consists in the disposition as well as the combination of objects Thespis was the *inventor* of tragedy, Psalmanazar *framed* an entirely new language, which he pretended to be spoken on the island of Formosa, Solon *framed* a new set of laws for the city of Athens. To *invent, feign,* and *frame,* are all occasionally employed in the ordinary concerns of life, and in a bad sense. A story is *invented* inasmuch as it is new, and not before conceived by others or occasioned by the suggestions of others; it is *framed* inasmuch as it requires to be duly disposed in all its parts, so as to be consistent; it is *fabricated* inasmuch as it runs in direct opposition to actual circumstances, and therefore has required the skill and labour of a workman, it is *forged* inasmuch as it seems by its utter falsehood and extravagance to

have caused as much severe action in the brain as what is produced by the fire in a furnace or forge

Invented word, in the English Patents Act, 1883 (c. 57), s 64, includes a descriptive word, *i c*, a word referring to the quality or nature of the article to which it is applied [*Eastman Photographic Co* v *Comptroller of Patents*, (1898) App Cas 571, *Linotype Co's Trade Mark*, (1900) 2 Ch 238]

"Invention" defined (*See also* NEW INVENTION) Act 5, 1888, s 4 (1)

INVENTION (In Patent Law) The act or operation of finding out something new

An invention is the finding out, the contriving, the creating of something which did not exist and was not known before, and which can be made useful and advantageous in the pursuance of business, or can add to the enjoyment of mankind (15 Fed Cas 260, 261)

The term 'invention,' in the sense of the patent law, is the finding out, contriving, devising, or creating something new and useful which did not exist before, by an operation of the intellect. (20 Fed Cas. 286, 291)

"Invention" means any manner of new manufacture, and includes an improvement and an alleged invention [Act II of 1911 (Patents and Designs), S. 2, Cl. 8]

The term "invention" as used in the Inventions and Designs Act, must be taken to mean new manufacture (23 C 702)

"Inventor" defined (*See also* ACTUAL INVENTOR) Act 5, 1888, s 4 (2)

INVENTOR One who makes an invention, one who finds out or contrives a new thing

Inventory It is a well-known business term having a well-defined meaning in commercial circles and used to designate articles of merchandise or personal property, that the same may be distinguished without any attempt to describe in detail the properties of each article, an itemised list or schedule, a list or catalogue of goods and chattels, containing a full, true, and particular description of a person's storage of goods for safety (*Encyclopaedic Dic*) It is a detailed list of goods, enumerating them with reasonable particularity according to the well-understood usage of businessmen (*Witt* v. *Banner*, 20 Q B D 114)

In ventre sa mere Literally "In his mother's womb."

In verbis non verba sed res, et ratio quaerenda est A maxim meaning "In words, not the words, but the thing and the meaning is to be inquired into". (*Bouvier L Dict*)

Invest—Investment To invest is employ for some profitable use, convert into some other form of wealth, usually of a more or less permanent nature, to surround with or place in, to place so that it will be safe and yield a profit As used in connection with money or capital, to give money for some other property

"The term 'invest' is used in a sense broad enough to cover the loaning of the money but is not restricted to that mode of investment" or loans made on commercial paper (*Colorado Sv Bank* v *Evans*, 12 Colo App 334, 56 Pac 981, 983)

INVEST—INVESTMENT The word 'invest' has been judicially defined as follows 'To place property in business, to place so that it will be safe and yield a profit It is also commonly understood as giving money for some other property (as) investing funds on lands and houses.

"Money loaned is '*invested*' in a debt against the borrower"

'Investment' means, in common parlance, putting out money on interest, either by the way of loan, or by the purchase of income-producing property To employ for some profitable use, convert into some other form of wealth, usually of a more or less permanent nature, as in the purchase of property or shares, or in loans secured by mortgage

'Invest' in common parlance, means putting out money on interest, either by way of loan, or the purchase of income-producing property

The word 'investments,' as used in the chapter relating to the assessment of taxes, includes stocks, bonds and Government securities

TO INVEST, ENDUE OR ENDOW. To invest signifies to clothe in anything Endue or Endow, signifies to put on anything One is *invested* with that which is external one *endued* with that which is internal. We *invest* a person with an office or a dignity a person is *endued* with good qualities To *invest* is a real external action, but to *endue* may be merely fictitious or mental The king is *invested* with supreme authority, a lover *endues* his mistress with every earthly perfection *Endow* is but a variation of endue, and yet it seems to have acquired a distinct office (as) to make an endowment of funds for a charitable object, or religious institution.

"Investigation" defined Act 10, 1882, S. 4 (*b*), Act 5, 1898, S 4

"Investigation" includes all the proceedings under this Cr P Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf." (Cr P Code, 1898, S 4, 26 B 533=4 Bom L R. 271)

INVESTIGATION CONNOTES A minute inquiry, a scrutiny, a strict examination (*Worcestor Dict*)

INVESTIGATION, EXAMINATION, SEARCH, INQUIRY, RESEARCH, SCRUTINY, EXPLORATION, EXPLOITATION, INSPECTION, INQUISITION *Examination* is a thing of detail, consisting of a complex inquiry or inspection of particulars, for the purpose of coming to a general conclusion or result as to the character or state of the object examined

"The proper office of *examination, inquiry*, and ratiocination is, strictly speaking, confined to the production of a just discernment and an accurate discrimination" —*Gogan.*

On the other hand, *search* implies the looking for something remote from present observation.

Inquiry is the aiming at or discovery of truth by question, either formal, verbal interrogation, or a

Investigation

recourse to the proper means and sources of knowledge when the object has been shaped into a question or problem for solution

Research is laborious and sustained *search* after objects, not of physical, but mental observation and knowledge It is used in the sense of accumulated results as well as the process of such inquiry, as a 'man of great research"

Investigation is not used of any physical tracking, but of the patient inquiry into matters of science or knowledge along a strict path, and, as it were, step by step The subject of *investigation*, like that of *examination*, and unlike that of *search*, is never absolutely unknown, but it is always partially so

Scrutiny involves nothing unknown in itself, and is confined to minute examination of what is known and present "*Scrutiny* of voters, and their votes"

Exploration is an enquiry ranging, or a search directed, over an extensive area, whether geographically or in a metaphorical sense, for the purpose of exacter knowledge of the whole area, or of finding some specific object of search comprised or supposed to be comprised in it

Inquisition has the same origin and meaning as inquiry, but adds to it a peculiar exactness and searching closeness often the accompaniment of judicial rigour, or official minuteness. Its subject is the dealings of men (*Smith Syn Dis*)

Investment In common parlance, the term means the putting out of money on interest, either by way of loan or purchase of income producing property, a form of property viewed as a vehicle in which money may be invested (*Oxford Eng Dic*), the loaning or putting out of money at interest, so as to produce an income (*State* v *Bartley*, 41 Nebr. 277, 284) In its most comprehensive sense it is generally understood to signify the laying out of money in such a manner that it may produce a revenue, whether the particular method be a loan or the purchase of stocks, securities, or other property The term will also include the laying out of monies in Foreign Government Bonds (*Arnould* v *Grinstead*, 21 W R Eng 155)

INVESTMENT, in 16 & 17 Vict, c 34 (Income Tax), Ss 1, 2. See *Clerical, &c, Assurance Co.* v *Carter*, (1889) 22 Q B D 444

Invincible Unconquerable.

INVINCIBLE, UNCONQUERABLE, INSUPERABLE, INSURMOUNTABLE The Spaniards termed their Armada *invincible* The qualities of the mind are termed *unconquerable* when they are not to be gained over or brought under the control of one's own reason, or the judgment of another hence obstinacy is with propriety denominated *unconquerable* which will yield to no foreign influence The particular disposition of the mind or turn of thinking is termed *insuperable*, inasmuch as it baffles our resolution or wishes to have it altered an aversion is *insuperable* which no reasoning or endeavour on our own part can overcome Things are denominated *insurmountable* inasmuch as they baffle one's skill or efforts to get over them out of one's way, an obstacle is *insurmountable*.

Inviolate The term 'shall remain inviolate' used in respect of the right of jury trial does not merely

Invoice

imply that the right of jury trial shall not be abolished or wholly denied, but that it shall not be impaired The word 'inviolate' is defined by approved lexicographers to mean 'unhurt, uninjured, unpolluted, unbroken' 'Inviolate,' says Webster, is derived from the latin word 'inviolatus,' which is defined by Ainsworth to mean 'not corrupted, immaculate, unhurt, untouched'

Invitat culpam qui peccatum praeterit A maxim meaning "He encourages a fault who overlooks a transgression." (*Peloubet Leg Max.*)

Invitation A mere permission on license by a railroad company to cross its road is not an invitation to do so

The term 'invitation,' within the rule that the owner of property who has held out any invitation, allurement, or inducement for others to come upon the property, must keep his premises in a safe condition, imports 'that the person injured did not act, merely for his own conveniences and pleasure, and from motives to which no act or sign of the owner or occupant contributed, but that he entered the premises because he was led to believe that they were intended to be used by visitors or passengers, and that such use was not only acquiesced in by the owner or person in possession and control of the premises, but that it was in accordance with the intention and design with which the way or place was adapted and prepared or allowed to be so used. The true distinction is this. A mere passive acquiescence by an owner or occupier in a certain use of his land by others involves no liability But if he directly or by implication induces persons to enter on and pass over his premises he thereby assumes an obligation that they are in a safe condition, suitable for such use, and for a breach of this obligation he is liable in damages to a person injured thereby.'

Safety gates at a railroad crossing, which should be closed in case of danger, if standing open, may amount to an invitation to the traveller on the highway to cross

Invited error. The principle of 'invited error' is that if, during the progress of a case, any party there to request or move the Court to make an erroneous ruling, and the Court rule in accordance with such request or motion, he cannot take advantage of the error on appeal.

Invito beneficium non datur. A maxim meaning "A benefit is not conferred on one who is unwilling to receive it, that is to say, no one can be compelled to accept a benefit" (*Black L. Dict*)

Invitus nemo rem cogitur defendere A maxim meaning "Nobody is compelled against his will to defend his own" (*Morgan Leg Max*)

Invocibus videndum non a quo sed ad quid sumatur A maxim meaning "In discourses, it is to be considered not from what, but to what, it is advanced." (*Bouvier*)

Invoice A particular account of merchandize to another merchant with its value, custom, and charges, etc., sent by a merchant to his factor or correspondent. (Car 2 c. 34. *Tomlin's Law Dic*)

Invoice

An invoice is written account of particulars of goods delivered to a purchaser, and of their prices, and the charges concerning them

An 'invoice' in commercial transactions, is defined to be 'a written account of the particulars of merchandise shipped or sent to a purchaser, consignee, factor, etc, with the value or prices and charges annexed'

Invoice and inventory An 'invoice' is an account or catalogue of goods, with the value, marks, or particular description thereof annexed An 'inventory' is a list or catalogue of property merely

Invoice cost The term 'invoice cost' sometimes means the prime price or cost of goods, although there is no invoice in fact.

Invoice price The amount at which the goods are invoiced to the purchaser, the cost or value of the property at the shipping point

The invoice price is the cost or value of the property at the shipping point

The 'invoice price' of goods, as used in an open policy of insurance, means the prime costs, the value which, upon a total loss, the insured is entitled to recover.

The term 'invoice price' sometimes means the prime price or cost of goods, although there is no invoice in fact.

'Invoice prices' means the amounts that ought to go into the invoices and though the invoice themselves (when unchallenged) are the best evidence of those amounts, yet their production is not essential (*Plank* v *Gavila*, 3 C B N S 807)

Invoice value A term which may be equivalent to shipping value (*Anderson* v *Morice*, L R 10 C P 609, 614)

Involuntary Not voluntary or willing, contrary or opposed to will or desire, independent of volition or consenting action of mind, unwilling, unintentional, not accidental (*Century Dic*)

Where an accident policy provides that it shall not cover a death resulting from voluntary or involuntary taking of poison, the word 'involuntary' has a broader and more comprehensive meaning than an act forced upon one which he cannot help The term is defined in the Century Dictionary as 'not voluntary or willing, contrary or opposed to will or desire, independent of volition or consenting action of mind, unwilling, unintentional 'Involuntary' is an antonym of 'voluntary,' and therefore, in this sense, includes 'accidental'

'INVOLUNTARY' is not the equivalent of the word 'undesigned' or 'unintentional.'

Involuntary alienation. Such as results from attachment, levy and sale for taxes or other debts due from the owner of the property.

Involuntary bankrupt Where a man is forced into bankruptcy against his will by his partner, it is not voluntary bankruptcy, any more than it would be if he were forced into it by any one else It is compulsory and involuntary.

I O U.

Involuntary bankruptcy Proceedings to have a debtor judicially declared a bankrupt, instituted by his creditors without his consent

Involuntary payment One made reluctantly in consequence of an illegal demand

The term 'involuntary payment' characterizes a payment which has been obtained by fraud, oppression, or extortion, or when it has been made to secure a right which the party paying was entitled to without such payment, and which right was withheld by the party receiving the payment until such payment was made, and therefore it may be recovered back.

'INVOLUNTARY PAYMENT' includes any payment which is made under a claim involving the use of force as an alternative, as the party of whom it is demanded cannot be compelled or expected to await actual force, and cannot be held to expect that a person will desist after once making demand.

Involuntary trust 'Involuntary or constructive trusts' embrace all those instances in which a trust is raised by the doctrine of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation, and contrary to the intention of the one holding the legal title.

Involve To comprise, to contain, to include by rational or logical construction, to connect with something as a natural or logical consequence or effect, to include necessarily, to imply (*Webster Dict.*), entangle, implicate in charge or crime, implying financial embarrassment (as) "Involved circumstances" A thing is only said to be "involved" in another when it is a necessary resultant of that other In its more exact and literal signification, the word is synonymous with "comprise" or "embrace." [*St John* v *West*, 4 How Pr N.Y 329, 332, *see also* 23 All 94 (98)=21 A W N 8 A point *involving* a substantial question of law] This word is also used, according to the context, as synonymous with "affected"

The primary signification of the word 'involve' is 'to roll up or envelop, and it also means to comprise, to contain, to include by rational or logical construction, and its exact synonym may not be found in a single word'

"SUBJECT MATTER INVOLVED IN THE LITIGATION" means the possession, ownership or title to the property or other valuable thing which is to be determined by the result of the litigation (*Dr Jaeger's Sanitary Woollen System Co.* v. *Le Boutillier*, 63 Hun N Y 297, 299)

Inward Bound. The term vessels "'Inward-Bound used in the English Port Offices Duties Act, 1840, includes Vessels bound as well to any Port in the United Kingdom, as to any Port in any of Her Majesty's Colonies, and 'Outward-Bound', shall be held to include Vessels bound as well from any Port in the United Kingdom as from any Port in Her Majesty's Colonies" (S 71)

I O U. An informal acknowledgment of indebtedness The letters stand for "I owe you" It is a memorandum of debt, consisting of three letters, a sum of money, and the debtor's signature. (*Black*

Ipsae leges

L. Dict) This is a common form of acknowledgment of an account stated between the person signing the document and the person to whom it is addressed It is a memorandum which professes to be the result of an account stated in respect of a debt due. [*Lemere* v *Elliott*, 6 H & N 656 (659), 7 Jur N S 1206] An I O U is evidence of an account stated but not of money lent, goods sold, etc (*Fesenmayer* v *Adcock*, 16 M & W 449) It is only an acknowledgment of a debt, it is not a promissory note, it is not a receipt (*Fisher* v *Leslie*, 1 Esp 427)

Ipsae leges cupiunt ut jure regantur A maxim meaning "The laws themselves desire that they should be governed by right" (*Bouvier*)

Ipse He himself, himself.

Ipse dixit He said it himself, *i e*, there is no other authority for it

Ipsissima Verba (*Lat*) In the very same words, in the exact words

Ipso facto By the fact itself (Bouvier), by the very act itself (*Rapalje & L L Dict*), by the mere fact (*Anderson*) Automatically The expression is used where any forfeiture or invalidity is incurred, and the meaning of it is, that it shall not be necessary to declare such forfeiture or invalidity in a Court of law, but that, by the very doing of the act prohibited, the penalty shall be thereby instantly and completely incurred (*Tomlin's Law Dic*)

Ipso jure By the law itself, by the mere operation of law

'Iqrar' The word Iqrar which is often interpreted "Agreement" is an ambiguous word (A I R 1923 All 488) Iqrar does not necessarily mean contract but means ratification and assent 33 All 196=7 A L J 1040=7 I C 680

Ira furor brevisest Anger is a short insanity

Ira hominis non implet justitium dei A maxim meaning "The wrath of a man does not fulfil the justice of God" (*Morgan Leg Max.*)

Irakkaranma (*Mal*) Lands and tenements held by a small acknowledgment of superiority to a higher lord, free-hold

Irakkaranmayola (*Mal*) Title deeds of land held free-hold

Ireland and Irishmen "A very old author, discoursing upon Irishmen, says, "Where Irishmen are good, it is impossible to find better, where they are bad, it is impossible to find worse" I am afraid we have got to this alternative Treachery was never the character of Irishmen Courage and interpidity were their characteristics Every creature is taught to fight, but boldly and fairly" [Earl of Clonwell, L C J (Ir.), *Case of Glennon and others*, (1796) 26 How. St. Tr 46?]

Ireland, Laws of "The common law of England is the common law of Ireland, where the latter is not altered by statute" [Perrin, J, *Queen* v *O'Connell*, (1843) 5 St. Tr (N S) 63]

IRISH VALUATION ACTS *See* Eng Int. Act, 1889, S. 24.

"Iron" includes steel. (10 C L J. 486)

Irregularity

Irony Expression of one's meaning by language of opposite or different tendency In libels irony makes them as properly libels as what is expressed in direct terms. (*Tomlin's Law Dic*)

Irrational Unreasonable, illogical, not endowed with reason, insane (*Ame Cyc*)

IRRATIONAL, FOOLISH, ABSURD, PREPOSTEROUS *Irrational* is not so strong a term as *foolish* it is applicable more frequently to the thing than to the person to the principle than to the practice, *foolish* on the contrary is commonly applicable to the person as well as the thing, to the practice rather than the principle *Foolish, absurd*, and *preposterous*, rise in degree a violation of common sense is implied by them all, but they vary according to the degree of violence which is done to the understanding *foolish* is applied to any thing, however trivial which in the smallest degree, offends our understandings, the conduct of children is therefore often *foolish*, but not *absurd* and *preposterous*, which are said only of serious things that are opposed to our judgments, it is *absurd* for a man to persuade another to do that which he in like circumstances would object to do himself, it is *preposterous* for a man to expose himself to the ridicule of others, and then be angry with those who will not treat him respectfully

Irrecoverable That cannot be recovered or remedied

Irredeemable That cannot be redeemed, irreclaimable, hopeless

Irredeemable paper currency is one which is not convertible into cash

Irregular Not according to rule, improper or insufficient, by reason of departure from the prescribed course (*Black Law Dict*)

IRREGULAR, DISORDERLY, INORDINATE, INTEMPERATE. Our habits will be *irregular* which are not conformable to the laws of social society, our practices will be *disorderly* when we follow the blind impulse of passion Our desires will be *inordinate* when they are not under the control of reason guided by religion, our indulgences will be *intemperate* when we consult nothing but our appetites Young people are apt to contract *irregular* habit if not placed under the care of discreet and sober people, and made to conform to the regulations of domestic life, children are naturally prone to become *disorderly*, if not perpetually under the eye of a master, it is the lot of human beings in all ages and stations to have *inordinate* desires, which require a constant check so as to prevent *intemperate* conduct of any kind

Irregular process Voidable process.

Irregularity A neglect of order or method, not according to the regulations; the doing of some act at an unreasonable time, or in an improper manner, the technical term for every defect in practical proceedings or the mode of conducting an action or defence, as distinguished from defects in pleading, a comprehensive term including all formal objections to practical proceedings (*Burrill*) Irregularity is the failure to observe that particular course of proceeding which, conformable with the practice of the Court, ought to have been observed.

Irregularity

An irregularity is defined to be the want of adherence to some prescribed rule or mode of proceeding; and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unreasonable time or improper manner.

IRREGULARITY AND ERROR Every irregularity is not erroneous [Lord Kenyon, C J, *Jackson* v *Hunter*, (1794) 6 T R 74]

Irregularity in publishing the sale The irregular preparation of the actual proclamation definitely announcing that a sale will be held and giving particulars regarding the property to be sold is an "irregularity in publishing the sale" within the O 21,R 90 of C.P C. (Act V of 1908) [(18 I C. 715 (716)]

Irrelevancy (*in the Law of Pleadings*) An answer is said to be 'irrelevant' when the matter which it sets forth has no bearing on the question in dispute, does not affect the subject-matter of the controversy, and can in no way affect or assist the decision of the Court

"Matter is irrelevant in a pleading which has no bearing on the subject-matter of controversy and cannot affect the decision of the Court"

Irrelevant Not pertinent, without relation to the matter in issue, redundant, a term which has the signification of not applicable (*Scofield* v *State Nat. Bank*, 31 Am Rep 412)

IRRELEVANT. In the law of evidence, means not relevant, not relating to or applicable to the matter in issue, not supporting the issue (*Black L. Dict*)

Irreligious Not conforming to the forms or the spirit or observances of religions

IRRELIGIOUS, PROFANE, IMPIOUS All men who are not positively actuated by principles of religion are irreligious, who, if we include all such as to show a disregard to the outward observances of religion, form a too numerous class. *profanity* and *impiety* are however of a still more heinous nature, they consist not in the mere absence of regard for religion but in a positive contempt of it and open outrage against its laws

Irreparable. That which cannot be repaired, restored, or adequately compensated for in money, or where the compensation cannot be safely measured, that which cannot be repaired, retrieved, put back again, or atoned for. (*Gause* v. *Perkins*, 69 Am. Dec 728.)

Irreparable Injury A term which means that the injury must be a grievous one, a material one, and not adequately reparable in damages That which cannot be measured by any known pecuniary standard. The basic principle on which injunctions should be issued is that the plaintiff must show that an injunction is necessary to protect him from irreparable injury and that mere inconvenience is not enough, by the term "irreparable injury" is meant injury which is substantial and could never be remedied or adequately remedied or atoned for by damages I L.R. (1937) Nag 313=170 I.C. 239=10 R.N 58=A I R. 1937 Nag 137

By the term 'irreparable injury' it is not meant that there must not be any physical possibility of repairing the injury. All that is meant is that the injury would be a grievous one, and at least a material one and not adequately reparable in damages

'Irreparable injury,' as used in the law of injunction, does not necessarily mean that the injury is beyond the possibility of compensation in damages, nor that it must be very great, and the fact that no actual damages can be proved, so that in an action at law the jury could award nominal damages only, often furnishes the very best reason why a court of equity should interfere in a case where the nuisance is a continuous one

Irresistible force By "irresistible force" is meant such an interposition of human agency as is from its nature, a power absolutely uncontrollable (*Story Bailm* Ss 25, 489, 511)

Irresistible impulse The absence of sufficient mental power to choose between right and wrong.

A person acts under an "irresistible impulse' when, by reason of duress or mental disease, he has lost the power to choose between right and wrong, to avoid doing the act in question, his free agency being at the time destroyed

'IRRESISTIBLE IMPULSE,' in criminal law, is that uncontrollable impulse produced by disease of the mind, when that disease is sufficient to override the reason and judgment, and obliterate the sense of right as to the act done, and deprive the accused of the power to choose between them This impulse is born of the disease, and when it exists capacity to know the nature of the act is gone

Irresistible Injury That cannot be successfully resisted or opposed (*Webster Int Dict*)

Irresistible Superhuman Cause A phrase equivalent to the term Act of God, and refers to those natural causes, the effects of which cannot be prevented by the exercise of prudence, diligence, and care, and the use of those appliances which the situation of the party renders it reasonable that he should employ.

Irresistible violence 'Irresistible violence,' within the meaning of the doctrine that a bailee of goods is discharged if the subject-matter bailed be lost by 'irresistible violence,' is synonymous with 'vis major'

Irrespective of Benefits An act providing that 'no right of way shall be appropriated to the use of any corporation until full compensation therefor be made in money, *irrespective of any benefit* from any improvement,' means that full compensation shall be assessed by the jury, without looking at or regarding any benefits contemplated by the construction of the improvement

Irrevocable Not to be recalled or revoked; That which cannot be recalled or revoked, The word may mean a thing, or denote a right or power, which cannot be annulled or vacated, except for a sufficient cause, it may mean "unalterable" or "irreversible," *Houston* v *Houston City St. R. Co.*, 83 Tex 56, 548, 557.)

A confirmed credit is something, formerly provisional, and now turned into something definite by way of promise, and the word "irrevocable" simply closes the door on any option or *locus penitentiae*.

Irrigate.

and makes the agreement definite and binding—in other words, creates a true contract, which will either be performed or be broken Neither word would carry the matter further than the word "contract", used in its strict sense 54 I A 317=1 Luck. 241=39 M L.T 659=55 C 1=107 I C 225=27 L W 582=29 Bom L R 1181=25 A L J 665=46 C L J 61=(1927) M W.N 648=32 C W.N 33=A I R 1927 P.C 195=53 M L J 42

Irrigate Primarily, according to the latin word from which it is derived, to convey water to or upon anything, and, more generally to wet or moisten anything, and the ordinary definition in our language is to water lands, whether by channels, by flooding, or simply by sprinkling

"Irrigated by using without due authority" *See* I L R (1937) Mad 772=9 R M. 651=168 I C, 664=1937 M W N 318=A I R 1937 Mad 548=(1937) 1 M L J 732 (F B)

Irrigation In its primary sense, a sprinkling or watering yet, according to the best lexicographers, it has an agricultural or special signification the watering of lands by drains or channels (*Worcester Dict*) In its popular sense, the application of water to land for the production of crops (*Paxton, etc Irri Co* v *Farmer's etc, Irr etc,, Co*, 53 *Am St Rep* 585), the operation of causing water to flow over lands for nourishing plants (*Webster Dict*)

"Irrigation by percolation" The words "irrigation by percolation" cover cases where subsoil water derived by percolation from a river or channel belonging to Government is taken by percolation to the roots of trees (34 Mad 21, 35 Mad 197, 34 Mad 366 *Ref*) *Secretary of State* v *Mahadeo Sastrigal*, 40 Mad 58=32 M L J 411=(1917) M W N 376=21 M L T 337=39 I C. 193=5 I W 817 (F B)

Irrigation canal Any canal constructed for the purpose of developing water power, or any other useful purpose, and from which water can be taken for irrigation is an irrigation canal.

"Irrigation-work" defined Mad. Act 4, 1886, S 2.

"Irrigator" defined P Act 3, 1905, S 3 (*viii*)

"IRRIGATOR" means in respect of any land which is irrigated from a canal any person for the time being directly deriving benefit by such irrigation and includes a land-owner or occupancy tenant of such land, Pun Act 3 of 1905 (Minor Canals), S 3, cl 8

Irritant. Rendering void (*Balantine*).

Irsal (*H*) Sending, despatch, a despatch of any thing, the sending of remittances from the villages to the Zamindar, or to the district treasury, and from thence to the exchequer (*Wils Gloss* 219)

Irubhagamu (*Tel*) The two shares, *i e*, of the crop, the one assignable to the Government, the other to the cultivator also read as iru-bhogamu, or double possession, implying the same thing

Irubu, Irubhagam (*Tam*) Two crops

Irugoru (*Tel*) Both shares, the entire crop before the Government portion is deducted

Irunali-patam (*Mal*) Two nalis out of four, used to express an equal division of the crop between

Issue

proprietor and tenant, made annually, and not very customary in Malabar

Iruvara (*Karn*) Both the Government's and cultivator's shares of the crop.

Iruvayam (*Tel*) The whole crop before its partition between the state and the cultivator

Isafat, *see* Izafat

Is damnum dat qui jubet dare ejus vero nulla culpa est cui parere necesses est A maxim meaning "He occasions a loss who gives orders to cause it, but no blame attaches to him who is under the necessity of obeying (*Morgan Leg Max*)

Isha-namaz (*H*) Prayer at sunset.

Ishta (*S*) The learned say that Kshema is Putra or an act of charity (like digging a tank which is the cause of preserving the good that has been got) and that Yoga is *Ishta* or sacrificial act (which is the case of getting the good that has not been got) these are declared to be indivisible and so are also a couch and a seat (*Ghose Hindu Law* 624)

Islam Mohammedanism, the Mohammedan world

Island A body of land surrounded by water A body of submerged land, although covered by an aquatic vegetation, is not an island

Isle Island (as) Isle of Man.

Islet Small island

Ism Farzi One in whose name purchase is made, the name of the real purchaser not appearing in the transaction, Benami (*Mac Mhn Law*)

Is quid actionem habet ad rem recuperandum ipsam rem habere videtur A maxim meaning "He is regarded as having possession of the thing itself who hath an action to recover it (*Morgan Leg Max*)

Is qui dolo male desiit possidere pro possessore habetur A maxim meaning "He who has fraudulently ceased to possess is still a possessor" (*Morgan Leg Max*)

Israel. The Jewish people

Israelite Jew.

Israk-namez (*H*) Prayer at sun-rise.

"Issue" defined, (*See also* Children) Act 10 1865, S 86

ISSUE, (*Exitus from the Issuer, i e Emanare*) Hath divers significations in law, sometimes it is taken for the children begotten between a man and his wife, sometimes for the profits growing from amerciaments and fines, sometimes for the profits of lands and tenements but it generally signifies the point of matter, issuing out of the allegations and pleas of the plaintiff and defendant in a cause (1 Inst 126=11 Rep 10 *Tomlin's Law Dic*)

"The term 'issue' is of very extensive import, and when used as a word of purchase, unexplained or uncontrolled by any clear indication of intention, will comprise all persons who can claim as descendants, whether as children, grand children, etc, from or through the person to whose issue the limitation

Issue

is made, and, to restrict the legal meaning of the term a clear intention must appear in the will"

ISSUE The word 'issued' ordinarily means emitted or sent forth.

ISSUE *As a noun*, the act of sending or causing to go forth, a moving out of any enclosed place, egress, the act of passing out, exit, egress or passage out (*Worcester Dict*), the ultimate result or end

IN THE LAW OF DESCENT, issue means descendants, lineal descendants, offspring, legitimate offspring This word 'has a peculiar meaning, being often used in the sense of 'children,' and legal or technical meaning, being used in the sense of 'descendant, ... It is a term of flexible meaning (*per* Jessel, M R in *Morgan* v *Thomas*, 1882, 9 Q B D, 643, 645)

The word 'issue' includes offspring of both sexes 4 C 397 (401) *See* 27 L W 156

An adopted son does not fall within the meaning of the term 'issue' 107 I C 497=27 M L W 156= 1927 M W N 909=A I R 1928 Mad 297.

"Issue" is a general name, including all, even to the remotest, descendants

The word 'issue' is a general term, which, if not qualified or explained, may be construed to include grandchildren as well as children

A devise to 'issue' means, *prima facie*, legitimate issue, and an intention to include illegitimate issue must be deduced from the language itself, without resort to extrinsic evidence

IN COMMERCIAL LAW "Issue" signifies a class or series of bonds, debentures, etc, comprising all that are omitted at one and the same time (*Black L Dict*), the first delivery of the instrument complete in form to a person who takes it as holder

The ordinary and commonly accepted meaning of 'to issue' is to send forward, to put into circulation, to emit, as to issue bank notes, bonds, etc

The term 'issue,' as used in the negotiable instrument law, means the first delivery of the instrument, complete in form, to a person who takes it as a holder

AS APPLIED TO NEGOTIABLE PAPER, its delivery for use and circulation

As applied to bonds, it usually includes delivery, but it does not invariably do so It may mean "executed" under some circumstances and "delivered" under others It is said to include not only the delivery of the bonds, but all preceding acts of signature and preparation, and registration according to law

AS APPLIED TO A PATENT it means delivered

As applied to an insurance policy "issued" is indicative of the completion, signing up, and execution of the instrument, making it ready for delivery.

In a popular sense a corporation engaged in organization is said to issue stock when it obtains subscriptions for it.

IN PLEADINGS When, in the course of pleading, the plaintiff and the defendant come to a certain and material point which is affirmed by the one and denied by the other, they are said to be at issue (*3 Blackstone*, 313)

Issue

An 'issue,' in pleading is a question, either of fact or of law, raised by the pleadings, disputed between the parties, and mutually proposed and accepted by them as the subject for decision

In the law of pleading the word means a single certain and material point *issuing out* of the allegation of the plaintiff and defendant, a single material point of law or fact depending in the suit, which, being affirmed on the one side and denied on the other, is presented for determination, a point in dispute between parties on which they put their cause to trial a claim on one side denied by the other; that matter upon which the plaintiff proceeds by his action and which the defendant controverts by his pleadings, (*Vaughan* v *Morrison*, 55 N H 580, 592, citing *King* v. *Chase*, 15 N.H 9, 16, 41 *Am Dec* 675), some question, either of fact or law disputed between the parties, and mutually proposed and accepted by them as the subject for decision.

An issue arises on the pleadings where a fact, or conclusion of law, is maintained by one party and controverted by the other, where both parties rest the fate of the cause upon the truth of the fact in question, when both the parties join upon somewhat that they refer unto a trial to make an end of the plea (*3 Blackstone Comm* 313)

Issues in pleadings are classified and distinguished as follows General and special, material and immaterial, formal and informal real and feigned, and of law and of fact

A stipulation that a certain case should abide by 'the issue' of a certain other case should be construed to mean that such case should abide the ultimate result or end of the other case

A *feigned issue* is one made up by direction of the court upon a supposed case for the purpose of obtaining the verdict of a jury upon some question of fact materially involved in the cause (*Black L. Dict*)

A *formal issue* is one framed in strict accordance with the technical rules of pleading An *informal issue* is raised when the material allegations of the declaration are traversed but in an inartificial or untechnical mode (*Black L Dict*)

A *general issue* is raised by a plea which briefly and directly traverses the whole declaration, such as "not guilty" or "non-assumpsit," (*Black L Dict.*).

A *real issue* is one formed in a regular manner in a regular suit for the purpose of determining an actual controversy.

A *special issue* is formed when the defendant chooses one single material point which he traverses, and rests his whole case upon its determination

Issues are described as *material or immaterial* according as they do or do not bring up some material point or question which, when determined by the verdict, will dispose of the whole merits of the case, and leave no uncertainty as to the judgment (*Black L Dict,*)

The production of an *"issue"* is the object as well as the end and effect of the system or process of pleading, and when, by means of this process the parties have arrived at a specific point affirmed on the

Issue joined

one side and denied on the other, they are said to be "at issue," that is, "at the end" of their pleading, and the emergent question itself is termed "the issue", being designated, according to its nature, as an *"issue in fact"*, or an *"issue in law"* (*Burrill L Dict.*)

Issue joined means an issue of fact reached by the parties, as distinguished from cases where the defendant does not plead or appear, and thus no issue is raised *Solomons* v *Chesley*, 57 N H. 163 164

The words 'after issue joined' were construed to mean after the end of the pleadings

"By the *'matter in issue'* is to be understood that matter upon which the plaintiff proceeds by his action, and which the defendant controverts by his pleadings" *Morgan* v *Burr*, 58 N H 470, 471

SPECIAL ISSUE means "directly denying some one material and traversable allegation in the declaration, and concluding to the country." (*Black L. Dict*)

As a verb, 'To issue" means to send out, to send out officially, to send forth, to put forth, to deliver, for use, or authoritatively, to put into circulation, to emit, to go out (*Burrill*), to go forth as authoritative or binding, to proceed or arise from, to proceed as from a source (*Century Dict*)

"Issue," to, defined Act 1, 1889, s 2.

Issue notice, does not always mean mere posting of notice It refers sometimes to actual service of notice 117 I C 347=1929 A 600

Issue of bank-notes, in sect 11 of the Bank Charter Act, 1844 (7 & 8 Vict c 32), means "the delivery of the notes to the persons who are willing to receive them in exchange for value in gold, bills, or otherwise, the person who delivers them being prepared to take them up when they are presented for payment" *Att-Gen* v *Birkbeck* (1884), 12 Q B. D 611, *cf Prescott & Co Bank of England*, (1894) 1 Q B 351 (C A)

Issue of Bill of Exchange or promissory Note, "means, the first delivery of a Bill or Note, complete in form, to a person who takes it as a Holder" (s 2, Bills of Ex Act, 1882)

Issue of Cheques, within sect 2 of the Bills of Exchange Act, 1882 (45 & 46 Vict) *Clutton* v *Attenborough*, (1896) App Cas 90

Issue of Debentures The "issue" of a Debenture means, "delivery over by the company to the person who has the charge" (*per* Chitty, J, *Levy* v *Abercorris Co*).

Issue of fact An issue of fact arises when the allegations in an indictment are denied by the defendant, or the allegations of any subsequent pleading are controverted

By 'issues in fact' are meant questions in fact, as distinguished from questions in law, which the result of the pleadings in each case show to be in dispute or controversy between the parties. When the facts constituting the rights violated or duty neglected are alleged upon one side and denied upon the other, they form the issue of fact.

Issued

Issue of law is an issue upon a matter of law or consisting of matter of law being produced by a demurrer on the one side and a joinder in demurrer on the other (*Burrill L Dict*) An issue of fact is an issue taken upon or consisting of matter of fact, the fact, the fact only and not the law being disputed, and which is to be tried by a jury (*Burrill L. Dict.*)

Issue of Process Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service A writ or notice is *issued* when it is put in proper form and placed in an officer's hands for service, at the time it becomes a perfected process

Issue of shares, in the Companies Act, 1867 (30 & 31 Vict c 131), s 25, "must be taken as meaning something distinct from allotment, and as importing that some subsequent act has been done whereby the title of the allottee becomes complete" *Clarke's case* (1878), 8 Ch D 638

ISSUE OF SHARES Shares in a company are issued by the sending out of certificates of shares in return for subscription paid

Issue of valuable securities, within the Stamp Act, 1891 (54 & 55 Vic c 39, s 8?) See *Lord Revelstoke* v *Inland Revenue Commissioners*, (1898) App 565

Issue of the body 'Issue of the body' is of the same meaning, and has precisely the same legal operation, as the expression 'heirs of the body'

"Issued" An execution is *"issued"* only when it is properly attested by a clerk, and delivered to the sheriff to be executed by him

'ISSUED,' as used in reference to the issuance of a life insurance policy, means that when the policy is made and delivered in pursuance with the laws of the state legalizing such policies, and is in full effect and operation, it is to be regarded as issued

The term 'issued' when used with reference to a deed or patent, usually means delivered

'Issued,' as used in speaking of a marriage license as having been issued, means filled up and handed to the person who is to use it, and a blank form of marriage license, though signed by the register of deeds, does not constitute the 'issue' of such a license.

"Any process may be considered 'issued' if made out and placed in the hands of a person authorised to serve it, and with a *bona fide* intent to have it served'

The mere writing or filling up blank summons and lodging them in the clerk's office is not an issue of process.

The word "issued" in Art 92, Limitation Act, 1877 is intended to be applied to the kinds of documents to which people commonly apply that term in business. It has no application to an instrument such as a power to adopt an anumatipatra. 24 Cal. 1 =23 I A 97 (P C)

The word "issued" in S 92 of Act X of Bengal Rent Act of 1859 is not to have a strict literal interpretation put upon it, but it should be interpreted to

Issues

mean sued out or applied for with success. 4 B L. R (F B) 82=13 W R (F B) 3

"Issues" defined Act 14, 1882, S 146

ISSUES (*Of property*) 'Income, issues and profits of an estate, include the rents of the whole estate' The word 'issues' is an apt term to indicate the rents and profits derived from realty

"Istafa"—Meaning of —See 8 C W.N 896 , 32 C 51 (P C)

Istamrari The words Istamrari, 'baran dawan' and hamesh used in a lease do not import a grant of heritable interest 'Sir' connote a heritable tenure, and 'Muafi' may imply a right of resumption but does not connote a life tenure. 3 U P L R (B R) 39,

Istava-kaul (*Tel.*) A lease or grant of waste lands at a rent progressively increasing for a term of years, when it becomes fixed.

Istemerar Continuity, the being constant and continuous, perpetuity (*Fifth report*) A grant of the land revenue of a tract subject to the payment of a sum as quit rent, fixed in perpetuity

Istemrar. Istimrar.

Istemrardar The holder of a grant in perpetuity. (*Fifth report*)

Istemrari Mokurari. The words "Istemrari Mokurari" as used in deeds do not *per se* convey an estate of inheritance. Not that such an estate may not be created without the addition of such expressions as "ba farzandan" (with children), or "naslan badnaslan" (generation after generation) without them, the other terms of the instrument, the circumstances under which it has been made, or the conduct of the parties, may have to be looked into to ascertain the intention with sufficient certainty to enable the Courts to pronounce the grant to be perpetual 12 C 117 (P C)=12 I A 205, 8 C 664=9 I A. 33 (P C), 21 M. 503.

Istihsan. Approving. Taking or considering a thing as a favor (*Mac Mhn Law*), approving in law a favourable construction or interpretation of a point of law, deviating from the strict letter of the law in kindness either to suitors or to the community (*Wil. Gloss.* 2 21.)

Istimerar [See *Istemrar*] Continuity, the being constant and continuous, perpetuity, a farm or lease granted in perpetuity by government or a Zamindar, at a stipulated rent, and exempt from abwabs such a lease granted in charity at a quit-rent (*Wil Gloss* 221)

Istimirar-kiramam (*Tam*) A village permanently settled

"Istimrardar" Defined Reg 2, 1877, s. 20

ISTIMRARDAR The holder of a grant in perpetuity

Istimraree *Or Istimrari.* Perpetual, continuous (*Fifth report*)

The word "*istimraree*" in lease may or may not convey a hereditary right according to the surrounding circumstances but do not of themselves give such a right 7 L R 9 (Rev)

Item.

Istimrari, connotes a 'permanent' estate (not liable to be recalled) applied to certain 'tenures' in Bengal, and to certain land-grants to chiefs in Ajmer, S-E Panjab, &c estates in Ajmer. (*Bad. Pow.* II. 336, 7. of Karnal (P J) *Bad Pow* II 685)

"Istimrari estate" defined. Reg. 2, 1887, s. 20.

Istimrari-jama, *H* Fixed on perpetual assessment or rent (*Wil Gloss* 221)

Istimrari mukarrari" The words "mukarrari istemrari" do not in their lexicographical sense primarily imply any heritable character in the grant as the term "mourasi" does, but they simply imply permanency from which in a secondary sense such heritable character might be inferred, it always being doubtful whether they meant permanent during the lifetime of the persons to whom they were granted or permanent as regards hereditary character, and the words do not *per se* convey an estate of inheritance (30 Cal 883, *Ref*) 109 I C 663=48 C L J 69 =32 C W N 897=55 I A 212=28 M L.W 41=9 P. L T 501=7 Pat 649=30 Bom L R 1361=A I R 1928 P C 146=55 M L J 882 (P.C) The words "Istimrari Mokarrari" do not necessarily mean "permanent and heritable" but the nature of the grant is to be determined from the circumstances 90 I C 781=A I.R 1926 Cal 322 The phrase "*Istimrari mukarrari*" in a Patta in District Hazaribag does not *per se* convey an estate of inheritance But the Court is competent to see whether the other terms of the instrument, the circumstances under which it was made or the subsequent conduct of the parties show that the intention was to make the grant hereditary 6 P.L.T 12=4 Pat 139=84 I C 586=A I R 1925 Pat 216 The expression "istimrari mokurari" occurring in a lease does not necessarily confer a permanent, heritable and transferable grant but means a lease for the life of the grantee 3 Pat 534=78 I C 511=A.I R 1924 Pat 572

Istimrari patta, (*H*) A lease or farm granted at a permanent rent, a perpetual lease (*Wil Gloss.* 221)

Istimrari-pattadar, (*H*) Holder of a lease of lands at a perpetual rent (*Wil. Gloss* 221).

Istuva (*Tel*) (See *Istava*) Property, estate

It An objection to the use of the word 'it' in an allegation in an indictment that 'defendant knew such statements to be false when he made it, 'in place of the word 'them,' is hypercritical and without merit.

"It is hereby agreed" It is well settled that the words 'it is hereby agreed' make of the words that follow a covenant

Ita lex scripta esta A maxim meaning "The law is so written" (*Bouvier Law Dict.*)

Ita semper fiat relatio ut valeat dispositio A maxim meaning "let the relation be so made that the disposition may stand" (*Bouvier*).

Ita te deus adjuvet. So help you God.

Item. An 'item' is a separate particular of an account.

An 'item,' as used with reference to an itemized account, means an article, a separate particular in an account.

Item.

ITEM, is a word of varied meaning, according to the standard lexicographers, it may mean an article, a circumstance, a driblet, a part (*Standard Dict*), a separate particular of an account, the particulars of an account or a single item of an account, anything which can form part of a detail, an entry In written instruments, especially in wills, the word is sometimes used as the proper beginning of a distinct clause, and divides, so far from connecting it with the precedent, to introduce new and distinct matter, and not to influence other clauses of an instrument, to mark and distinguish the different clauses The word "item" in a will has never been construed as disjunctive, but is only made use of to distinguish the clauses in the will. *Cheeseman* v *Partridge*, 1 Atk, 436, 438, 26 Eng Reprint 279 The word is sometimes used as a verb Thus "the whole (costs) in this case was item'd to counsel' (*Chambers* v *Robinson Bumb* 164)

The word "ITEM" OR "FURTHER," OR "MOREOVER," is commonly used in the beginning of a separate devise or bequest in a will merely for the purpose of indicating that it is the commencement of a new bequest, and not as connecting the preceding with the following bequest (*Burr* v *Sim*, 1 Whart 29 Am Dec 48)

Itemize To state in items or by particulars. *Itemized Account* An account which states the items making up the aggregate of the demand

Iter A way, a right of way, the journey of a judge on his circuit.

ITER. (*In Maritime Law*) A way or route, the direction of a voyage

Iter est jus eundi, ambulandi hominis, non etiam jumentum agendi vel vehiculum A way is the right of going or walking, and does not include the right of driving a beast of burden or a carriage

Itifak (*M*), applied to a certain kind of well (*Bad Pow* III 74)

Itinerant. Travelling or taking a journey and those were anciently called Justices Itinerant, who were sent with commission into divers counties to hear causes. (*Tomlin's Law Dic.*)

Itinerant Salesman A persom who solicits orders for goods similar to a sample which he carries in his wagon is not an 'itinerant salesman,' nor a peddler exposing for sale goods on the street

Itinerant Vendor The term 'itinerant vendor' includes any one who goes from place to place to peddle or retail goods, wares, or other things, without regard to the distance between the different places visited in so selling

Itlaanamah (*H*) A proclamation addressed generally to the chiefs of any country or the residents of any district

Itmam. The word *Itmam* in the permanently settled parts of Chittagong imports permanent, heritable and transferable tenure 47 Cal 979=60 I C 984=25 C.W.N 857.

"It shall be lawful" *See* 14 Pat. 24=152 I.C 805=1934 Pat. 670

IT SHALL BE LAWFUL. The word "may" in S 265 of the Contract Act (IX of 1872) has a somewhat similar force The natural meaning of the expression "it shall be lawful" is permissive and enabling only The words "it shall be lawful" in a statute mean merely making legal and possible what there would otherwise be no authority to do 7 C 157=8 C L R 329

The words "and it shall be lawful for the Court on those or any other occasions," in S 36 of the Insolvent Debtors Act, 11 and 12 Vic, C 21, should receive a very wide application, and the Court has power to proceed under this section, as soon as there is an insolvent 29 C 503, *See also* 4 Bom 489

Ivumaniyam, (*Tam*) A grant of a proportion or percentage on any branch of land-revenue which fluctuates with the improvement or deterioration of the produce (*Wil Gloss* 222).

Izad (*A increase*), lands held in excess (*Bad Pow* III 447)

Izafat (*Bo*) a tenure in the Konkan (*Bad. Pow* III 295)

Izara Tenure (See *Ijhara*) 20 N L J 224.

J

J The initial letter of judge, justice

JJ. Justices or judges

J P An abbreviation of the term, justice of the peace

Jr. (See *Junior*) An abbreviation of "Junior".

Jack-Jackass Mr Webster defines a jackass to be a quadruped of the genus equus—that is, equus asinus—having a peculiar harsh bray, long, stretching ears, and being usually of an ash colour, with a black bar across his shoulders The tame or domesticated ass is patient to stupidity and slow' Such animals are included in the term 'horses' in statutes exempting horses from attachment in execution of decrees for money

Jactitation Boasting of something which is challenged by another (as) Jactitation of marriage, Jactitation of a right of seat in the church, jactitation of tithes

'JACTITATION' is also used as a technical word of the medical profession, meaning an involuntary convulsive muscular movement (49 *Ame. St Rep.* 348)

Jactitation of Marriage, is an action (originally Ecclesiastical) for the false, malicious, and unexcusable boast and assertion by a person that some one else is married to him or her (3 Bl Com 93)

It is one of the first and principal matrimonial causes in the Ecclesiastical Courts as, when one of the parties boasts or gives out that he or she is married to the other whereby a common reputation of their marriage may ensue On this ground the party injured may libel the other; and unless the defendant undertakes and makes out a proof of the actual marriage, he or she is enjoined perpetual silence upon that head, which is the only remedy those courts can give for this injury. (*Tomlin's Law Dic., Browne* and *Powles* on Divorce, *Geary* on Marriage, 378.)

Jactus, (*Lat.*) *In old English law* Thrown, cast, defeated *In the civil law* The throwing of goods

Jactus

overboard to lighten a vessel, jettison, the thing thrown in overboard.

The word 'jactus' is used in the maritime law to designate a portion of a cargo or vessel which is drawn overboard at time of peril for the purpose of preventing the loss of the vessel and cargo.

Jadd The word *"Jadd"* literally means grandfather and *"ashkhas jaddi"* means persons descended from a common ancestor and cannot include a woman who is not descended from such common ancestor but enters into the family by marriage 19 A L J 820=64 I C 191 (2)

Jadi (*Karn*) Assessment of land, revenue, land tax

Jadid (*A*) new, applied to new or casual tenants, also to recent cultivator (as) Banjar jadid. (*Bad Pow*)

Jadkharedi villages (*C.P.*) Villages purchased under the (C P) Waste Land Rules 1862

Jagannatha, (*H*) Lord of the world, a name especially applied to Sri Krishna in the form in which he is worshipped at the temple of Jagannath at Puri in Orissa (*Wil Gloss* 224)

Jagati-dar, (*Mar*) A custom house officer, a collector or farmer of customs (*Wil Gloss* 224)

Jaghir Amal (*Mar*) The share of the revenue claimed by the Mogul government for the exchequer on certain holders of jagirs after deducting Maratha chauth and another fourth, or 25 per cent for the Faujdar Under the Peshwa and the British government it denotes, in some districts, the right to the revenue which remains after deducting the Sardesmukhi and chauth, in others after deducting the Mukhasa portion of the chauth only (*Wil Gloss* 225)

Jaghir buckshee. A jaghir for the support of a general or commander-in-chief (*Fifth report*)

Jaghir circar. (See *Jaghir Sarkar*) The jaghir of the government *i e*, the company's jaghir under the presidency of Fort St George. (*Fifth report*)

Jaghir dewanny (*or Dewani*) The jaghir of the dewanny, *i e*, of the office of Dewan held by the Company (*Fifth report*)

Jaghir-diwani, (*H*) The grant of the collection of the revenues of Bengal, Behar, and Orissa to the company, (*Wil Gloss* 225)

Jaghir Jagir An assignment of the Government revenue on a tract of land to families, individuals, or public officers (*Mac Mhn Law.*)

Jagir is an estate of greater or smaller extent held on favourable terms as to the payment of land revenue and usually with such incidents of tenure as impartibility and primogeniture (*C P Land Rev Man*)

JAGIR, was a tenure common under the Mohammadan government, in which the public revenues of a given tract of land were made over to a servant of the state together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district The assignment was either conditional or unconditional, in the former case, some public service, as the levy and maintenance of troops, or other specified duty, was engaged for, the latter was left to the entire disposal of the grantee The assignment was either for stated term, or, more usually, for the life time of the holder, lapsing on his death, to the state, although not unusually renewed to his heir, on payment of a nazarana, or fine, and sometimes specified to be a hereditary assignment (*Wil Gloss*)

Jagir (*P from Jai place, gir-holder*), is an assignment of the L R of a territory to a chief or noble, to support troops police, & for specific service to maintain the state and dignity of the grantee, or sometimes to encourage the colonization and population of a jungle tract The grant may or may not include a right in the soil, originally for life, but often became permanent and hereditary. (*Bad.-Pow* 1 189)

In the Punjab, the term jagir is ordinarily restricted as meaning an assignment of land revenue only. Jagir is ordinarily not land. 146 P.W.R, 1912=16 I. C 855=167 P L R 1912

Where the grant of jaghir is made to a person and his heirs and there is nothing to control the ordinary meaning of the words, the grantee takes an absolute interest (15 Bom. 422, *Foll*) 1 P. 201=A.I R 1922 P 411

In the absence of words clearly indicating a contrary intention a jaghir is presumed to be the grant of an estate only for life (3 Bom 186, 46 C 683 1921 Pat 369, *Ref to*) 71 I C 929=A I R 1924 Pat 298

Ordinarily the Government grant jagirs in the form of assignment of land revenue but it may also take the form of cash allowance by the Government or the assignment of other dues recoverable by the Government as the recovery of the fines and recovery of the income of a garden 39 P L R 434=A I.R 1937 Lah 211

A jagir includes a khorposh tenure A I R 1928 Pat 294

In the Punjab, the term *Jagir* is ordinarily-restricted as meaning an assignmeut of land revenue only *Jagir* is ordinarily not land 146 P W R 1912=167 P L R 1912=16 I C 855, *See also* 58 I A, 17=1931 P C 5=60 M L J 245 (P C)

'JAGIR' AND 'MUAFI' DISTINGUISHED The difference between muafi and jagir is that the former is remission of land-revenue to the owner whereas the latter is an assignment of land revenue which is collected and paid to the jagirdar The jagirdar may subsequently acquire the property and if he does, the grant technically becomes 'muafi' though it always continues to be shown as jagir 123 I C 835=A.I R 1930 Lah 46

JAGIR, SARANJAM, INAM Grants in Jagir of the ordinary character were personal and not hereditary, and were resumable at pleasure Being personal and temporary they were "necessarily impartible" The Marathi equivalent of the term Jagir is Saranjam. The terms Saranjam and Inam are not mutually exclusive, Inam is one of more generic significance, applicable to a Government grant as a whole. 16 C W.N 1058=23 M L.J 383=12 M.L.T 472=(1912) M. W.N 1140=14 Bom L.R. 1226=36 B. 639=17 C.L.J. 17=16 I.C. 239 (P C)

Jagir an lad.

Jagir "au lad wa ahfad," meaning of. *See* 13 I.C. 155.

"Jagir land" defined Act 20, 1881, S. 3 Act 20, 1896, S 2 (1).

"JAGIR LAND" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mamul* or garden grants Bom Act XX of 1896 (Incumbered Estates (Sindh) S. 2, Cl 1

Jaghir sarkar, Jagir-i-sarkar, (*H.*) The tract originally granted to the company by the Nawab, of the Carnatic, as an assignment for the maintenance of their troops. (*Wil Gloss.* 225)

Jaghir tenahaut Jaghires for the support of tenahs, or small garrisons of sebundy troops (*Fifth report.*)

"Jagirdar" defined (*See also* Talukdar Thakur or Jagirdar) Act 20, 1881, S 3, Act 16, 1887, S. 4 (15). Act 20, 1896, S 2 (2)

JAGIRDAR, (*H*) One who holds a jagir. The holder of any assignment of revenue, for his powers in the Bombay Presidency, *see* Bom Reg, XIII. 1830, and Act XIII. 1842 (*Wil Gloss. 225*)

Jagirdari, (*H.*) The possession of rights of the holder of a jagir (*Wil. Gloss* 225)

Jagir-or-jagir-dari-sanad, (*H*) The deed or patent under which a jagir was granted under the Mohammadan government (*Wil Gloss 225.*)

Jaglia (*Bom and Berar*) a village watchman (*Bad Pow* III 308, 350, 386)

Jagodih estate Villages forming the Jagodih estate are not an ordinary jagir of the Raj resumable on failure of the direct male line of the grantee and are a shamilat or shikmi taluk of the Ramgarh estate as recorded in the Khewat or record of-rights of the zamindari, made under the Chota Nagpur Tenancy Act, 1908 58 I A 17=33 L W, 121=130 I C 620=52 C L.J 512=35 C W.N. 201=A I R 1931 P C 5=60 M L J 245 (P C.)

Jah (*H*) A title of very high rank among Muhammadans

Jahannam (*H*) The Muhammadan hell, consisting of seven divisions allotted respectively to wicked Muhammadans, Christians, Jews, Sabaeans, Guebres, idolaters, and hypocrites.

Jaidad (*Per.*) The capabilities of a district in respect of revenue, an assignment of territory for the maintenance of troops

JAIDAD In a document, the word jaidad is generally used for immovable property, and when used for moveable has prefixed to it some word like mankula showing that it is not to be read in its original meaning. 3 I.C 506 (507)=6 A L.J 627=31 A 523=6 M L T. 5

"Jail" defined. *See* Gaol. (*See also* Civil jail, Prison) Mad Act 5, 1869, S. 5.

JAIL. A jail is a house or building used for the purpose of a public prison, or where persons under arrest are kept The word 'jail' means any place of confinement used for detaining a prisoner.

Jama-bandi.

Jailer One who has charge of a jail or prison and prisoners

Jail delivery, commission of. One of the commissions issued to judges of assize in England.

BREAK JAIL To force one's way out of prison

Jalaparabi Incidents explained. 1 I C 121

Jalasam land Whether constitutes occupancy holding 10 Pat L T 625

Jalkar, (*H*) Profits or cent derived from the water, lakes, ponds, or the like, upon a tract of country, or an estate, with the right of fishing, and of cultivating the beds, if dry. (*Wil Gloss* 227)

Unless the boundaries in a grant of a jalkar clearly indicate the contrary, the mere use of the word jalkar would not ordinarily include rights of fishery in tidal navigable rivers 11 C 434 (F B.) *per* Prinsep and Pigot, JJ *See also* 22 I C 844

The mere use of the word 'Jalkar', in a deed of permanent settlement, would not give a right of fishery in a public tidal river This word may be satisfied by applying it to the right of fishing within an enclosed water 4 C 53.

Jalnum Ponnujam (*Mal*) Literally birth, again born The term is particularly applied to a mortgage deed, upon the execution of which the proprietor parts with almost his whole interest in the land.

Jalsazan, a kind of tenant holding in Ch. Nagpur (*Bad Pow* I 579)

"Jama" defined Bom Act, I, 1880, S 3 (4), Bom. Act 6, 1888, S 2 (1) (*c*)

JAMA, (*H*) Amount, aggregate, total in general but applied especially to the debit or receipt side of an account, and to the rental of an estate, also to the total amount of rent or revenue payable by a cultivator or a Zamindar, including all cesses, as well as land tax, latterly it is more especially applied to the revenue assessed upon the land alone its special application is commonly defined by the term with which it is compounded, as, Asal-jama, Ain-jama, Bazi-jama, Istimrari jama, *see also* Beng Regs I. 1793 I II XXVII 1795 Regs XXIII 1803 VII 1822· Acts I 1841 IV 1846 Mad Regs XXV 1802 II. 1806, Bomb Reg XVII 1827 (*Wil Gloss* 228, (*Bad. Pow.*)

'JAMA" means land-revenue payable by a khot or Taluqdar to Government Bom Act I of 1880, S 3, Cl 4, Act VI of 1888, S 2

The word '*jama*, is very well understood by the people who are at all conversant with the language used by the Indian Bankers 'Jama' means a deposit and nothing more 38 P L R 506=164 I C 50=9 R. L 78=A I.R 1936 Lah 587

Jama-bandi, a rent-roll, a roll showing both revenue and rent dues in a village (meaning varies according to the system). In Bombay and Madras the word is applied to the annual account made out for each occupant of his actual holding and payment due for the year (*Bad Pow* I 24)

JAMABANDI (*H*) Settlement of the amount of revenue assessed upon an estate, a village, or district, a village or district rent roll, a register of the village holding. Settlement of the amount of revenue assess-

Jama-bandi

ed upon an estate, a village or district, a village or district rent rolls a register of the village holdings, a statement exhibiting the particulars of the public revenue, its amount, and how assessed, annual settlement of revenue with cultivators, or Ryotwari settlement, an annual statement, modified according to the circumstances under which the revenue is paid, whether by individuals or communities, and whether to the Zamindar or to the government (*Wil Gloss.*)

Where a deed of usufructuary mortgage provided that mortgagee was to appropriate profits towards interest and that if profits fell short of interest, mortgagor was liable for deficiency according to the "jamabandi" *Held*, that the jamabandi referred to meant the rent roll and the account of collections kept by the mortgagee in possession, and the patwari's jamabandi cannot be accepted as a substitute for the private accounts of the mortgagee 95 I C 175=A I R 1926 Oudh 514

Jama-bandi patti, (*Mar*) A document formerly furnished by the Collector of a district to the Patil of a village, on settling the amount of revenue to be paid by the village for the ensuing year, specifying the amount, and the consent of the villagers. (*Wil Gloss* 228)

Jama-kamil or kamal, (*H*) In Bengal the term usually denotes the settlement made by Akbar's financial minister, Todar Mal, also known as the Jama-kamil-tumari In the Madras province it was applied to the assessment of the revenue of the Northern Sirkars made about A D 1512-1570, or to one subsequent framed in the reign of Alamgiri, or about 1684-1687, for the whole of the Dakhin on the principles of Todar Mal's assessment, and accordingly, in Kandesh it denotes the highest rate which any village had been made to pay, although not unfrequently falling short of the estimated rental, or tankha, as calculated at an earlier date In Cuttack, the Jama-kamal applied to a revision of the same, which then became the standard assessment (*Wil Gloss* 229)

Jama-kamil-tumari, (*H*) The particulars of the settlement of Todar Mal, as modified in Bengal by Sultan Shuja in 1658 and Jaffir-khan in 1722, the latter of which was carried into operation by his successor Shuja Khan in 1729 (*Wil Gloss* 229)

Jama-masjid, (*H*) The principal mosque or Mohammadan place of prayer in a city. (*Wil Gloss* 230)

Jama-mukarrari, (*H*) A fixed or permanent amount of revenue an account formerly kept by the Kanungo of lands permanently assessed (*Wil. Gloss* 229)

Jamabandi-tirappu (*Tam*) Particulars of a revenue settlement

Jama-wasul-baki (*H*) An account, showing the revenue demand, payments and balances.

Jamadar (*H*) The chief or leader of any number of persons, in military language, a native subaltern officer, second to the Subahdar, an officer of police, customs, or excise, second to the Darogha, a head domestic servant among the Marathas, an officer appointed to protect the crops from the depredations of an army and its followers (*Wil. Gloss* 230).

Janmakar.

Jamatkhana (*H*) A place of assembly.

Jamba gutta, (*Karn*) A tax on the long grass called Jamba, used in that ching huts and making mats. (*Wil Gloss* 230)

Jambut tenure. Mineral rights Express words necessary 58 I A 29=10 Pat 407=60 M L J. 183 (P C)

Jamdar (*Mar*) An officer in charge of the treasure, jewels, of the head of the estate (probably corruption of Jamadar) (*Wil Gloss.* 230)

Jami (*Santal Perg Ben*), a dielectic form of Zamin, applied only to levelled or prepared rice land (*Bad Pow* i 595)

Jami-ur-Rumuz This is a commentary (on the Nikayah) written by Shams-ud-Din Muhammad-al-Khurasani Al Kohistani in A H 941 (A D 1534) It is one of the fullest and the clearest as well as one of the most useful law books frequently referred to in this country on questions of Mahamadan Law. (*Tagore Law Lectures*, 1873, pp 44 45)

Jamma *See* Jama The whole, total, sum, amount sum total, assembly, collection The total of a territorial assessment (*Fifth Report*)

JAMMA (*Coorg*) a privileged tenure (*Bad Pow* iii. 470) Land inalienable (*Bad Pow*, iii 472)

Janajaut Man by man, individual This term, applied to a pottah, means a lease to each individual ryot (*Fifth Report.*)

"Janashin" Meaning of *See* 3 O W N (Sup) 56=A I R 1926 Oudh 431

Jangal (*H*) A forest, a thicket, any tract overrun with bushes or trees, or suffered to be overspread with vegetation (*Wil Gloss* 231)

Jangal-buri Clearing lands of jangal, also applied to a sort of tenure under which waste or forest lands are granted in absolute property to the clearer, free of rent or revenue for a certain time at the expiration of which such part or parts as were in cultivation were to be liable to a fixed rent and customary imposts

Jangal-buri-taluk An estate or tract of land overrun with jangal, held on easy terms for a given term, on condition of its being cleared

Jangal mahal (*H*) Forest tracts or estates, applied especially to the districts on the west of Bengal, between it and Berar and Cuttack Ben Reg v 1800 xviii 1805 (*Wil Gloss.* 231)

Jangal-Tarashi. The clearing of Jangal for cultivation

Janishin (*A*) A lieutenant, a successor. (*Mac. Mhn Law*)

Janitor. A door keeper, a person who has the care of a building or of rooms therein, to keep them clean and in order, to lock and unlock them etc.

Janma or Janma dravyam (*Mal.*) The price given for landed property.

Janmabhogam (*Mal.*) The share in the produce of the land which is due to the Janmi. (*Moore Mal. Law*)

Janmakar. A proprietor by inheritance.

Janmakkaran

Janmakkaran or Janmi or Mutalalan A landed proprietor (*Logan Mal. Man*)

Janmakkavul (*Mal*) Is a fee which is given to a kind of headman among slaves for watching a large tract of rice-land and protecting it from cattle The land may belong to different proprietors, though the watcher is the slave of only one The fee consists in the crop of a certain portion of every rice-field The watcher is generally selected from the caste of Palium, which is considered the most trustworthy and attentive, and the watcher goes on such occasion by the name of Kalladi Palium (*Log Mal Man*)

Janmakkolu (*Mal*) Answering to Moolganee in Canara It is a fixed rent which cannot be raised, and the proprietor cannot remove the tenant It prevails in some few places in the Northern Division of Malabar (See *Log Mal Man*)

JANMAKKOLU is a grant of land made in the form of a perpetual lease as a reward for services rendered An annual rent, which as rule is merely nominal, is payable by a tenant holding under this tenure It is equivalent to Karankari (*Moore Mal Law*)

Janmakkozhu Same as Janmakolu.

Janmakkudiyan (*Mal*) A proprietary inhabitant It is not uncommonly used to designate the modern Janmakar, who has acquired his property by purchase in contradistinction to the ancient or hereditary Janmakar (*Log Mal Man*)

Janmam (*Mal*) the right or tenure of the janmi landlord (*Bad Pow* III 155) Birth, birthright, hereditary proprietorship, freehold property which it was considered disgraceful to alienate (*Moore Mal Law.*)

Janma paimash (*Mal*) The returns prepared in 1805-6 in connection with the Survey of Malabar District, carried out by the Collector Mr Warden, are called the Janma Paimash Accounts This Paimash is also known as Alavu Paimash (*Moore Mal Law*)

Janmapanayam (*Mal*) One of the higher forms of mortgage by virtue of which the proprietor parts with nearly all his proprietary interest (*Moore Mal Law*) Mortgage of land with no right of redemption, possibly as opposed to mortgage of usufruct or panayom (*Sun Mal Law*)

Janm-panay ellutu (*Mal*) A deed of mortgage, on which an additional sum being raised, the proprietor engages never to transfer the land to any other purchaser without the consent of the mortgagee.

Janma-patra (*Mal*) A horoscope, a paper prepared at the birth of a child, foretelling his fate according to the aspects of the planets Horoscope. (*Wil Gloss* 232)

Janmavada (*Mal.*) A dispute or suit about landed property.

Janmi (*Mal*) Landlord or proprietor; An owner of land, a proprietor, the original owner or proprietor by hereditary right (*Wil Gloss* 232, *Bad Pow* III, 162, 172.) The person in whom the Janmam title vests.

Jat

Janmidosam (*Mal*) The claim of the proprietor or landlord on mortgaged land

Janmimarattam (*Mal*) Dispute about landed property

Janmi paimash see *Bad Pow.* III 179.

Janmum Birth, Birthright Hereditary or proprietary right in the soil

Jantri (*H*) The almanack with civil and army lists and directory, published in India, and in very general circulation (*Wil Gloss.* 232)

Jao, a small fraction used in describing land-shares (N W P) (*Bad Pow* II 127)

Japji (*P*) The name of two Sikh prayers, the first, called also guru mantra, was composed by Nanak and the second by Gobind Singh, they are contained respectively in the adi granth and the daswa padshahka granth

Japti-dar (*Mar*) A bailiff, an officer employed to execute an attachment (*Wil Gloss*)

Jarayati *See* Jeroyiti

Jarayati-guttige (*Karn*) Assessment on cultivated land

Jari (*Karn*) Free from an attachment (land) exempt from revenue

The Tamil word "ஜாரி" (Jari) means handing over or giving possession or putting one in possession In order to understand in what sense the word was used reference must be had to the circumstances of the grant (1928) M W N 763=A I R 1928 Mad 1246 *See also* 27 M L J 195, 26 I C 537, 114 I.C 626.

JARI In use, applied to a well.

Jari-amal Items of revenue which were once current, but are in the course of being alienated from the public revenue, as the sardeshmukhi and Chauth.

Jari-bhumi (*Tel*) Lands cultivated by the Ryots of the state

Jari-inamu (*Tel Karn*) A grant of land

Jari-inamu-kaniki (*Karn*) A light or quit rent on grants still in force

Jarib (*A.*) A measuring chain or rope, twenty gathas or sixty gaz in length, the square of the jarib is the bigha

Jashn-i-Wazan, (*H*) The ceremony of weighing a person of rank against money and ornaments, which were afterwards given away in presents or in charity (*Wil Gloss* 234)

Jasti, (*Tel. Karn*) Increase, addition, also, injustice, exaction (*Wil Gloss* 234)

Jasti-kamavis, (*Mar*) Miscellaneous or extra collections, as of a tax on trades and professions, a discount on different sorts of rupees (*Wil. Gloss.* 253.)

Jasti huttavali (*Karn*) Increase of produce.

Jasti-saguvali (*Karn.*) Increase of assessment

Jat, (*H*) The name of a very numerous race of people in the north-west and bordering provinces, also in the Punjab and Sindh, where they have become, in part at least Sikhs and Mohammadans;

Jatabaki

they are in general industrious and enterprising cultivators, and a brave and hardy race (*Wil Gloss* 234) The Raja of Bhartpur is of this tribe See also *Bad -Pow* II, 135, 613, 666, 668

Jatabaki (*Karn*) Net revenue

Jatara A pilgrimage to a holy place, particularly a pilgrimage on a fixed day recurring annually or at longer intervals Jatras are usually made the occasions of fairs and various amusements, as well as of visiting the temple, bathing in the holy water, etc

Jatri (*H.*) A pilgrim

Jatua (*H*) One of the seven branches of the Chamar tribe located chiefly in the Upper Doab

Jauhar (*H*) The putting to death of women and children to prevent them from falling into the hands of an enemy

Jawabi-hundi, (*Mar*) Payment of money into the hands of a banker, as a deposit for the value of a bill, to be paid to the drawer on receiving advice that the bill has been cashed (*Wil Gloss* 235)

Jawahir-i Nayerah A commentary on the Kuduri by Abu Bakr bin Ali-ul-Haddadi-ul-Abbadi, 800, A H It is a book of reference on Mahomedan law

Jay (S) Victory, used as an exclamation either by itself or with a name 'Ramraja jay' is a war cry of the Hindu soldier

Jaziah (*A.*) [*See* Jizea] A capitation tax levied on all who refused to become Muhammadans It was abolished in India by Akbar, but re-imposed by Aurangazeb.

Jealousy Suspicious fear or apprehension, painful apprehension of rivalship

JEALOUSY, ENVY We are jealous of what is our own, we are envious of what is another's Jealousy fears to lose what it has, envy is pained at seeing another have Princes are jealous of their authority, subjects are jealous of their rights, courtiers are envious of those in favour, women are envious of superior beauty Jealous is applicable to bodies of men as well as individuals, envious to the individuals only Nations are jealous of any interference on the part of any other power in their commerce, government, or territory, individuals are envious of the rank, wealth, and honours of each other

Jenmabhogam, (*Mal*) (*See* Janmabhogam,) Jenmi's share, applied to payment to Government as Jenmi's share when the Government is Jenmi (*Sun Mal Law*)

Jenmakaran, (*Mal*) Owner in fee

Jenmakudima Pledge of jenm Irredeemable tenure and after this the jenmi has only nominal ownership He cannot sell to any other but the mortgagee

Jenmam (*See* Janmam) Freehold

Jenmum A word used corruptly for janman

Jeofail An oversight or mistake in pleading, strictly the acknowledgment of an oversight (*Kenney.*)

Jeopardy Hazard danger, peril.

Jetsam

The signification of the word 'jeopardy' in its common use is exposure to death, loss, or injury, hazard, danger, peril

The word 'jeopardy' is defined to be danger, to expose to loss or injury, peril 'Jeopardy' is to put in danger, 'Jeopardize' is putting in danger The word 'danger' is then, the equivalent of 'jeopardy.'

'Jeopardy has been held to mean danger, peril, reasonable fear, and well-grounded apprehension'

For a thing to be in jeopardy is to be in danger of being lost

JEOPARDY (*In criminal law*) Jeopardy, in its common-law sense, has a strict application to criminal prosecution only

The word 'jeopardy,' as used in an Act providing that no person shall be twice put in jeopardy for the same offence, is used in its defined technical sense at common law, and in this use it is applied only to strictly criminal prosecutions by indictment, information, and otherwise

Jerk By 'jerking a car in' is meant giving it a jerk with the engine and letting it run without the engine being attached to it

Jeroyiti [*See* Jiraiti] The word "jeroyiti land" may mean cultivable or arable land But it may also mean "assessable or assessed land" as opposed to inam land It is only the context that must decide which meaning is to be given to the word. The word "jiroyiti" especially when prefixed to the word 'right' or Hakkuq has come to mean "rights of occupancy,' 111 I C 168=A I R 1928 Mad 786

Jeroyitidar 104 I C 892=1928 Mad 58

Jerquer The process by which the customs department checks all documents relating to import ships

Jesuit. The Jesuits are a community (the Society of Jesus) in the Roman Catholic Church, established by a Papal Bull in 1540 Although under vows, they are not a monastic order, but simply (in their own words) an "order of priests," acting in strictest subordination in the service of the Papacy for the overcoming of unbelief The society of Jesuits was instituted by Ignatius Loyola, a Biscayan gentleman" It has been termed most political and best regulated of all the monastic orders, and from which mankind have derived more advantages, and received greater hurt, than from any other of the many religious fraternities" (Roberts Hist Emp, Char. V. 2 V 134, 135, &c (*Tomlin's Law Dic*)

Jesus. The saviour of mankind according to Christian faith

SOCIETY OF JESUS The Jesuit order.

Jeth (*H.*) the eldest. head or elder of the tenant body (Jeth-raiyat), (Ben.) (*Bad Pow* I, 604)

Jetsam, Jetzon, and Jotzon. (*Jettison,*) (from the French jetter, ejicere) Anything thrown out of a ship, being in danger of wreck, and by the waves driven to the shore (*Tomlin's Law Dic*). Cargo thrown into the sea and Goods which have been voluntarily cast over-board from a vessel in a storm or other contingency to lighten the ship

Jettison

Jettison In its largest sense, it signifies any throwing overboard, but, in its ordinary sense, it means a throwing overboard for the preservation of the ship and cargo the throwing overboard of a portion or all of the cargo of the ship for the purpose of lightening it so that it may better endure the stress of weather (*Gray* v *Waln*, 7 Am Dec. 642).

A carrier by water may, when, in case of extreme peril, it is necessary for the safety of the ship or cargo, throw overboard or otherwise sacrifice any or all the cargo or appurtenances of the ship. Throwing property therefrom for such purpose is called 'jettison,' and the loss incurred thereby is called a 'general average loss'

Jetty A projection, a kind of pier.

Jew An inhabitant of Judea, a Hebrew, an Israelite, used also of an usurer or miser.

Jewan-birt (*Oudh*), grant for maintenance of a younger son, relative, &c, now a sub-prop tenure under Taluqdar (*Bad Pow* II 238 *note*, 240)

Jewel A precious stone, a gem, a valuable stone set and prepared for wear, an ornament of dress, usually made of a precious metal, having precious stones as a part of its design

Jewellery Jewels in general, but as commonly understood, ornaments of gold or silver, or precious metals, or precious stones *See* 31 Cal 166 "The word 'jewelry' is generally used as including articles of personal adornment, and the word further imports that the articles are of value in the community where they are used A belt of cowry shells, a necklace of bears' claws, a head ornament of sharks' teeth, though possessing no value in themselves,are esteemed valuable in the communities where they are worn, and we, therefore, constantly find them referred to in books written in the English language—books of travel, standard works, encyclopaedias, and scientific dissertations upon sociology—we find those articles described in those books as 'jewelry' The articles of value used for personal adornment in our civilization are, and for centuries have been, the precious metals,—gold and silver, to which, I think, platina is now generally added,—and what are known as precious stones, the diamond, sapphire, ruby, etc Articles manufactured from those for the purpose of personal adornment are known as articles of jewelry" (*Robins* v *Robertson*, 33 Fed 709, 710)

A bag of coins would not pass under a bequest of "jewellery" (*Sudbery* v *Brown*, 4 W R 736 Eng)

Hat pins, hair pins, breast pins, buckles, and other similar ornaments adapted for personal use or otherwise, and composed of base metal or imitation of precious metals and otherwise, some being set with imitation precious stones, are dutiable as jewelry.

Jhalar (*Pj and Sindh*), a small Persian wheel apparatus erected on low level canal cuts, creeks, &c to raise the water (*Bad. Pow* I 15, II. 597)

Jhewar (*Pj*,)=bihisti (*Bad. Pow.*)

Jhil (*Pj.*), a swamp, shallow lagoon (*Bad. Pow.* II 600).

Jinswari-hissab.

Jhil (*Adj. Jhilan*). Low lying rice land retentive of moisture also a pond for irrigation.

Jhiwar Fisherman

Jhojha (*H*) The name of a Muhammadan tribe converted from Hinduism, considered as of base origin, but good cultivators, found in parts of the Doab and Bundelkhand.

Jhok (*Pj Montgomery Dist.*), a camel-camp (*Bad Pow* II 665)

Jholi (=*a lapful*), a certain grain contribution or due, paid to a landlord (S Pj) (cf. 'Lapo') (*Bad. Pow* II 658)

"Jhora" "Jhora" according to Oriyah dictionaries means a bunch of flowers It does not signify a concubine *Held* on the evidence the term referred to a woman married before coronation as contrasted with Patta Mahadevi, a woman married after coronation 141 I.C 1=64 M L.J. 1 (P C.)

Jhula (*H*) A rope bridge for crossing rivers, it consists of three ropes, one to walk on, and the other two as hand-ropes on either side.

Jhura-band (*S Pj*), a kind of tenant (*Bad Pow* II. 658).

Jhuri (*Pj South*), a fee paid to overlord families by the inferiors (*see Bad Pow* II. 655)

Jhutha Pugla (*A*) A fictitious robbery (*Mac. Mhn Law*)

Ji (*H*) A particle of respect added to names and titles, as Raghunathji, Sahebji. It also forms the termination of most Parsi names, as Jamsetji, Kawasji, and is used by the Sikhs in the personification of their church as Khalsaji, and of their chief prayer as Japji It is also used in conversation as equivalent to the English 'Sir'

Jiban (*Ben*), a kind of tenant-holding in Ch. Nagpur (*Bad Pow.* I 578.)

Jibka tenure The expression of Jibka tenure used in a maintenance grant does not necessarily mean that the grant is limited to the life of the grantor or that it is resumable the meaning is equivocal 39 C.W N. 98=60 C.L J 384=A.I.R 1935 Cal. 261.

Jihad (*A*) Mutual effort, a general effort such as Muhammad preached to exterminate unbelievers, a holy war, a war against infidels

Jinayat (*A*) In Mohammadan law, any offences or crimes against person or property, but in practice it is generally restricted to the former, attended with serious injury or death, and punishable by retaliation or by fine (*Wil. Gloss* 240)

Jins (*P*)='kind' *i e* grain, applied to grain-payments, jinswar (naqsha), a table of crops sown and reaped (*Bad Pow.* II. 281)

Jinswar Return of crops

Jinswar-khataunt An account of the portions of an estate, in which the lands are classed together according to their crops

Jinswari-hissab A statement or account of collections according to the articles or crops.

Jirait

Jirait (*Mar*) Arable land, land fit for cultivation not requiring artificial irrigation, also cultivated lands and their produce, as distinguished from garden cultivation, *see* Bagayat, also from khachar, or rice cultivation. (*Wil Gloss* 240)

Jiraiti (*Mar*) Pertaining or relating to fields or their crops, as tax, survey, produce, arable, raised on arable lands as opposed to garden produce Jiraiti lands are sometimes considered the same as taxable or assessable lands in opposition to Inam, or rent free lands and frequently also the term is applied to land not artificially irrigated, in opposition to Tari, wet, or rice lands. (*Wil Gloss* 240), *See also* 111 I C 168=A I R 1928 Mad 786

Jirayat (*Jerayet*) (*Bo*), corrupt for (*A*) zirat, applied to *unirrigated* cult land (*Bad Pow* III 222)

Jirga or Jirgah (*Pj Frontier*), a tribal council (*Bad Pow* II 637, 646) The council of headmen which governs each Afghan tribe

"Jis se razi ho" "Jis se razi ho" means that the person who wishes to sell has some right of selecting the person to whom he will make the offer, A I R 1923 All 519

Jitagara (*Karn*) A labourer, a person receiving wages or hire for cultivating land.

Jivad-vibhaga (S) Partition made during the life of a father. (*Wil Gloss*)

'Jivai grant', meaning and incidents of *See* 17 Bom L R 273=28 I C 929

Jizea (*See* Jaziah) A tax imposed by Muhammadans on infidels and idolators (*Fifth report*)

Job. A particular piece of work, something to be done any undertaking of a defined or restricted character (*Century Dict*)

Jobber A merchant who purchases goods from importers and sells to retailers (*Webster Dict*), a person who sells to any one who comes to him at a fraction above the market price, and buys of any one at a fraction below the market price (per *Blackburn J., Mollett* v *Robinson*, 41 L J C P 78) He differs from an auctioneer, who does not purchase at all, but sells the goods of others for a commission

Jockey A professional rider of horses in races (*Webster Int Dict*) "A regular jockey" has been construed to mean one who follows the business of a jockey for a livelihood (*Wamsley* v *Mathews*, 3 M & G 133, 137, 5 Jur 508.)

Jodi (*Tel karn*) An easy rent or quit-rent, a personal tax on district officers) (*Wil Gloss* 241)

Jodi-or Jori-inam. (*Tel Karn*) A grant of land to be held on payment of a quit-rent. (*Wil Gloss* 241)

Jodiga, Jodige. A branch of the sornadyem, consisting of a quit-rent paid by Brahmans for inam lands held by them (*Fifth report*), A favourable quit rent

Jodi lands. (Coorg) *Bad Pow.* III 478, *see* Jodi.

Johovah. The eternal self existing Being, the Hebrew name of the Deity

Joint adventure.

Join. To unite-act together. (*Nolan* v. *Moore*, 97 Am St Rep 911), to connect, to join in the execution of an instrument

Join The word 'join,' as used in a statute requiring the husband and wife to join in the conveyance of the wife's separate property means must unite—that is, act together—in the execution of the deed

The word 'join' as used in an Act stating that a husband must join in a conveyance by his wife of the property of the latter or a mortgage thereof, 'means to join in the execution'

Join, Unite, Many are *joined* in marriage who are not united in heart Men *unite* in esteem, they may *join* in battle. That which is *joined* may be separated, though it be needful to employ force. That which *united* cannot be separated without being broken (*Smith Syn. Dis*)

Joinder A joining of parties as plaintiffs or defendants, a joining of causes of actions or defence, the acceptance of an issue tendered in law or fact (*Webster Int Dict*)

Joinder in Action The coupling or joining of two in a suit or action (*Tomlin's Law Dic*)

Joinder in issue, a formula by which one of the parties to a suit joins in, or accepts an issue in fact tendered by the opposite party

Joinder of causes of action The joining of two or more causes of action in the same suit or proceeding

"Joinder of issue," is where the two parties to a litigation (whether civil or criminal) "have agreed to rest the fate of the cause upon the truth of the fact in question" (3 Bl Com 315)

Joinder of Parties The joining of several parties as plaintiffs or defendants in the same suit or action

Joint Combined, united, done by or against, or shared between two or more persons in union. (*Abbott L Dict*) The term is used to express a common property or interest enjoyed or a common liability incurred by two or more persons (*Bouvier L Dict*) As applied to real estate, it involves the idea of survivorship (as) joint tenancy

'Joint' is defined as united, combined, done by or between two or more unitedly, shared by or between two or more

The words 'joint' and 'general' import unity, as distinguished from the word 'separate," which implies division and distribution.

Joint action Action brought by two or more as plaintiffs or against two or more as defendants, an action in which two or more unite, or are united as parties.

Joint Administrators Two or more persons to whom letters of administration have been granted jointly

Joint Adventure. A joint adventure is a limited partnership, not limited in a statutory sense as to liability, but as to its scope and duration.

Joint adventure and partnership.

A joint adventure is an enterprise undertaken by several persons jointly. (*Cyclopedic L Dict*) "A commercial enterprise by several persons jointly" (*English L Dict*) "A commercial or maritime enterprise undertaken by several persons jointly" (*Black L. Dict.*)

Joint adventure and partnership The subject of joint adventures is of comparatively modern origin It was unknown at common law, being regarded as within the principles governing partnerships. One distinction lies in the fact that while a partnership is ordinarily formed for the transaction of a general business of a particular kind, a joint adventure relates to a single transaction, although the latter may comprehend a business to be continued for a period of years. Another distinction is that a corporation incapable of becoming a partner may bind itself by a contract for a joint adventure, the purposes of which are within those of the corporation

Joint and several bond, a bond in which the obligators bind themselves both jointly and severally to the obligee.

Joint and several liability. A liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately or all of them together at his option

Joint Appointment, A joint appointment of property is one made under a power by two or more persons, the commonest example being one made by a husband and wife under a marriage settlement (*Farwell* on Powers p 453 etc)

Joint Ballot The expression 'joint ballot,' as used in an Act providing for the election of officers by 'joint ballot' of the Assembly, is used merely for the purpose of showing that the members who are to elect are to act together, and not separately The term means jointly by ballot.

Joint Bond A joint bond is one executed and delivered by two or more persons jointly

On a 'joint bond' all the obligors must be sued, but on a joint and several bond' a creditor may sue all jointly or one separately for the whole amount It is the same as though all had given a joint bond, and each a separate bond, and the creditor could elect on which bond he would sue.

Joint bond or note A bond or note under which the obligers or makers bind themselves jointly but not severally.

Joint Captors In respect of a booty "Joint Captors" are those who, not being the actual captors, have assisted, or are taken to have assisted, the actual captors by conveying either encouragement to them, or intimidation to the enemy (*Ame Cyc*)

Joint causes of action A term which includes causes of action against joint wrong doers as well as causes of action against joint parties to a contract.

Joint claimants. Meaning of. *See* 28 M. 479.

Joint contract One in which the contracting parties are jointly bound to perform the promise or obligation or receive the benefit of the same

A contract with several persons for the payment to them of a sum of money is a joint contract with

Joint Session

all, and all the payees have therein a joint interest, so that no one can sue alone for his proportion.

Whether a contract is joint or several may depend upon the use of those terms, or upon the obvious nature of the undertaking.

Joint contract Joint debt "There is in the cases of joint contract and joint debt as—distinguished from the cases of joint and several contract and joint and several debt,—only one cause of action" (*per* Bowen, L.J Re Hodgson, 55 L J Ch. 241)

Joint Creditors Persons jointly entitled to require satisfaction of the same debt or demand. (*Black L Dict*)

Joint debtors Persons united in a joint liability or indebtedness

Joint execution-creditors are not "joint creditors" within the meaning of S. 8 of the Limitation Act (13 M 286, 14 C 50, 22 A 199, 20 B. 383, *F*). 25 M 431 (F B)=12 M L J 166

Joint executors Two or more persons who are joined in the execution of a will.

Joint family "In a case where property is jointly held by the members of a family, in order to prove separation it is not sufficient to show that there has been separation in mess only, there must be proof of separation in estate as well 20 I.C 28 (29), per *Mookerjea and Beachcroft, JJ.*

Joint family property The words "*Joint family property*," mean the property of joint family, and not the joint property of the family. Thus the article would not apply where the property is joint, but the family is not 18 A 282 (F B)=(1891) A.W.N. 88. *See also* 15 M 57 (59, 60), 7 C W N 155, 22 Cal. 95, 30 All 324, 14 Bom 70, L B.R. 1903, 184.

Joint Heir A co-heir as applied to two persons a term sometimes meaning the heirs of both at the death of the survivor (*Ame Cyc*)

Joint indictment, An indictment brought against two or more offenders charging them jointly

Joint Interest Such interest as is acquired at the same time and by the same title. (*Denigan* v *San Francisco*, Sav. Union, 78 Am St. Rep 35)

"Joint Landlords" The term "joint landlords" must be held to include all the co-sharers immediately under whom the tenant holds, whether such co-sharers receive their quota of rent from the tenant jointly or separately 19 C 593

Joint liability. The special liability of a Hindu son to pay his father's debts on the pious obligation theory is not a 'joint' liability with the father. 35 I. C 918=31 M L J 386

Joint Lives A term which applies when a right is granted to two or more persons, to be enjoyed while both live. (*Abbott L Dict.*)

Joint property. A term which may be employed as meaning partnership property. (*Ame. Cyc.*)

Joint Session. Used in relation to a legislature, the word implies the meeting together and commingling of the two Houses, which, when so met and commingled, act as one body.

Joint stock Bank.

Joint stock Bank Joint Stock Company for the purpose of banking

"**Joint-stock-Company**" defined (*See also* Company) Act 6, 1882, S. 226. Act 7, 1913, S 254

Joint Stock Companies Companies on a joint stock basis They may be limited. See *Re Russell Institution and Baghino*, (1898) 2 Ch 72

A joint stock company is an association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each member possesses one or more, and which are transferable by the owner

A 'joint-stock company' is an association of individuals possessing a common capital divided into shares, of which each member possesses one or more.

The term includes "Every partnership whereof the Capital is divided, or agreed, to be divided, into Shares and so as to be transferable without the express consent of all the co partners"

A joint-stock company at the common law lies midway between a corporation and a co-partnership It is an association of persons for the purpose of business, having a capital stock divided into shares, and governed by articles of association, which prescribe its objects, organization, and procedure and the rights and liabilities of its members

JOINT STOCK COMPANY AND CORPORATION A Joint stock Company is not technically a corporation, yet it has many of the characteristics of a corporation, and it has been said that it may not be improper to call such an association a quasi-corporation In many cases almost the full measure of corporate attributes has by legislative enactments, been bestowed upon joint stock companies or associations, until the difference has become obscure, elusive, and difficult to describe (*Ame Cyc*)

The fundamental distinction between a corporation and a joint stock company is this. A corporation on the one hand is an artifical entity brought into existence by the sovereign power of the state, and the individual liability of its members is completely eliminated unless some part of that liability is expressly preserved by constitutional or statutory provision; while a joint stock company, on the other hand, is formed by a written agreement of individuals with each other, and its whole force and effect in constituting and creating the organization, rest upon the common law right and power of the individuals to contract with each other, the relation they assume is wholly the product of their mutual agreement and depends in no respect upon any grant of authority from the state, and hence the individual personal liability of the members remains intact unless there is express statutory authority for its elimination

Joint Tenancy. "A joint tenancy exists where a single estate in property, real or personal, is owned by two or more persons under one instrument or act of the parties" "Joint tenancy is when two or more persons have any subject of property jointly between them in equal shares by purchase" (*Freeman Coten* sect 10) Joint Tenancy originally applied to land rights only, but now generally extends to personalty as well. (*Staples* v. *Maurice*, 4 Bro. P. C. 580) A joint purchase by two or more in their joint names creates a joint tenancy.

Joint tenancy and Tenancy in common The only practical difference betweent the estates of joint tenancy and tenancy in common is the right of survivorship

ESTATE IN JOINT TENANCY An Estate in Joint tenancy is where lands or tenements are granted to two or more persons, to hold fee tail, for life, for years, or at will In consequence of such grants an estate is called an estate in joint-tenancy Lit 27 (*Tomlin's Law Dic*)

An estate in 'joint tenancy' is an estate arising by purchase or grant to two or more persons The important incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant runs to the survivors and at length to the last survivor.

In order to constitute an estate in 'joint tenancy' the tenants thereof must have one and the same interest, arising by the same conveyance, commencing at the same time, and held by one and the same undivided possession The chief peculiarity of this interest is the right of survivorship, by which, upon the death of one joint tenant, the entire tenancy remains to the surviving co-tenants, not to the heirs or other representatives of the deceased, the last survivor taking the whole estate

Joint tenants They who hold lands or tenements in joint tenancy (*Tomlin's Law Dic*)

The use of the words 'joint tenants' in the appropriate place in a deed of conveyance is sufficient to create an estate of joint tenancy

Joint tort-feasors Two or more persons who commit a wrong or tort jointly.

Joint trespass 'Joint trespass' is trespass by two or more persons who unite in committing a trespass

Trespass by several persons being joint and several in its nature, the injured person has his remedy against all or any of them, and may enter a *nolle prosequi* as to any of them at any time before final judgment

Joint trespassers. 'Joint trespassers,' means two or more persons who unite in the commission of trespass.

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

"**Joint undivided estate**" defined Ben. Act 5, 1897, s 3

"JOINT UNDIVIDED ESTATE" means an estate of which two or more persons are proprietors; Ben Act 5 of 1897 (Estates Partition) s. 3, Cl 10

Joint undivided family (*In Hindu Mithakshara Law*) Members of the same family holding property in common, as joint tenants, with rights of survivorship.

Joint will. A joint will is a will executed by two or more owners of land in common 'as a means of transferring their several titles to one devisee.'

Jointly and severally

Jointly and severally A joint and several covenant, is a combination of a joint covenant and a several covenant, (*Platt Cov* 117, *Stroude*) Persons who bind themselves jointly and severally in a bond or note may all be sued together or any one or more of them at the option of promisee

In a bond reciting, 'We bind ourselves, our heirs, etc, jointly and severally,' the words "jointly and severally' must be construed distributively, so as to apply as well to the obligors as to their heirs Jointly and severally apply to all the parties bound, and appear to have been added in order to express an intention so to bind as well the obligor as each and every one of their heirs

"Jointly interested", In land 13 Mad. 322.

Jointress, or Jointuress She who hath an estate settled on her by the husband, to hold during her life, if she survive him. (*Tomlin's Law Dic*)

"Jointure" is a provision for the wife after the death of the husband" (*per* Stirling, J, *Re De Haghton*, 1896, 2 Ch. 385).

"Jointure is defined by Bouvier to be a competent livelihood for the wife of lands and tenements, to take effect in profit or possession presently after the death of the husband, for the life of the wife at least.'

JOINTURE was an "estate made to the wife in satisfaction of her Dower" (*Co. Litt* 36b) so that a woman shall not have both a Jointure and Dower S 6, 27 H. 8, c, 10)

By some, a *Jointure* is defined to be a bargain and contract of livelihood, adjoined to the contract of marriage being a competent provision of lands or tenements, &c for the wife, to take effect after the death of the husband, if she herself is not the cause of its determination or forfeiture of it. (1 Inst 36 4 Rep. 2, 3. *Tomlin's Law Dic*)

Jointure of Lands. A Jointure is a settlement of lands and tenements made to a woman in consideration of marriage or it is a covenant, whereby the husband, or some friend of his, assureth to the wife, lands or tenements, for term of her life (*Tomlin's Law Dic.*)

Jot (*Ben.*), (1) a 'tenure' often of considerable size *Bad Pow.* 1 547, (2) the landholding of Jalpaiguri: *Bad Pow.* 1. 522, (3) holding of a tenant (not a 'tenure'), Bengal and Bihar (*Bad Pow.* 1 600)

Jotdar (*holder of a jot*) (Ben, Noakhali) (*Bad. Pow* i 609)

Jote. The expression "Jote" in a deed does not mean that the tenancy is a ryoti holding The expression "Jote" is a general term and does not necessarily mean "Ryoti" "Jote". 76 I C. 324= A.I.R. 1923 Cal 351, A I R. 1928 Cal. 880=48 C L J. 97=32 C.W N. 587=56 Cal. 133=115 I C 81.

Jote is a general term with respect to a holding and it is not necessarily equivalent to a "Raiyati jote" 151 I C 81=48 C.L.J 97=32 C.W N 587=56 Cal. 173=A I R. 1928 Cal 880

The word 'jote' does not necessarily mean an occupancy holding, it may mean a raiyati, under-raiyati or any sort of holding for the purpose of cultivation, 139 I.C. 544=55 C.L.J. 170=A.I.R. 1932

Journey

Cal 568 *See also* 148 I C. 729=A I R. 1934 Cal 398 The word jote does not necessarily mean a tenure. Jote simply means a tenancy 39 C W N 454=A.I.R 1935 Cal 462, *See also* 8 C W N 117, 29 Cal 707 (P C)

Jotedar A jotedar under the Government is not necessarily a proprietor or a permanent tenure-holder within the meaning of S 22 of the Bengal Tenancy Act (VIII of 1885) 2 C L J. 570

Journal Is a day-book or diary of transactions used in many cases, as by merchants and tradesmen in their accounts, by mariners in observations at sea, &c (*Tomlin's Law Dic*)

JOURNAL also means the official record of what is done and passed in the legislative assembly

Journalism 'Great is journalism. Is not every able editor a ruler of the world, being a persuader of it, though self-elected, yet sanctioned by the sale of his members" (*Carlyle French Revolution*)

Journal of the Legislative Assembly. The journal of the legislative assembly is 'the official record of what is done and passed in such assembly.'

The official record of what is 'done and passed,' in a legislative assembly is called the 'journal' It is so called, because the proceedings are entered therein in chronological order as they occur from day to day, the business of each day forming the matter of a complete record by itself Hence the record is frequently spoken of in the plural as the 'journal' In the two houses of Parliament, the clerks take minutes of all the proceedings, orders, and judgments of their respective houses as they occur, and make short entries of them in their minutes From these, and from the papers on the file, it is the duty of the clerks afterwards to prepare the journals, in which entries are made at greater length, and with the forms more distinctly pointed out. All persons may have access to the journals of the two houses in the same manner as to the record of courts" 85 Am. St Rep 42 (*quoting Cushing*)

'Journals are not always records, but remembrances or proceedings to the record. The journal is of good use for the observation of the generality and materiality of proceedings and deliberations as to the three readings of any bill, the intercourse between the two houses, and the like, but when the Act is passed the journal is expired'

Journals of Parliament Are not records but remembrances, and have been of no long continuance (*Hob Rep* 109 *Tomlin's Law Dic.*)

Journey. In its original signification meant a day's travel, (*Gholson* v *State*, 25 Am Rep. 652), but in use it has attained a broader though less definite meaning, and it is now applied to a travel by land from place to place without restriction of time.

JOURNEY The term 'journey', as used in a statute forbidding the carrying of weapons except on a journey, should be construed in its popular sense, and includes a going from home by a highway to a definite point far enough distant to carry a person beyond the circle of his neighbours and to detain him throughout the day, and not within the routine of his daily business (*Davis* v. *State*, 45 Ark 359, 361) It is impossible to lay down any unbinding rule or

Journey

determinate distance which will characterize the act as a journey or the actor as a traveller Much must depend on the circumstances of each particular case

A 'journey' within the meaning of the statute prohibiting the carrying of concealed weapons, which makes an exception in favour of a person setting out on a journey, means travelling to distance from home and out of the ordinary line of the person's duties, habits, or pleasures

JOURNEY, TRAVIL, VOYAGE We take journeys in different counties in England we make a voyage to the Indies, and travel over Germany

Journeys are taken for domestic business, travels are made for amusement for information, voyages are made by captains or merchants for purposes of commerce

We estimate journeys by the day, as one or two day's journey, we estimate travels and voyages by the months and years that are employed

The Israelites are said to have journeyed in the wilderness forty years, because they went but short distances at a time It is a part of polite education for young men of fortune to travel into those countries of Europe which comprehend the grand tour as it is termed A voyage round the world, which at one time was a formidable undertaking is now become familiar to the mind by its frequency (*Crab, Smith Syn*)

Journeyman. A man hired to work by the day, hence a mechanic who is hired to work for another, whether by the month, year or other term "Journeyman" cometh of the French word Journee, that is a day or days-work, though now it be extended to those likewise that covenant to work with another in his Trade or Occupation by the year" (*Cowel*)

"A JOURNEYMAN is a servant by the day, and it makes no difference whether the work is done by the day or by the piece" (*Hart* v *Albridge*, 1 Cowp 55, 56, *per* Lord Mansfield)

Journey-weight. A weight used in a mint in weighing coin

Journey-work Work done by a mechanic for hire.

Jowaki A clan of the Afridi tribe Their country projects into British territory on the north-east of Kohat

Judaism. The customs, religion, or rites of the Jews (*Tomlin's Law Dic*) The religion of those believers in the Old Testament who still expect and look for a promised Messiah. (*Hale* v *Everatt*, 16 Am. Dec 82)

Judas To write of one that he is a "Judas" is Libel, and needs no innuendo (*per* Coleridge, J, *Hoare* v *Silverlock*, 12 Q B 633)

Judex The judicial power which examines the truth of the fact, the law arising upon it, and if an injury has been done, applies the remedy (*In old English Law*) A judge,—one who declares the law, or administers justice between contending parties.

Judex a quo. A judge from whom there is an appeal

Judges

Judex aequitatem semper spectare debet A maxim meaning 'A judge ought always to regard equity" (*Bouvier L Dict*)

Judex ad quem A judge to whom an appeal is made

Judex ante oculos a equitatem semper habere debet A maxim meaning "A judge ought always to have equity before his eyes" (*Bouvier*)

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticae voluntatis, sed juxta leges et jura pronunciet A maxim meaning "A good judge should do nothing of his own arbitrary will nor on the dictate of his personal inclination but should decide according to law and justice "(*Burrill*)

Judex damnatur cum nocens absolvitur A maxim meaning "The judge is condemned, when a guilty person escapes punishment" (*Wharton L Lex*)

Judex debet judicare secundum allegata et probata A maxim meaning "The judge ought to decide according to the allegations and the proofs" (*Black L Dict*)

Judex de peace civium constituitur A maxim meaning "A judge is appointed for the peace of the citizens" (*Taylor L Gloss*)

Judex est lex loquens A maxim meaning "The judge is the speaking law" (*Bouvier*)

Judex habere debet duos sales, salem sapicutiae, ne sit insipidus, et salem conscientiae, ne sit diabolus A maxim meaning "A judge should have two salts,—the salt of wisdom, lest he be insipid, and the salt of conscience, lest he be devilish" (3 Inst 147)

Judex non potest esse testis in propria causa A maxim meaning " A judge cannot be a witness to his own cause." (*Wharton*, 4 Inst 272)

Judex non potest injuriam sibi datum punire A maxim meaning "A judge cannot punish an injury done to himself" (*Wharton L Lex*)

Judex non reddit plus quam quod petens ipse requirit A maxim meaning " A judge cannot give more than the petitioner (or suitor) himself asks" (*Treyner Leg Max*)

"Judge" defined *See also* Chief Justice, District Judge, Subordinate Judge) Act 45, 1860, S 19, Act 18, 1879, S 3, Act 5, 1908, S 2 (8), Act 3, 1909, S 2, Act 18, 1891, S 2 (6), Reg 1, 1896, S 3 (4)

Judges Are Presiding officers or "Chief Magistrates, in the law, to try civil and criminal causes, and punish offences" (*Tomlin's Law Dic*)

A judge is a public officer, who by virtue of his office is clothed with judicial authority

"JUDGE" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated Act XVIII of 1879 (Legal Practitioners), S. 3

The word "judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment

Judge.

or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons, which body of persons is empowered by law to give such a judgment (*Penal Code*, S. 19)

A judge has been defined as a public officer lawfully appointed to decide litigated questions according to law, an officer, so named who presides in some court (*Bouvier L Dict*) He must not only be impartial, but he must pay a blind obedience to the law. Whether good or bad, he is bound to declare what the law is, and not to make it He is not an arbitrator, but an interpreter of the law "It is his duty to be patient in the investigation of the case, learned in considering it, and firm in his judgment"

The term 'judge' includes every judicial officer authorised, alone or with others, to hold or preside over a court of justice

Judge is a "public officer whose function is to declare the law, to conduct the trial of causes between litigants according to legal forms and methods" (*Anderson L Dict*) "One invested with authority to determine any cause or question, in a court of judicature created by the King's or Queen's Letters Patent (*Wharton L Lex*)

An attorney at law selected or appointed to act and preside as judge in the trial of a case when the regular judge is disqualified is a judge *pro hac vice* (*Anderson L Dict*, 4 Blackst Comm 261)

Mere administrative officers of the government, such as commissioners, committees, auditors, and the like, are not included within the meaning of the term (*Ame Cyc* Vol 23, p 504)

"**Judge**" in most modern Acts is defined by the Act's interpretation or Divinition clause according to the subject matter of the Act *See* 16 All 136 (F B)=14 A W N 39

"Judges are philologists of the highest order" Pollock, C B, *Ex parte* Davis (1857), 5 W R 523 "The Judge does much better herein, than what a bare grave grammarian, or logician, or other prudent man could do"—Hale's "Common Law" Vol. 1, (5th ed) 143

JUDGE AND COURT "Judge" and "court" are not, strictly speaking, convertible terms, but they are so in popular sense. A court is not a judge, nor a judge a court"

The words 'judge' and 'court' are often interchangeable

The judge of a court, while presiding over the court, is by common courtesy called the court, and the words 'the court' and 'the judge (or judges)' are frequently used as synonymous

JUDGE, UMPIRE, ARBITER, ARBITRATOR *Judge* is the generic term, the others are only species of judge The *judge* determines in all matters disputed or undisputed, he pronounces what is law now as well as what will be law for the future the *umpire* and arbiter are only judges in particular cases that admit of dispute: there may be *judges* in literature, in arts, and civil matters, *umpires* and *arbitraters* are only judges in civil matters. The *judge* pronounces, in matters of dispute, according to a written law or a prescribed rule, the *umpire* decides in all matters of contest, and the *arbiter* or *arbitrator* in all matters of litigation, according to his own judgment The *judge* acts under the appointment of government, the *umpire* and *arbitrator* are appointed by individuals The office of an English *judge* is one of the most honourable in the state, he is the voice of the legislator and the organ for dispensing justice, he holds the balance between the king and the subject the characters of those who have filled this office have been every way fitted to raise it in the estimation of all the world An *umpire* has no particular moral duty to discharge, nor important office, but he is of use in deciding the contested merits of individuals, among the Romans and Greeks, the *umpire* at their games was held in high estimation The office of an *arbiter*, although not so elevated as a judge in its literal sense, has often the important duty of a Christian peacemaker, and as the determinations of an *arbiter* are controlled by no external circumstances, the term is applied to monarchs, and even to the Creator as the *sovereign Arbiter of the world*

"I JUDGE" The statement by a witness that 'I judge' certain things are so is not a statement of knowledge, but merely of a guess

TO JUDGE "To Judge" of a matter, means, to come to a conclusion on it

Judge advocate An officer of a court-martial, who combines the character of adviser to the Court with that of public prosecutor

Judge at Chambers A judge acting out of court.

Judge of a Court of Record. A judge authorised by law to hold a court which is a court of record is a judge of a court of record

"Judge of a Court of Small Causes" The expression, "The judge of the Court of Small Causes" in cl (8) of Sch. II, Provincial Small Cause Courts Act (1887) must be taken to apply either to a Court of Small Causes constituted under the act or to a Court invested with the jurisdiction of a Court of Small Causes 35 C 677=7 C.L.J 407.

Judge-Made Law Used in the sense of judicial decisions which construe away the meaning of Acts and statutes or find the meanings in them the legislature never intended. It is also sometimes used as meaning simply, the law established by judicial precedent. (*Cooley Const Lim* 70)

Judge's Order An order made by a Judge at chambers, or out of Court (*Black L. Dict.*)

Judge ordinary Judge attached to the Court for Divorce, who transacts the main business therein (*Wharton*)

Judgeship. Office of Judge.

Judge Pro-Tempore Judges A judge elected or appointed to act for and in the absence, sickness, or disqualification of the regular judge is a judge pro-tempore, he is only a substitute never a duplicate.

Judge's Minutes or Notes Memoranda usually taken by a judge, while a trial is proceeding, of the testimony of witnesses, of documents offered or admitted in evidence, of offers of evidence and whether it has been received or rejected, and the like matters. (*Black L Dict*)

Judge's Minutes.

Judgment.

A verdict wrongly entered may be amended by the judge by reference to his notes "It is the ordinary practice," said *Tindal, C J*, "When any mistake has arisen at the trial, to apply to the judge to say, by reference to his notes on what counts the verdict is to be entered" (*Ernest v Brown*, 1838, 4 Bing N C 162) As to the proper use of judge's notes *see* Annual Practice, The Annual County Court Practice Chitty's Archbold's Practice, Daniell's Chancery Practice, Seton's Jud and orders

"Judgment" defined (*See also* Foreign Judgment) 53-4 V c 27, S 15, Act 5, 1908, S 2 (9)

JUDGMENT The sentence of the law, or decision pronounced by the Court, upon the matter contained in the record (3 Comm 395, c 24 *Tomlin's Law Dic*) A judgment in the final determination of the rights of the parties in an action

Judgment is the determination of a Court declaring the rights to be recognised and the remedies to be awarded between the parties upon facts found by the Court or jury, or admitted by the parties or upon their default in the course of proceedings instituted for the redress of a legal injury. (*Ency of the Laws of England*)

A judgment is the determination or sentence of law, pronounced by a competent judge or court, as the result of an action or proceeding instituted in or before such court or judge, affirming that upon the matters submitted for its decision, a legal duty or liability does or does not exist (*Black Judgm*)

OTHER DEFINITIONS ARE "As adjudication of the rights of the parties in respect to the claims involved" *See* 27 M 432 at 433, 434, "The final and solemn adjudication and determination of the rights of the parties in and to the subject-matter litigated" "The application of the law to the facts found in the case, and the legal determination of the rights of the parties before the court" (*Ball v Trenholm*, 45 Fed 588, 589) "The determination of some judicial tribunal created by law for the administration of public justice according to law in strictness the determination of the law" "A decision which affects the merits of the question between the parties by determining some right or liability" 2 Ind Cas 150 (151) A judgment is that which decided the case, one way or the other in its entirety, and it does not mean a decision or order of an interlocutory character, which merely decides some isolated point, not affecting the merits of result of the entire suit 4 C 531= 3 C.L R. 311

"The Judgment, though pronounced or awarded by the Judges, is not their determination or sentence, but the determination and sentence of law It is the conclusion that naturally and regularly follows from the premises of law Judgment depends not on the arbitrary caprice of the Judge, but on the settled and invariable principles of justice The judgment, in short, is the remedy prescribed by law for the redress of injuries, and the suit or action is the vehicle or means of administering it What that remedy may be, is, indeed the result of deliberation and study to point out, and therefore the style of the Judgment is, not that it is decreed or resolved by the court, for then the judgment might appear to be

Judgment and order.

their own, but, "It is considered," that the plaintiff do recover his damages, his debt, his possession, and the like, which implies, that the Judgment is none of their own, but the act of law, pronounced and declared by the Court after due deliberation and enquiry" 1 Inst 39 *Tomlin's Law Dic*, *See* Seton on Judgments and Orders, Pemberton, Judgments and Orders, Daniell's Chancery Practice, Viner, Abr, tit "Judgments", Chitty Archbold, Ann Pr, 1907, Annual County Court, Practice, Yearly Practice, (*Ency. of the Laws of England*)

JUDGMENT DISTINGUISHED FROM DECREE The term "judgment" is properly restricted to proceedings at law, while a "decree" is the determination, sentence, or adjudication of a competent court upon the controversy submitted for its decision *See also* Civil Procedure Code 1908, S 2

"Judgment" means the statement given by the Judge of the grounds of a decree or order Act V of 1908 (Civ P Code) S 2, Cl 9 10 L 587=115 I.C. 753=1929 Lah 481 (F B)

The term "judgment" in the Letters Patent of the High Court means in civil cases a "decree" and not a judgment in the ordinary sense 49 M L.J 25=23 A L J 555=27 B L R 872=2 O.W N 535=87 I C 313=L R 6 P C 117=41 C L J 628=(1925) M W N 474=22 L W 246=A I R 1925 P C 155 (P.C) *See also* 26 Cal 361=3 C W N 347, If synonymous with decree 10 Lah 132

DISTINGUISHED FROM DECISION OR FINDINGS A finding of facts or conclusions of law by the judge trying a case, or his decision of a controverted point, or opinion upon the matters submitted, whether oral or in writing, does not constitute a judgment, it is not such a definitive sentence or adjudication as is contemplated by that term

Judgment and order An order is a decision made during the progress of the cause, either prior or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by the pleadings, and necessary to be disposed of before such issue can be passed upon by the court, or necessary to be determined in carrying into execution of the final judgment" (*23 Ame Cyc* 667)

JUDGMENT DISTINGUISHED FROM RULE OR ORDER An order is the mandate or determination of the court upon some subsidiary or collateral matter arising in the action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings It has not the qualities or consequence of a judgment

Where the common-law system of pleading and practice is in force, the term usually employed to designate such an order is "rule" An order or rule is not ordinarily founded upon the whole record in the case, but is granted upon a special application to the court called a "motion".

"In Acts of Parliament there is a well known distinction between a 'judgment' and an 'order.'" *Ex parte Chmery* (1884), 12 Q B, 345, *In re Binstead*, (1893) 1 Q B. 199, 203; and see Ann. Pr 1907, p 561. Judgment in S 1 of 1 Will. 4, c 21, was used in its technical sense—*i e.* a judgment on pleadings, not a mere decision of a Court upon a rule. *Ex parte Everton Overseers* (1871), L R. 6 C P. 246. As to

Judgmentand and order

what are judgments and what are not see Letters Patent, Cl 15

"Judgment" is a decision which affects the merits of the question between the parties by determining some right or liability, and does not include a mere formal order, or an order regulating the procedure in a suit 1 Bom 342

JUDGMENT, DISCRETION, PRUDENCE *Judgment* acts by a fixed rule, it admits of no question or variation *discretion* acts according to circumstances, and is its own rule *Judgment* determines in the choice of what is good *discretion* sometimes only guards against error or direct mistakes, it chooses what is nearest to the truth *Judgment* requires knowledge and actual experience, *discretion* requires reflection and consideration a general exercises his *judgment* in the disposition of his army, and in the mode of attack, whilst he is following the rules of military art he exercises his *discretion* in the choice of officers for different posts, in the treatment of his men, in his negotiations with the enemy, and various other measures which depend upon contingencies

Discretion looks to the present, *prudence*, which is the same as providence or foresight, calculates on the fortune future *discretion* takes a wide survey of the case that offers, it looks to the moral fitness of things, as well as the consequences which may follow from them

For want of *discretion* the master of a school, or the general of an army, may lose his authority, for want of *prudence* the merchant may involve himself in ruin, or the man of fortune may be brought to beggary (*Crabb*)

JUDGMENT DISCERNMENT PENETRATION, DISCRIMINATION DISCRETION *Penetration* is the power of seeing deeply into things, and is that faculty, which, when habitually exercise upon different objects, constitutes great *discernment*, *discernment* is general, *penetration* is in detail *Discernment* is exercised upon the common differences and relations of human character, *penetration* upon those which challenge peculiar powers of insight *Discernment* sees and judges *Penetration* pierces the mask

Discrimination is a more directly practical term It is *discernment* in minute particulars, and of such a kind as leads to the acting upon the differences observed

Judgment is the faculty of deciding matters with wisdom, truly, legally, skilfully, or accurately.

Discretion is, etymologically, another form of discernment It is cautious discernment, and has for its result the avoidance of such errors as come from want of self-control or want of proper judgment It is a kind of prudence and moderation and involves discernment. (*Smith Syn Dis*)

JUDGMENT, FINAL, PRELIMINARY OR INTERLOCUTORY. "Judgment" in cl 15 of the Letters Patent, means a decision which affects the merits of the question between the parties by determining some right or liability It may be either final or preliminary, or interlocutory. 32 B 602=10 Bom L.R 337. *See also* 33 Bom 216.

A final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment

Judgment Creditor

determines only a part of it, leaving other matters to be determined 17 W R 364 (369)

INTERLOCUTORY JUDGMENTS as such as are given in the middle of a suit or proceeding upon some plea or proceeding which is only intermediate, and does not finally determine or complete the suit

FINAL JUDGMENTS are such as once put an end to the action by determining the right and fixing the amount in dispute

FOREIGN JUDGMENT Foreign judgments are judgments rendered by the courts of a country or state politically and judicially distinct from that in which the judgment or its effect is brought in question, a judgment of a foreign tribunal (*Bouvier L Dict*)

Judgment and Award An award, when made, is more in the nature of a contract than of a judgment It is but the consummation of the contract of submission, its appropriate and legitimate result

An award of arbitrators is to be considered as a judgment of the court from the time of its entry upon the docket

A judgment is an adjudication of the rights of the parties in respect to the claim involved It imports absolute verity It cannot be disputed In that sense it is final and conclusive

Judgment by confession A 'Judgment by confession' is a judgment which results from the voluntary agreement of the parties

Judgment by default. A judgment by default is obtained where one party neglects to take certain steps in the action within a proper time.

A 'judgment by default' is a judgment for want of an appearance, or, if the defendant appears and does not plead, or appears and pleads and withdraws the plea.

Judgment by default and Judgment by confession A 'judgment taken by default' is a judgment resulting either from the fact that a defendant has no defence to make, or does not appear to make it The expressions 'judgment by confession' and 'judgment taken by default' are not synonymous, as the former is one which results from the voluntary agreement of the parties.

Judgment by operation of law A judgment confirmed under a provision of the Code, which provides that 'where the court is equally divided, the judgment of the lower court shall stand affirmed,' is not a judgment by operation of law more than any other judgment

Judgment Creditor. 'Judgment creditors' are creditors who have reduced their debt through judgment (*i e*) who have obtained decrees for debts due to them.

JUDGMENT CREDITOR IS one who is entitled to enforce a judgment by execution, the owner of an unsatisfied decree. (*Black L Dict*, See also *Baxter v Moses*, 52 Am Rep. 783)

The term 'judgment creditors' signifies the person who is entitled to collect, or otherwise enforce, in his own right, a judgment for a sum of money, or directing the payment of a sum of money.

Judgment Day

Judgment Day The day on which, according to the tenets of the christian religion, god will pronounce final judgment on mankind

Judgment Debt. A debt, for the recovery of which judgment has been entered up or decree has been given. "Judgment Debt" includes the money payable under a Decree for Specific Performance when such Decree contains an Order to pay the purchase money with interest and costs (*Beaufort* v *Phillips*, 1 D G, & S 321)

"Judgment-debtor" defined. Act 5, 1908, s 2 (1)

"JUDGMENT-DEBTOR" means any person against whom a decree has been passed or an order capable of execution has been made Act 5 of 1908, Civ Pro Code, s 2, cl 10, 14 I C 453=15 C L J 170, A person against whom judgment has been recovered, and which remains unsatisfied (*Black Law Dict*)

The word 'judgment-debtor' in S 174 of the Bengal Tenancy Act must be construed strictly as referring to judgment-debtor alone, and does not include a transferee or assignee from him 15 C 482, *See also* 15 C L J 170, 16 C L J 546

Judgment Hall. The place or Hall where a court of justice meets

Judgment inter partes or Judgment in personam is one which operates only upon those who have been duly made parties and then privies, being against the person merely, and not settling the status of any person or thing.

Judgment in personam. A 'judgment in personam' is, in form as well as in substance, between the parties claiming the right, and that is so interpartes appears by the record itself.

Judgment in rem is one pronounced upon the status of some particular person or thing and which binds all persons

JUDGMENT IN REM. A 'judgment in rem' is an adjudication pronounced upon the status of some particular subject-matter by a tribunal having competent authority for that purpose

The judgment entered in the probate court upon the probate of a will is a judgment in rem

Judgment nisi a judgment to become absolute unless within the first four days of the next term the court shall order otherwise

JUDGMENT NISI A 'judgment nisi' is nothing more than a rule to show cause why judgment should not be rendered'

Judgment obtained, in the Public Authorities Protection Act, 1893 (56 & 57 Vict c 61), includes a consent order for dismissal of an action *Shaw* v *Hertfordshire C C.*, (1899) 2 Q. B. 282 (C A), and see *Smith* v. *Northleach U D C*, (1902) 1 Ch 197

Judgment of His Peers. Trial by jury (*Wright* v. *Wright*, 56 Am. Dec. 723.) Judgment of his Peers In *State* v. *Simons*, 2 Speers, (S C) 761, 768, it is said, "The judgment of his peers' means in general the great unalienable common law mode of trial by twelve good and lawful men of the vicinage, in the presence of the accused, and by the oath of a witness." (But see 32 Am. L. Rev. 633, 634)

Judices recenter.

The phrase 'judgment of his peers' is a term or expression borrowed from ancient English statutes, which means a trial by the country, which is a trial by jury

Judgment roll a roll of parchment containing the entries of the proceedings in an action to the entry of judgment inclusive

JUDGMENT ROLL A 'Judgment roll' consists of the papers enumerated by statute, as such and does not depend upon the fact that the clerk has fastened these papers together, nor do any other papers which the clerk may have joined with those which the statute declares shall constitute the judgment roll becomes a part of such roll by reason of having been so joined

The 'judgment roll' is made up of the summons and proof of service the pleadings, bill of exceptions, all orders relating to change of parties, together with the copy of the entry of judgment, and all other entries or orders in any way involving the merits and necessarily affecting the judgment

"Judgment with costs" means only such costs as have been incurred through the adversary's act (*per* Esher, M R, *Stumm* v *Dixon*, 22 Q B D 529, 60 L T. 560)

Judi or Jodi (Bo), a quit rent (=Salami), imposed by the Marathas on many former revenue free holdings, watan lands, etc)(*Bad Pow* III. 299 *note*)

Judicandum est legibus, non exemplis A maxim meaning "Judgment is to be given according to the laws, not according to examples or precedents" (*Black L. Dict*)

Judicature A Court, or rather a power which distributes justice (*State* v *Fay*, 4 Mo 120, 191) Power of dispensing justice, jurisdiction, a tribunal.

'JUDICATURE' is defined to be a Court, or rather a power which distributes justice'

'Judicature' is used to designate with clearness that department of government which it was intended should interpret and administer the law

Judicature Acts (*English*) Acts of the British Parliament, together with their subsequent amendments

Judicat virum magistratus. A maxim meaning "The magistrate shows the man" (*Morgan Leg Max*)

Judices in curia regis non adnihilentur, sed stent in robore suo quousque per erroeem aut attinctum a dnullantur A maxim meaning "Judgments in the king's courts are not to be annihilated, but to remain in force until annulled by error or attaint" (*Black L Dict*)

Judices non tenentur exprimere causam sententiae suae A maxim meaning "Judges are not bound to explain the reason of their sentence." (*Jenkins Cent.*)

Judices recenter et subtiliter excogitatis minime favent contra communem legem. A maxim meaning "Judges by no means favour things raised recently and subtlely against common law," (*Polou bet Leg. Max.*)

Judicia in deliberationibus.

Judicia in deliberationibus crebro matures-cunt, in accelerato processu nunquam. A maxim meaning "Judgments frequently become matured by deliberations, never, by hurried process or precipitation" (citing 3 Inst. 210)

Judicia officium suum excedenti non paretur To a Judge exceeding his office there is no obedience (*Jenk*)

Judicia posteriora sunt in lege fortiora The latter decisions are the stronger in law

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur A maxim meaning "Judgments are, as it were, the sayings of the law, and are received as truth"

Judicial Belonging to a cause, trial, or judgment belonging to or emanating from a judge as such, the authority vested in a judge (*Bouvier L Dict.*), of, or belonging to a court of justice, of or pertaining to a judge, pertaining to the administration of justice, proper to a court of law

The word "judicial" is used in two senses The first to designate such bodies or officers "as have the power of adjudication upon the rights of persons and property In the other class of cases it is used to express an act of the mind or judgment upon a proposed course of official action as to an object of corporate power, for the consequences of which the official will not be liable, although his act was not well judged [See *Royal Aquarium* v *Parkinson*, (1892) 1 Q B 431]

Judicial judicial Act The term "judicial" does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but a judicial act may be an act done by competent authority upon a consideration of facts and circumstances and imposing liability or affecting the rights of others The authority must "exercise some right or duty to decide" before its act can be called 'judicial' The act of the presiding member of a municipal council in declaring the result of a poll is a purely ministerial or administrative act—and not judicial [130 I C 509=1931 M W N 317=33 L W 497=A I.R 1931 Mad. 122=60 M L J 260]

Judicial Act An act done by a member of the judicial department of government in construing the law or applying it to a particular state of facts presented for the determination of the rights of the parties thereunder, an act done in furtherance of justice, or a *judicial* proceeding by a person having the right to exercise *judicial* authority (*Ross* v *Fuller*, 36 Am Dec 342)

"A judicial act must be an act performed by a court, touching the rights of parties, or property, brought before it by voluntary appearance, or by the prior action of ministerial officers (*Anderson L Dict.*) An adjudication of the rights of parties who in general appear or are brought before the tribunal by notice or process, and on whose claims some decisions is rendered (In re *Salm County Subscription*, 100 Am Dec 337), the power to decide rights of person or property in specific cases (*Ame Cyc*)

Judicial admission, A voluntary admission made in court or before a magistrate.

Judicial decisions.

Judicial and Ministerial Acts. The acts of justices of the peace may be either judicial or ministerial. If justices in dealing with a particular matter have to exercise their discretion in arriving at a decision, they are acting judicially, if on the other hand, they are merely required to do a particular act and are precluded from entering into the merits of the matter, they are said to be acting ministerially The duty of a magistrate, for instance, in respect to admitting a person to bail is a judicial act, as it involves inquiries on which discretion must be exercised [*Linford* v *Fitzroy*, (1849) 13 Q B. 240]

Judicial and ministerial powers In *Land Owners* v *People*, 113, 296, 309, it is said "Judicial power has never been held to apply to those cases where judgment is exercised as incident to the execution of a ministerial power, nor has it ever been held in the exercise of ministerial power by the courts where they have been compelled to exercise of judicial power" (*23 Ame Cyc* 1622)

MINISTERIAL OFFICERS WITH JUDICIAL POWERS As ministerial powers are often vested in judicial officers so in a less technical and more liberal sense of the terms, it seems, ministerial officers or boards are sometimes required to exercise judicial or rather quasi judicial powers (*Grider* v *Tally*, 54 Am. Rep. 65)

Judicial cognizance Cognizance of a case taken by a judge or magistrate

"Judicial Commissioner" means the Judicial Commissioner of any Province [*See* Pun Regn VII of 1901 (N W F P Law and Justice) [S 2 (1), cl. (*a*)]

Judicial Committee An offshoot of the Privy Council forming the highest Court of appeal

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL' A tribunal composed of members of the Privy Council established in 1833 It is the Court of final appeal from the Ecclesiastical Courts, from the Courts in India, the colonies, the Channel Islands and the Isle of Man.

Judicial confession A confession of guilt, made by a prisoner before a magistrate, or in court, in the due course of legal proceedings

Judicial conventions Agreements entered into in consequence of an order of court (*Bouvier*)

Judicial Day A day in which the court is in session

Judicial Decision Opinions, or determinations, are the sentiments of the Judges delivered in a cause in Court before them, and which form the decree or judgment of the Court (*See* Hale's Hist Com Law 68, 69, Plowden, 122 to 130, 140, etc, *Tomlin's Law Dic*)

JUDICIAL DECISION is the application by a court of competent jurisdiction of the law to a state of facts proved or admitted to be true, and a declaration of the consequences which follow The "judicial decision" must be a decision pronounced by an officer competent to deal with the matter (11 A L J 277=18 I.C 734)

JUDICIAL DECISIONS "Judicial decisions in Courts of justice are ranked by Lord Hale as one of the

Judicial Department.

grounds or constituents of the common law" [Tindal, L.C.J., *Balme* v *Hutton*, (1833), [Moore & Scott's Rep 61.]

Judicial Department As used in speaking of a judicial department of government, the word "judicial" means that department of government which interprets and applies law

"Judicial determination" *See* 5 C.W.N. 254.

Judicial discretion means sound discretion guided by law It must be governed by rule, not humour It must not be arbitrary, vague, or fanciful, but legal and regular (*2 Bom L R* 845)

Judicial discretion is a discretion in discerning the course prescribed by the law, a perceiving by, through or according to the law of what would be just

Judicial discretion is the option which a judge may exercise either to do or not to do that which is proposed to him that he shall do, that discretion which is not, and cannot be, governed by any fixed principles or rules, a discretion to be guided by the spirit principles, and analogies of the law, such an exercise of authority in the mode of proceeding for the enforcement of rights or the redress of wrongs as is reasonably designed to promote substantial justice In the language of Chief Justice Marshall, it is a legal discretion to be exercised not to give effect to the will of the judge, but to that of the law Lord Mansfield says "Discretion," when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful, but legal and regular" *Rex* v. *Wilkes*, 4 Burr 2527, 2539

A judicial discretion presupposes that power has been confided to a tribunal to act or refrain from acting in a particular way in certain proved or admitted circumstances Some of the instances are the discretion regarding payment of costs appointment of receiver, granting of injunction, cases under O 9, R 9 or O 41, R 19, C P Code, or under S. 5, Limitation Act 9 Rang 281=I R 1931 Rang 225= 133 I C 81=A I R 1931 Rang 194 (F B)

Judicial district A district created for judicial purposes, for defining jurisdiction of courts, and distributing judicial business (*Abbott L Dict*, *Rapalje & L L Dict*).

Judicial documents. Proceedings relating to litigation. The term includes inquisitions, examinations, depositions, affidavits, and other written papers, when they have become proofs of its proceedings and are found remaining on the files of a judicial court (*Hammatt* v *Emerson*, 46 *Am. Dec* 598, 23 *Ame Cyc* 1618)

Judicial duty Such duty as legitimately pertains to an officer in the judicial department

Judicial errors An error growing out of a mistaken application of the law to the facts

Judicial evidence Judicial evidence is evidence of mutable phenomena, through human agency addressed to human tribunal.

Judicial function. The exercise of a judicial function is the doing of something in the nature of or in the course of an action in court.

Judicial proceeding.

Judicial notice The notice which a judge will take of a fact without proof. Acceptance by court for the purpose of a case, of the truth of certain notorious facts without requiring proof

Judicial office An office which relates to the administration of justice, includes the legal capacity and obligation of the incumbent to render judicial service, by holding one or more courts of justice.

Judicial officer The term "judicial officers" includes judges and justices of all courts and all persons exercising judicial powers by virtue of their office. *See also* 15 Cal 327

Judicial opinion The direct solemn and deliberate decision of the court upon the issue raised by the record and presented in the argument The term is sometimes used as importing a judgment or decree

AN EXTRA JUDICIAL OPINION, given in or out of Court, is no more than the prolatum or saying of him who gives it, nor can be taken for his opinion, unless every thing spoken at pleasure must pass as the speaker's opinion (*Vaugh* 382 *Tomlin's Law Dic*)

An opinion given in Court, if not necessary to the judgment given of record is no judicial opinion It is no more than a *gratis dictum* But an opinion, though erroneous, which is necessary to the judgment is a *Judicial opinion*, because delivered under the sanction of the Judge's oath upon deliberation, which assures that it is, or was when delivered, the opinion of the deliverer (*Vaugh* 382, *Tomlin's Law Dic*)

Judicial persuasion For a fair illustration of the legal meaning of the words 'Irresistible Inference' and a 'Judicial Persuasion'" *See* Wigram on Extrinsic Evidence, 3 ed, 99, 100 *Goblet* v *Beechy*, 3 Sim 24 cited in Stroude 1030)

Judicial power The authority to determine the rights of persons or property by arbitrating between adversaries in specific controversies at the instance of a party thereto, the authority vested in some court, officer, or person to hear and determine when the rights of persons or property or the propriety of doing an act is the subject-matter of adjudication (*Grider* v *Tally* 54, Am Rep 65)

Judicial power and discretionary power The terms "discretionary power" and "judicial power" are often used interchangeably, but there are many acts requiring the exercise of discretion which may fairly be considered of a judicial nature, and yet do not in any proper sense come within the judicial power as applicable to the courts (*Ame Cyc*)

"Judicial proceeding" defined Act 45, 1860, S. 193 *expln* Act 24, 1870, S 16, Act 4, 1871, S 8, Act 8, 1873, S 69, Act 6, 1876, S 15, Act 2, 1886, S 37, Act 5, 1898, S 4 (*m*), Act 16, 1908, S 84 (3), Bom Act 3, 1874, S 72 (1), Bom Act 5, 1879, S 196, Bom Act 2, 1890, S 53 (3), Mad Act 1, 1891, S. 3 (16), Reg 4, 1872, S 31

JUDICIAL PROCEEDINGS A general term for proceeding in courts, for the course authorized to be taken in various cases to secure the determination of

Judicial proceeding.

controversy, to obtain the enforcement of a right or the redress or prevention of a wrong (*Abbott L Dict*) The term includes an execution proceeding 6 I C 801 (803) *See also* 2 M H C 43. *See also* 11 N L R 36=28 I A. 513=16 Cr L J 289, 12 C L J 618 =8 I.C 1106=25 M L J 593=21 I C 672

An application to leave to sue is a stage in a judicial proceeding 25 C L J 401=18 Cr L J 793= 41 I C 313=21 C W N 654

"Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath (Crim Pro Code, 1898, S 47)

Judicial proceedings, publicity of "It is of great consequence that the public should know what takes place in the Court, and the proceedings are under the control of the Judges The inconvenience, therefore, arising from the chance of injury to private character is infinitesimally small as compared to the convenience of publicity"—Lord Campbell, *Davison* v *Duncan* (1857), 7 E & B 231, 26 L J A B 106

"Public policy requires that some hardship should be suffered by individuals rather than that judicial proceedings should be held in secret"—Lord Esher, *M R*, *Kimber* v *The Press Association* (1892) L R 1 Q B (1893), p 69

"It is one of the essential qualities of a Court of justice, that its proceedings should be public, and that all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose,—provided they do not interrupt the proceedings, and provided there is no specific reason why they should be removed,—have a right to present for the purpose of hearing what is going on"—*Bayley, J*, *Daubney* v *Cooper* (1829), 10 B & C 240

"It is of vast importance to the public that the proceedings of Courts of justice should be universally known The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings The same reasons also apply to the proceedings in Parliament it is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated"—*Lawrence, J*, *The King* v *Wright* (1799), 8 T R 298

Judicial process "In its largest sense, the term comprehends all the acts of the court from the beginning of its proceedings to the end In a narrower sense it is the means of compelling the defendant to appear in court for suing out the original writ in civil, and after indictment in criminal cases" (*Bouvier L Dict* quoted in *State* v. *Gulbert*, 60 Am St Rep 756)

Judicial proof (*See* Proof) A clear and evident declaration and demonstration of a matter which was before doubtful, conveyed in a judicial manner (*Powell* v *State*, 65 Am St Rep 277)

Judicial purposes Purposes of the courts and the administration of justice (*Berthod* v *Holman*, 93 Am Dec. 233).

Judicial question A question, where the validity of certain acts are involved, the determination of which is intrusted to the judiciary, when such question is raised by a person who has suffered or is threatened with some special injury which he seeks to redress or prevent. (See 23 *Ame Cyc* 1623).

Judicial record A precise history of a suit from its commencement to its termination, including the conclusions of law thereon, drawn by the proper officer for the purpose of perpetuating the exact state of facts

Judicial reference (*See* Reference) Reference made to a superior court by proper parties or authorized officers on points of law arising on a given statement of facts.

Judicial remedies. Such remedies as are administered by the courts of justice, or by judicial officers legally empowered for that purpose

Judicial sales A judicial sale is one made, under the process of a court having competent authority to order it, by an officer legally appointed and commissioned to sell one made by a court of competent jurisdiction, in a pending cause through its authorized agent

"A sale under an order or decree of Court is a judicial act The Court is the vendor, and the officer conducting the sale is the mere agent of the Court The sale is a transaction between the Court and the purchaser A sale is not a judicial sale, properly speaking, unless it is one made on an order of the court and subject to confirmation by the court. Proceedings for judicial sales are ordinarily *in rem*." (24 *Ame Cyc* 6,)

Where a cestui que trust contracted to sell and the court approved the contract and directed the sale to be made, it was not a judicial sale (*Ibid*)

A sale of lands under a decree of the orphans' court is a judicial sale (*Moore* v *Shultz*, 53 *Am Dec* 446)

Judicial separation (*See Divorce*) A lesser form of divorce See Indian Divorce Act IV of 1869, Ss 22-25 *see* Lushington's Summary Jurisdiction (Married Women) Act, and Browne and Powles' Law of Divorce, Oakley's Divorce Practice

Judicial Trial A fair trial, the purpose of which is to truly ascertain the material facts in issue.

Judicial Tribunal A court A board of arbitrators is not a "court" or "Judicial tribunal" in any proper sense of those terms It has none of the powers that appertain to courts to regulate their proceedings or enforce their decisions

Judicial Writ In English practice, such writs as issue under the private seal of the courts, and not under the great seal of England, and are tested or witnessed not in the King's name, but in the name of the chief judge of the court out of which they issue (24 *Ame Cyc* 77)

Judiciary. A term applied to a co-ordinate department of the government, which construes and applies the laws, relating to that department of the government that has to do with the expounding and administering of the law, the officers of that department of government that expounds and administers the law, the judges taken collectively. Pertaining to courts of law The laws of a free government are

Judiciary

construed and applied by the judiciary, or judicial department This department has distinct and independent powers, designed to operate as a check upon those of the legislative and executive departments It is confined to its own functions, and can neither encroach upon nor be made subordinate to those of another.

The judiciary is a co-ordinate department of the government, and is not a mere subordinate branch, dependent for existence and power on the legislative will.

HIGH COURT OF JUDICIARY OR HIGH COURT OF JUDICATURE Supreme Court in the state or province

"Judiciary powers" is used to designate with clearness that department of government which it was intended should interpret and administer the law.

Judiciis posterioribus fides est adhibenda A maxim meaning "Credit is to be taken to the later decisions."

Judicious. According to sound judgment

Judiciously To act skilfully with discretion or wisdom prudently

Judici satis paena est, quod deum habet ultorem A maxim meaning. "It is punishment enough for a judge that he has God as his avenger"

Judicis est in pronuntiando sequi regulam, exceptione non probata A maxim meaning "The judge in his decision ought to follow the rule, when the exception is not proved"

Judicis (nostrum) est judicare secundum allegata et probata. A maxim meaning "It is the duty of a judge to determine according to what is alleged and proved"

Judicis est jus dicere, non dare A maxim meaning "It is the province of a judge to declare the law, not to give it"

Judicis officium est opus diei in die suo perficere A maxim meaning "It is the duty of a judge to finish the work of each day within that day" (*Dyer*, 12)

Judicis officium est ut res ita tempore rerum quaerere A maxim meaning "It is the duty of a judge to inquire into the times of things, as well as into things themselves."

Judicium (*Lat*) Judgment A proceeding before a judex or judge, a court or judicial tribunal

Judicium a non suo judice datum nullius est momenti A maxim meaning "A judgment given by one who is not the proper judge is of no force"

Judicium capitale, judgment of death, capital judgment

Judicium dei, the judgment of God, applied to the ordeals by fire and water.

Juneta juvant

Judicium est iis quae pro religione faciant faveri, etsi verba desint A maxim meaning 'It is right to favour those things which make for religion, though words be wanting'

Judicium est juris dictum, et per judicium jus est novitur revelatum quod diu fuit velatum A maxim meaning "Adjudication is the utterance of the law, and by it the law which was for long time hidden is newly revealed"

Judicium est quasi juris dictum A maxim meaning "Judgment is as it were a saying of the law"

Judicium non debet esse illusorium, suum effectum habere debet A maxim meaning "A judgment ought not to be illusory, it ought to have its proper effect"

Judicium parium, judgment of one's peers, trial by jury

Judicium redditur in invitum A maxim meaning "Judgment is given against one, whether he will or not' (*Rapalje & L. L. Dict*, *Coke Litt* 248*b*)

Judicium semper pro veritate accipitur A maxim meaning 'A judgment is always accepted as true" (*Trayner Leg. Max.*)

Juggler One who practices or exhibits tricks by sleight of hand, one who makes sport by tricks which make a false show of extraordinary dexterity

"Juice of the cocoanut" in Excise Act does not refer to the milk of the cocoanut itself, but means the juice of the palm tree of whatever species and not its fruit 13 Cr L J. 545=16 C W N 785=15 Ind Cas 961 (962)

Julaha (*H*) The name of Muhammadan tribe of weavers

Julkar is a general term signifying "water rights", and might, therefore aptly include the right to drift and stranded timber, as well as the right of fishing or any other interest of similar kind in the produce of water 24 C 504=24 I A 33=1 C.W.N 249 (P. C)

JULKUR, or the right of fishing, may exist in India as an incorporeal hereditament and a right to be exercised upon the land of another 2 Suth 865=20 W R 45=12 B L R 210=3 Sar. 264

Julus (*A*) The beginning of a reign The accession to the throne (*Mac Mhn Law*)

Jum (*Ben Assam*), shifting cultivation in the hill forests by burning vegetation and dibbling in seed with the ashes (*Bad. Powl.* 1 115)

Jumah (*H*) The Muhammadan Friday, the day of public prayer

Jumarat (*H*) The Muhammadan Thursday, so called as being the eve of the great day Friday.

Junadar (*H juna=old*) (Nimar, C P.), an old, hereditary cult (*Bad-Pow.* II. 383, 469)

Juneta juvant Things joined have effect. (2 Inst. 380).

Junction.

Junction In the ordinary acceptation as applied to railroads a term which is frequently employed to designate the point or locality where two or more lines of railway meet.

Juncture A union, a joining; a critical or important—point of time

Jungle. Land covered with thick brushwood

Junglebari lease Entitles the holder thereof to the use and possession of the surface, the mineral rights remain with the owner (distinguished from khorposh grant) 3 A L J 59 (P C)=33 C 203=32 I.A 185=7 Bom L R 920=15 M L J 379=2 C L.J 408=9 C W.N. 1073 (P.C).

"Jungle-path" *See* L B R (1893—1900), 629

Junior. A word meaning younger, later born, later in office or rank, an addition or description used to designate the individual referred to, an addition to distinguish between two or more persons of the same name, a character used to distinguish a man from an elder man of the same name and place

"JUNIOR" is no part of a person's name, but the fact that a person, who ordinarily signs his name with this addition, has added it to his signature on an election nomination paper does not invalidate such paper, although on the register of electors the name of the nominator is entered without such addition (*Gledhill* v. *Crowther*, 1889, 23 Q B D 136)

JUNIOR The addition of 'junior' is no part of the name of a person It is a mere description of the person, and intended only to designate between different persons of the same name It is a casual and temporary discrimination It may exist one day and cease the next

The addition of 'junior' is no part of a person's name, but it is used as merely descriptive of the person, and is assumed, applied, and discarded at will This addition to a name is at the best but presumptive evidence that of two persons bearing the same name the person thus designated is the younger

Junior Barrister. A barrister under the rank of Queen's Council,—also the junior of two counsel employed on the same side in a case

Junk. 'Junk' is defined as worn-out and discarded material in general that may be turned to some use, especially old rope, chain, iron, copper, parts of machinery and bottles, gathered up and brought by tradesman, called 'junk dealers', hence rubbish of any kind, odds and ends

The word 'junk' which is of nautical origin, originally meant old or condemned cable and cordage cut into small pieces, which, when untwisted, were used for various purposes on the ship Hence the word afterwards came to mean worn-out or discarded material in general

Junk Business The 'junk business' is purchasing old iron, brass, bottles, and things of that sort, and selling them again.

Junk Shop. A 'junk shop' is defined to be a place where junk is bought and sold, and junk seems to consist of odds and ends, such as old metal, ropes, rags, etc.

Jura summi.

JUNK-SHOP is a place where odds and ends are purchased and sold

Junk Shop and second hand store Every junk shop, it is said, is a secondhand store, but not every secondhand store is a junk shop. The term 'secondhand store,' if not qualified or limited, would include any store in which any kind of secondhand goods are dealt in, as for example, secondhand furniture or secondhand books But stores in which these articles are dealt in would not necessarily be junk shops

Jura debet esse omni exceptione major A maxim meaning "Laws should be greater than any exception" (*Peloubet Leg. Max*)

Jura ecclesiastica limitata sunt infra limites separator A maxim meaning "Ecclesiastical laws are limited within separate bounds"

Jura eodem modo destruuntur quo construuntur A maxim meaning "Laws are abrogated by the same means as those by which they are made" (*Wharton L Lex*)

Jura fiscalia fiscal rights, rights of the exchequer

Jura in personam Rights primarily available against specific persons

Jura in rem Rights which are available only against the world at large

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsum. A maxim meaning "An oath is indivisible, it is not to be held partly true and partly false"

Jura mixti dominii In old English law Rights of mixed dominion

Jura nature sunt immutabilia A maxim meaning "The laws of nature are unchangeable."

Jura personarum Rights of persons, the rights of persons

Jura publica Public rights

Jura publica anteferenda privatis A maxim meaning "Public rights are to be preferred to private" (*Coke Litt* 130)

Jura publica ex privato promiscue decidi non debent A maxim meaning "Public rights ought not to be promiscuously determined in analogy to a private right" (*Coke Litt.* 181 b)

Jura rerum Rights of things

Jura regia Royal rights, the prerogatives of the crown

Jura regis specialia non conceduntur per generalia verba A maxim meaning "The special rights of the king are not granted by General words" (*Jenkins Cent* 103)

Jura sanguinis nullo jure civili dirimi possunt A maxim meaning "Rights of blood cannot be destroyed by the provision of the civil law". (*Trayner Leg Max*).

Jura summi imperii Rights of supreme dominion; right of sovereignty

Jurare est deum.

Jurare est deum in testem vocare, et est actus divini cultus A maxim meaning "To swear is to call God to witness, and is an act of religion," (*Inst* 165)

Jurat A term which means that the affiant swore before the officer taking the affidavit, a certificate of the officer who administered the oath that the affiant had subscribed and sworn before him, that part of an affidavit where the officer certifies that it was sworn before him (*Bouvier L Dict, Ame Cyc*)

The jurat of an officer authorised to receive and file oaths is the certificate of the officer who administered the oath that the affiant had subscribed and sworn to the same before such officer

The "Jurat is not a certificate to a deposition in the ordinary sense of the term, but a certificate of the fact that the witness appeared before the commissioner and sworn to the truth of what he had stated (*U S v Julian*, 40 L ed 984)

The primary meaning of the word 'jurat' is 'sworn' but the derivative signification is 'proved'

Jurato creditur in Judicio A maxim meaning "He who makes oath is to be believed in judgment" (*Black L Dict*)

Juratores debent esse vicini, sufficientes, et minus suspecti A maxim meaning "Jurors ought to be neighbours, of sufficient estate, and free from suspicion" (*Black L Dict*)

Juratores sunt judices facti A maxim meaning "Juries are the judges of fact" (*Black L Dict*)

Jurats Sworn men, officers of certain municipal corporations in England, in the nature of alder men or assistants, (*Cyclopedic Law Dict*)

Jure aequum est neminem cum alterius deterimento et injuria fieri locupletiorem according to the law of nature, it is just that no man should be made richer by the loss and injury of another

Jure belli · by the right, or law of war

Jure civili by the civil law

Jure divino by divine right

Jure ecclesiae in right of the church

Jure emphyteutico by the right or of law of emphyteusis

Jure gentium by the law of nations.

Jure naturae by or according to the law of nature

Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem "A maxim meaning "by the law of nature it is not just that any one should be enriched by the detriment or injury of another" (*Black L Dict*)

Jure propinquitatis by right of propinquity, or nearness

Jure representationis by right of representation.

Jure uxoris in right of a wife

Juri de alterius detrahendum potius quam suum cuique incommodum ferendum est A maxim meaning "Rather let every man bear his own grievance than abridge the rights of another" (*Morgan Leg Max.*)

Juridical Relating to the dispensation of justice, belonging to the office of a judge (*Burrill*)

Juridical Evidence Evidence through human agency addressed to a human tribunal.

Juri non est consonum quod aliquis accessorius in curia regis convincatur antequam aliquis de facto fuerit attinctus A maxim meaning "it is not consonant to justice that any accessory should be convicted in the King's court before any one has been attainted of the fact." (*Black L. Dict*)

Juri sanguinis nunquam praescribitur. A maxim meaning "No prescription runs against a right by blood" (*Traynor Leg Max*)

Juris, (*Lat*) Of law, of right.

Juris consult One who is consulted on the law; a Roman lawyer who gave opinions on cases put to him

Juris consultus (*In Roman law*) One who is consulted on matters of law, a learned person who gives counsel on questions of law, a juris consult

Jurisdictio (*Lat*) Jurisdiction, authority to judge, or administer justice

Jurisdictio est potestas de publico introducta, cum necessitate juris dicendi A maxim meaning "Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice" (*Bouvier*) "Jurisdiction is a power introduced of common right (by public authority or for the common benefit), arising out of the necessity of declaring the law"

Jurisdiction An authority or power, which a man hath to do justice in causes of complaint brought before him (*Tomlin's Law Dic.*) The power to hear and determine the particular case involved, the power of a Court or a judge to entertain an action, petition, or other proceeding, the legal power of hearing and determining controversies. As applied to a particular claim or controversy, jurisdiction is the power to hear and determine that controversy The term imports authority to expound or apply the laws, and excludes the idea of power to make the laws, means (1) The right to adjudicate on a given point (2) The local extent within which the Court can and does exercise the right when ascertained *See* 6 Law Quarterly Review, 295, R S C 1883, O. 11, r 1, Ann Pr (1900), p 66 *See also* 2 L W 230=28 I C 189, 41 Cal 323=28 I C 97; 28 Cal 324=5 C W N 509 The term "jurisdiction" means authority or power to act in a matter, and not authority or power to do an act in a particular manner 12 A 115=10 A W N. 32. *See also* 5 P. W R 1908, 10 M L J 232 (234)

Jurisdiction may be local, pecuniary, personal or with reference to the subject-matter of the suit. 23 Ind Cas. 977 (980)

The term "jurisdiction" in respect of *Res judicata* appears to mean essential jurisdiction, *viz.*, competency to entertain the suit with reference to its subject matter and to the powers of the Court. 1900 P L.R. 435.

Jurisdiction

"The rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of the superior Court, but that which specially appears to be so, and on the contrary, nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged" Per Cur, *Peacock* v *Bell and Kendall* (1667), 1 Saund 74 a

JURISDICTION, EXPOUNDING AND EXPANDING OF "It is part of my duty to expound the jurisdiction of the Court It is no part of my duty to expand it" *Kekewich*, J, *In re* Montagu (1897), L R 1 C D (1897) p 693

ANCILLARY JURISDICTION is where one court entertains a suit or proceeding in aid of a suit commenced in another jurisdiction, both being designed to operate upon the same subject-matter or property right

APPELLATE JURISDICTION *See* Original and appellate jurisdiction

ASSISTANT JURISDICTION is that afforded by a Court of chancery in aid of a Court of law

CIVIL JURISDICTION is that which is possessed when the subject matter is not of criminal nature

CONCURRENT JURISDICTION is that which is possessed over the same parties or subject matter at the same time by two or more Courts

CRIMINAL JURISDICTION is that which exists for the punishment of offences

CRIMINAL AND CIVIL JURISDICTION Criminal jurisdiction is that which exists for the punishment of crimes Civil jurisdiction is that which exists when the subject matter and within the same territory is not of a criminal nature

EXCLUSIVE JURISDICTION is that which gives to one tribunal sole power to try a case

EXCLUSIVE AND CONCURRENT OR CO-ORDINATE JURISDICTION Exclusive jurisdiction is jurisdiction confined to particular tribunal or grade of courts Concurrent or co-ordinate jurisdiction is jurisdiction exercised by different courts at the same time over the same subject matter and within the same territory, and where litigants may, in the first instance, resort to either court indifferently

GENERAL AND LIMITED OR SPECIAL JURISDICTION General jurisdiction extends to all cases comprised within a class or classes of causes Limited or special jurisdiction on the other hand is jurisdiction which is confined to particular causes

ORIGINAL JURISDICTION The phrase *Original jurisdiction* does not mean exclusive jurisdiction, and two or more courts may have original jurisdiction, and it may be of the same actions (*Abbot* v. *Knowlto*, 31 Me. 77, 79)

ORIGINAL AND APPELLATE JURISDICTION. Original jurisdiction is jurisdiction conferred upon, or inherent in, a court in the first instance Appellate jurisdiction is the power and authority conferred upon a superior court to rehear and determine causes which have been tried in inferior courts.

Juris quidem

PECUNIARY JURISDICTION Jurisdiction as limited by the extent or value of the subject matter of suit.

TERRITORIAL JURISDICTION Territorial jurisdiction is the power of the tribunal considered with reference to the territory within which it is to be exercised

"Jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorised to exercise such powers (Ben Act VII of 1868 (Land-Revenue Sales), S 1.)

Jurisdiction of the cause is the power over the subject matter conferred by law

Jurisdiction of the subject matter. 'Jurisdiction of the subject matter' is the power to hear and determine cases of the general class to which the proceeding in question belongs

If a court has jurisdiction of the persons to the action and the cause is the kind of a cause triable in such court, it has jurisdiction of the subject of the action, and has the power to render any rightful judgment therein

Jurisdiction of the subject-matter always comes from the law, and it cannot be waived, nor conferred by the consent of the parties or their counsel

Jurisdictional facts Facts, the existence of which is necessary to the validity of the proceeding, and without which the act of the court is a mere nullity

"COURT OF JURISDICTION COMPETENT TO TRY" The terms "the Court of jurisdiction competent to try" in S 13, C P C must be taken to mean a court having jurisdiction not only as to the nature but also as to the amount of the suit 16 A 183=14 A W N 18.

Juris effectus in executione consistit A maxim meaning "The effect of the law consists in the execution" (*Black L Dict*, *Kenney*)

Juris et de jure of law and from law, a term applied to conclusive presumptions

Juris ignorantia est cum jus nostrum ignoramus A maxim meaning "It is ignorance of the law when we do not know our own rights" (*Black L Dict*)

Juris ignorantia in executione consistit The effect of the law consists in the execution.

Juris positivi of positive law

Juris praecepta sunt haec honeste vivere alterum non laedere suum cuique tribuere. A maxim meaning "These are the precepts of the law, To live honorably, to render to every one his due." (*Black L. Dict*)

Juris privati. of private right, subjects of private property.

Juris publici of common right, of common or public use as common highways, common bridges, etc

Juris quidem ignorantiam cuique nocere, facti verum ignorantiam non nocere. A maxim meaning

Jurisprudence.

„Ignorance of fact prejudices no one, ignorance of law does" (*Bouvier*)

Jurisprudence is the science of law. The term, which is now properly employed only in this technical sense, has also been employed in various other senses, respectively suggested by etymology, by historical accident, or by the pursuit of euphony, Etymologically, "jurisprudentia," like juris scient in," originally denoted merely such a knowledge of the laws of his country as was possessed by a practising lawyer at Rome By historical accident, "juris prudence" has come to mean in France the decisions of the Courts In popular English, one perpetually encounters, such phrases as "Spanish jurisprudence" "equity jurisprudence" or "medical jurisprudence," when the writer wishes to express by those sonorous appellations nothing more than "the law of Spain," "the decisions of Courts of equity," or 'such medical facts as may have to be discussed in the course of judicial inquiries' But the use of the term in a specific and technical sense is indispensable As so used, it is the name of the science which defines legal conceptions, and classifies them in accordance with their observed affinities The province of jurisprudence is therefore to determine what is meant by "law" ('ius"), what are its sources and species, and what are the objects which it serves (*Ency of the Laws of England.*)

ANALYTICAL JURISPRUDENCE deals with specula tions as to such ideas as Duty, Intent, Ownership, Possession etc

COMPARATIVE JURISPRUDENCE deals with the ground work and typical conceptions which are common to all legal systems or to all that have made any considerable way towards completeness

ETHICAL JURISPRUDENCE is a term sometimes applied to positive law or law, which would in itself be best fitted for a nation in certain given circumstances (See *Bouvier Pollock Oxford Lectures*)

FINAL JURISPRUDENCE deals with the consideration of laws as they ought to be, and belongs more to the statesman than the lawyer

GENERAL JURISPRUDENCE is the comparative result of comparative and analytical jurisprudence

INTERNATIONAL JURISPRUDENCE The science and theory of International law

Jurisdiction clause That part of a plaint which sets forth, or is intended to give, the facts that confers on the court, jurisdiction in the suit

Jurisprudentia est divinarum atque humana rum rerum notitia justi atque injusti scientia A maxim meaning "Jurisprudence' is the knowledge of things divine and human, the science of what is right and what is wrong"

Jurisprudentia legis communis angliae est scientia socialis et copiosa A maxim meaning "The jurisprudence of the common law of England is a science social and comprehensive" (*Black L Dict*)

Jurist. One who is versed or skilled in law, now commonly a person eminent mainly for knowledge of the theoretic side of the law

Jury.

Juristic. Pertaining to jurisprudence.

Juristic act an act intended to have a legal effect.

Juror. Jurors are men qualified and sworn to try a cause according to the evidence

Juror or Juryman. A Jury man, a member of a jury, one of those persons who are sworn on a jury, one of the body of men sworn to try a case according to the evidence, the legitimate tryers of questions of fact in important criminal and sometimes, civil cases, any person selected and summoned according to law to serve in that capacity, whether the jury has been actually impanelled or not (*Bouvier, Tomlin's Law Dic*)

"The average English Juror is a prosaic sort of persons, unimaginative, unexcitable, docile to the evidence, and amenable to the advice and guidance of the Judge His Irish counterpart will be a man of another temper, and, not to push invidious distinctions too far, suffice it to say that, in certain classes of cases, which need not be particularized, but of which those of agrarian order are undoubtedly an example, he is (to put it mildly) prone to be a little unreliable" (*per* Christian, L J *Moffett* v *Gough*, I L R Ir 371, *Stroude*)

Juror's book A list of persons qualified to serve on juries. (*Wharton*)

Jury A certain number of men sworn to inquire of, and try, a matter of fact, and declare the truth, upon such evidence as shall be delivered them in a cause, and they are sworn judges upon evidence in matter of fact (*Tomlin's Law Dic*)

The privilege of Trial by jury is of great antiquity in England, some writers will have it that *Juries* were in use among the Britons, but it is more probable that this trial was introduced by the Saxons, yet some say that we had our trials by Jury from the Greeks, the first trial by a jury of twelve, being in Greece By the laws of King Ethelred, it is apparent that juries were in use many years before the conquest, and they are, as it were, incorporated with the English constitution, being the most valuable part of it (Wilk Ll, Angl Sax 117 *Tomlin's Law Dic.*) The truth seems to be that this tribunal was universally established among all the northern nations, and interwoven in their very constitution Its establishment, however, and use in England of what date soever it be, though for a time greatly impaired and shaken by the introduction of the Norman Trial by battle, was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it In Magna Charta it is more than once insisted on as the principal bulwark of the people's liberties. And it was ever esteemed, in most countries, a privilege of the highest and most beneficial nature. (*Tomlin's Law Dic*)

JURY. The late Mr Justice Miller, in his lectures on Constitutional Law, quotes with approval the following from the Encyclopaedia Britannica, in its article 'Jury', to wit, 'The essential features of trial by jury, as practised in England and countries influenced by English ideas, are the following: The jury are a body of laymen selected by lot, to ascertain, under the guidance of a judge, the truth, in questions of fact arising either in a civil litigation or

Jury.

a criminal process. * * * * * Their province is strictly limited to questions of fact, and within that province they are still further restricted to the exclusive consideration of matters that have been proved by evidence in the course of the trial They must submit to the direction of the judge as to any rule or principle of law that may be applicable to the case', etc Again, Forsyth in his History of Trial by Jury, published in 1852, says 'The distinctive characteristic of the system is this That the jury consists of a body of men taken from the community at large, summoned to find the truth of disputed facts They are to decide upon the effect of the evidence, and thus to assist the court to pronounce a right judgment, but they have nothing to do with the judgment or sentence which follows the verdict They are not, like the judges, members of a class charged with the duty of judicial inquiry. They are taken from varied pursuits, to make a special inquiry, and return to their ordinary avocations when this labor is over' (*Hopkins* v *Nashville*, 32 L R.A 354)

The term 'jury' and 'trial by jury' are, and for ages have been, well known in the meaning of the law. A jury for the trial of a cause is a body of men, described, as being upright, well-qualified, and lawful men, disinterested and impartial, not of kin or personal dependents of either of the parties, having their home within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impanelled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict on the issues submitted to them.

"We do not desire that the unanimity of a jury should be the result of anything but the unanimity of conviction It is true that a single juryman, or two or three constituting a small minority, may, if their own convictions are not strong and deeply rooted, think themselves justified in giving way to the majority It is very true, if jurymen have only doubts or weak convictions they may yield to the stronger and more determined view of their fellows, but I hold it to be of the essence of a juryman's duty, if he has a firm and deeply rooted conviction, either in the affirmative or the negative of the issue he has to try, not to give up that conviction, although the majority may be against him, from any desire to purchase his freedom from confinement or constraint, or the various inconveniences to which jurors are subject".—Cockburn, J, *Winsor* v *The Queen* (1866), L.R. 1 Q B Ca 305 "In my mind, he was guilty of no error, he was chargeable with no exaggeration, he was betrayed by his fancy into no metaphor, who once said, that all we see about us, Kings, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box" Lord Brougham on the present state of the Law. *See also* on this subject *See* Bacon, Abr "Juries", Hale, Coke; Hawk Blackstone's Com, Stephen's Com, Arch Cr Pl, Taylor on Evidence Thayer, Cases on Evidence and Evidence at the Common Law, Stubbs, Constitutional History, Holland, Juryman's Handbook; Pollock and Maitland, History of English Law, Husband, Law of Juries, Short and Mellor, Crown Office Practice. For History of trial by jury *see* Thayer, Evidence, "Development of Trial by jury", 1896, Forsyth, History of Trial by Jury, Stubbs, Constitutional History of England, (*Ency of the Laws of England*, 568).

COMMON JURY A common jury is one drawn in the usual and regular manner (*Bouvier*)

"There is no distinction between a good jury and a common jury" —Buller, J, *King* v. *Perry*, (1793), 5 T R 460

FOREIGN JURY, A foreign jury is one drawn from a county other than that in which issue is joined A foreign jury is properly granted where it appears that, on account of local prejudice or other cause, a fair and impartial jury cannot be obtained in the county where the action is pending, or where there are express statutory provisions to this effect.

GRAND JURY A jury of not less than twelve, nor generally, more than twenty-three, whose duty it is to examine into accusations against persons charged with crime, and if they see just cause, then to find bills of indictment against them to be presented to the Court (*Wharton*, *Bouvier*)

Jury box The place in court where the jury sit

Jury de medietate linguae A jury de medietate linguæ is one composed half of aliens and half of denizens (*Bouvier*)

MIXED JURY A mixed jury is a jury composed partly of white men and partly of natives or one consisting partly of citizens and partly of aliens. (*Bouvier L Dict*)

PETIT OR TRAVERSE JURY A petit or traverse jury is a jury who try the question in issue and pass finally upon the truth of the facts in dispute. The term "jury" is ordinarily applied to this body distinctively (*Bouvier.*) A body of citizens, duly qualified to serve on juries, empanelled and sworn to try one or more issues of facts submitted to them, and to give a judgment respecting the same called a verdict". *State* v *Cox* 8 Ark 436, 446) "A tribunal of a definite number of men, presided over by a court, and hearing the allegations, evidence, and arguments of the parties".

SPECIAL OR STRUCK JURY. A special jury is a jury ordered by the court, on the motion of either party, in cases of unusual importance or intricacy. A struck jury is a special jury, and is so called because constituted by striking out a number of names from a prepared list Special juries were familiar in the administration of justice from the earliest period of the common law, and were originally introduced in trials where the causes were of too great nicety for the discussion of ordinary freeholders

Jury Duty. 'Jury Duty is in the nature of service due from the citizen to the government, necessarily required in the administration of its laws.

Jury of inquest A jury of inquest is a body of men summoned from the qualified inhabitants of a particular district, before the sheriff, coroner, or other ministerial officer, to inquire into particular facts.

Jury of matrons. Jury of discreet woman empanelled to try a question of pregnancy of a woman.

Jury pocess

Jury pocess. Writ for the summoning of a jury.

Jury woman Women who are empanelled as jurors, jury of matrons

Jus (*Lat.*) Right, justice, law, power or authority

Jus is a term with two meanings (1) Law considered in the abstract, or law taken as a system, an aggregate, a whole, or some one particular system or body of particular laws, and (2) a right in general or in the abstract It is said that the word "Just" is derived from the Latin "Justus" which is from the Latin "Jus", which means a right, and, more technically, a legal right, a law (*Ame Cyc*)

In the maxim "Ignorantia juris haud excusat" the word 'Jus' is used in the sense of denoting General Law,—the ordinary law of the country But when 'jus' is used in the sense of denoting a private right, that maxim has no application (*per* Ld Westbury, *Cooper* v *Phibbs*, L R 2 H L '70) V Right.

Jus accrescendi the right of survivorship, a principal incident of an estate held by several jointly

Jus accrescendi inter mercatores, pro beneficio commercioe, locum non habet A maxim meaning "The right of survivorship has no place between merchants, for the benefit of commerce", (*Black L Dict*)

Jus accrescendi praefertur oneribus A maxim meaning "The right of survivorship is preferred to incumbrances"

Jus accrescendi praefertur ultimae voluntati A maxim meaning "The right of survivorship is preferred to the last will"

Jus ad rem a right to a thing, a right to a thing without possession

Jus alluvion is an increase of the land adjoining by the projection of the sea casting up and adding sand and slubb to the adjoining land whereby it is increased for the most by insensible degrees Hale De Jure Maris 25 in *Multry* v *Norton*, 29 Hun N Y) 660, 663

Jus aquam ducendi the right of leading water (over another's land)

Jus banci. the right of bench, the right or privilege of having an elevated and separate seat of judgment, anciently allowed only to the king's judges

Jus belli. the law of war.

Jus civile civil law All the Roman law except the jus honorarium

Jus civile est quod quisque sibi populus constituit A maxim meaning "The civil law is what a people establish for itself".

Jus civitatis, the right of citizenship, the right of a Roman citizen.

Jus commune the common law, common right

Jus constitui oportet in his quae ut plurimum accidunt non quae ex inopinato. A maxim meaning "Laws ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence

Jus gladii

Jus coronae the right of the crown, the right of succession to the crown

Jus cudendae monetae the right of coining money

Jus curialitatis the right of courtesy of England

Jus dare to give law, to make law

Jus deliberandi the right of deliberating

Jus descendit et non terra A maxim meaning "A right descends, not the land"

Jus dicere To pronounce the judgment, to give the legal decision

Jus dicere et non jus dare "To declare the law not to make it"

Jus disponendi the right of disposing

Jus duplicatum a double right, the right of possession united with the right of property

Jus eminens, (*Eminent domain*) in the civil law, is the supreme power of the state over its members and whatever belongs to them.

Jus est ars boni et aequi A maxim meaning "Law is the science of what is good and just"

Jus est norma recti et quicquid est contra normam recti est injuria A maxim meaning "Law is a rule of right, and whatever is contrary to the rule of right is an injury"

Jus et fraus nunquam cohabitant A maxim meaning 'Right and fraud never dwell together".

Jus ex injuria non oritur A maxim meaning "A right does not arise out of a wrong".

Jus falcandi the right of mowing or cutting

Jus feciale the law of arms.

Jus fiduciarium a right in trust

Jus fluminum the right to the use of rivers

Jus fodiendi the right of digging on land of another

Jus gentium The Law of Nations The law by which kingdoms and societies in general are governed (*Selden Tomlin's Law Dic*).

Jus Gentium. of which the term "Law of Nations" and "Droit des gens" are translations, is a term in Roman Law The jus gentium, when opposed to the jus civile, means the institutions of Roman law, admitted by all civilised peoples of antiquity The jus gentium was not international law, nor was it, so to speak, philosophical or ideal law, which is a product of ethical reasoning though the two notions were often confounded, for the rules of law in question were founded on reasons, and were therefore also called *jus naturale* or *jus naturae* *See* Ency of the Laws of England, Maine, Ancient Law, Wildman, Institutes of International Law, Edinburgh Review, July 1893, article on Sir H Maine).

Jus geranii the right of the crane, the right of unloading goods from a vessel by means of a hoisting engine called a crane

Jus gladii, the right of the sword, the right, power or prerogative or punishing for crime.

Jus hauriendi.

Jus hauriendi. the right of drawing water

Jus individuum, an individual or indivisible right

Jus in personam Is a right against a person a right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something

Jus in re, a right in a thing a complete, as distinguished from an imperfect right, is a right, or property in a thing, valid as against all mankind The young machenic 30 Fed Cas No 18

Jus in re inhaerit ossibus usufructuarii A maxim meaning "A right in the thing cleaves to the person of the usufructuary"

Jus inter mercatores pro beneficio commercii, locum non habet, the right of survivorship has no place between merchants, for the benefit of commerce

Jusjurandi forma verbis differt re convenit hunc enim sensum habere debet ut deus invocetur A maxim meaning 'The form of taking an oath differs in language, agrees in meaning, for it ought to have this sense that it is the deity that is invoked"

Jusjurandum inter alios factum nec nocere nec prodesse debet A maxim meaning "An oath made among others should neither harm nor profit"

Jus latii, the right of the Latins, which seems to have been mainly a right to the use of their own laws, a right to exemption from the edicts of the practor. (*Kenney*)

Jus legitimum, a legal right

Jus mariti, the right of a husband

Jus merum, mere or bare right, the mere right of property in lands, without possession

Jus naturae, the law of nature.

Jus naturae proprie est dictamen rectaeration is quo scimus quid turpe quid honestum quid faciendum quid fugiendum A maxim meaning "The law of nature is properly the dictate of right reason by which we know what is dishonourable and what is honourable; what should be done and what should be avoided"

Jus naturale est quod apud omnes homines eandem habet potentiam A maxim meaning "Natural right which has the same force among all mankind"

Jus navigandi; the right of navigation.

Jus necis, the right of death, or of putting to death; a right which a father anciently had over his children

Jus non habenti tute non paretur A maxim meaning "one who has no right cannot be safely obeyed."

Jus non patitur ut idem bis solvatur Law does not suffer that the same thing be twice paid

Jus non scriptum, the unwritten law "The unwritten law declared by the tacit consent and customs of the people"

Jus novum; the new rule.

Jus publicum

Jus papirianum or jus civile papirianum, the civil law of Papirius,—the title of the earliest collection of Roman law

Jus pascendi, the right of pasturing cattle.

Jus patronatus, the right of patronage the right of presenting a clerk to a benefice.

Jus piscandi, the right of fishing

Jus portus the right of port or harbor.

Jus possessionis, right of possession, or seisin.

Jus postliminii, the right of postliminy, the right of a person restored to the possession of a thing, or to a former condition, to be considered as though never deprived of it.

JUS POSTLIMINII in international law, is a right by virtue of which things taken by an enemy are to be restored to their former state or owners, when a country comes again under the power of the nation to which it formerly belonged (1 *Kent Comm* 108)

Jus praefertar oneribus A maxim meaning "the right of survivorship is preferred to incumbrances"

Jus praefertur ultimae voluntati A maxim meaning "the right of survivorship is preferred to the last will."

Jus praelationis, the right of preference or priority, the priority of one creditor over another.

Jus praesens, a present or vested right, a right completely acquired

Jus praetorium, the discretion of the praetor, as distinct from the leges, or standing laws.

Jus precarium, a right in courtsey, for which the remedy was only by entreaty, or request, for which there was no remedy at all

JUS PRECARIUM is an indefinite or uncertain right, the existence of which can only be determined when put to the test, a precarious right.

Jus proprietatis, the right of property, as distinguished from the right of possession

Jus prosequendi in judicio quod alicui debetur. The right of proceeding to judgment for what is due to any one

Jus publicum et privatum est quod ex naturalibus praeceptis, aut gentium aut civilibus est collectum et quod in jure scripto jus appellatur, id in lege angliae rectum esse dicitur (*Co. Litt* 158.) A maxim meaning "Public and private law is that which is collected from natural principles, either of nations or in states, and that which in the civil law is called jus in the law of England is said to be right"

Jus publicum, public law.

Jus publicum privatorum pactis mutari non potest A maxim meaning "A public right cannot be altered by the agreements of private persons."

Jus quo universitates.

Jus quo universitates utuntur est idem quod habent privati A maxim meaning "The law which governs corporations is the same which governs individuals"

Jus respicit aequitatem A maxim meaning "the law regards equity."

Jus scriptum, written or statute law, called lex scripta, as distinguished from the common law, or lex non scripta

Jus secandi, the right of cutting

Jus singulare, a peculiar or anomalous rule, differing from the jus commune or common rule of right.

Jus stapulae, the law of staple, the right of staple, a right or privilege of certain towns, of stopping imported merchandise, and compelling it to be offered for sale in their own markets (*Kenney*)

Jus strictum, strict law

Jus summum saepe summa est malitia. Law strictly enforced sometimes becomes the severest injustice Strict law is often the greatest mischief, or right too rigid hardens into wrong

Jus superveniens auctori accrescit successori A maxim meaning "A right growing to the possessor accrues to the successor"

Jus tertii, the right or interest of a third person When a person is sued in respect of certain property he may sometimes set up as a defence that the title to such property is not in the plaintiff but in some third person

In an action for ejectment, the plaintiff is entitled to succeed solely on the strength of his prior possession and the defendant is not entitled to set up the right of a third party unless he claims under him and makes good that claim 11 Pat 701=141 I C 157=14 Pat L.T 509=A I R 1933 Pat 6 *See also* 13 P 182 (189)

Just As an adjective fair, adequate, reasonable, probable, right in accordance with law and justice, right in law or ethics, rightful, legitimate, well founded, conformable to laws, conforming to the requirements of right or positive law, conformed to rules or principle of justice 2 Bom L R 845 As an adverb of time the word "Just" is equivalent to "at this moment" or the least possible time since" (*Ame. Cyc.*)

The word 'just' is derived from the Latin 'justus' which is from the Latin 'jus' which means a right, and more technically a legal right—a law. The word 'just' is defined by the Century Dictionary as right in law or ethics, and in the Standard Dictionary as conforming to the requirements of right or of positive law, and in Anderson's Law Dictionary as probable, reasonable Kinney's Law Dictionary defines 'just' as fair, adequate, reasonable, probable, and justa causa as a just case, a lawful ground

An allegation in an indictment that an offence has 'just' come to the knowledge of an officer having authority to prosecute is, by implication, a sufficient allegation that the offence had not previously come to the knowledge of any other public officer having authority to prosecute.

Just cause.

'Just,' as used in Laws providing that an affidavit for attachment shall show the nature of the plaintiffs claim, and that it is just, etc, should be construed to mean just in a moral sense The claim must be morally just, as well as legally just, in order to entitle a party to an attachment "Shall have the power, if he shall think just, to order a new trial" in the Country Courts Act, 1888 (51 & 52 Vict c 43), S 93 These words do not give a County Court judge an absolute power of granting new trials His power under the section is subject to the rules and limitations as to the granting of new trials which are binding upon the High Court, the Court of Appeal, and the House of Lords. *Murtagh* v *Barry* (1890), 44 Ch D 632 (*Lord Coleridge, C J*) The crucial word in the phrase is "just," which imparts a judicial, and not an absolute power. (*Craies St Law*)

Just Right. *Just* has taken up the combined meaning of the Latin *justus* and the French *juste*, the latter meaning nicely coincident or fitting, as in the English verb to adjust A *just* observation may be one which expresses justice or which bears a character of fitness The contrary to the former would be an unjust, to the latter an irrelevant or inappropriate one

That is *Right* which goes straight to the point without deviation or error That is *right* which is according to rule, that is *just* which is according to proportion Taking the terms in their purely moral meaning, he does *just* who observes in his dealings what is relatively due to others, he does *right* who acts according to the direction of a true rule of law. (*Smith Syn Dis*)

Justa causa (*Lat*) A term meaning lawful ground, often used as synonymous with reasonable cause

Just and convenient In ascertaining what is a "*Just or Convenient*" regard should be had to what is "Just" according to settled legal principles, as well as to what is Convenient" (*Beddow* v *Beddow*, 47 L J Ch 588, *See* Civil Pro Code, O 39, r 1) In ascertaining what is 'just," regard must be had to what is "convenient" (*per* Jessel, M R,, *Beddow* v *Beddow*, 1878, 9 Ch D 89, and see *Hedley* v. *Bates*, 1880, 13 Ch D 498)

Just and fair. The words 'just and fair' apply to the moral qualities of acts, dealings, and transactions and cannot be properly construed as having reference to formal legal proceedings.

Just and Reasonable, "There is always some difficulty in understanding the meanings of the term '*just*', but I am putting a favourable construction on it if, in this case—*i e*, on the phrase just and reasonable' condition in S 7 Eng Ry & Canal Traffic Act, 1854—I construe it as meaning 'to the advantage of the customer,'" (*per* Cave, J, *Brown* v. *Manchester* S & L Ry 51 L J Q B 601, *Stroude.*)

Just and true account The 'just and true account' requiring a person to render a just and true account, means an account honestly stated It does not require the statement of the exact account which a jury or court may find to be due

"Just cause" defined. Act 10, 1865, S. 234, *expln.* Act 5, 1881, S. 50 *expln.* 8 I.C. 133, 24 Cal. 95.

Just cause.

'JUST CAUSE." Just cause to be shown for a Court to do anything," does not add much weight, though it may add a little It means, some substantial reason must be shown" (*per* Jessel, M R Ex p, Cocks, Re Poole, 52 L J Ch 65, 21 Ch.D 397 *See also* 8 M L T 388=8 I C 133)

"Just cause for revocation of probate" 18 C 45.

Just Compensation 'Just and reasonable compensation' as used in an agreement that solicitors should have a just and reasonable compensation for their services, means neither more nor less than the fees or compensation allowed them by law for the services

The term 'just compensation,' in an Act prohibiting the taking of property for public use without just compensation, does not mean that the property so taken shall be valued and its price paid in money, but that the individual who claims to be a sufferer in consequence of the exercise of the right of eminent domain over his property shall be recompensed for the actual injury which he may have sustained, all circumstances considered, by the measure of which he complains In ascertaining the question of the injury, undoubtedly an estimation of the value of the property taken at the time of the taking is a necessary step, but if the benefits, real and substantial, resulting to the complainant, are equal in pecuniary value to the value of that of which the public has deprived him, they constitute a just compensation for the deprivation to which he has been subjected

'JUST COMPENSATION,' in an Act providing that private property shall not be taken for public use without just compensation, means 'a full and perfect' equivalent for the property taken The noun 'compensation,' standing by itself, carries the idea of an equivalent, so that if the adjective 'just' had been omitted, and the provision was simply that the property should not be taken without 'compensation,' the natural import of the language would be that the compensation should be equivalent to the property, and this is made emphatic by the adjective 'just'

'Just compensation,' in an Act forbidding the taking of private property without just compensation, means 'that the equivalent to be rendered for the property taken shall be real, substantial, full, and ample.

'Just compensation,' as used in an Act, requiring a just compensation to be paid for property seized means an equivalent, a recompense in value for the property taken, what the article would sell for in the market, quality and quantity considered, and not the price which the owner might demand, or which some person for especial reason might be willing to give

Just debts. Where a clause in a will directed that all the just debts of testator be paid, the phrase 'after all my just debts are paid' should be construed as used by the testator in compliance with the universal custom, having its origin in the solemnity which attends a final disposition of earthly concerns, and does not mean that any debt barred by the statute of limitation is to be revived.

A will requiring that the executor shall 'pay the just debts' of the accused out of the estate should not be construed to force the payment of a just debt held by a person who neglected the legal proof of his demand until more than three years had elapsed after the issuance of letters testamentary, and until after the estate has been finally settled according to law, and the administration closed. The words will not strip the estate of just defence.

Justice

Where a testator directed that his just debts should be paid, it was held that the expression 'just debts' only included debts for which the testator was legally liable

JUST DEBT—A 'just debt' in Punjab Customary Law, means a debt which is actually due and is not immoral, illegal, or opposed to public policy, and has not been contracted as an act of reckless extravagance or destroying the interests of the reversioners 13 M L T 5=11 A L J 1=9 P W R (1913) =17 C L J 137=15 Bom L R 79=17 C W N 302= 24 M L J 218=(1913) M W N. 58=17 Ind Cas 666 (668)

"JUST DEBT" (*in Hindu Law*) In the absence of any proof of wanton waste and reckless extravagance, the money actually borrowed in the ordinary course of dealings whether from the alienee or from a third person is a "just debt" The mere fact that it seems to have swollen in a short time does not make any difference

The word 'just' has reference to the nature of the debt and not to the person who has advanced the money 11 P R 1899=139 P.W.R. 1909=4 I.C. 997.

Just ground The word 'just' has various meanings, but the connection in which it is used in an instruction in relation to justifiable homicide, where the circumstances were such as to afford the accused 'just and reasonable grounds for believing himself to be in danger of death,' seems to be based upon the definition 'rightful, legitimate, well founded,' given in the Century Dictionary When so construed, just ground for believing must necessarily be reasonable ground

Just provocation In order to reduce what could otherwise be murder in the first degree to manslaughter, there should be a 'lawful' or 'reasonable' provocation, as, for example, a blow, but in order to reduce what would otherwise be murder in the first degree, in order to eliminate from it the element of deliberation and bring it down to murder in the second degree, grievous and degrading words of reproach would amount to 'just provocation,' as contradistinguished from 'lawful and reasonable provocation'

Just valuation The word 'just' in an act requiring a local authority to provide such regulation as shall secure a just valuation for taxation of all property, real and personal, is used as the equivalent of 'correct,' 'honest,' and 'true' Its use requires the valuation of all property of the same kind in the same taxing district by a uniform and equal standard

Just value. The 'Just value' at which an Act shall appraise taxable property is the market value of the property

"Justice" defined. Bom. Act 3, 1888, s. 3 (*g*),

Justice.

JUSTICE. In its common acceptation, the rendering of every man his due the constant and perpetual desire to render every one his due; the dictate of right according to the consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals

As applied to the judiciary, a judicial officer, a person duly commissioned to hold courts or to try and decide controversies and administer the laws, a term often used interchangeably with judge, and is broad enough to include the judge of any court in state.

'Justice' is the dictate of right, according to the consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals

'Justice,' says Vattel. 'Is the basis of a state; a sure bond of all commerce. Human society, far from being an intercourse of assistance and good offices, would be no longer anything but a vast scene of robbery, if there were no respect of this virtue, which secures to every one his own. It is still more necessary between nations than between individuals, because injustice produces more dreadful consequences in the quarrels of these powerful bodies politic, and it is still more difficult to obtain redress.'

'Justice,' the establishment and enforcement of which is the object of all law, is a comprehensive term, in which are included the three great objects for which, according to our Declaration of Independence, governments among men are instituted. Whatever rule of the unwritten law, therefore, is at variance with this great purpose of justice—the security of life, liberty, and the pursuit of happiness —is one not suited to our condition and circumstances.

In a judicial sense, justice is nothing more or less than exact conformity to some obligatory law, and all human actions are either just or unjust as they are in conformity to or in opposition to law.

"There is not in this country one rule by which the rich are governed, and another for the poor. No man has justice meted out to him by a different measure on account of his rank or fortune, from what would be done if he were destitute of both. Every invasion of property is judged of by the same rule; every injury is compensated in the same way; and every crime is restrained by the same punishment, be the condition of the offender what it may. It is in this alone that true equality can exist in society."—*Buller, J., Trial of O'Coigly and others* (1798), 26 How. St. Tr. 1193.

A justice is a person duly commissioned to hold court, and to try and decide controversies and administer justice. The word 'justice' is used interchangeably with 'judge'.

'Justice' as used in the Code is synonymous with 'judge'. Hence a justice of the High Court is included in the term 'judge' of such Court

The word 'justice,' when applied to a magistrate shall mean a justice of the peace for the country for which he is appointed.

Justice.

"Justice" also means a Justice of the Peace for any town appointed under the provisions of the Justices of the Peace Act, 1869, or of any other law for the time being in force in this behalf. *See* Bom. Act 3 of 1888 (City Bom. Municipal), s 3, cl (*g*)

Justice, Equity Justice is a written or prescribed law, to which one is bound to conform and make it the rule of one's decisions equity is a law in our hearts, it conforms to no rule but to circumstances, and decides by the consciousness of right and wrong The proper object of justice is to secure property; the proper object of equity is to secure the rights of humanity Justice is exclusive, it assigns to every one his own, it preserves the subsisting inequality between men, equity is communicative, it seeks to equalise the condition of men by a fair distribution. Justice forbids us doing wrong to any one, and requires us to repair the wrongs we have done to others equity forbids us doing to others what we would not have them do to us, it requires us to do to others what in similar circumstances we would expect from them The obligations to justice are imperative, the observance of its laws is enforced by the civil power, and the breach of them is exposed to punishment, the obligations to equity are altogether moral, we are impelled to it by the dictates of conscience we cannot violate it without exposing ourselves to the Divine displeasure Justice is inflexible, it follows one invariable rule, which can seldom be deviated from consistently with the general good, equity, on the other hand, varies with the circumstances of the case, and is guided by discretion, justice may, therefore, sometimes run counter to equity, when the interests of the individual must be sacrificed to those of the community, and equity sometimes tempers the rigour of justice by admitting of reasonable deviations from the literal interpretations of its laws.

"BEST CALCULATED TO ANSWER THE ENDS OF JUSTICE," in 17 & 18 Vict. c 82, s 8, means to attain what is right and proper in the circumstances. *Smith* v. *Cooke* (1891), App. Cas. 297, 45 Ch. D. 38.

JUSTICE IS BLIND. The expression that justice is blind means that the Court shall merely regard litigants as they appear from their claims put forward in the Courts and not as individuals having any personal characteristics. It cannot be considered to mean that the Courts are to act so blindly that they do not even see the course they are pursuing. A.I.R. 1930 Ran. 337 (2).

CHIEF JUSTICE. The Highest judicial Officer of a Court.

LORD CHIEF JUSTICE. The chief judge of the King's or Queen's Bench Division of the High Court of justice in England.

"Justice, Equity and good Conscience." The words "Justice, equity, and good conscience," with reference to India practically mean cases principles and rules of English law, if found applicable to Indian Society and circumstances 35 C. 34 (F B.)= 11 C.W.N. 983=6 C L J. 273. *See also* 36 Cal 433 (465); 11 Bom. 551 (P.C)

The decision of a case according to the principles of justice, equity and good conscience has generally meant decision according to the principles of English

Justice Court.

Law applicable to a similar state of circumstances. Where rights of parties are determined according to the general principles of equity and justice, this must be done without any distinction as in England, between that partial justice which is administered in the Court of Law and the more full and complete justice for which it is frequently necessary to seek the assistance of a Court of Equity 37 C.L J. 145= 27 C.W.N. 587=A.I R. 1923 Cal. 538.

Justice Court. A 'justice's Court' is a court held by a justice of the peace within the precinct for which he may be chosen

Justices in eyre: itinerant or travelling justices

Justices of assise (*In Old English Law*) a particular kind of justices in eyre appointed or commissioned to determine certain actions called assises, or take verdicts in such actions.

Justices of gaol delivery. justices in eyre, who acted under a special commission to deliver the gaols of persons confined in them.

JUSTICE OF GAOL DELIVERY, Are those who are sent with commission, to hear and determine all causes appertaining to such, who for any offence are cast into gaol. These seem in ancient times to have been sent into the country upon several occasions (*Tomlin's Law Dic*)

Justices of laborers (*in Old English Law*) justices appointed to redress the forwardness of laboring men, who would either be idle or have unreasonable wages. (*Kenney*).

Justices of oyer and terminer. justices deputed upon some special occasion, to hear and determine some peculiar causes, such as cases of riotous assembly.

Justices of the Bench: the justices of the court of Common Bench or Common Pleas.

"Justice of the peace" defined, 33-4 V. c 52, S. 26.

JUSTICE OF THE PEACE. A justice of the peace is a judicial officer of inferior rank, holding a court, and having usually civil jurisdiction of a limited nature, for the trial of minor cases, to an extent prescribed by special or general statutes, and for the conservation of the peace and the preliminary hearing of criminal complaints and the commitment of offenders, a judicial officer of special and limited jurisdiction, both civil and criminal In English law justices of the peace are judges of record appointed by the crown to be justices within a certain district for the conservation of the peace, and for the execution of the divers things, comprehended within their commission and within divers statutes, committed to their charge.

Justice of the peace is an inferior magistrate appointed by special commission under the Great Seal to keep the peace within the county, borough, or liberty for which he is appointed. "The whole christian world," says Lord Coke, "hath not the like office as justice of the peace, if duly executed."

A 'justice of the peace' is defined to be a public officer invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law.

Justifiable.

A 'justice of the peace' is a judicial and ministerial officer. He performs judicial duty in the trial of causes, and ministerial duty in recording his judgments. He is both judge and clerk of his courts. His duties as recording officer are similar in every respect to those performed by clerks of the higher courts

Justice: Judges, Officers deputed by the King to administer Justice, and do right by way of Judgment They are called Justices because in ancient times the Latin word for Judge was Justitia, (*Glanvil, lib.* 2 C. 6 *Tomlin's Law Dic.*)

Justices' Clerk The justices for every petty sessional division of a county appoint one fit person to act as their salaried clerk. The appointment is during their pleasure *See* Stone's Justices' Manual, 40th ed., Saunders' Practice of Magistrates' Courts, 6th ed., by Stephenson and Lindsay, 1902).

"Justices' election" defined; Bom. Act 3, 1888 S. 3 (*j*).

"Justices' election" and "fellows' election' mean, respectively, an election of a councillor by justices or by fellows Bom. Act III of 1888 City Bom. Municipal) S 3, Cl (*j*).

Justiceable. In Old English law. Amenable; summonable.

Justiceship. Rank or office of justice.

Justicia, (*Lat.*) Justice.

Justiciar, or Justicier, (Fr Justicier.) A Judge, Justice, or as he was sometimes termed, Justiciary. Shakspeare uses the term Justicier for Judges. (*Tomlin's Law Dic.*)

Justiciarii Itinerantes. 'Justiciarii itinerantes' was the name used in the ancient common law to designate the justices in eyre who were sent throughout the realm to try causes, in contradistinction to the resident judges.

Justiciarii Residentes. 'Justiciarii residentes' was a name used in the ancient common law to designate the justices who resided at Westminster.

Justiciatus. (*In Old English law.*) Judicature, prerogative or jurisdiction.

Justifiable. Rightful, warranted or sanctioned by law, that which can be shown to be sustained by law, Excusable.

JUSTIFIABLE. In a prosecution for murder the court instructed the jury that the defendant admits that he shot and killed the deceased, but insists that he did so shoot and kill him in justifiable self-defence. It was contended that the word 'justifiable' implies a higher degree of right conduct than the word 'excusable' and hence its use in place of 'excusable self defence' and 'excusable killing in self-defence' was erroneous. The terms 'justifiable' and 'excusable,' are often synonymous. There is, however, no practical difference in the use of the words in this connection. What would excuse a killing would amount to a justification, and the reverse would be equally true.

Justifiable Cause.

Justifiable Cause. As used in an Act providing that no master of a vessel shall, during his being abroad, maliciously and without justifiable cause force any officer or mariner of such vessel on shore, or leave him behind in any foreign port or place, or refuse to bring home again such of the officers and mariners of the ship as he carried out with him who are able and willing to return, the words 'justifiable cause' cannot be construed to mean whatever misbehaviour would, by the general principles of the maritime law, constitute a sufficient cause to discharge a seaman in a foreign port. Justifiable cause arises only under extraordinary emergencies, and in extreme cases, where otherwise the safety of the officers or crew, the due performance of the voyage, or the regular enforcement of the ship's discipline would be put in jeopardy. The mere convenience of the master would not justify a discharge, much less such offences as could be ordinarily suppressed by the modern punishments administered in the sea service.

Justifiable homicide. The killing of a human creature without fault or blame, as by command of the law.

JUSTIFIABLE HOMICIDE is the killing of a human being in necessary self-defence, or in the defence of habitation, property, or person against one who manifestly intends or endeavours, by violence or surprise, to commit a known felony upon either person or property, or against any person or persons who manifestly intend to endeavour in a violent riotous, or tumultuous manner to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Justification. A maintaining or showing good reason in Court why one did such a thing which he is called to answer Brooke (*Tomlin's Law Dic*) The showing in court of a sufficient lawful reason why a party charged or accused did that for which he is called to answer.

Justification—Plea of justification This word has acquired a somewhat special meaning in proceedings for defamation. A "plea of Justification" is a plea that the words complained of "are true in substance and in fact." Such a plea is a complete defence to any action of libel or slander The object of civil proceedings is to clear the character of the plaintiff and to compensate him for any injury done to his reputation; and if the defendant has done no more than publish the literal truth about the plaintiff he has done him no wrong, he has merely made manifest the plaintiff's real character. (*Ency of the Laws of England*)

Justify. To make out, or establish according to law, particularly the sufficiency of bail.

Justitia (*Lat.*) Statute law, ordinance.

Justitia debet esse libera, quia nihil iniquius venali justitia, plena, quia justitia non debet claudicare; et celeris, quia dilatio est quaedam negatio: justice ought to be free, because nothing is more iniquitous than venal justice; full, because justice ought not to halt; and speedy, because delay is a kind of denial.

Jus vendit.

Justitia est constans et perpetua voluntas jus suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right.

Justitia est duplex, viz severe puniens, et vere praeveniens: justice is two fold, *viz*: severely punishing, and really or efficiently preventing.

Justitia est virtus excelleus et Altissimo complaceus Justice is an excellent virtue and pleasing to the most high

Justitia firmatur solium. By justice the throne is established.

Justitia nec differenda nec neganda est: justice is not to be denied or delayed.

Justitia nemini neganda est. justice is to be denied or delayed

Justitia non est neganda, non differenda; justice is not to be denied nor delayed.

Justitia non novit patrem nec matrem, solam veritatem spectat justitia justice knows not father nor mother, justice looks at truth alone.

Justitia prepondrous. Speedy justice. (*Bract* 333 *b*).

Justly The term 'justly' as used in the consideration of what a plaintiff in attachment is 'justly entitled to recover,' includes not only what in good faith to the debtor he is entitled to recover, but also what he is entitled to recover in good faith and justice to other creditors

Justly due and owing 'Justly due' does not necessarily mean 'justly due and presently payable,' but only means that there is a just indebtedness.

The words 'justly due and owing,' in a statement in a claim against the decedent's estate that a certain sum is justly due and owing, is but another mode of saying that it is justly due and wholly unpaid.

Justness. The quality of being just; conformity to truth, accuracy, exactness, justice, equity, (as) the justness of a cause or demand.

JUSTNESS, CORRECTNESS. We estimate the value of remarks by their justness, that is, their accordance to certain admitted principles. It has been justly observed by the moralists of antiquity that money is the root of all evil, partisans seldom state *correctly* what they see and hear.

"Few men, possessed of the most perfect sight can describe visual objects with more spirit and justness than Mr. Blacklock the poet born blind." (*Burke.*)

"I do not mean the popular eloquence which cannot be tolerated at the bar, but that correctness of style and elegance of method which at once pleases and persuades the hearer." (*Sir. W. M. Jones.*)

Justum non est aliquem antenatum mortuum facere bastardum, qui pro tota vita sua pro legitimo habetur. It is not just to make a bastard after his death one elder born who all his life has been accounted legitimate.

Jus venandi; a right of hunting on another's land.

Jus vendit quod usus approbavit. The law dispenses with what use has approved.

Jus vetus

Jus vetus: the old rule.

Jut. To project.

Jut-window. A projecting window.

"Jute" defined, Ben Act 1,1893, S. 3 (3).

Juvenile Young, pertaining to youth, a young person

Juvenile courts. Courts having special jurisdiction, of a paternal nature, over delinquent and neglected children

Juvenile offenders Persons of young age who have committed crimes, persons sent to reformatory schools.

"JUVENILE OFFENDER" defined (*See also* Youthful Offender) Act 4, 1909, S. 5 *expln.*

Juxta (1). According to.

Juxta conventionem, according to the covenant.

Juxta formam statuti, according to the form of the statute.

Juxta ratam, at or after the rate.

Juxta tenorem sequentem, according to the tenor following.

Juz-o-kul (*H*) Totally, entirely, great and small. In Bengal a revenue account formerly kept, containing a variety of details arranged under six heads, whence it was also termed shash bab-i kaifiat, the six section account (*Wil Gloss* 243)

Jyarum (*Karn*) In the Carnatic a register of lands.

Jyeshthana (*S.*) The right of Primogeniture, or the right of the eldest son to a larger portion of the patrimonial property than his brothers, a right formerly recognised, but now obsolete, the partition being equal. (*Wil. Gloss* 243.)

K.

K. B. King's Bench.

K. C. King's Counsel

Kabadara (*Karn.*) Remission of a part of the land tax in favour of sugar cultivation, the deficiency being made good by an impost upon the produce.

Kabala (*H.*) Any deed of conveyance or transfer of right or property, any contract of bargain or sale signed by a judge, a bond, a bill of sale, title-deeds, and the like. In the Northern Sarkars it is said to apply especially to deeds affecting titles to houses and gardens. (*Wil. Gloss* 244.)

"KABALA" merely means a contract. 112 I C. 610= 30 Bom L R 1317=A I R. 1928 Bom. 487

Kabala-dar (*H*) The holder of a kabala or bond, one entitled to any right in consequence of forfeiture of a bond, or the like. (*Wil. Gloss.* 244).

Kabar, a blackish clay soil (Bundelkhand, N.W.P.) (*Bad. Pow.*)

Kabbina-varada-kandaya (*Karn.*) Sugarcane lands taken under the direct cultivation by the state, but subject to the land tax formerly levied from the Ryots.

Kabbu (*Karn*) Sugar-cane.

Kabin nameh. A dowry deed. A marriage settlement. (*Mac. Mhn. Law.*) Failure to prove *kabin namah* does not disprove marriage A.I.R. 1929 Cal. 682.

'Kabir darmiani,' meaning of [*See also* Kabizdarmiani] 1 O L.J. 421=25 I C 743.

Kabirpanthi foundations The *Kabirpanthi foundations* are not temples but maths, the object of which generally is the promotion of religious knowledge and the imparting of spiritual instruction to the disciples and followers of the math There may be idols connected with maths but the worship of them is a secondary matter. 14 Pat.L.T. 415=149 I.C. 156=6 R.P. 573=A I.R. 1933 Pat 449.

Kabiz, words "Malik" and "Kabiz" in a will unquestionably carry the signification of a full ownership in proprietary (38 All. 446, P.C. and 31 All. 308, *Foll*, 35 Bom. 279 and 21 Bom. 376, *Dist.*) A.I. R. 1924 Nag. 194.

Kabizdarmiani The words "Kabizdarmiani" can only be interpreted to mean "under proprietor" in the sense in which that word is used in the Oudh Rent Acts 25 I C. 743=1 O.L J. 421.

Kabul. Consenting, Acceptation; Agreeing to, acknowledgment. (*Mac. Mhn. Law*)

Kabuli (*H*) Relating to Kabul, the capital of Afghanistan. Afghan settlers from Kabul are known by this name. They are Sunnis, and form to a great extent a distinct community, marrying only among themselves. Horse-dealing is their chief employment

Kabulait (*Marathi form of qabuliyat*) (*Bo. and Berar*), an 'acceptance' form or transfer of land (*Bad. Pow* III. 386, 8). An engagement or agreement in writing. The counterpart of a Revenue lease, A written agreement signifying assent, the document in which a payer of revenue, whether to the government, the zamindar, or the farmer expresses his consent to pay the amount assessed upon his land. (*Wil. Gloss.* 244).

A *kabuliyat* is a valuable security, though it relates to a period which has passed away and though a suit thereon would be barred by time, because, it can even then be used, at any rate show the lessor's right to possession and the contract of tenancy during these years between him and the lessee. 88 I.C. 283= 26 Cr.L J. 1115=A.I.R. 1925 Nag. 337.

Kacha. Not lined with masonry applied to a well.

Kaccha Adatia. A *Kaccha Adatia* in Bombay enters into transactions on behalf of his up-country constituent with third parties in Bombay, and when he enters into such transactions under instructions from his up-country constituent, the third party is responsible for the losses to the up-country constituent. To the third party in Bombay, both the *Kaccha Adatia* and the constituent would be responsible. The name of the up-country constituent is not communicated to the third party in Bombay, but the name of the third party with whom the *Kacha Adatia*

transacts business on behalf of the up-country constituent is communicated to the up country constituent. The *Adatia* enters into contracts with the third parties in Bombay on behalf of his up country constituent as an agent, the name of the principal not being disclosed. (7 Bom L R. 213, *Foll* 26 B L R. 1097=85 I.C. 613=A.I R. 1925 Bom. 79)

Kacchar (*Kaccha*) River or tank bed cultivation

Kachha-daulu (*Karn.*) A rough estimate of the value of standard crops

Kachcha-khardu (*Karn.*) A rough draft, a rough or sketch account, an account kept by the village accountant of money received from the cultivators.

Kachha (*H*), raw or unripe, applied to local weights as differing from the standard or "pakka, weights (*Bad Pow* II. 117 *note*), applied also to buildings, wells, &c. which are 'pakka' if made of burnt bricks, 'Kachha' if made of mud-bricks, or without masonry, a 'Kachha' road is a country cart-road without metal (*Bad Pow.*)

Kachhar, (See *Kacchar)* moist riverain soil, unstable and liable to erosion (N.W.P.) (*Bad Pow.* II 78)

Kachchi, moist soil close to the river edge and liable to erosion (Pj) (*Bad. Pow.* II 535)

Kachi khandi. 53 B. 367=116 I.C. 251=1929 B. 157.

"Kachin hill tract" defined. Bur. Act, 1, 1898, S. 2 (32).

" Kachin hill tribe" defined Bur Act 1, 1898, S. 2 (33)

Kachmach. Same as Daryabanna.

Kachnar. A tree, *Bauhinia variegata.*

Kadam (*Tam*) A measure of distance, as much as a man may walk in three hours, it varies in different places, but is never less than eight miles (*Wil. Gloss.* 246) *Kadam,* a pace; the common lineal unit in land-measuring (Pj) (*Bad Pow* II. 551 *note,* 558).

Kadarambam. (*Tam.*) Dry land or land which depends entirely upon rain for watering as opposed to Nir-ai ambam.

Kadeem (See *Kadim*) Head, headman, one of the numerous terms used in the peninsula to designate the head man of a village. (*Fifth report*).

Kadegallada-pairu (*Karn*) A late crop.

Kadi (*Tel.*) The yoke of a plough.

Kadi-gattu (*Tel.*) A land or boundary mark, a ridge or mound separating two fields

Kadim (See *Kadeem*) (*H.*) An old inhabitant of a village or one holding by hereditary descent, and as being "usually chosen from this class, applied to the headman of a village in the West of Bengal, and in some parts of the peninsula. (*Wil. Gloss* 247).

KADIM. *See* Fakir

Kadim (*Kan.*) Ancient as opposed to Hosagame wargs (Kan.) (*Sun. Mal. Law.*)

Kadim grant or Kadim haks. If grants were *kadim* or in existence at the time when the village itself was granted as inam, the right of resumption is vested in the Government and not in the inamdar 56 I.A. 44=53 B. 222=31 Bom.L R 235=113 I.C. 467=1929 P.C. 30=56 M L.J. 429 (P.C)

'Kadim haks' *Kadim haks* are grants made prior to the grants of a village in favour of Inamdars by the former government 50 Bom 698=28 Bom L.R 1308=98 I C 933=A I.R. 1927 Bom 40 *See also* 53 Bom. 222 P.C.=56 I A. 44=56 M.L J. 429.

Kadimi. A set of fire-worshippers. (*Mac Mhn. Law*)

Kadirmadangal. (*Tam*) Close of the harvest

Kadjan, Cadjan A term used by Europeans for the leaves of the fan palm, or cocoanut, on which the native write with an iron style; the letters are sometimes, but not always, blackened with ink or other colouring fluid. The word is supposed to be of Portuguese origin, but this seems doubtful. (*Wil. Gloss.* 247)

Kadpap-manyam (*Karn.*) A fee or tax payable to a low caste of Sudras, who perform the funeral obsequies (Mysore). (*Wil. Gloss* 247)

Kafaat (*A.*) Resemblance; in law, similarity of condition and circumstances, such as is required between a man and woman to give legality to their marriage. (*Wil Gloss* 247)

Kaffir A member of a South African Race; a native of Kafiristan in Asia.

Kaffirs. South African Mine Shares.

Kafir (*A*) An unbeliever, one who does not accept the teaching of Muhammad Kafir is also the name, among themselves as well as with their Muhammadan neighbours, of a tribe inhabiting the mountain region north-east of Kabul, the angle between the Hindu Kush and the Western Himalayas, called after them Kafirstan The origin of this tribe is uncertain Some say they are descended from Greek soldiers left behind by Alexander, others that they are of Persian descent. Their language is Aryan, writing is unknown among them The Chinese pilgrim Sung Yun speaks of them as Buddhists in the 6th Century A D , and as suffering persecution under the Tartars They have now an intense hatred of all Musalmans, and think it very creditable to slay any of that religion, The Kafirs neither bury nor burn their dead, but expose them on the top of a hill They sacrifice cows and goats to their god Doghan.

Kafiri The language of the kafirs; it is an Aryan language.

Kahan (*Sylhet*), an old land measure. (*Bad. Pow.* III 448)

Kahar Millers generally (in Berar.)

Kaichit. Counter part. (*Sun. Mal. Man.*)

A memorandum or note. It is used especially to denote a document executed to a landlord by his tenant (*Moore Mal. Law.*)

Kai-kanam-karan (*Mal.*) A tenant on an improving lease.

Kai-kanam-pattam.

Kai-kanam-pattam (*Mal.*) Tenure by labour or by an engagement to improve the property, on condition of holding it for a stipulated period.

Kail (*M*), experimental reapings to test the rate of produce on different soils (*Bad Pow* iii. 65)

Kail, Kailu, Kayalu (*Tel*) The actual measurement of the crop after it is threshed, and before its division between the cultivator and the Government

Kail-asamivari anverja (*Tel*) A detailed statement of the produce of each ryot's land by measurement.

Kail-pechchu (*Tel*) A portion of the grain in excess of their share by measurement, granted to the cultivators

Kaima-pen-kuru, (*Tam*) Portion due to widow from her husband's estate

Kaimi The word "Kaimi (used in deeds) does not import fixity of rent, but only permanence of occupation of land 6 C W N 915 (919), 119 C W. N 1129 The word *kaimi* connotes nothing more than permanence of occupation and does not import fixity of rent. 101 I C. 45=A.I R 1927 Cal. 546.

The use of this word in a patta or solenama confers a permanent right 34 C W N 887 Where the patta described the right as "sanba sani osat jotedari" the solenama under which it was issued used the word *Kaimi, held* that the parties may be taken to have intended to deal with a permanent right 34 C.W.N. 887

Kaimi Maurashi. The description of "kaimi maurashi" applies very aptly to a non-agricultural tenancy Where the lessor of homestead described his interest as kaimi maurashi and not as that of an occupancy right *Held*, that the lessor intended to put forward himself as the owner of a permanent heritable tenancy of a homestead land. 90 I C. 104 =42 C L J. 78=A I.R. 1926 Cal 215.

Kaing (*L B*), miscellaneous cult, on laterite and other soils on a higher level than the rice-plains. (*Bad Pow* iii, 509, 531)

Kaipattunilam (*Tam.*) Land in one's own possession

Kaipporul. (*Mal*) Possession of property, property in hand whether personal or real.

Kairi, Kaini (*Tam*) An irrigated field.

Kaisari-Hind, the vernacular equivalent of the title "Empress of India" (*Bad Pow.* i. 78 note) Emperor or Empress of India, a title assumed by the Queen of England in 1876.

Kaivasa Panayam. (*Kaivasam, Possession, Panayam, mortgage*) Usufructuary mortgage. (*Sun Mal Law*)

Kai-vidu. (*Mal*) A kind of mortgage in Malabar by which in consideration of a sum of money, the proprietor of an estate transfers it to the lender to hold, without prejudice to his own proprietary right, but which precludes the mortgagee from disposing of the land to a third party for more than he paid, or on any other terms than those on which he acquired the occupation; if he wish to dispose of it he is bound also to give the proprietor the option of redeeming it. (*Moore Mal. Law.*)

Kalappadi.

Kaiyerpu. (*Tam.*) Allowance of grain given to village servants at harvest time from the threshing-floor.

Kakar. The name of a Pathan tribe; they are nominal subjects of Kabul, and are always at feud with the Maris and other Biluch tribes The Kakars are divided into seven clans quite independent of one another They are both agricultural and pastoral and also engage in trade.

Kal (*H*), famine, failure of rain (*Bad Pow*, ii. 349)

KAL. (*Mal*) (Dravidian) foot, leg, stem, pillar Literally, leg, figuratively support. In the Northern Division of Malabar it means the standard three round which the pepper-vines climb. It applies to trees such as the Moochy wood tree (moorka), which are planted expressly for the support of the vine. A cocoanut or jack would not be called a Kal. (*Log. Mal. Man*)

Kala. (*Karn.*), **Kalam** (*Tam*), **Kalamu** (*Tel.*) A threshing-floor, a place where the grain is beaten or trodden out

Kalais of Burma. The Kalais of Burma are the descendants of Hindus who had married Burmese women The Kalais as a community are not Hindus within the meaning of the expression as used in the Burma Laws Act of 1898. The Kalais acquired a non-Hindu status of their own 48 I A 553 (564)= 1 Bur L.J 15=30 M L T 126=4 U P.L R. (P.C.) 45 =(1922) P C. 197=66 I C. 609=42 M L.J. 193.

Kalam A farm-house, A granary. (*Moore's Malabar Law*)

Kalam (*Tam*) A measure equal to twelve markals.

Kalama (*Karn*) A field of paddy, a crop of standing paddy.

Kalamadi. (*Tam*) Estimate of the grain on the threshing-foor

Kalameni. (*Mal*) From Dravidian Kalam (pot, vessel, measure) and Dravidian meni (body, shape, sample, average), An average. (*Logan Mal. Man*)

Kalanadai. (*Tam*) A heap of grain unthreshed.

Kalangam Land paying no tax except when cultivated.

Kalang (*Derajet, Pj*), the Sikh Land Revenue payment. (*Bad Pow* ii 644)

Kalapat (*Mal*) (*See* Kalappad) A barn, or threshing-floor

Kalappad (*Mal*) A term in use in the Walluvanad Taluk, and, perhaps other places to the Southward in Malabar. It means a threshing-floor a house or a place for removing the grain from the straw, whether by threshing, or as in Walluvanad, by treading with men. More generally it means a collection of paddy-fields under one manager or cultivator, the produce of which is brought to one threshing-floor. (*Logan Mal. Man*)

Kalappadi. (*Tam*) A portion of the grain out of the produce of all taxable lands allotted to the labourers, whether slaves or hired servants.

Kalappichchai

Kalappichchai. (*Tam*) Grain from the threshing-floor given in charity.

Kalar Barren soil, waste ground

Kalari A gymnasium A place where martial exercises are gone through (*Mal*) (*Moore's Malabar Law*)

Kalarmedu (*Tam*) High land, unprofitable for cultivation

Kalarnilam (*Tam*) Barren or sandy soil

Kalasi (*Karn*) A measure of grain, one-third of a mora, in Guzarat it has the same sense but is equal to 10 maunds, or 640 seers or lbs

Kalatiri A title of the Rajah of Chirakkal (*Mal*) (*Moore's Malabar Law*)

Kalattumedu (*Tam*) A threshing-floor

Kalavadi (*Tel, Karn*) The season of cultivation, the beginning of it, when arrangements are made with the ryots, also the close of the season, or of the year

Kalavadi (*Tam*) Sweepings of a threshing-floor

Kalavara (*Mal*) A store, a granary

Kalavasam (*Tam*) Hire or fee given to agricultural labourers or inferior village servants, of a portion of grain from the threshing floor, or from the field (*Wil Gloss* 250)

Kalaya (*Mal*) Land that has been reaped the same cultivated a second time in the same year

Kalayi (*Mal*) Means rice of a second crop It implies that one crop must have been cut in Kanni (September and October), and that the second crop is cut in Makaram (January and February) It does not apply to a crop cut in Makaram which had no previous crop) (*Log Mal Man*)

Kalayi Nilam is the opposite of Ariri Nilam, which means land on which Ariri a single crop-is raised (*Log Mal Man*)

Kali, or Kaliyuga (*S*) The Kali age the last and worst of the four ages that make up a great age or cycle of this world the present age of the world is the Kali, supposed to have begun on Friday the 18th of February, 3102 years, B C and it is to last altogether 432,000 years forming a period of progressive iniquity and deterioration and ending in the general dissolution of existing forms. (*Wil Gloss* 251)

Kalikina, Telugu words '*kalikina*' and 'Santanam' —Meaning of *See* (1927) M W N 909

Kalingal, (*Tam*) (*or Kalingu*) An outlet or sluice for carrying off the surplus water of a reservoir (*Wil Gloss* 252) A dam, a stone bank or dyke, a sluice. (*Wil. Gloss* 252)

Kalingu (See *Kalingal.*) A dam, a stone bank, or dyke, a sluice

Kalivayanilam A clay soil.

Kalive A channel by which water is drawn from above an anicut for irrigating the lands below.

Kambarlu.

Kalkura Patinaru. (*Mal*) Quarters less 16 or $15\frac{3}{4}$ Viray fanams, which Desavali could receive in fines from inhabitants If the fine amounted to 16 or above it, it was the right of Naduvalis. (*Logan. Mal Man*)

Kallarrari (*P.*) A substance of the nature of ammonia found among old ruins, just before sunrise it is seen to glisten on the ground, and is immediately swept up and spread as a top-dressing over wheat crops, it is found of great efficacy in counteracting the effect of brackish water

Kallatiruva (*Tel*) Fees on threshing grain

Kalpa Taru A digest on ancient Hindu Law written by Lakhmidara A book of authority on Hindu Law

Kalayana-Kuri (*Mal*) A marriage or other entertainment to which the guests invited are expected to subscribe according to their means. (*Moore's Malabar Law*)

Kalyanam, Marriage

Kam (*Tel*) A revenue term implying private or own

Kamadar A minor will *prima facie* be considered disqualified like females for holding the office of a *kamadar* which is necessarily a position of confidence and respectability and ordinarily none but an adult male can be considered fit to hold it. But the female heir or a minor may by virtue of a special custom or reservation of a right under the term of the sannad be entitled to hold the office and nominate his deputy or substitute, 99 I C. 160=A I R 1927 Nag 162

Kamal (*A*) Entire, perfect, complete, as a revenue term, the total assessment before any reduction, allowance, or remission is made, The full (Maratha) assessment of land, consisting of the older rate increased up to a higher standard. (*Bad, Pow* i *273*, iii 205)

Kamardai (*Tam.*) The transfer of proprietary land by a proprietor, who is unable to cultivate it himself, to another person, to hold for a given term, on condition of allowing the owner a proportion of the produce, the occupant engaging not to dispose of the land to a third party

Kamarishi, amani, and Vopundile 171 I C. 844 =39 Bom L R 572=A I R 1937 Bom 433,

Kamat lands What are *See* 89 I.C 913

Kamatagadu (*Tel*) **Kamatagaranu** (*Karn.*) A person who cultivates lands belonging to another with the farming stock of the owner

Kamatam lands [See *Kambattam*] Occupancy right cannot be acquired in respect of *Kamatum* land by virtue of S 6 of the Mad Estates Lands Act 82 I C 597=A I R 1925 Mad 291

Kamavisdar (*Also kamais or kamisdar*). (*Mal.*) a district officer of the Marathas appointed to watch the desmukh or Zamindar: (*Bad. Pow.* i. 261. iii. 203)

Kambalai (*Tam*) A rice field.

Kambarlu (*Tel.*) Cultivators of lands for other persons

Kambattam private land

Kambattam private land *See* 82 I C 597=A I R. 1925 Mad 291, *22* L W 522=(1925) M W N 771 =A.I R. 1926 Mad 140

Kambharti. Wargs not paying full assessment (*Kan.*) (*Sun Mal. Law*)

Kambhogatta (*Tel*) The gross account of a village.

Kamdura (*Midnapore Ben*) a clearing tenure (*Bad Pow* 1 572)

Kameswar Modak Kameswar Modak is a mixture containing bhang and is a '*bona fide* medicated article prepared for medicinal purposes" within s 72 of the Eastern Bengal and Excise Act, (I E B & A of 1910), 14 Cr L J 300=17 C W N 934= 19 Ind Cas. 956 (957.)

Kamiana (*Pj*), dues and allowances in cash or kind to the village menials (kamin) (*Bad Pow*)

(Kamin) [*Pj*) village menial, farm labourer, &c, derived from the Panjabi, form (*Kam*) of the persian 'kam' labour' one who labours, (*Bad Pow* 1 154 11) 564

Kamini-bachh, A tax levied by the proprietors of a village on every resident who is not engaged in agriculture, a sort of ground rent for the non-cultivators dwelling (*Wil Gloss,* 253)

Kana (*Karn*) A threshing or treating floor, where the grain is trodden out

Kanachi (*Karn*) A hereditary estate, *see* Kani-atchi

Kanaja (*Karn.*) A granary, a store for grain

Kanakka-maniam (*Tam*) A portion of land rent-free granted to the village accountant

Kanakkamerai (*Tam*) Fees in grain given to the village accountant

Kanakkaran (*Mal*) Mortgage the person who has lent the Kanam (*Logan Mal Man*)

Kanal, a land measure, one-eighth of a 'ghumao' (Pj) (*Bad Pow.* II 559)

Kanam (*Mal*) (*also Kanom Kanum*) the (so called) mortgage tenure of Malabar (*Bad Pow* III 164-5 For varieties of —See *Bad Pow.* III 169, 471 note)

KANAM is an advance or deposit of money made to a proprietor of lands or gardens on receiving them from him at a stipulated rent upon lease for a given term of years, the deposit bears interest, which the tenant sets off against the rent, the principal is returned when the lease expires and the occupant does not renew it.

KANAM. (*Mal*) Kanam which, in Malabar is generally supposed to mean mortgage or pledge, must be construed to be the thing or consideration for which the mortgage or pledge is given and it seems the term is applicable only to lands, timber trees, and slaves. In Arabic the terms for the different incidents of mortgage are very distinct and precise. *Murhoon* is the thing mortgaged or pledged: *Rahin* is the mortgagee, *Moortahin* the mortgagor, and *Mooblungh* or *Murhoom* the money or consideration which is given for the pledge. Kanam corresponds with *Mooblungh* or *Murhoon,* or the money given, and *Panayam with Murhoon,* or the thing mortgaged *Panayam Elutiu* is the mortgage writing or deed Though the pattam or rent capable of being collected from the lands which is in the possession of the mortgagee is more than sufficient to pay the interest of the mortgage debt, yet it is generally calculated that the value of the pattam would, if sold, be not more than adequate to pay the principal (*Logan Mal Man*)

KANAM AND MORTGAGE There is a great distinction to be observed between a *mortgage* and what is called *Kanam* A mortgage is the thing given for the security of the creditor for money borrowed of him A Kanam is an advance of rent made by a tenant to a proprietor for the security of the latter against failure in payment of the pattam. It was originally as much the custom for a tenant to have been a long time in possession of land, merely paying the simple pattam before he advanced money as for him to acquire possession in consequence only of advancing the pattam money The occupancy of the land in short, sometimes preceded and sometimes followed, the advance of money. (*Logan Mal Man*)

Kanam-janm-marya daaranyavar. (*Mal.*) Assessors by whom the value of an estate is determined, and the proportions of the tenant and landlord adjusted

Kanam kondavan (*Mal*) A tenant, a person who gives security by a deposit for payment of rent.

Kanam kuzhikkanom. Mortgage of waste land for 12 years (*Mal*) (*Sun Mal Law*).

Kanam-pattam (*Mal*) Leasehold tenure of lands or gardens on payment of a rent or proportion of produce equal usually to two-thirds, or the money value of that proportion of the produce. Mortgage tenure of lands, interest on the money advanced on mortgage

Kanam purankadom (*Mal*) Further charge payable with kanom. (*Sun. Mal. Law.*)

Kanam-puram-kadam (*Mal*) This is an expedient for raising money on land already made over on Kanam It is quite a separate transaction, sometimes taking place at the time of the mortgage, in which case it is referred to in the Kanam deed, at other times effected along after the mortgagee has come into possession In the latter case the fact of the mortgage is alluded to in this deed, and the landlord engages to pay off both the mortgage and the loan together The loan thus made gives the mortgagee an additional lien upon the property as security for the repayment of the loan. Where the new loan is added to the sum first advanced, and a fresh mortgage-bond is executed, the transaction is treated altogether according to the rules applying to the Kanam mortgages —(proceedings of the Court Sadr Adalat, No. 18, dated 5th August 1856, (*Logan Mal. Man*)

Kanchani (*H*) A Muhammadan dancing-girl

Kandam (*Mal*) Piece of land particularly rice-land; It means also a field (answering to a stullum in

Kandam.

Kandarutta

the Carnatic) having a distinct name, and having many Kandams or divisions of banks for the convenience of irrigation. (*Logan Mal Man*)

Kandarutta (*Mal*) Survey, mensuration, measuring and estimating land

Kandaya or Kandayam (*Tam*) Tax, tribute, duty, land-tax, ground rent, fixed portion of tax payable at a certain time

Kandi (*Mal*) (*Dravidian*)—gap in hedge or fence, a piece of high ground A division used in garden lands only to express one paramba or garden It is used when speaking of the number of gardens in an estate (*Logan Mal Man*)

Kandu (*Tam*) A field of corn

Kandukrishi (*Mal*) Government agriculture, cultivation on account of Government.

Kandulı (*Karn.*) A fixed rate of assessment

Kandu-mudal (*Tam*) Actual produce of a field when reaped and threshed

Kanet (*P*) A low cultivating class at the base of the Himalayas, they are divided into two branches called Khasia and Rao, the former wear the janeo and the latter do not

Kangar A tree, *Distacia intergerrima.*

Kani (*Tel Tam.*) In numbers, an 80th fractional part, or sometimes one 64th, but the word is more generally known as the denomination of a land measure at Madras, in the Carnatic, and the south eastern provinces, of the peninsula, it varies in different places, but the standard is considered to be equal to 24 Manais, or grounds, of 2400 square feet each, being equal therefore to 57,600 square feet By another computation it is made equal to the same number of square adis, or 57,600 native feet, each adi being equal to inches 10 47 By the latter measurement, the kani, is not quite an English acre, by the former, it, is something more, or 1·322 In Cuttack a kani is only a hands breadth (*Wil Gloss* 258)

KANI (*Karn*) A piece of inferior land not included in that which is rented.

Kani (*Tam.*) Property, possession, right of possession, hereditary right

Kaniatchi A hereditary or proprietary right in land *See* 1 L.W. 41

Kaniatchi-karan (*Tam.*) A hereditary proprietor of land or privileges

Kani-karan (*Tam*) A hereditary proprietor, or a hereditary coparcener in village lands held in common

Kani-merai (*Tam*) A portion of grain claimed by the Mirasidars of the Tamil countries as a perquisite from all taxable lands.

Kani peru (*Tam*) The greatness or dignity of holding landed property, a term used in conveyances of Mirasi rights

Kanisht Soil of inferior class

Kani-sutantram (*Tam*) Independent hereditary right or property.

Kaniyalan (*Tam.*) An inheritor of land.

Kanya.

'Kaniyatchi' (See *Kaniatchi*) 1 L.W. 51, 52=23 I.C 113

KANIYATCHI (*Tam*) That which is held in free and hereditary property, hereditary right to lands fees of office, or perquisites, held by members of village communities, or by village officers, in the Tamil countries, equivalent to the Arabic term *Mirasi*, used likewise in certain other part of India (*Wil Gloss* 258, 1 L W 41)

Kaniyatchi-gar (*Karn*) Proprietor of a hereditary estate

Kaniyatchi-maniyam (*Tam*) A portion of land held by each hereditary proprietor free of assessment

Kankanadhara An important function in a Hindu marriage—and consists of tying a sacred thread round the wrist of the bride and the bridegroon *See* 40 Bom 112=17 Bom L R. 950=31 I C. 448

Kankanam (*Tam.*) Watching, inspection, a fee paid for watching the crop between the field and the stalk.

Kankani (*Tam*) An inspector of crops

'**Kankar**. Kankar is concretionary lime stone and comes under the category of minerals. 133 I C 611= 1931 A L J 660=A I R 1931 All. 394. Nodules of lime used for metalling roads

Kankasht (*H.*) Decrease in the cultivation of an individual cultivator, as compared with a preceding period (Puraniya) (*Wil Gloss* 253)

Kankut. Appraisement of crops—Realisation of landlord's share of produce in cash after appraising its amount and value

"**Kanom**" (*Mal*) *See* Kanam A mortgage. 5 Mad 310

The Malabar law shows that the tenure Kanom "Neerozikha Otti Kanom" is irredeemable 42 M L J 350=1923 M W N. 73=16 L W 930=A I.R. 1922 M 185

Kanuju (*Tel*) An artificial water-course for irrigation.

Kanum (*Kanam*) Mortgage, usufructuary property acquired by mortgage. (*See* Kanum Patam.) *See* 5 Mad 310

Kanumkar A mortgagee of land

Kanungi (*H*) The office of kanungo: this was abolished in Bengal at the time of the permanent settlement, but was preserved in Benares and the Ceded and conquered, provinces (*Beng. Reg IV of* 1808) *Wil Gloss.* 260.)

Kanungo (*H*) An expounder of the laws, but applied in Hindustan especially to village and District Revenue Officers, Supervisor of patwaris.

Kaungu-daftar, (*H*) The record or office of the Kanung (*Wil Gloss* 260)

Kanya, *S* A maid, a virgin, a girl of nine or ten years of age (*Wil Gloss* 260). The word "kanya" as used in para 2, S 2, Ch 4 of the Dayabhaga means "unmarried daughter" and not daughters generally.

Kanya-dana.

12 C.W.N. 924=36 C 86=8 C.L J. 200=1 Ind. Cas. 766.

Kanya-dana. (*S.*) The presentation of the bride to the bride groom, by her parent or guardian, the giving of a girl in marriage, a gift to a girl upon her marriage, a dower (*Wil Gloss.* 260)

Kanya putra, or *suta,*(S.) The son of an unmarried girl. (*Wil. Gloss.* 260)

Kappam. (*Mal.*) (*Dravidian*)-tribute, taxes Equivalent to peishcush or tribute (*Logan. Mal. Man*)

Kapu (*Tel*) A cultivator, a husbandman, a ryot, it is also commonly applied in the Telinga Provinces to the principal cultivator or headman of a village.

Kar (*Tam.*) The ploughing season in the months of August-September, rice growing in the rainy season, and reaped in the last months of the year, the first or lesser rice crop

Pasama-kar (*Mal.*) The best sort of soil, a rich, greasy clay

Rasi pasama (*Mal.*) Middling or mixed soil.

Rasikar (*Mal*) A poor light soil

KAR. The word "Kar" includes cesses also A clause in a partition deed was as follows —The second party will not have to pay to any one any "Kar" whatsoever should anybody recover any "Kar" from them the first party should reimburse them. *Held* that the second party would not have to pay either revenue or rent or any kind of taxes including road cesses 65 I.C. 598=A I R. 1923 Cal. 283

Karab. A demand in the nature of rent, 14 R.D. 634

Karabati The term Karabati does not include the widow but only the next male collaterals. 196 P R. 1889.

Karagadde (*Karn*) Cultivation in the wet season

Karahati. Means not only a male collateral but near male collateral 196 P.R 1889

Karai (*Tam*) A share. A karai village is one divided into shares, which are or ought to be periodically re-allotted.

KARAI. (*Tam.*) A portion of land, especially a share in a Mirasi, or hereditary co-parcenary village, originally in general, a determinate and entire share. It is said sometimes to consist of four pangus shares or subdivisions of villages held by Brahmans rent-free, but this is perhaps incorrect (*Fifth Rep.* p 826, *Wil. Gloss.* 262.)

Karaikattu (*Tam*). A prop or buttress for raising or strengthening a bank.

Karai-yidu (*Tam.*) An agreement amongst the co-parceners of a village for a temporary change of their respective shares.

The *Karaiyedu* tenure consists in a system of shifting severalty of ownership, the village lands being re-distributed among the mirasidars at intervals. 20 L.W. 122=78 I.C. 37=A I.R 1924 Mad. 741.

Karaveppu.

Karaima (*Mal*) Perpetual grant by temple managers for services to be rendered to the temple. Resumable on neglect to perform service or setting up proprietary claim (S. P) (*Sun Mal. Law.*)

Karalan (*Mal*) Is the agent or deputy for the Uralan, or founder, in the management of the lands of Hindu-temples (*Log. Mal. Man*) Possessor of freehold or private property, the agent or manager of the lands of a temple on the part of the founder or endower.

Karambu. (*Tam*) Waste or uncultivated land, and which is of two kinds Sekal-karambu, which is capable of cultivation although neglected for some time, and *Anadi-karambu,* waste from time immemorial, and which cannot be cultivated with any prospect of advantage (*Wil Gloss* 263)

Karam Karai Karamkarai and Adimayavana tenures are not inalienable by custom in South Malabar and the Jenmi is not entitled to forfeit them on alienation. The burden is on the landlord to prove the custom of inalienability and forfeitability of such tenures 15 L.W. 164=A I R 1922 Mad. 290.

Karamkari or jenma Kozhlu (*Mal.*) Permanent grant in return for services rendered; in case of temples for future services. In North Malabar only life interest, elsewhere till failure of heirs (*Sun Mal Law*)

Karam Kozhu. (*Mal*) Land held on *karam koshu* tenure whether in North or South Malabar is not liable to forfeiture by alienation 86 I C. 294=A.I. R 1925 Mad 914

Karanam (*Mal*) A deed, a title-deed, a bond, any legal writing or document it is especially applied to the deeds by which land is transferred in Malabar.

Karanam or Pramanam (*Mal*) Generally means bonds and agreements of all kinds. Note. The six kinds of Karanams culminating in Janmam were, 1, Kulikkanam, 2 Kanam, 3 Otti 4 Ottikkumpuram; 5 Janmappanayam, 6 Janmam (*Log Mal Man*)

Karani (*H.*). A clerk, a scribe. The word sometimes corrupted into cranny, is used to denote the whole class of writers or their profession.

Karankari —Vide Karamkarai (*Moore's Mal. Law*).

Karao (*H,*) The practice of marrying a widow to her deceased husband's younger brother, it is common among the Jat, Gujar and Ahir tribes. The same practice is known in different parts as Urhari, Bathi, and Dharicha

Karar (*H*) Firmness, stability, Agreement, engagement, contract.

Karar nemeh. A deed of agreement, (*Mac. Mah. Law*)

Karaveppu. (*Mal.*) From Dravidian Kara (shore, riverside, bank) and Dravidian Veppu (deposit, planting).

Plantains on elevated spots of ground, in contradistinction to Attuveppu, situated on low ground. High-lying cocoanut gardens are divided in the revenue accounts into three classes of Karaveppu. Karaveppu gardens are not unfrequently situated

Karayma-karan.

on the high banks of rivers and backwaters. (*Log. Mal. Man*)

Karayma-karan (*Mal*) A proprietor of freehold land.

Karbala The meeting place of the taziahs at the Muharram festival, so called after Karbala, in Turkish, Arabia, the burial place of Hussain

"Karbi" and 'Baidi', meaning of, *See* 28 I C. 306

'Kareebi'—Where the word 'kareebi" in a Wajib-ul-arz as to pre-emption, is used together with the word "Karabatdaran," the same meaning should underlie both words and show an intention that the property as far as possible should remain in members of the same family. 1 I. C 390

Kar-e-kair The word *kar-e-khair* means literally a good deed but according to Pallon it also bears the colloquial meaning of a charitable act 97 I C 934=3 O W N. 714=3 O L J 804=1 Luck 554=A I R 1927 Oudh 213

Kargahi (*H*) Anything relating to a workshop, an Impost formerly levied on weaver's looms, abolished by Regulation 2, 1795, where the word is written, phergui. (*Wil Gloss 261*)

'Kari'. The word *'Kari'* is wide enough in its ordinary meaning to include the word 'cess'. A I R. 1923 Cal 283

Kariakaran. The performer of a business, an agent The principal Meerassadar of a village appointed by the rest to act as their common agent (*Fifth Rep*)

"Karibi".—"Bhai Karabi" Although karibi must be read in connection with the preceding word bhai, the words bhai karibi must be held to include more than cousins, *viz*, all near relatives both male and female. The use of the word karibi alone in the pre-emptive clause of a wajib-ul-arz is ambiguous and inadequate to express the intention of the shareholders 11 A 41 (F B)=9 A W.N 1 *See also* 5 I C. 669, 2 A L J. 346.

Karibi Ekjaddi. The term *Karibi Ekjaddi* used in the pre-emption clause of a wajib-al-arz connotes descent through the male, and not through the female line. 3 A.L J 179=(1906) A.W N. 72.

"Karibi-ekjaddi hissedar" On a wajib-al-arz giving a right of pre-emption to a "karibi ekjaddi hissedar" held that a co-sharer who was related to vendor through a female was not such a hissedar The *jadd* must be found in his own father's stock and not in the stock of his mother 3 A.L J. 179=(1906) A W N 72.

Karikallu (*Kanarese*) Slabs of stone set up at the foundation of a village. They are generally painted in broad vertical stripes of red and white, and are objects of worship All the cattle of the village are presented before them annually as a means of averting the cattle disease.

Karil. A bush, *Cappris aphylla.*

Karipanayom Ordinary usufructuary mortgage. (*Mal.*) (*Sun. Mal Law.*)

Karisal. (*Tam.*) Punjey black soil of the first quality.

Karta.

Karji (*Tel*) A village officer, the head of a village, charged with revenue and judicial functions, or the accountant of a village, but sometimes filling the office of headman or manager, collecting the revenue from the villagers, and engaging for its payment to the government, in Cuttack, (*kit*) a man of business, (*Wil Gloss 262*)

Karkhanah. (*H*) A workshop A manufactory.

Karkun (*H. Mar*) A clerk, a writer, a registrar, used also generally among the Marathas for an agent or manager in financial and revenue collections an inferior revenue officer in charge of a taraf, or division, under the Mamlatdar, or district collector. (*Wil Gloss* 261.)

Karkuni (*Mar*) The office or function of a karkun, or his fees or perquisites a cess levied on the Ryots to pay the expense of maintaining government Karkun an extra allowance for household expenses made to any public functionary, anything relating to him or his services (*Wil Gloss* 261)

Karma (*S*) Destiny or fate as determined by one's own actions in the past.

Karnam. (*Tel*) A village accountant. *See* 4 M H. C 234

Karnam Lands The *Karnam* of a village holds his office not by hereditary or family right but as personal appointee, though the appointment in certain cases, are exercised by members of a particular family The lands which form the emoluments of the officer do not become the family property and they are inalienable and designed to be the emolument of the officer into whose hands, the office passes. The effect of enfranchisement is to free the lands from their inalienable nature and to empower the Government to deal with them as they pleased The law applicable to the enfranchisement of Palayams cannot be applied to the case of karnam office 41 M.L. J 1=44 Mad 463=48 I A 244=34 C L J 16=14 L. W 59=61 I C 667=(1921) M W N 401 (P C.)

Karnam-mirasi. (*Tam.*) The hereditary fees or perquisites of the village accountant.

Karnam service inam. When a land which forms part of a karnam service inam is enfranchised in favour of a person who is a stranger to the office, the holder of the office for the time being cannot contend that enfranchisement is really for his benefit. 48 M. L J 500=(1925) M W N 480=21 L W. 474=A.I.R. 1925 M 726

Karnavan. (*Mal*) Eldest male member and the manager of the tarwad. (*Sun Mal. Law.*) The senior male in a tarwad, and therefore its head and manager (*Moore's Malabar Law.*)

Karori (under the Mughal Empire), an officer who collected a 'crore' ten millions) of dams of revenue. (*Bad Pow.* 1. 256)

Karraima (*Mal*) A verbal agreement with a poorer tenant or cultivator.

Karsha. (*S. Krishan*), a tenant (Ben.) (*Bad, Pow* 1. 600.)

Karta. 'Karta' as used in Wills and other legal documents in Telugu always means heir or person entitled. A.I.R. 1928 Mad. 926=28 M.L.W. 869=112 I.C. 255.

Kartkari.

'Kartkari.' *See* 19 C W.N. 149=22 I.C. 563

Karu. (*Panjab*) Kadam.

KARU. (*Tel, Karn*) The wet season, the crop of rice sown in April, and reaped in June-July

Karubaru (*Karn*) Rule, management, government, Karuvaru (*Tam*) Authority of revenue officers over the cultivators

Karubatta (*Karn*) Rice growing in the hot season, and reaped in the rains.

Karubele. (*Karn*) The wet season crop

Karubhumi (*Tel*) Saline soil

Karukaya (*Tel.*) Weak or blighted corn.

Karunilam. (*Tam.*) Black and barren soil

Karunkuruvai. (*Tam*) A kind of black rice of quick growth.

Karupanta (*Tel*) Rice sown in the wet season, the chief crop of the Tamil countries it is also applied to the lesser crop, or that which is sown in spring, and reaped in the rains

Karuttakkadappu, (*Tam.*) Black paddy or rice in the husk.

Karuvai. (*Tel.*) Estimated as produce

Karuvai-daul. (*Tel*) Demand on each ryot's produce, according to the estimate

Karz (*H.*) Debt, In Mohammadan law, besides the general sense, it implies a loan to be repaid by something dissimilar, but of equal value, in distinction to Ariyat the return of the identical thing borrowed · a money loan, money lent at interest for an indefinite time (*Wil Gloss* 266)

Kasai. (*H.*) A butcher, Kasais are a distinct class, marry only among themselves They are Sunni Musalmans

Kasar. (*H*) Defect, deficiency, diminution. (*Wil Gloss.* 266; 1 L.W. 941=26 I C. 187)

Kasaur (*Karn*) Profit or loss on the exchange of coins. (*Wil. Gloss* 266)

Kasawargam tenure. A Kasavargamdar has no proprietary interest in the land which he occupies He is the proprietor of the superstructure, if any, built by him on the land, and is entitled to compensation for the value of the superstructure on eviction He and his heirs are entitled to occupy the land so long as he or they perform the service and are willing to do so He forfeits his right if he refuses to perform the service The Kasavargamdar has no power to alienate the land by sale or mortgage, and an alienation by him has the effect of causing a forfeiture of the tenancy, and the alienee does not acquire the status of a tenant unless and until he is recognised as such by the landlord. The landlord has a right to enter on the land the moment the forfeiture is incurred. 45 L W 347=A I.R. 1937 Mad. 295.

Kasba, a small town; a village large enough to be a market place; a suburb; a hamlet (locally); (*Bad. Pow. iii.* 364, &c.)

Katba.

Kasbati, a tenure now proprietary (*Bo.*) (*Bad. Pow iii.* 286)

The *Kasbati* lessees were not Taluqdars of Ahmedabad within the meaning of Act VI of 1862.

Kasht Kasht and Bakasht are the words of art in Revenue Records, they apply to cultivation of land by proprietors and tenants. 3 P L T. 13=A.I.R. 1922 Pat. 193.

Kasht-hasb-maqdur (*P A* =cult according to ability) (*N W P, Pj*), a term used to describe a principle of village land holding, when each co-sharer took as his lot as much 'as he could manage', (*Bad. Pow ii* 109)

Kashtkar. The words "Kashtkar" and "Thalwa" in the *wajib-ul-arz* must be taken to mean respectively a tenant of the village and a person who is not such a tenant. 22 N L R 173=97 I,C 1001=A.I.R. 1927 Nag 23

Kasi. (*Mal*) Marriage gift among Moplas, donor reserving a reversionary right on the termination of marriage (*Kan.*) [*See* 6 M 319. *Sun Mal. Law.*)

Kasi or Badi The words 'kasi' and 'badi' used in a deed of gift do not bear the same meaning. In Kasi, the donor reserves a reversionary right on the termination of the marriage while in Badi there is no such reversion. 6 M. 319.

Kasrat *H* Difference, properly, in excess, between the land measure established by Beng. Reg. xi. 1795, and that of preceding years (*Wil. Gloss.* 266.)

'Kassar,' (*See Kasar*) meaning of. *See* 1 L.W. 941=26 I C. 187.

Kastkar. (*Lit. Kast-cultivation, Kar-doer*), Cultivator.

Kasu, (*Tel*) karn. A small copper coin, current at Madras, it also means in Tamil coin, money, in general (*Wil. Gloss*)

Kasur (*A. pl. of Kasr, a fraction*) (*Pj*), certain small dues, Kasur sil-chah, &c. (*Bad. Pow ii* 663.) Assignment of a fractional share of the revenue to a local magnate.

Kasur-khor, the person entitled to Kasur. (*Bad. Pow ii* 663)

Katai Maurusi Absolute occupancy.

Katal-i-umd (*H*) Murder. (*Mac. Mhn. Law.*)

Katar (or sword) marriage. Among Sudras a marriage in the Katar form (in which the bride is given to the bridegroom's sword or dagger in place of to the bridegroom) is not a valid marriage, in the absence of proof that the ordinary ceremonies of a Hindu marriage were performed, and the issue of such a connection is not legitimate. 61 I.A. 106=39 L W 198=3 A W R. 247=36 Bom L.R 262=38 C W N 511=59 C L J. 341=147 I.C. 667=A.I R. 1934 P.C 74=66 M L.J 114 (P C.).

Katba, (*Mar.*) Penalty bond, recognisance, agreement · a writing given to a Panchayat by the parties appealing to it asserting the truth of their statements and agreeing to acknowledge their verdict (*Wil. Gloss.* 268.)

Katcha thatched house.

Katcha thatched house. Buildings of mud walls and thatched roof (Katcha thatched house) built for the purpose of school and which were in existence and kept under regular repair for about 30 years were held to be a work of a permanent character (28 All. 741 *foll*) I Luck. C. 44=102 I C. 26=A I.R. 1927 Oudh 206.

Kate Punjah Land which from situation cannot be irrigated, and which strictly speaking depends upon the falling rains

Katha or Kattha (*Ben.*) (the 'Cottah' of Reports), a land-measure $\frac{1}{20}$ of a bigha. (*Assam*), $\frac{1}{8}$ of a bigha. (*Bad Pow* iii 421.)

Kathadar (*Ben*), a chainman, one who holds the measuring-rod in surveying (*Bad Pow* i 604.)

'Kathanabaing'—Authority of, in Lower Burma. *See* 8 Bur.L T 62=27 I.C 112.

Kathan crop. Spring crop (*Rabbi*)

Kati (*Karn.*) An obsolete grain measure in Mysore containing 40 kanis of 80 rupees weight, or 3,200 rupees, also a land measure used in Kanara for betel-nut gardens, containing 484 square feet.

Katil-Khataa. (*A.*) Homicide by an erroneous act, or by error in the intention. (*Mac. Moh Law*)

Kat-kabala (*H*) A conditional engagement a deed of conditional sale, as one stipulating that if the purchase price be not returned within a given period the sale is absolute, a mortgage deed with liability of sale if not redeemed by a stipulated time (*Wil. Gloss.* 244.)

Katkina (*Ben.*), a sub-lease, farm of a farm: (*Bad. Pow.* i 546.)

Katlai (*Tam*) A single field or parcel of land amidst those of a village.

Katl-i-kaim makam ba khataa. (*A*) Involuntary homicide. (*Mac. Moh. Law*)

Katra (*Oudh*), a 'street' or hamlet, *i e.* a line of houses for families and their dependents. (*Bad Pow.* ii 241).

Kattakanom or Muppappanam or Talakanam. (*Mal.*) Simple lease for one year when the tenant advances the rent May be even for a longer period with an advance as security not to carry interest (*Sun. Mal. Law*, 17 I.C. 623)

"Kattalai.' Meaning of. *See* (1915) M.W.N. 76= 26 I.C. 841.

Kattavadi or Kattakol. (*Mal*) Literally clod-breaker. The stick in Malabar, with a knob at the end of it, with which men and women break the clods in a field after it has been dug by the mamutty or spade.

Kattbadi (*Tel. Karn. Tam*) A revenue term usually applied to a fixed, invariable and favourable quit rent, which has been assessed on lands granted to public servants.

Katti (*Tel.*) A measure of land containing about 14 acres.

Katti (*Catty*) (*Kanara M.*), a certain weight. (*Bad. Pow. iii*, 149.)

Katugta

Kattubadi (*M.*), a kind of service (police) grant of land under the 'Polygars'. (*Bad Pow. iii.* 82)

KATTUBADI (*Tel karn*) (*Tam*) A revenue term usually fixed, invariable and favourable or quit-rent, which has been assessed on lands granted to public servants (*Wil Gloss.* 270)

Kattubadi Is in the nature of rent. 29 L.W. 600= 115 I C 351=56 M L.J 273.

Kattubadi-agraharamu, (*Tel.*) A village granted to Brahmins and assessed at a quit-rent. (*Wil. Gloss* 270)

Kattubadi-bantrotulu, (*Tel*) Peons or militia paid for their services by lands of grant at a quit rent (*Wil Gloss.* 270)

Kattubadi inam, (*Tel.*) A grant of land paying a small or favourable rent. (*Wil. Gloss.* 270).

Kattubadi-jana (*Karn*) Public servants holding lands at a low assessment and, who, when occasion requires, perform the duty of soldiers.

Kattubadi-khandrika (*Tel*) A portion of land granted at a low rate of assessment.

Kattubadi-mukhasa (*Tel*) A village granted for services at a low or quit rent

Kattudale (*Karn.*) Agreement, settlement, rate of assessment.

Kattuguttagai (*Tam*) Land held in farm at a permanently fixed money-rent, which is usually light. The kattukuthagai is in essence a lease or grant of land at a favourable rent. 106 I C. 505= 1928 Mad 375

Kattukalive (*Karn.*) A large channel for irrigating the land and supplying reservoirs

Kattukkanam also Muppappanam. (*Mal.*) Is the acknowledgment or Nuzur paid by a cultivator to a proprietor for land he is allowed to cultivate. It is not an advance which is recoverable.

It is not deducted from subsequent payments to be made, nor is any interest granted upon it; the cultivator pays the full established pattam besides. Its proportion to the pattam does not seem uniform. It means, literally clod-money.

Kattukuthagaidar is not necessarily a rentor of the melvaram only. 106 I C 505=A I R. 1928 Mad. 375

Kattutara. (*Karn.*) Remission of revenue on account of keeping up dams and embankments.

Kattuvaram. (*Mal.*) A tax of two fanams upon every individual possessing land in a few Hobalis of the Temmalapuram District, where there is no regular Modan cultivation. It was intended as an equivalent for any cultivation which might be carried on in the Kad or jungle

Katuban. (*Mar*) A grant or tenure in perpetuity of barren or fallow lands for a fixed annual sum, not liable to increase: also, the land so held. (*Wil. Gloss* 270.)

Katugta (*Mar.*) Tenure of land held at fixed rate of revenue, usually lower than the ordinary rate. the term seems to be properly Tamil, (*see* Kattuguttagai.) (*Wil. Gloss.* 268)

Katvaram.

Katvaram (*Mal*) A tax on lands bordering on waste or wilderness in lieu of any assessment on tracts that may be cultivated within it

Katyayana A great Hindu Sage and writer of an important Smriti that bears his name.

Kaul (*H*) A word, a promise, an agreement or contract the term is used in various deeds granted by superiors to inferiors, in which the engagement implies an act of grace or favour a promise of pardon or of safe conduct to a rebel or offender to induce him to give himself up In revenue transactions a kaul usually means the document granted by the collector, proprietor or the receiver of the revenue to the subordinate payer of the revenue or the actual cultivator, stating the terms of the agreement and the amount to be paid, and, securing him against further demands it frequently implies also that the contract or lease is granted on favourable conditions, as in the case of the cultivation of waste lands, for which a remission of rent is granted for a given period by a kaul. (*Wil Gloss* 270)

Kaul-bira (*H*) The betel of contract the ceremony of giving betel to the nearest male relative of a girl at the time of Betrothment, to obtain his consent, practised by the Mohammadans of Hindustan. (*Wil. Gloss.* 270.)

Kauli (*H*) Relating to an engagement Land held under a kaul or stipulated tenure In Benares and the Northwestern provinces it was applied to lands in which the government made its settlement directly with the cultivators, without the intervention of third party it was also applied to lands of which the assessment was fixed in money not in kind, also waste land brought into cultivation under a kaul from the state (*Wil Gloss* 270.)

Kaulachara (*Karn*) A quit rent on land.

Kaulige A village accountant or Karnam under a palegar.

Kaul-karar (*Mar.*) A term in written engagements, as leases, to denote agreeing to the terms proposed. (*Wil Gloss* 270.)

Kaul-nama (*H.*) The written voucher granted to the revenue payers specifying the terms of their payments and amount: any written contract or engagement. (*Wil. Gloss.* 270)

Kaul-patrak (*Mar*) One of the village accounts, that of lands cultivated on a reduced assessment. (*Wil. Gloss.* 270)

Kaulvaram (*Tam*) A share or portion of land granted by Kaul in addition to his regular share, to induce the holder to cultivate.

Kauri (cowrie), a small fraction of a rupee in land-division; also for the shells used as small coin, (*Bad. Pow* iii 128) (Ben), a small land-measure= 1 sq. yd. (*Bad. Pow*)

Kaval-merai (*Tam.*) Portion of grain to the village watchman.

Kavalphalam (*Mal*) Protection fund or compensation for protection. (*Logan Mal. Law.*)

Kayyala.

Kaval-Thalam (*Tam.*) Share of grain given to the watchman from the threshing floor or the field.

Kavass. Turkish armed constable or servant.

Kavile An account-book made of slips of palm leaves.

Kaweli. Watching, guarding, and protecting. The office or employment of guarding and protecting a district. (*Fifth Rep*)

Kayam Geni. Permanent lease (Kan). (*Sun. Mal Law*)

Kayam geni karar Agreement to deliver quantity of paddy in return for money advanced No lease but restrictive covenant *See* 5 Mys.L J. 197.

Kayam-gutta (*Karn*) The lease or farm of a village at a fixed rent, with right of sub-letting the land

Kayam patta The words '*kayam patta*' in a grant do not *prima facie* convey more than a life-estate but in construing the grant, the duty of the courts is to look to the surrounding circumstances and to the conduct of the parties to see what the real intention of the grantor was and whether the grant was intended to be in perpetuity 28 M L.J. 510=17 M. L,T. 269=(1915) M W N. 313=29 I C. 188.

Kayastha (*S.*) A caste so termed, or a member of it, sprung from a kshatriya father and a Vaisya mother the occupation of which is that of the writer or accountant it is one of the most respectable, of the mixed classes (*Wil Gloss. 272.*)

Kayasthas of Bengal *Quaere* whether Bengali Kayasthas are Sudras 47 I A 140=24 C.W N. 794 =(1920) M,W.N. 541=12 L W. 556, *see also* 1929 Pat 51

Kayasthas of Bihar The Kayasthas of Bihar are Kshatriyas and not Sudras (Authorities reviewed and discussed) 6 Pat. 506=8 Pat L.T. 34=A.I. R. 1927 Pat. 145

Kayemi "The word *Kayemi* is never used in describing zemindari interest in land by any person. The word is always used in connection with the description of tenant's right in land and it means a permanent occupancy holding." 32 C.W N, 241=47 C.L. J. 124=A I R. 1928 Cal. 385.

Kayemi jote. The expression '*kayemi jote*' is applicable to a raiyat or a tenure holder It imports permanence of occupation, not fixity of rent, or in other words, the lessor has an occupancy holding, which is heritable but is not held at a fixed rate of rent 149 I C 1019=6 R C. 668=37 C W.N. 643=A. I.R. 1933 Cal. 682.

'Kayemi, sthayee karsha kabuliyat meaning of. *See* 19 C.W.N. 1129=29 I.C 461.

Kay-kanum-patam. Conveyance of a spot of land, in Malabar, to one who undertakes to fence it with mud walls and plant it with trees, being insured in the possession of it, for a specified period. (*Fifth Rep*)

Kavitalavu (*Tam*) Measurement by a rope of a heap of corn or grain in stacks.

Kayyala (*Mal.*) A threshing floor; a place where corn is collected before threshing.

Kayyara.

Kayyara (*Mal.*) A water-course, a channel.

Kaza (*H*) Judgment, administration of justice, the office of the Kazi. (*Wil Gloss 272*)

Kazi. A Judge, civil, criminal, and ecclesiastical, among the Mahomedans (*Mac. Mah Law*)

KAZI (*A,*) A judge Under the Muhammadan Empire the Kazi was a civil and criminal Judge Under British rule he became an adviser to the Courts on points of Muhammadan law He still holds a high place in Musalman communities, and leads the public prayers on great festivities He is also registrar of marriages and divorces for which he receives fees, he has also usually some endowment

Kazi askar (*H*) A military judge or a kazi attached to a military station (*Wil. Gloss 272*)

Kazi-ul-kozat. The Chief Kazi (*Mac Mah Law.*)

"Kazin" defined. Bur. Act 4, 1909, s 3 (2)

"KAZIN' means any small bank or ridge surrounding or dividing a field. Bur Act IV of 1909 (Embankment), S. 3, cl 2

Kedarnath (*H*) The Lord of Kedar, a name of Siwa

Keel A ship's bottom, the chief foundation timber, reaching from stem to stem holding the whole frame together. In an iron or steel ship, the term signifies the plates that correspond to the keel timbers of a wooden ship

Keelson. 'Keelson' is a line of joined timbers in a ship laid on the middle of the floor timbers over the keel, fastened with long bolts and clinched, thus binding the floor timbers to the keel, in iron ships, a combination of plates corresponding to the keelson timber of a wooden vessel

Keep. To hold, to retain in one's power or possession, not to lose or part with, to preserve to retain; to preserve in the same state or tenor, to maintain or carry on, conduct or manage, to have the control and management, as for example, to have the control and management of places where liquors are sold, of bawdy-houses, of gambling establishments etc to have in possession, use care or custody, hence to use and enjoy, to maintain, support as in a prison, or asylum, so also as applied to animals, to tend to feed to pasture, to supply with necessaries of life. As an intransitive verb, to remain sound, sweet, fresh or the like, (*as*) Meat will keep for two days

To 'keep' is to 'maintain, carry on, conduct, or manage.' (as) to keep a lodging house.

KEEP implies habitual, and not mere occasional, use for the purpose prohibited by a statute *R* v. *Strugnell*, (1866), L,R. 1 Q B D 93 (Keeping spirituous liquors).

KEEP in 6 & 7 Vict c 68, S 2 (Theatres), is not synonymous with "have," but does not imply habitual use. Keeping a house for one day for unlicensed stage plays is a contravention of the Act. *Shelley* v. *Bethell* (1884), 12 Q B D. 11, 15.

Within the rule of law which declares that a city is bound 'to keep' its streets, sidewalks, and bridges

Keep and retain

in a reasonably safe condition for travel, 'to keep' includes the idea expressed by the words 'to construct', 'to make' especially when coupled with the words 'in a reasonably safe condition for travel,'. To keep a street in such safe condition is to have it so, to make and remake it so

The requirement that a horse, to be exempt from attachment in execution, must be 'kept and used for team work,' does not require that he be exclusively kept for such purpose, as such statutes are to be construed liberally

In Acts exempting from attachment a horse 'kept and used for team work,' future intended use is as controlling on the question of exemption as any past use 'Kept and used' signifies that the animal must be kept for team work, or it must be kept with the honest intention and purpose of the owner, within a reasonable time thereafter, to use him for team work, as occasion may require, to enable him with the aid of the animal to procure a livelihood

To keep, preserve, save Things are *kept* at all times, and under all circumstances, they are *preserved* in circumstances of peculiar difficulty and danger, they are *saved* in the moment in which they are threatened with destruction, things are *kept* at pleasure, they are *preserved* by an exertion of power they are *saved* by the use of extraordinary means, the shepherd *keeps* his flock by simply watching over them, children are sometimes wonderfully *preserved* in the midst of the greatest dangers, things are frequently *saved* in the midst of fire by the exertions of those present

To keep, observe, fulfil To *keep* marks simply perseverance or continuance in a thing, a man *keeps* his word if he do not depart from it; to *observe* marks fidelity and consideration we *observe* a rule when we are careful to be guided by it to *fulfil* marks the perfection and consummation of that which one has kept, we *fulfil* a promise by acting in strict conformity to it A person is said to *keep* the law when he does not commit any violent breach of it, he *observes* every minutia in the law if he is anxious to show himself a good citizen, by this conduct he *fulfils* the intention legislator St. Paul recommends Christians to *keep* the faith, which they can never do effectually unless they *observe* all the precepts of our Saviour, and thereby *fulfil* the law.

Keep animals The word 'keep' as applied to animals has a peculiar signification. 'Keep' to tend; to feed, to pasture, to board, to maintain; to supply with necessaries of life.'

'Keep and bear arms' as used in an Act providing that the right of the people to keep and bear arms shall not be infringed, means 'to keep and bear arms of every description, and not such merely as are used by the militia'

Keep and dispose of as they think best. Where a will requested certain persons to pay testatrix's debts and deliver portions of her property to persons named, and the remainder to 'keep' and dispose of as they think best, it is equivalent to saying that they may hold and enjoy the residue or remainder absolutely as their own property.

Keep and retain 'Keep' is a very general term, and is variously applied. A person 'keeps' what is

Keep company.

his own, and 'retains' what is not taken from him He 'keeps' his farm or property, and 'retains' an office.

Keep company. "Keeping company," is a phrase commonly and generally understood as having a definite signification as applied to the relations of unmarried people. It imports attentions on the part of the young man toward a lady.

Where in a prosecution for bastardy the complaining witness testified that she was unmarried at the time of the trial, and that the defendant 'kept company' with her for a year and a half, the jury would properly understand her to mean by such phrase that he had been paying his addresses to her with a view to marriage, thus implying she was an unmarried woman.

Keep diary Maintain diary (record of daily transactions) in proper condition.

Keep false books A statement relating to a blacksmith, in relation to his business and trade, that 'he keeps false books' is slanderous, for it imputes a want of moral honesty to the blacksmith in relation to his trade.

Keep for the benefit of To 'keep' is to retain in one's power and possession, and to 'keep for the benefit of' is to keep for the use, enjoyment, and support, and the term 'to be kept' for the benefit of a legatee's children means to be kept for the use and support and enjoyment of such children, and creates a trust in their behalf.

Keep house The phrase 'keeping a house,' in its ordinary acceptation, is equivalent to 'having had it in possession or occupying it'

KEEP HOUSE. (*In Bankruptcy Law*) A term applied to a debtor who denies himself to creditors calling at his house. This constitutes an act of bankruptcy.

Keep house of ill-fame Frequenting, 'keeping, or maintaining' houses reputed to be houses of bawdy and ill-fame, imply much more than to live in such a house, as to 'keep' a hotel implies more than to live in one. The controlling head of the hotel 'keeps', it, while the individuals who take their meals and lodge in such hotel, and have no other domicile, 'live' therein; so the controlling head of a house of ill-fame, or a house reputed to be a house of ill-fame 'keeps' such house.

Keep place Under a statute making it unlawful for any person to sell or keep a place where intoxicating liquors are sold, the language '*keep a place*' involves a control and management of the place, and a clerk left temporarily in charge will not be held chargeable as a keeper of the place Persons having the general charge, control, management, and supervision have been held liable as for keeping.

To 'keep' a place in which any sports or games of chance are carried on or allowed is an appropriation of the place by the person in control for the conduct of his business therein.

To "keep" a place for a particular purpose, involves the idea that it is used for that purpose on more than one occasion; but how many or how frequent those occasions must be, is a question of

Keep a woman

fact to be determined in each case. (*Marks* v. *Benjamin*, 5 M. & W. 568)

'**To keep" a place or thing** involves the idea of having over it the immediate control, of a character more or less permanent. (*R.* v *Standard*, 33 L.J. M.C. 61, L. & C. 349)

Keep a man. A charge that a married woman 'keeps' a man not her husband would be understood by the ordinary hearer as imputing the crime of adultery.

Keep a mistress. The word 'kept' has many significations, according to the subjects to which it is applied But it is a common and well-established sense of it, when used in reference to connections between the sexes, to denote habitual and criminal carnal conversation amounting to cohabitation. Every one knows at once what is meant by the terms 'kept mistress,' or what is laid to the charge of a man who is said 'to keep a mistress.' It is not the meritorious act of providing for or maintaining a virtuous lady in her innocence, but it is the vicious one of having a wanton at his command for carnal gratification, and of keeping her for sexual uses. This is the natural import of the words in themselves, as the people in the country would universally understand them To say that a man 'kept' a woman amounts to a charge of incontinency against her, and is actionable

Keep record. When it is said that the clerk of a court shall keep a record, or that a record shall be kept by such clerk, reference is not made to the mere possession and control of the book in which matters are recorded, but rather to the work itself in writing up the record

"Keep" as used in an Act declaring that the Secretary of State shall "keep" the records of the state and records and papers belonging to the General Assembly, might be construed in its broadest sense to include the duty to preserve, the duty to prevent spoliation, the duty to prevent interlineation, the duty to prevent entries of any kind upon the record, to bring back the record when it is wrongfully taken from his office, and to replace leaves that have been torn from it, if he can recover them.

The term 'to keep a record,' as used in reference to legislative proceedings, means to make a permanent record of the whole proceedings.

Keep a woman. Where, in an action for defamation, it appeared that defendant said that plaintiff was keeping a woman not his wife, the court said: 'It is difficult to conceive how the charge that the plaintiff was keeping Mrs. B., when taken in connection with the other words spoken, or considered by themselves, could have been understood by the hearers in any other sense than that the plaintiff was guilty of criminal intercourse with her. If they did not mean that, what did they mean? The words 'keep' and 'keeping' have no doubt several meanings, but their signification in a particular case depends upon the context, the words with which or the circumstances under which they are used. But when it is said, in reference to a woman, that a man is 'keeping a woman,' the ordinary and popular construction of that language is that the relation between the parties is one which involves criminal intercourse,'

Keep in possession.

Keep in possession. The expression 'keeping' in possession of contraband liquors, involves the idea of continuity or habit, the words meaning to have habitually in possession, the word 'keeping' being defined as to maintain habitually, to have habitually in stock or for sale, and implies more than the mere having in temporary possession

Keep in repair. A covenant in a lease to 'repair, uphold, and support,' or 'to keep in repair and have as found,' or 'to repair and keep in repair,' or 'to keep in good repair, natural wear and tear excepted', all impose upon the covenantor the duty of rebuilding or restoring the premises destroyed or injured by the elements.

KEEP IN GOOD REPAIR A devise of a house, con ditioned that the devisee should 'keep it in good repair', requires a rebuilding of the house if destroy ed by fire

" 'To keep in good repair' means that during the whole term the premises shall be in good repair" (per *Rolfe, B , Payne* v *Haine*, 16 M. & W. 546).

Keep on the premises The word 'kept' as used in fire insurance policy providing that it shall be void if certain substances are kept on the premises, implies a use of the premises, as a place of deposit for the prohibited articles for a considerable period of time.

Keep open. Closing the front door of a saloon on Sunday, and leaving unfastened a back door, through which persons entered and bought drinks, was 'keeping open a dramshop,' within the meaning of a prohibitory statute.

To keep open, as applied to places of business and public houses, is a familiar expression constantly in use. It does not refer to the closing of shutters or the barring of doors. These may be done in order that the place may keep open. It is not met by the mere refusal to sell intoxicating liquors It means more. As to keep open is a standing invitation that gives the public a right of access and of entertainment, so not to keep open means that this invitation is withdrawn and that all public entertainment has ceased.

'Keeping open,' as used in an Act prohibiting 'keeping open' a shop on the Lord's day, should be construed to include permitting general access to a shop through the owner's dwelling-house to any one that may please to enter for the purposes of traffic, though the outer entrance were closed.

A statute making it an offence to keep a store open on the Sabbath day means such a keeping open as would induce customers to enter for the purpose of trade or traffic; and hence the mere fact that defendant's door was open for a few moments, but not kept open for any length of time, or for the purpose of inducing trade or traffic was insufficient to warrant conviction under the statute.

"KEEP" AND "KEEP OPEN". The words "keep" and "keep open," are entirely different things. Effect of words "keep open," in S. 391 of the Calcutta Municipal Act, considered. (58 Cal. 1293=35 C.W.N. 865.)

Keeper. The word 'Keeper' is defined to be one who has the care, custody, or superintending of anything, as the 'keeper' of a park,

Keeper of the Great Seal

'KEEPER,' as used in an Act giving a lien for the price of keeping livestock in favour of the keeper until paid, means the one in possession of the animals When a vicious animal is used in the business of a corporation, the president or manager, who controls and conducts the business and hires or discharges the animal is the keeper, and is responsible for any, injuries it may inflict.

"Keeper of a lodging house" defined. Ben Act 4 1871, S 1, Bur. Act 3, 1898, S. 2 (5).

"Keeper of a sarai" defined. Act 22, 1867, S 2.

Keeper of an asylum The words 'keeper of an asylum' mean any person, body of persons, or corpo ration which has the immediate superintendence, management, and control of an asylum and the patients therein

Keeper of bar room. The words 'dealer' and 'keeper' of a bar room are synonymous, and mean the same thing, as used in an indictment charging defendant with being a dealer or keeper of a bar room

Keeper of common gaming house 'Keeper,' as used in laws providing for the punishment of a keeper of a common gaming house, does not mean only one who is the proprietor or lessee thereof, or directly interested in the profits of the business or house If one has the general superintendence or charge, though simply an employee of the house, he is a keeper thereof One of the definitions which Webster gives of 'keeper' is 'one who has the care, custody, or superintendence of anything.' The word 'keeper' does not necessarily imply either ownership or the right to participate in the profits of the thing kept.

'Keeper of disorderly house,' in a penal statute, means the proprietor, and not prostitutes who occupy rooms in such house.

Keeper of dog. The head of a family who has possession and control of a house or premises, and permits a dog to be kept on the premises, is to be regarded as the 'keeper' of the dog

One who harbors dogs is liable as their 'keeper' for injuries caused by them, though he be not the owner of them.

The term 'keeper of a dog,' within the meaning of the rule that a keeper of a dog which is vicious is liable for injuries resulting therefrom, does not apply to a wife living with her husband upon premises owned by her

'Keeper of ferry,' as used in a Penal Act means a grantee or lessee having a beneficial interest in and control over the ferry, and does not refer to the ferryman.

Keeper of gaming device, is one who has the management of a device, when used for gaming purposes, or when it is set up with a view to attract people to risk their money on it, and does not include one who has a gaming device in his possession for harmless purposes.

Keeper of the Great Seal. Is a lord by his office, styled Lord Keeper of the Great Seal of England, and is of the King's Privy Council through his hands pass all charters, commissions and grants of

Keeper of the Great Seal.

the King, under the Great Seal, without which seal many of those grants and commissions are of no force in law, for the King is by interpretation of law a corporation, and passeth nothing but by the Great Seal, which is, as the public faith of the kingdom, in the high esteem and reputation justly attributed thereto. The Great Seal consists of two impressions, one being the very seal itself with the effigies of the King stamped on it, the other has an impression of the King's arms in the figure of a target, for matters of a smaller moment, as certificates, etc. And anciently, when the King travelled into France or other foreign kingdoms, there were two Great Seals, one went with the King, and another was left with the Custos Regni, or the Chancellor &c. If the Great Seal be altered, the same is notified in the Court of Chancery, and public proclamations made thereof by the Sheriffs, etc. (1 *Hale's* Hist. P.C. 171, 4. *Tomlin's Law Dic.*)

Keeper of the King's concience. The Lord High Chancellor.

Keeper of the privy seal. That officer, through whose hands all charters, pardons, etc, pass, signed by the King, before they come to the Great Seal, and somethings which do not pass the seal at all. (*Tomlin's Law Dic.*)

Keeping. The word '*keeping*' (in Penal Code, Act XLV of 1860), S. 363, connotes the fact that it is compatible with independence of action and movement in the object kept. It implies neither comprehension nor detention, but rather maintenance, protection and control, manifested, not by continual action but as available on necessity arising. (6 S L.R. 71=13 Cr. L J 736=16 Ind Cas 768, per *Pratt, J C. and Hayward, A J. C.*)

KEEPING, CUSTODY. The *keeping* amounts to little more than having purposely in one's possession, but *custody* is a particular kind of keeping, for the purpose of preventing an escape, inanimate objects may be in one's *keeping*, but a prisoner, or that which is in danger of getting away, is placed in *custody*. A person has in his *keeping* that which he values as the property of an absent friend, the officers of justice get into their *custody* those who have offended against the laws, or such property as has been stolen. (*Crabb.*)

Keeping is simple and generic. *Custody* is a specific *keeping*, involving responsibility, and is for the sake of obviating escape in the case of persons, and loss in the case of inanimate objects; as the *custody* of prisoners or documents. (*Smith. Syn. Dis.*)

Keeping down interest. Means the payment of interest periodically as it becomes due (*R.* v. *Hutchinson*, 4 E. and B. 211.)

Keeping silence. The expression "keeping silence" implies intentional concealment as distinguished from mere non-disclosure; the withholding must be fraudulent, as necessarily is the case when a material circumstance is intentionally concealed. (15 B. 585.)

Keep street in repair. To 'keep the street in repair,' as used in a contract requiring a street railway company to keep the street in repair, means 'to have it n such state that the ordinary and expected travel of he locality may pass with reasonable ease and afety.'

Kept woman.

"Keep the old stock good" The expression 'keep the old stock good,' as used in the lease of a flock of sheep, means that the same number and quality and ages are to be returned as has been taken out, but not necessarily the same sheep or their increase.

"Kefalat." Means incumbrances, pledge, security. The root meaning is "something to stand upon." (A.I.R. 1934 Pat. 217.)

Keffyet or Keffayet. Surplus, profit, advantage. Profit resulting from the revenue investigations of Meer Cossim, being an item of the soubahdarry abwab, or cesses arising from jaghires and other lands held at reduced rate by the principal officers of the Nazims, which were added to the public rent also increase of revenue from hastabood enquires into the resources of the khalsa lands. (*Fifth report.*)

Keikuli. (*Mal.*) This word was formerly used to denote a fee or fine paid by a tenant to the janmi upon a renewal of a lease (equivalent to Shilakasu). As it is now used, it generally means a bribe, (*Moore's Malabar Law.*)

Keikkuli or Shelakkasu (*Mal.*) Perquisite payable by a Verumpattom lessee at the renewal. (*Sun. Mal. Law.*)

Keippanom. (*Mal.*) Property given on marriage among the Mappillas returnable on the termination of the marriage to widow or children if she is dead, to tarwad in the absence of both. (*Sun. Mal. Law.*)

Keittima adoption (*in Burma*) is the adoption of a child publicly with the intention that the child shall inherit. [54 C L.J. 425=1931 P.C. 317=61 M.L.J. 898 (P.C.)]

Keivida otti. (*Mal.*) Is not a separate deed, but if the two first words are tacked to the Otti deed it becomes a condition that the mortgagee can never be dispossessed, that the land can never go out of his hands, that the mortgage is irredeemable. Kei is "hand" and vida is "without letting go."

Keividuga otti. (*Mal.*) Otti irredeemable except when the ottidar refuses to make further advance. (*Sun. Mal. Law.*)

Keno. 'Keno' is a game at which money or property may be lost or won, and is played by a device containing figures.

Kentah. Heaven, paradise. Pits, so called, used as prisons in the time of Jaffer Khan into which the Zamindars and renters were thrown, who were in arrears, to compel them to discover their resources.

Kentlege (*In Maritime Law.*) Permanent shipballast, and generally consisting of pigs of iron. (*Abbot.* Ship 5)

"Kept in regular course of business"—A daybook, which has been entered after four months from the happening of an event and the rough notes of which are not available is not a document which can be held to have been kept in the regular course of business. These remarks apply *a fortiori* to a ledger which is prepared from such a day-book. (155 I.C. 1006=7 R. Pesh. 106=A.I.R. 1935 Pesh. 44)

Kept woman. Mistress.

Kerala mahatmyam (*Mal*) A mythical history of Keralam in Sanskrit verse, never printed, authorship unknown, said to be one hundred and fifty or two hundred years old.

As regards this book Mr. Winterbotham writes in an appendix to the report of the Malabar Marriage Commission.—

"The 'Kerala Mahatmyam' or 'might of Malabar'is an often-quoted chronical in Sanskrit verse, ancient manuscripts of which, on palm-leaf, are believed to be possessed by some Numbudri and royal families. (*Moore's Malabar Law*)

Keralam or Kerala (*Mal*) The Western Coast from Gokarnam to Cape Comorin comprising Travancore, Cochin, Malabar and part of South Canara. (*Moore's Malabar Law*)

Keralolpatti (*Mal*) A history of Malabar in Malayalam, author unknown, said to be over two hundred years old. There are several versions extant one of which has been printed by the German Mission (*Moore's Malabar Law*)

Keram (*Mal*) Canarese mode of pronouncing Cheram.

The Sanskrit name for the cocoanut fruit. A law is in existence in Malabar, contained in book called Kera Kalpam, composed in the Sanskrit language but written in the Malayalam character, regulating the mode of planting cocoanut, betel-nut and jack trees, and the pepper-vine, and of settling the Kulikkanam *Note.*—Dr. Gundert's view is that Keram is the Canarese mode of pronouncing Cheram, *i e*, Chera or Malabar, and hence applied to its chief fruit, the cocoanut palm

Kettiadakam (*Mal*) Seizure of land mortgaged for a sum of money on failure of payment of the stipulated interest.

Kettiadakamkanom (*Mal.*) Usufructuary mortgage in which rent is absorbed by interest but with no pre-emption. (*Sun Mal. Law*)

Kettiadakanavan (*Mal*) The person who takes possession of a mortgaged estate on failure of payment of interest on the mortgage loan.

Key. An instrument for fastening and opening a lock. The delivery of the key of a warehouse is symbolical delivery of the goods stored therein.

KEYS are also implements of housebreaking. Though commonly used for lawful purposes, they are capable of being employed for purposes of housebreaking (*Bouvier.*)

The term "key", as used in a statute prohibiting any person from having in his possession at night burglars' tools, a key, picklock, etc., comprehends a skeleton key and any kind of a key employed for purposes of house-breaking.

KEY, DELIVERY OF Goods may be delivered to a purchaser by, among other ways, delivery of the key of the warehouse or other premises in which the goods are. This mode of effecting delivery has sometimes been termed "symbolic delivery", but the better view seems to be that it is an actual transfer of the means of control over the goods. "The key is not a symbol in the sense of representing the goods, but the delivery of the key gives the transferee a power over the goods which he had not before, and at the same time is an emphatic declaration (which being by manual act, instead of word, may be called symbolic) that the transferor intends no longer to meddle with the goods" (*Pollock and Wright*, Possession in the Common Law, 68.)

KEY TO OR OF A TERRITORY is the place that controls access to it.

Keyage A toll paid for heading and unloading merchandise at a quay port or wharf.

Khad (*Hazara dist. Pj.*), term for the right in land acquired by 'prescription.' (*Bad Pow.* II 649)

Khadim (*H*) A mosque servant, or one who has charge of a religious endowment

The word should not be interpreted to mean a servant, since it is a mode of describing the peculiar relationship which exists between a spiritual preceptor and his disciple. (35 I.C 56=12 Lah. 590=32 P L R. 867=1931 Cal 379.)

Khaekari village—Pucca and kachcha khaekars There are two distinct tenures called by the same name "Khækari" in Kumaun Division One class of tenure is the under-proprietary khækari, that is, pucca khækari, and the other the occupancy khækari or kachcha khaekari The first class consists of ex-proprietors who have still got under-proprietary interests in the land and are superior to ordinary occupancy tenants, while the second class consists of mere occupancy tenants The pucca khaekars are really representatives of old proprietors who hold the entire area of the village in virtue of having first reclaimed it from waste They are in all respects equal to proprietors with the exception that they cannot sell their holdings and they pay a small sum in addition to the quota of revenue due from the land recorded in their names The small sum is paid as malikana to the hissedar or proprietor, who was, however, no power to interfere with the pucca khaekar or his land, waste or cultivated Where the land granted was already held in propriety by others, those occupant proprietors, if they continued on the estate, sank into tenants of the new grantee, who by the custom of the country, was permitted to take one-third of the estate into his own immediate cultivation or *sir* Of the remainder of the estate the right of cultivation rested with the original occupants, who were now termed khaekars or occupants in distinction from thatwan or proprietor. If the grantee did not at once exercise to take part of the village into his own immediate possession, he was subsequently debarred from getting a footing there at all, and remained entitled to his normal dues Where the grantee or sayana or hissedar took a portion of the estate into his immediate cultivation, the village became a kachcha khækari village, and where the grantee did not at once so exercise his right, the village became a pucca khækari village. (1938 A.L J. 4)

Khagga. A cultivating Muhammadan caste of the Punjab claiming to be of qureshi origin.

Khaikar (local; Kumaon Hills, N.W.P.), a cultivator, one who wields the hoe (Khai) (*Bad. Pow.* II, 313.)

Khairat.

Khairat, (*H.*) Alms, charity, lands given as charitable endowments (the term is more especially applicable to grants or alms given by, or to Mohammadans) (*Wil Gloss* 274, *Bad. Pow* III, 81)

Khairat and Bishun prit—Meaning. (11 Pat.L. T. 403=A I R 1930 Pat 455)

The description of properties as '*Khairat*' and '*Bishun prit*' in revenue papers indicate that the properties belong to a religious or charitable endowment, but such entries however are not conclusive (9 Pat 885=127 I C 817=11 Pat L T 403=A.I R 1930 Pat 455)

"Khairat and Dharma" Meaning of the terms considered (116 I C 242=31 Bom L.R 135=A I R. 1929 Bom 127)

Khairat Kusbrit tenure Khairat Kusbrit is, as defined by Mr. Sifton's Settlement Report, a tenure given on the condition of the grantee maintaining the worship at a particular temple and it is resumable if the condition is not properly fulfilled. In the Ramgarh estate, there is a custom of resuming *khairat* grants on failure of male heirs in the male line of the original grantee (131 I C 788=12 Pat L. T. 891=A I R. 1931 Pat 224)

Khair-khwah (*H*) A well-wisher, a common signature to an anonymous petition or address (*Wil Gloss* 274)

Khajan A tidal swamp for reclamation (Bo) (*Bad Pow* III, 298)

'Khajan lands'. "Khajan land," as it is called is a special kind of land recognized as partly cultivable in villages on the sea and tidal creeks, and although such lands may not be actually cultivated, they are part of the lands of the village from which Government could derive some revenue in the forms of fees for digging earth, sand and keeping of boats thereon (154 I C 278=36 Bom L R. 761=A I R 1934 Bom 434)

Khakiana (*N W P*) Allowance by tenant to landlord to compensate for dust (Khak) in the grain (*Bad Pow* II, 192)

Khal A water channel, water course, through which water is carried to one's land

Khala. Dissolution of the marriage at the suit of the wife, in which she agrees to make her husband compensation for her loss by relinquishing to him an adequate portion of her peculiar property, and by foregoing claim for dower. (*Wil. Gloss* 505) also disinheriting a son, turning him out of doors. (*Wil. Gloss* 274)

Khalal The expression "khala" used in mortgage deed does not mean merely an unforeseen event or accident, but a disturbance of the nature above referred to. (27 A 488=2 A L J. 241=1905 A W N. 61)

Khalasa The name of a division of the Sikhs who followed the teaching of the first Guru, the peaceful Nanak, but would not enrol themselves as the Singhs or soldiers of Govind, the tenth Guru.

Khali. Not under crop.

Khalif. (*H*) The successor to sovereign power, especially applied to the successors of Mohammad,

Kham

who united the characters of head of the state and of the Mohammadan religion. In India the term commonly designates a tailor, sometimes a cook, also the head boy or monitor of a class. (*Wil. Gloss.* 275)

Khalifate or Khalifat or Khalapat Agitation to free all Moslem territories from non-Moslem interference

Khalimah (*A.*) The Muhammadan confession of faith 'There is but one God, and Muhammad is the Prophet of God' The Shiahs add, 'Ali is the Caliph of God.'

Khalipad Meaning of—Entry in Wajib-ul-arz. (25 N L R 16=116 I C 76=1929 Nag. 108)

Khalisa The exchequer, the office of government under the Mahomedan administration in which the business of the revenue department was transacted and which was continued during the early period of British Rule, as applied to lands, it means those of which the revenue remains the property of Government, not being made over in jagir or inam to any other parties Lands or villages held immediately of Government and of which the state is the manager or holder It is termed in some official papers the rent roll of the Government meaning the revenue receivable from Government or Khalsa lands. The term has been of late familiar as the collective denomination of the Sikh government and people

Khalsa (*H.*) Revenue not assigned to a private individual This term is applied to lands or villages over which no intermediate landlord exercises any right, but the revenue of which belongs solely to the State Thence it came to be the name of the revenue department, or exchequer under the Mogul Government. The same word, apparently as meaning free, not subject to any one else, was assumed as the name of the Sikhs when they became a distinct Government and people. Their religion is pantheistic, but they speak of the Khalsa as peculiarly the representation of god, the tenth Guru says. 'The image of the Almighty is the visible body of the immortal khalsa, the khalsa is everything, other divinities are as sand which slips through the fingers.'

Khalsa (*A*) **or Khalisa** A term applied to distinguish the 'Royal demesne' from that held by barons and chiefs (in Hindu and Rajput States), the Sikh power (in abstract) (Pj). In the Mughal Empire, the territory paying L R to the Imperial treasury, as distinct from that held in 'jagir' (*Bad. Pow.* I, 250, II, 454)

The term sometimes used as Khas and Kham for land held or managed by Government officers Land in Ajmer (*Bad Pow* II, 327, 331); term as used in Berar (*Bad Pow.* III, 350)

Khalsa-Kachahri The office of the royal exchequer. (*Wil. Gloss*)

Khalsa-mukarrari The designation of lands, which under the Mahomedan Government, were considered as permanently paying revenue to the state

Khalsa-sharifa. The Royal Exchequer.

Kham (*P* =raw) Land in revenue language is said to be so held when, for any reason, the proprietor is

Khamar.

not managing, but the land is sequestrated or managed by a Revenue officer. (*Bad. Pow.* II, 345.)

Khamar. (Ben.) unoccupied land brought under cultivation by the Zamindar and therefore his own. (*Bad. Pow*, I, 515 *note.*)

Khamavishi Land cultivated under the immediate superintendence of Government.

Kham-jamabandi, (*H*) Gross assessment before making deductions for charge assessment or settlement with the cultivators direct (*Wil. Gloss*, 275)

Kham-masul. Gross revenue, total collections, the gross revenue of a village or an estate before the allowed charges are deducted, a record or account of the gross revenue

Khamnavis (*H.*) A revenue accountant under the Mohammadan government. (*Wil. Gloss* 275.)

Kham-tadarak. Imperfect inquiry or investigation.

Kham-tahsil. (*H.*) Collection of the revenue in gross from the cultivators direct by the revenue officers of Government usually by native officers under the authority of the Collector. (*Wil. Gloss.* 275)

KHAM-TAHSIL (*N.W.P.*) and said to be under—when sequestrated for default, refusal of survey etc. (*Bad Pow.*)

Kham wasil, (*H.*) Gross revenue, total collections, the gross revenue of a village or an estate before the allowed charges are deducted a record or account of the gross revenue (*Wil Gloss* 275.)

Khan (*H*) A title borne by Mohammadan nobles especially when of Persian or Pathan descent: it is also a common adjunct to Afghan or Pathan names. (*Wil. Gloss*, 276.)

KHAN (Pj Frontier) A chief of a clan or section of a tribe. (*Bad. Pow* II, 633.)

Khan Bahadur. A title of honour bestowed by Government as a personal distinction The Hindu equivalent is Rao Bahadur, and these titles are higher than Khan Saheb and Rao Saheb.

Khanahdamad (*Pi.*) A son-in-law who resides with his father-in-law. (70 P.R. 1908=127 P.W.R 1908.)

Khanam (*Per*) The wife of a Khan, any lady of rank Among Moguls the title is commonly added to the names of all women.

Khanda bhogiam. 106 I.C. 426=1928 Mad. 35=54 M L J 76.

"Khandagutta cowle." Meaning of, *See* 41 L. W. 271=A I R 1935 Mad. 320=69 M L.J. 115.

"Khandan" Ordinarily the vernacular expression "Khandan," of which the corresponding English expression is 'family' means a group of descendants from one common ancestor called progenitor (36 All. 101 (P.C.) *Foll.* [108 I.C. 817=1 L.C. 733=A I R. 1928 Oudh 155]

"KHANDAN" denotes the descendants of one's paternal grandfather. (A.I.R. 1931 Oudh 177=8 O. W.N. 349)

Khandi.

The word applies to blood relations. (142 I C. 1=A.I.R. 1933 P.C. 71=64 M L.J 427=60 I A. 90 (P. C).]

The word "Khandan" ordinarily refers to the group of descendants who constitute the family of the progenitor to include illegitimate offspring, who from the necessities of the case cannot share in the family life or its worship or ceremonials [22 I C. 293 (302) *See also* 17 O C. 68=26 I C. 293.]

"Khandanirishtadaran". A will which authorised a widow of the testator to adopt contained a prohibition against the adoption of "any one of the relations of her family" (Khandanirishtadaran) She adopted her brother's daughter's son. *Held,* that the word "Khandan" was used by the testator in a general sense as applying to blood relations and not applying only to his lineal descendants and ascendants and his collaterals in the male line, that the boy adopted fell within the prohibited clause and that the adoption was invalid [60 I.A. 90=142 I C 1 =1933 A.L.J 260=1933 M W N 276=37 C.W N, 485 =35 Bom L R 487=57 C L J 237=37 L.W. 534=A I. R 1933 P C 71=64 M.L.J 427 (P C).]

Khandi A measure of weight and capacity. In relation to cattle means 20 heads. In relation to grain measurement. means 20 kudaos (a kudao being equal to 8 pailies) · also means 20 maunds (one maund equal to 40 seers or 80 lbs).

"Khan of phulera" defined. Reg 2, 1900, S 2 (d)

"The Khan of Phulera" means the person for the time being appointed and recognized by the Government as the Chief of Phulera [Reg II of 1900 (Hazara U Tanawal), S 2, cl (d)]

Khankah. A Muhammadan shrine

Khana khali (*N.W.P*)=(house empty), ownerless villages at first S. (*Bad Pow* II. 100 *note.*)

.Khan-khanan (*H*) Lord of Lords, a title borne by several nobles of the Court of Delhi under the Moghul Government (*Wil Gloss.* 276)

Khangi Zamindari (*H*) The household expenses of a Zamindar. In Jessore, an abwab or cess levied prior to the perpetual settlement upon the cultivators to provide for the support of the Zamindars it is applied also to land retained by a Zamindar in his own cultivation as a fund for his household expenses. (*Wil Gloss.* 277.)

Khandi (*Mar.*) A measure of weight and capacity, commonly termed candy, its value varies in different places. at Bombay it consists of twenty Bombay maunds, or for particular substances, of only eight maunds; at Poona it is of twenty Poona maunds, and varies therefore with the weight of the maund; in Malayalam it is equal to twenty-eight-tulams or 500 lb according to Prinsep's tables the candy of Anjengo is called 560 lb. in another statement it is said that in Malabar the khandy is equal to 560 lb. for sea custom, and 480 lbs. for land customs, while the country rates varies from 600 lb. to 720 lb.; the latest statements make the Madras khandi of 20 maunds 500 lb., the Bombay khandy 20 maunds 560 lbs., the Surat of 20 maunds 746. 6'6 lb. and the Travancore of 20 maunds 640 lbs. The number of maunds varies however and with it of course

Khandrika.

the value of the khandi. In Malabar there is also a khandi for timber about two feet, 4 in. square and in the Maratha country there is a land measure termed corruptly, Cundy, considered equal to 120 Bighas; but it varied formerly from 15 to 45 Bighas, and is also called 23 to 35. it also means, in Marathi, a score generally. (*Wil Gloss 278*)

"Khandrika." A Khandrika means a small hamlet It is a large block of land granted as inam, less than a village, but much larger than an ordinary inam. [56 C L.J 341=139 I C. 546=36 L.W 525=A.I R. 1932 P.C 238=63 M L.J 649 (P C.).

Kharaba. Failed, applied to crops which fail to ripen.

Kharaj. (*H.*) Tax, tribute, applied originally in an especial manner to the Tribute levied by the Mohammadans upon infidels after conquest, but latterly to the revenue raised from the land, in which sense it is still employed, importing the amount claimed by the state as its rent or share of the profits of land cultivation. hence Lakhiraj designates lands which are exempted from any such payment. (*Wil Gloss* 280.)

Kharat. Khirat under Mahomedan jurisprudence might include all kind of things which would not be covered by the word "charity" according to the English system of Jurisprudence,(146 I.C 1075=1923 Lah 961)

Kharbi Contribution made by each tenant for grazing of the malguzar's cattle

Kharch-i-pandan "Kharch i-pandan', which literally means betel-box expenses is a personal allowance to the wife customary among Mahomedan families of rank, especially in Upper India, fixed either before or after the marriage and varying according to the means and position of the parties. Although there is some analogy between this allowance and the pin money in the English system, it appears to stand on a different legal footing arising from difference in social institutions. Although both *kharch-i-pandan* and pin money are amounts for the personal expenses of the wife, there is a difference inasmuch as no obligation to spend the money during coverture attaches to the *kharch-i pandan* [51 A 612=27 A L. J 367=116 I.C 855 (2)=A I R 1929 A 281, *See also* 20 M L J. 614 (P C)] When the parties to the marriage are minors, the amount of this money is arranged for by their respective parents and guardians Kharch-i pandan, though somewhat analogous to pin-money in the English system, stands on a different legal footing Though pin-money is meant for the personal expenses of the wife, she may during coverture be made to spend it by the intercession and advice and at the instance of the husband ,but as regards kharch-i-pandan, though the money would be received and spent in the conjugal domicile, the husband has hardly any control over the wife's application of the allowance either in her adornment or in the consumption of the article from which it derives its name [12 Bom L R. 638=20 M. L.J 614=32 A 410=7 A.L J 871=14 C W.N. 855= 8 M L T. 147=12 C.L.J. 205=7 I.C. 237 (P.C.).]

Kharidadari (*Ben. Orissa*), 'purchased' villages. (*Bad Pow.* I. 569)

Kharif. The autumn harvest, *see Pad. Pow.* I. 13.

Khasab rasad Khewat

Kharif crop The autumn harvest: Crops sown at the beginning of the rains and reaped from October to December · Rice, Juar, Tur, Cotton.

Kharija (=outside), estates in Ben. separated at P S for Zamindaris. (*Bad. Pow.* I. 525)

Kharijalu (*Tel*) Fees deducted from the gross produce of village lands

Kharij jama 'Kharij jama' imports that the owner of the kharij jama land is an independent proprietor. [A I R. 1926 Pat. 152=90 I C 777.]

KHARIJ JAMA. *Prima facie* the word "khari' jama" import that the owner of the kharij jama land is an independent proprietor. (90 I C. 777=A.I.R. 1926 Pat 152)

Kharij-nama (*H*) A deed of separation or division, a deed for the partition of a joint estate, or for the separation of an individual share, or for making a dependent taluk separate and independent, also simply a deed of transfer (*Wil Gloss.* 280.)

Kharj (*H.*) Tribute, tax, revenue. (*Wil. Gloss* 279)

Kharij parta, Not assessed to land revenue.

Kharikam (*Mal*) A field that requires, or that is sown with, a khari of seed

Khari miti Meaning of—Karachi usage. According to Karachi usage the expression "Khari miti" in the case of ready goods means a day when the goods can be delivered (A.I.R. 1924 Sind 38 and A. I R 1928 Sind 103, *Dist.* A I.R. 1930 Lah. 635.)

Khariz (*P*) A tent made of Camel's hair.

Kharji (*A*) The name of a Muhammadan sect who exclude Ali from the number of the Caliphs.

Kharpose mukarrari joti grant. As the khatian jamabandi is not confined to raiyati lands, the entry in this khatian jamabandi of kharposh mukarrari lands does not show that they are raiyati lands, and if according to the rules of the Settlement Department, in force under tenancies are not to be recorded it must be taken that the tenants entered against the sub-numbers are raiyats and consequently the khorposhkar is a tenure-holder and his interest is transferable. (9 Pat L.T. 283=A.I.R. 1928 Pat. 105)

Kharral The name of a Punjab tribe Muhammadan in religion, but which many Hindu customs. they are reputed a turbulent, savage and thievish people, and bad cultivators.

Kharsandi (*hit toe, part of a hoof*). A fraction of a 'leg' of a 'bullock' of land (Pj. Frontier.) (*Bad. Pow.* II 639, 658.)

"Kharni." 12 O,C. 97.

Khas Private, peculiar, particular, proper. Revenue collected immediately by Government, without the agency of the Zemindars. Under the East India Company's government in Bengal, the term is generally applied when there is an immediate division of the actual produce between the government and the ryots, and also where the revenues of smaller portions than zemindaries are let to farm. (*Fifth report.*)

"Khasab rasad Khewat." The term 'Khewat' in the phrase 'khasab rasad khewat' admits of two in-

Khasaramba-bhumi.

terpretations and may mean "proprietary land or the land revenue assessed on that land."

Khasaramba-bhumi (*Karn.*) Lands cultivated by Zamindars through their own domestic slaves.

Khas bandi (*Mar.*) Distribution of the lands of a village without regard to contiguity, amongst certain families, and the assessment of each estate in the lump, without reference to measurement or rating (*Wil Gloss* 281)

Khas-mahal (*H.*) District held in the management of the government (*Wil Gloss* 282, *see also* 35 C W N 648)

KHASMAHAL (*H.*) The women's apartments in a Muhammadan palace

Khas navis, (*H.*) A private secretary, a clerk or accountant of the government. (*Wil. Gloss* 282)

Khas navisi (*H*) Relating to government accounts, an abwab or tax formerly levied in Bengal from the Zamindars for the expense of the government officers of account employed in registering the annual revenue settlements. (*Wil Gloss.* 282.)

Khasra Girdawari Crop inspection register, a government record

Khas-saguvali. Cultivation of lands by the Government for its own benefit, or by a Zamindar on his own account.

Khas sircar 57 I A. 339=58 Cal 858=33 L W 41 =53 C L J 1=33 Bom L R. 175=130 I C 616=35 C W.N 173=1931 M.W.N. 41=A.I R 1931 P C 1=60 M L J. 142 (P C)

Khas-tasil (*H.*) The collection of the revenue by the government or its officers direct from the cultivators, (*Wil Gloss.* 500)

Khat. A plot of land or group of lands (local, Kumaon hills, N.-W. P.) (*Bad Pow.* II, 317)

KHAT (*Assam*). An estate, group of lands (*Bad. Pow* III, 402)

Khata The ultimate or individual (family holding in a co-sharing village. (*Bad. Pow*)

KHATA (*H*) An account book, a day book a journal or ledger, also an account, account current-one kept with an individual, or of a particular concern with respect to the receipts and outlay upon it, an account of real or personal property, also the paper or book in which such accounts are kept (*Wil Gloss.* 283)

KHATA (*Tel*) Large scales for weighing grain in sacks

Khatadar or khetedar. Holder of a lot, *i,e*, to distinguish a holder of a share in the whole estate, as such from anyone not a co-sharer who might be a tenant or milkmaqbuza, or an arazidar, or a plot or sub-proprietor and not a khatadar (Upper India) (*Bad Pow.* I. 160)

Khatauni (*a*) Village statement showing demand and collections of sums paid in by headmen (*b*) A statement of the demand on a holding

An entry in the *khataun* of a settlement is to be accepted unless its incorrectness is demonstrated in a convincing manner. 1937 R.D. 458. *See also* 1937 R. D. 463.

Khel.

'Khatauni' and 'Khasras.' Unless instruments of title are involved, findings of fact arrived at by a Court of first appeal cannot be questioned in second appeal, although documentary evidence has to be considered *"Khataunis"* and *"Khasras"* cannot always be regarded as instruments of title Where the entries in the *"Khataunis"* and the *"Khasras"* are relied on by the parties with reference to the question whether a certain plot was occupied by the plaintiff alone or by him and the defendant jointly, such entries are mere items of evidence and cannot be regarded as instruments of title 168 I C. 302=1937 O W N 544=A.I R 1937 Oudh 370

Khatedar. Used in Bombay and Berar of the 'registered occupant (*Bad Pow* III, 351, 354, 369)

Khatib (*A*) A preacher. A reader of prayers in a mosque (*Mac Mhn. Law*), The officer who preaches in the mosque on Fridays and feast days

Khatt kubala A writing preparatory to a deed. In Bengal a deed of conditional sale, the same as Bay-bil-wafa

Khattak. The name of a Pathan tribe settled within our Frontier near Kohat.

Khattar The name of a tribe in the Punjab claiming kinship with the Awans

Khatu (*H.*) A title commonly added to the name of Pathan women

Khawas (*H*) Nobles, grandees, attendants, personal servants, usually the favourite or confidential attendant on a person of rank, a boy or female servant. In the west of India the children of a female slave belonging to a Charanor Rajput, the property of the owner of the slave, but treated as a member of the family, the word written Chiaus, is the origin of the English word Chouse In puranıya the term is applied to slaves in general, whether domestic or agricultural, but the khawas is usually originally a free person who has become a voluntary slave for protection and support, and in some cases, has a grant of land from the Zamindar for his subsistence, another kind of khawas is more of a client or retainer of some wealthy person than a slave, although nominally such (*Wil Gloss* 284)

Khawind An honorific title of address, lord, master.

Khazane (the Treasury.)

Khazanchi, native treasurer (*Bad. Pow*)

Khedai--afiyal. Expenses incurred in catching wild Elephants, for which under the Mohammadan government, a tax was levied upon certain districts in Bengal and Sylhet, the case or abwab so levied (*Wil Gloss.* 284)

Khedive Viceroy of Egypt.

Khekar. Tenure history and origin of. 119 I.C. 514=1929 A. 223.

Khel (*Pj. Frontier*) A village : *e* the small tribal group located in one place. (*Bad Pow.* II, 647.)

KHEL (*Khel.*) Berar, formerly used for a division of family land estate-patti. (*Bad. Pow.* iii, 364.)

Khera.

KHEL A grouping of the Raja's subjects in Assam, *see* (*Bad. Pow* iii 400, 419, 420, note 436), in Kachar, joint ownership. (*Bad Pow* iii. 435, 436)

Khera (*N.-W. P. & Oudh.*) The parent village, original centre of first location of a clan or family (*Bad. Pow.* ii 125, 135.)

Kherij-jama (*Mar.*) Extra collections, miscellaneous items of revenue. (*Wil Gloss.* 280)

Khet (*H*) A field, a tract of land especially fit for cultivation; a cultivated field, an agricultural division of land, in Bengal, formerly considered as equal to 60 Bighas (*Wil Gloss* 284.)

Khet-bat (*division field by field*) (*Oudh*) Describes the division where each family share is made up not of one compact lot, but of bits scattered about over the whole area, often through several villages (*Bad Pow* ii 258, 675)

Khevat The term 'Khevat' in the phrase 'Hasab rasad Khevat' may mean proprietary land or the land revenue assessed on the land 6 L.L J 398=85 I C 337=A I R 1925 Lah 127, 17 R D 985=1933 Oudh 514, 1938 R D 194=1938 O W N. 58 (B R)

Khewat (*N W. P*) One of the old survey records, a list of co-sharers and proprietors in the village with their interests and share of revenue payable (*Bad Pow.* ii. 88)

Khiar (*A*) Option, selection; in Mohammadan law an optional completion or dissolution of an agreement of sale under various circumstances, (*Wil Gloss* 285)

Khichadi A mixed village under the khot landlord (Konkan, Bo) *i e* part of the tenants are old hereditary, and part not. (*Bad. Pow* iii 279)

Khid-mutgar (*H*) Male table servant to a European officer in India.

Khilafat (*H*) Sovereignty, the office of Khalif. (*Wil. Gloss* 275)

Khiraj (*A*) The land revenue, the term survives chiefly in the form lakhiraj Revenue free (*Bad. Pow* i 267)

Khiraj-khaidar (*Assam*) Holder of a larger, estate or holding, who pays his revenue direct and not through a 'Mauzadar.' (*Bad Pow.* iii 405)

Khiraji-bhumi (*Tel*) Land paying revenue, to government. (*Wil Gloss* 280)

Khirakasi. The name of a sect of Hindus in Rawalpindi who repudiate idolatry and Brahmanism

Khirudu (*Tel*) Ground in cultivation.

Khiyar. A local land measure (Cachar) (*Bad. Pow* iii, 430, 448 *note.*)

Khoja (*H*) A eunuch, A tribe of Indian Mohammadans (*Wil Gloss.* 286)

Khoja mahamadans The Hindu law only applies to *Khoja muhammadans* with regard to the question of succession and inheritance. The principles of Hindu law relating to joint family are not applicable to khojas. 107 I.C. 211.

Khoti tenure.

Khondu (*Tel*) Ripe grain.

Khor (*H*) is the stump, hence a tenant who reclaims the land and digs out the stumps (*Bad. Pow.* i. 579)

Khorkar. A kind of tenant in Ch Nagpur.

Khor-o-posh (*P-food and clothing*) (*Ben*) A grant for the support of minor members of a chief's or Raja's family. (*Bad. Pow.* i. 580)

Khorposh grants. In common parlance a grant to any member of the family would be a khorposh grant It need not necessarily be limited to grants by a senior member of the family to a junior member 114 I.C 194=A I.R. 1928 Pat. 294 *See also* 12 Pat. 147=142 I C. 495=A I.R 1932 Pat 337.

Khostwal A Shiah tribe of Afghanistan situated between the Mangals on the West and the Waziris on the East and having the Turis next them on the north

"Khot" defined (*See also* Managing Khot) Bom. Act 1, 1880, S 3 (2)

KHOT (*Bombay, Konkan*), originally a revenue farmer, whether as a former landowner or local land officer with an ancient hereditary title, or otherwise, now proprietor (*Bad Pow.* iii 287, 8)

"Khot" includes (*a*) a mortgagee lawfully in possession of khotki, (*b*) all co-sharers in a khotki Bom. Act I of 1880 (Khoti Settlement) S 3, cl 2.

Khota (*Mar*) A farmer of land revenue or customs, any contractor or monopolist in some of the Maratha provinces, an officer exercising hereditarily the office of collecting the government revenue, also one appointed to that duty. (*Wil Gloss* 286).

Khotbah (*A*) An oration delivered every Friday after the forenoon service in the principal mosques, in praise of God, Mahomed, and his descendants, and prayers for the ruling power. (*Mac Mhn Law*)

Khotgi the 'khotship' estate, privileges, &c, of a khot, (*Bad. Pow*)

Khoti the tenure of a khot. (*Bad Pow*)

Khot-khasgi the private or family holding of the khot (cf Gharkhed, Sir &c,) (*Bad. Pow*)

Khoti khasgi Khoti Khasgi lands in the hands of a co-sharer, Khot or Khoti Nisbat lands in the hands of his alienee are not exempt from payment of Faida 46 B 819=24 Bom L R 358=A.I R. 1922 Bom 235.

"Khoti-land" defined. Bom. Act. 1, 1880, S. 3 (10).

"KHOTI-LAND" means land in respect of which a khot has, as such, any right or interest and which is not dhara land. Bom. Act I of 1880 (Khoti Settlement) S. 3, cl 10.

All khoti lands are liable to pay Faida, that is, the Khot's profits. It constitutes his remuneration for the trouble and risk of collecting the revenue of the village and managing the village. 46 B. 819=24 Bom.L.R. 358=A I.R. 1922 Bom. 235.

Khoti tenure The relation between a *khot* and his tenant is not strictly that of landlord and tenant. The *khot* is not a landlord, but in theory a farmer of

Khotki.

land revenue. 156 I.C. 339=7 R.B. 506=36 Bom.L R. 1253=A.I R 1935 Bom. 98

"Khotki" defined Bom Act 1, 1880, S. 3 (3).

"KHOTKI" means the aggregate of the rights and interests vested in a khot as such: Bom. Act I of 1880 (Khoti Settlement) S 3, cl. 3.

'Khraja Kharch' Meaning of. *See* 24 I.C. 58.

Khu-abadi (*N W P*) a kind of tenure see (*Bad Pow* II 143).

Khudian. A cultivator.

Khud-kasht (*khud P. self own, Kasht-cult*) (1) (Ben) a resident hereditary tenant under a Zemindar one of the (presumably) original village holders of their own land, who, but for the growth of the landlord's power, would have been 'proprietor' in some sense, (2) (N W Pj &c) land cultivated by a proprietor (for himself) in a co-sharing village estate, and for which he pays rent to the whole body, in that case khud-kasht is not the same as 'Sir,' (*Bad Pow* I 599 II 51) tenants (Ben) under protection of by-law (*Bad. Pow.* I. 628)

KHUD-KASHT (*H.*), is a resident cultivator, one cultivating his own hereditary lands, either under a Zamindar or as a coparcener in a village In Bengal one class of them holding their lands at fixed rates by hereditary right, sometimes sub-let them, except the part about their dwelling in which they continue to reside, and although ceasing to cultivate, and engaged in trade or business they retain their designation of khud kasht The term is also applied in the North western provinces to lands which the proprietor, or the payer of the government revenue, cultivates himself (*Wil Gloss 267*) 5 Pat 735= 1926 P C. 60, 18 C.W N 828=25 I C. 562, 29 M L J 144=29 I C 559.

Though *khudkasht* is by usual village custom let out by the holder, unless a co-sharer is a sole *khudkasht* holder, he would not have the right to dispose of the fields concerned by any village custom 1938 R D 323. *See also* 13 R D 501

Khudkasht malikan *Khudkasht* means land actually cultivated by the proprietor himself or in the case of a joint *Khudkasht* by the holders jointly The word "*Malikan*" cannot mean in the case of *Khudkasht* "any proprietors who may at any particular time be recorded as proprietors"; it must mean certain definite proprietors 14 L.R 382 (Rev.)=17 R.D 521

Khudkhasht raiyat. A *khudkasht* raiyat is a resident hereditary cultivator in contradistinction to *Paikast* raiyat that is a migratory tenant. Where certain tenants were resident within the *patni mahal* but outside the jungle tract which did not form part of any village and where no man could live, *held* that they were *khudkhast* raiyats all the same (20 W R 426. *relied on.*) 54 Cal. 788=106 I.C. 71=1928 Cal 52.

Khula-vesh (*Pj. Frontier*), method of allotting land by counting each individual 'mouth' or head in each family (*Bad. Pow.* II 648).

Khunt; a lot; division of the Dravidian village in Ch Nagpur (*Bad. Pow* I. 576).

Kick-kicking.

Khunt-bator-vat. Tenure by ancestral shares in a village, as existing in Azimgarh. (*Wil Gloss.* 287).

Khunta khuntaiti (*N W.P. Benares*), a share in the ancestral holding. a shared village. (*H.* equivalent of pattidari) (*Bad. Pow.* II. 127).

Khunt-kati, the first clearer of kunt or division of a Dravidian village (*Bad. Pow.* I. 576).

Khurli A khurli is merely a trough for feeding cattle, made of mud. It is a structure of a purely temporary character which usually breaks down when it rains 134 I C. 294=32 P.L.R 467=A.I.R. 1931 Lah. 489.

Khush or Khush-bash (*H*) One who lives pleasantly or at his ease, applied in various senses in different places in Sylhet to a petty proprietor, one who possesses a small piece of ground, with a dwelling on it, for which he pays revenue In Cuttack to a resident in a village who pays no rent for the ground on which his dwelling stands, In Birbhum it denoted a remission or assignment of revenue to enable the grantee to live more comfortably. In the Dakhin, and in other places, it usually means a cultivator holding land at an easy or quit-rent. (*Wil Gloss.* 288)

Khushbash (*P a dweller at ease, or at pleasure*), a voluntary settler, one who dwells in a place at the invitation of the older settlers, or who dwells at ease being a tenant on more or less favourable terms (*Bad. Pow* I 555, III 363).

Khushbhash inam The word "*khushbhas*" means a cultivator holding land at an easy or quit-rent and there is no service in the case of *khushbhas* inam Where the lands were originally granted for service to the inamdar but subsequently it became '*khushbhas*' and the service was committed for a quit-rent, *held*, that the lands so held became alienable 30 Bom. L R. 917

Khush kabala (*H*) Unconditional engagement, sale without stipulation the opposite of the preceding (*Wil Gloss.* 244).

Khutbah (*A*) A public prayer or discourse pronounced in a mosque at Friday service.

Khwabgah (*H*) A sleeping apartment in a palace.

Khyberi The common name of the tribes occupying the Khyber pass, the Afridis, the Shinwaris, and others.

'Kiandan' *See* 18 C W.N 401=22 I C 293 (P C).

Kias (*H.*) Reasoning, inference, logical deduction in the absence of a positive law, judgment on the merits of a case (*Wil Gloss.* 288).

Kick upstairs (*in English Politics*). To shelve an inconvenient politician by giving him a peerage or titular promotion to the House of Lords.

Kicker A "kicker" is a device for opening the door of stoves by the use of the foot.

Kick-kicking The term "kick", as applied to railroad cars, describes the operation of placing a car on the siding. It may be described as follows: "The car to be kicked standing between the engine and the switch, the switch is thrown to the proper position, the car uncoupled from the engine, and the

Kick-kicking.

engine started, shoving the uncoupled cars as it moves. When sufficient momentum has been given the car to move it to the desired spot, the movement of the engine is stopped, and the car allowed to move on; some one riding on the car to apply the brakes at the proper place for stopping"

"What is known in railroad parlance as "kicking" refers to the practice of uncoupling one car from the other cars of a train and imparting to such car sufficient momentum by the switch engine, so that the car will be carried a short distance by force of such momentum."

Kick signal There is a difference between a "back-up signal" and a "kick signal" A kick signal means that the speed shall be sufficiently increased to throw the cut-off car into the side track by the force of the increased momentum, without following the car into the switch with the rest of the train

Kidakkora (*Mal.*) A form of Nayar marriage in Palghat (*Sun. Mal Law*)

Kidel Kiddle. "Kidels is a proper name for open weirs whereby fish are caught," (2 Inst. 38, Vf, *Cowel, Termes de la Ley, Stroude*)

Kidnapping. At common law kidnapping consists in the forcible abduction or stealing away of a man, woman or child from his or her own country and sending him or her into another country. Kidnapping in common law is to be regarded as an aggravated species of false imprisonment, so that in addition to the essential elements of false imprisonment, to constitute the common law offence proper, another element was necessary, *viz.*, that of sending away the person on whom the offence was committed from his own country into another.

OTHER DEFINITIONS. "A false imprisonment, which it always includes aggravated by the carrying of the person imprisoned to some other place. 2 Bishop Cr L 750

"Seizure and removal for the purpose of transportation, enslavement, or involuntary service" (*Wharton Cr L* 590)

"The unlawful removal of a person from his own country or state against his will"

"The forcible abduction and conveying away of a man, woman, or child." (*Tomlin's Law Dic*)

KIDNAPPING is not a *nomen juris*, but means the forcible seizure and carrying away of any person of either sex or of any age

KIDNAPPING is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship (*Penal Code, S.* 359)

"Kidnapping from British India" defined. Act 45, 1860, S 360

Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to kidnap that person from British India. (*Penal Code, S.* 360.)

"Kidnapping from lawful guardianship" defined Act 45, 1860, S. 361.

Whoever takes or entices any minor under four teen years of age if a male, or under sixteen years

Kill.

of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. (*Penal Code*, S. 361.)

Kifayat (*H*) Surplus, profit, advantage, profit or increase in the amount of revenue received by the government, whether by raising the rate of assessment or imposing additional taxes, in the old revenue accounts several items of increase are so denominated as (*Wil Gloss.* 288)

Kifayat-i-Faujdari (*H.*) Increased assessment on the frontier lands held by Military governors, levied by them at first for their own benefit, but brought to the credit of the government by Kasim Ali-khan. (*Wil. Gloss.* S 288.)

Kifayat-i-hasti-o bud (*H*) Increase of actual and past assessment founded on a revision of the value of the lands and resumption of illegal or lapsed alienations (*Wil Gloss* 288.)

Kifayat-i-sair, *H.* Increase of the revenue derived from miscellaneous items of taxation, whether effected by additional imports or reduction of charges. (*Wil. Gloss.* 289.)

Kila (*H*) A fort, a fortress, a castle, a hill fort. In Cuttack the term applies to estates or Zamindars in the Jangal and hill tracts on the western border, some of considerable extent, paying tribute, but in some respects subject to their own rajas. (*Wil. Gloss*)

Kilajat (*H*) Forts, in Orissa the term is used collectively to designate lands chiefly in the hill country bordering on the plains, and held at a quit rent on the tenure of military service in defending the low country from the ravages of the wild mountain tribes, for which as well as their own safety, the Zamindars occupy numerous Kilas or forts. (*Wil. Gloss.* 289)

Kilayikurujanmam or Kilayijanmam Means right to the lower kinds of paramba produce when the higher (*i e* Naluphayam or cocoanut, areca and Jack trees, and pepper-vine) belong to another. (*Log. Mal Man.*)

Kilazikur jenmum or kilayi jenmum Right to lower kinds of produce when the higher belongs to another. (*Sun Mal Law*)

Kill; Killing (*See* Murder, Homicide,) "Killing is causing the death, of a person by an act or omission but for which the person killed would not have died when he did, and which is directly and immediately connected with the death. The question whether a given act or omission is directly and immediately connected with the death of any person, is a question of degree dependent upon the circumtances of each particular case. (*Steph.* Cr. 151, 152)

In a popular language, as well as in legal phraseology, a party is said to have "killed" one on whom he has inflicted a blow of which the wounded person soon dies.

A charge of "killing" a human being signifies a voluntary and unlawful killing.

TO KILL, MURDER, ASSASSINATE, SLAY, OR SLAUGHTER. To *kill* is the general and the indefinite term

Kill

signifying simply to take away life, to *murder* is to kill with open violence and injustice, to *assassinate* is to murder by surprise, or by means of lying in wait to *slay* is to kill in battle, to *kill* is applicable to men, animals, and also vegetables, to *murder* and *assassinate* to men only to *slay* mostly to men, but sometimes to animals, to *slaughter* only to animals in the proper sense, but it may be applied to men in the improper sense, when they are killed like brutes, either as to the numbers or to the manner of killing them.

Kill, murder, slay, assassinate, slaughter To *kill* is the broadest and simplest term meaning no more than to deprive of life To *murder* was anciently employed only of the secret killing of one human being by another, but now means the killing with malicious forethought and intention To *assassinate* is to murder by secret, close, and sudden attack upon the person, who is generally one of importance *Slay* is to kill with a weapon, or by violence and in a sort of animal way, that is, with little thought but that of destroying animal life, whether in men or other animals It is violent, but not necessarily illegal, as, to *slay* in battle *Slaughter* commonly denotes killing in a promiscuous way, or extensively (*Smith Syn Dis.*)

Killadar (*Per*) The Governor of a Fort.

Killadari The office and emoluments of a killadar, or the revenues to be collected by him, or a tract of country formerly under a Killadar.

Killa-vartala (*Mar*) A cess imposed upon the peasant in lieu of a reduction in the amount of the grain with which they were bound to supply the garrison of a fort. (*Wil Gloss* 289.)

Kiln. The term "Kiln" conveys the idea of an outer structure of a permanent nature within which bricks are burnt (49 Cal 1014 *Rel on*) 111 I.C 736=29 Cr L J 628=A I R, 1928 Mad 1195

Kilogram A French measure of weight

Kimat Having regard to the subject which underlies the provisions as to pre-emption in a village administration paper, viz, the prevention thereby of intrusion of strangers into the village community, the word kimat should be interpreted to include the consideration given for a usufructuary mortgage with possession as well as for a sale. 28 A. 454=3 A L J. 215=(1906) A.W N 82

"Kin"—"Nearest of kin" Primarily the words "nearest of kin" indicate the nearest degree of consanguinity, and they are perhaps more frequently used in this sense than in any other

The words "nearest of kin," as used in a residuary clause of a will, mean nearest blood relation, when the context does not imply the contrary.

Kindergarten, Literally, a garden of children, a word devised by Friedar W A. Froebel, German philosopher and educator, to apply to a system which he elaborated for the instruction of children of very tender years. (*Ame Cyc*)

"Children's garden" ought to be taken in its allegorical sense. The child is a plant, the school is a garden, and Froebel calls teachers "gardeners of children." His system guides the children's inclination for activity into organized movement, and invests the games, unknown to the child, with an ethical and educational value, teaching, besides physical exercises, the habits of discipline, self-control, and harmonious action and purpose, together with some definite lesson of fact; and an act making a city a school district, to be governed by a city board of education, and giving such board control over the public schools, with the power to determine the course of study, and for adopting such a system into the methods of schools under its supervision

Kindred A term employed to designate a relation by birth or consanguinity *Kindred*, are a certain body of persons of kin or related to each other. There are three degrees of Kindred in our law, one in the right line descending, another in the right line ascending, and the third in the collateral line (*Tomlin's Law Dic*)

KINDRED means relations by blood, and includes collateral as well as lineal relations It includes children and their descendants, brothers and sisters, nieces and nephews, cousins, uncles, aunts, and other next of kin

Neither husband nor wife is of "kin" to the other (Wms Exs 983, 984), but persons related by the half-blood are of "kin" equally with those of the whole-blood

"A man's 'kindred' in the proper signification of the word, means such persons as are related to him by blood, and accordingly relations by marriage are generally incapable of bringing themselves within the description of 'next-of-kin,' in a will, and..... neither husband nor wife can be entitled under a bequest to the 'next-of-kin' of either of them" (Williams, Executors and Administrators, 10th Ed. 881)

In view of the conception of the marriage relationship as understood by Hindu Jurists, a Hindu wife may be deemed as standing in the relation of kindred to her husband 11 I.C. 67 (71)=14 C L.J. 20=15 C W N. 945, (*per* Mookerjee, J)

The term "kindred" (Oxford Dict vol, V, p. 702) though ordinarily employed to indicate relationship by blood or descent, is occasionally, though perhaps not very correctly from the point of view of the technicalities of English Jurisprudence, used to indicate relationship by marriage. 11 I.C. 67 (71)= 14 C L J 20=15 C W N. 945.

By the rules of the common law the term "all kindred" includes only those who are legitimate, unless a different intention is clearly manifested.

An Act authorising a bastard child to inherit from its parents, or their lineal and collective kindred, is not confined to lawful kindred, but is to be construed, in connection with the subject of the statute, to include actual kindred.

Kindred or consanguinity. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor, Act XXXIX of 1925 (Succession) 24. *see* 11 I C. 67 (71)=14 C L J 20=15 C W N. 945.

Kindred, relationship, affinity, consanguinity. "*Kindred*" in the most general sense may embrace all mankind, or refer to particular families or com-

munities; it depends upon possession the common property of humanity, the philanthropist claims kindred with all who are unfortunate, when it is in his power to relieve them. *Relationship* is a state less general than kindred, but more extended than either affinity or consanguinity, it applies to particular families only, but it applies to all of the same family, whether remotely or distantly related *Affinity* denotes a close relationship, whether of an artificial or a natural kind. there is an affinity between the husband and the wife in consequence of the marriage tie, and there is an affinity between those who descend from the same parents or relations in a direct line. *Consanguinity* is, strictly speaking this latter species of descent, and the term is mostly employed in all questions of law respecting descent and inheritance. (*Crabb*)

AFFINITY AND CONSANGUINITY Affinity is a connection formed by marriage, which places the husband in the same degree of nominal propinquity to the relations of the wife as that in which she herself stands towards them, and gives to the wife the same reciprocal connection with the relations of the husband. It is used in contradistinction to consanguinity. It is no real kinship, and does not exist between the blood relations of the husband and wife, nor between the husband and wife themselves Consanguinity imports blood through some common ancestor. It may be either lineal or collateral Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the other.

Kinetoscope. The kinetoscope, briefly described is a mechanical contrivance involving, among other things, a transparent or translucent narrow film of very great length, on which a series of photographs, very extensive in number, are taken which photographs consecutively represent the continuous development of movement or action in the persons or things which are the subjects of such photographs. This film by a photographic device is caused to pass with great rapidity by a set of lenses, through which, by the use of a powerful electric light, the scenes which are the subject of the series of photographs are much enlarged and thrown upon a white screen. As one picture of the scene photographed succeeds another upon the screen with great rapidity, the impression produced upon the retina of the eye by the preceding picture continues longer than does the existence on the screen of the picture which produces the impression. As a result the impression produced by one picture lasts approximately until the impression produced by the next succeeding picture occurs The result is substantially that one sees a continuous moving picture, reproducing the action and movement of the scenes photographed upon the film.

"King" defined, (*See also* Queen) E.B. & A. Act 1,1909, S 5 (31), U. P. Act 1, 1904, S 4 (22), Bom. Act 1, 1904, S. 3.

King Rex: A Monarch or Potentate, who rules singly and sovereignly over a people; or he that has the highest power and rule in the land The King is the head of the State. (*See* Bract. lib. 1 c. 8.) The Supreme Executive Power of these Kingdoms is vested by the English laws in a single person, the King or Queen; for it matters not to which sex the

Crown descends, but the person entitled to it, whether Male or Female, is immediately invested with all the ensigns, rights, and prerogatives of Sovereign Power (*Tomlin's Law Dic.*)

"King can do no wrong" This is a maxim of English law. It means that the king is not legally responsible for anything he may be pleased to do or for any omission. (*Aus. Jur. Sec. VI.*)

KINGLY ROYAL REGAL. *Kingly* means like a king; *Royal* belonging to the person of a king, *Regal*, belonging to the attributes of a king A *kingly* form, a *royal* residence, *regal* magnificence. (*Smith Syn Dis*)

King's Advocate, in Scotland. His office is similar, but in some respects superior, to that of the King's Attorney-General in England. It is his province to prosecute all criminal actions and bring the criminals to punishment and at the expense of the public (*Scotch Dict Tomlin's Law Dic*)

King's Bench The Supreme Court of Common Law in the Kingdom, (4 Inst. 73) The Court of King's Bench is so called because the King used formerly to sit in Court in person During the reign of a queen it is called the Queen's Bench; and under the usurpation in Cromwell's time, it was styled the Upper Bench (*Tomlin's Law Dic*)

King's Enemies This phrase in a bill of lading means, or at all events includes, the enemies of the Sovereign of the person who made the bill of lading. (*Russel* v *Niemann*, 1864, 17 C B N S 163) It does not include traitorous subjects (*Holmes*, Common Law, 177), and probably only extends to States recognised as at war with the Sovereign of the ship owner (*Carver* Carriage by Sea, 4th ed, 1905, pp. 11, 81, citing The Teutonia, 1872, L.R. 4 P C 171, and the Heinrich, 1871, L R 3 A. & E 424, Scrutton, Charter-Parties and Bills of Lading, citing *Specne* v. *Chadwick*, 1847, 10 Q.B. 517, *Ency of the Laws of England*)

King's Evidence An accomplice, who an implied promise of pardon is admitted as evidence for the crown against his accomplices.

King's Proctor is the proctor or solicitor representing the Crown in the Courts of Probate and Divorce.

King's Remembrancer (Queen's Remembrancer) For merely an officer of the Exchequer, now of the Supreme Court The office is one of great antiquity, the holder whereof was anciently called Remembrancer, Memorator, and Remembrator (*see* Maddox's Hist of the Exchequer, (*Ency. of the Laws of England*)

Kingdom. The term "kingdom", in its strict sense, means territories belonging to the king.

KINSMAN, RELATIVE. *Kinsman* is one of the same kin, and so related by blood *Relative* is one connected either by blood or by affinity.

"Relative has indeed, within my memory, by a ridiculous affectation of false and unfounded accuracy, crept into improper use to the exclusion of relation." Tooke (*Smith. Syn. Dis*).

Kirah. (*A.*) Homicide by compulsion. (*Mac. Mhn, Law.*)

Kirani.

Kirani or Kanakkappilla. (*Mal*) "Writer or Accountant. In Malabar the first used exclusively for Portuguese and half-caste writers, the second is also used for them, but I find it was also the common name for the Raja's accountants in the Kadattanad, Kottayam and Chirakkal Rajyams" (*Log. Mal. Man.*)

Kirant, a minute fraction of a rupee used in describing land shares (N.W.P.), (*Bad Pow* ii 187.)

Kiraz, Repaying, borrowing, a debt in law a kind of partnership in which one party advances the capital, the other the labour or skill, and the profits are divided in stipulated proportions. (*Wil Gloss* 266.)

"Kirtan," is a sort of religious concert" 1 Ind. Cas. 109.

Kisas (*A*) Retaliation (*Mac. Mhn. Law.*)

Kishtbandi. Land revenue roll.

Kishti-Banna. Same as daryabanna.

Kismat, (*H.*) Share, distribution, share of prosperity, or the like allotted to each person in life, hence fate, fortune in law, partition of inheritance, also a separated or divided portion applied in revenue matters to a portion of land detached from a larger division, specially if subject to a different jurisdiction a hamlet or dependent village. (*Wil. Gloss.* 290.)

Kiss my foot The words "Kiss my foot", when written by a drawee, together with his signature, on a draft presented to him for acceptance are equivalent to and signify a refusal to accept The words should be construed, as they are used in common parlance, to mean and express contempt for the person to whom the words were addressed, and, when used as a reply to a request they imply, and are understood to mean, a decided, unqualified, and contemptuous refusal to comply with such request

Kist. Stated payment, instalment of rent. Instalment, or portion or the amount paid as an instalment, the period fixed for its payment, as a revenue term it denotes the portion of the annual assessment to be paid at specified periods in the course of the year; such periodicial payment is called a kist In Marathi kist also implies various ruinous mode of borrowing money upon repayment by instalments. (*Wil. Gloss.* 290.)

Kist-or pisti bandi, (*H*) Settlement of the instalments of the revenue both as to time and amount, a document given at the beginning of the year to the revenue payer by the Collector or Zamindar, in which the time and amount of the instalments to be paid are specified: a counterpart statement of the same kept by the receiver of the revenue, or a district account shewing the particulars of the instalments receivable. any document relating to fixed periodical payments of the revenue or of a debt. (*Wil. Gloss.* 290, *See also* 7 I.C. 130 at p. 133.)

Kistbundy. A contract for the payment of a debt or rent by instalments. (*Fifth report.*)

Kistwari Maps *Kistwari* maps (survey maps) are under S. 36 of the Evidence Act, evidence between the parties *quantum valet*. They are primarily

Kleptomania.

evidence of possession, but evidence of possession is always evidence of title. 3 P.L T. 140=1 P. 65= A I.R 1922 Pat. 58.

Kitchen furniture "Household and kitchen furniture", within the meaning of a statute exempting from execution to the head of a family his household and kitchen furniture, is limited to household and kitchen furniture for the use of the family, and does not include such furniture used in hotels and restaurants beyond that which is used by the family.

Kith Kith and Kin Acquaintance and kinsfolk.

Kiting "Kiting," in commercial parlance, means the lending of one commercial firm to another of its credit Thus one friendly firm would borrow from another its check, draft, note, bill, or indorsement to tide over an immediate necessity for money, and when occasion arose the other firm would return the favor

Kittima child. Under the Burmese Buddhist Law a child adopted according to the fullest form of adoption and retaining his status as an adopted child till the death of his adoptive parents, is entitled to inherit their estate as if he were a natural and lawful child, either in the absence of other children or in competition with them. Such a child is called a *kittima* or *kittima* child. The word is sometimes written *kettima* and seems to be a corruption of the Sanskrit *krtrima* 44 I A 251=45 C. 1 (7)=22 M.L. T 411=22 C W.N 97=27 C.L J. 68=(1918) M W.N. 9=20 Bom L R. 69=11 Bur L.T. 28=42 I.C 863.

Kiwada (*Tel.*) A tract of land round a village once occupied by dwellings

Kizhchamayom or vettuchamayom (*Mal*) Compensation for clearing and levelling land payable to tenants. (*Sun Mal Law*)

Kizkanom (*Mal*) (Sub-Kanom) (*Sun. Mal Law*).

"Kkairati." Meaning of. *See* 1 O.L.J. 680=26 I.C. 860

Klalkhana (*Per.*). A liquor shop or a distillery.

Kleptomania. It is a form of mania manifesting itself in a propensity to commit theft. The defence of kleptomania has usually been urged in the case of persons charged with larceny whose social circumstances and character would seem to preclude the idea of a felonious intent Naturally this defence is regarded with grave suspicion both by the Courts and by writers on medical jurisprudence. Dr. Luff (Forensic Medicine and Toxicology, vol. ii. 299) says that if the propensity to steal is due to an insane state the individual will show evidence of mental disease apart from the act of theft, as it is unlikely that the loss of the highest control would exclusively manifest itself only in acts of larceny (*Ency. of the Laws of England*).

KLEPTOMANIA, is a well defined symptom of mania, consisting of an irresistible propensity or impulse to steal, a species of insanity which renders its subject morally irresponsible for the crime of theft a morbid propensity to steal whether consciously or unconsciously; the scientific name of the disease of stealing: is a species of insanity which renders its subject morally irresponsible for the crime of theft.

Kleptomania.

"Kleptomania" is the scientific name for the disease of stealing. Persons who are victims of it will steal in spite of all restraints They may be sane in mind in all other respects, may know perfectly well stealing is wrong in every way, and may have no occasion to steal whatever, not being in want, or having prospect of it, and yet steal they will at the risk of the terrible exposure detection produces The disease is of that character which undermines and overthrows the will, rendering its victim powerless to control his conduct with respect to his temptation, though he possesses his will in its entire vigor in all other things. There is no lack of the reasoning powers to the rightfulness or wrongfulness of his conduct or behaviour, and yet the power, the ability, to do otherwise than what they do, is wanting No enlightened criminal system of law punishes him for acts which, if the will was in a healthy state, would never be done, any more than it does the mere idiot, or person who never had any reason at all.

Kleptomaniae person subject to kleptomania.

Knacker. " 'Knacker', used in respect of slaughter of animals means, a person whose business it is to slaughter any horse, ass, or mule, or any cattle, sheep, goat, or swine, which is not killed for the purpose of its flesh being used as Butcher's Meat". (*Stroude*).

Knave. Unprincipled man, rogue. Calling one a "knave" imports that he is dishonest and is actionable *per se*.

Knavery. Conduct of a knave.

KNAVISH DISHONEST. *Dishonest* is a term of grave, *Knavish* of contemptuous, reproach The former expresses a habit, the latter a propensity (*Smith Syn, Dis.*)

Kneel. Fall and rest on the knees—especially in supplication or reverence.

Kneeling. The act of bending the knee. "It is not necessary that a person should touch the ground in order to perform such an act of reverence as will constitute kneeling Of course they may be such a bowing of the knee as would not amount to kneeling —there may be an accidental bowing of the knee arising from fatigue or otherwise, but there is a knee bent for the purpose of reverence and in such a manner that those who behold cannot tell whether or not touching the ground with the knee has been arrived at, and indeed, Mr. Mackonochie says that at certain times his knee has momentarily touched the ground. This seems to their Lordships to be liberally kneeling." (*Martin* v. *Mackonochie*, L.R. 3 P C. 66; 39 L.J Ecc. 18).

Knew. The word "knew" in S 149, Penal Code indicates a state of mind at the time of the commission of the offence and not knowledge acquired in the light of subsequent events. 6 S.L.R. 101=13 Cr. L.J. 778=17 Ind. Cas. 408.

Knife. A cutting instrument.

Knight. A champion; the rank next below baronet entitling the owner to be called "SIR." *See* Nicolas, History of the Orders of Knighthood of the British Empire,; Burke's Knightage, Dod's Peerage.

Knight errant. One who travelled in quest of adventures in olden times.

Know.

Knighthood. The dignity of a knight.

Knight marshal. A royal official in England.

Knight service. An old English land tenure based on military service.

Knights of the Order of the Indian Empire. This Indian Order was established in 1878 for rewarding services rendered to Her Majesty and the Indian Empire, and to commemorate the adoption of the title of Empress of India. (*Ency. of the Laws of England*) Royal Warrant, December 31, 1877, Letters Patent, London Gazette, February 15, 1887; Burke's Peerage, Dod's Peerage; Book of Dignities.

Knight of the Star of India. This Indian Order of Knighthood was instituted in 1861. *See* Statutes of the Order, 1866, London Gazette, May 25, 1875 and 1876, Burke's Peerage etc, Dod's Peerage, etc., Book of Dignities.

Knight's fee "There is great diversity of opinions concerning the contents of a knight's fee, that is how much land goeth to the livelihood of a knight. A knight's fee, on hide or plowland, a yardland of land does not contain any certain number of acres, but a knight's fee is properly to be esteemed according to the quality and not according to the quantity of the land, that is to say, by the value and not by the content" (*Co. Litt.* 69a) In different ages a *Knight's fee* was estimated at several values 2 Inst. 596 "probably it does not contain any certain number of acres" (*Elph* 590, *Stroude*).

"Knit goods", as used in Tariff Act although frequently used interchangeably with "knit fabrics" more appropriately describes manufactured articles, while knit fabrics refer more especially to manufactured material as piece goods.

Knock down. Striking on the ground by auctioneer in assigning lot to bidder by tap of hammer.

In common parlance and in the language of the auction room property is understood to be "knocked down" or "struck off" when the auctioneer, by the fall of his hammer or by any other adequate or visible announcement, signifies to the bidder that he is entitled to the property on paying the amount of his bid according to the terms of the sale.

Knock out (*at auction*) Plot between buyers to secure lot cheap by avoiding competition and assign it privately afterwards.

Knot. "Knot", as used when the term is applied to a measure of distance, means a marine mile.

Know. (See *Knew*) To understand or perceive or to have knowledge of. "To Know" is not necessarily to have precise knowledge; knowledge of circumstances ordinarily leading to the conclusion that the thing or state of things exists will suffice. (*National Bank of Morris*, 1892, A.C. 287).

KNOW. "Know," means "to have knowledge; to possess information, instruction, or wisdom."

In order to charge an officer of a corporation with signing a statutory report *"knowing it to be false,"* some fact or circumstance must be shown indicating that it was made in bad faith, wilfully, or for some fraudulent purpose, and not ignorantly or inadvertently.

Know.

TO KNOW, BE ACQUAINTED WITH. We know a man to be good or bad, virtuous or vicious, by being a witness to his actions; we become acquainted with him by frequently being in his company.

Knowingly The primary definition of the word "knowingly" is with "knowledge."

"Knowingly" as used in laws authorizing the bringing of actions to recover certain penalties against whoever shall knowingly sell, supply, etc, milk in an improper condition specified, should be construed to mean actual personal knowledge.

The word "*Knowingly*" ought not to be read into a statutory definition of an offence unless it is clear that the legislature intended some such qualification" (per *Cave J*, *Betts* v. *Armstead* 57 L J M C 101.)

In *R* v *Tolson Stephen, J* said—Crimes are in the present day much more accurately defined by statute or otherwise than they formerly were. The mental element of most crimes by one of the word 'Maliciously,' 'Fraudulently', 'Negligently,' 'Knowingly' (or "wilfully"), but it is the general,—I might I think, say the invariable,—practice of the legislature to leave unexpressed some of the mental elements of crime In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined."

Knowingly and unlawfully. Where a statute provides that, to constitute an offence, the act must be done knowingly, an indictment charging the act as done unlawfully is insufficient, in asmuch as the word "unlawfully" neither comprehends nor is equivalent in meaning to the word "knowingly."

Knowingly and wilfully "Knowingly", in an indictment that a person "wilfully, knowingly, maliciously and falsely" said, deposed, and swore on oath, is equivalent to saying that he corruptly swore for the words used necessarily involve "corruptly"

A statute providing that every person who knowingly and wilfully obstructs, resists or opposes any officer in serving or attempting to serve or execute any process or warrant shall be punishable, etc, implies knowledge of the issuance of the writ or other process and an evil intent to resist the officer in the execution thereof.

A person *knowingly and wilfully* claims more than is due in a claim for a mechanic's lien only when he claims something which he knows not to be due, and not when he claims what he honestly, though mistakenly, believes to be due to him.

Where the president of a corporation did not know of the obstruction of a public road, and had no part therein, he is not guilty of wilfully or knowingly obstructing such road.

"Knowingly permits". An Act providing for the punishment of the owners of a building or tenement who "knowingly permits" it to be used for the keeping and sale of intoxicating liquors for tippling purposes, implies permission or consent, as well as knowledge.

Knowledge

"Knowing the nature of the act." The words "knowing the nature of the act" in the S 84, of the Indian Penal Code, have nothing to do with the appreciation of the moral quality or the forming a correct estimate as to its legal consequence. 15 O.C. 321=14 Cr.L J 81=18 I C. 641 (647).

Knowledge. The certain preception of truth, belief which amounts to or results in moral certainty indubitable apprehension, information, intelligence, implying truth, proof and conviction; the act or state of knowing, clear perception of fact, that which is or may be known, acquaintance with things ascertainable, specific information, settled belief; reasonable conviction, anything which may be the subject of human instruction. (*Ame Cyc*, 1928 P. 169.)

"Knowledge" and "actual knowledge" have sometimes been held to be synonymous.

The "knowledge," as used in a contract by which a fidelity and casuality company bound itself to make good to a bank such pecuniary loss as the latter might sustain by reason of the fraud or dishonesty of a named employee in connection with his duties, providing that the contract would be void if the bank continued in its service an employee of whose untrustworthiness they had knowledge, means actual knowledge, and not constructive

Knowledge and Belief. "Knowledge" is nothing more than men's firm belief, and is distinguished from "belief" in that the latter includes things which do not make a very deep impression on the memory. The difference is ordinarily merely in degree.

The meaning of the words "belief" and "knowledge," as defined by lexicographers, will show that there is a distinct and well-defined difference between them "Believe" is defined by Webster to mean to exercise trust or confidence, and by the Century Dictionary, to exercise belief in, to be persuaded upon evidence, arguments, and deductions, or by other circumstances other than personal knowledge. "Knowledge," according to Webster, is the act or state of knowing, clear perception of fact, that which is or may be known According to the Century Dictionary it means acquaintance with things ascertained or ascertainable, specific information.

Knowledge and Notice "Knowledge" is not synonymous with notice, but when a person is spoken of as having actual or constructive notice it means no more than that under the indicated circumstances the man is legally chargeable with knowledge.

The terms "knowledge" and "notice" are not synonymous or interchangeable, and should not, therefore be confounded the one with the other. That which clearly does not amount to positive knowledge may often, in a legal sense, constitute actual notice.

"Knowledge" and "notice" are not synonymous, although the effects produced by notice are the same, in many cases, as result from actual knowledge.

Knowledge, Information and belief. The verification of a petition praying a discovery and the appointment of a receiver by the petitioner as being true to the best of his knowledge, information, and belief, is insufficient, as the words "knowledge, information, and belief", upon the construction most favourable

Knowledge

to the competition means that the affiant has knowledge that some of averments of the petition are true, that while he does not know, he has been informed and believes that others of the averments are true, and that as to yet other averments he has neither knowledge or information, but, without knowing the facts or ever having been informed of their truth, he believes them to be true.

The words "to the best of his knowledge, information, and belief," at the end of an affidavit of service, qualified and restricted the prior declaration contained therein, and therefore the affidavit was defective and insufficient

"KNOWLEDGE: RELIGION MORALITY." "Knowledge," as used in a state document reciting that religion, morality and '*knowledge*' being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction, should be construed in its generic or unlimited sense "*Knowledge*" comprehends in itself all that is comprehended in the other two words, '*religion*" and '*morality*," and which can be the subject of human instruction. True religion includes true morality All that is comprehended in the word "*religion*," or in the words "*religion*" and morality, and that can be the subject of human instructions, must be included under the general term "knowledge." Nothing is enjoined, therefore, but the encouragement of means of instruction in general knowledge—the knowledge of truth The fair interpretation seems to be that true religion and morality are aided and promoted by the increase and diffusion of knowledge, on the theory that knowledge is the handmaid of virtue, and that all three, religion, morality, and knowledge, are essential to good government. (*Words and Phrases.*)

"Knowledge of decree." In Art. 164 of Sch. I of the Indian Limitation Act (IX of 1908), the term "knowledge" means a certain and clear perception of a fact, the fact being the decree in the suit. *Pundlick* v *Vasantrao*, 11 Bom.L.R. 1296=4 I C 586, *see also* 6 I.C. 901.

The expression "knowledge of the decree" in the article 164, Limitation Act means knowledge not of a decree, but of the particular decree which is sought to be set aside 11 Bom.L.R. 1296=4 I.C. 586, 13 C.L J. 221 (227)=15 C.W.N. 399=38 C 394=9 I C. 189.

Knowledge of the law "The knowledge of the law with which every man is charged includes a knowledge of the constituent facts which make the law. That the Legislature enacted a certain law is a fact, but a knowledge of the law imputed to every man comprises a knowledge of that fact. That a certain law is valid or void is another fact, but every man is presumed to know whether it is valid or void, else he could not know the law." (*Words and Phrases*).

Known. Perceived; understood: recognized; familiar; especially, when used absolutely, familiar to all; generally understood or perceived.

Known channel. The word "known" as used in the legal proposition that subterranean waters can only be the subject of riparian rights when flowing in defined or known channels, means the knowledge by reasonable inference from existing and observed facts in the natural or pre-existing condition of the surface of the ground. "Known," in this rule of law, is not synonymous with "visible."

Kodaga

The word "known", in an instruction as to the burden of showing that the course of a subterranean stream is known or notorious, is not synonymous with "visible", but refers to knowledge by reasonable inference.

Known creditors. An Act providing that commissioners appointed to receive and act upon claims presented against the insolvent estates of deceased persons shall give notice of their meetings to all known creditors residing within the probate district, means the creditors known to the executor or the administrator and not merely the creditors which are known by the commissioners.

Known defects. When it is said that servant assumes the risk of danger from known defects in implements used in his employments, the obvious meaning is that he assumes the risk of such danger as is apparent to his observation, not such as, on account of his want of experience, he could not reasonably be expected to apprehend.

Known equivalent. "Known equivalent", in the patent law in reference to a pioneer machine, means devices which, in mechanics, were recognized as proper substitutes for the devices used by a certain patentee to effect the same results, even though the peculiar form of the work done by the device was unknown before.

Known intemperate habits "A man of known intemperate habits" is one whose habit for intemperance is known in the community just as a man is known in the community either as a good or bad citizen.

"KNOWN INTEMPERATE HABITS," within the meaning of a statute prohibiting the sale of intoxicating liquors to persons or known intemperate habits, does not import that it is necessary that the person selling liquor has seen the purchaser intoxicated. "To know of a man's intemperate habits, it is not necessary to see him drunk, and know to an absolute certainty, by personal knowledge, that such are his habits, it is not necessary to see him drunk, and know to an absolute certainty, by personal knowledge, that such are his habits Nor is it necessary that defendant should have had written notice, or even verbal notice, served upon him, telling him that this man was of intemperate habits. If that was his reputation in the neighbourhood where he lived, and if defendant knew that such was his reputation, that would be sufficient."

MADE KNOWN. An Act requiring the certificate of acknowledgment to a deed by a married woman to set forth that the "contents were *made known* and explained" to her, "made known" is equivalent to "made acquainted with" the contents, as used in the certificate stating that she was made acquainted with the contents of the deed.

Koda (*Tel.*) Coarse rice, the third crop.

Kodaga: a Coorg caste, former ruling race in Coorg; (*Bad. Pow.* III, 467).

Kodagu

KODAGA Land which had been rent-free, but which has been subjected to a light or quit rent.

Kodagu the proper form from which 'Coorg' is anglicized. (*Bad. Pow*)

Kodebatta (*Karn*) Rice grown in the hot season.

Kodegadde (*Karn*) Land watered for the cultivation of rice in the dry season.

Kodi (*Tam*) A channel for carrying off the surplus water from a reservoir.

Kodu (*Tel*) A water-course, a nala.

Kodunga Katti (*Mal*) The knife worn for defence by the Nayars of Malabar, fastened to a hook attached to a leathern girdle at the back of the body Note—Also called Ayudha Katti, Vettu Katti, Katti Val, Nayar knife, Mappilla knife, &c (*Log. Mal Man*)

"Kofra" tenant. A Kofra tenant does not necessarily mean an under-raiyat A Korta tenant is a Sublessee whether of a taluqdar or of a raiyat 39 I C. 409=21 C.W.N. 452

"Kohat Salt" defined. Act 12, 1882, S. 3.

'KOHAT SALT" means salt produced in the district of Kohat in the Punjab. Salt Act (XII of 1882), S. 3.

Kohinoor The famous Indian diamond, now a jewel on the British Crown.

Kohistani. A pathan tribe, emigrants from Swat, and settled on our Frontier, east of the Indus. They are called also Swatis.

Koilu (*Karn*) A measure of seed corn containing four hanis, or 400 rupees in weight, and reckoned to be as much as a man can sow in a proportionate space of ground in a day (from koyya, to cut, to reap.)

Kol (*Mal*) A measuring rod twenty-eight inches in length (*Moore Mal Law*)

KOL. (*Kolarian*) tribe. (*Bad Pow* I, 115, 117, 575.)

Kolapiramanam (*Tam.*) A statement of the whole extent and of the divisions of a village and its lands, whether cultivated or waste.

Kolichchal (*Mal.*) Literally, fall. It is an allowance made by inspectors of a pepper-vines for the quantity of pepper which is likely to fall off between the period of inspection and the season for plucking (*Log Mal. Man.*)

Kol-karshadar. (*Bakirganj, Ben.*), a tenant under a 'tenure' holder, (*Bad. Pow.* I, 606.)

Kollam (*Mal*) *See* Andu, the Malabar Era. The name of the era used in Malabar, said to derive its name from a village so called, where it was first devised, but this seems to be a popular error, the current era being the third thousand of the cycle era of Parasurama the first year of which corresponds with A.D. 825. (*Wil Gloss.* 293)

Kollukai (*Karn*) The third crop of rice.

Korambu.

Kol Peimash (*Mal*) Warden's survey by measurement of 1805 (*Sun. Mal Law*)

Koluchchakkaran (*Mal*) An armed servant or vassal of a Naduvali or Raja; he is sometimes paid with land for his maintenance (*Log. Mal Man.*)

Kolulabam. The profit of ploughing, *i e*, the cultivator's share of the produce. (*Moore Mal. Law*) It is the cultivator's clear profit after deducting expenses under the name of Vittu Valli, or charges of cultivation Out of the Kolulabham is reckoned, indeed, to pay the inconsiderable expense of Eru Irimbu, or cattle and iron. (*Log. Mal. Man*)

Kolumidi (*Tam. Mal*) The owner's share of the produce of a field after deducting the due to the Government.

Kolunavan (*Mal.*) An occupant of land other than the original hereditary owner, holding by lease or mortgage, and, under particular circumstances, having the opportunity of converting his temporary into a permanent tenure, a tenant, a lease or mortgage-holder.

Kolluppanayam (*Mal*) Under this tenure in Malabar the mortgagee has only the right to cultivate the land If no period be specified, the landlord is at liberty to pay off the mortgage whenever he pleases This tenure prevails in the neighbourhood of Palghat as well as in North Malabar. (*Madras Sadr Adalat Proceedings*, No 18, dated 5th August 115)

Kolupanam (*Mal*) Price of the plough-share

Komati (*Tel. Mal*) The name of a caste in the South who consider themselves to be a branch of the pure Vaisya caste; they follow trade as shop keepers and merchants, and assume the denomination of Sheth or Chetty. (*Wil Gloss* 293.)

Konakan (*Mal*) A class of predial slaves in Malabar, a subdivision of the Vetuvar, or forest and hunter tribe; they are employed in agriculture, also as boatman and salt makers. (*Wil Gloss* 293)

Kondapodu (*Tel*) A corn field on high or hilly ground, one not capable of artificial irrigation.

Koodi. Inhabitant, tenant, ryot.

Koolcurney, koolkurnain, koolcurny, kulkurny A village accountant, in the Northern Circars, who is generally a Brahman (*Fifth report.*)

Koori kanum. A lease on favourable terms for the improvement of land. (*Fifth report*)

Korabandi (*H*) A new arrangement, a list of villages or fields to be registered according to an allotment different from a preceding one (*Wil. Gloss.* 294.)

Korakdar (*Beng*) A bailiff, a sheriff's officer an officer of court who attaches or destrains goods and property for debt. (*Wil. Gloss.* 304.)

Korak khalas. Replevin, release of attachment. (*Wil Gloss* 304)

Korambu (*Tam.*) A dam across part of a river, leaving an opening through which the water for irrigation is to run: the place where the water issues from, or runs into a tank. (*Wil. Gloss.* 294.)

Koran

Koran (*A.*) The sacred book of the Muhammadans, and considered by them to be the fountain head of all science, knowledge and law.

Korapuzha A river flowing into the sea seven miles north of Calicut and forming the traditional boundary between North and South Malabar

Korfa A *korfa* tenant is a sub-lessee whether of a taluqdar or of a raiyat 21 C.W.N, 452=39 I C. 409

"**Korfu.**" *See* 19 C.W N. 35=27 I C 446

"**Korkar**" defined Ben. Act 6, 1908, S. 3 (*rui*)

KORKAR Conversion of Jungle land into korkar. *See* 142 I C 673=1933 Pat 52, 13 Pat. 781=150 I C. 933=1934 Pat 80.

Korkardar. 63 I.C. 783=2 Pat L T 635

Kormagi (*Karn*) A well-tilled field, the produce of which is equally divided between the proprietor and cultivator.

Koru (*Tel.*) A part, a share, as a revenue term it applies to the share of the crop which belongs to the cultivator.

Korukalu (*Karn*) A crop equally divided between the cultivator and the proprietor.

Kos (*H.*) A measure of distance, varying in different places, but usually one and a half or two miles.

Koshan Case, repository, treasury register. A village register in which are entered the lands held by Brahmans in the southern poligar districts

Kos-minar A small obelisk or a pillar of brickwork set up to mark kos distances upon a High road Jahangir had them erected from Delhi to Peshawar, and they still remain between Agra and Sikandra.

Kostugutta (*Tel*) The joint renting of a village by all the cultivators.

Kotha In the absence of words excluding the Kotha of a house it passes along with the house under the sale deed as it is obviously appurtenant to it. 100 I.C. 863=A.I.R 1927 Nag. 177.

Koti (*H.*) Ten millions a hundred lakhs, or ten hundred thousands, commonly termed a kror or Crore (*Wil. Gloss.* 295)

Kotta (*Tam.*) A measure of gram varying in different places from 21 to 24 markals.

Kottai (*Tam*) A measure of grain, varying in different places from 21 to 24 markals (*Wil. Gloss* 296)

Kottu (*Tam*) Payment for reaping: a deduction from the gross produce on that account.

Kotwal (*H*) A Chief Officer of Police in a City or town Under the native Governments the Kotwal sometimes exercised magisterial power. Also in some places, a village watchman.

Kotwali (*H.*) The office of a Kotwal, or anything relating to it an impost formerly levied on the plea of providing for his salary; a variety of town duties. (*Wil. Gloss.* 296.)

Kritima

Kotwar (*Mar*) The village watchman and messenger, attending also on the Patel. (*Wil. Gloss* 296)

The widest and most comprehensive extension of the term "police-officer" cannot make it include a Kotwar in the Central Provinces He is popularly regarded as a subordinate police-officer and even that idea arises mainly from the fact that it is his duty to make, or rather to carry, frequent reports to the police. But the making of reports to a department of the government does not constitute a person who makes them, a member of that department even in the popular sense 25 Cr L J. 147=76 I C 291=A I. R. 1924 Nag 29.

Koumiss Fermented liquor of mare's milk.

Kovilagom or Kottaram Palace or dwelling place of Royal families in Malabar (*Moore Mal. Law, Sun. Mal Law.*)

Kovirbattu Lands, etc., belonging to a temple.

Koyiki. Reaping, mowing, cutting corn.

Koyilmeni or Ennipadu (*Mal*) Different modes in use of valuing or estimating the produce of cocoanut gardens. Koyilmeni means strictly the number of pluckings or more generally the number of crops. After deducting the Sisu or young plants and the Aphalam or those past bearing, it is estimated what the productive trees will yield with reference as well to their appearance as to the kind of soil—Attu Veppu, Kara Veppu, Pasima, &c (in which they are classed by nature rather than by any public account or any written deed.) The Ennipadu is the reckoning of the actual number of fruit growing in a particular year. There is supposed to be great enmity between the Janmi and the Kudiyan when this extreme is resorted to, and it is not common. (*Log. Mal Man*)

Koyittakaran (*Mal.*) A reaper.

Kozhlu Erakompanayom. Same as Kozhlu panayam (*Sun Mal Law*)

Kozhlupanayom. (Kozhlu Plough-share, Panayam. mortgage) Usufructuary mortgage redeemable at any time if no term fixed, no right of pre-emption. Prevails in Palghat and North Malabar (*Sun. Mal Law*)

Kozhulabhom Cultivator's share. (*Sun. Mal. Law*)

Kozilmeni or enipadu. Modes of reckoning the produce of cocoanut gardens (*Log. Mal. Law.*)

Kraya mulla sadhana or krayachit Sale deed (Kan) (*Sun. Mal Law*)

Kriegspiel. War game on maps.

Krishi (*Mal.*) Ploughing, agriculture. The word seems to indicate the land under the direct management of proprietors or their stewards.

Krishna. An avatar of Sri Vishnu the chief of Hindu deities.

Krita (*S*) is one sold by the parents,—one of several kinds of sons mentioned in the old Hindu Law Texts.

Kritima (*S*) is son made by onself (a son)

Kritrima adoption.

Kritrima adoption. A minor who has attained years of discretion can be adopted in the kritrima form if the parents of the minor consent to the adoption. The word kartaputra used by people in Mithila may be taken to refer to kritrima and not dattaka adoption 149 I C. 491=14 Pat.L.T 27=A. I.R. 1933 Pat. 165.

Kritrima form of adoption is not known in the Punjab and for all practical purposes is confined to Bihar and the West Coast of India. 147 I.C. 499=6 R.L. 397=A I.R 1933 Lah. 1050

Krorasinghia The name of a Sikh misl, called after their third leader Krora Singh. The lands were in the Jalandhar doab.

Krudichillara (*Mal*) Tax on houses, shops, warehouses and implements of the profession of blacksmiths, potters, oilmen, weavers, &c Persons of these professions paid the house-tax as well as the tax on their implement. (*Log. Mal Man.*)

Kshatriya caste The Kshatriya class must be considered as subsisting and that according to the Hindu law generally prevailing in the part of India from which the case before their Lordships arose, and independently of exceptions arising out of any well-established usage or custom to the contrary, as to particular places or families, Rajputs in Central India, and in the district where the Rajdom of Ramnuggar was situate were to be considered as of the Kshatriya caste 7 M I A 18 (46, 48)=4 W.R 132=1 Sar. 591=1 Suth. 313

Kshema (*S*) Prosperity, Welfare, conservation of acquired wealth: in law, an act of merit, as planting trees, digging tanks, erecting places of rest for travellers and the like (*Wil Gloss.* 298)

The learned say that Kshema is Putra or an act of charity (like digging a tank which is the cause of preserving the good that has been got) and that Yoga is Ishta or sacrificial act (which is the case of getting the good that has not been got) these are declared to be indivisible and so are also a couch and a seat. (*Ghose Hindu Law* 624)

Kshetraja (*S*) is the son of one wife by a sagotra or by another—one of the several kinds of sons mentioned in old Hindu Law Texts.

Kshetraj or the son of the wife is defined as follows. "If the husband's brother, or other person duly authorised, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man for the sake of raising issue both for himself and for the other. the son, whom he so begets is the child of two fathers and denominated Dvamushyayan. He is heir to both, and offers funeral oblation to their manes"

Kubala. (*A*) A contract or deed. A written agreement. (*Mac. Mal. Law*)

Kuch Hakiat 133 P.R. 1890.

Kucichchekam (*Mal*) or *Kulichcham* (*see* Kulichchakkaran), from Dravidian Kuli-hire, wages), means besides pay the honorable service of Nayars, especially in war. Military tournaments formerly in use among the Nayars.

Kudissika

Kuda-bigha. (*H.*) A bigha peculiar to Rohilkhand measured as to breath by the rope or chain, but as to length, by a certain number of leaps taken by the measure. (*Wil. Gloss.* 298)

Kudai (*Tam*) Basket (as) Alavu-kudai A basket for measuring rice.

Kudi (*Mal*) A pair, applied to a slave and his wife in speaking of their price. (*Log Mal. Man*)

Kudian (*Mal*) 1 L W 41 Cultivating tenant.

Kudi-irippu (*Mal.*) Specification in a deed of conveyance of permission to a tenant to reside on the rented or mortgaged estate, in which case he is entitled to remuneration for any buildings he may have erected, when his tenancy ends, dwelling, habitation in general a garden, an inclosure.

'Kudikani' *See* 1 L W 41, 53=23 I.C. 113.

Kudima (*Mal*) Tenancy, occupation of an estate for a season either under lease or mortgage tenure, dwelling on the property of another.

Kudima: *See* adima (*Sun Mal Law*)

Kudima Janmam A tenure under which a nominal quit-rent only is paid. (*Moore Mal Law*)

Kudimaner (*Mal*) A contract, in Malabar, the effect of which is to convert the tenure or mortgage by pledge into a kind of freehold Irredeemable tenure reserving a nominal rent Non-transferable where granted for services to be performed, non-performance of services gives right to resume, Not resumable for non-payment of rent (*Sun Mal Law*)

Kudimanir, is a tenure almost equal to a freehold by which all the body of property rights is gained without the crowning dignity, the right of transferring the property to another. A payment not exceeding two fanams is annually made to the possessor of the title who can no more redeem the land. (*Gundert's Malayalam Dictionary*) There appears to be very little real difference between Nirmudal, Kudimanir and Attiper. (*Moore Mal Law*)

Kudimaramattu (*Tam*) Repairs of the channels of irrigation on the borders of the fields by the cultivators themselves.

'Kudi Miras'. means occupancy right. *See* 8 M.L.T. 430=8 I.C. 158

Kudi mirasi (*Tam*) Land held in hereditary right by the village proprietors, exempt from land tax (*Wil Gloss.* 299.)

Kudippaka or Kuduppu. (*Mal*) From Kudi and Dravidian paka (separation, enmity) Family or house feud or enmity It is the common term to express the deadly hatred subsisting between two families. If a member of a family has been killed, his relations have been known to steep a cloth in his blood and vow never to lose sight of it till they have avenged his murder by the death of the murderer and the destruction of his habitation *Note* It was the custom to burn the body of the slain in the house of the slayer, which was of course also burnt. It was usual, however, to burn only an outhouse. (*Log. Mal Man.*)

Kudissika (*Mal.*) Arrears of rent or revenue.

Kudivaram

Kudivaram (*Tam.*) The share of the produce which is the right of the inhabitants or of the cultivators. (*Wil. Gloss 299.*)

KUDIVARAM literally means the share of the cultivator in the produce raised, in this sense Kudivaram belongs to the cultivating tenant whether he has permanent occupancy rights or is a mere lessee from year to year or even a tenant at-will, also means the rights of such a tenant so long as he is in possession of the land The word also means the right of a tenant having permanent occupancy rights In the last sense it is also called *Mirasidari* right or *Kudimiras* right. 33 M L J 84=41 I.C 788, 42 M L J 359=(1922) M.W N 180=16 L W. 531= A I.R. 1922 Mad 97, 22 I.C. 339 (340).

'Kudivaram' 'Melvaram' The word *Kudivaram* literally signifies the cultivator's share of the produce of land as distinguished from the landlord's share of the produce which is called Melvaram "Kudivaram" also denotes a permanent right of occupancy 41 Mad 1012=45 I A. 209=(1918) M W N. 859=23 C.W N 273=9 L W 126=.9 C L.J 153=21 Bom.L R. 547=36 M L J 585 (P.C.)=48 I C. 689.

Kudiyan. (*Mal.*) (Dravidian) inhabitant, subject. Who pays revenue direct to Government (Mr Warden's letter to Board of Revenue, 16th June 1813, paragraph 77, (*Log Mal Man*)

Kudiyan Kur. From Kudiyan and (Dravidian) Kur (share, portion). Cultivator's share (*Log Mal Man*)

Kudiyiram-pat (*Mal*) A deed by which the proprietor transfers any payments made by the tenant or mortgagee to a third party

Kudiyiruppu (*See* Kudi iruppu) A plot of land leased out for building purposes.

KUDIYIRUPPU It is consideration of 2 fanams which before the land-tax a tenant used to pay to a proprietor for land taken for building alone A Kudiyirippu tenure carries with it power to build shops if the locality is suitable for the purpose. (N. D. C 21 (1879))

Kudiyirumppadu A document by which the jenmi assigns the rent to a creditor (*Sun. Mal Law*) It is a muri or document by which a Janmi who is entitled to receive purappad from a mortgagee assigns over the payment of it to a third person from whom he has borrowed money. (*Log. Mal Man*)

Kudumanir or Kudimanir. (*See* Kudimanir) (*Mal*) The terms of the body of this deed are the same as those in the deed of Attiper The difference in the title alone shows a difference in the attributes The proprietor acknowledges by this deed to have received the full value of the property and the execution and delivery of the deed are attested by the same formalities as those of the Attipper deed.

Kudutale Entry in Collector's register. (*Sun. Mal Law*)

Kuka. A modern Sikh Sect.

Kuki The name of one of the khels or clans of the Afridis.

Kulkamil.

Kul-irrigated. Description of lands in *Jamabandi* as Kul, only means that the lands were capable of being irrigated from a *Kul.* A I.R. 1923 Lah. 605= 80 I.C 197

Kula (*S*) means an assembly of a few persons of the same family (*Ghosh Hindu Law*)

Kular Same as kachnar.

Kulargi (*Bo konkan*) describes a village under a khot entirely held by dharekar tenants at fixed rents (*Bad. Pow. in* 289)

Kul irrigated. Description of lands in *Jamabandi* as *Kul* irrigated, does not mean that they were as a matter of fact irrigated from a particular *Kul.* The description only means that the lands were capable of being irrigated from a *Kul.* 80 I C. 197=A.I.R. 1923 Lah 605.

Kulasisht (*Karn*) The system of land revenue formerly prevailing in Mysore.

Kulavarttane (*Karn*) The perquisites of the village officers, receivable from the farmers and those who pay revenue to the Government.

'Kulavettu' *See* 22 I.C. 144.

KULAVETTU is a cess for keeping the tanks in proper repair 160 I C. 680=1935 M W.N. 897= A.I.R. 1935 Mad. 718

Kul-band-o-bast, (*H.*) A complete settlement, either that of a whole estate by the proprietor, or of a district by the government. (*Wil Gloss.* 299)

Kulgutta (*Tel.*) Lands let to different castes at a low rent.

Kulgutta-strotriyam (*Tel*) Lands let to learned Brahmans at a low rent.

Kuli (*Mal.*) Money paid to a tenant on his relinquishing his lease or to a mortgagee, when a mortgage is paid off, for any improvements, they may have made, especially for any fruitbearing trees or cocoanuts, etc, which they may have planted.

Kulichcham (*Mal*) Land granted rent free, or on a low rent on condition of service.

Kulichekom: Land granted to Nayars for military service. (*Sun. Mal. Law.*)

Kulichchekam or Yapana or Anubhogam. (*Mal.*) Corruptly called Chaikavam, the terms used for lands given in free gift, that is, without rent to Nayars for the performance of military service when required.

Kuli-kanam.—(*Kuli,* a pit) A mortgage of land for the purpose of bringing it under cultivation, Money payable to a tenant for improvements. (*Moore Mal. Law*)

Kulikur.—(*Kuli,* pit; *Kur* share) The share to which the tenant is entitled for digging pits and planting trees. (*Moore Mal. Law.*)

Kulkamil (*H*). The total or utmost amount of assessment at any time: an extinct assessment of which the name only exists in the Northern Cirkars. (*Wil. Gloss.* 299)

Kulkanu.

Kulkanu, (*Mar.*) All laws and regulations, the whole body of the Statutes. a term used in official grants. (*Wil. Gloss.* 299)

Kulkaran, (*Mar.*) The office of village accountant. (*Wil. Gloss.* 300.)

Kulkarni (*Bo &c*) village accountant and registrar, in hereditary and holding a 'watan' (*Bad. Pow.* iii, 309, in Berar iii. 384)

Kulluck Bhatta (*of Benares*) A writer on Ancient Hindu Law-who wrote commentary on Manu Dharma Sastra.

Kultur. German conception of civilization.

Kulvarpatti (*Karn.*) An account of the land farmed by each cultivator severally.

Kulwar (*S*) to settle a village 'kulwar' or according to (war) the holding of each and every individual (kul), was Munro's term for the 'raiyatwari' (*Bad Pow* iii 41)

Kumaki · (*S*) The privilege of taking leaves for manure from adjoining waste land of Government. (*Kan*)

"Kumaun Local customs". A book by Panna Lal is a definite and a valuable evidence of the customs prevailing in Kumaun 57 All. 430=1935 A L J. 172=1934 All. 984

Kumhar. Workers in earthenware.

Kumki. In the case of lands in South Canara it is usual for pattadars to occupy lands adjoining their patta lands for the purpose of convenient enjoyment of their holdings under patta or for purpose of cultivation, etc The Government generally grants such land known as kumki land on darkhast to the pattadars. 89 I.C. 924=A.I R. 1925 Mad. 1226.

There is absolutely no relation or analogy between the nature of Kumri lands in South Canara and ryotwari holdings. 47 M L.J 35=51 I A 237=47 Mad 572=28 Bom L R 639=20 L W 49=80 I.C. 83 =(1924) M W N. 572=35 M L.T 128=29 C.W.N. 365=A I R 1924 P C. 150 (P.C)

Kumri: Shifting cultivation on forest land by felling trees. (*Sun. Mal. Law.*)

Kumri cultivation —*See* 15 M L J. 147=28 M. 257.

Kunbhava (*M*). Marathi term for the hereditary right in land (Tanjore) (*Bad Pow.* ii. 116.)

Kunbi (*Coonbee, Combie &c of old writers*), a caste of cultivators in Bombay, Berar and Central India, the same as Kurmi in N W P and Oudh. (*Bad. Pow* iii. 260. in Berar: iii 366, 368.)

Kunda (*S. India*), the rolling grassy downs on the Nilgiri plateau: (*Bad Pow* iii. 185)

Kundi (*or Kandi*) (Sindh): See *Bad. Pow.* iii. 342 *note.*

Kundurai (*Karn.*) An outlet from a reservoir, for irrigation.

Kurat-ul-Ayoon

Kuneia (*P*) The name of a Sikh misl, an offshoot of the Faizullapuria misl, and dwelling between Amritsar and the hills.

Kunganum. Fees paid for the expense of overseeing the just appropriation of and the cutting and division of the crop.

Kunkal. Poor, miserable Kunkal lands are lands the revenues of which are appropriated for the support of poor persons.

Kunta (*Tel*) A land measure, according to one statement 1089 square feet, to another 19,600 or the 32nd part of a katti.

Kuntige (*Karn.*) A sowing machine, a sort of tube or funnel attached to the plough through which the seed runs.

Kunwar a prince, Kunwar-kar, a grant for the prince's maintenance (Ch. Nagpur) (*Bad Pow.* i, 580)

Kunwar-mutka (=the prince's pot), a certain grain-payment or cess. (*Bad Pow.* i 271)

Kunz-ad-Dakaik. It is a book of great reputation, principally derived from the Wafi, and containing questions and decisions according to the doctrines of Abu Hanifah, Abu Yusuf, the Imam Muhammad, Zufar, Ash-Shafii, Malik and other Many commentaries have been written on his work the most famous is the Bahr-ar-Raik, which may, indeed, almost be said to have superseded in India" (Introduction to Morley's Digest of Indian Cases, Vol. I, p cclxx)

Kuppa (*Tel*) A heap or stack of grain: one of filth, a dunghill, manure

Kuppa-anchana (*Tel*) Estimate of the produce of a field taken from the grain when stacked.

Kuppadam (*Tam*) A portion of the production of the taxable land in a village, payable to the Mirasidar after the grain is threshed.

Kuppa-kattu (*Tel.*) An allowance of grain from the general heap or stock given to the village servants.

Kuppa-jabtia (*Tel*) A list of grain stacks, shewing which belonging to each cultivator

Kuppam, (*Tam Tel*) A small village, one occupied by low people. (*Wil Gloss.* 303.)

Kurambu (*Tam*) A water-course, leading from a river, for irrigation.

Kuramulai (*Tam*) First appearance of the crop above ground.

Kuran (See *Koran*) The sacred book of the Mohammedans, the supposed revelations made to Mohammad, and delivered by him orally, collected and committed to writing by the Khalif Omar. (*Wil. Gloss* 303.)

KURAN (*Bo.*), a jungle tract reserved for supply of fuel, often covered with babul (*Acacia arabica*): (*Bad. Pow.* iii. 246.)

Kurat ul Ayoon. A supplemental commentary on Durrul Mukhtar by Mohammed Alauddin Effendi bin. This is a book of reference on Mahamadan Law.

Kurh.

Kurh (*H*) A circular inclosure, in which a pile of wood was constructed, and an old women placed in the centre to be burnt alive by Brahmans in the event of any government officer attempting to put them under restraint, the consequences of the crime being supposed to devolve upon those whose oppression had driven the Brahmans to perpetrate it but the practice was prohibited by the British government and is now never heard of

KURI. *Vide* Changati-Kuri.

Kuri (*Mal*) A club, an association in which a number of persons contribute monthly for a given term a certain sum or quantity of grain each, at the end of the term a lottery takes place, and the whole accumulation becomes the prize of one of the contributor (*Wil Gloss* 304).

KURI (*Tam*) A mark, a stamp.

Kurikanam (*Mal.*) Compensation allowed for the value of trees planted, or other improvements made by the tenants or mortgagee on relinquishing possession (*Wil Gloss* 304)

Kurikarayama (*Mal*) Tenure of an estate, or gardens, by which the tenant holds under condition of being reimbursed for improvement, and of compensating for dilapidations

Kurikur (*Mal*) Tenure under which compensation for improvements and dilapidations is stipulated (*Wil Gloss. 304*)

Kurimosam (*Tam.*) A fraudulent mark put upon a stack of grain after some has been clandestinely removed.

Kurivila (*Mal*) Value of planted trees allowed for to a tenant on his giving up his lease.

Kurk (*H*) Sequestration, confiscation, seizure of goods, attachment, distraint for debt, or for arrears of public revenue Beng Reg xvii, 1793, xlv 179[illegible], vii 1799 Madras Reg xxviii 1802, v 1822. Bombay Reg xvii 1827 (*Wil Gloss* 304.)

Kurk amin (*H*) An officer of the court employed to attach a property and realise the proceeds. (*Wil. Gloss.* 304)

Kurki (*H*) Attached, sequestrated, distrained, under attachment (*Wil Gloss.* 304)

Kurki-parwana (*H*) A warrant of attachment. (*Wil. Gloss.* 304)

Kurk mahal (*H.*) An estate under attachment (*Wil. Gloss.* 304.)

Kurk-sazawal (*H.*) An officer appointed to attach and hold an estate, and realise arrears of rent or revenue or to distrain goods for debt, a bailiff, a sheriff officer (*Wil Gloss.* 304.)

Kurk-Tahsil. A coercive process by which an estate or holding is attached on account of arrears of land revenue.

Kurnum. A secretary, a writer, clerk, accountant of a village (*See* curnum).

Kurowabari. (*Santal Perg., Ben.*), local name for 'jum,' (*Bad. Pow.* i, 589.)

Kuttikkanakkola.

Kurpha. (Ben), a tenant of a tenant=a 'shikmi or sub tenant.' (*Bad. Pow.* i. 605.)

Kurra (*Ajmer*), a scarcity of rain (*Bad. Pow.* ii, 349)

Kurri (*Mal*) The principal or manager of a club. (*Wil Gloss.* 304.)

Kuruni (*Tam*) A measure of capacity, the same as the Marakal: in Tamil also a term used in computation as equal to a twelfth of a Kalam.

Kurvalcha. Is the step or throne which the Rajas of Malabar ascend. It answers to Puttam in Tamil and to Musnud Takht in Persian. Kur is share and Valcha is the management or government, implying that a Raja has come to the possession of the share of rank to which he is entitled by his seniority. (*Log Mal Man*)

KURVALCHA is the rank of second, third, etc, prince in a Royal family in Malabar

Kurwah (*A*) A conductor of pilgrims. (*Mac. Mhn Law*)

Kushem In the Ceded Districts a streamlet or water-course from a spring

Kushida means lending money for increase.

Kut kubala or Bye-bil-waffa (*A.*) In India a deed of conditional sale, and one of the customary deed or instrument of security. (*Ame. Cyc.*)

Kutlai. In the Ceded Districts a field

Kuttadan (*Mal.*) Rice planted in the spring (Feb. April) and ripening in the ensuing cold season.

Kuttaka (*Mal.*) Farm, contract, rent, tenure.

Kuttakakaran (*Mal. Tam.*) A farmer a contractor, a renter.

Kuttalai (*Tam*) Rice growing on high ground.

Kuttam A collection of houses consisting of 500 or 600 persons, six necessary for a Kartavu of 3 000. The Kuttam answered many purposes *e g*, Nilalkuttam, assembly under shade of a tree to discuss Tara affairs, Padakuttam for way: Nayattukttam for hunting, Yagagkuttam, for meditation, Nadu-kuttam, for arbitration. In the Laccadive Islands there are periodical kuttam for killing the rats which infest the cocoanut trees Any one absenting himself is fined The Honourable Mr. Hudleston has suggested that the Koot organisation which gave so much trouble in Canara in 1832-33 was probably identical with the Kuttam of Malabar.

KUTTAM, the council of Chiefs of a Nad in old days. (*Bad-Pow.* iii 157, 160.)

Kuttikanakola (*Mal.*) A register on palm leaves of a proprietor's deeds or mortgages, a list of his tenants, amount of his rents, etc.

Kuttikkanam. Is the privilege of half a rupee or one rupee (according to local custom) to which every proprietor of a forest is entitled for every tree cut within the limit of his property. It means literally stump money. (*Log Mal Man.*)

Kuttikkanakkola. From Dravidian Kutti (—stake peg to mark limits) and Dravidian Kanakku (accounts), and Dravidian Ola (—palm-leaf, writing(

Kuttinella.

A kind of memorandum or register written upon the Karimbana palm or palmyra leaf, in which is recorded the Janmakaran's Pramanams or deeds with his tenants and the amount of the pattam share.

Kuttinella (*Mal*) An allowance in grain made by proprietors to their tenants for keeping up the fences and inclosure of an estate.

Kuttinellu or Velinellu (*Mal*) From Dravidian Kutti (peg, stump, stake, in a fence) and Dravidian veli (hedge, fence) and Dravidian nel (rice) a contribution formerly made by Janmakars for keeping up fences against cattle, half of which contribution was taken and consolidated with the land revenue.

Kutubdiya (*island*), Government estate in Chittagong Dist. (*Bad. Pow.* 1 559.)

Kuva. The Malayalam name for the arrowroot that grows in Malabar. It grows without cultivation, and is commonly eaten by the poorer classes boiled in water and mixed sometimes with curds and salt. (*Log Mal. Man.*)

Kwin (*or Queng*) (*Lower Burma*) a group of independent landholdings, isolated by natural (or other) boundaries, so as to form a convenient unit for land-management (includes any separate estate, e g, an old land grant, a State-forest, &c) (*Bad. Pow* III. 491, 511, 515)

Kyedangyi (*Lower Burma*), official headman of a village. (*Bad Pow* III. 528)

Kyvedooth A form of mortgage and transfer of landed property in Malabar

Kuzhikanapattom. A tenure under which the tenant binds himself to pay stipulated rent as well as bring new land under cultivation, enures for 12 years unless a special term is fixed by contract. (*Sun. Mal. Law*)

Kuzhikanom A lease for improving the land, no rent is paid ordinarily (*Sun. Mal. Law*)

Kuzhikkuryavana. A redeemable tenure. (*Sun. Mal. Law*)

Kuzhikur. See Coozhikur. (*Sun. Mal Law.*)

Kuzi-ul-kuzat (*H.*) The principal Kazi under the British government, the head Mahommadan legal officer of the Sadr Adalats, or courts of appeal, (*Wil. Gloss. 272.*)

L

L. An abbreviation of Law, lord.

L.C Lord Chancellor.

L D. Doctor of Laws.

L.L Law Latin.

L.R Law Reports.

L S Is an abbreviation of Locus Sigilli, the place of the seal usually put within a circle at the end of a copy of a deed to show where the seal would be put in the original deed *Smith* v. *Butler* 25 N. Hamp. 524.)

LL. Laws.

LL.B. Bachelor of Laws.

Labham.

Laan the special oath known in Mahomedan Law as '*Laan*' could not be given effect to by Courts unless it conformed to the conditions prescribed for special oath under the Oaths Act 52 Bom 295=30 Bom.L. R. 447=110 I C. 131=A.I.R 1928 Bom. 285.

'La aulad.' The word 'la-aulad' in vernacular means issueless or without any sons or daughters 126 I.C. 337=52 All. 172=1929 A.L.J. 1233=A.I R. 1929 All. 963.

La conscience est la plus changeante des regles. A maxim meaning "Conscience is the most changeable of rules."

La ley favour la vie d'un home A maxim meaning 'The law favours a man's life."

La ley favour l'inheritance d'un home A maxim meaning "The law favors a man's inheritance."

La ley voit plus tost suffer un mischiefe que un inconvenience. A maxim meaning "The law will sooner suffer a mischief than an inconvenience."

'Label" defined. Act 4, 1889, s. 5 (3)

LABEL A placard or slip attached to an object to denote its contents, destination or ownership, a slip of paper or any other material bearing a name or title, address or the like, affixed to something to indicate its nature, contents, ownership, destination or other particulars a small piece of paper, or other material containing, the name, title or description, and affixed to indicate its nature or contents.

As commonly understood the word denotes a slip of paper or other suitable material attached to goods giving a short description of their character, directions for their use, and other facts of interest to the purchaser

The most general idea of a label is not of a separate strip of paper or parchment, but a written description of the article upon which it is placed or made, as to its ownership, or character, or quality, or extent

A label is a slip of paper or any other material bearing a name, title, address, or the like, affixed to something to indicate its nature, contents, ownership, destination, or other particulars.

A label is only intended to indicate the article contained in the bottle, package, or box to which it is affixed, and not to distinguish it from articles of the same general nature manufactured or sold by others, thus securing to the producer the benefits of any increased sale by reason of any peculiar excellence he may have given to it, as a trade-mark does.

Labelled or Sealed Neither the word 'labelled" nor the word "sealed" necessarily means that it should contain the name of manufacturer. 106 I C. 587=29 Cr.L J 75=9 P.L.T. 434=9 A.I. Cr. R. 352= A.I.R. 1928 Pat. 213.

Labham (S) Profit, gain. The vernacular term "labham" is a very generic expression covering different kinds of profit or gain. In its ordinary and comprehensive sense, it means profit, gain or income as opposed to the corpus yielding the same, and includes interest on capital, dividends on shares, and income of immoveable property, 29 M. 155.

Labhamu-dosili.

Labhamu-dosili (*Tel.*) A small portion from each heap of grain considered to be the perquisite of the cultivator.

"**Labour**" defined; Act 17, 1908, S. 2 (1) (*v*), P Act 3,1905, S 3 (*rr*).

Labor As a noun, it means manual, servile work, manual exertion of a toilsome nature, physical toil or bodily exertion, the act of doing what requires a painful exertion of strength, work to be done, child birth, travail, hard muscular effort directed to some useful end, as agriculture, manufactures, and the like, intellectual exertion and mental effort

"Labor would not ordinarily be understood to embrace the services of clergyman, physician, lawyer, commission merchant, or salaried officer, agent, railroad and other contractors, but would be confined to claims arising out of services where physical toil is the main ingredient although directed and made more valuable by mechanical skill"

To labour is "to exert one's strength with painful effort particularly in servile occupations" (*Webster*) cited in 6 I C 855

"LABOUR" includes labourers, cattle and appliances necessary for the execution of the work for which labour is to be supplied, Pun. Act III of 1905 (Minor Canals) S. 3, Cl. 9.

Labor or service, within the meaning of Act prohibiting the importation of aliens for labor or service, is limited to cheap and unskilled labour and service, and does not include professional labour or service

The shaving of a person by a barber, in his usual and ordinary business, is labor, within the meaning of a statute prohibiting labor on Sunday

LABOUR AND EXERCISE "Labour" is confined to occupations by which subsistence is obtained as in agriculture and manufactures, as distinguished from exertions of strength in play or amusements, which are denominated exercise rather than labor

Labour, Labourer, Labouring man 'Labor', either as a noun or a verb, is a comprehensive word, and does not seem to carry to its derivative, 'laborer' as ordinarily used, its full original meaning The travelling salesman undoubtedly labors, but he is not a laboring man.

MANUAL WORK AND MANUAL LABOUR. 'Manual work,' and 'manual Labour' must be distinguished "many occupations involve the former but not the latter, such as telegraph clerks, and all persons engaged in writing" (per *Smith, J*, *Cook* v. *Metrop. Tramways Co*, 18 Q B D 684).

AGRICULTURAL LABOURER An agricultural labourer is one who ordinarily works with his hands at the plough and with the spade, and who only under extraordinary circumstances is occupied in commercial pursuits. 6 I.C. 855 (856).

"REAL 'LABOUR' is that which tests a man's muscles and sinews" (per *Esher, M.R.*, *Yardmouth* v. *France*, 19 Q.B D. 651).

Labour Arbitration The investigation and determination of disputed matters between employers and employees.

Labourer.

Labour Combination. Labour Union. *See* Trade Union.

"**Labour Contract**" defined, Act 6, 1901, S. 2 (1) (*j*) Mad. Act 1, 1903, S. 3 (1) (*c*).

Labour Department. Department of Government dealing with Labour and Labourers.

Labour dispute. Dispute between labourers and their employers

"**Labour-district**" defined; Act 6, 1901, S 2 (1) (*k*)

Labour Exchange Local office under the state for directing labour to places requiring it.

Labour-Market. Supply of labour in relation to demand

Labour Party Representatives of labourers and artizans in Parliament or their constituents.

Labor union. Trade union. It is an association of workmen, usually but not necessarily, employed in the same trade, for the purpose of combined action in securing the most favourable wages and conditions of labour

Other definitions of the term are "A combination or association of persons pursuing a particular trade, formed for the purpose of mutual aid, particularly in securing the highest prices for their labor." (*Abbot. Law Dict*)

"A combination by employers or employees to regulate the price of labor" (*Anderson Law Dict.*)

Combination or association of labourers for the purpose of fixing the rate of their wages, hours of work, for righting grievances against their employers, and generally for their mutual benefit.

"An association of labourers for their mutual benefit." (*English Law Dict.*)

"An organized association of workmen skilled in any trade or industrial occupation formed for the protection and promotion of their common interests, especially to secure remunerative wages for their labor." (*Standard Dict*)

"Trade unions were originally merely friendly societies, consisting of artisans, engaged in a particular trade, such as carpenters, bricklayers, but in course of time they acquired the status of associations for the protection of the interests of workmen against their employers" (*Rapalje & Law Dict*)

"**Labourer**" defined; Act, 8, 1873, S 63, Act 6, 1901, S. 2 (1) (*l*); Mad. Act 8, 1878, S. 3, Mad. Act 1, 1903, S 3 (1) (*d*).

LABOURER. Etymologically and in a general sense, one who labors, one who labors or works with either mind or body, one who performs any kind of labor physical or mental. In a more restricted sense, one who performs manual menial or physical exertion, labor, or toil, not requiring special knowledge skill or training, for hire or wages, under the direction of his employer, master or superior, and hence distinguished from an artisan, professional man, or skilled workman; one who is regularly employed at some hard work; one who subsists by physical toil in distinction from one who subsists by professional skill;

Labourer

one who works with his hands rather than with his head, one who literally earns his bread by the sweat of his brow, an operative, a workman, one engaged especially in husbandry, or manufacture The proper meaning to be given to the word in a particular case is frequently governed by the context or the evident intent with which it is employed (*Ame. Cyc.*)

A laborer is one who labors with physical power, and under the direction of another, at fixed wages

A laborer, within the statutes exempting from garnishment the wages of a "laborer" is one whose work depends on mere physical power to perform ordinary manual labor, and not one engaged in services consisting mainly of work requiring mental skill or business capacity, and involving the exercise of intellectual faculties

A person may be properly referred to as a laborer, or as belonging to the laboring class, although at the particular time to which such reference is made he may, by reason of inability to obtain work, sickness, or other cause, not be actually employed as a laborer.

"A laborer is defined by Webster to be one who labors in a toil some occupation, a man who does work that requires little skill, as distinguished from an artisan."

Labourer, in 29 Chas 2, c 7, S 1, does not include a former who works for himself, but *semble,* it includes an agricultural labourer *R* v *Cleworth,* (1864), 4 B & S 927 It does not include a barber *Palmer* v *Snow* (1900), 1 Q B 725 The term in Employers and Workmen Act, 1875 (38 & 39 Vict. c 90), does not include an omnibus conductor or driver *Morgan* v *London General Omnibus Co* (1883) 12 Q B D 206

LABOURER AND ARTIZAN "*Labourer*" would not include a skilled Artizan, "there is a known distinction between a Journeyman in any art, trade, or mystery or other workman employed in the different branches of it, and a Labourer" (per *Ellenborough, C.J., Lowther* v *Radnor,* 8 East, 124) "A Labourer" is a man who digs and does other work of that kind with his hands A Carpenter or a Bailiff or a Parish clerk is not called a Labourer" (per *Brett, L J, Morgan* v *London Gen. Omnibus Co* 53 L J Q B 353, 13 Q B D 832) But in *R* v. *Wortley,* 21 L J M C 44, 2 Den 333) *Campbell, C J,* said—"I see no reason for confining the meaning of the word '*Labourer*' to a mere hedger and ditcher"

Labourer and mechanic. A mechanic is unquestionably a laborer

Labourer and servant. "Laborer" is more distinctive than "servant," and embraces a smaller class, comprehending only such as perform labor with their hands

Labouring class (Standing Orders of the House of Commons, Private Business, 38, 183a) includes mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working for some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of 30s. a week, and the families of any such persons who may be residing with them. *See* Housing of Working Classes Act, 1890 (53 & 54 Vict c 70), S 53. *See also* 6 Mad 199=1 Weir. Cr. Rul. 784.

Labourite Member of the Labour Party in Parliament

Lac One hundred thousand. (*Fifth Report.*)

LAC A resinous incrustation formed on the bark of twigs of certain trees by the action of the lac-insect

Laches. "Laches, or lasches, is an old French word for slackness or negligence, or not doing" (*Co. Litt* 380b, *Terms de la Ley*).

"LACHES' in law is a neglect to do something which by law a man is obliged to do" (per *Ellenborough, C J, Sebag* v *Abitbol,* 4 M & S. 463). In a general sense it means a neglect to do what in the law should have been done for an unreasonable or unexplained length of time under circumstances permitting diligence.

Laches to bar the plaintiff's right must amount to waiver, abandonment, or acquiescence and to raise a presumption of any of these, the evidence of conduct must be plain and unambiguous (32 Bom 234 and 33 Cal 633, *Ref* 95 I C 636=1926 Nag 416)

What would be laches in one case might not constitute such in another The question is one addressed to the sound discretion of the court, depending upon all the facts of the particular case.

Laches and acquiescence distinguished While the words "laches" and "acquiescence" are often used as similar in meaning, the distinction in their import is both great and important Laches imports merely passive non action, while acquiescence implies active assent

Lack of jurisdiction The expression "lack of jurisdiction", in special assessment proceedings, does not necessarily mean that there was no authority of law to levy the assessment under any circumstances, it covers as well a case where there was legal authority to make the assessment, but when there has occurred some material defect or omission in the proceedings at any stage.

Ladavi (*A.*) A deed of relinquishment A release or acquittance without claim (*Mac. Mhn. Law*)

Lading bill of *See* Bill of lading.

Lady A woman of good breeding, education, and refinement of mind and manners. Feminine of "Lord" or "Sir"

The wives of all peers bear the title of lady, corresponding and prefixed to the titles of their husbands The daughters also of all peers of the rank of real earl, marquis, or duke bear the courtesy title of lady prefixed to their Christian names and surnames. Wives of baronets and of all classes of knights are addressed by the same courtesy title; but, strictly speaking, lady is correlative with lord and indicates all those women of the families of peers who, or whose sons, bear the title of lord. The wives of all the sons of dukes and marquises, and of the eldest sons of earls, also bear the courtesy title of lady but not the wives of younger children of earls, who only bear the courtesy title of honour-

able. The only exception to this dependence of the title of woman on the father or husband is in the case of a peeress in her own right. The title lady would then belong to here independently, *See* Burkes Peerage, Dod's Peerage, (*Ency. of the Laws of England*)

Ladies gallery, reserved for female spectators in the House of Commons.

"My Lady" A form of address especially from servants etc to women of title (*Ox Dic*)

"Our Sovereign Lady," Queen.

"Our Lady" (*Eccl.*) Virgin Mary

Lady Mayoress. Lord Mayor's wife

Lady of the bedchamber Royal attendant

"Ladyship." Used for "her" or your etc for a titled lady's name or for a woman of rank.

Lagan, a yearly fee, a cash-rent (Pj) (*Bad Pow.* II. 716)

Lagan. Floatable goods cast overboard from a sinking ship. Goods cast into the sea tied to a buoy so that they may be found again by the owners

Lager Beer "Lager beer is a beer which is used in Germany, where it is kept in casks on a frame, 'lager (signifying bed), placed in a cellar for that purpose". And it is the name of a similar beverage now largely manufactured in other countries It is obviously called "lager beer" to indicate that it is like the German beer. The fact that the word "lager" is prefixed to the term "beer" does not convey the idea that it is a fermented liquor made of malt, this idea being involved in its being called "beer", since that is a fermented liquor chiefly made from malt

Lager beer, being a malt liquor, is to be regarded as an intoxicating liquor, within the meaning of a statute regulating the sale of intoxicating liquors

Lagwan, a rent-roll, a list of revenue payments (in. Maratha times), for each cultivator,—to make up the village total (*Bad Pow*)

Lahan Gahan. If the mortgage is a mortgage with a condition of "*lahan gahan*" it ordinarily involves no personal liability on the part of the mortgagor for repayment of the debt, unless it may by special agreement or local custom confer on the mortgagee the option of recovering the money from the mort gagor personally. The parties having adopted a form of mortgage which ordinarily is understood to involve no personal liability must be taken not to have contemplated it. 5 N L J. 259=19 N L R 67= A.I.R. 1922 Nag. 119 (1).

Laid up for repairs A yacht is "laid up for repairs", within the meaning of that phrase in a charter party, where it is at rest, for repair having suffered some damage, which to a material degree impaired its ability to sail as a yacht, though the charterer may continue to eat and sleep and entertain friends on board.

Lailat ul kadir. (*H.*) The right of power the 27th night of Ramzan, when it is said the kura descended from heaven and which is observed with much reverence by the Mohammedans of India. (*Wil. Gloss* 308).

Lairage Building, generally of brick and wood, roofed over, used for the reception and slaughter of cattle and sheep brought from abroad, and for the cooling and preservation of the carcasses. (*Mersey Docks* v. *Birkenhead*)

Laity The word "laity" is opposed to "clergy", and signifies the community of the faithful not specially dedicated to the ministry, who having been received into the Church are entitled, unless excommunicated, to the benefit of her ministrations and sacraments.

Laissez faire. Government abstention from interference with individual action, especially in commerce.

"**Laizu**" The literal and primary meaning of the word "laizu" is "share for land", and apparently through careless usage this expression is commonly employed to denote 'rent", but where the context is inconsistent with the latter interpretation, it should be given the primary meaning. 6 R 660=A I R. 1928 Rang 260

Lakband (=loins girt), a fighting tenant, to preserve frontier lands against an enemy (*Hazara, Pj*): (*Bad Pow* II 642)

Lake A body of water which occupies a basin of greater or less depth, and may or may not have a single prevailing direction A lake is an expense of fresh water entirely surrounded by land, or practically so, but there is nothing to distinguish in its legal character the salt water Caspian or Dead Sea from the fresh-water lakes

Lake. Stream pond. It is said that the controlling distinction between a stream and a lake or pond is that in one case the water has a natural motion, while in the other the water in its natural state is substantially at rest, and this entirely irrespective of the size of the one or the other. But not every sheet of water which has a current from head to its outlet is a stream It is said that even the large lakes have such a current

Tenements distinguished. "'Land,' in its most general sense, comprehends any ground, soil, or earth whatsoever, as meadow, pastures, woods, moors, waters, marches, furzes and heaths", while "tenements" is a word of greater meaning and extent sometimes, and includes not only land, but rents, commons, and several other rights and interests issuing out of or concerning land.

Lakh (lac or lakh). (*See lac*) one hundred thousand, one hundred lakhs make a kror, i e ten million. (*Bad Pow*).

Lakhabatta Periodical re-distribution of land in the Chhattisgarh plain.

Lakhiraj (A La=not, khiraj=L R.), of revenue-free land Lands the government dues from which are assigned to any person for his own benefit, or are appropriated to any public purpose. The term is used in contradistinction to Malguzary. (*Fifth Report*). The meaning of the term "lakheraj" is not very clear It may mean either a revenue-free grant or a rent-free grant, and although the right to make revenue-free grants belonged to the Crown the Zemindars made many alienations which are

Lakhiraj.

revenue-free grants 62 Cal 346=159 I C 98=8 R C. 257=60 C L J 477=A I R 1935 Cal 368 'Lakhiraj' applies to rent-free and revenue-free lands *See* 13 M L J 224=19 I C 3 6, 18 C W N 913=21 I C 415

'Lakhiraj, belagan, kabillagan' *See* 18 C W.N 913=21 I.C. 415.

Lakhiraj-dar, (*H*) A holder of rent free lands (*Wil Gloss.* 308)

Lakhirajı-bhumi, (*Tel. karn*) Land exempt from paying revenue to the state (*Wil Gloss* 308).

Lakhiraj-zamin, (*H*) Alienated or revenue exempted land (*Wil Gloss* 308)

Lakit, (*H*) In Mohammedan law, a foundling it is considered meritorious to take charge of a deserted child, and the finder becomes its guardian, but cannot make it a slave, the state is bound to provide for those foundlings of whom no charitable individual takes charge (*Wil Gloss* 308)

Laksha (*S*) (*See* Lac) current in all dialects, sometimes modified as Lak, or more commonly, Lakh (*H*) Laksha, or Lakh A hundred thousand, a lac, or Lakh, commonly though not exclusively, applied to coin as a Lakh of rupees (*Wil Gloss* 308)

Lakshmi, (*S*) The wife of Vishnu, the goddess of wealth and prosperity. (*Wil Gloss* 308)

Lalah. A term for a respectable Hindu, such as a banker.

Lama Tibetan or Mongolian Buddist priest (as) Dalai Lama or Grand Lama

Lamb The offspring of sheep when between 9 and 12 months old is still a lamb (*R.* v *Spicer,* 1 Den 82 23, *Stroude*)

"Lambardar" defined Act 18, 1881, S 4 (11)

LAMBARDAR, the (modern) headman of a village (N.W P. Oudh, Pj, C P), or of a patti or section of a village (*Bad Pow* 1 153) The cultivator who either on his own account, or as the representative of other members of the village, pays the government dues and is registered in the Collector's roll according to his number as the representative of the rest he may hold the office by descent or by election (Beng Reg ix of 1824, 11 of 1826 Act 1 of 1841 (*Wil Gloss* 309)

Lambardaran sharikdaran The word *'Lambardaran Sharikdaran'* occurring in a *wajib-ul-arz* does not mean mere co-sharers but carries the distinct and ordinary meaning of *lambardars* 48 All 810=24 A L.J 1021=98 I C 1007=A I R 1927 All 168

Lambardari. Relating to a lambardar The office or duty of a Lambardar (*Wil Gloss* 309.)

Lambar lari Lag *See* 159 I C 411=1935 A W.R 1358=1935 All 976

Lame duck. A cant term in the Stock Exchange for a person unable to meet his engagements (27 L. J. Ex. 412)

Lammas Lands (*in English Law*) Lands which belong to a person who is absolutely the owner in fee simple to all intents and purposes for half the year, and the other half of the year he is still the owner in fee simple, subject to a right of pasturage over the lands by other people. (*Baylis* v. *Tyssen-Amhurst,* 46 L J Ch 721)

Land

Laan Divorce upon accusation of adultery by the husband, to be confirmed by him by his imprecating upon her the curse of god whereupon separation takes place (*Wil Gloss* 505.)

Lana (*Pj Hill States*) See *Bad Pow* 1 232. *note.*

Lanabandi, (*H.*) An agreement formerly practised among the coparcenary proprietors of a village to contribute to the government assessment in proportion to the number of their several ploughs. (*Wil. Gloss* 309)

Lanadari (*Bijnor, N W.P*), villages in which *de facto* possession is the measure of right. (*Bad Pow.* ii 107 and *note*)

'Land" defined *N B* This word is also used in combination with other words (as) Basti land, Chaukidari chakran lands, Dhera land, Improved land, Jagir land, Khoti land, Reclaimed land, Sir land State land, Waste-land, Uncultivated land, Village land) 52, 3 V c 53, s 3, Act 29, 1839, s. 1, Act 0, 1839, s 1, Act 10, 1876, s 3, Act 5, 1882, s 4, Act 20, 1883, s 3 (1), Act 22, 1886, s 3 (3), Act 16, 1887, s 4 (1), Act 1, 1894, s. 3 (*a*), Act 11, 1898, s 2 (5), Act 24, 1899, s 2 (*b*), Act 13, 1900, s. 2 (3) (am. P Act 1, 1907, s (2), Act 7 1903, s 2 (*a*); Act 7, 1904, s 2 (5), Ben, Act 6, 1873, s 3, Ben. Act 5, 1876, s 6 (7), Ben Act 9, 1880, s. 4, Ben Act 2, 1882, s 3; Ben Act 3, 1884, s 6 (5) Ben Act 1, 1887, s 2; Ben. Act 4, 1887, s, 2, Ben Act 5, 1897, s 3 (*xiii*); Bom. Act 2, 1863, s 16 (6), Bom Act 7, 1863, s 32; Bom Act 5, 1872, s 3 (4), Bom Act 6, 1879, s 3 (6), Bom Act 6, 1816, s 2 (4), Bom. Act 3, 1888, s 3 (*r*), Bom. Act 5, 1888, s 2 (*d*) Bom, Act 3, 1901, s 3 (6), Mad Act 2, 1905, s. 5 (6), P Act 2, 1900, s 2 (*a*), P. Act 1, 1912, S 2 (*a*), U P Act 2, 1903, s 2 (2), U P. Act 3, 1904, s 2 (3), U P Act 2, 1906, s 2 (4); Reg 3, 1879, s 2 (1), Reg 1, 1899, s 3 (3).

LAND that species of property, which by its fixed situations and qualities, has engrossed the term real as its peculiar description

In the Land Acquisition Act the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth Act I of 1894 (Land acquisition) S 3 (a) *see also* 30 M 151=16 M L J. 55.

The word as used in the Land Acquisition Act does not necessarily refer to the right of fee-simple to it, but means the purchase of such interest as clogs the right of Government to use it for any purpose it likes 34 B 618=12 Bom L R 34=5 I.C 621.

Though the term 'land' in section 3 (a) of the Land Acquisition Act is defined as including things attached to the earth, the Act does not contemplate the acquisition of things attached to the land without the land itself 35 I C 97. It is only the land including the rights which arise out of it, and not merely some subsidiary right, which is capable of acquisition under the Act 35 I C. 97

The word "land" is a comprehensive term, including standing trees, buildings, fences, stones, and waters, as well as the earth we stand on Standing trees must be regarded as part and parcel of the land in which they are rooted and from which they draw their support.

Land.

The word "land," in the ordinary legal sense, comprehends everything of a fixed and permanent nature and therefore embraces growing trees 48 All 498 95 I.C. 150=24 A L.J. 583=1926 All 689

The word "land" includes the water in the earth, which is the result of natural and ordinary percolation through the soil, such water being a part of the land itself.

"Land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory, Bom Act V of 1879 (Land Revenue Code), S. 3, cl. 4

"LAND" includes the sites of villages, towns and cities. it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights-of-way, ferries, fisheries and all other benefits to arise out of land, and things attached to the earth or permanently fastened to things attached to the earth Bom Act X of 1876 (Revenue jurisdiction), S 3

"Land" includes the bed of the sea below high-water mark. Bom Act VI of 1879 (Port Trust Aden (Bom) S 3, cl. 6.

"Land" includes the bed of the sea below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth, Bom. Act VI of 1886 (Port Trust (Karachi)) S 2, cl. 4.

. The word "land" shall extend to messuages, and all other hereditaments, whether corporal, or incorporal and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency, Act XXX of 1839 (Inheritance), S 1

"LAND" includes houses and buildings and corporeal hereditaments and tenements of any tenure, unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure, and Ben Act I of 1899 (General Clauses), s. 5, Cl 1.

"LAND" shall include land which is built, upon or covered with water. Bom Act III of 1901 (District Manual) S 3, Cl 6 *See also* 33 Cal. 396=10 C.W N. 289=3 C L J. 169, 20 M. 21

The term land in S 6, Bengal Act X of 1859 means cultivated land, and does not include a tank regarded as land covered with water. 31 C. 937=8 C W N 804

The *'land'* in its wider signification would no doubt include not only the surface of the ground, but also everything on or under it but as used in the C P Act, the term land does not include buildings 24 A 218= 22 A.W.N. 27; *See also* 4 B 515; A I R 1928 All. 124,

The rule that whatever is affixed or built on the land becomes part of it, has a limited application in

Land at the disposal of Govt.

India 26 A L.J. 1 (P.C.). *See also* 1928 All. 124, 1902 A W N 27, 24 A 218, 14 M L J 155 Though trees are immovable property, there is no presumption that whenever the word "land" is used in an enactment, the trees standing thereon are included 29 N.L R 1 =142 I C 147=16 N L J 1=A I.R 1933 Nag. 53. *See also* 5 Lah 385, 7 N.L.R 63=10 I C 473, 29 I C. 20, 9 O L J 101=66 I C. 106=A I R. 1923 Oudh 47.

In all English Acts passed after 1850, unless the contrary intention appears in the Act, the expression 'land' includes messuages, tenements, and hereditaments, houses and buildings, of any tenure. Int. Act 1889 (52 & 53 Vict. c. 63) S. 3

"Land" in the English Lighting and Watching Act, 1833 (3 & 4 Will 4, c 90), does not include coal mines *Thoresby* v *Briercliffe-cum Entwistle*, (1895) App Cas 32

"Land" in the English Conveyancing Act, 1881 (44 & 45 Vict c 41), S 2 (ii), and Settled Land Act, 1882, c 38 See 5 Law Quarterly Review, 376 *Brown* v *Peto*, (1900) 1 Q B 346

"Land" in the Mortmain, &c Act, 1891 (54 & 55 Vict c 73) See *Re Wilkinson*, (1902) 1 Ch 841, *Re Ryland*, (1903) 1 Ch. 467.

Lands granted as subsidy for aiding constructions of Railway are not part of Railway. A.I.R. 1921 P.C. 234

LAND COUNTRY —We speak of the *land* as rich or poor, according to what it yields, of a *country* as rich or poor, according to what its inhabitants possess: we say, the land is ploughed or prepared for receiving the grain but the country is cultivated, the country is under a good government, or, a man's country is dear to him In an extended application, however, these words may be put for one another: the word land may sometimes be put for any portion of land that is under a government, as the land of liberty, and country may be put for the soil, as a rich country.

LANDS, TENEMENTS, AND HEREDITAMENTS In the construction of statutes the words "real estate" or "real property" shall be deemed synonymous with the phrase "lands, tenements, and hereditaments."

The term "lands, tenements, and hereditaments" is generally construed to include all lands and interest in lands, corporeal or incorporeal, which would descend to an heir at law.

"BENEFITS TO ARISE OUT OF LAND."—Future rents payable in respect of lands are "benefits to arise out land" 6 I C 504=(1910) M.W.N. 263=8 M L.T. 91

Land acquisition officer, is not a Court, 31 C.W. N 825=104 I.C 249=1927 Cal 621

"Land at the disposal of Government" Bur. Act 4, 1902, S 3, Mad. Act 5, 1882, S. 2; Reg. 7, 1891, S. 3.

"LAND AT THE DISPOSAL OF THE GOVERNMENT" means land in respect of which no person has acquired either (*a*) a permanent, heritable and transferable right of use and occupancy under any law for the time being in force; or (*b*) any right created by grant or lease made or continued by, or on behalf of, the British Government. Bur Act IV of 1902 (Forests) S. 3, Cl. 7.

Land Bank.

Land Bank Bank issuing notes on security of landed property

Land charges, in the Land Charges Act, 1888 (51 & 52 Vict c 51), did not include expenses incurred by local authorities under the Public Health Acts, although they may in certain events become charges on property. *R* v *Vice Registrar of Land Registry* (1890), 24 Q B D 178, *See also* Elphinstone and Clark Searches, c. ix Hood and Chalis, Conveyancing and Settled Land Acts, 4th ed, pp 400-409, Land Charges Acts, Practical Guide (*Ency. of the Laws of England*)

Land classification in the Punjab (1) The most important classes of cultivated land are as follows —(*a*) *barani* dependent on rainfall, (*b*) *sailab* flooded or kept permanently moist by river, (*c*) *abi* watered by lift from tanks, *jhils*, streams, or by flow from springs, (*d*) *nahri* irrigated by canals by flow or lift, and (*e*) *chahi* watered from wells

(2) The most important classes of uncultivated land are as follows —(*a*) *banjar jadid* land which has remained unsworn for four successive harvests, (*b*) *banjar qadim*, land which has remained unsworn for eight successive harvests, and (*c*) *ghair mumkin* land which has for any reason become unculturable, such as land under roads, buildings, streams, canals, tanks or the like, or land which is barren sand or ravines

Land Clauses Acts *See* Eng Int. Act, 1889, S. 23

"Land covered with water," in S 211 of the Public Health Act, 1875, held to include artificial reservoirs, See *Southwark and Vauxhall W.W. Co* v *Hampton U D C*, (1899) 1 Q B 272 (C A.), (1900) App. Cas. 3.

"Land customs area", means any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed. Act XIX of 1924 (Land Customs), S 2, cl (g).

Land forces. In a certain and general sense, the terms 'army' and "land forces" do embrace militia in actual service The militia do serve on land, and therefore, in a popular sense, are a part of the land forces.

Land gained Lands washed away and afterwards re-formed upon the old site, which can be clearly recognised, are not lands "gained" within the meaning of S. 4 of Reg XI of 1825, they do not become the property of the adjoining owner, but remain the property of the original owner. This principle applies equally to a case in which the question arises between two riparian owners and when the land was washed away from one side of the river and re-formed on the other side but was re-formed on the old ascertained site (1927) 54 I A 156=6 Pat 481=31 C.W N. 717=101 I C. 1=45 C L J. 520= 8 Pat L T 497=26 L.W. 754=25 A.L.J. 905=A I.R. 1927 P.C. 89=52 M L.J. 576

"Land held for service" defined. Bom Act 2, 1863, S 16 (*d*), Bom. Act 7, 1863, S 32 (*d*),

"Lands held under a treaty," refers to cases in which the root of title was a treaty. 33 Bom L.R. 1418=136 I C 161=1932 Bom 15.

Land held for agricultural purposes Land held as a grove whether on payment of rent or not is not 'land' held for agricultural purposes. 11 A L. J 236=35 All 280=19 I C 416.

Landed estate The phrase "landed estate" embraces not only the land, but all houses, fixtures, and improvements of every kind thereon, and all machinery, neat cattle, horses, and mules, when attached to and used on a plantation or farm The ordinary meaning of the words "landed estate" seems to be an interest in and pertaining to lands. Thus we say a "landed proprietor", and mean thereby any person having an estate in lands, whether highly improved or not

Landed property "Landed property", as used in the taxation act, is synonymous with "real estate"

"Land holder" defined (*See also* Holder of land, Recorded land holder, Zamindar) Act 20, 1883, S. 3 (3), Act 24, 1899, S. 2, Ben Act 6, 1880, S 3 (11), Bom Act 5, 1879, S 3 (11), Bur. Act 1 1905, S 2, Mad Act 2, 1864, S 1, Mad Act 5, 1884 S 3 (xi), Mad Act 4, 1886, S 2, Mad Act 1, 1908, S 3, P Act, 2, 1903, S 3, U P 2, 1909, S 4, Reg. 3, 1879, S 2 (2), Reg 1, 1886, S 3 (*g*), Reg. 1, 1888, S 3 (3), Reg, 1, 1899, S 3 (6)

LAND-HOLDER Proprietor or a superior tenant of land.

"Land holder" means any person responsible for the payment of the land revenue, if any assessed on land It also includes the proprietor of land the land-revenue of which has been wholly, or in part, released, compounded for, redeemed or assigned, Pun Act XX of 1883 (District Board) S 3, cl 3

The assignee of a lessee or a person farming lands from a Zemindar or Jaghirdar, is a land-holder within the meaning of the Madras Rent Recovery Act. 8 M 394 (F B)

Per *Sadasiva Aiyar, J*—Even an assignee of arrears of rent from the owner of the estate or even a part of the arrears is a 'landholder'. 40 M L J. 319=44 M 433=62 I C. 890=29 M L.T. 203=(1921) M W N 198 (F B)

The word "landholder" in S 6 (1) does not mean "landowner" 48 M L J. 147=86 I.C. 191=A.I R. 1925 Mad 454

"Landholder's right" defined. Bur. Act 4, 1898, S 4 (10), Ben. Act 1, 1907, S. 77.

"Land in its natural condition" defined Act 5 1882, S 7, *Expln I to Illn (e)*.

Land, interest in. *See* Taylor *v.* London and County Banking Co (1901) 2 Ch. 231

"Land irrigated from a canal.' defined. Bom. Act 7, 1879, S 48.

Land jobber. Speculator in landed property.

Land lady. A woman keeping an inn or boarding house or lodgings

Land laws. Laws relating to landed property.

"LAND LET OR OCCUPIED FOR AGRICULTURAL PURPOSES A village tank which is left for the cultivation of water-nuts is not "land let or occupied for agricultural purposes or for purposes subservient to agriculture" within the meaning of the phrase in the Central Provinces Tenancy Act, 1898 By cultivation of such nuts no person can acquire a tenant right over the area 11 N L.R. 49=28 I.C. 869.

Land locked

Land locked Fully or almost enclosed by land.

"Landlord" defined Act 8, 1885, S 3 (4), Act 22, 1886, S 3 (11), Act 16, 1887, S 4 (6), (7), Act 17, 1887, S. 3 (4), Act 11, 1898, S 2, Ben Act 6, 1908, S. 3, Bom Act 5, 1879, S 3 (15), Mad Act, 1, 1887, S. 2 (2), U. P. Act 2, 1901, S 2.

LANDLORD He of whom lands are holden (*Tomlin's Law Dic*) The word generally implies, not the mere lordship or ownership of the soil, but, the relationship to a tenant (per *Bramwell, B. Churchward* v *Ford*, 26 L J Ex. 354)

The person letting the land is called the "landlord", and the party to whom the lease is made is called the tenant"

"Landlord" means a person immediately under whom a tenant holds, and includes the Government, [Ben. Act VIII of 1885 (Tenancy), S 3 (4)]

Mulgar being a puttadhar, is a "land-holder", within the meaning of S 1 of Mad Act II of 1864 (Madras Revenue Recovery Act) 20 M.L J 640(F B.) =8 M.L T 173=(1910) M W N. 333=7 Ind ,Cas 321

The person to whom the land, the rent for which is claimed as also the arrears of rent, are transferred, is an assignee of the whole interest of the land lord, and is a landlord under the Bengal Tenancy Act 7 C.L.J. 425=35 C. 744

Landlord and landholder. A landlord is a proprietor of land, a landholder may or may not be a proprietor. 18 R D. 662=16 L R 105 (Rev).

Landlord and tenant. "In order to constitute a tenancy (or the relation of landlord and tenant) there must be a demise by one person to another of an estate in lands or other hereditaments less than that of the grantor, who retains what is termed the "reversion". Such a demise is a lease, and the parties to it are respectively lessor and lessee They are not necessarily landlord and tenant properly so called for a lease may be of incorporal hereditaments only such as a right of way or an advowson It is essential to a lease that the lessor should not grant the whole of his interest, for this would be an assignment, and that the lessee should take some estate, as distinguished from a mere license to use the demised premises The accepted test of this distinction is to enquire whether or not the grantee gets exclusive possession of some defined portion of land, or of a house or room, for some definite period (*Selby* v *Greaves*, 1868, L.R 3 C P. 594, *Smallwood* v. *Sheppards*, (1895) 2 Q B 627) The question is one of substance rather than of words, and is to be decided by the effect of the agreement of letting taken as a whole' (*Glenwood Lumber Co* v. *Phillips*, (1904),

The relation of *landlord and tenant* may be defined in general terms as that which arises from a contract by which one person occupies the property of another with his permission, and in subordination to his rights, the occupant being known as the tenant, and the person in subordination to whom he occupies as the landlord. Per *Acton, J.*—"The relation of landlord and tenant in its ordinary legal significance arises whenever one party confers on another the right to exclusive possession of premises, for example, of a dwelling-house, for a time which is either subject to a definite limit originally, as in the case of a lease for a term of years, or which, though originally indefinite, can be made subject to a definite limit by either party, as in the case of a tenancy from year to year or of a quarterly, monthly, or weekly tenancy. This relation is created by contract to which there is usually, though not necessarily, incident a right on the part of the landlord to receive from the tenant payment for the use of the premises in the shape of rent. . The relation of landlord and tenant is fully established only when the tenant has entered on the premises let in pursuance of the contract" (1927) 2 K B 279=96 L J (K B) 783. The fact that a man takes the site at his own free will, occupies it for a few hours and pays fees, not for the occupation of the site, but for the privilege of selling goods upon the site, does not create the relation of landlord and tenant 3 Luck 282=106 I.C. 491 (2)=A I R 1928 Oudh 99, *see also* 23 I C 250. *See* Woodfal's Landlord and Tenant, Redman and Lyon, Landlord and Tenant, Fawcett's Law of Landlord and Tenant, Foa's Landlord and Tenant, Leake on Contracts (*Ency of the Laws of England*)

Landlord's interest The term "landlord's interest" in S 148, cl (h) of the Bengal Tenancy Act (VIII of 1885) means the interest of the person entitled to receive the rent from the tenant. 17 C.L.J. 227=17 C W N 276=40 C 462

Land mark Boundary mark, marking a stage on crisis in history

Land-Measures (*Used in the Punjab*) The land-measures used in revenue-work are the local measures and not the English acre. These measures are the 'bigha' and the 'ghumao' and 'kanal' For imperial returns, in which acre-measures are required, the conversion is effected by simple rules These local land-measures vary from district to district; but the application of them is not so difficult, for, fortunately, there is a generally-accepted unit of length which differs only very slightly in certain localities, and the area measure, is naturally a square of this unit.

The unit of length is the 'kadam' (also called 'karu') and ten kadams make a chain Then the area measures follow naturally. A table is given on the opposite page

The area-unit is a *square kadam*, which in bigha measure, is called *biswansi*, and in ghumao measure, a 'sarsai' (or sarsahi).

In the former—		
20 Biswansi	.	1 Biswa.
20 Biswa	..	1 Biswa.
In the latter—		
9 Sarsai	..	1 Marla.
20 Marla	..	1 Kanal.
8 Kanal	..	1 Ghumao.

Land Measures.

	In the districts of	The Kadam is in inches	Proportion to acre	
Bigha measure	Delhi, Rohtak, Gurgoan, Hissar Ludhiana, Ambala, Karnal, Fazilka (Firozpur District)	57 15	1 Bigha 0 208 acres or 4 8 bighas 1 acre	The Standard acre is 4840 Square yards
	Simla ..	54 00	1 Bigha 0 186 acres, 5 38 bighas 1 acre	
	Kulu and Plach (Kangra district)	56 00	1 Bigha 0 2 acres, 5 Bighas 1 acre	
	Shahpur - Khandi (Gurdaspur district)	59 03	1 Ghumao 0 8 acres 1 25 Ghumaos 1 acre	
Ghumao or kanal measure	Jalandhar, Hoshyarpur and Kangra (except as above)	57 50	1 Ghumao 76 acres 1 82 Ghumao 1 acre	In some places it is common to count by kanals instead of by ghumaos and kanals Thus they speak of 246 kanals and not 30 Gh 6 k
	Amritsar, Gurdaspur, (except Shakargarh Tahsil and Shahpur (Kand) Firozpur (except Fazilka) Lahore (except Sharakpur)	60 00	1 Ghumao 0 83 acres 1 21 ghumaos 1 acre	
	Tahsils Shakargarh, Gurdaspur district), Sharakpur (Lahore dist) and all districts not named	66 00	1 Ghumao 1 acre	

See Land systems in British India, by Baden Powell, Vol II, p 559

"Land needed for a public purpose" defined, Mad Act 5, 1882, S. 68.

"Land occupied by the proprietor" defined, Act 18, 1881, S. 4 (5), *Expln* 1, Act 9, 1883, S 3 (11), *Expln* 1 (sub. Act 17, 1889, S 5)

Land of the living. Present life.

"Landowner" defined, Act 16, 1887, S 4 (9), Act 17, 1887, S. 3 (2) P 1, 1902, S 2 (2); Reg 6, 1893, S 2 (4).

"LANDOWNER', means the person for the time being receiving the rent of land, whether on his own account or as trustee for any other person, or who would so receive it if the land were let at a rent"

"Landowner" does not include a tenant or an assignee of land-revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under Land Revenue Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate: (Pun. Act XVII of 1887, Land Revenue) S 3, Cl. 2.

Land Societies

Land Record. Official records kept in respect of each plot of revenue paying lands, public as well as private lands

Land Record office The department of Government in charge of land records.

"Land-revenue" defined, (*See also* Arrear of land-revenue, arrear of revenue, Grant of money or land revenue, revenue), Act 10, 1876, S. 3, Act 2, 1880, S 2, Act 20, 1883, S 3 (2), Act 16, 1887, S. 4 (10), Act 17, 1887, S 3 (6), Bom Act 2, 1876, S. 3 (2), Reg 1, 1886, S 3 (*e*).

LAND REVENUE The revenue derived by the State by taxation of lands and of profits on land.

"LAND-REVENUE" means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force. Bom. Act of 1876 (Revenue Jurisdiction) S 3.

"Land-revenue" means revenue assessed upon land under the provisions of the Land and Revenue Act, Bur. ActII of 1880 (District Cesses and Rural Police) S 2

'The words *"land-revenue"* signify any sum of money legally claimable by Government from any person on account of any land, or interest in or right exercisable over, land held by or vested in him, under whatever designation such sum may be payable, [Bom Act II of 1876 (Bom City Land Revenue) S. 3, Cl 2. *See also* 9 Bom 462.]

"Land-revenue" includes trini or grazing dues levied for grazing on Government lands Punjab Act XX of 1883 (Dist Board) S. 3, Cl 2.

The expression *"land Revenue"* does not include the duties leviable, on the manufacture of spirits, or the taxes on the tapping of toddy trees, 9 B. 462

Land Societies The object of a land society is to enable persons of small means to become owners of plots of land at wholesale prices Subscriptions are received from the members and applied to the purchase of an estate, which is laid out in lots of a convenient size, with all necessary roads, sewers, and improvements. The lots are then distributed among the members, by ballot or otherwise, at a fixed price, which is made to include the initial price of the land, plus the expense of all improvements and the costs of conveyance If a member is in a position to pay for his lot at once, he may do so, and obtain his conveyance forthwith, otherwise he pays for his lot by instalments, commonly called subscriptions and which include interest, and the society gives him a conveyance on his payments being completed, or he obtains a conveyance in the first instance, and mortgages the property to the society as security for the due payment of his instalments. A land society is thus essentially different from a building society (*Ency. of the Laws of England.*)

LAND SOCIETY AND BUILDING SOCIETY, *"A land society* buys land with the funds contributed by the members of the society, and then divides it amongst them, but a building society advances to its borrowing members money derived from the subscriptions' and which the borrowing members themselves lay out in the purchase of lands or buildings, and then mort-

Land Steward.

gage them to the society" (*Grimes* v. *Harrison*, 1859, 26 Beav 435, *per* Romily, M.R.) It not unfrequently happens, however, that a land society and a building society exist side by side and work together under practically the same management. (*See* Davis on Building and Land Societies, 4th ed , Wurtzburg on Building Societies, 4th Ed , *Ency. of the Laws of England.*)

Land Steward A person who has the care of a landed estate He sees that the lessor's covenants are duly fulfilled, sees to repairs, and generally supervises the estate on behalf of the landlord

"**Land-suit**" defined Act 18, 1884, S 3 (2) , Act 6, 1900, S. 2, Reg 1,1896, S 3 (1) , Reg. 7,1901, S. 2.

"LAND-SUIT" means a suit relating to immoveable property or to any right or interest in immoveable property Bur Act VI of 1900 (L. B. Courts) S. 2, Cl (*b*).

Land Tax Tax on land , one of the chief sources of revenue to the Government *See* Bourdin on Land Tax. Chandler on Land Tax, 1899.

A land tax includes a yearly impost laid upon real property by parliamentary enactment for the provision of public revenue, and the Bridge Tax being a tax on land directly imposed by the legislature of the State is a land tax There is no authority for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term 'a tax' nor can it be contended that revenue raised by statutory imposts for specific purposes is not taxation. 125 I C. 867=A.I.R. 1930 P.C 129 (P.C).

Land tenant He who actually possesses the land (*Bouvier*)

Land used for building purposes Is not the same as "building land" it means "land actually used for building purposes, not land contemplated to be used for building purposes or thoroughly suitable for building purposes" (*per* Lord Hatherley, L. C in *L. & S W Rly Co* v *Blackmore* 1870, L R. 4 H L. 610 at pp 616, 617). On this case see *Macfie* v. *Callander*, etc.. Rly. Co , (1898) A C. 270 It may include, however, gardens of a reasonable size, or a reasonable amount of curtilage, if connected with houses (*ibid*).

LAND USED FOR AGRICULTURAL PURPOSE Land which is used for the purpose of a grove is, land used for agricultural purpose. 13 I.C. 634 (635).

Landa, name of the character used by village shopkeepers in their books (*Bad. Pow.* ii. 612 *note.*)

Landed Landing goods means putting them upon the land, or upon that which, by custom of the port, is its equivalent; but placing goods into lighters, which are to take them to an export vessel as soon as she is ready to receive them, is, however usual in trade, not the same thing as "landing" the goods directly and immediately upon the quay (*per* Bowen, L J, in *Houlder* v. *Merchants Marine Insurance Co*, 1886, 17 Q.B D. 354).

Landed Estate. In the ordinary meaning of the words, an interest in and pertaining to lands.

Langar.

Landed property. Real estate, whether in fee simple or leasehold, and whether improved or unimproved

Landed Proprietor. Any person having an estate in lands.

Landing Taking from ship and putting on land; taking the cargo out of a vessel either with or without the intervention of a wharf; a wharf to or from which persons may go from or to some vessel in the contiguous waters, a place in a river or other navigable water for lading and unlading goods,or for the reception and delivery of passengers; a place where vessels can be moored and loaded or discharged; the terminus of a road in a river or other navigable water, for the use of travellers, and the loading and unloading of goods, the yard or open place which is used for deposit and the convenient communication between the land and water.

LANDING AND "WHARF" "A landing does not necessarily include a wharf, but the difference is simply that a wharf is an improved landing and no less landing because it is a wharf (*Reighard* v. *Flinn*, 194 Pa 352, St. 356, cited in 24 *Ame Cyc.* 843).

Landing Net, A "landing net" is a kind of scoop net used to bring to land or hand a fish which has been caught Its use is not to catch fish separately as they are caught in drift nets and seines, but its use is to land the fish when caught. A fish is caught when hooked, and a landing net is not necessarily a part of the act of catching, but simply a convenient means of obtaining physical possession.

Landing Order. A customs document authorising the chief officer of a ship, after dues paid to hand over goods for landing.

'As if it were an arrear of land revenue"—meaning of. *See* 158 I C 263=18 N.L.J. 149=1935 Nag. 185.

"**Landing place**" defined. Act 2, 1901, S. 2. Bom. Act 7, 1882, S. 4.

Land shark. One who preys on seamen ashore.

Lane The term "lane" is not a legal term. It signifies simply a narrow way, which may be either public or private and is oftener, perhaps, private than public.

A lane which is accessible to the public whether permanently or temporarily is a street. A.I.R. 1922 Lah. 41

The word "lane" is not defined in the Punjab Municipal Act but it signifies a narrow road or street. 122 I C 564=31 P.L.R 193=A I.R. 1930 Lah. 547.

Langar, (*H.*) An anchor.

LANGAR (*Per.*). An almshouse In Marathi any extensive establishment is called langarkhana an almshouse, a place where food and alms were distributed to the poor under the Mohammedan government, by which an assignment from the public revenue was appropriated to the maintenance of such establishments in some parts of Bengal: a similar institution, in which the poor were lodged and fed was kept up by the Maratha government of Nagpur. in Marathi, the term means also any extensive establishment. (*Wil. Gloss.* 309).

Lang-batai.

Lang-batai: *see Bad. Pow.* 1 275.

Language. Language "is the conveyance or medium in which thoughts and ideas are transmitted from one to another. The multiplicity of thoughts and complexity of ideas in modern times necessitate either a startling increase in the coinage of words, or the giving to existing words many meanings, such as primary or secondary, general or specified, popular or technical".

The word "language" is broad enough to include words written as well as words spoken

Lapo (*Sindh*), a due or cess in grain paid to the Zamindar chief. (*Bad. Pow* iii 327)

Lapse (*In testamentary law*) the failure of a devise or bequest by the death of the devisee or legatee in the lifetime of the testator is called a lapse

Lapsed devise. A devise which fails to take effect.

Lapsed devise and void devise There is a distinction between a 'Lapsed" and a "void" devise In the former case the devisee dies in the intermediate time between the making of the will and the death of the testator, but in the latter case the devise is void from the beginning, as if the devisee be dead when the will was made.

Lapsed legacy. A "lapsed legacy" is one which has never vested or taken effect. It has been defined as one which, originally valid, afterwards fails because the capacity or willingness of the donee to take has ceased to exist before he obtained a vested interest in the gift

Larcenous intent. A "larcenous intent" exists where a man knowingly takes and carries away the goods of another without any claim or pretense of right, with intent wholly to deprive the owner of them or convert them to his own use

Larceny Larceny is the taking and carrying away of the mere personal goods of another with intent to steal the goods.

OTHER DEFINITIONS ARE "The felonious taking and carrying away of the personal goods of another." 4 Blackstone Comm 229.

"The felonious and fraudulent taking and carrying away by any person of the mere personal goods of another." *U S* v *Moulton*, 27 Fed. Cas No 15, 827.

"The felonious stealing, taking and carrying, riding, or driving away the personal property of another." *Haywood* v. *State*, 41 Ark. 479 484.

"The fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner" (*Wharton* Cr.L 862)

"The taking and removing, by trespass, of personal property which the trespasser knows to belong either generally or specially to another, with the felonious intent to deprive him of his ownership therein; and, perhaps it should be added, for the sake of some advantage to the trespasser." 2 Bishop Cr.L. 758.

"Knowingly taking and carrying away the goods of another without any claim or pretense of right, with intent wholly to deprive the owner of them, and to appropriate or convert them to his own use" (*State* v *South*, 74 Am Dec 250 *See* Pollock and Maitland, Hist Eng Law, 3 Steph Hist Cr Law; Hawk. P C.; East, P C., Roscoe, Cr Ev, Steph Hist Dig Cr Law, Mayne, Ind Cr. Law, Russell on Crimes, Arch Cr Pl

Lard In its ordinary meaning, the fat of swine which is melted and separated from the flesh.

Large. Absolutely or relatively great or ample as regards quantity, number, extent. (*Standard Dict.*)

Large proportion of landlords The "large proportion of landlords" as contained in Section 101, cl. 2 (a), Bengal Tenancy Act (VIII of 1885) was not confined to the proportion numerically but it referred to the interests which the landlords had in the estate The words do not mean "a large numerical proportion, but mean "a large proportion of the landlords as determined by the interests they held in the estate" 40 C 123=18 I C 939 (941 & 943)

AT LARGE Not in custody.

Lari (*or lari*), (S E Pj), a subdivision of a 'patti' in a village (*Bad Pow* ii 679)

Lascivious That which tends to excite lust, as in the phrase lascivious behaviour, loose, wanton, lewd, lustful, tending to produce voluptuous or lewd emotions, as in the phrase lascivious work or publication.

"LASCIVIOUS," as used in making it a criminal offense to place in the mails any obscene, lewd, or "lascivious" publication, signifies that form of immorality which has relation to sexual impurity

The words "LASCIVIOUS," "LEWD," "OBSCENE," OR "OF AN INDECENT CHARACTER," in the statute prohibiting the sending of such matter through the mail, does not necessarily mean that the separate words are of such a character, but the character of the letter is to be determined by treating it as a whole.

Lascivious behaviour. In an Act making "gross lewdness and lascivious behaviour" punishable by imprisonment, etc, includes an indecent exposure of the person of a man to a woman, with a view to excite unchaste desires on her part and to induce her to yield.

"Lascivious carriage and behaviour" means 'all those wanton acts between persons of different sexes, flowing from the exercise of lustful passions, which are grossly indecent and unchaste, and which are not otherwise punished as crimes against chastity and public decency."

Lascivious cohabitation. The act or state of a man and women not married, who dwell together in the same house as man and wife (*Bouvier*).

Lascivious lewdness. Lewd and lascivious conduct in public.

Lasciviously. In a lascivious manner, loosely, wantonly, lewdly. (*Webster Dict.*)

Last. As an adjective, that which comes or remains after all the others; (as) last or only child; latest, (as) last place of abode; last annual account; hindmost; closing; final; ultimate. As an adverb, in conclusion, finally; lastly. (*Century Dict.*)

Last and usual place of abode.

Last and usual place of abode A proof of service of summons on a person at his "last and usual place of abode" is equivalent to "usual place of abode" It means that the service was made at the person's last and usual place of the abode. The words "last and" are mere surplusage.

Last clear chance, "Last clear chance" is the doctrine that notwithstanding the previous negligence of a plaintiff, if, at the time the injury was done, it might have been avoided by the exercise of reasonable care on the part of the defendant, the defendant will be liable for the failure to exercise such care.

THE LAST DAYS. Day of judgment

Last illness A "last illness," within the meaning of an Act making a physician's bill for attendance and medicine furnished during the last illness of a decedent a preferred claim against his estate, means the immediate illness resulting in the decedent's death It does not include the illness of one caused by a serious injury from which he so far recovers that he is able to attend to business, but has a subsequent relapse from which he dies, and therefore the claim of the physician attending him before the relapse is not preferred.

The term "last illness," includes any sickness for which a physician is called. which continues until the death of the patient. It is not necessary that the sickness should in the first instance confine the patient to her room

Last Sickness The sickness which is terminated by death; the sickness which results in death, that of which a person died, in extremis, the immediate illness resulting in the decedent's death. (*Ame. Cyc*) It includes any sickness for which a physician is called, which continues until death It does not include the illness of one caused by a serious injury from which he so far recovers that he is able to attend to business, but has a subsequent relapse from which he dies, it relates not to remote but proximate cause of death Matter of Reese, 2 Pearson (Pa) 482. Nor can it be construed to include a lingering illness that has stretched across many months or many years. (25 *Ame Cyc* 161.)

Last will "My *last will* dated," &c, giving date of the first will held to mean the last will in fact, the date given being rejected as a mistake (Re Ince, 46 L.J P.D & A 30,, 2 P.D. 111)

In the construction of statutes the words "last will" shall be construed as meaning "last will and testament"

A "last will," says Swineburn, ' is a lawful disposing of that which any one would have done after death" It is a voluntary disposition of property, in the mode recognized by law, to take effect after death.

Last will and testament. "A last will and testament" may be defined as the disposition of one's property to take effect after death."

The words "will and testament" and the phrase "last will and testament" are exactly synonymous by common usage all over the world.

Lastage. Sand or gravel used for ballasting a ship; a custom exacted in some fairs or markets to carry things as one pleases.

Lathmar

Lata culpa "Lata culpa" is the term used in the civil law to designate gross faults or neglects.

Lata Culpa dolo aequiparatur A maxim meaning "A concealed fault is equal to a deceit" (*Tayler L Gloss*). Gross negligence is tantamount to fraud.

Late Defunct, (as) late constable; existing recently, but now dead (as) late husband, formerly; recently; lately (*Black L Dict*) In *Holmes* v. *Custance*, 12 Ves. Jr 279, 33 Eng Reprint 105, where the description was 'Robert Holmes, late of Norwich,' Sir William Grant, Master of the Rolls, said 'Every one knows that the sense of "late" is not recently, but formerly of Norwich.'

"LATE IN MAY" means a date later than the 17th. *Erskine* v. *Erskine*, 13 N H 436, 443; (*Ame. Cyc.*)

Latent. Not manifest, hidden, concealed, not visible or apparent; document, existing but not apparent on the surface (as) Latent ambiguity in documents or latent defects.

Latent ambiguity An ambiguity not evident; not on the surface.

LATENT AMBIGUITY arises where the words of a written instrument are plain and intelligible, but by reason of extraneous facts a certain and definite application of those words is found impossible In such case, to preserve the instrument to give it operation and effect, to prevent it from being defeated by uncertainty, parol evidence to explain its intent and to fix its application is admissible. *See* Evidence Act.

Latent dangers.—Dangers not seen, or perceptible to the senses by their presence.

Latent deed A deed kept for twenty years or more in a man's strong box. (25 *Ame Cyc.* 162)

Latent defects. "Latent defect" means a defect which is not obvious to the eye and is not apparently noticeable (94 I.C. 873=43 C L.J. 126=A.I.R. 1926 Cal. 749.)

A defect, in order to be latent, within the exceptions in a bill of lading of injuries arising from latent defects in hull, etc, must have been not discoverable at the time of the shipment

Lateral Proceeding from the side (as) lateral motion, lateral support. (*Webster Dict.*)

The right to the lateral support to a wall, from a neighbour's land, is acquired only by prescription. 68 I.C 831=14 L.W 728=23 Cr.L.J 607

Laterally By the side

Lathis Lathis are "arms". 35 Ind. Cas. 489=17 Cr.L.J. 313.

An instrument which consists of two separate pieces, *i.e.*, a lathi 6 feet 3 inches long at one end of which is a hollow screw and an axe like blade 5" × 4½" which blade has a screw to allow of its being fixed into a long lathi is an arm under S 19 (*f*) of the Arms Act. (9 Lah. 137=29 P. L. R. 309=112 I.C. 49=A I.R. 1928 Lah. 295.)

Lathmar, a tenant who makes an embankment for a certain kind of cult, one who beats down (mar) the clay with a club (lath) (Pj. South.) (*Bad. Pow.* 11, 658.)

Latin.

Latin. The language of the ancient Romans Latin is an important language in the law; being the language not only of the civil and canon law, but of the early European codes, of much of the ancient common law of England and Scotland and of a large proportion of the public, civil and maritime law of later times. (*Burrill L. Dict*)

Latinism Idiom or construction imitating Latin.

Latinist. One who knows Latin or given to latinism

LAW LATIN is a technical law language made up of Latin and latinized English and French (*English L. Dict*) There are three sorts of law Latin (1) Good Latin, allowed by the grammarians and lawyers, (2) false or incongruous Latin, (3) words of art, known only to the sages of the law, and not to grammarians, called "Lawyers' Latin" (*Wharton L. Lex*)

"Latrine" defined Mad. Act 4, 1884, s 3 (*xxiv*), 5, 1884-33.

LATRINE Place for evacuation on bowels or bladder.

Latter. Later; more recent (as) later part of November coming or happening after something else (*Century Dict.*)

Latter part A contract fixing the time for performance as the "latter part of January" should be construed to mean the whole of that part A suit is not maintainable until after the expiration of that time.

Laudanum. An alcoholic preparation of opium, known in medical science as the tincture of opium, but properly known as laudanum.

Lauja, meaning of. *See* 1905 A W.N 214.

Launch To cause to move or slide from the land into the water In *Homer* v *The Lady of the Ocean*, 70 Me. 350, 352, where it is said "The launching is a definite period, one well understood as applied in shipbuilding." (25 *Ame. Cyc*, 162)

LAUNCH. A large boat, the act of launching a vessel.

To launch is to cause to move or slide from the land into the water. The launching is a definite period, one well understood in shipbuilding

Laundry. A place where clothes are washed

Laundryman. A laundryman is one whose business it is to wash clothes This term, however, does not include persons who merely receive and collect soiled clothes to be washed, acting as agents of those engaged in the laundry business, and receiving by way of compensation a discount from the price charged from the general public. (*Words and Phrases.*)

Lavani patrak (*Mar*) One of the village accounts shewing the total assessment, and by whom paid. It is also described as a general statement of the land held by each individual, with the amount of the assessment, and every other item of revenue leviable from the cultivator. (*Wil. Gloss.* 310)

Law Agents.

Woman's property having been presented to her by her parents and friends as a mark of respect or affection (*Wil Gloss.* 310) Property acquired by a wife from her husband given in affection or in admiration of her beauty (*Wil. Gloss* 491.)

"Law" defined (*N B* This word is used in combination with other words (as) Colonial law, Local law; Matter of law, Native law, Special law; Admiralty law. Act 2, 1882, S 4

LAW The rule and bond of men's actions · or it is a rule for the well governing of Civil Society, to give to every man that which doth belong to him Law, in its most general and comprehensive sense, is thus defined by Blackstone, in the Commentaries. A Rule of Action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey Laws in their more confined sense, denote the rules, not of action in general, but of human action or conduct

In jurisprudence, law is a rule prescribed by society for the government of human conduct, a rule of action or of civil conduct prescribed by competent authority, by the law making power of the state, by the proper law-making authority, by the supreme authority for the government of human action, by the sovereign power, an established or permanent rule, established by the supreme power, or the power having the legislative control of the particular subject, an act, enactment, ordinance, or statute, prescribed by the legislative power the declared will of the legislature; a rule ordained and made known by the legislature, for the government of the people in the state, which they are bound to obey.

"There is no word in the language which in its popular and technical application takes a wider or more diversified signification than the word "law". Its use in both regards is illimitable" (*Miller* v, *Dunn*, 1 Am. St Rep 67.)

Blackstone's definition is: "A rule of civil conduct, prescribed by the supreme power in the state, commanding what is right and prohibiting what is wrong". (1 *Blackstone Comm*)

Law is the solemn expression of legislative will.

"The law does not consist in particular instances, though it is explained by particular instances and rules, but the law consists of principles, which govern specific and individual cases, as they happen to arise"—Lord Mansfield, *R.* v *Bembridge*, (1783), 22 How. St Tr 155.

"Judges could by their resolution alter the practice but never the law—*Blackburn, J., Reg.* v. *Charlesworth* (1861), 9 Cox, C C. 67.

"It was nobly said in another place (I heard it with pleasure, and thought it becoming the dignity of the person who pronounced it, and the place in which it was pronounced) "that the law is best applied, when it is subservient to the honesty of the case".—*Buller, J., Master* v *Miller* (1791), 4 T.R. 335.

Law abiding. Obedient to the laws of the land.

Law agents (*in Scotch law*) Solicitors.

"Law and conscience are one and the same"—*Bacon, J., Watson* v. *Watson* (1670), Style's Rep 56

Law Agents.

"The law of England is a law of liberty."—Lord Ellenborough, *Wm Cobbett's Case.* (1804), 24 How. St. Tr. 49.

"The law of England is a law of mercy."—*Coke,* 2 Inst. 315.

When we speak of 'law' we mean some thing which is enforceable and which is not capable of being rejected by the Courts as uncertain or unreasonable.

AUSTIN'S DIVISION OF LAWS. Divine law The revealed law of God, positive human law—municipal law; positive morality—morality; laws metaphorically so called—the laws of animate and inanimate" (*Anderson L. Dict. Citing Austin Jur*)

LOCKE'S DIVISION OF LAW Divine law—the law of God, natural or revealed law-civil law—the municipal law, law of reputation—morality". (*Anderson L Dict*)

"ANY OTHER LAW FOR THE TIME BEING IN FORCE, MEANING OF 14 Pat. 799=156 I C. 1050=16 Pat L.T 280=1935 Pat. 243.

Law and custom The expression "the ordinary law to which members of ' ' intestate's tribe and religion are subject" in S. 2 of the Oudh Estates Act I of 1869 embraces any "family custom" 3 I A 457 (P C)=10 C L.J 216=6 A L J 767=13 C W N 1073=11 Bom.L R. 890=12 O C 304=4 Ind. Cas 25 (20 I A 77, 79, *F.*)

Law and equity. The High Court have the powers both of a Court of Equity and a Court of Law (1871) 14 M I A. 209=2 Sar. 727=L R 3 P.C. 733=8 Moo P C (N S.) 127.

Law and judicial decisions. "The decisions of courts are not the law, they are only evidence of the law" (*Paul* v *Davis,* 100 Ind. 422, 426, *Ame. Cyc*)

Law and justice The picture of law triumphant and justice prostrate is not, I am aware, without admirers. To me it is a sorry spectacle. The spirit of justice does not reside in formalities, or words, nor is the triumph of its administration to be found in successfully picking a way between the pitfalls of technicality. After all, the law is, or ought to be, but the handmaid of justice, and inflexibility, which is the most becoming robe of the latter, often serves to render the former grotesque But any real inroad upon the rights and opportunities for defence of a person charged with a breach of the law, whereby the certainty of justice might be imperilled, I conceive to be a matter of the highest moment"—Lord Penzance, *Combe* v. *Edwards* (1878), L R 3 P D. 142

Law and maxims "Personally, I detest any attempt to bring the law into maxims. Maxims are invariably wrong, that is, they are so general and large that they always include something which is not intended to be included."—Lord Esher, M R, *Yarmouth* v. *France* (1887), L J. 57 Q.B. 9.

"Law and order." The normal state of a civilized society.

Law charges. Legal costs, Costs incurred in Court in the prosecution of a suit or defence, to be paid by the party cast.

Law court. A court of law.

Law of evidence.

Law day. The day limited in a mortgage or trust deed for payment of the debt thereby secured (*Kenney*).

Law—Human and Divine. *Borden* v *State,* 11 Ark. 519, 527, 44 Am. Dec 217, where it is said "We understand all laws to be either human or divine, according as they have man or God for their author, and divine laws are of two kinds, that is to say, 1st, Natural Laws, 2nd Positive or revealed laws."

Law library A collection of books, manuscripts pamphlets etc relating to legal subjects.

Law list Annual publication of a quasi official character in England comprising various statistics of interest in connection with the legal profession

Law lords. Peers who have held high judicial offices or have been distinguished on the legal profession.

Law martial. Martial law or Military law

Law merchant (*Lex mercatoria*) A special law differing from the Common Law proper, applicable to merchants, and part of the Law of the realm. (*Tomlin's Law Dic*) "The Law Merchant is neither more nor less than the Usages of Merchants and Traders in the different departments of trade ratified by the decisions of Courts of Law, which, upon such usages being proved before them, have adopted them as settled law, with a view to the interests of trade and the public convenience, the Courts proceedings therein on the well-known principle of law that, with reference to transactions in the different departments of trade, Courts of law, in giving effect to the contracts and dealings of the parties, will assume that the latter have dealt with one another on the footing of any Custom or Usage prevailing generally in the particular department. By this process, what before was usage, only unsanctioned by legal decision, has become engrafted upon, or incorporated into, the common Law and may thus be said to form part of it 'When a general Usage has been judicially ascertained and established',—says Ld Campbell, in *Brandao* v *Barnett,* 12 Cl & F 805—'it becomes a part of the Law Merchant which Courts of justice are bound to know and recognize" (*Goodwin* v. *Robarts,* 44 L.J. Ex. 162).

THE LAW MERCHANT is not a rigidly fixed body of law, but is constantly expanding.

Law municipal Municipal Law is defined to be —"A rule of civil conduct prescribed by the Supreme Power in State, commanding what is right, and prohibiting what is wrong." (*Tomlin's Law Dic.*)

Law of arms Ordinances which regulated proclamation of war, leagues, treaties etc. (*Cowell, Bouvier*).

Law of citations In the Civil Law. The most important of the laws of citation were those enacted by Valentinian III A D. 426.

Law of evidence. The law of evidence is a collection of general rules established by law (1) for declaring what is to be taken as true without proof, (2) for declaring the presumptions of law, both those which are disputable and those which are conclusive; (3) for the production of legal evidence, (4) for the exclusion of whatever is not legal; (5) for determining in certain cases the value and effect of evidence.

Law, rule and notification. Per *Das, J.*—'Law' is one thing and an act done or order issued under the law is another thing When we speak of 'law' we mean something which is enforceable and which is not capable of being rejected by the Courts as uncertain, unreasonable or as repugnant to the law of the lands. Where a statute under the authority of which rules are promulgated itself declares that they shall have the same effect as if enacted in the statute, the validity of the rules cannot be canvassed by Courts of law. Nor can any Court reject them as uncertain and unenforceable. But where the statute does not so provide their validity can be canvassed and the Court can reject them as unenforceable on the ground of unreasonableness of uncertainty They do not constitute 'law' The essence of the law is that it is enforceable as law, and though the Courts may construe it they cannot reject or quash it A power to regulate does not involve a power to prohibit Per *Mullick, J*—A notification issued in exercise of a power conferred by Statute is as much a part of the law as if it had been incorporated in the statute The command is, in every sense a command by the appropriate Legislative authority 68 I C 945=3 P L.T. 585=1922 P H C C 274=2 Pat 134=23 Cr L J 625=1 Pat L R Cr 199=A I R 1923 Pat 1 (S B).

Law of god "The law of God is the law of land and what is consonant to the law of reason is the best law of God." *Keble, C.J. Lilburne's Case* (1649), 4 How St Tr 1307.

Law of nations is a system of rules and principles established among nations, for the regulation of their intercourse, the *jus gentium* of the Roman Law

Law of nature. The law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction, and this is *lex-aeterna*, the moral law, called also the law of nature. And by this law, written with the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world."—(Lord Coke, *Calvin's Case* (1608), 4 Co. 21)

The law of nature "is those fit and just rules of conduct which the Creator has prescribed to man as a dependent and social being, and which are to be ascertained from the deductions of right reason, though, they may be more precisely known and more explicitly declared by divine revelation"

NATURAL LAW OR THE LAW OF NATURE IS "the rule of human action prescribed by the Creator, and discoverable by the light of reason." (*Anderson L Dict*) (citing 1 *Blackstone Comm.* 24, 39, 43)

The laws of nature are those fit and just rules of conduct which the Creator has prescribed to man as a dependent and social being, and which are to be ascertained from the deductions of right reason, though they may be more precisely known and more explicitly declared by divine revelation.

Laws of Oleron. The laws of Oleron were introduced into England by King Richard, the crusader, and are to a large extent the basis of the maritime law of that country

Law of Parliament, in 2 & 3 Will. 4, c. 45, S. 36 (Representation of the People), meant the law as

administered at the time of the passing of that Act by Committees of the House of Commons. *Harrison v. Carter* (1876), 2 C.P.D. 35.

Law of the case. Propositions of law once decided by an appellate court are not open to reconsideration in that court upon a subsequent appeal or writ of error, (*Brown v Zinc Co*, 179 Fed. Cas. 309).

Law of the Flag. Under what is called in international law "the law of the flag", a shipowner who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the shipmaster that he intends the law of that flag to regulate those contracts, and that they must either submit to its operation or not contract, with him or his agent at all

Law of the land. The general law of the state.

LAW OF THE LAND means due process of law (*Kenney*).

Law of the Road Rule of the Road, navigation rules

Law of Remedy. In its most comprehensive sense, the law of remedy includes all lawful methods of redressing violations of legal rights, but as more commonly used it covers only the forms of redress which may be had through the agency of courts of justice.

Law Officers The law officers of the Crown in England are the Attorney-General and the Solicitor-General Sometimes the term has been loosely applied to the legal advisers of the various Government departments The law officers represent the Crown in the Courts, (Resolution of Judges of December 1884, 5 State Trials, N.S. 3n)

Law relating to usury The prohibition in the Koran and the Hedaya against the taking of usury is not part of the active Municipal Law of this country, and the Courts have always recognized and enforced the custom of taking interest as between Mahomedans The words "laws relating to usury" in Act XXVIII of 1855 refer to laws affecting the rate of interest which ought legally to be stipulated for, and not to laws which in strictness relate to usury, yet do not meddle directly with the rate of interest 5 B L R 500=14 W R 308; (3 B L R O C. 130 *Diss.*)

Law Reports A general term, for the published volumes narrating and recording the decisions of the courts. (*Abbott L. Dict.*)

Law Reporting and council of Law Reporting. Modern English Law Reporting may be said to begin with *Sir James Burrow's Reports* (1765). From that time we have continuous reports in the Courts of King's Bench, and in the other Court, except the Exchequer, which then hardly counted as a superior Court, from about twenty years later Thenceforward, for a century, reporting was carried on by private enterprise in each Court separately, one reporter, or associated set of reporters was, however understood to be specially authorised by the judges, and to have an exclusive, or at least prior, claim to the judgments as settled and revised by them These "authorised" reports was generally accurate, but the system was costly and dilatory. A partial remedy

Law Reporting

was provided by the legal newspapers issuing cheaper and earlier reports of their own which soon acquired an independent standing, but these, though often quite as good in substance, as the "authorised" reports, and occasionally better in particular cases, ultimately increased the burden, for most men in considerable practice found that they had to get the "authorized" reports for at least their own branch of work, and one of the serial reports as well.

In 1863 the Bar in England appointed a committee to consider the whole matter, and the result was the establishment of the Council of law reporting, under whose direction the Law Reports have been publish ed since 1865, superseding the former "authorised" reports, and practically absorbing their then existing staff and goodwill, though not inheriting their claim to a semi-official character. This may be due to the fact that a few of the old "authorised" reporters held out against the Law Reports, and for a short time continued to publish their own reports separately. Several independent series of reports, of which the oldest are the Law Journal Reports, are still carried on *See* Sitarama Raw's Lecture to Law students on Law Reports and Law reporting published in the Madras Law Journal Vols Wallace on the Reporters, a classical work for the early history and bibliography of the subject, Kent's Commentaries, Lect xxi , Lord (then Lord Justice) Lindley on the 'History of the Law Reports "in Law Quarterly Review, 1 137 the chapter on "Law Reports" in Pollock, A First Book of Jurisprudence, 2nd ed, 1904, p 286, F. Pollock, "English Law Repo1ting," Rep. Amer Bar Association, 1903, p 363 and Law Quarterly Review, xix 451, (*Ency of the Laws of England.*)

Law, Retrospective "Retrospective laws are, *prima facie*, of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." *Willis J Phillips* v *Eyre* (1870) L.R. 6 Q B 23

Law society An association of lawyers, the incorporated Law Society in England.

Law Spiritual, means the ecclesiastical Law, allowed by our laws where it is not against the Common Law, not the statutes and customs of the kingdom and regularly according to such Ecclesiastical or Spiritual Laws, the Bishops and other Ecclesiastical Judges proceed in causes within their cognizance. Co Lit. 344 (*Tomlin's Law Dic*)

Law suit Suit instituted in a law Court. An action at law, litigation

BAD LAW View resting on misapprehension of the law on the subject

"GO TO LAW". Start suit or proceedings in law Courts

"Lay down the law". Be dogmatic.

NATURAL LAW. A natural law is defined by Burlamqui to be "A rule which so necessarily agrees with the nature and state of man, that, without observing its maxims, the peace and happiness of society can never be preserved." *Borden* v. *State*, II Ark. 519, 527, 44 Am. Dec. 217.

Lawful age

TAKE THE LAW INTO ONE'S OWN HANDS. Redress one's wrong by force.

"Lawald" means on failure of male heirs. A jagir resumable when the family becomes lawald means that it is resumable on failure of male heirs, A I.R. 1927 Pat. 386.

LAWALD The word *Lawald* is, no doubt, often used of a man who has no sons 10 I.C. 277 (278); The word "*Lawald*" means without male issue and not issueless. 103 I C. 679=A.I R. 1927 Pat. 386.

A jagir resumable when the family becomes *lawald* means that it is, resumable on failure of male heirs. 103 I C. 679=7 Pat. 36=A.I.R. 1927 Pat. 386, *see also* 1933 Oudh 182.

"Lawald" means without descendants, either male or female. 16 Lah. 255=A L.R. 1935 Lah. 335 (1)= 158 I C. 343=37 P.L.R. 465=A I R. 1935 Lah. 343.

Lawalad and khandan quribi shauhar. A wajibul-arz provided that "if both the widows are lawalad" then after their death the inheritance devolves on the nearer relations of their husband's family. The words "khandan qaribi shauhar" also frequently appeared. *Held*, the 'lawalad' should be interpreted as meaning as sonless and not issueless Khandan qaribi shauhar are generally used with reference to the nearest male collaterals 131 I C 897=14 O.L. J. 344=8 O.W.N. 288=A I.R. 1931 Oudh 322.

Lawful That which in its substance is sanctioned or justified by law, (as) opposed to unlawful or illegal, peaceable, as lawful citizen.

LAWFUL, LEGAL, LEGITIMATE, LICIT, The *lawful* property implies conformable to or enjoined by law; the *legal* what is in the form or after the manner of law, or binding by law, it is not *lawful* to coin money with the king's stamp, a marriage is not *legal* in England which is not solemnized according to the rites of the established church, men's passions impel them to do many things which are unlawful or illicit, their ignorance leads them into many things which are illegal or illegitimate. As a good citizen and a true Christian, every man will be anxious to avoid everything which is unlawful, it is the business of the lawyer to define what is legal or illegal, it is the business of the critic to define what is legitimate. It is the business of the moralist to point out what is illicit When a claim to property cannot be made out according to the established laws of the country it is not legal the cause of legitimate sovereigns is at length brought to a happy issue. The first inclination to an illicit indulgence should be carefully suppressed. "Of the meaning and force of the word 'lawful," Anderson in his Dictionary says· "Legal" looks more to the letter and "lawful" to the spirit, of the law. "Legal" is more appropriate for conformity to positive rules of law· "lawful" for accord with ethical principals. "Legal" imports rather that the forms of law are observed, that the proceeding is correct in method, and that rules prescribed have been obeyed, "lawful" that the act is lawful in substance, that moral quality is secured."

Lawful Act. A lawful act is one not forbidden by the penal law

Lawful age, means age of majority.

Lawful Capture

Lawful Capture. A capture made by a declared enemy lawfully commissioned and according to the laws of war.

Lawful custody meaning of. 18 Pat.L.T. 760.

Lawful deed. A deed conveying a good or lawful title

Lawful defense "Lawful defense", as used in a Penal Code, providing that homicide shall be justifiable when committed in lawful defense of the wife, means in defending her against the danger of a felony or of great personal injury.

Lawful deposit If a deposit is made with the approval of the Court it should be held that it is a deposit made lawfully 32 C.W.N 1087=108 I C. 46 =A.I R 1928 Cal. 389

"Lawful Excuse" defined. Act 14, 1882, S. 174 *Expln*

LAWFUL EXCUSE is reasonable excuse, and one not opposed to any law or principle of law. 28 Bom L R. 1061=97 I C. 814=1926 Bom 530.

Lawful goods. "Lawful goods," as used in a marine policy on lawful goods, means "goods not prohibited by the laws of the country to which the vessel belongs Articles contraband of war are "lawful goods," within the meaning of the term as so used.

"Lawful guardian" defined. Act 45, 1860, S. 361, *expln*

LAWFUL GUARDIAN The words "lawful guardian" in S. 361, Penal Code, include not only the parents or relations in whose house the minor lives and is brought up, but any other person with whom the minor resides by the consent, express or implied, of those who have the higher legal right The term does not include a person who has himself gained possession of the minor by an offence under section 361, Indian Penal Code. 10 I.C. 97 (98)

"Lawful guardianship" defined. *See* Kidnapping from lawful guardianship

"LAWFUL GUARDIANSHIP" The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. 1929 Cr.C 543=A I R. 1929 Sind 249 (2).

Lawful heirs Heirs. The words "heirs," or "lawful heirs" used in a will, must be construed in their legal and ordinary sense, unless other provisions of the will show that the testator meant other persons than those who would be heirs in the legal sense

Where property was devised for life, with remainder to the testator's "lawful heirs," the words "lawful heirs" were held to have reference to those persons who were the lawful heirs of the testator at the time of his death.

Lawful holder. In speaking of the 'lawful holder' of negotiable paper, that term may include one who holds the paper merely as trustee for the real owner, for the purpose of collecting the same in his own name for the benefit of such real owner

Lawful interest "Lawful interest," in an Act providing that all judgments do bear "lawful interest" on the principal amount recovered, means interest provided by law

Lawfully.

Lawful issue The words "lawful issue," when used in a will, ordinarily and generally mean descendants.

Lawful manner. The test whether a thing is done in a lawful manner or not is the probability of injury to others, and that, of course, depends on circumstances, "It is quite manifest that injury or mischief, whether it be to life, limb, or property, would or would not be probable, not simply according to the act done, but according to the time at which it was done, and the locality where the occurrence took place."

Lawful Money. Any currency usually and lawfully employed in buying and selling, such currency as shall be lawful at the time payment is to be made, coin or treasury notes made a legal tender.

Lawful orders, "Lawful order," as used in a statute defining contempt of court to be the disobedience or resistance of a lawful order of a court or judge, does not mean an order which is not erroneous, but an erroneous order or judgment, though unlawful and liable to be reversed on appeal, is obligatory until reversed, and disobedience of it is contempt.

Lawful payment An interest in making the payment is the criterion for deciding whether the payment was lawful. 6 I C 341 (343)

Lawful possession. The term "lawful possession" is not convertible with "innocent possession," in legal terminology Intent does not enter into whether an act is unlawful or tortious, though it does as to whether it is innocent or criminal.

Lawful Process "Lawful process" in any action or proceeding manifestly refers to process emanating from court, or by the statutory of a court, and cannot be understood to refer to such acts or notices between private parties as derive no authority from a court, but simply serve to create a right of action.

Lawful provocation "Lawful provocation" is synonymous with "legal, adequate, and reasonable provocation," and includes an assault or personal violence.

Lawful Sum in Money The term "lawful sum in money" and "legal tender" are not synonymous, but have different meanings A tender, to be good in law, must be made in legal tender notes or coin of the State. National bank notes and gold and silver certificates are lawful money, and are so recognized in the commercial exchanges, but they are not legal tender.

Lawful title A perfect title with a general covenant of warranty.

"LAWFUL TITLE", as used in a bond requiring the obligor to give a lawful title to certain property to be conveyed by him, should be construed to mean a perfect title, with a general covenant of warranty.

Lawfully. The word "lawfully" in S 70 of the Contract Act is not merely a surplusage. In using that word, the Legislature had in contemplation cases in which a person holds such relation to another as either directly to create or reasonably to justify the inference that by some act done for another person, the doer was entitled to look for compensation to the person benefited. (11 A. 234, *Appr.*) S. 70 of the Contract Act ought not to be so read as to justify

Lawfully

the officious interference of any one with the affairs or properties of another, or to impose an obligation in respect of services which the person sought to be charged with did not wish to have rendered (18 M. 88, *Appr*) 2 C.L.J 311

A person should be regarded in the eye of law as having been lawfully entrusted with the care and custody of a minor, if he has acquired control over the minor lawfully and in such circumstances as would imply trust, even though he may not have been formally entrusted with the care and custody of the minor by a third person 15 Pat 817=169 I C 48=9 R.R 526=3 B R 514=38 Cr L J 673=18 Pat L T 535=A I.R 1937 Pat. 263

Lawfully administered oath "Lawfully administered oath" as used in an act declaring that prosecutions for perjury may be based upon false testimony given under oath in proceedings in which an oath may be lawfully administered, means an oath that is administered pursuant to, or is required or authorized by, some law It is not enough that the officer administering the oath had general authority so to do, nor that his administering the particular oath was not unlawful in the sense of incurring a penalty by administering it A mere gratuitous oath, which the law does not recognize as of any force, and to which it gives no more effect than if the statement were not sworn to, is not a lawfully administered oath, within the statute

"Lawfully begotten heirs of their bodies," as used in a will giving "the remaining two-thirds of my estate to my three daughters for life, and then to the lawfully begotten heirs of their bodies," should be construed to mean children

Lawfully Convey "Lawfully convey", as used in a statute providing that a deed of quit claim and release, shall be sufficient to pass all the estate which the grantor could lawfully convey by the deed or bargain and sale, limits the estate conveyed to such as the grantor has the legal right to convey, and therefore he cannot lawfully convey land which he has already conveyed to another.

Lawless. Not subject or submissive to law, uncontrolled by law, whether natural, human, or divine (*Ame. Cyc*)

Lawless man, A Outlaw Bract lib 3, c. 11 (*Tomlin's Law Dic*)

Law-list A list of barristers, special pleaders, conveyancers, and solicitors published annually in England by the authority of the Commissioners of Inland Revenue.

Law martial. *See* Court martial.

Lawyer, A counsellor or one learned in the law. (*Tomlin's Law Dic.*) One who pursues the profession of law, a legal expert.

One who earns a part of his living by legal work for others in his office, though he combines it with other business, and does not advertise as a lawyer, nor appear in court on the trial of cases, is a lawyer

Lay, relating to persons or things not clerical or ecclesiastical; not connected with a profession (*English L. Dict.*) Non-professional, of or pertaining to persons outside a class, as, of lawyers or doctors As a verb, to put or place in a position or situation; to construct; to deliver, to offer; to risk, to state or allege in pleading

The meaning of the word often depends upon its use in connection with other words, as for example as employed in the phrases "lay down" or "laid down", "lay off" or "laid Off", "lay open" or "laid open", "lay out" or "laid out", "lay up" or "laid up".

Lay brother, Lay sister Member of the religious order employed in manual labour or excused other duties. (*Ox Dic*)

"Lay claim to". Claim as one's own.

Lay Clerk. Chairman in cathedral etc.

Lay Days, used in a Charter Party are "days for loading and unloading, and they are sometimes called Lay Days and sometimes Working days" (*per* Esher, M R, *Nielsen* v *Wait*, 16 Q.B D 70.)

LAY DAYS OR LAYING DAYS ARE. Days sometimes given in favour of the charterer, which are called demurrage days". (*Ame Cyc*)

Lay down Relinquish (as) office.

"Lay down ones arms" cease fighting, surrender.

"Lay down the law" Declare the law

Lay information Bring indictment

Lay-Lord Peer who is not a law-lord.

Lay out scheme. A I.R 1937 Lah. 781.

Lay papers Put documents on the table of the House of Legislature for the information of the members.

Lay Reader. Layman licensed to conduct religious services

Lay sister. *See* Lay brother.

Lead (*noun*) One of the useful metals remarkable for its softness and durability." (*Century Dict.*)

LEAD (*Verb*) To guide, to show the method of attaining, to draw to go first and show the way.

Lead a witness. To suggest to the witness by the move of interrogation the answer desired, to put leading questions

Lead in a cause is to have the management of the trial on one side

Lead the defence. Having the chief conduct of the defence in a case

Lead to the altar Take as wife.

Leader. The chief person in a party who is followed by the other persons belonging to that party.

Leaderette, Short editorial paragraph in a newspaper or Journal.

Leading. Settling or determining (as) leading case having the management of (as) leading counsel, (*Burrill L Dict*)

Leading article (*in a newspaper*). Editorial pronouncement at full length.

Leading case Legal decision used as an important precedent. A reported case considered as settling any particular point of law and which is looked upon and followed as a guide for subsequent cases.

Leading counsel.

Leading counsel. The advocate to whom is chiefly intrusted the conduct of a suit or other legal proceedings.

"Leading question' defined. Act, 1, 1872, s 141.

Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question (*Evidence Act*, S. 141.)

League. A land measure, four thousand four hundred and twenty-eight acres A measure of distance varying in different countries.

A "MARINE LEAGUE" is equivalent to three geographical miles, or three sea miles (25 *Ame Cyc* 170)

Leakage. An allowance made for losses on liquids by leaking, the waste or diminution of a liquid carried by its leaking from a cork or barrel in which it was placed

In the law of carriers, in the ordinary signification of the word, it is a loss of a part, but not of the whole of a liquid commodity

Leakage and Breakage A term of exception sometimes inserted in a charter party or bill of lading and indicating that the ship-owner is exempt from liability for any damage of this kind occurring on a voyage, unless by negligence of the crew in handling or stowing the goods

"NOT ACCOUNTABLE FOR BREAKAGE" means that the ship-owners is not to be responsible for the broken condition of the goods at the Port of Delivery" (*per* Inglis, L P *Moes* v *Leith & Amsterdam Co*, 5 Sess 3rd Ser 988, Abbott, 492, *Stroude*)

Lean Years. Period of scarcity

Leap Year The natural or solar year consists of 365 days, 5 hours, 48', 45', 30", but as that was inconvenient for sub-division Julias Caesar, when he superseded the lunar year, made the Roman year to consist of 365 days, adding an extra day every fourth year after the 24th February, which was the sixth day before the calends of March, that day being reckoned twice, the first day being bissextus prior and the second bissextus posterior or bissextile day (bis, twice, and sextilise, sixth), Hence the bissextile or leap year (*Ency of the Laws of England.*)

Learned Possessing learning, (as) learned in the law to be in receipt of creditable information.

Learned in the Law. The phrase "learned in the law", as used in an Act providing that no person shall be eligible to the office of Judge unless he shall be "learned in the law", means that the candidate must be an attorney or a counsellor at law. It clearly indicates an intention to prescribe some sort of an educational qualification, and should be given some practical effect In other words, the fact that the candidate is learned in the law must have been ascertained by a competent tribunal prior to the appointment.

Learned Professions. "We speak of the professions of medicine, law, and divinity as learned professions, and also the profession of arms So, also, the term has come to be applied to other occupations and callings, all of which require learning and special preparation in the acquirement of scientific knowledge and skill necessary to the

Lease for agricultural purposes

proper understanding and successful management of such occupations. As an illustration it is not unusual now to regard the occupation of a civil or mining engineer or an electrician as a professional occupation, because scientific learning and knowledge are essential to the proper understanding of such a calling, but we do not speak of or understand the business of a merchant or blacksmith or carpenter or tailor as belonging to the learned profession.

Learning. A word sometimes used as equivalent to "teaching" It may signify either the act of acquiring knowledge or the knowledge itself. (*Ame Cyc,*)

Leasable fishery The terms *"leasable fishery", 'reserved fishery," "open fishery"* and *"protected fishery"* mean, respectively a fishery for the time being classified under such denomination in accordance with the provisions of the Fisheries Act. [Bur. Act III of 1905 (Burma Fisheries), S 3, Cl 6.]

'Lease" defined Act 16, 1908, S 2, Act 2, 1899, S 2 (16), Act 17, 1879, S 2, 5th, Act 6, 1895, S. 2, Act 4, 1882, S. 105.

A lease is a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own, in consideration of a certain annual or stated rent or other recompense

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the *lessor*, the transferee is called the *lessee*, the price is called the *premium*, and the money, share, service or other thing to be so rendered is called the *rent* [Act IV of 1882 (Transfer of Property) S 105 *See* 39 C. W N. 98=1935 Cal. 261, 1937 A 561]

"L'ASE" means a lease of immoveable property, and includes also—(*a*)a patta, (*b*)a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immoveable property; (*c*) any instrument by which tolls of any description are let, (*d*) any writing on an application for a lease intended to signify that the application is granted. [Act II of 1899 (Stamp), S. 2 (16)].

"Lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease [Act XVI of 1908 (Registration), S 2, Cl. 7]

Lease for agricultural purposes. A lease of a coffee garden is not an agricultural lease within the meaning of S 117, Transfer of Property Act. (17 M. 98=4 M.L.J. 21.) A lease of land for the cultivation of betel is an agricultural lease. [24 M. 421 (423) (N.F.)] Lands on which potatoes, grain, vegetables, etc. are grown, as well as pasture lands, are used "solely for agricultural purposes" within the meaning F sub-S (3), S. 63 of the Municipalities Act (Act IV of 1884). [25 M. 627 (629) *R* Also where betel is cultivated. 24 Mad 421 (423)]

Where a certain land is given for "cultivation and building tenant's house" held that the lease was for

Lease from month to month.

a mixed purpose, agricultural and non-agricultural, for a lump rent. (1 O L J. 124=24 I C 788)

"Lease from month to month" defined. Act, 4, 1882, S. 106.

"Lease from year to year" defined Act 4, 1882, S. 106.

Leasehold An estate in land for a term of years

Leasing Company. The company which has let, farmed out, or rented its property to another (*Ame Cyc.*)

Leave. As a noun, permission As a verb, according to the context or the intent with which it is employed the word may mean to abscond, to deliver, to depart, to get off, to give, to go away from; to quit, to remove from, to resign, to submit, to suffer to remain, to withdraw from (*Ame Cyc* , 30 Cal. 498.)

"LEAVE", as used in a criminal recognizance that the defendant should not depart without leave, means leave of the Court, and does not mean that the defendant will not escape from the custody of the sheriff

Leave of Court Permission granted by the Court to do something which, without such permission, would not be allowable. (*Bouvier L Dict*)

Leaven As a noun, any substance that sets up or is intended to set up fermentation, as a verb, to excite fermentation in, to raise and make light

"Leaves his holding uncultivated" The expression 'leaves his holding uncultivated' in S 35 (4) of the Central Provinces Tenancy Act (XI of 1898), means 'omits to cultivate the holding himself or to arrange for its cultivation' (9 N.L R. 54=19 I C 759)

Lecture A discourse on any subject

"LECTURE" includes address, speech, and sermon (Portions of Copyright Act applicable to British India 1 and 2 Geo. V, C 46, S. 35)

Ledger A book of accounts in which a trader enters the names of all persons with whom he has dealings, and also enters the nature of the dealings

Leet (*in old English law*) A Court of criminal jurisdiction.

"Legacy" defined. *See* Demonstrative legacy, Specific legacy.

LEGACY (*Legatum*). A bequest, or gift of goods and chattels by will or testament the person to whom it is given is styled the *Legatee* and if the gift is of the residue of an estate after payment of debts and legacies, he is then styled the *Residuary Legatee* (*Tomlin's Law Dic.*) Legacy is a gift or bequest by testament; a gift or bequest of personal property, a bequest of goods and chattels by will or testament, a testamentary disposition of personal property. "The plain import of the word 'Legacies' includes both specific and pecuniary legacies" (*per* Romilly, M.R , *Ward* v. *Grey*, 29 L.J. Ch. 75, 76),

Legacy and bequest In the construction of statutes and wills the words "bequest" and "legacy" are often held to mean the same thing, and to embrace and include either real or personal estate, or both.

Legacy of goods.

KINDS OF LEGACY. A legacy may be absolute, additional, alternate, conditional, contingent, cumulative, demonstrative, general indefinite, lapsed, model, pecuniary, residuary, specific, substitutionary, universal, vested, or a trust legacy. (*Black L. Dict*, 25 *Ame. Cyc* 172)

CONTINGENT LEGACY One in which no immediate interest passes to the legatee, but the title to which depends on the legatee being in a condition to receive it when due

CONDITIONAL LEGACIES A legacy may be given upon condition that the legatee does or refrains from doing some act Conditions are either precedent or subsequent, that is, the legatee to perform the condition either before he gets his legacy or after. If a condition precedent is impossible, the legatee of course cannot comply with it, and therefore does not get his legacy [*Robinsan* v *Wheelwright*, (1856) 6 De G M & G 535, 43 E R 1342] An illegal or immoral condition precedent is void [*Brown* v *Pek*, 1758, 1 Eden 140, 28 E R 637].

CUMULATIVE LEGACY One given in addition to a legacy given previously.

A DEMONSTRATIVE LEGACY is a general legacy with reference to a particular fund for payment. "It is so far general, and differs so much in effect from one properly specific, that if the fund be called in, or fail, the legatee will not be deprived of his legacy, but will be permitted to receive it out of the general assets [In re *Tunno*, (1890) 45 Ch. D 66], yet the legacy is so far specific that it will not be liable to abate with general legacies upon a deficiency of assets" (*Tempest* v *Tempest*, 1857, 7 De G., M & G. at p 473), 44 E R. 185]

GENERAL LEGACY. One payable out of any assets

LAPSED LEGACY One which has failed to take effect

RESIDUARY LEGACY is a bequest of the personal estate of the testator not otherwise disposed of.

SPECIFIC LEGACY is the gift of a particular thing, the property of the testator [*Bothamley* v. *Sherson*, (1875) L R 20 Eq 304]

VESTED LEGACY. A legacy the interest in which is so fixed as to be transmissible to the personal representative of the legatee.

LEGACY AND ANNUITY "There is no doubt that the word '*Legacy*' is sufficient to include Annuity, but it is a word which sometimes may include an annuity and sometimes may not; whether it does so or not depends upon the context" (*Per* Cairns, *C Cunningham* v *Foot*, 3 App Ca 989) "Under a charge of '*Legacies*," *Annuities* will generally be included unless the testator manifests an intention to distinguish them, as by sometimes using both words (2 Jarm 609)

Legacy Duty A tax on property falling on the successors of a deceased person, leviable when the enjoyment accrues. *Blackwood* v. *R*, (1882) 8 App. Cas 82, 90.

Legacy of goods A legacy of "goods" or the like at a particular place will pass everything at the place except stocks, shares, debentures or mortgages, or the like, the documents relating to which, though

Legal.

at the place, are merely evidences of property, and not the property itself. Such a bequest will also include articles which have been temporarily removed for any purpose, such as repair, valuation, or safe custody [*Spencer* v *Spencer*, (1856) 21 Beav at p. 549 52 E R. 972], but probably not articles ordered to be sent to the place but not yet delivered [*Lane* v. *Sewell*, (1874) 43 L J Ch 378, *Field* v *Peckett*, (1861) 29 Beav 573 54 E.R. 750]

Legal. Lawful, that is, something effectual and proper and which the courts of judicature of the country will recognize and enforce, opposed to that which is illegal or unlawful, allowed or authorized by law, implied or imputed in law, opposed to actual, sufficient to meet the requirements of law, a term which refers to common law as distinguished from equity

In *Dufaur* v *Professional L Assur Co*, 25 Beav 599, 603, it is said "In this court, however, a technical meaning is attached to the word 'legal', it makes the distinction between a legal and an equitable estate and between a legal and equitable right, and these words "legal' and 'equitable' are used as opposed to each other But in ordinary parlance, the meaning of the word 'legal' is not so confined"

Legal. Lawful, distinguished The word "legal," when used as an adjective qualifying "provocation," is synonymous with "lawful, adequate and reasonable"

Legal assets That portion of the assets of a decedent which by law are directly liable, in the hands of his executor or administrator, to the payment of debts and legacies

"Moneys arising from the sale of the property of a deceased person are called 'legal assets' in the hands of an executor or administrator, out of which the creditors of the estate are paid

Legal attainments In an Act providing that in certain suits thereunder, in which arbitrators should be appointed two of the persons to be appointed shall be "men of legal attainments", does not mean judges licensed lawyers, justices of the peace, or men of any particular class, for it requires no particular degree of legal attainment and almost every man in the country possess some. (4 Indiana Ame. 7, 11, *Words and Phrases.*)

Legal character The words "Legal Character" in S. 42, Specific Relief Act, are wide enough to include the right of franchise and also the right of being elected as a Municipal Commissioner 24 C 107

Legal claim. One which the party asserting it may enforce by action or by some proceeding at law

Legal commitment. "Legal commitment" means any act of committing of the person of a party which is justifiable by the law of the land.

Legal compensation. Legal compensation for land taken by eminent domain refers solely to the injury done to the property taken, and not to any collateral or consequential damages resulting to the owner by trespass Loss of trade, destruction of credit, and failure of business prospects are collateral or consequential damages for which compensation cannot be awarded.

Legal estate

Legal costs. "Legal costs" mean such costs as are usually recovered in civil actions.

Legal damages Such losses or detriments as the law compensates in consequence of a wrong committed

Legal day A day in which legal and judicial business can be transacted, as distinguished from "*dies non*"

A "judicial day" is distinguished from a "legal day" in this . The former means a day in which the court is in session, while a legal day is one in which legal and judicial business can be transacted, as distinguished from "*dies non*"

Legal demand A demand properly made in proper form, time and place

Legal disability Means, some Disability imposed by Law, *e g.*, *bona fide* Bankruptcy, or Attainder of Treason, minority or Lunacy Persons whose estates are under a court of wards and disqualified proprietors are also to a certain extent under legal disability (*See* Court of Wards Acts)

"Legal disability is defined to be a want of legal capacity to do a thing" The disability may relate to the power to contract or bring suit. It may arise out of a want of sufficient understanding, as idiocy, lunacy, infancy, of want of freedom of will, as in the case of married women and persons under duress, or out of the policy of the law, as alienage, when the alien is an enemy, or from outlawry, attainder, and the like. The disability is something pertaining to the person of the party, a personal incapacity, and not to the cause of action or his relation to it There must be a present right of action in the person, but some want of capacity to sue."

"**Legal discharge**" defined. Act 5, 1881, s. 84.

Legal discretion (*See* Discretion.) A discretion to be exercised with the limits which the law fixes, a discretion to be exercised according to the rules of law

Legal duty An obligation arising from contract of the parties or operation of law, that which the law requires to be done or forborne to a determinate person or to the public at large, and is correlative to a right vested in such determinate person or the public (*Wharton Lex. Max*)

In his treatise on Negligence, Dr Wharton has defined a "legal duty" to be "that which the law requires to be done or forborne to a determinate person or to the public at large, and is correlative to a right vested in such determinate person or the public" The obligation involved is not a moral obligation, but is the obligation imposed on every member of society by law so to conduct himself and use his property as not to injure others.

Legal estate. Legal Proprietorship as distinct from equitable estates(*i e.*) those estates and interests which have their sanction only in Equity.

In law the "legal estate" is the whole estate, and the holder of the legal title is the sole owner. But this title may be held for the beneficial interest of another, which interest has come to be called an equitable estate

Legal evidence.

Legal evidence. Legal evidence is admissible evidence, if not legal, it is not admissible.

LEGAL EVIDENCE is not confined to the human voice or oral testimony but includes every tangible object capable of making a truthful statement, such evidence being roughly classified as "documentary evidence". In oral evidence the witness is the man who speaks, in documentary evidence the witness is the thing that speaks.

Legal fees The phrase "legal fees" embraces such fees as are fixed by law.

The phrase "legal fees" embraces such fees as are fixed by law, and does not authorize the taxation of disbursements paid to private stenographers attending the trial

Legal fraud. There would appear to be no real difference between "legal fraud" and "fraud" [*Derry* v *Peek*, (1889) 14 App Cas. 337]

"LEGAL FRAUD" is synonymous with "constructive fraud", and is such as is implied by law from the nature of the transaction itself. The question of the existence or non-existence of an actual purpose to defraud does not enter as an essential factor in determining the question

Legal heirs The term "legal heirs", though generally a term of description, has a well-defined meaning, and, whether applied to real estate or personalty, it includes only next of kin or relatives by blood.

In administering the Lunacy Act to any particular community (as) the Mahamadans the Court is bound to interpret the phrase "the legal heir" as it occurs in S 10 of the Act, not with reference to the English Law of Inheritance, but in reference to the Muhammadan Law of Inheritance. 15 A 29=1892 A W N 225, 63 C.L J 573.

Legal impediment. "Legal impediment", as used in an act making it criminal for any person to undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, includes everything which would prevent a valid marriage

Legal interest is the rate fixed by law, which attaches to contracts where the parties have not agreed upon rate.

LEGAL INTEREST is the rate of interest fixed by law when the contract is silent on the subject of interest.

Legal means. "Legal," as used in an Act making it the duty of the sheriff, on the receipt of notice of a mob or riot endangering property, to take all legal means to protect the property so attacked or threatened to be attacked, means all means which the sheriff may officially use. "The sheriff is required to take all 'legal means' to prevent the injury, and there is a clear differential distinction between the word 'legal' and 'lawful', and the former is used in the law with reference to this distinction. It imports a much more limited range of means than is employed by the word 'lawful', and impose a much less onerous duty on the officers named. When the law requires an officer to take all 'legal means' to effect an object, it intends that he shall take all such means as he may officially use, and he is not chargeable with neglect of duty if

Legal Practitioner

he adopts the means prescribed by the law for such occasions, though he may omit other plain physical and moral means These may be lawful, because not forbidden, but they are not 'legal means', because not prescribed by law as means to be used by him in his office"

Legal memory (*In English law*) A period fixed by statute to begin with the reign of Richard I, since reduced to 20 years

Legal mortgage A mortgage which is created by operation of law, a first mortgage. This term is used in distinction with equitable mortgage

Legal necessity Any act for which the character of 'legal necessity' or 'benefit to the estate' can be claimed must necessarily be a defensive act, something undertaken for the protection of the estate already in possession, not an act done with the purpose of bringing fresh property in possession and which may or may not be successful under the chances attending upon litigation. So, a Hindu father cannot encumber joint ancestral property to acquire the necessary funds to pre-empt other property (47 All 381=23 A L J. 204=L.R. 6 A Civ 214 =86 I C 769=A I R 1925 All 333

Legal negligence Legal negligence is the failure to exercise the degree of care that a prudent and careful man would take under like circumstances

LEGAL NEGLIGENCE is the omission of such care as persons of ordinary prudence exercise and deem adequate to the circumstances of the case

Legal nominee, in Friendly Societies Act, 1896 (59 & 60 Vict, c. 25). See *Re Redman*, (1901) 2 Ch 471.

Legal notice A "Legal notice", means, a notice provided by law, as distinguished from one prescribed by contract (*Friend* v *Show*, 57 L J Q B 225) It is notice given as and in the manner prescribed by law.

LEGAL NOTICE means something more than bare knowledge of the given facts It is knowledge brought home to a party in a prescribed form When its terms are so unambiguous that the meaning cannot without negligence or intention be misunderstood the notice is sufficient. Defects in form, by which a party is not misled to his injury, do not render a notice invalid, but a notice giving wrong information or silent as to material information which the statute requires, cannot be regarded as legal notice

Legal notice to quit means a notice to quit required by law, and not one depending on the stipulation of the parties [*Friend* v *Shaw*, (1887), 20 Q B. D. 374. *See also* Transfer of Property Act, S 106].

"Legal personal representative" defined (*See also* Personal representative). 57-8 V.c. 60, S. 742].

"Legal practitioner" defined (*See also* Advocate of a High Court, Barrister, Government pleader; Pleader, Public Prosecutor, Recognized agent) Act 18, 1879, S 3; Act 18, 1881, S. 4 (2); Act 16, 1887, S. 4 (16); Act 17, 1889, S 3 (13); Act 23, 1923, S. 2, Act 21, 1926, S. 2.

"LEGAL PRACTITIONER" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar

revenue agent. Act XVIII of 1879 (Legal Practitioners), S 3]

Legal presumption Legal presumptions ought to be logical inferences from the natural and usual conduct of men under given circumstances

LEGAL PRESUMPTIONS are founded upon the experience and observation of distinguished jurists as to what is usually found to be the fact resulting from any given circumstances, and, the result being thus ascertained, whenever such circumstances occur, they are *prima facie* evidence of the fact presumpted

"Legal proceeding" defined Act 18, 1891, S 2 (4)

'LEGAL PROCEEDING" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration [Act XVIII of 1891 (Banker's Books Evidence) S 2, Cl. 4 *See also* Eng. Act, 42 Vict c 11]

Legal proceeding means a proceeding regulated or prescribed by law in which a judicial decision may or must be given (114 I C 817=30 Cr L J. 365=A.I R 1929 Mad 175)

The phrase "legal proceeding", is any proceeding in a court of justice by which a party pursues a remedy which the law affords him. The term embraces any of the formal steps or measures employed in the prosecution or defence of a suit It refers to the use of a judicial process

Legal process. The words "legal process" mean all the proceedings in an action or proceeding

Process, whether by a writ or by warrant, is legal whenever it is not defective in the frame of it and is issued in the ordinary course of justice from a court or Magistrate having jurisdiction of the subject-matter, though there have been error or irregularity in the proceedings previous to the issuance of the process

Legal profession "The interests of justice cannot be upholden, the administration of justice cannot go on without the aid of men skilled in jurisprudence, in the practice of the Courts, and in these matters affecting rights and obligations which form the subject of all proceedings"—Brougham L.C, *Greenough* v. *Gaskell* (1833), 1 Myl. & K 98

"There is nothing which has so great a tendency to secure the due administration of justice, as having the Courts of the country frequented by gentlemen so eminently qualified by their education and principles of honour, as at this time appear to discharge the duties which they are called upon to fulfil" [Best, J, *Morris* v *Hunt*, (1891) 1 Chit, Rep. 555]

Legal proof. Per *Carnduff, J.*—Given evidence on the record which is admissible and excluding from consideration any that may have been wrongly admitted it is not possible to draw a distinction between "legal proof" as defined in S 3 of the Evidence Act and "moral conviction" [37 Cal 467=14 C.W.N. 1114=7 I C 359=11 Cr L J 453.]

Legal punishments. Legal punishments are "Fine hard labor, transportation imprisonment in the jail, death by hanging, or any other mode of punishment provided by law.

Legal rate of interest. The term "legal rate of interest" means the statutory rate.

Legal relevancy. This term is distinguishable in meaning from "relevancy" and "logical relevancy".

Legal remedy A remedy at law, as distinguished from a remedy in equity, a suit or proceeding in a court of justice.

"Legal remuneration" defined. Act 45, 1860, S. 161 *expln*

'Legal representative" defined. Act 5, 1908, S. 2 (11), Act 2, 1911, S 2.

The term "legal representative" ordinarily means the executor or administrator, though sometimes, when required by the context and surrounding circumstances, it is held to mean *next-of-kin* and, under rare and peculiar facts, may mean heirs, who themselves, in a broad sense, are often regarded as the legal representatives of the decedent.

"LEGAL REPRESENTATIVE" means a person who in law represents the estate of a deceased person Act II of 1911 (Patents and Designs) S. 2, Cl. 9

"Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and, where a party sues or is sued, in a representative character, the person on whom the estate devolves on the death of the party so suing or sued [Act V of 1908 (Civil Procedure Code) S 2, Cl 11]

The person who has the right to represent the estate of a deceased person is, in the Civil Procedure Code, called his representative, or legal representative [22 C 259, *see also* 12 All 313, 19 I.C. 870, 3 C L J 197, 4 C L J 509, 8 All 438]

In the broadest sense the term means one who lawfully represents another in any matter whatever, one who legally and lawfully represents another in any matter or thing of whatever nature or character it may be, any person, natural or artificial who by contract or operation of law stands in the place of and represents the interests of another.

"THIS FORMULA, 'OR HIS LEGAL REPRESENTATIVES,' embraces representatives of the original grantee in the land, by contract such as assignees or grantees, as well as by operation of law" [*Ame. Cyc* , 24 Cal. 62 =1 C W N 36 (F.B); 14 I C. 40, 31 All 82 (F B.) , 26 Cal 250, 27 Cal 264, 32 Cal. 1031, 30 M. 507, 26 All 447.

The words "the legal representative" must, where there are more than one such representative, be read in the plural. 16 A. 211=1894 A W N *22*; *see also* 30 All. 117=5 A.L.J. 62=1908 A.W N. 41=3 M.L.T. 207, *but see* 23 Mad. 125 (131.).]

The term 'legal representative' is defined in S. 2 (11), C P. Code, as meaning "a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased" What is meant by intermeddling is not stated, but it may be taken to indicate an officious interference with and an unauthorised assumption of control over property not belonging to oneself. The addition of the words about intermeddling in the definition of the new Civil Procedure Code was designed to draw attention to the fact that in some cases a mere intermeddler may, for purposes of a particular suit, sufficiently represent the estate

Legal representative.

(5 Mys L J, 65. *see also* 19 C W N 525=24 I.C 183, 115 I C 184=1929 C. 26, *see* Civil Procedure Code, 1908, O. 22)

"PERSONAL REPRESENTATIVES, "LEGAL REPRESENTATIVES" OR "LEGAL PERSONAL REPRESENTATIVES"—these words when not controlled by a context, "are to be construed as equivalent to 'executors and administrators.'

"Representatives", "legal representatives", "personal representatives", or "legal personal representatives", "executors or administrators" in their official capacity—all these terms are used to mean more or less the same persons (*Price* v *Strange*, 6 Mad. 159, *Saberton* v *Skeels*, I Russ & My. 587.)

"Legal representative of deceased" defined Act 5, 1881, S. 4.

MORTGAGOR'S LEGAL REPRESENTATIVE The term 'mortgagor's legal representative" used in Reg. XVII of 1806, S 8 was intended to apply to all or any persons who, at the date of the notice of foreclosure, possesses a title to the equity of redemption, whether absolute or defeasible, of the mortgage (1 A 499)

Legal residence "Legal residence" is synonymous with "domicile," and is a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time It means more than "residence"; there being a distinction between actual and legal residence.

A distinction is recognized between legal and actual residence. A person may be a legal resident of one place and an actual resident of another, as when he goes from the place of his legal residence, to reside temporarily at the other place, intending to return.

Legal right A capacity residing in one man of controlling with the assistance of the state, the action of others, a right that may be enforced in a civil action.

Legal succession. That succession which the law has established in favor of the nearest relation of the deceased.

Legal tender. The terms "lawful sum in money" and "legal tender" are not synonymous, but have different meanings. A tender, to be good in law, must be made in legal tender notes or coin of the States. National bank notes and gold and silver certificates are lawful money, and so recognized in the commercial exchanges, but they are not legal tender.

Legal tender note Currency note; a genuine and current note issued by the Government or other competent authority.

Legale concilium. (*Lat.*) The King's council a. law.

Legalism. Exaltation of law or formula.

Legality. Lawfulness.

Legalize Make legal or lawful.

Legally. The state or character or being legal, lawfulness; in conformity with law. (*Century Dict*)

"Legally bound" defined. Act 45, 1860, S. 4.

Legem habere

Legally recoverable. The words "legally recoverable" have no reference to the ability of the debtor to pay the demand in full, and a sum is legally recoverable though in the result the creditor, must be satisfied with a dividend. [30 B 173=7 Bom.L. R 246.]

The words "legally recoverable" in Transfer of Property Act (IV of 1882), S 90 mean that the balance must be a balance which the mortgages is not precluded by the terms of the mortgage from realizing otherwise than out of the property sold, or a balance the recovery of which is not barred by limitation. (15 A 331=13 A.W N 120)

"Legatee" defined, Act 1, 1869, S. 2 (sub U. P. Act 3, 1910, S 2).

LEGATEE The person to whom a legacy is given. (*Burrill L Dict*) The person to whom a legacy is bequeathed by the last will of the testator (*Tomlin's Law Dic.*)

"Legatee" means a person to whom there has been or is bequeathed an estate [U P Act I of 1869 (Estates) S 2, *See also* 27 All 634=9 C.W.N 1009= 15 M.L J. 352 (P C), 8 C.W N. 699]

LEGATE (*in Eccles Law*). The Pope's ambassador extraordinary to a foreign sovereign or state professing the Romam Catholic faith, is also called a legatee. As a diplomatic agent, a legatee enjoys the representatives character, and exercises papal jurisdiction where the Pope cannot be present. The missions of a legatee are usually of a more or less ecclesiastical and special character, thus differing from the mission of a *nuncia* which is usually political and permanent.

Legatos violare contra jus gentium est. A maxim meaning "It is contrary to the law of nations to injure ambassadors" (*Black. L. Dict*)

Legatum In the ecclesiastic sense, was a legacy given to the church, or accustomed mortuary. (*Cowell, Tomlins Law Dic*)

Legatum morte testatoris tantum confirmatur, sicut donatio inter vivos traditione sola. A maxim meaning "A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone" (*Black L Dict*)

Legatus. (*Lat.*) A legatee, an ambassador or envoy

Legatus regis vice fungitur a quo destinatur et honorandus est sicut ille cujus vicem gerit. A maxim meaning "An ambassador fills the place of the King by whom he is sent and is to be honoured as he is whose place he fills." (*Black L. Dict.*)

Legem. (*Lat.*) In old English law.

Legem amittere (*Lat*) To lose the law, or privilege of being admitted to oath.

Legem enim contractus dat A maxim meaning "The contract makes the law." (*Bouvier L Dict*)

Legem facere (*Lat.*) To make law or oath.

Legem habere. To have law; to be capable of giving evidence upon oath.

Legem terrae

Legem terrae amittentes perpetuam infamiae notam inde merito incurrunt A maxim meaning "Those who lose the law of the land, then justly incur the ineffaceable brand of infamy." (*Black L Dict*)

Legem vadiare (*Lat*) To wage law.

Leges (*Lat.*) Laws.

Leges angliae (*Lat.*) The laws of England

Leges angliae sunt tripartitae—jus commune, consuetudines ac decreta comitiorum A maxim meaning "The laws of England are threefold—common law, customs, and decrees of parliament" (*Black L Dict*)

Leges communes si nescit foemina, miles A maxim meaning "If a woman is ignorant of the laws, her husband is presumed to know them, and to instruct her" (*Morgan Leg Max*)

Leges figendi et refigendi consuetudo periculosissima est. A maxim meaning "The practice of fixing and refixing (making and remaking) the laws is a most dangerous one." (*Black L. Dict*)

Leges humane nascuntur vivunt, et moriuntur A maxim meaning "Human laws are born, live, and die." (*Black L Dict*)

Leges naturae perfectissimae sunt et immutabiles. A maxim meaning "The laws of nature are most perfect and immutable" (*Black L Dict*)

Leges non scriptae. Unwritten laws, customary laws.

Leges non verbis sed rebus sunt impositae. A maxim meaning "laws are imposed not on words but things" (*Burrill.*)

Leges posteriores priores contrarias abrogant A maxim meaning "Later Laws repeal earlier laws inconsistent therewith" (*Broom Leg Max*) *See also* as to applicability of this maxim 45 C L J 323 (F B)

Leges quae retrospiciunt raro, et magna cum cautione sunt aubibendae, neque enim janus locaretur in legibus A maxim meaning "Laws which are retrospective are rare, and to be received with great caution, for Janus should have no situation among the laws" (*Tayler L Gloss.*)

Leges Romanae, the Roman laws.

Leges scriptae Written laws, Statute laws.

Leges sub graviori lege (*Lat*) Laws under a weightier law.

Leges suum ligent latorem A maxim meaning "laws should bind their own maker." (*Burrill*)

Leges vigilantibus, non dormientibus subveniunt. A maxim meaning "The laws aid the vigilant, not the negligent."

Lege totum, si vos scire totum A maxim meaning "Read all, if you would know all" (*Morgan Lex Max.*)

Legibus sumptis desinentibus, lege naturae utendum est A maxim meaning "When laws imposed by the state fail, we must act by the law of nature." (*Black L. Dict.*)

Legislative Act.

Legis constructio non facit injuriam. A maxim meaning "The construction of the law does no wrong, a construction made by the law works no injury" (*Burrill*)

Legis interpreta tio legis vim obtinet. A maxim meaning "The interpretation of law obtains the force of law." (*Black L. Dict.*)

Legislate To make or enact laws. (*Abbott L. Dict.*)

Legislation The exercise of sovereign law making power, the act of making, giving or enacting laws. (*Wharton*) "The act of giving or enacting laws, the power to make laws"

LEGISLATION (COMPARATIVE), SOCIETY OF The Society of Comparative legislation is an association formed in England, on the model of a French society bearing the same name (Societe delegislation comparee) for the purpose of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of His Majesty's dominions, and in the United States. The Society originated in a paper read by Sir Countenay Ilbert, at a meeting of the Imperial Institute on November 8, 1894, under the chairmanship of Lord Herschell (then Lord Chancellor), in which he urged strongly the importance of an annual summary of comparative legislation similar to that published by theFrench Society Every civilised State, as he pointed out, is concerned to know how other States are dealing with political, social or economic difficulties similar to its own, how they administer justice, reconcile the rights of capital and labour, regulate the liquor traffic, deal with marriage and divorce, with patents, literary and industrial property, how they educate children, reform criminals, reclaim drunkards, control railways, trading companies, and merchant shipping In the mechanism of modern States the capital fact according to Sir Henry Maine, is the energy of the legislatures. In the British Empire alone there are more than sixty legislatures busy at work, In the United States there is an almost equal number. Each of these is working out its own problems in its own way —problems differentiated by local conditions, but often identical in principle, and the experience and experiments of each cannot fail to be profitable and instructive to the others The venerable Parliament, at Westminster has often learnt lessons from the experiments made by her daughters beyond the seas. (*Ency of the Laws of England*) The journal of the Society contains the annual "Review of Legislation" and is published on the 15th December in each year. Besides, this Review, the journal contains articles by writers of eminence on a variety of topics which come within the sphere of the Colonial Office, the Foreign Office, and the India Office. (*Ibid*).

Legislative That makes or enacts laws; law making, making, giving, or enacting laws, relating or pertaining to the passing of laws, of, or pertaining to legislation (*Worcester Dict*).

"LEGISLATIVE", as the word is used in speaking of the legislative department of the government, means the organ or organs of the government which make the law.

Legislative Act. An act which prescribes what the law shall be in future cases arising under it; an act of the legislative department of the government, by

Legislative authority

which the law, to be applied in future cases under particular states of fact, is established in the form of a statute, ordinance, or other written form. (*Ame Cyc*)

JUDICIAL ACT DISTINGUISHED That which distinguishes a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing thing already done or happened while the other is a predetermination of what the law shall be, for the regulation of future cases falling under its provisions The legislative power extends only to the making of laws To construe and apply the law is the peculiar province of judicial power

Legislative Authority "Legislative authority", as used in an act declaring that the legislative authority of the state shall be vested in a certain body means the power to make laws, or alter and repeal them.

Legislative Body The term "legislative body", in relation to the privilege of a newspaper in the publication of the proceedings of a legislative body, in the law of libel, has not been extended to cover a city council

"**Legislative Council**" defined 9 Edw 7, c. 4 S. 1 (1).

Legislative Department That department of the government which makes the laws, the law making organ or organs of the government (*Webster Dict*)

The "legislative department", has for its object the making of the laws It is independent of the other two departments, the executive and judiciary In a free country "Each department is confined to its own functions, and can neither encroach upon or be made subordinate to those of another without violating the fundamental principle of a democratic form of government".

Legislative Intention "By legislative intent", as that term is used with relation to the interpretation of statutes, is meant the intent as gathered from the Act itself, and sometimes viewed in the light of the knowledge of the court, in common with the public at large, of well known conditions which may seem to have led up to the Act under construction But such consideration of extraneous facts is not resorted to to defeat the Act, but to aid in its interpretation.

Legislative Office An office relating to the enactment of laws

Legislative Officer One whose duties relate mainly to the drafting of codes or the enactment of laws (*Bouvier L. Dict*)

Legislative Power The law making power, the power to make laws, that power in a state which gives and makes laws for the people; a power to enact laws or to declare what the law shall be, the power to enact new rules for the regulation of future conduct, rights, and controversies. Legislative power is "that one of the three great departments into which the powers of government are distributed —legislative, executive and judicial—which is concerned with enacting or establishing and incidentally with repealing laws." (*Abbott L. Dict*) Besides the

Legitimacy.

Imperial and Local Legislatures there are also other bodies such as government departments, municipal corporations, railway companies, etc, which exercise a species of legislative power in framing regulations and by-laws under the authority of particular Acts of the Legislature (*See* the question of legislative powers fully dealt with in *Dicey*, Law of Constitution, 6th ed, ch II; *Ilbert*, Government of India,. *Ilbert*, Legislative Methods and Forms, *Jenkyn's*, British Jurisdiction beyond Seas)

Legislatorum est viva vox, rebus et non verbis legem imponere. A maxim meaning "The voice of legislators is a living voice, to impose laws on things, and not on words" (*Black L Dict*)

"**Legislature**" defined (*See also* Local Legislature; Representative Legislature) 33-4 V. c. 52, S 26, 44-5 V c 69, S. 39, 47-8 V c 31, S. 18, 52-3 V c. 63, S 18 (7)

LEGISLATURE A term used as synonymous with "general legislative assembly"; the body of persons in the state clothed with authority to make laws. (*Abbott L Dict*)

Legislature and Courts. It is the function of the legislature to enact the laws and the duty of the Judiciary to interpret and enforce them It is no doubt the characteristic of a good Judge to amplify his jurisdiction where the words of the statute conferring the jurisdiction can reasonably be interpreted as giving him jurisdiction Where, however, jurisdiction can only be snatched by a strained interpretation of the law, the good Judge becomes a bad citizen. 24 S L R 277=127 I C 673=A I R 1930 Sind 265 (F B).

Legis minister non tenetur in executione officii, sui, fugere aut retrocedere. A maxim meaning "The minister of the law is bound, in the execution of his office, not to fly nor to retreat.' (*Burrill*)

Legis virtus haec est, imperare, vetare, permittere, punire. A maxim meaning "The virtue of the law is this, to command, forbid, permit, and punish" (*Peloubet Leg. Max.*).

Legiti (*Tel*) Making advances of cash to a ryot, or supplying him with cattle, seed-corn, etc

Legitima potestas, (*Lat*) Lawful power.

Legitimacy A status or social condition, and capacity to inherit is only one of its incidents At English law, a person born anywhere either in wedlock or within the *ultimum tempus parendi* after its determination is legitimate, so also is anyone born out of wedlock whose parents afterwards marry, if both the law of the father's domicile at the birth and the law of his domicile at the marriage coincide in allowing *legitimatio per subsequens matrimonium* [2 Black Com. 247, *Dicey*, Conflict of Law, p. 496 See *In re Goodman's Trusts*, 1880, 14 Ch. D 619; (1881) 17 Ch D 266, In re *Grove Vaucher* v *The Solicitor to the Treasury*, (1888) 40 Ch D 216, and the cases cited therein, *Ency of the Laws of England*, Macqueen, Marriage and Divorce Weightman, Marriage and Legitimacy, Hammick Marriage Law of England, Brown and Powles, Divorce Law, Hubback, Evidence of Succession, Story, Conflict of Laws, Dicey, Domicile and

Legitimacy

Conflict of Laws, 1895, Westlake, International Law, Foote, Private International Law.]

"LEGITIMACY, as the word imports, requires that the child be born in a manner approved by law"

A legitimate child has from the moment of its birth until the day of its legal majority a common-law right to support from the father It is entitled to bear his name, even though never acquired by common reputation It may inherit, not merely from the father, but from remoter ancestors and collateral kindred All these several adjuncts or incidents make up the status or condition which is called "legitimacy"

Legitimate. As an adjective, lawful, As a noun, a person born in lawful wedlock As a verb, to make lawful, to legalize and, in the case of an illegitimate, the plain and unambiguous meaning is to render legitimate, to communicate the rights of a legitimate child to one who is illegitimate is to invest with the rights of a lawful heir" (*Webster Dict. Ame Cyc.* Vol 25, p 182)

Legitimate child A legitimate child is one born in lawful wedlock, or born before the marriage of its parents, who afterwards marry and which receives the recognition of its father, and one of such children is just as legitimate before the law as the other.

"Legitimate purpose," as applied to the acts of a municipal corporation, is a term meaning such a purpose as is authorized by the Municipal Act (*Vaugun* v *Geencastle*, 104 Mo. App 206)

Legitimatio, (*Lat*) (*In English law*) Legitimacy, lawful birth

Legitimation The act whereby children born bastards are rendered lawful or legitimate children (*Tomlin's Law Dic*)

In the proper sense there is no legitimation under the Muhammadan Law By the Muhammadan Law a son to be legitimate must be the offspring of a man and his wife or of a man and his slave, any other offspring is the offspring of Zina that is, illicit connection, and cannot be legitimate The term "wife" necessarily connotes marriage, but as marriage may be constituted without any ceremonial the existence of a marriage in any particular case may be an open question Direct proof may be available, but if there be no such, indirect proof may suffice. Now one of the ways of indirect proof is by an acknowledgment of legitimacy in favour of a son This acknowledgment must be not merely of sonship, but must be made in such a way that it shows that the acknowledger mean to accept the other not only as his son but as his legitimate son It must not be impossible upon the face of it [48 I A 114=26 C W N. 81=A I.R 1922 P.C 159=40 M L. J. 510 (P C)]

Unless there is an absolute bar or impediment to a valid marriage acknowledgment has the effect of legitimation according to Mahomedan Law where either the fact of the marriage or its exact time with reference to the legitimacy of the child's birth is a matter of uncertainty Where there could not have been a valid marriage between the parents the question of acknowledgment does not at all arise [9 C. W N 352, 48 C 856, 10 A 289, 15 A 386, *Ref. to*] 1 Pat L R 328=A I R 1924 Pat 191

Legitimation and adoption "Legitimation", properly considered, refers to persons where the blood relation exists, and is not synonymous with "adoption", which properly refers to persons who are strangers in blood

Legitime imperanti parere necesse est. A maxim meaning "One lawfully commanding must be obeyed" (*Black L Dict*)

Legitimus (*Lat.*) Lawful, legitimate

Legum omnes servi sumus ut liberi esse possumus A maxim meaning "We are slaves to the law, in order that we may become free" (*Morgan Leg Max*)

Lekha mukhi "A *lekha mukhi* is a kind of running mortgage in which the proprietor's share of the produce is made over to the creditor, who pays the revenue and keeps a running account of the receipts and disbursements" 28 Punj L R 123=101 I C. 549 =9 Lah L J 63.

Lend To deliver to another for use, on condition that the thing loaned, or an equivalent of the kind, shall be returned, the parting with a thing of value to another for a time fixed or indefinite, to be used or enjoyed by that other, the thing itself, or the equivalent of it, to be given back at the time fixed, or when lawfully asked for, with or without compensation for the use, as may be agreed on (25 *Ame Cyc* 183).

Lender. One from whom a loan is taken

Length. The property of being long or extended in a single direction (*Century Dict*)

Lent The chief fast or holy season of the Church, which has been observed from a very early period. Lent commences on the Wednesday in the seventh week before Easter, and extends for forty days, not including the intermediate Sundays It thus terminates on the Saturday immediately preceding Easter Sunday In former times Lent was the period selected for the performance of solemn penance (solemnis poenitentia) for the greater sins, such as incest and the like, which had occasioned great scandal in the State, (as to which, see Constitution of Archbishop Peckham, Lind Prov p 339, Johnson Canons, vol. ii p 7, Phillimore, Eccl. Law, 2nd ed. ii, 1066, *Ency of the Laws of England*).

"Leper" defined (*See also* Pauper Leper) Act 3, 1898, S. 2 (1)

Leprosy. An infectious or contagious disease tending to cause one afflicted with it to be shunned or excluded from society

LEPROSY is a disease of a nature which will cause the persons to be affected by it to be shunned and avoided, and therefore a publication charging one with having leprosy is libellous

Lesa (*or lessa*), Assam, a small land-measure (*Bad Pow* iii, 421 *note*).

Le salut du peuple est la supreme loi. A maxim meaning the safety of the people is the highest law.

Les lois ne

Les lois ne se chargent de punir que les actions exterieures. A maxim meaning 'The law delights in equity, it covets perfection, it is a rule of right" (*Jenks Cent*)

"Less than" means "not exceeding" 21 L J Ex 160, 7 Ex 591 A covenant to pay certain royalties where "less than" a stated quantity is got is also applicable to a case where none is got 26 L J Ex 41 (*Bouvier*)

'NOT LESS THAN' is not the same as equivalent to or 'the same as' It implies also more 1929 A C 242=114 I C 25=1929 P C 84=56 M L J 363 (P C)

"Lessee" defined Act 4, 1882, S 105, Act 11, 1886, S 3 (11), Bur Act 2, 1898, S 3 (4)

LESSEE A person to whom a lease is made, he is an owner *pro tanto*, of the estate which is leased to him The word would also include the assignee of a lease under the Ferries Act the term would mean a person to whom the right of levying tolls is leased (as) lessee of ferry dues *See* Bur Act II of 1898, S 3 (4)

A person cannot be a lessee unless he has enjoyment of the property which is the subject of the lease. 62 C L J 147

Lease, Lessee The mere use of technical words and phrases which have a definite legal signification cannot be allowed to defeat the contrary intention of the parties, if that intention be manifest from the whole contract So that the words "demise", "lease," "lessors", "lessees" and like words, specially appropriate to a contract between the owner and tenant for years, have no bearing, if the contract is in fact not a lease

Lessen To make less, to reduce, to diminish, to abate, to decrease

"Lessor" defined Act 4, 1882, S 105

LESSOR. A person who grants a lease.

Let. As a noun, in old conveyancing, hindrance, interruption, As a verb, to allow, to permit, to hire, to demise, to lease or grant the use and possession of a thing for hire. The term is sometimes employed to the expression "it is hereby ordered that" (25 *Ame. Cyc* 184)

"LET", as used in the expressions "Let an inventory be taken", 'Let a family meeting be held as prayed for", "Let a writ of seizure and sale issue", etc, is equivalent to "it is hereby ordered"

"Let", as used in a lease by which the owner lets the premises, etc, is synonymous with "demise".

Lethal weapon A deadly weapon The term "lethal weapons" means deadly weapons "Guns, swords, pistols, knives, and the like are lethal weapons as matter of law, when used within striking distance of the party assaulted. Others are lethal or not according to their capability of producing death or great bodily harm in the manner in which they are used."

A gramophone needle can scarcely be regarded as a lethal weapon 8 R S. 20=156 I C 972=36 Cr L J 1037.

Letter of attorney.

Letter A letter is a written or printed message or communication in the form of epistolary correspondence

LETTER, is one of the arbitrary marks constituting the alphabet (as) A, B, C, etc, a person who lets out a thing (i e) one, who being the owner of a thing lets it out to another for hire

IN CORRESPONDENCE, a writing, an epistle, a message in writing, correspondence wholly or partly in writing, a writing inclosed in an envelope and transmitted by mail

Metaphorically, the verbal expression, the strict literal meaning (as) the letter of a statute as distinguished from the spirit of it

Letter book. A book containing copies or press copies of letters written by a merchant or trader or other person to his correspondents

Letter box The provision in an act that service on an attorney during his absence may be made by depositing the paper, in a sealed wrapper directed to him, in his letter box, is complied with by dropping it through a slit or opening for letters in the then closed door of an attorney's office, in a receptacle attached to such door on the inside for receiving letters during the attorney's absence

Letter carrier A person employed to carry letters from the Post Office to the persons to whom they are addressed

Letter missive A letter from the king to a dean or chapter containing the name of the person whom he would have them elect as bishop. 2 Step. Com 666.

Letter of advice Letter containing information of any circumstances unknown to the person to whom it is written It is usual and proper for the drawer of a bill of exchange to write a letter of advice to the drawee, as well to prevent fraud or alteration of the bill as to let the drawee know what provision has been made for payment of the bill chitty, Bills.

Letter of allotment This is a letter written by the secretary of a company, on the instructions of the directors, notifying to an applicant for shares in the company that his application has been successful, and that shares have been allotted to him Such a letter is the usual although not the only, mode in which a company can accept the offer of an applicant for shares The acceptance contained in a letter of allotment must, as in other contracts, be unconditional otherwise it constitutes only a new offer. (*Household Fire Insurance* v *Grant*, 4 Ex Div 216, *Hawthorn* v *Fraser*, (1892) 2 Ch 27.)

Letter of attorney or power of attorney A writing, authorising another person, who, in such case, is called the Attorney of the party appointing him, to do any lawful act in the stead of another, as to give seisin of lands, receive debts, or sue a third person, &c A Letter of Attorney is either general or special The nature of this instrument is to give the attorney the full power and authority of the maker, to accomplish the act intended to be performed, and sometimes these writings are revocable and sometimes not so, but when they are revocable, it is usually a bare authority only, they are irrevocable when debts, &c, are assigned to another, in which

Letter of attorney

case the word irrevocably is inserted, and the intention of them then is to enable the assignee to receive the debt, &c to his own use (*Tomlin's Law Dic*)

A mandate procuration, or letter of attorney is an act by which one person gives power to another to transact for him, and in his name, one or several affairs.

A letter or power of attorney is commonly understood to be a formal document authorizing some act, which shall have a binding effect upon the person making such power of attorney

Letter of credence A written instrument given to an ambassador, envoy or minister accredited to a sovereign and addressed to the sovereign or state to which the minister is delegated.

Letter of credit A written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn

LETTER OF CREDIT Is where a merchant or correspondent writes a letter to another, requesting him to credit the bearer with a certain sum of money (*Merch Dict Tomlin's Law Dic*)

Letter of Credit-General and special "A letter of credit (sometimes called a 'bill of credit') is an open letter of request, whereby one person (usually a merchant or a banker) requests some other person or persons to advance moneys or give credit to a third person named therein, for a certain amount, and promises that he will repay the same to the person advancing the same, or accept bills drawn upon himself, for the like amount It is called a *general letter of credit*, when it is addressed to all merchants or to other persons in general, requesting such advance to a third person, and it is called a special letter of credit when it is addressed to a particular person by name, requesting him to make such advance to a third person "(*Story, Bills of Exchange*, 4th ed. S 459). The giver of such a letter undertakes that he will give credit, that he will pay or that he will allow himself to be made a person upon whom demands or drafts may be made for payment. Such a letter is usually operated upon by bills of exchange, but it may also be operated upon by cheques or by simple demands, in any form, for the payments of the sums for which credit has been undertaken to be given" (per *Lord Cairns, L C* in *Mogan* v. *Larivière*, 1875, L R. 7 H L 432)

Letter of Exchange. Bill of Exchange.

Letter of Indemnity Letter undertaking to be responsible for any loss or damage sustained under certain specified circumstances.

Letter of Licence, (*in Old English Law*). An instrument or writing made by creditors to a man that hath failed in his trade, allowing him longer time for the payment of his debts, and protecting him from arrests in going about his affairs These letters of license give leave to the party to whom granted to resort freely to his creditors, or any others, and to compound debts, &c And the creditors severally covenant, that if the debtor shall receive any molestation or hindrance from any of them he shall be acquitted and discharged of his debt against such creditor, &c. (*Tomlin's Law Dic.*)

Letters Patent

Letter of Renunciation A letter sometimes appended to a letter of allotment, enabling the allottee, by filling up and signing it, to renounce his allotment if he desires to do so.

Letterpress Copy A well-known process, by which, after a letter has been written on ordinary paper, it is placed between the leaves of a book filled with tissue paper, the pages upon which the copy is desired being usually damped somewhat for that purpose, after which such book is subject to great pressure by means of a hand or other press. (25 *Ame Cyc* 186)

"Letters of administration" defined, 55 V. c 6 S 6, Act 2, 1874, S 3.

LETTERS OF ADMINISTRATION are granted by a Court having probate jurisdiction to show that the authority incident to the office and duty of an administrator has been devolved upon the person therein named

"Letters of Administration" includes any letters of administration whether general or with a copy of the will annexed, or limited in time or otherwise Act III of 1913 (Administrator-General's) S 4, Cl 5.

Letters of marque and reprisal. Letters of marque and reprisal are a commission to attack the subjects of a foreign state on the high seas beyond the limits of the state, seize their property, and put it in sequestration It is a hostile act of aggression.

Letters Patent, are writings of the King sealed with the Great Seal of England, whereby a person or officer is enabled to do or enjoy that which otherwise he could not, and so called, because they are open with the seal affixed, and ready to be shown for confirmation of the authority thereby given. (*Tomlin's Law Dic*)

The law relating to Letters Patent is best expounded in connection with the various rights which are conferred by them, Letters Patent are a means whereby the Crown makes a grant to a subject of some dignity, office, monopoly, franchise, etc, the letters are addressed "to all to whom these presents shall come," they are not sealed up, but are left open, and are recorded in the Patent Rolls, so that all subjects of the realm may read and be bound by their contents, hence the term "letters patent" They are of record (*Coke, 4 Inst 209*); formerly they were always made under the Great Seal, but now the Wafer Great Seal may, in many cases, be used instead of the more cumbrous waxen seal, whilst letters patent for inventions which form the bulk of letters patent are sealed with the seal of the Patent Office Amongst rights which are conferred by letters patent other than monopolies for inventions may be mentioned grants of peerage, constitution and judgeships of the High Courts, the status of denizen, the rank of King's Counsel, grants of precedence at the Bar, the Attorney or Solicitor Generalship, the Treasury and Admiralty Commission, royal pardons, and many others (*see* Edmunds on Patents 2nd Ed. p 1, note (*c*); Letters Patents of the Various Indian High Courts, *Ency. of the Laws of England.*) *See also* Bacon, Abr. "Prerog. "*F.*, Hindmarch on Patents, Edmunds on Patents; Annotated Forms of Letters Patent.

Levees.

The interpretation of Letters Patent is governed by rules which differ in material respects from those which obtain when the meaning of any other document of grant is in question Usually a grant is construed in a manner favourable to the grantee Letters Patent are construed in the sense most favourable to the grantor, *viz*, the Crown, though if the Crown received consideration for the grant, or if the grant is expressed to have been made *ex certa scientia et mero motu*, the severity of this rule is somewhat relaxed.

Levees. A levee is an embankment on the margin of a river or other body of water to prevent inundation

Another definition is "An artificial mound of earth intended exclusively as a protection from overflow," *State* v *New Orleans*, etc, *R. Co*, 42 La Ann 138, 142

A secondary meaning, growing out of the purposes for which levees are commonly used, is "a landing place or quay" (*Coffin* v. *Portland*, 27 Fed 412)

LEVEE EMBANKMENT DISTINGUISHED An embankment is an artificial bank or mound of earth. It may be used either exclusively as a roadway or as a railroad, bed, or exclusively as a protection from overflow, or as both, while the levee is an artificial mound of earth, intended exclusively as a protection against an overflow Every levee is therefore an embankment, but every embankment is not a levee

Embankments, locks, and dams are not levees, but they may enter into and form part of a comprehensive system of levees

Level Crossing· In the various railway Acts special provision has been made to provide for the safety of the public at points where a railway crosses a highway on the level. Railway Companies are required to maintain gates at such level crossings, which are to be kept constantly closed against the highway, except when vehicles, etc., have to cross the railway The gates must be so constructed as when closed to fence in the railway Proper persons are also to be employed at level crossings to open and shut the gates and a lodge is generally to be erected by the railway company thereat *See* Brown and Theobald, Law of Railway Companies, (*Ency. of the Laws of England.*)

Levis exceptio excusat a spolio A maxim meaning "A slight defence excuses from the consequences of spuilzie." (*Trayner Leg Max*)

Levitical degrees Degrees of kindred within which persons are by law prohibited to marry, defined by the levitical law (*Kenney*)

Levy, is used in the law for to collect, or exact, as to levy money &c (*Tomlin's Law Dic*)

This term is frequently used in more than one sense, its meaning in a particular instance being determined by resort to the context, and bearing different significations according to its object With respect to writs, as a noun, in its original sense, it means an actual making the money out of the property, in its secondary sense, seizing the property preliminary to making the money out of it; a seizure; actual seizure, the seizure actual or constructive of the property.

Lewdness

The word "levy", as used in the chapter relating to executions, shall be construed to mean the actual seizure of property by the officer charged with execution.

AS APPLIED TO TAXATION, as a noun, it means assessment, to computation according to the assessment, the taking and seizure of property on a warrant, as a verb, to assess, to collect or exact, impose

AS APPLIED TO TAXES, it sometimes means to raise and exact by authority of government, or to determine by vote the amount of tax to be raised It is in this sense that town, city, and school districts levy taxes In other cases it is used with reference to the mere ministerial or executive act of entering them on the tax books and collecting them

AS APPLIED TO WAR, as a noun, it denotes a general assemblage of persons in force to overthrow the government or to coerce its conduct, as a verb, to inaugurate, to make

AS APPLIED TO MEN OR TROOPS, it means to bring together, to raise or collect (*Webster Dict*, 25 *Ame Cyc* 207)

Levying War Any assemblage of men for the purpose of revolutionizing by force the government established by law although as a step to or the means of executing some greater projects, may amount to levying war

"LEVYING WAR" as used in an act declaring the act of levying war against the state by a citizen thereof a crime, etc, includes not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the States.

A levying of war, without having recourse to rules of construction or artificial reasoning, would seem to be nothing short of the employment, or at least of the embodying of a military force, armed and arrayed in a war-like manner, for the purpose of forcibly subverting the government These troops should be so armed and so directed as to leave no doubt that the government were the immediate object of the attack.

"Lewd" means dissolute, lustful, filthy

The question what constitutes obscene, lewd, lascivious, or indecent publications is largely a question of public conscience and opinion, but, before a publication can be regarded as lewd, it must be calculated, with the ordinary reader, to deprive his morals or lead to impure purposes

Lewd house "Lewd house," as used in a statute for bidding keeping of a lewd house for the practice of fornication or adultery, imports a house given to the unlawful indulgence of lust, including fornication or adultery "A lewd house may be said to be a house in which fornication or adultery is practised."

Lewdly To say that a man and woman did lewdly and lasciviously associate means that they did unlawfully associate, bed, and cohabit together, and did commit adultery

Lewdness. Lewd is defined as given to the unlawful indulgence of lust, dissolute, lustful, filthy Lewdness is an offence against morality by frequenting houses of ill-fame, or by some grossly scandalous

Lewdness

and public indecency, licentiousness (*Black I Dict*) The term "public indecency" has no fixed legal meaning, is vague and indefinite, and cannot in itself imply a definite offense. *State* v. *Huey*, 16 Ind 338.

Other definitions are that form of immorality which has relation to sexual impurity (*Bouvier L Dict*), unlawful indulgence of the animal desires, the living and cohabiting together as man and wife openly, publicly, and notoriously, without being lawfully married (*State* v *Moore*, I Swan (Tenn) 136, 137), designedly open and indecent or obscene exposure of the person, Lustfulness and lascivious behaviour, a synonym of unchastity, sensuality, and debauchery (*Century Dict.*), all those wanton acts between person of different sexes, flowing from the exercise of lustful passions, which are grossly indecent and unchaste, and which are not otherwise punished as crimes against chastity and public decency (*Fowler* v *State*, 5 Day (Comm) 81 84, 25 *Ame Cyc* 210)

LEWDNESS is the act of living and cohabiting together as man and wife, openly, publicly, and notoriously, without being lawfully married The idea of notoriety is a necessary ingredient of the offence

Lex Literally "Law, a law the law" (*Black L Dict.*)

Lex aequitate gaudet, appetit perfectum est norma recti A maxim meaning "The law delights in equity it covets perfection, it is a rule of right" (*Bouvier*)

Lex agraria. The agrarian law.

Lex aliquendo sequitur aequitatem (3 Wils 119) A maxim meaning "The law sometimes follows equity" (*Bouvier L Dict*)

Lex angliae The Law of England,—one of the names of common law.

Lex angliae est lex misericordiae A maxim meaning "The law of England is a law of mercy"

Lex angliae lex terra est The law of England is the law of the land

Lex angliae non patitur absurdum A maxim meaning "The law of England does not suffer an absurdity" (*Black L Dict*)

Lex angliae nunquam matris sed semper patris conditionem imitari partum judicat A maxim meaning 'The law of England rules that the offspring shall always follow the condition of the father never that of the mother"

Lex angliae nunquam sine parliamento mutari non potest A maxim meaning "The law of England cannot be changed but by parliament," (2 Inst 619)

Lex apparens Apparent or manifest law, (used of trial by battle or duel)

Lex a rege non est violenda. A maxim meaning "The King cannot violate the law." (*Morgan Leg Max.*)

Lex barbara. The barbarian law.

Lex est tutissima

Lex beneficialis rei consimili remedium praestat (2 Inst 689) A maxim meaning "A beneficial law affords a remedy for a similar case"

Lex brehonia The Brehon Law of Ireland.

Lex certo esto, poena certa et crimini ideonea et legibus praefinita A maxim meaning "Let the law be certain, and let the punishment be certain, adequate to the crime, and previously determined by the laws" (*Morgan Leg Max*)

Lex citius tolerare vult privatum damnum quam publicum malum (*Co Litt* 152) A maxim meaning "The law will more readily tolerate a private loss than a public evil" (*Black I Dict*)

Lex comitatus. The law of the country, the law administered in the county court

Lex communis The common law

Lex contra id quod praesumit, probationem non recipit A maxim meaning "The law admits no proof against that which it presumes"

Lex deficere non potest in justitia exhibenda A maxim meaning "The law cannot be defective in dispensing justice"

Lex de futuro, judex de praeterito A maxim meaning "The law provides for the future the judge for the past" (*Black L Dict*)

Lex delationes semper exhorret. A maxim meaning "The law always abhors delays"

Lex domicilii Literally "The law of the domicile," (*Black L Dict*, 8 *Ency* 153)

Lex est ab aeterno A maxim meaning "Law is from everlasting" (*Black L. Dict*)

Lex est anima regis, et rex est anima legis. A maxim meaning "The law is the soul of the king, and the king is the soul of the law" (*Pelonbet Leg Max*)

Lex est dictamen rationis A maxim meaning "Law is the dictate of reason" (The common law will judge according to the law of nature and the public good) (*Pelonbet Leg Max*)

Lex est exercitus judicium tutissimus ductor. A maxim meaning "The law is the safest leader of the army of judges" (*Morgan Leg Max*)

Lex est linea recti A maxim meaning "Law is a straight line" (*Morgan Leg Max*)

Lex est norma recti A maxim meaning 'Law is a rule of right" (*Black L Dict*)

Lex est ratio, summa, quae jubet quae sunt utilia et necessaria et contraria prohibet A maxim meaning "Law is the perfection of reason, which commands what is useful and necessary, and forbids the contrary" (*Burrill L Dict*)

Lex est sanctio sancta, jubens honesta et prohibens contraria A maxim meaning "Law is a sacred sanction, commanding what is right and prohibiting the contrary" (*Burrill*)

Lex est tutissima cassis sub clypeo legis nemo decipitur A maxim meaning "Law is the safest helmet, under the shield of the law no one is deceived" (*Burrill L Dict.*)

Lex facit regem

Lex facit regem A maxim meaning "Law makes the King" (*Peloubet Leg, Max*)

Lex favet dotı. A maxim meaning 'The law favors dower."

Lex finget ubı subsistıt aequıtas. A maxim meaning "The law feigns where equity exists" (*Burrill*)

Lex forı "The law of the forum of court"

Lex gothıca. The Gothic law.

Lex haereditates lıberas esse vult non ın perpetum astrıcıtis A maxim meaning "The law wishes inheritance to be free to those who are not strictly bound in all time coming" (*Morgan Leg Max*)

Lex imperatorıa The Imperial or Roman Law.

Lex ınjusta non est lex. A maxim meaning 'An unjust law is not a law." (*Peloubet Leg Max*)

Lex ıntendıt vıcınum vıcını facta scıre A maxim meaning "The law intends (or presumes) that one neighbour knows what another neighbour does" (*Burrill*)

Lex judıcat de rebus necessarıo faciendis, quasi re ipsa factis A maxim meaning "The law judges of things that must necessarily be done, as if they were in fact done" (*Burrill*)

Lex Locı. "The law of the place."

Lex Locı contractus The law of a place where a contract is made

The phrase "lex loci contractus" is used, in a double sense, to mean sometimes the law of the place where a contract is entered into, sometimes that of the place of its performance

Lex Locı delıctus "The law of the place where the crime took place"

Lex Locı domicılıı "The law of the place of domicile"

Lex Locı reı sitae. "The law of the place where a thing is situated"

Lex Locı solutıonis. "The law of the place of solution' (*Black L Dict.*)

Lex manıfesta Manifest or open law, the trial by duel or ordeal

Lex marcatoria The lex mercatoria, or law merchant, is a body of legal principles founded on the customs of merchants in their dealings with each other, and though at first distinct from the common law, afterwards became incorporated into it Though part of the general law of England, it is distinguished by a separate name, because it applies to particular subjects, and is based on principles more or less different from those which the common law recognizes in other matters, and also because these principles were ingrafted into the municipal law by gradual adoption from the *lex mercatoria*, or general body of European usages, in matters relating to commerce. (*See* Smith Mercantile Law (1905); *Mitchell, The law Merchant Ency. of the Laws of England*).

Lex non patitur

Lex mercatoria est lex terrae A maxim meaning "The mercantile law is the law of the land' (*Tayler L Gloss*)

Lex neccessıtatıs est lex temporıs, (I E) ınstantıs A maxim meaning 'The law of necessity is the law of the time, that is, of the instant, or present moment." (*Holt* 159)

Lex neminem cogit ad vana seu ınutılia peragenda An old and salutary maxim of the common law meaning "The law will not force any one to do a thing vain and fruitless" (*Broom Leg Max*)

Lex nemını facıt ınjurıum The law does injury to no one

Lex neminem cogıt ostendere quod nescire praesumıtur A maxim meaning "The law compels no one to show that which he is presumed not to know" (*Black L Dict*)

Lex nemını operatur ınıquum A maxim meaning "The law works injustice to no one" (*Burrill L Dict*)

Lex nıl frustra facıt A maxim meaning "The law does nothing in vain"

Lex nıl frustra jubet A maxim meaning "The law commands nothing vainly" (*Burrill L Dict*)

Lex non a rege est vıolanda A maxim meaning "The law is not to be violated by the king" (*Cyclopaedic L. Dict*)

Lex non cogıt ad ımpossıbılıa A maxim meaning "The law does not compel the doing of impossibilities" Limitation as to applicability of the maxim *See* 53 B 12=115 I C 369=1929 B 14

Lex non consılıa nuda, sed actus apertos Respicıt A maxim meaning "The law regards not mere intentions, but open acts" (*Peloubet Leg. Max*)

Lex non curat de mınımıs A maxim meaning "The law does not regard small matters" (*Bouvier*)

Lex non debet defıcere conquerentıbus ın justıtıa exhıbenda A maxim meaning "The law wills that, in every case where a man is wronged and endamaged, he shall have remedy" (*Broom Leg. Max*).

Lex non defıcıt ın justıtıa exhıbenda A maxim meaning "The law does not fail in showing justice" (*Burrill*)

Lex non exacte defınıt, sed arbıtrıo boni vırı permıttıt A maxim meaning "The law does not define exactly, but trusts in the judgment of a good man"

Lex non favet delıcatorum votıs Law pays little attention to mere fastidiousness A maxim meaning "The law favours not the wishes of the dainty" (*Black L Dict*)

Lex non ıntendıt ad ımpossıbılıa A maxim meaning "The Law does not intend anything impossible" (*Burrill L. Dict*)

Lex non patıtur fractıones et divisiones statutorum A maxim meaning "The law does not suffer fractions and divisions of estates", (*Burrill L. Dict*)

Lex non praecipit.

Lex non praecipit inutilia, quia inutilis labor etultus A maxim meaning "The law does not command useless things, for useless labour is folly" (*Burrill L Dict*)

Lex non requirit verificari quod apparet curiae (9 Rep. 54) A maxim meaning "The law does not require that to be verified (or proved) which is apparent to the Court" (*Burrill L Dict*)

Lex non scripta Unwritten law, "comprising those principles usages, and rules of conduct applicable to the government and security of person and property which do not depend upon any existing express and positive declaration of the will of the legislature It comprises and mainly consists of 'customs' whether general or particular, and is often called the 'customary law'" (*Broom, Common Law*, 9th ed, p 7).

Lex nostra neminem absentem damnat. A maxim meaning "Our law condemns no one in his absence" (*Morgan Leg Max*)

Lex orbis, insanis et pauperibus pro tutore atque parente est A maxim meaning "The law s the guardian and father of orphans, the insane, and the poor" (*Peloubet Leg Max*)

Lex plus laudatur quando ratione probatur A maxim meaning "The law is the more praised when t is approved by reason" (*Burrill L Dict*)

Lex posterior derogat priori A maxim meaning 'A later statute takes away the effect of a prior one" (*Black L Dict*)

Lex praetoria The prætorian law

Lex prospicit, non respicit A maxim meaning 'The law prescribes a rule for the future, not for the past" (*U S v Iselin*, 87 Fed 194, 197—citing *In re* Richardson, 20 Fed Cas No 11, 777,) The law looks forward, not backward

Lex punit mendacium. A maxim meaning 'The law punishes falsehood" (*Burrill*)

Lex pure poenalis obligat tantum ad Poe-Ro nam, non item ad culpam, lex poenalis mixta, et ad culpam obligat, et ad poenam. A maxim meaning "The law, merely penal, binds only as to penalty, not as to fault, the mixed penal law binds both to fault and penalty" (*Tayler L Gloss*)

Lex regia The Royal law

Lex rei sitae. Literally "The law of the place of situation of the thing." (*Black L. Dict*)

Lex rejicit superflua, pugnantia, incongrua (*Jenk Cent* 133, 140, 176) A maxim meaning "The law rejects superfluous (and contradictory) things" (*Burrill*)

Lex reprobat moram A maxim meaning "The law reprobates delay" (*Burrill L Dict*)

Lex respicit aequitatem A maxim meaning 'The law pays regard to equity" (*Black L. Dict*)

Lex scripta Written Law, that is the statute law of the land

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est, et, si qua in re hoc defecerit, tunc I quod proximum et consequens ei est, ei id non appareat, tunc jus quo urbs romana utitur servari oportet A maxim meaning 'if the written law be silent that which is drawn from manners and custom ought to be observed, and, if that is in any manner defective then that which is next and analogous to it, and, if that does not appear, then the law which Rome uses should be followed" (*Black L Dict*)

Lex semper dabit remedium. A maxim meaning "The law will always give a remedy"

Lex semper intendit quod convenit rationi (*Co. Litt* 78, *b*) A maxim meaning "The law always intends what is agreeable to reason"

Lex spectat ad proximam non ad remotam causam A maxim meaning "The law looks to the proximate not to the remote cause"

Lex spectat naturae ordinem A maxim meaning "The law regards the order and course of nature" (*Broom Leg Max*)

Lex succurrit ignoranti A maxim meaning "The law assists the ignorant" (*Burrill.*)

Lex succurrit minoribus A maxim meaning "The aids minors" (*Burrill*)

Lex talionis The law of retaliation (as) an eye for an eye, a tooth for a tooth

Lex terrae Literally "The law of the land."

Lex uno ore omnes alloquitur. A maxim meaning "The law addresses all with one (the same) mouth or voice" (*Burrill*)

Lex vigilantibus, non dormientibus, subvenit. A maxim meaning "Law assists the wakeful, not the sleeping" (*Black L Dict*)

Liable Bound or obliged by law, compellable to make satisfaction of a claim or debt Exposed to a certain contingency or casualty more or less probable, financially responsible, to be obliged to pay, at least, upon a contingency, According to the context the word may mean bound or obliged, likely or probable.

'LIABLE", is generally regarded by jurists as a word of modern English and not having any existence in ancient documents, It means very little more than 'under an obligation'" (*per Kekewich, J, Re Chapman*, 1896, I Ch 323, *Stroude*).

LIABLE SUBJECT Webster distinguishes the shades of meaning between the word 'liable' and its synonym 'subject' He says " 'Liable denotes something external which may befall us, 'subject' refers to evils which arise chiefly from internal necessity, and are likely to do so Hence the former applies more to what is accidental, the latter, to things from which we often or inevitably suffer".

"Liability" defined Act 6, 1882, s. 61, expln. 1; Act 3, 1909, s 46, expln

LIABILITY, A broad term, it may be employed as meaning the state of being liable, that for which one is responsible or liable obligation in general, that condition of affairs which gives rise to an obligation to do a particular thing to be enforced by action, responsibility, legal responsibility. *See also* 21 Cal 319.

Liability.

"LIABILITY", as defined in *Abb Law Dict.* means, "amenability or responsibility to law, the condition of one who is subject to a charge or duty which may be judicially enforced"

"Liability", as a legal term, signifies that condition of affairs which gives rise to an obligation to do a particular thing to be enforced by action, as we say an executor is liable for the debts of his testator or a principal is liable for the acts of his agent

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

In criminal law, this term covers every form of punishment to which a man subjects himself by violating the law of the land

In Bankruptcy Act, 1883 (46 & 47 Vict c 52), s 37, the word includes liability under a covenant to pay money out of the estate of the covenantor *Barnett* v *King*, (1891) 1 Ch 4, and *cf Wolmershausen* v. *Gullick*, (1893) 2 Ch 514, *Ellis* v *Pond*, (1898) 1 Q B 426, 554.

Liability to costs, construed in *Stubbs* v *Director of Public Prosecutions* (1890), 24 Q B D 577

Liabilities by Endorsement Liabilities incurred by the endorsement of bills or other negotiable instruments whereby the endorser becomes responsible for payment should other parties to the document make default

"LIABILITY TO CEASE" In a Charter-Party, the meaning of the words 'liability to cease' is, not that the liability should cease to accrue but that the liability should cease to be enforced" (*per Cleasby, B, Francesco* v *Massey*, L R 8 Ex 104)

"Liabilities lawfully incurred The words "expenses, debts and liabilities lawfully contracted and incurred" in S 42 of the Government of India Act (21 and 22 Vic C 106), must be construed as "debts lawfully contracted, and expenses or liabilities incurred" even if the words "liabilities incurred" were to be read in connection with the word "lawfully", the sense is not materally altered 11 Ind Cas 58=5 S L R 82

The words "liabilities lawfully incurred" cannot mean liabilities incurred by acts authorised by law, but must mean liabilities incurred by servants or agents in the course of undertakings, in which they are lawfully engaged (*Ibid*)

Liability Insurance A contract by which the insurer agrees to indemnify the insured against loss by reason of the liability imposed by law for damages on account of bodily injuries, including death, suffered by a person or persons through accident or casualty occurring within a specified term

Libel A contumely or reproach, published to the defamation of the Government, of a Magistrate or of a private person (*Com. Dig title Libel*) It is also defined to be, a malicious defamation, expressed either in printing or writing, or by signs pictures, &c, tendering either to blacken the memory of one who is dead, or the reputation of one who is alive and thereby exposing him to public hatred, contempt,

Liberal

and ridicule (1 Hawk, P.C c 73 1 Bac Abr Litle Libel 5 Mod 165=5 Co 121, 5) Libels, says Blackstone, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency Considered particularly as offences against the public peace, they are malicious defamations of any person, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule The direct tendency of these Libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed (4 Comm c 11, p 150. 3 Comm c 8 p 125) From the different modes in which a Libel may be conveyed, a distinction has been made between a Libel in writing, and one without writing (3 Inst 174 *Tomlin's Law Dic.*)

OTHER DEFINITIONS "A censorious or ridiculing writing, picture or sign, made with a mischievous and malicious intent towards government, magistrates or individuals" "Any writing, picture or other sign tending, without lawful excuse, to injure the character of an individual, by subjecting him to ridicule, contempt or disgrace"

Bishop defines "libel" as any representation in writing calculated to create disturbances of the peace, to corrupt public morals, or to lead to any act which, when done, is indictable The gist of the offense of libel is the publication of something which tends in contemplation of law to affect injuriously the peace and good order of society because it injuriously affects the reputation, memory, or business of individuals

LIBEL AND SLANDER The word "slander" is the general and original word for all kinds of defamation, and at an early day in the history of the common law the term applied both to oral and written defamations of character In modern usage it has been limited to defamation by words spoken, and in this sense may be defined as the speaking of base and defamatory words which tend to the prejudice of the reputation, office, trade, business, or means of getting a living of another

Libel is the printed or written declarations of one person against another, while slander is defined to be oral or spoken defamatory words used by one person against another

False, defamatory words, when written, constitute a libel, and, when spoken, a slander

SLANDER OF TITLE Although the term "slander" is more appropriate to the defamation of the character of an individual yet the term "slander of title" has by common use become a well known and recognized phrase of the law, and an action therefor is permitted to be maintained against one person who falsely and maliciously disparages the title of another person to property, whether such property be real or personal, in consequence of which such other person is caused to suffer some special pecuniary loss or damage

Liber As a noun, literally, "a Book," a distinct part or principal division of a work As an adjective Free, or Exempt.

Liberal (*Noun.*) Member of the Liberal party in Parliament.

Liberal.

LIBERAL (*Adj*) Free in bestowal or concession, generously inclined, ready to Impart of bestow (*Century Dict*)

Liberal Art A polite or "liberal art" is that in which the mind or imagination is chiefly concerned, as poetry, music, and painting, as distinguished from a useful or mechanical art, which is one in which the hands and body are more concerned than he brain

Liberal Construction Chancellor Kent, in his Commentaries, lays down the rule that a guaranty is o receive a "liberal construction" for the purpose of ascertaining its latitude or the interests of the party to it *Held*, that the words "liberal construction", as so used, do not mean that the words shall be forced out of their natural meaning, but simply hat the words should receive a fair and reasonable nterpretation, so as to attain the object for which he instrument is designed and the purpose to which t is applied

LIBERAL CONSTRUCTION does not mean enlargement or restriction of any plain provision of law If a tatutory provision is plain and unambiguous, it is he duty of the court to enforce it as it is written If t is ambiguous or doubtful, or susceptible of different construction or interpretations, then such liberality of construction may be indulged in as, within the fair interpretation of its language, will effect its apparent object and promote justice

Liberal interpretation 'Liberal interpretation" s used in the statement that certain statutes should eceive a liberal interpretation, does not mean that the words should be forced out of their natural meaning, but simply that the words should receive fair and reasonable interpretation, so as to attain he objects for which the instrument is designed and he purpose to which it is applied"

Liberalism Principles of the Liberal party

Liberata pecunia non liberat offerentem A maxim meaning "Money being restored does not et free the party offering', (*English L Dict*)

Liberationalism Policy of freeing church from tate control

Liber Homo A term meaning Freeholder

Libertas est naturalis facultas ejus quod cuique acere libet, nisi quod de jure aut vi prohibetur maxim meaning "Liberty is that natural faculty hich permits every one to do anything he pleases xcept that which is restrained by law or force" *Black L. Dict*)

Libertas est res inestimabilis Liberty is an instimable thing

Liberty. Freedom, individual freedom, personal freedom Freedom from restraint under conditions essential to equal enjoyment of the same ight by others, freedom from all restraints but such s are justly imposed by law, or regulated by law t means the enjoyment of the rights which belong o us as individuals

In its most general signification "Liberty" is said to e a power to do as one thinks fit, unless restrained y the law of the land and it is well observed, that

Liberty of speech.

human nature is ever an advocate for this Liberty, it being the gift of God to man in his creation, therefore every thing is desirous of it, as a sort of restitution to its primitive state (Fortesc 96) It is upon that account the laws of England in all cases favour Liberty, and which is accounted very precious, not only in respect of the profit which every one obtains by his liberty but also in respect of tbe public (2 Lib Abr 169 *Tomlin's Law Dic*)

Liberty is nothing more than mere freedom from physical restraint It means freedom to go where one may choose and to act in such manner, not inconsistent with the equal rights of others, as one's judgment may dictate for the promotion of one's happiness, that is, to pursue such callings and avocations as may be most suitable to develop one's capacities and to give them their highest enjoyment

"The last end that can happen to any man, never comes too soon, if he falls in support of the law and liberty of his country for liberty is synonymous to law and government"—Lord Mansfield, *Rex* v *Wilkes* (1769), 4 Burr Part IV, p 2563

Liberty, Franchise In a legal sense "franchise" and "liberty" are used as synonymous terms, and the kinds of them are various, and almost infinite

CLASSIFICATION Liberty has been classified as being absolute, civil, natural, personal, or political liberty The term is sometimes used as synonymous with franchise, right, privilege, or license

ABSOLUTE LIBERTY is something not allowed by any system of laws It may, if allowed amount to a licence to make a malicious use one's rights to the detriment of another

CIVIL LIBERTY is that which is allowed or recognized by the law of the state to individuals

"NATURAL LIBERTY" consists "properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature." *Synder* v. *Walford*, 49 Am Dec 94

PERSONAL LIBERTY consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due course of law (*Black L Dict*)

POLITICAL LIBERTY is an effectual share in the making and administration of the laws. (*Black L Dict*)

Liberty Hall House in which guests etc., do as they please

Liberty-man Sailor ashore on leave

"Liberty of apply", clause in a decree, effect of. 30 Bom L R 137=108 I C 510=1928 Bom 102

The "liberty to apply" reserved in an order passed by consent is merely liberty to carry out the order and not to vary it or set it aside 56 Bom 231=139 I C 845=34 Bom L R 880=A.I.R. 1932 Bom. 615.

Liberty to apply means liberty to carry out the provisions of the decree 140 I C. 819=34 Bom L.R. 733=A I R 1932 Bom 439

Liberty of speech, the right to state facts and express opinions.

Liberty of speech and the press Judge Cooley in speaking of the liberty of speech and of the press,

Liberty of speech.

says "We understand 'liberty of speech and of the press' to imply not only liberty to publish, but complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords"

The Liberty of the press was said by Blackstone to consist "in laying no previous restraints upon publication, and not in freedom from censure for a criminal matter when published Every freeman has an undoubted right to lay what sentiments he pleases before the public. To forbid this is to destroy the freedom of the press, but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own action"

The liberty of the press consists in the right to publish with impunity the truth, with good motives and for justifiable ends, whether it respects governments or individuals, the right freely to publish whatever the citizen may please, and to be protected against any responsibility for so doing, except in so far as such publications, from their blasphemy, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing and reputation, or pecuniary interests, of individuals"

Liberty of the Press Every English man has the right to print and publish what he will, subject only to this, that he must take the consequences, should a jury subsequently deem his words defamatory There is at present any censorship of the press in England "The liberty of the press," says Lord Mansfield, in *R* v *Dean of St Asaph*, 1784, 3 T R 431,n, "consists in printing without any previous licence, subject to the consequences of law" Lord Ellenborugh says, in *R* v *Cobbett*, 1804, 29 How St Tr 49 "The law of England is a law of liberty, and consistently with this liberty, we have not what is called an *impremature*, there is no such preliminary licence necessary, but if a man publish a paper, he is exposed to the penal consequences, as he is in every other act, if it be illegal" Lord Kenyon shortly puts it thus, in *R* v *Cuthell*, 1799, 27 How St Tr 675 "A man may publish anything which twelve of his countrymen think is not blamable"

"This was not always so in England The printing press had not long been invented before statesmen began to fear its power Nobles quailed before the sarcasms penned by low born intellect, priests dreaded its searching questionings, while kings saw in it a new source of disaffection and danger It undoubtedly increased to an enormous extent the power, for good or for evil, of every educated brain Early English monarchs at first endeavoured to keep all the printing presses in their own hands, and allowed no one to print anything except by special royal licence. All printing presses were kept under the immediate supervision of the King in Council, and regulated by proclamation and decrees of the Star Chamber by virtue of the King's prerogative Against these orders Milton published, on November 24, 1644, his noble but ineffectual protest the Areopagitica A speech for the Liberty, of Unlicenced Printing, a work written, as he tells us himself (Prose Works, ed 1848, vol. i 259), "in order to deliver the press from restraints with which it was

Liberum est cuique

encumbered, that the power of determining what was true and what was false, what ought to be published and what to be suppressed, might no longer be entrusted to a few illiterate and illiberal individuals, who refused their sanction to any work which contained views or sentiments at all above the level of vulgar superstition"

It was not until 1695, says Macaulay, (vol iii. c 19), that "English literature was emancipated, and emancipated for ever, from the control of the Government" Yet no one realised at the time the vast importance of this salutary change Since that date (1695) every one is at liberty to write and publish what he pleases "The liberty of the press is no greater and no less than the liberty of every subject of the Queen" (per *Lord Russell of Killowen, C J* in *R* v *Gray*, (1900) 2 Q B, at p 40) But if he make a bad use of this liberty he must pay the penalty of his misconduct If he unjustly attack an individual, the person defamed may sue for damages, if the words endanger the public peace, or inculcate vice of sedition, the offender can be tried for a misdemeanour either on information or indictment Subject to these restrictions, the greatest latitude is allowed to all who write on public affairs "The power of free discussion," as Lord Kenyon, C J, said in *R* v *Reeves*, 1796, Peake, Add C 86,4 R R 891, "is the right of every subject of this country" And this right is further safeguarded by Mr. Fox's Libel Act, passed in 1792, which re-established the rule that libel or no libel is a question for the jury and not for the judge (*Ency of the Laws of England*)

"The liberty of the press is dear to England, the licentiousness of the press is odious to England, the liberty of it can never be so well protected as by beating down the licentiousness"—Lord Kenyon, Cuthell's Case (1799), 27 How St, Tr 674

"The power of free discussion is the right of every subject of this country All the blessings we at present enjoy might be ascribed to it"—Lord Kenyon, *King* v *Reeves* (1796), *Peakess* Nisi Prius Cases, 85

"The liberty of the press is no greater and no less than the liberty of every subject of the Queen"—Lord Russell of Killowen, *Reg* v *Gray* (1900), L R. 2 Q B D 40

Liberties of Franchises These are synonymous terms and their definition is, a royal privilege or branch of the King's prerogative, subsisting in the hands of a subject The kinds of them are various, and almost infinite (*Tomlins Law Dic*)

Liberty of worship, The right freely to worship in any mode and in accordance with any belief, doctrine or principle which does not violate the laws of morality or property, nor infringe upon personal rights

Liberum corpus nullam receipt aestimationem A maxim meaning "The body of a freeman does not admit of valuation the life of a freeman is above all valuation" (*Burrill*)

Liberum est cuique apud se explorare an expediat sibi consilium A maxim meaning "It is free for every one to weigh the matter in his own mind, or to have resort to counsel." (*Tayler L. Gloss.*)

Library.

Library. A term which may mean either the room or place where books are kept, or the books in the aggregate.

Liceat eos exhaeredare quos occidere licebat A maxim meaning "It may be lawful to disinherit those whom it is lawful to deprive of life" (*Taylor L Gloss*)

"License" defined (*See also* Accessory License; Revoked License) 44-5 V.c 58, S 174 (2), Act 11, 1878, S 4, Act 5, 1882, S 52, Bur Act 4, 1898, S 4 (7)

LICENSE Permission or authority to do a particular thing

"A license in respect to real estate is defined to be an authority to do a particular act or series of acts on another's land without possessing any estate therein"

A "license" is described by Jones in his book on Easements as a personal and revocable privilege to do some act or series of acts upon the lands of another without possessing any estate therein It gives immunity to the licensee while acting under the privilege, but confers no vested right by which he can rightfully enjoy it contrary to the will of the grantor.

"Where one person grants to another, or to a definite number of other persons a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license" Act V of 1882 (Easements) S 52

A licence is an excuse by reason of the consent of the plaintiff for an act which would otherwise be unlawful as an entry upon the plaintiff's land, or the infringement of his patent or copyright

LICENCE AND EASEMENT A license, according to the definition of the words as given in the Easements Act is not, as in the case of easements, connected with the ownership of any property, but creates only a personal right or obligation 23 B 397 (per *Ranade, J*)

The difference between an easement and a license is that the former implies an interest in land, while the latter does not An easement must be created by deed or prescription, while a license may be by parol The former is a permanent interest in the realty while the latter is a personal privilege to do some act or series of acts upon the land of another without possessing any estate therein, and is generally revocable at the will of the owner of the land in which it is to be enjoyed, by the death of the licensor,or by his conveyance of the lands to another, or by whatever would deprive him of doing the acts in question or giving permission to others to do them

Licence and invitation distinguished There is a clear distinction between a "license" and an "invitation" to other premises, and an equally clear distinction as to the duty of an owner in the two cases. An owner owes to a licensee no duty as to the condition of premises, unless imposed by statute, save that he should not knowingly let him run upon a hiddenperil, or wilfully cause him harm, while to one invited he is under obligation for reasonable security for the purposes of the invitation.

Licentia loquendi.

License, Regulate, and Tax. "License, tax, and regulate", as used in city charter authorizing the council to license, tax, and regulate telephone companies and all other branches of business, includes the power to grant such companies the right to erect poles in the streets.

LICENCE FOR OCCUPATIONS AND PRIVILEGES. License, in its general sense, means a right or permission granted by some competent authority to do what is unlawful at common law, or is made so by statute or ordinance, including the one authorizing or requiring the license A privilege is the exercise of an occupation or business which requires a license from some proper authority, designated by some general law, and not free to all, or any, without such license It follows that an occupation or privilege license is the permission granted to an individual by a competent authority to engage in and carry on the particular business or calling to which it refers. (25 *Ame Cyc* 596)

LICENCE IN THE LICENSING ACTS A "licence", for the purposes of Licensing Act, means a licence for the sale of intoxicating liquors granted by justices in pursuance of the Intoxicating Liquor Licensing Act, or Abkari Act *See* Peterson's Licensing Act, Licensing Laws, by Talbot

License fee In order to secure the authority to engage in a business, which, without paying for and obtaining such authority, would be illegal.

A license fee is a tax when imposed mainly for the purposes of revenue

License Tax A license tax is one imposed on the privilege of exercising certain callings, professions, or avocations, that, when collected, goes into the state treasury, and when applied to municipal taxation is termed a "license fee",

"Licensed", defined Act II, 1878, S. 4

Licensed Hawker. In S. 13 of the Markets and Fairs Clauses Act, 1847 (10 and 11 Vict C. 14) *Llandudus V.D C* v *Hughes*, (1900) 1 Q B. 472.

"Licensed plumber", defined Bom. Act 3, 1888, S 3 (*k*)

"LICENSED PLUMBER" and *"licensed surveyor"* mean, respectively, a person licensed by the Commissioner for the purposes of the Municipal Act as a plumber or surveyor Bom Act III of 1881 (City Bom Municipal), S 3, cl (*k*)

Licenced victualler Innkeeper with license to sell alcohol

"Licensee", defined. Mad Act 4, 1889, S 3, (*m*).

LICENSEE. Person to whom a license is granted.

'Licensee of salt work" defined. Bom. Act 2, 1890 S 3 (*l*).

Licensor. The person who gives a license.

Licentia, (*Lat*) License, liberty, permission.

Licentia loquendi, Leave to speak (*i.e.*, with the plaintiff).

Licentiate.

Licentiate. Holder of certificate of competence from a college or university.

Licentious The doing what one pleases without regard to the rights of others, and such is its meaning in the definition of wantonness as "the licentious act of one towards the person of another", lewd (*Abbott L Dict*, 25 *Am. Cyc* 653), immoral in sexual relations.

Licentiously. In a licentious manner, freely, loosely, dissolutely

Licentiousness. The indulgence of the arbitrary will of the individual without regard to ethics or law, or respect for the rights of others, lewdness or lasciviousness

"LICENTIOUSNESS", is defined by Bouvier to be the doing what one pleases without regard to the rights of others, and such is its meaning in the definition of wantonness as the licentious act of one towards the person of another

"Licentiousness" is defined in Abb Law. Dict as being equivalent to "lewdness" The word "licentiousness" is so used in an act entitled to protect females from licentiousness

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio praecedens quae sortiatur effectum, interveniente novo actu. A maxim meaning "Although the grant of a future interest is inoperative, yet it may become a declaration precedent, taking effect upon the intervention of some new act. (*Broom Leg. Max*)

Lichh (*S Pj and Sindh*), the landlord's share of the grain (*Bad Pow* II 658, 9)

Licita bene miscentur, formula nisi juris obstet A maxim meaning "Lawful acts (done by several authorities) are well mingled (*i e*, become united or consolidated into one good act), unless some form of law forbid"

Licitation. A mode of dividing property held in common by two or more persons (In the civil law) An offering for sale to the highest bidder, or to him who will give most for a thing, an act by which coheirs or other co-proprietors of a thing in common and undivided between them, put it to bid between them.

Licitator. (*Lat*) In the Roman law. A bidder at a sale.

Licitum. (*Lat*). Lawful, permitted by law

Lie. As a noun, a Falsehood. As a verb, to subsist; to exist; to be substantial, to utter a lie (*Black L. Dict.*)

Telling a bare naked lie, without intention to injure, cheat, or deceive another person, is not ground for an action Though every deceit comprehends a lie, yet it is more than a lie on account of the view with which it is practised and the injury which it is calculated to occasion and does occasion to another person. If a man will wilfully assert that which he knows to be false, and thereby draws his neighbour into a heavy loss, the law will compel him to pay for it.

To LIE, LAY. To Lie is neutor, and designates a state; to Lay is active, and denotes an action on an

Lien.

object, it is properly to cause to lie, a thing lies on the table, some one lays it on the table, he lies with his fathers they laid him with his fathers In the same manner, when used idiomatically, we say, a thing lies by us until we bring it into use, we lay it by for some future purpose, we lie down in order to repose ourselves, we lay money down by way of deposit.

Lie in To be capable of, to be the subject or subject-matter of, to consist in

Lie to To adjoin

Liege In feudal law, bound, bound in fealty to a lord

Liege homage. Homage due to the sovereign alone, as supreme lord

Liege Lord. A sovereign lord, the sovereign.

Liege man. A subject.

Liege Subject. A natural born subject. A person who owes but a temporary allegiance might without impropriety to be called a "liege subject".

"Lien" defined *See* SELLER'S LIEN.

LIEN A lien may be defined to be a charge on property for the payment of a debt or duty, and for which it may be sold in discharge of the lien

It signifies an obligation, tie, or claim annexed to, or attaching upon, any property without satisfying which such property cannot be demanded by its owner Thus, the costs of an attorney are a Lien upon deeds and papers in his hands (*Attorney's Lien*), a factor has a Lien on goods in his hands for balance due from his principal &c. *Bankers Lien Vendors Lien* (*Tomlins Law Dic.*)

A lien, in a limited and technical sense, signifies the right by which a person in possession of personal property holds and retains it against the owner in satisfaction of a demand due to the party retaining it, but in its more extensive meaning and common acceptation it is understood and used to denote a legal claim or charge on property, either real or personal, as security for the payment of some debt or obligation, it is not strictly a right in or right to the thing itself but more properly constitutes a charge or security thereon.

OTHER DEFINITIONS —" A special right which one has in that of which another has the general property, and, to the extent of the lien, it is an abridgment of the dominion which the latter has in the thing"

" A security . . , given by law to secure the payment of money." (58 Fed. 708, 711)

LIENS, GENERAL AND PARTICULAR —Liens are of two kinds, general and particular A general lien is the right to retain the property for a general balance of accounts. A particular lien is a right to retain property for a charge on account of labor employed or expenses bestowed upon the identical property detained. (13 B. 314.)

Liens are also divided into particular or special and general A particular or special lien is a right to retain property of another for some particular claim or charge upon the identical property detained. A

Lien

general lien is the right to retain the property of another to secure a general balance due from the owner A general lien, however, is not favored, and can only be established either by contract, express or necessarily implied, or by custom or usage of trade or of the parties (*Ame Cyc*)

ATTORNEY'S LIEN The lien for costs of attorney upon the deeds and papers in his hands

BANKER'S LIEN A banker has Lien for the amount of his balance upon securities (bills and cheques) paid in by a customer upon his running accounts (15 E R 428)

COMMON LAW LIEN, EQUITABLE, MARITIME OR STATUTORY LIENS Liens, so far as the source of their creation is concerned, are divisible into common-law, equitable, maritime, and statutory

COMMON-LAW LIENS A common-law lien is the right to retain the possession of personal property until some debt due on, or secured by, such property shall be paid or satisfied It merely secures the lienor in the possession of the property on which the lien attaches, to hold it as security for the debt or obligation but not to sell it

EQUITABLE LIENS An equitable lien is one which a Court of equity recognizes as distinct from strictly legal rights, and is always ready to enforce regardless of what rights the applicant may have in a court of law The term "equitable lien" merely denotes a charge or encumbrance of one person upon the property of another.

MARITIME LIEN A "Maritime Lien" does not include or require possession The word is used in Maritime Law not in the strict legal sense in which we understand it in Courts of Common Law, in which case there could be no Lien where there was no possession, actual or constructive, but to express, as if by analogy, the nature of claim which neither presuppose nor originate in possession This was well understood in the Civil Law, by which there might be a pledge with possession and Hypothecation without possession, and by which, in either case the right travelled with the thing into whosesoever possession it came Having its origin in this rule of the Civil Law a Maritime Lien is well defined by Ld Tenterden to mean, a claim or privilege upon a thing to be carried into effect by legal process, and Mr Justice Story (1 Sumner, 78) explains that process to be, a proceeding *in rem*, and adds that, wherever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding *in rem* and, indeed, is the only Court competent to enforce it This claim or privilege travels with the thing into whosesoever possession it may come It is inchoate from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached" (*The Bold Buccleugh*, 7 Moore P C 284, cited and applied *The Feronia*, 37 L J Adm 60)

PRINTER'S LIEN A printer has a general Lien upon the copies of a work not delivered, for his balance 3 Mau & Sel Rep 167 (*Tomlin's Law Dic*)

STATUTORY LIENS Liens are also frequently defined or provided for by statute Such statutes embrace in a modified form the common-law liens, and also frequently provide for liens in cases to

Life.

which the common-law lien does not apply Statutory liens, however have been looked upon with jealousy, and generally will only be extended to cases expressly provided for by the statute, and then only where there has been a strict compliance with all the statutory requisites essential to their creation and existence (25 *Ame Cyc*. 662)

Lien on title deeds A "solicitor's lien on title deeds" was a right to hold the deeds so as to enforce payment of the amount intended to be secured by their deposit, by embarrassing the debtor but unaccompanied by any charge upon the estate

LIEN DISTINGUISHED FROM DEBT OR OBLIGATION A lien is entirely distinct from the debt or obligation which it secures and may or may not be asserted as such, and the debt itself may be enforced with or without its aid

"Lieutenant-Governor" defined (*See also* Local Government) Act, 1867, S 1, Act 3,1867, S 1, Ben Act 5,1876, S 6 (9), Ben Act 7,1876, S. 3 (4), Ben Act 8,1876, S 4 (xi)

"**Lieutenant-Governor**" means the Lieutenant-Governor of Bengal or any other Province for the time being, or the person acting in that capacity, *See* Ben Act III of 1876 (Land Registration, S 3, cl. 4)

"**Lieutenant-Governor in Council**" means a Lieutenant-Governor in Executive Council, Government of India Act (9 and 10 Geo V. Ch. 101), S 134, cl 3

"Life" defined Act 45,1860, S. 45

LIFE Possession of animate existence, that period between birth and death, in the law of inheritance it begins with conception, in abortion, with quickening, in civil rights, with birth. (*English L Dict*)

"LIFE" is the immediate gift of God, and a right inherited by nature in every individual

The "right to life includes the right of the individual to his body in its completeness and without dismemberment"

"LIFE", as used in an statute providing that no state shall deprive any person of life, liberty, or property without due process of law, means something more than mere animal existence The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed The provision equally prohibits the mutilation of the body by the amputation of an arm, or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world The deprivation not only of life, but of whatever God has given to every one with life for its growth and enjoyment, is prohibited by the provision in question

The word "life" denotes the life of a human being, unless the contrary appears from the context. (*Penal Code*, S 45.)

"Life, Liberty, and Property" The term "life, liberty and property" is a representative term, and intended to cover every right to which a member of the body politic in a free country is entitled under the law This term includes the right of self-defence, freedom of speech, religious and political

freedom, exemption from arbitrary arrest, and the right freely to buy and sell as others may Indeed, it embraces all our liberties, personal, civil and political, including the rights to labor, to contract, to terminate contracts, and to acquire property

Life, Liberty and Pursuit of Happiness The expression "life, liberty and the pursuit of happiness," is general in its character, and includes many rights which are inherent and inalienable. Many of the rights referred to in this expression are included in the general term "liberty". The happiness here referred to may consist in many things, or depend on many circumstances, but it unquestionably includes the right of the citizen to follow his individual preference in the choice of an occupation The right of everyman to choose his own occupation, profession, or employment, is included in the right to the pursuit of hapiness.

Life annuity An annual income, the payments of which depend on the continuance of any given life or lives.

"Life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life, Act VI of 1912 (Life assurance), S 2 (5)

Life belt is made of buoyant material to support body on water.

Life-boat—specially made for saving life in a storm or ship wreck or other accident at sea

"Life-boat Service" defined 57-8 V. c 60, S. 742.

LIFE-BOAT SERVICE, in the Removal of Wrecks Acts, 1877 and 1889, "means the saving or attempted saving of vessels, or of life or property on board vessels, wrecked, or aground, or sunk, or in danger of being wrecked, or getting aground, or sinking" 52 & 53 Vic. c. 5, S 3, Mer Ship Act, 1894, S 742 (Eng.)

Life buoy. Appliance for keeping body afloat.

Life, continuance of A person shown to have been living at a given date is presumed to be still alive until a time considerably exceeding the ordinary duration of human life has elapsed and the onus of showing such person's death lies on the party asserting it. (*Taylor*, Evidence, 10th ed. Ss 198-201, *Best*, Evidence, 10th ed, p. 340.

Life Employment. Under a contract for life employment, the employer would not be bound to retain in his service one who was unfaithful in the performance of his duties, or who was incapable of performing them, or if the employer had no work which the employee could perform.

Life Estate. An estate for life is defined to be a freehold interest in lands, the duration of which is confined to the life, or lives of some particular person or persons, or to the happening or not happening of some uncertain event

There is no authority in support of the broad proposition that a life-estate holder as such has the power of making transfers for necessity. 114 I C. 113=A.I.R. 1929 Oudh 204

ESTATE FOR LIFE OR LIVES. Estates, for Life, or in other words freeholds not of inheritance, are estates capable of subsistence for the term of a life or lives.

Life insurance and benefit societies.

They arise either by act of party or by law Those that arise by act of party are estates created expressly by deed or will, and given to the donee to hold (1) for the own life, or (2) the life of another person—the latter estate is called an estate *pu autre vie*, and the person on the duration of whose life the estate depends is called the *cestui que vie*, (3) for the joint lives of several persons, (4) for the life of the longest lives of several persons (See *Ency of the Laws of England*) Tudor's Leading Cases in R P, Lewis Bowles's Case, Williams' Law of Real Property, Goodeve's Law of Real Property, Edwards' Compendium of the Law of Property in Land, Challis' Law of Real Property

Life Guards Household cavalry regiment

Life Insurance Insurance on the life of an individual

The contract of life assurance is not, like that of fire insurance or marine insurance, a contract of indemnity, but is a contract, by which the insurer "undertakes to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum—or certain equivalent periodical payments—by another" The event may be either the death of the assured, or his attaining a certain age, or his surviving, some other person. Contracts to pay annuities during the continuance of certain lives stand on a similar footing. These and other contingencies are now commonly provided for by policies of insurance, and premiums to meet most conceivable risks are readily quoted by different insurance offices (*Ency of the Laws of England*)

"LIFE INSURANCE is protection given to one person against the damage he may suffer through the death of another.

A contract for life insurance is really a contract for insurance for one year or other fixed period in consideration of an advanced premium, with the right of assured to continue it from year to year upon payment of a premium as stipulated

Life insurance imports a mutual agreement whereby the insurer, in consideration of the payment by the assured of a named sum annually or at certain times, stipulates to pay a larger sum at the death of the assured The insurer takes into consideration, among other things, the age and health of the parents and relatives of the applicant for insurance, together with the applicant's own age, course of life, habits, and present physical condition, and the premium exacted from the insured is determined by the probable duration of his life, calculated upon the basis of past experience in the business of insurance.

Life insurance and benefit societies. All benefit societies, whether corporations or mere voluntary associations, are, strictly speaking, insurance organisations, whenever, in consideration of a periodical contribution, they engage to pay the member or his designated beneficiary a benefit upon the happening of a specified contingency

The association may be benevolent and charitable, and only incidentally provide benefits for its members or their beneficiaries, but, nevertheless, when it contracts to pay a certain sum to the appointees of its members upon their decease while in good stand-

Life insurance company

ing, in consideration of certain contributions made by such members while living, it is doing a life insurance business

Life insurance company A life insurance company shall be deemed to be a corporation doing business involving the payment of money or other thing of value to families or representatives of policy holders, or conditioned upon continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities

Life insurance company and mutual benefit society A mutual benefit society is not a life insurance company, within the meaning of that term in the statutes relative to life insurance companies

Lifeless Dead

"Life or lives in being" The common-law rule against perpetuities, that any estate granted or devised must, in order to be valid, vest within a "life or lives in being, and 21 years afterwards," means that the estate will be invalid if by any possibility it will not vest within the time specified, but this rule relates entirely to time, and not to persons, since the testator is allowed to select as a measure of time the lives of any persons in existence, and the 21 years afterwards are not regulated by the birth or the coming of age of any person, for they begin not with a birth, but with the death, and are 21 years in gross, without regard to life or to the coming of age of any person whosoever

Life office Office for Life Assurance

Life policy. A policy of insurance on the life of an individual.

A life policy for the benefit of the family of a person procuring it, though not a testament, is in the nature of a testament, and, in construing it, the courts should consider it, as far as possible as a will.

Life-saving appliances Life-saving appliances comprise life-boats, life rafts, life-buoys, life-jackets etc., and are required by legislative provisions for use either at sea or on the sea coast

Life sentence is one terminable only by death

Life-tables Tables by which an estimate of the duration of a person's life or ability to earn a living is made (*English L Dict*)

LIFE TABLES are never taken as fixing the expectancy of the life of the particular person, or as forming a legal basis for a calculation, but are accepted as furnishing some evidence to be considered by the jury in connection with all the other pertinent evidence in ascertaining the probable duration of the life in question.

"Life tenure" defined. Ben. Reg 37, 1793, s. 15.

Life time Duration of a person's life.

GOOD LIFE BAD LIFE (*In Life Insurance Law.*) Likely to live long, not likely to live long

"Lift" defined Reg 8, 1887, S 2 (7).

LIFT. To lift a promissory note is to discharge its obligation.

Lighter.

Lifts. "Lifts" is a mining phrase, and means rests or stopping points along the shaft of the mine, at which there were switches on the track, by which the descending cars could be turned off or placed back on the track

Ligan (*nautical*) A term used where the goods cast into the sea to lighten the vessel to save her from some danger are so heavy that they sink and the mariners tie a buoy or something to them so that they may find them again

Ligeance The true and faithful obedience of a liegeman or subject to his liege lord, or sovereign "This Ligeance (which is an incident inseparable to every subject) is in four manners, (1) Natural, (2) Acquired, (3) Local, and (4) Legal. *See* Calvin's Case, 7 Rep 1", *Termes de la Ley* 1 Bl Com Ch 10)

Ligeantia est quasi legis essentia, est vinculum fidei A maxim meaning "Allegiance is, as it were the essence of law, it is the chain of faith" (*Black L Dict*)

Ligeantia naturalis nullis claustris coercetur, nullis metis refraenatur nullis finibus premitur A maxim meaning "Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits" (*Black L Dict*)

Light As a noun, something to kindle with, that by which objects are seen As an adjective, of short weight, weighing less than the proper or standard amount (*Century Dict*)

The word "light" as used in Laws providing that in dark hallways and tenements a light shall be maintained, evidently means an artificial light, such as is furnished by a lamp, gas, or electricity

Lights are those openings which are made rather for the admission of light than to look out of

RIGHT TO LIGHT Light like air and water, is a provision of nature, for general use of mankind, and essential to man's very existence. Like air and water, it flows over the land of one person to that of another for the use of both, and, to secure the due use and enjoyment of light by both, the law recognizes mutual rights and obligations on the part of both, that each may be restrained from infringing the rights of the other and depriving him of them unjustly It is obvious that the right of a landowner to unobstructed light across his neighbour's land must, if unrestricted and unlimited, at once come into conflict with the right of that neighbour to build near the extremity of his land, in such a way as to obstruct the light The two rights could not co-exist if unrestricted, and the law has therefore stepped in to define and determine the respective rights and obligations of neighbours *See also* Easements Act, S 15

Light dues Charges levied on ships for the maintenance of light-houses, beacons, etc, around the coasts.

LIGHT RAILWAY (*Ireland*), "includes tramway as that word is used in the Tramways (Ireland) Acts" (1889).

Lighter. A vessel used in assisting to load and unload other vessels; and in common parlance, it

Lighterage.

includes boats plying for hire and carrying passengers or goods, a craft plying for hire for the carrying of goods.

Lighterage The price paid for unloading ships by lighters or boats

Lighterman Any person working or navigating for hire a lighter, barge, boat, or other like craft.

"Lighthouse" defined 57-8 V c 60, S 742.

LIGHTHOUSE A structure, usually in the form of a tower, containing signal-lights for the guidance of vessels at night, at dangerous points of a coast, shoals, etc

Lighthouse and beacons The legal history of light houses and beacons in England succinctly described—"Lights and beacons were at one time almost universally private property Persons erected beacons or lighthouses where they were required, and those who navigated the seas, at first perhaps voluntarily, and afterwards by compulsion, paid tolls in respect of them Rights gradually grew up, rights recognised by law, and rights enforced, it may be, by charters or by Acts of Parliament With the gradual development of those rights it became necessary at last to bring all those lighthouses and beacons under one general authority, and eventually, in England in 1854, they were all brought under the one central authority of the Trinity Board, which had long had an existence, originally as a private body and gradually and naturally developing its authority and influence and acquiring fresh powers, until at length all lighthouses and beacons were vested in it" Day J, [*Gilbert* v *Trinity, House*, (1886) 17 Q B D 795, 800, *Ency of the Laws of England*]

In addition to the ordinary meaning of the word, it includes "any floating and other light exhibited for the guidance of ships and also any Sirens and any other description of Fog Signals, and also any addition to a lighthouse of any improved light or any siren or any description of fog signal" (Merch Ship Act, S 742)

Light laden. A shipping term of no settled meaning, the meaning depending upon the context or circumstances under which it is used.

Lightning A discharge of atmospheric electricity, accompanied by a vivid flash of light, commonly from one cloud to another, sometimes from a cloud to the earth, a sudden discharge of electricity from a cloud to earth, etc, producing a vivid flash of light, etc (*Webster Dict*)

A policy of fire insurance providing that it was liable for any loss or damage caused by lightning to the property insured covers all known effects of electricity coming under the general head of "lightning".

The word "lightning", in its ordinary and popular sense, applies to any sudden and violent discharge of electricity occurring in the course of nature between positively and negatively electrified bodies, usually developing in its course the phenomena of light heat and disruptive force.

Lightning insurance. A contract by which the insurer, for a consideration, agrees to indemnify the

Likhi.

insured against loss of or damage to property by lightning

Ligna et lapides sub "armorum" appeelatoine non continentur A maxim meaning "sticks and stones are not contained under the name of 'arms'" (*Black L Dict.*)

Like. As defined by Webster, "like" means equal in quantity, quality, or degree, exactly corresponding, so that "in like manner" means "with same force and effect"

While the context often determines its signification the term is generally defined to mean analogous, resembling, having resemblance, similar, equal, same in quantity, amount, or extent; having the same, or nearly the same, appearance, qualities, or characteristics, resembling, similar to, equal in quantity, quality, or degree, exactly corresponding (*Webster Dict*)

"Like another" Saying that one article is like another does not necessarily mean that they are the same in all particulars, but rather the contrary, that, is, that they are the same in some particulars, and not in others

Like effect A statute requiring that a certain notice be given in a specified form, or to the like effect, would be complied with by a notice which gave all the information which the Legislature intended to be given by the form recommended

Likelihood "Likelihood" as used in instructions relative to preponderance of evidence, is not a proper synonym of "probability"

Likely. Probable, in all probability (*Standard Dict*)

"LIKELY" *See* 1 S L R 50 Cr = 8 Cr L J 170

Like manner In a statute providing that a written petition in summary proceedings shall be verified in like manner as a verified complaint, "in like manner" means in like form as pleadings are verified. "Manner" means method of procedure, habit, or custom.

Like punishment The expression "like punishment", in a statute providing that an accessory shall receive like punishment with the principal, imports that he shall be liable to indictment in the same manner as the principal.

Likewise When a clause begins with "Likewise" or "Item", it is, generally speaking, to be read independently of the former clause as a fresh departure, and starting upon a new disposition 1 Jarm 831, 832, citing *Lethieullier* v *Tracy*, 3 Atk. 774, Amb. 204, (*Stroude*)

"It is not, however, to be assumed that whenever the word 'Item' or '*Likewise*' begins a sentence, it creates a complete severance of all that follows from the previously expressed contingency. It cannot be put higher than this, that such expressions make a *prima facie* case for the disconnection, which the context of the will may either maintain or rebut" (I. Jaram 832, 833).

Likhi. A line, a strip, applied to certain landholdings (Pj. frontier) (*Bad Pow.* II, 639, 650).

Likhita.

Likhita A great Hindu Sage and writer of an important Smriti that bears his name.

Limekiln A limekiln is a structure fit for burning lime

Limestone rock In a contract for the construction of bridge piers, reciting that the foundation of the same should rest on "limestone rock", that term is synonymous with "solid rock" or "bed rock".

Limit A point of price fixed by a principal, beyond which a broker or agent is restricted from buying or selling, a word meaning boundary, border the outer line of a thing *As a verb*, to mark out, define, indicate the extent or duration of, and sometimes used as synonymous with to lessen or to a bridge

LIMIT EXTENT *Limit* is a more specific and definite term than *Extent* by the former we are directed to the point where anything ends, by the later we are led to no particular point, but to the whole space included limits are in their nature something finite, extent is either finite or infinite we therefore speak of that which exceeds the limits, or comes within the limits and of that which comprehends the extent, or is according to the extent a plenipotentiary or minister must not exceed the limits of his instructions, when we think of the immense extent of this globe and that it is among the smallest of an infinite number of words, the mind is lost in admiration and amazement.

"CHANGE OR LIMIT" as used in Laws providing that a railroad company shall not "change or limit" its common-law liability as a common carrier except by written contract, etc., is used as synonymous with "lessen" or "abridge"

"LIMITS AFORESAID" 9 I.C 630 (631)

'LIMITS OF THE ORDINARY ORIGINAL CIVIL JURISDICTION' means, in respect of the Court of the Judicial Commissioner of Sind, the limits of the Municipal district of Karachi as from time to time constituted under the Bombay District Municipal Act, 1901, the Port of Karachi, the Cantonments of Karachi and Manora, and any area within the original civil jurisdiction of the said Court notified in this behalf by the Local Government" [Act III of 1909(Presidency Town Insolvency), S 2 (bbb) *See also* Letters Patent]

Limitation. In its ordinary sense, restriction or circumspection, in its ordinary legal and popular sense, the word refers to the time within which an action may be brought, or some act done, to preserve a right

The term "Limitation" has been defined to mean the time which is prescribed by the authority of the law, during which a title may be acquired to property by virtue of a simple adverse possession and enjoyment, or the time at the end of which no action or suit can be maintained.

AS APPLIED TO ESTATES, a word has two well-known and distinct meanings; in the one, its primary sense, it signifies the marking out the bounds or limits of the estate, in the other it signifies simply the creating of an estate.

Limitation and Condition. The principal difference between a condition and a limitation is

Limitation over.

that a condition does not defeat the estate, when broken, until it is avoided by the act of the grantor, but a limitation marks the period which is to determine the estate, without entry or claim.

Limitation of Actions. The statute of limitation alters the common law by introducing limitations to the right of actions in mentioned cases. The object of the act is to secure and quiet men in their estates and possessions, and one means of doing so is by obliging creditors to demand their debts within a reasonable time, under the penalty of losing the right of action in case of their neglect to sue within a prescribed time The debt is not abolished—it is the remedy in the judicial form that is denied by reason of the creditors default

The reasons upon which these statutes are founded, Sir William Blackstone tells us are First, because the law will not disturb an actual possession in favour of a claim which has been suffered to lie dormant for a long and unreasonable time, secondly, because it presumes that he who has for a long time had the undisturbed possession of either goods or lands, however wrongfully obtained at first, has either procured a lawful title or made satisfaction to the injured, otherwise he would have been sooner sued, and, thirdly because it judges that such limitations tend to the prevention of innumerable perjuries, the preservation of the public tranquillity, and, what it values perhaps more than all, the suppression of contention and strife among men Taking these principles as the basis of their conduct, the Courts of Justice built up upon them a system extending beyond the letter of the statutes themselves And the Judges extended the principle of the presumption of payment to cases which, though not within the letter, were yet within the reason and spirit of the law

Statutes of limitations are statutes of repose, intended to put at rest controverted facts, to insure to a degree certainty in testimony by compelling its production.

Limitation of Estates A modification or settlement of an Estate, determining how long it shall continue, or is rather a qualification of a precedent Estate (*Tomlin's Law Dic*)

Limitation of Suits "The limitation of suits is founded in public convenience; and attended with so much utility, that Courts of Equity adopt this Statute as a positive rule, and apply it, by parity of reason, to cases not within it" [Lord Mansfield, *Johnsan* v *Smith*, (1759) 2 Burr. Part IV, p. 961.]

Limitation over. A limitation over includes any estate in the same property, created or contemplated by the conveyance, to be enjoyed after the first estate granted expires or is exhausted. Thus, in a gift to *A*, for life, remainder to the heirs of his body, the remainder is a limitation over to the heirs of the body

STATUTES OF LIMITATION, are acts limiting the time within which actions shall be brought

Apart from statute, lapse of time does not of itself extinguish any right of action. At law the doctrine of presumption of payment might afford an answer to an action brought to recover a debt after a considerable lapse of time, and in equity the fact of allowing a long interval to lapse before seeking an equita-

Limitation over.

ble remedy might be a reason for refusing relief Various statutes have from time to time been passed which bar nearly all actions after the lapse of a prescribed period, but which have other remedies such as liens, etc., untouched, while other statutes not only bar rights of action after the lapse of the prescribed period, but extinguish rights and titles altogether The statutes which fix a certain period within which a right of action must be enforced are generally known as the Statutes of Limitations, (*See* Darby and Bosanquet's Statutes of Limitations, Hewitt on the Statutes of Limitations, Banning on the Limitation of Actions, *Ency of the Laws of England.*)

WORDS OF LIMITATION Words of limitation are the words which limit or mark out the quantum of estate under a deed, instrument or will

Limited Narrow, restricted, circumscribed, construed, controlled and governed, not absolute

Restricted in extent, duration, scope or character, confined

The word "limited" is synonymous with the word "circumscribe," and that a word means to inclose within a certain limit, to hem in, to confine, to bound, to limit, to restrict, etc

Property is limited or qualified when the control which one has over external objects or things falls short of the absolute property

LIMITED ADMINISTRATIONS An administration of a temporary character, granted for a particular period, or for a special purpose

Limited by Law The term "limited by law" when used in a statute, is to be construed as meaning limited by the statute law, and not to mean limited by the general common law

Limited Company A joint-stock company the liability of the members of which for the debts of the company is limited by statute

Limited Divorce A divorce for a limited time, a separation from bed and board.

Limited fee "A limited or qualified fee simple is such as has some collateral matter annexed to it whereby it is made by some means determinable, *viz*, by limitation or condition"

Limited Interest. A "limited interest" is a duration or extent of property less than that of absolute property.

Limited Jurisdiction Limited Jurisdiction, as applied to Courts, has been often used instead of the term "special", to distinguish such Courts from Courts which have general jurisdiction. A Court of limited or special jurisdiction is one which has jurisdiction only for a particular purpose, or is clothed with special powers for the performance of specific duties, beyond which they have no manner of authority

Such tribunals with special powers for adjudicating particular cases are very numerous, such as commissioners, surveyors, appraisers, committees, overseers, and the like, but they relate only in a small degree to the general administration of justice

Line

The jurisdiction of a Court of limited jurisdiction must be proved when the acts and judgment of such Court are relied upon as giving a right or furnishing a defence

Limited liability In regard to companies, means that the liability of shareholders does not extend beyond the paying in of the amount represented by their respective shareholding

Limited liability and limited liability companies Every person is by the law of England *prima facie*, liable on his contracts to the full extent of his assets, and a corporation is no exception But the application of this principle to a company carrying on trade in its own name, yet composed of a number of individuals, is attended with considerable difficulty It is the company as an independent entity which contracts in such a case and which should strictly therefore be alone liable, and this theory was logically carried out in the case of the early chartered companies The company only was liable for its debts, the members enjoyed entire immunity But in later times, the law altered its attitude It treated the company as what in fact it was, a large partnership trading under a "nomen collectivum" and every member of such partnership as a principal was held liable on the company's contracts to the full extent of his fortune This unlimited liability and the alarm which it engendered was highly detrimental to enterprise, because no shareholder could tell whether he might not, by the fraud or folly of the directors, be committed to ruinous liabilities Why should not a shareholder in a company be entitled to say to persons dealing with the company—it was thus the late Robet Lowe and Lord Bramwell argued—"I am prepared to risk so much in this company's enterprise, and I am not to be held liable for more"? The argument was reasonable, the problem was, how was the proposal to be carried out? Lord Bramwell solved the difficulty by suggesting that every company permitted to trade on these terms should, as a condition of the privilege and in justice to those dealing with it, add to its name the word "Limited", and keep that word conspicuously exhibited on all occasions So no wrong could be done Lord Bramwell was proud of this plan This simple expedient embodied in legislative provisions, has answered its purpose admirably and has given an enormous impulse to joint stock enterprise (*Ency of the Laws of England*)

Limited partnership A partnership in which there are special partners who contribute special sums as capital, and who are not liable for the debts of the partnership beyond the fund so contributed.

Limits, bounds, confines, boundary, frontier, precinct purlieu The limits are those which part off, so that you may not pass them without transaction or transgression as the limits of a territory *Bounds, confines*, and *limits* are words which lend themselves readily to moral or rhetorical uses, while *boundary, frontier, precinct*, and *purlieu* are purely territorial *Limits* mark but do not in themselves enforce enclosure or restriction. A conventional line as a parallel of longitude may be a limit A *boundary* expresses a line, a bound an obstacle (*Smith. Syn Dis*)

Line. A term, the signification of which depends upon the subject to which it is applied and the

Line

connection in which it is used As used in connection with other words the following phrases among others have received judicial interpretation, "Line of buildings," "line of the canal," "line of credit," "line of descent," "line of duty," in the discharge of duty, "line of fence, a road, or a farm," "line of highway," "line of navigation," "line of railroad" or "railway", "line of the road," "line of a state, a country, a county, a coast, or a sea-shore," "line of steamers," "line of the street," telegraphic line" and "telephone line". (24 *Ame Cyc* 1441)

IN PRINTING, the term means a row of words, letters or figures printed across a page or column, without regard to the size of the type *As a term of surveying*, it means something which has length, without breadth

Lineage Heirs, race, progeny, descendants in a common line from a common progenitor (*Webster Dict*)

The word "Lineage", as used in a will giving certain property to testator's daughter and her "lineage", should be construed to mean heirs, and as simply a word of limitation "Lineage" is not a legal term, but means, according to Webster's Dictionary, race, progeny, descendants in a line from a common progenitor

Lineal That which comes in a direct line

"Lineal consanguinity" defined Act 10,1865, S. 21. Act 29, 1925, S 25

LINEAL CONSANGUINITY is that which subsists between persons of whom one is descended in a direct line from the other (*Tomlin's Law Dic*)

Lineal consanguinity is the relation which exists among persons where one is descended from the other, as between the son and the father or the grandfather, and so upward in a direct ascending line, and between the father and son or the grandson, and so downward in a direct or descending line

Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, great-grandson and so downwards in the direct descending line Every generation constitutes a decree, either ascending or descending A person's father is related to him in the first degree, and so likewise is his son, his grandfather and grandson in the second degree, his great-grandfather and great-grandson in the third degree, and so on. [Act XXXIX of 1925 (Succession), S. 25]

Lineal descendants. Direct descendants but not brothers and sisters, a term which is said to be synonymous with issue

The term "*lineal descendants*", as used in a statute which imposes a tax upon all property which passes by will or by the intestate laws of the state to any person other than to the lineal descendants born in lawful wedlock, and certain others specified in the statute, includes only the direct descendants of the testator or intestate, and does not include children of brothers and sisters of the deceased

The term "lineal descendants" includes all the descendants and is not restricted to male descendants.

Lion.

[116 I C 608=49 C L J 594=33 C W N 837=30 M L W 75=1929 M W N 639=A.I.R 1929 P.C 162=57 M L J 580 (P C)]

"LINEAL DESCENDANT", as used in an Act providing that lineal descendants shall take from their ancestor, etc, includes a legally adopted child

Lineal descent A term used to designate a descent from father to son, or grandfather to grandson, the descent of estates, from ancestor to heir, *i e*, from one to another, in a right line (*Tomlin's Law Dic*)

Lineal heirs Legal representatives

Lineal male descendants Means sons, grandsons and great grandsons alive at the time (1936 R D 575)

Lineal warranty A term applied where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor, who made the warranty (25 *Ame Cyc* 1443)

Linea recta est index sui et obliqui lex est linea recti A maxim meaning "A right line is a test of itself, and of an oblique" (*Black L Dict*)

Linea recta semper praefertur transversali A maxim meaning "The right line is always preferred to the collateral"

Linen A thread or cloth made of flax or hemp "Under this term, without any qualification, table and bed linen, and every article to which that general word can be applied, will pass But where there is a bequest of 'all linen and clothes of all kinds, it has been held that only body linen will pass" (Wms. Exs 1066, citing *Hunt* v *Hort*, 3 Bro C C 311, *Stroud*)

Line of duty "Line of duty", as used in a statement that an act of a workman was in the line of duty, is synonymous with the words "in the discharge of duty"

"Line of navigation" defined Ben Act 5,1864, S 1, Mad. Act 2,1890, S 3

The words "line of navigation" shall mean any navigable channel subject to the provisions of the Canals Act [Ben Act V of 1864 (Canals), S 1]

Line trees By "line trees" is to be understood not trees marked and set apart by the parties as evidence or monuments of the division line, but trees deriving their nourishment from roots extending on both sides of the line, and with bodies so directly over the line, and necessary on both sides of that line, that it could not be determined upon which side of the line the tree was planted.

Lingee means a perpetual student, a hermit and the like and includes a Buddhist or Jaina mendicant, a sanyasi and the like. A lingee is not entitled to a share of the heritage. (*Smrtii Chandrika.*)

Lingua (*Lat.*) A tongue; speech.

Link A unit in a connected series; anything which serves to connect or bind together the things which precede and follow it. As a verb, to couple, or join together.

Lion. 'The British Lion", Great Briton.

Liqueur.

Liqueur A cordial, a liquor composed of alcohol, water, sugar, and different aromatic substances (*Ame. Cyc*)

Liquid assets Readily realisable property, such as coins, notes, and other high class securities

Liquidate. To adjust, to settle; to ascertain or reduce to precision in amount, to ascertain the balance due, to whom due and to whom payable, to cle r away, to lessen a debt, to clear up, to clear from obscurity, to pay, to satisfy (*Webster Dict*)

'LIQUIDATE' is said to be a term of jurisprudence, finance, and of commerce, the action by which one determines or fixes that which has been indeterminate in certain accounts, liquidation of expenses, of interest, of accounts, liquidation of profits, liquidation in partnership

Liquidated. Adjusted, certain, settled in respect to amount, that which is made certain and manifest

A claim is "liquidated" when the amount due is fixed by law, or has been ascertained and agreed upon by the parties

"Bouvier says 'liquidated' is that which is made clear, manifest, as 'liquidated damages' ascertained damages, 'liquidated debts' ascertained debts, as to amount"

LIQUIDATED **Account** an account the amount of which is made certain by act of the parties, or by operation of law

Liquidated damages A sum stated and agreed to be paid as damages between the parties to a contract, in the event of default by either, the primary meaning of that phrase is, that the sum has been "assessed between the parties" (*per* Cotton, L J, *Wallis* v. *Smith*, 52 L J Ch 154

LIQUIDATED DAMAGES in a contract mean the payment of a certain and reasonable sum of money which should operate to extinguish any claim of plaintiff's for damages by reason of the breach of the contract by defendants

Liquidated damages and penalty Where a contract provides a forfeiture for the purpose of securing the payment of a sum of money or the performance of an act which may be compensated in damages, the sum forfeited may be deemed a penalty and not liquidated damages

It matters not what particular terms are used in contract. Even if the thing to be done be called a 'penalty" or "liquidated damages" or given no name at all, it will be treated according to the evident intent of the parties, and the subject-matter of the contract

Where, from the nature of the transaction, the actual damages consequent on a breach of the contract are incapable of accurate measurement, or where the sum specified is not out of all proportion to any damages which could arise, the provision will be treated as *liquidated damages*. But where these facts do not exist the tendency of the Court is to treat the stipulation in the nature of a penalty.

Liquidated Demand A liquidated demand is a claim for a specific sum of money payable under a contract expressed or implied not being in the nature of a penalty, or of unliquidated damages; or a claim

Liquor

for a specific sum recoverable by action for an amount due under a judgment or order of the Court, brought by the person entitled against the person liable to pay, or a claim for a sum of money whether or not in the nature of damages or penalty, recoverable under a statute which contains an express provision that the sum sued for may be recovered as a liquidated demand, or as liquidated damages (*Ency. of the Laws of England.*)

Liquidation. The act of settling, adjusting debts, or ascertaining their amounts or balance due, settlement or adjustment of an unsettled account, the act of admitting claims of indebtedness, the winding up of an insolvent firm or company 'In its general sense, liquidation means the act or operation of winding up the affairs of a firm or company by getting in the assets, settling with its debtors and creditors, and appropriating the amount of profit or loss". A voluntary liquidation is equivalent to "Bankruptcy," [*Horsey* v *Stegar* (1898) 2 Q B 79] Forfeiture on "*Liquidation*" is incurred on the making of a winding-up Order (*General Share Co* v *Wetley Co* 20 Ch D 260, 51 L J Ch 464)

AS APPLIED TO A BILL, BOND, OR NOTE, OR BILL OF EXCHANGE, liquidation is payment and satisfaction thereof

AS APPLIED TO A PARTNERSHIP OR COMPANY Liquidation is the act or operation of winding up the affairs of a firm or company by getting in the assets, settling with its debtors and creditors and appropriating the amount of profit or loss (*Century Dict*)

"**Liquidator**" defined (*See* Office liquidator) Official appointed to liquidate a company or firm

LIQUIDATOR Where a partnership is mutually dissolved, and one of the members of the firm is made the liquidator the position which he occupies is one of agency He becomes the sole authorizing agent of the partnership for the single purpose of winding up and settling its affairs He represents creditors on the one hand, and all of the partners on the other, and for this reason he is sometimes spoken of as a trustee, but he is not accurately so described, inasmuch as he has in his possession no more property or power after being appointed liquidator than he had theretofore

"**Liquor**" defined *See also* Fermented liquor, Spirit, Spirituous liquor, Tari, Bom Act 5, 1878, S 3 (7), Mad Act 3, 1864, S 2, Mad Act, I, 1886 S. 3 (9)

LIQUOR A liquid or fluid substance In a more limited sense, and in its more common application, spirituous fluids, whether fermented or distilled, such as brandy, whisky, rum, gin, beer and wine, and also decoctions solutions, tinctures, and the like fluids in great variety

"The word 'liquors', as commonly used, includes all that are spirituous, vinous, or inferior fermented, including malt"

DEALING IN LIQUORS. One who engaged in the business of procuring from the manufacturers beer by the case and disposing of it by the bottle is dealing in liquors, and it can make no difference if it is true that the customers left their orders for specific quantities before the defendant undertook the procurement thereof The word "dealer" is not confined to one who sells his own property only.

Liquor shop.

A benevolent association, which sells as such to its members tickets entitling them at a picnic to a glass of beer, is a "dealer in malt liquors" within the statute requiring a licence for that purpose

Liquor Shop A house where spirituous liquors are kept and sold

'COUNTRY LIQUOR' 7 R 316=119 I.C 223 (1)= 1929 R 256

LIQUOR, LIQUID, JUICE Water is the simplest of all *liquids*, wine is the most inviting of all liquors, the orange produces the most agreeable *juice*.

Lis A suit, action, controversy, or dispute

Lis mota This phrase is used to denote the date at which the controversy began which subsequently culminates in a law suit The corresponding phrase *lis pendens* denotes that litigation has actually commenced But a contention may be raised and a claim definitely formulated for years or even for generations before any legal proceeding is begun, and evidence which comes into existence during this interval is naturally viewed with some suspicion Thus no entry or declaration made by a deceased person will be admissible as evidence of reputation, unless it was made *ante litem motam* [*Monkton* v *A G*, (1831) 2 Russ and M, at p 161, 34 R.R 38]

"In our law the term "lis mota" is taken in the classical and larger sense of controversy, and is understood to mean the commencement of the controversy, and not the commencement of a suit '

Lis pendens. Lis means a suit, action controversy, or dispute, and *lis pendens* means a pending suit The doctrine denotes those principles and rules of law which define and limit the operation of the common-law maxim *pendente lite nihil innovetur*, that is, pending the suit nothing should be changed

As soon as proceedings are commenced to recover or charge some specific property [*Ex parte Thornton* (1867) 2 Ch p 178] there is *"lis pendens"*—a pending suit, the consequence of which is that until the litigation is at an end neither litigant can deal with the property to the prejudice of the other.

A *lis pendens* is defined in Wharton's Law Dictionary as a pending suit "Lis" means a suit, action, controversy, or dispute, and dispute is a conflict or contest, while controversy is a disputed question, a suit at law, and the pendens of the lis is not disturbed or in any manner affected by the fact of an appeal taken from one Court to another The litigation or contest still goes on

The rule of *"lis pendens"* is statutory and imposes two conditions (i) the existence of a contentious suit, and (ii) that the transfer should be during its active prosecution in a Court of the kind described in S 52, Transfer of Property Act (31 B 393=9 Bom L R 530)

Lis pendens and notice "It is scarcely correct," says Lord Cranworth, L C, in *Bellamy* v *Sabine*, (1857) 1 De G and J 578, 44 E R. 847, "to speak of *lis pendens* as affecting a purchaser through the doctrine of notice, though undoubtedly the language of the Courts often so describes its operation It affects him not because it amounts to notice, but because the law does not allow litigant parties to give to others, pending the litigation, rights to the property in dispute, so as to prejudice the opposite party Where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only on the litigant parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings If this were not so, there could be no certainty that the litigation would ever come to an end A mortgage sale made before final decree to a person who had no notice of the pending proceedings would always render a new suit necessary, and so interminable litigation might be the consequence" As to *lis pendens*, *see* Daniell's Chancery Practice, Daniell's Chancery Forms, Carson's Real Property Statutes.

A *lis pendens* is constructive notice to a purchaser that he will be bound by a decree to be entered in a pending suit

Lis pendens is only a constructive notice of that which is involved in the litigation

Lis pendens and res judicata *See* 61 Cal 494= 150 I C 321=38 C.W N. 492=1934 Cal 552.

List As a noun, a roll or catalogue As a verb, applied to taxation, to make a list of the property assessed, with the description and valuation of the same.

LIST, ROLL, CATALOGUE, REGISTER A collection of objects brought into some kind of order is the common idea included in the signification of these terms The contents and disposition of a *list* is the most simple, it consists of little more than names arranged under one another in a long narrow line, as a list of words, a *list* of plants and flowers, a *list* of voters, a *list* of visits, a *list* of deaths or births, of marriage a *roll*, which is figuratively put for the contents of a roll, is a list rolled up for the conveniences, as a long roll of saints, *catalogue* involves more details than a simple list, it specifies not only names, but dates, qualities, and circumstances A *list* of books contains their titles, a *catalogue* of saints enters into particulars of their ages, deaths, etc, a *register* contains more than either, for it contains events, with dates, actors, etc, in all matters of public interest.

List Civil At the beginning of each reign of the English Kings a certain annual sum, payable out of the Consolidated Fund is settled by Parliament on the Sovereign for the support of his household, and the honour and dignity of the Crown At one time the amount appropriated to the Sovereign was paid not only for his personal use, but also to defray the expense of the civil service,—the whole of those charges being included in a list called the civil list,to distinguish it from the statement of the military and naval charges, and although those civil service expenses have long ceased to be paid out of the amount settled on the Sovereign, the term Civil list is still employed to denote the sum thus settled. (*Ency. of the Laws of England*)

Listers. Persons whose duty it is to arrange a list of taxpayers in a given district.

Listing.

Listing While the words "listing" and "assessing" are used, in relation to taxation, in a somewhat different sense, but always as a part of the same process of getting the property upon the tax roll, the use of the word "listing" in the title of an act to authorize boards of supervisors to provide for discovery of property withheld from taxation, and to list the same and collect taxes thereon, includes an assessment

Lite pendente See *Pendente lite.*

Litera pl literae (*Lat*). (*In old English law*) A letter, the letter, as distinguished from the meaning of a writing, a term applied in the plural to various instruments in writing, public and private.

Litera acquietantiae (*Lat*) A letter of acquittance.

Litera cambil. (*Lat*) A letter of exchange.

Lietrae mortuae (*Lat*) Dead letters, fulfilling words of a statute

Literae patentes (*Lat*) Letters patent, literally, open letters

Literae patentes regis non erunt vacuae A maxim meaning "Letters patent of the king shall not be void"

Literae pisanna (*Lat*) The Pisan letter,—a term applied to the old character in which the copy of the Pandects formerly kept at Pisa was written

Literae procuratoriae Letters procuratory, letters of procuration, letters of attorney

Literae recognitionis (*Lat*) A bill of lading.

Literae regis non erunt vacuae A maxim meaning, the king's letters patent shall not be void.

Literae sigillatae. (*Lat*) Sealed letters, applied to the return of a sheriff

Literal Interpretation (*See* Construction) A term applied where we collect the intention of a deed, will, or statute from the words used only.

The "literal interpretation" of a statute, is finding out the true sense by making the statute its own expositor If the true sense can thus be discovered there is no resort to construction It is, beyond question, the duty of Courts, in construing statutes, to give effect to the intent of the law-making power, and seek for that intent in every legitimate way, but first of all in the words and language employed.

Literary Pertaining to polite learning, connected with the study or use of books and writings "We speak of *literary persons* as learned, erudite, of *literary property*, as the productions of ripe scholars, or, at least, of professional writers, of *literary institutions*, as those where the positive sciences are taught, or persons eminent for learning associate, for purposes connected with their professions This we think is the popular meaning of the word; and that it would not be properly used as descriptive of a school for the instruction of youth." (*Indianapolis* v. *McLean*, 8 Indi 328, 332)

A historical society, the object of which is the gathering up of facts, the writing out of them, and reading the same at meetings, whereupon discussions

Literary proprietor.

arise, etc, is properly incorporated under the statute for the incorporation of literary societies.

Literary and artistic work, in the International Copyrights Act, 1886, "unless the context otherwise requires, means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend" [49 & 50 Vict c 33, s 11 As to what is literary composition, see *Chilton* v *Progress Publishing Co*, (1895) 2 Ch 29, *Walter* v. *Lane*, (1900) App Cas 539]

Literary or scientific institution, in the Income-Tax Act, 1842 (5 & 6 Vict c 35), s 61 See *Mayor, &c of Manchester* v *Macadam*, (1896) App. Cas. 50.

Literary property or common law copyright is the exclusive right of the owner to possess, use, and dispose of intellectual productions, is the property that the Author, or his assignee, hath in the copy of any literary work The right which an Author may be supposed to have in his own original literary compositions, so that no other person without his leave may publish or make profit by the copies, is classed by Blackstone among the species of property acquired by occupancy, being grounded on labour and invention (*Tomlin's Law Dic*)

"Literary property may be described as the right which entitles an author and his assigns to all the use and profit of his composition to which no independent right is, through any act or omission on his or their part, vested in another person" (*Keene* v *Wheatley*, 14 Fed Cas. No. 7, 644)

"In order to decide what is an infringement of an author's rights, we must inquire what constitutes literary property, and what is recognized as such by and secured and protected thereby An author may be said to be the creator or inventor both of the ideas contained in his book and the combination of words to represent them Before publication, he has the exclusive possession of his invention His dominion is perfect, but when he has published his book, and given his thoughts, sentiments, knowledge, or discoveries to the world, he can no longer have an exclusive possession of them. Such an appropriation becomes impossible, and is inconsistent with the object of publication The author's conceptions have become the common property of his readers, who cannot be deprived of the use of them or their right to communicate them to others clothed in their own language, by lecture or by treatise His exclusive property in the creation of his mind cannot be vested in the author as an abstraction but only in the concrete form which he has given them, and the language in which he has clothed them When he has sold his book, the only property which he reserved to himself, or which the law gives to him, is the exclusive right to multiply the copies of that particular combination of characters which exhibits to the eyes of another the ideas intended to be conveyed This is what the law terms "copy" or "copyright"

Literary proprietor The term "literary proprietor," within the meaning of the copyright laws, includes an author and his assigns.

Literary work.

Literary work. Something intended to afford either information and instruction, or pleasure, in the form of literary enjoyment

In the Copyright Act, unless the context otherwise requires, "Literary work" includes maps, charts, plans tables, and compilations (Copyright Act 1 & 2 Geo Ch. 46, S 35)

Litera scripta manet, vox emissa volat A maxim meaning 'Lasting is the written thing, spoken things speed away'

Litharge An oxide of lead (*Ame. Cyc*)

Lithograph A print from a drawing on stone or other substance

A lithograph is a print from a drawing on stone, as a lithographic picture, Worcester says "A mark, form, character, a figure made by impression"

Litigate To dispute or contend in form of law, to carry on a suit (*Burrill*)

Litigated. Facts in controversy bearing such relation to a judgment rendered as to be necessarily within the issue presented, and without proof of which the judgment could not have been rendered, are the only once which can in any legal sense be said to have been litigated in any judicial proceeding so as to come within the rule of *res judicata*

Litigating under the same title *See* Civil Pro Code, S 11, 10 O W N 1166=147 I C 540=1933 Oudh 535, 1933 Lah 66

Litigation. A judicial controversy, a contest in a Court of law, a judicial proceeding for the purpose of enforcing a right.

"The law is too tenacious of private peace, to suffer litigations to be negotiable" (Yates, J, *Miller* v *Taylor*, (1769) 4 Burr Part IV, p 2385)

Litigious That which is the subject of a suit or action pertaining or addicted to litigation.

Litigious right A right is to be litigious whenever there exists a suit and contestation on the same

LITIGIOUS RIGHTS are those which cannot be exercised without undergoing a law suit

Litigium (*In the civil and old English law*) Litigation the contest between the parties to a suit

Litigosa ignorantia juris est potius quam scientia A maxim meaning "Ignorance of the law, rather than familiarity with it, is the most frequent cause of law suits"

Litis (*Lat*) (*In the civil law*) Of a suit.

Litis contestation (*Lat*) Contestation of suit.

Litis nomen omnem actionem significat, sive in rem, sive in personam sit A maxim meaning "A law suit signifies every action, whether it be *in rem* or *in personam*."

Litter Carrying coach formerly used as carriage, especially by women, invalids, priests, etc, and carried by men or beasts, bedding for beasts, straw, or other substance commonly used for bedding or otherwise for or about animals.

Live-stock insurance

'Little more or less" "A little more or less," as used in a grant of public land describing premises as containing three fourths of a squire league of land, a little more or less, should be disregarded as immaterial We reject the words "a little more or less," as having no meaning in a system of location and Government survey and the claim of the grantee is valid for the quantity clearly expressed

Where in a conveyance of land, incapable of determination by metes and bounds, it was stated to consist of little more than three leagues, it was held that the words "a little more than" were not susceptible of any definite construction, but were probably inserted as an authority to slightly increase the quantity for convenience of boundary or similar reasons

Littleton An English Judge of the reign of Edward IV, who wrote a treatise on tenures, on which Coke wrote a commentary

Littoral A word used in describing the rights of the upland owners along the seashore and tide lands

Litus est quousque maximus fluctus a mari pervenit A maxim meaning 'The shore is where the highest wave from the sea has reached" (*Black L Dict*)

Live As an adjective, being in life, continue alive, living, animate, not dead As a verb, to continue in being, to remain or be kept alive, to abide to have a settled residence in any place, to dwell, to reside, to have one's home or domicile

LIVE The words "to live," "to reside," "to dwell," "to have one's home or domicile," are equivalent and convertible terms Relating to questions of residence, they refer to the domicile of the party, or the place where he is deemed, in law, to reside, which is not always the place of one's present actual abode.

An averment that the complainant lives in the state is not a sufficient allegation of citizenship. One may live even for many years in one state, and at the same time retain his citizenship in another.

"Live and dead stock" In *Porter* v *Pournay* (1797) 3 Ves 311, 30 E R 1027, Sir R Arden, M R, said that the words "live and dead stock" standing alone meant "out of door stock," such as corn, hay, straw, carts, etc There it was held that under a bequest of "all the furniture and stock of carriages and horses and other live and dead stock," wine and books did not pass

Live animals "Live animals," as used in the Tariff Act imposing a duty on all live animals imported from foreign counties, includes singing birds

Live apart. A statute dispensing with the concurrence of a husband in a conveyance of property by a wife, when living apart from his wife, construed not to include a temporary absence of the husband for business purposes in the pursuit of his ordinary calling.

Live Stock All cattle, horses, mules, sheep, asses and hogs are deemed live stock, domestic animals kept for farm purposes especially marketable animals, as cattle, horses and sheep.

Live-stock insurance is a contract by which the insurer agrees to indemnify the insured against such

Live in

loss or damage as he may sustain by reason of injury to or the death of live stock by the happening of the perils specified, as fire and lightning, or a contract to pay a certain sum of money on the death of an animal from disease or accident (*Ame Cyc.*)

"Live in" "The House I live in," will include stables and coalpen occupied by the testator with his dwelling-house, though for the purposes of trade as well as for the convenience of the house (*Doe d Clements* v *Collins*, 2 T R 498 *Ency of the Laws of England*)

Live in my family The phrase "to live in my family", in a contract with a mother-in law "to live in my family", "involves, to some extent, services or attention toward the mother-in law She is not to be fed as a brute, nor to be sheltered as a horse, simply She is entitled to decent physical comforts, and these, it will be admitted, are implied in every such contract"

Livelihood Means of living subsistence

LIVELIHOOD, LIVING SUBSISTENCY, MAINTENANCE, SUPPORT, SUSTENANCE The means of living or supporting life is the idea common to all these terms, which vary according to the circumstances of the individual and the nature of the object which constitutes the means, a Livelihood in that which is sought after by the day, a labourer earns a livelihood by the sweat of his brow a subsistence is obtained by irregular efforts or various descriptions Living is obtained by more respectable and less severe efforts than the two former, tradesman obtain a good living by keeping shop, artists procure a living by the exercise of their talents maintenance, support, and sustenance differ from the other three inasmuch as they do not comprehend what one gains by one's own efforts, but by the efforts of others, maintenance is that which is permanent, it supplies the place of living support may be casual, and vary in degree the object of most public charities is to afford a maintenance to such as cannot obtain a livelihood or living for themselves, it is the business of the parish to give support, in time of sickness and distress, to all who are legal parishioners Maintenance and support are always granted, but sustenance is that which is taken or received the former comprehends the means of obtaining food, sustenance comprehends that which sustains the body which supplies the place of food

Livery A delivery of possession of lands, tenements, and hereditaments, unto one that hath a right to the same, being a ceremony in the Common Law used in the conveyance of lands, &c where an estate of fee-simple, fee tail or other freehold passeth. (*Bract* lib 2 c 18) And it is a testimonial of the willing departing of him who makes the livery, from the thing whereof the livery is made, and of willing acceptance of the other party receiving the livery, first invested, that the common people might have knowledge of the passing or alteration of estates from man to man, and thereby be better able to understand in whom the right of possession of lands and tenements were, if the same should be contented, or otherwise have to do concerning the same (*West Symb.* par. 1 lib 2. *Tomlin's Law Dic*)

Living in adultery

LIVERY (*Domestic*) The cloths supplied by a master for his servant's use belong to the master, and must be returned to him upon his request or upon the conclusion of the service, unless some agreement to the contrary is made as a term of the hiring or otherwise. Frequently, of course, a supply of clothing, which he is to keep is part of the servant's wages

Livery of seisin Livery of seisin is investiture or delivery of corporeal possession of the land or tenement

Livery stable "A stable where horses are kept for hire, and where a stabling is provided" A livery stable is "a place where horses are groomed, fed and hired, where vehicles are let"

Livery stable keeper One who keeps a livery stable as a business is a livery-stable keeper (*English L Dict*)

OTHER DEFINITIONS ARE "One whose business it is to keep horses for hire, or to let, or to keep, feed, or board, horses for others" (*Abbott L Dict*, *Anderson L Dict*, *Black L Dict*) "One who takes horses to bait and board, and he usually keeps horses to let"

Livery stock, a term sufficiently expressive to include all the property used in a livery business

Living Abiding, having a domicile, having one's home, residing, sojourning, being, subsisting, subsistence

"The word 'Living' is ambiguous It is sufficient to pass the advowson On the other hand it may be restricted to a single Presentation the law does not determine which is its meaning and the point must be ascertained from the context" (*Per* Wood, V C, *Webb* v *Byng* 2 K and J 674, affd 10 H L 171, 2 Jarm 286, n)

"A power to appoint to children living at the parent's decease includes a child *in ventre sa mere* at that time (*Beale* v. *Beale* 1 P Wms 244)

LIVING Livelihood

LIVING BENEFICE *Living* signifies literally the pecuniary resources by which one lives. *Benefice*, from beneficio, signifies whatever one obtains as a benefit, the former is applicable to any situation of life, but particularly to that resource which a parish affords to the clergyman, the latter is applicable to no other object we speak of a *living* as a resource immediately derived from the parish in distinction from a *curacy*, which is derived from an individual; we speak of a *benefice* in respect to the terms by which it is held, according to the ecclesiastical law: there are many livings which are not benefices, although not *vice versa*

Living child A child *en ventre sa mere* at its father's death is deemed living, and entitled to participate in a devise to children living at their father's death.

"Living in adultery"—*See* 26 A. 326=1 A L J 18 =1904 A W N 23, 5 N L R. 19=9 Cr L J. 390=11. C. 801.

A single or occasional act of criminal intercourse, without having co-habited, is not a "living together in adultery".

Living in adultery

"LIVING IN ADULTERY", as used in the statute providing that persons who shall live together in adultery or fornication shall be liable to fine and imprisonment, is a state or condition of co-habitation, as distinguished from a single or occasional criminal act

It may be true, and doubtless is the law that occasional acts of illicit intercourse, each had by a previous understanding or agreement for the particular act, not contemplating a continuance of the unlawful co-habitation or connection, but made in each instance for the single occasion, would not be a violation of the statute against living in a state of adultery or fornication, but there may be a state or condition of co-habitation which is unlawful and prohibited by the statute, although the proof may not show more than occasional acts of illicit intercourse

A single act of adultery does not necessarily amount to "living in adultery within the meaning of cl (4)," S 488 of the Criminal Procedure Code and will not justify a magistrate in refusing maintenance The words 'living in adultery' refer to a course of conduct and mean something more than a single lapse from virtue 52 Bom 160=30 Bom L R 79= 108 I C 24=29 Cr L J 314=A I R 1928 Bom 59

The phrase living in adultery in S 488 of the Criminal Pro Code, means something quite different from living an unchaste life The principle seems to be, that a husband is absolved from the obligation to maintain his wife when his wife has a *de facto* protector with whom she lives and by whom she is being maintained as if she were his wife 1937 M W N 1131=46 L W. 766=(1937) 2 M L J 885

Living in brothel Residence in a brothel for about four days before rescue, comes within the meaning of the words "lives in" 30 C W N 768= 97 I C 42=27 Cr L J 1066=A I R 1926 Cal 944

Living stream The word "living", as used in referring to a stream as a living stream, is employed in the sense of permanent or continuous

Living wage Wages sufficient for worker and his family to live on without privation

Living with me In a bequest to Servants means not "living in my house" but "living in my service" (per *Turner, V C Blackwell* v *Pennant*, 22 L.J Ch. 155, 9 Hare, 551)

Lloyd's. A very powerful association of merchants and ship owners in London for the transaction of marine insurance business The members of Lloyd's mostly engage in the business of insuring or "underwriting" ships

LLOYD'S is a society of underwriters, insurance brokers, merchants, bankers, shipowners, etc, formerly regulated by a deed of association, dated 1811, and now incorporated by special Act (1871) (34 Vict c xxi) The objects of the society are stated in the special Act to be the carrying on of the business of marine insurance by members of the society, the protection of the interests of members of the society in respect of shipping and cargoes and freight, the collection, publication, and diffusion of intelligence and information with respect to shipping." It derives its name from Lloyd's Coffee-house, which was at first in Lombard Street and then was

Lloyd's lists.

moved to the Royal Exchange, and from 1688 onwards was a regular resort for persons engaged in maritime commercial business, and its members now carrying on business in rooms over the Royal Exchange They are divided into underwriting, non-underwriting, and subscribing members

In *maritime insurance*, Lloyd's has given its name to the form of policy, which is the common one among private under-writers, which has been substantially adopted by insurance companies, and is now embodied in the Marine Insurance Act (*Universe I C of Milan* v. *Merchants*, M I.C (1897) 1 Q.B. 205, and (1897), 2 Q B (93)

Lloyd's Association is a combination of individuals acting concretely as insurers, binding themselves not jointly, but severally, until the entire amount of the insurance has been covered.

A LLOYD'S ASSOCIATION is neither a joint stock company nor a corporation, although it has been held that in respect to its carrying on the business of insurance with a limited personal liability, it resembles the former as well as the latter

Lloyd's Bonds Certain bonds used by corporations in place of debentures as security for loans

LLOYD'S BOND is an instrument under the seal of corporation admitting its indebtedness to a person named therein in a sum specified in the bond, and containing a promise by the corporation to that person to repay him that amount on a future day, and interest at a fixed rate It is so called after the name of the counsel (J H. Lloyd) who introduced it, and is a security devised for the pupose of enabling corporations like railway companies, whose powers of borrowing money are regulated and limited by statute, to incur greater money liabilities than the statute allows them by borrowing (*English Law Dict*, *Ency of the Laws of England*)

A Lloyd's Bond, is a Bond issued by a Ry. or other incorporated Co to secure a debt or other obligation it has already contracted in carrying out its undertaking as distinct from a security for a present advance, its issue not being dependent upon or limited by the borrowing powers of the Co (*White* v *Carmarthen Ry*, 33 I .J Ch. 93, I.H. & M. 787, *Cavanaga on Money Securities*, Ch. 28).

Lloyd's Contract or Policy In *Enterprise Lumber Co* v *Mundy*, 62 N J L 16, 21, 42 Atl 1063, 55 L R.A 193 it is said "What is familiarly known as a 'Lloyd's contract or policy of insurance, (is) where the insurers are such as individuals and not as a corporate insurance company, and where the liability for loss, under the contract, of the individual underwriters is several and not joint"). (*English Law Dict*)

Lloyd's Insurance —Lloyd's insurance is a contract by which the members of an association not incorporated agree to indemnify each other, or some third party, against loss, damage, or liability arising from an unknown or contingent event, each member agreeing to bear a given amount of such loss, damage, or liability.

Lloyd's lists. Accounts of the arrival and departure of vessels and of maritime losses and casualties.

Lloyd's Policy

Lloyd's Policy. A document signed by underwriters at Lloyd's setting forth the terms of the particular insurance effected by it

Lloyd's register is "a list of vessels of all nations classified according to their seaworthy condition, gotten up by an English association of shipowners, shippers and underwriters" (*English Law Dict*) A register book is printed annually by the society for the use of its members, containing the names of vessels alphabetically arranged and ranked in different classes (e g, A 1) according to their construction, nature of materials, state of repair, etc, as determined by surveys made by the society's surveyors Ships of all descriptions, including yachts, may be registered, and the society issues certificates of the character of the ships surveyed and registered Even though such survey be negligently made and the ship be wrongly classed by the society's surveyor, and a purchaser gives more money for her than he should have done, he has no right of action against the Committee of Lloyd's Register if he is not a member of the society. (*Thioden* v *Tindell*, 1891, 7 Asp 76, following *Bragington* v *Chapman*, 1878, *Ibid*, 77)

Load—As a noun, the carrying capacity of a conveyance, the material placed upon a conveyance for carriage As a verb, to lay a burden on, charge with a load, furnish with lading or cargo (*Century Dict*)

"Loaded" In a fire-arm to be loaded it must have been "so loaded as to be capable of doing mischief by having the trigger drawn" (*R* v *Carr*, *Russ & Ry* 377)

'Loaded gun" "Loaded arm" A pistol loaded with powder and balls, but its touch-hole so plugged up that it could not possibly be fired, is not a "loaded gun" or "loaded arm" (*R* v *Harris*, 5 C & P 159).

Loading Putting goods etc on ships, vehicles etc The work of loading does not begin until there is a contract and collaboration between the cargo owners, servants in charge of the cargo on shore and the ship's crew or stevedores employed in their place are ready on board the ship to receive the goods as they come over the ship's rail and stow them in the hold 118 I C 770=30 M L W, 121=52 Mad 747=A I R 1929 Mad 698=57 M L J 88 (F B)

Loading in life insurance. "Loading" is the sum added to the net premium for a life insurance policy, deemed sufficient to pay expenses and provide for contingencies

Loaf Sugar.—Sugar in loaves

'Loan" defined Act 9, 1872, S 241

'LOAN" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan Act X of 1918 (Usurious Loans) s. 2 (2).

LOAN As a noun, a lending, that which is lent, a permission to use, a bailment of an article for a certain time to be used by the borrower Loan may include the lending of anything a horse, a carriage, a book, or any kind of goods, as well as money. To loan is to lend a thing to another, either gratuitously or for reward. In order to constitute a loan, there must be a thing loaned, a lender, and a borrower, as well as a contract between the parties. Where the relation between a depositor in a bank and his banker is that of debtor and creditor, simply, the transaction cannot in any proper sense be regarded as a loan, unless the money is left, not for safe-keeping, but for a fixed period at interest, in which case the transaction assumes all the characteristics of a loan. "Except with respect to money, 'to loan' implies that a thing is delivered to another for use, without reward, and to be returned in specie." *See also* A I R 1937 Oudh 124.

Loan and debt A loan is something quite different from a debt A loan contracted creates a debt, but there may be a debt contracted without contracting a loan

Loan and deposit A distinction between a loan and a deposit is that in the case of a loan it is ordinarily the duty of the debtor to seek out the creditor and to repay the money according to the agreement In the case of a deposit it is the duty of the depositor to go for the money to the banker or the depositee and to make a demand for it 171 I C 506=39 P L R 377= A I.R. 1937 Lah 81

A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed, and hence a deposit of money with a banker for safe-keeping is not a loan

"Loaning out", as used in an Act prohibiting public officers from loaning out the public moneys, etc, does not include a deposit of such money in a bank

Loan Company It includes a corporation authorized to loan its money, though its business was not confined to the loaning of money

Loan for Exchange A "loan for exchange" is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing or another of the same value at a future time, without reward for its use

"Loan of money" "By a loan of money, is meant the delivery by one party .... and the receipt by the other party. of a given sum of money, upon an agreement, express or implied, to repay the sum loaned, with or without interest"

Lobana. A Hindu tribe of the Punjab They are farmers, traders, and carriers by occupation, and are peaceful and industrious

Lobby "Lobbying" signifies to address or solicit members of a legislative body, in the lobby or elsewhere, with the purpose of influencing their votes, and a contract for lobbying is void as against public policy

Lobbying Seeking by bribery or other dishonest means to influence the vote of a member of legislature

Lobbyist. One who makes it a business to procure the passage of bills pending before a legislative body.

Lobby Member "A lobby member is a person who frequents the lobby of a house of legislation for the purpose of influencing measures therein

Lobby Services

pending" (*Webs Dict*) The term does not include an attorney openly appearing in the Legislative Assembly as a representative of parties interested in certain legislation

Lobby Services Lobby services are personal solicitations by persons supposed to have personal influence with members of the Legislative body, to procure the passage of a bill

"LOBBY SERVICES" are generally defined to mean the use of personal solicitation, the exercise of personal influence, and improper or corrupt methods, whereby legislative or official action is to be the product It is not, however, the doing of the improper act which is the sole test A contract for such services is void, and cannot be enforced

Local Relating to a particular place, belonging or confined to a particular place, distinguished from general, personal, or transitory, pertaining to a place, or to a fixed or limited portion of space, limited or confined to a spot, place, or definite district, fixedness in a place (*Bouvier L Dict*)

The word "local", signifies belonging to or confined to a particular place, and relates only to a portion of the people of a state or their property When applied to legislation it signifies such legislation as relates to only a portion of the territory of a state, or a part of its people, or a fraction of the property of its citizens

The term 'local' is frequently applied to an area smaller than an entire estate or country as a whole (21 C.L J 489=29 I C 885)

Local Act of Parliament "Local and Personal" Act is "Local, in being confined to certain limits, and Personal, as affecting a particular description of persons only as distinguished from that of all the Queen's subjects" (*per* Parke, B, *Richards* v *Easto*, 15 L J Ex 167, *Stroude*)

Local action An action which must be brought in a particular place or county

"Local agent" defined Act 1, 1882, s 3

A local agent is a representative of a corporation to transact its business and represent it in a particular locality It does not embrace the idea of an agent who casually happens to be in the particular territory, or one who is temporarily sent to such territory to perform some particular purpose or specific act

Local allegiance A temporary kind of allegiance, depending on place, the allegiance which a resident alien owes to the sovereign of the country in which he resides.

"Local area" defined Ben Act, 8, 1895, s 2 (*d*)

'LOCAL AREA' means area smaller than entire estate or country as a whole 21 C L J 489=29 I C 885

"Local area" *See* 16 C 667, 25 C 858=2 C W N 577.

Local assessments. Local assessments are a species of taxes on supposed benefits

The essential characteristic of a local assessment is that it is levied on particularized property, and not on property generally. This feature is the corollary of what in theory, if not in actual practice is the fundamental principle of the law of local assessment—that the tax should be levied on each particular piece of property in proportion to the benefit that is to be derived, not supposedly, but actually from the expenditure of the proceeds of tax The mere localness of the tax is not necessarily a distinguishing feature, nor is the fact that the tax was imposed only after a consultation of the taxpayers, for local assessments may be, and often they are, levied without consultation with the contributors

"LOCAL ASSESSMENTS" are not ordinary taxes levied for the purposes of sustaining the government, but they are charges on individual property because the property on which the burden is imposed receives a special benefit, which is different from the general one which the owner enjoys, in common with others, as a citizen of the commonwealth

"Local authority" defined Act 1, 1871, s 3 (ad. Act 1, 1891 s 2) Act 11, 1879, s 3, Act 7, 1880, s 54 Act 20, 1883, s 54 (4), Act 13, 1885, s 3 (7), Act 18, 1885, s 16 (*a*), Act 2, 1886, s 3 (1), Act 11, 1886 s 3 (1), Act 9, 1890, s 135 (5), Act 10, 1897, s 3(28), Act 15, 1910, s 5, Ben Act 3, 1883, s 2, Ben Act 3, 1885, s 5, Ben Act 1, 1895, s 4 (3), Ben Act 1, 1899, s 3, Ben Act 1, 1904, s 3, Bur Act 1, 1898, s 2, E B & A Act 1, 1909, s 5, Mad Act 1, 1888, s 2, Mad Act 1, 1891, s 3(17), P Act 1, 1898, s 2, U P. Act 1, 1904, s 4, Bur Act, 1, 1898, s 2 (34), E B & A Act 1, 1909, s 5 (35), Mad Act 1, 1888, s. 2, Mad. Act 1, 1891, s 3 (17), P Act 1, 1898, s 2 (30) U P. Act, 1, 1904, s 4 (25)

"LOCAL AUTHORITY," is a modern phrase and in a modern Act is generally defined by the Act's interpretation clause, according to the subject-matter of the Act

"Local authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area [Cattle Trespass Act (I of 1871), S 3]

"Local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund [Act V of 1897 (General Clause) s 3 (28)]

"Local authority" means any district board or local board, joint committee, union committee or joint union committee constituted under Law. [Ben Act III of 1885 (Local Self-Govt) s 5]

"Local board" defined Mad Act 5, 1884, s 3

Local Commissioner is not a Court *See* 89 P. R 1909.

"Local Corps" defined Act 2, 1901, S 2 (*f*).

Local Courts Courts, whose jurisidiction is limited to particular territories or districts

LOCAL COURT, as used in an Act conferring authority to establish a "local Court" is one, the jurisdiction of which must be exercised within the locality, and its process cannot be executed outside of it.

"Local Division" defined. Ben Act 7, 1876, s. 3 (5).

Local Division.

Local Division.

"LOCAL DIVISION" means a sub-division, pargana, thana, police division or jurisdiction, or other division according to which the mauzawar register of the district is arranged. Ben. Act III of 1876 (Land Registration), s. 3, cl 5]

Local Election. The term "local election", as used in the title relating to elections, shall mean any election of city, town or village officers in cities, towns or villages.

"Local Fund" defined Act, 1, 1871, s 3 (Ad Act 1, 1891, s. 2), Mad Act 5, 1884, s. 3 (vii).

"LOCAL FUND" means any fund under the control or management of a local authority [Cattle Trespass Act (I of 1871), [S 3]

"Local Government" defined (*See also* CHIEF COMMISSIONER; LIEUTENANT-GOVERNOR) Act 10, 1841, s 27, Act 13, 1856, s 2, Act 1, 1859, s 118, Act 3, 1864, s. 1, Act 15, 1864, s 4, Act 10, 1865, s 3, Act 15, 1865, s 2, Act 11, 1867, s 1, Act 22, 1867, s 2, Act 25, 1867, s 1, Act 10, 1897, s 3 (29), Ben Act 1, 1899, s 3 (24), Mad Act 1, 1891, s 3 (12), Bom Act 1, 1904, s 3 (27), Bur Act 1, 1898, s 2 (35); E B. & A Act 1, 1909, s 5 (36), P Act 1, 1898, s 2 (31), U P Act 1, 1904, s 4 (26)

LOCAL GOVERNMENT is that form of government where the local affairs are regulated by local authorities

"Local Government" means, in the case of a governor's province, the governor in council or the governor acting with ministers (as the cause may require), and, in the case of a province other than a governor's province a lieutenant-governor in council, lieutenant governor or chief commissioner [Government of India Act (9 & 10 Geo V, Ch 101), S. 134, cl 4.]

"Local Government" shall mean the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner [Act X of 1897 (General Clauses), s 3 (29), Act III of 1864, S 1 *See also* 7 All 687=5 A W N. 227

Local government register of electors. *See* Int Act, 1889, (Eng) s 17 (3)

Local improvement A "local improvement" is a public improvement, which, by reason of its being confined to a locality, enhances the value of adjacent property

The technical and legal meaning of the phrase "local improvement, is a public improvement, which, although it may incidentally benefit the public at large, is made primarily for the accommodation and convenience of the inhabitants of a particular locality, and which is of such a nature as to confer a special benefit upon the real property adjoining or near the locality of the improvement.

Local influence. Within the meaning of the law authorizing removal of causes on account of local influence, the local judge's fitness, and his uprightness, firmness, or ability, or the reverse, do not constitute an element of local influence.

"LOCAL INFLUENCE", within an Act authorizing a removal because of prejudice and local influence,

Local option.

does not mean merely an influence primarily existing against the party seeking the removal. It includes as well that element in a controversy between a stranger and resident parties having the power through wealth, business, social relations, or personal popularity, or all combined, to direct or materially aid in the direction of political parties and control the selection of public officers and the distribution of public emoluments, so that a stranger may be at great disadvantage, if not powerless to assert his right

Local investigation Inspection of locality.

Local investigation report. Report of the officer making a local investigation.

Unless there are very good grounds for dissenting and differing from the reports made by ameens upon local investigations, the Courts even in India, and *a fortiori*, the Courts in England, in dealing with boundary questions, ought to give great weight to them and be guided by them (14 M I A. 453 (463-4) =17 W R 285=2 Suth 549=3 Sar 73)

Locality A thing's position, site or scene of something, a district

LOCALITY The word "locality" signifies a particular district, confined to a limited region, opposed to "general", limited by boundaries, large or small—as a country, a state, a county, a town, or a portion thereof (*Anderson's Law Dictionary*)

The word *"locality"* in S 103 of Cr P. Code does not mean the same quarter of the town as the place which is searched (4 Bur L.T. 222=12 I C. 87=12 Cr.L J. 479.)

"Local law" defined. 49-50 V c. 48, S. 27, Act 45, 1860, S 42

A statute which relates to a particular person or particular thing of a class is a local law.

L "local law" is a law applicable only to a particular part of British India (Penal Code, S. 42)

"Local legislative Council" includes the legislative council in any governor's province, and any other legislative council constituted in accordance with the Government of India Act [Government of India Act (9 & 10 Geo V Ch 101), S. 134, Cl. 4]

"Local legislature" defined. (*See also* Legislature) 55-6 V c. 14, S. 6.

"LOCAL LEGISLATURE" means, in the case of a governor's province, the governor and the legislative council of the province, and, in the case of any other province, the lieutenant-governor or chief commissioner in legislative council [Government of India Act (9 & 10 Geo. V Ch. 101), S. 134, Cl. 4.]

"Locally situate out of the United Kingdom," in the Stamp Act, 1891 (54 & 55 Vict. c 39, S. 59). See *Muller & Co's Margarine, Ltd.* v. *Inland Revenue Commissioners*, (1900) 1 Q.B 310.

"Local meeting" means the annual meeting of the shareholders whose names are registered in a branch register [Act XLVII of 1920 (Imperial Bank of India), S. 2, Cl. *f.*]

Local option A term which implies the grant of the right to one locality to adopt, or to decline to

Local option law.

avail itself of a law. Right given to a district to prohibit sale of liquor.

Local option Law The term "local option law" includes a law prohibiting the sale of intoxicating liquors, which is not to operate until the majority of the adult residents in certain local districts shall, by petition, procure an order of the County Court prohibiting the sale of such liquors

The term "local option law" is an apt term to designate a law prohibiting the sale of intoxicating liquors which is left to take effect or operate in districts at the option of a majority of the adult residents thereof.

Local posts. "Local posts" are special arrangements for the carriage of letters and packets to and from subordinate stations within the limits of a mail station

Local purpose. A purpose to the benefit of which is confined to a particular locality or limited district

Local Self-Government "The principle of local self-government is regarded as fundamental in all democratic political institutions It means that local affairs shall be decided upon and regulated by local authorities, and that the citizens of particular districts have the right to determine upon their own public concerns and select their own local officials without being controlled by the general public or the state at large For this purpose municipal corporations are established, and are invested with rights and powers of government subordinate to the general authority of the state, but exclusive within their sphere It is axiomatic that the management of purely local affairs belongs to the people concerned not only because of being their own affairs, but because they will best understand and be most competent to manage them The institution of local self-government is traditional in England, and is justly regarded as one of the most valuable safeguards against tyranny and oppression It is but an extension of this idea that the government should be intrusted with only such powers and rights as concern the welfare of the whole country, while the individual units are left to the uncontrolled regulation of their internal affairs"

Local statutes Statutes which regard such things as are upon the spot

Local taxation A term used to distinguish this form of taxation from that form of taxation which is general and for the whole state

LOCAL TAXATION. In a law "exempting from local taxation or other purposes" all the real and personal property of a charitable corporation "so long as it or its income is used for the purposes for which it was incorporated", the "other purposes" referred to are evidently local purposes, such as assessments, etc., and could never have been intended to extend to taxation by the state.

Local venue A venue which must be laid in a particular county.

Locate. According to the context the word may be employed as meaning: To ascertain and determine the place of, to state the locality of, to designate the site or place of; to determine the situation or limits. So according to the context it may mean

Loco Parentis

to direct, or to lead to, to fix in place, to select or determine the bounds or place, to set in a particular spot or position, as applied to land, to select, survey, and settle the boundaries of a particular tract of land, or to designate a particular portion of land by limits. (*Webster Dict*)

Locatio, (*Lat*) (*In the civil law*) A letter for hire

Locatio-conductio or locatio et conductio (*Lat*) A letting and hiring

Locatio custodiae. (*Lat*) A letting to keep

Locatio operarum (*Lat*) A letting of services

Locatio operis faciendi (*Lat.*) A letting out of work to be done

Locatio operis mercium vehendarum (*Lat*) A letting of work to be done in the carrying of goods

Locatio rei. A letting of a thing to hire

Locked Harbor A locked harbor is where a vessel cannot go to sea being landlocked by sheals or reefs

Lock-out A lock-out has been defined to be the closing of a factory or workshop by an employer, usually to bring the workmen to satisfactory terms by a suspension of wages

LOCK-OUT The act of a trading corporation, when by reason of trade disputes, factories or workshop are closed against the employees

Lock-up house A place used temporarily as a prison

Locmen "The term 'locmen' was used in the early maritime law to designate a local pilot whose business was to assist the pilot of the vessel in guiding the course of the vessel into the harbor, or through a river or channel, so as to avoid shoals, rocks", etc.

Locomotive Engine An engine which moves cars by its own forward and backward motion

"LOCOMOTIVE ENGINE" generally means a propelling engine on a railroad, and does not include a traction engine, with a crane used for lifting stone, but propelled by steam

A *locomotive engine* is one which moves cars by its own backward and forward motion

Locomotive steam is such as is used in a locomotive engine, and a *locomotive engine* is one which moves cars by its own backward and forward motion

Loco Parentis. *See* "In Loco Parentis"

LOCO PARENTIS "What is the meaning of a person in loco parentis? I cannot do better than refer to the definition of it given by Lord Eldon in ex parte *Pye* (18 Ves. 140) Lord Eldon says it is a person, in the situation of the person described as the lawful father of the child' Upon that Lord Cottenham in *Powys* v *Mansfield* 7 L J Ch 9 observes.—'But this definition must, I conceive, be considered as applicable to those parental offices and duties to which the subject in question has reference *viz*, to the office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical,

Locus contractus regit actum.

from the mere exercise of any of such offices or duties by one not the father, to infer an intention of such person to assume also the duty of providing for the child' So that a person in *loco parentis* means, a person taking upon himself the duty of a father of a child to make a provision for that child" (*Per* Jessel, M.R *Bennet* v. *Bennet*, 10 Ch D 477)

"Locus contractus regit actum" The locality of the contract governs the action

Locus penetentiae. (*Lat*) An opportunity to repent, to be penetent.

Locus pro solutione reditus aut pecuniae secundum conditionem dimissionis aut obligationis est stricte observandus A maxim meaning "The place for the payment of rent or money according to the condition of a lease or bond, is to be strictly observed."

Locus regit actum A maxim meaning Locality governs the act

Locus standi A place of standing, a right of appearance in a Court of justice

Lodemanage Lodemanage is payment made to a pilot for conducting a ship from one place to another The word was chiefly known in connection with a society of pilots, or "lodesmen," "lootsmen", or leadmen or men who measured the depth of water over shoals in narrow seas They conducted ships clear of sandbanks (Lyon Cinque Ports, (1813) 286, 287) They were governed by a master and wardens chosen by themselves, and had a monopoly of the right of pilotage in specified ports *See* Boys, Snadwich, Lyon, Cinque Ports, (*Ency of the Laws of England.*)

"Lodes" As used in the mining laws means "lines or aggregations of metal imbedded in quartz or other rock It is intended to indicate the presence of metal in rock"

A "lode," as the term is used in the mining law, means "ore in mass and position in the body of a mountain, whatever its former structure or boundaries may be"

A lode is a connected deposit of mineral bearing ore and concomitant vein matter.

Lodge A lodge is the meeting room of an association.

"LODGE", as used in reference to associations by that name, "is defined by Webster to be a secret association, as the Free Masons, Odd Fellows, and the like"

Lodged A deed is "lodged" with the clerk for record when it is sent to him with a request to record the same

"Lodger" defined. Ben Act, 4 of 1871, S. 1 (am Ben. Act 3 of 1908, S. 3), U. P. Act 1 of 1892, S 2 (4).

LODGER. A lodger is one who inhabits a portion of a house of which another has the general possession and custody.

A "lodger" is one who occupies hired apartments in another's house, a tenant of part of another house.

Lodger.

GUEST DISTINGUISHED. A lodger is one who inhabits a portion of a house, of which another has the general possession and capacity. As distinguished from a "guest", a "lodger" is one who for the time being has his home at his lodging place

TENANT DISTINGUISHED. A lodger is one who has the right to inhabit another man's house, one who lives in a hired room or rooms in the house of another The distinction between "lodgers" and 'tenants" may in some cases be fairly drawn, and may depend upon the character of the hiring, with reference sometimes to the business of the lessor and the presumed intention of the parties The tenant is put into the exclusive possession of his rooms, while the boarder or lodger has merely the use of them, without the actual or exclusive possession, which is in the lessor, subject to such use.

LODGER The term lodger has no precise legal significance, and its construction and application have frequently given rise to considerable difficulty. There seem to be four principal uses of the term. *First*, it is often used loosely of a person who enters into a contract for food and lodging with the keeper of a boarding house, without stipulating for the exclusive occupation of a particular room or rooms, though a separate apartment for sleeping may in fact be given to him *Secondly*,—and this is by far the commonest use of the word—it is employed to designate a person who takes part of, or rooms in, a house, the landlord or his agent residing also on the premises, and supplying him with what is usually called "attendance". *Thirdly*, the term is sometimes applied to a person who takes part of a house, whether furnished or unfurnished, but brings in his own servants, or finds his own attendance, though the landlord resides also in the house *Lastly*, the word is occasionally applied to a person who resides in a house which (like so-called "model dwellings" for the working classes) is divided off into separate tenements, approached by a common staircase, a servant or porter, appointed and paid by the landlord, to perform specified services for the inmates residing in some cases upon the premises (*Ency of the Laws of England*) In *Thomson* v *Ward* (L R 6, C P 360) *Bowell, J*, said —"Generally speaking, a lodger is a person whose occupation is of part of a house, and subordinate to, and in some degree under the control of a landlord or his representative, who either resides in or retains the possession of a dominion over the house generally, or over the outer door, and under such circumstances that the possession of any particular part of the house held by the lodger does not prevent the house generally being in the possession of the landlord "Where a landlord resides in part of a house, and there is an outer door from the street, and he, by himself or his servants has the control of this outer door, and undertakes the care or control of rooms, let to other persons and the access to them, and those rooms themselves have not anything in the nature of an outer door, and are not structurally severed from the rest of the house, there could be little hesitation in saying that an occupier of those rooms, being part of the house, is only a lodger On the other hand, if there be no real outer door to the street, and neither the landlord nor his servants nor any one representing him, occupies any part of the premises, or exercises any

control over any part of them, and the rooms occupied by another person are structurally severed from the rest of the house and have an outer door to the general landing or staircase and no one but such tenant has or exercises any care or control over the room or that outer door, as a general proposition, the person so occupying those rooms could not properly be said to be a lodger

"It is always important in determining whether a man is a lodger, to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house, and this he may do though he do not personally reside on the premises" Judgment of *Bovill, C J*, in *Thompson* v *Ward* (40 L J C P 188, L R 6 C P 360, 361) *See also Allan* v *Liverpool*, etc, L R 9 Q B 180)

LODGER, under the Rating Acts, means every person occupying part of a house who is not a householder *Stamper* v *Sunderland Overseas*, (1868) L R 3 C P 388 Under the Franchise Acts, means a person residing in the house of another over which the latter exercises some control, such as by having a servant in the house to look after it for him [*Bradley* v *Baylis*, (1881) 8 Q B D at p 241, per *Cotton, L J*]

In the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict c 79), Ss 1 and 2, "Lodger" means one who lives and sleeps on the premises in question, and does not include persons who occupy rooms for business purposes in the daytime [*Heawood* v *Bone* (1884) 13 Q B D 179]

"Lodging-house" defined Ben Act 4 of 1871, S. 1, Bur Act 3 of 1898, S 2 (6), U P Act 1 of 1892, S. 2 (3).

LODGING HOUSE, INN, HOTEL, AND TAVERN DISTINGUISHED The term "lodging house" and the words "inn," "hotel or boarding house" are not covertible terms or words, and a distinction exists between these several institutions and a lodging house

"LODGING HOUSE" means a building or part of a building which is let in lodgings or occupied to any extent in common by members of more than one family [Bur. Act 3 of 1898 (Municipalities), S 2, cl. (6).]

Lodgings Includes "any apartments or place of residence whether furnished or unfurnished, in a dwelling-house" (41 and 42 V c 26, S 5).

A *"lodging housekeeper"*, as distinguished from an "innkeeper", makes a contract with every man that comes to his lodging house, whereas an innkeeper is bound, without making any special contract, to provide lodging and entertainment for all at a reasonable price.

LODGINGS, APARTMENTS A *lodging*, or a place to lodge or dwell in, comprehends single rooms or many rooms, or in fact any place which can be made to serve the purpose, *apartments* respect only suites of rooms, *apartments*, therefore, are, in the strict sense, *lodgings*, but all *lodgings* are not *apartments*, on the other hand, the word *lodgings* is mostly used for rooms that are let out to hire, or that serve a temporary purpose, but the word *apartments* may be applied to the suites of rooms in any large house.

Log. A line used for reckoning the speed at which a ship is travelling

LOG. The term "log" has a definite significance, and means the trunk of a tree cut down and stripped of its branches

The words *"logs or timber"*, as used in the act relating to booms and dams, shall be taken to mean logs and timber of every kind and description, manufactured or unmanufactured.

"Log" is also used to mean the trunk of a tree cut down and stripped of its branches A log is "a bulky piece or stick of wood or timber" (*Webster Dict*, *Worcester Dict*) The word "logs" does not include manufactured lumber of any kind, or timber which is squared or otherwise shaped for use without further change in form It may mean "wood suitable for building houses or ships, or for use in carpentry, etc, trees cut down and squared or capable of being squared and cut into beams, rafters, planks, boards etc," or "growing trees, yielding wood suitable for constructive uses, trees generally, woods." (*Donworth* v *Sawyer*, 94 Me, 243, 253 47 Atl 521 *Ame*)

Log and Lumber Lumber is timber sawed or split for use in building that is, the manufactured product of logs In some states the term is defined by statute

Log Book A ships journal, the book in which the records of the takings of a ship's log, as well as the chief incidents of a voyage, are entered In every ship it is part of the duty of the master to his owners to keep a log-book of the events happening in and to his ship, and in steamships the engineer also keeps a log of the movements of the engines, but besides the ordinary ship's log, the Merchant Shipping Act imposes on the master of every British ship the duty to keep an "official log" Such an official log must be in a form approved by the proper authorities The entries in it must be made as soon as possible after the events to which they relate, and dated both with the date of the occurrence and the date of the entry, and if they happen before the arrival of the ship at her final port of discharge, not later than twenty-four hours after that time, and they must be signed by the master and mate, or some other of the crew. If they relate to illness, injury, or death, they must also be signed by the doctor on board, if any; if they relate to wages due to, or the sale of effects, of, a seaman or apprentice who dies, by the mate and one of the crew as well as master (*Ency of the laws of England.*)

Log Measure Log measure is the measurement of logs before sawing them, then by calculation ascertaining what quantity of lumber they would produce when sawed into pieces of the required size

Log Rolling. Mutual compacts between members of a legislature by which one assists the passage of a bill in which he has no interest in consideration of a like assistance from the interested member (*Bouvier*)

SAW-LOG A sawlog means a heavy piece or stick of wood, or body of a tree, cut into a convenient length for the purposes of being sawed into lumber.

Log Rolling

BOOM. A boom is a line of connected floating timbers stretched across a river, or inclosing an area of water, to keep sawlogs from floating away It consists not only of the timbers by which the commodity boomed is inclosed, but also of the piers, piles, or other thing by which it is held in place

RAFTAGE AND BOOMAGE "Raftage" and "boomage" are charges incident and necessary to the delivery of logs

SAW-MILL. A saw-mill is an establishment for sawing logs into lumber by power, often including other wood-working machines, such as lath and planing machines

STUMPAGE. While the term "stumpage" has different meanings according to the connection in which it is used, it generally refers to the sum agreed on, to be paid to an owner for trees standing or lying upon his land.

TIMBER In England the term "timber" does not include all kinds of trees. What kind of wood is deemed to be timber depends upon the custom of the country. Wood which in some counties is called Timber is not so in others. (*Ame Cyc*) In America the term "timber", (as distinguished from a log) when applied to standing trees, generally means such as are suitable for use in the erection of buildings or in the manufacture of tools, utensils, furniture, carriages, fences, ships, and the like. (*Alcutt* v. *Lakin*, 66 *Am. Dec* 739)

Logging Railroad A logging railroad is a private road constructed for the convenience and accommodation of lumbermen

Logical relevancy Stephen defines "logical relevancy", as follows "Two facts are said to be 'relevant' to each other when so related that according to the common course of events only, either, taken by itself or in connection with other facts, proves or renders probable the past, present, or future existence or non-existence of the other".

"Logrolling" is the public name, universally understood, designating the practice of corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits.

The vicious and corruptive system familiarly known as "logrolling" is the practice of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in its support members who were in favour of particular measures, but neither of which measures could command the requisite majority on its own merits

Lohar (loha=iron) A blacksmith, one of the village staff: (*Bad-Pow* 1. 151)

Loiter. "To loiter", means to be slow in moving; to delay; to hinder; to be dilatory; to spend time idly, to saunter; to lag behind.

Lombards. Formerly applied to a class of merchants who were said to be bankers and usurers.

London Gazette. A single sheet from the London Gazette containing a notice, is not proof that such notice has appeared in the Gazette, (*R.* v. *Lowe*, 52 L J. M.C. 122).

Lop.

Long. Having duration or extent in time; far reaching, extended, drawn out in a line, or in the direction of length, opposed to "short", and contradistinguished from "broad" or "wide". (*Webster Dict.*)

"Long, continual, and peaceable" enjoyment (in respect of prescription). (*Co. Litt* 113b) "As to 'Long' Lord Coke says it is the time given by law, which in England is the 'time whereof there is no memory of man to the contrary', namely the time of Richard I. (A D, 1189) (per *Ld. Blackburn*, *Dalton* v. *Angus*, 50 L.J. Q B. 740, 6 App. Ca. 810, 811).

"Long voyage" defined. Act 10, 1887, s. 5 (3).

Longa patientia trahitur ad consensum. A maxim meaning "Long sufferance is construed as consent".

Longa possessio. (*Lat.*) Long possession.

Longa possessio est pacis jus. A maxim meaning "Long possession is the law of peace". (*Burrill*).

Longa possessio parit jus possidendi, et tollit actionem vero domino. A maxim meaning "Long possession produces the right of possession, and takes away from the true owner his action".

Longevity. Length of life; long life.

Longitude of a place In geography, is an arch of the equator intercepted between the first meridian and the meridian passing through the proposed place, which is always equal to the angle at the pole, formed by the first meridian, and the meridian of the place (*Tomlins Law Dic.*)

Longum est iter per precepta; breve et efficax per statuta A maxim meaning "The way is long that is marked out by precepts, short and certain when indicated by statutes". (*Peloubet Leg. Max*)

Longum tempus et longus usus qui excedit memoria hominum sufficit pro jure. A maxim meaning "Long time and long use, exceeding the memory of men, suffices for right"

Loom The word may, according to the connection, include not merely the framework, but all that is necessary for weaving.

Loose The terms "fast" and "loose" are relative terms, and might mean one thing in one place, and quite another thing in another place.

LOOSE. Free from all control; not confined; not fixed, not stationary, or susceptible of motion; of unchaste character.

LOOSE, in 2 & 3 Vict. c. 47, s. 54 (Metropolitan Police), in expression "every person who shall turn loose any horse or cattle," does not mean "physically loose," as the enactment only requires that the cattle shall be under the care and control of their owner. [*Sherborne* v. *Wells*, (1862) 3 B. & S. 786.]

Loose women. A "loose woman" is a woman of unchaste character.

Lop. To 'lop" a tree, is to cut off its lateral branches; to "top" it is to cut off its head. [*Unwin* v. *Hanson*, (1891) 2 Q.B. 115; 60 L.J. Q.B. 531.]

Lopala-bhavalu

Lopala-bhavalu, (*M.*). A kind of well. (*Bad. Pow* iii, 74).

Loppings The fruit of trees, together with the usual trimmings.

Loquendum ut vulgus, sentiendum ut docti. A maxim meaning 'We must speak as the common people, we must think as the learned." (*Burrill.*)

Lord. Feudal superior, Master, owner, husband, God.

LORD. Selden (Titles of Honour, p 36), speaking of Dominus, says "It is to be thought of only as a distinguishing attribute of greatness and as our English word lord is, and that without any relation of it to an interest in property, or to servitude, it denotes such superiors as King, or subject of the greater nobility, with us" By the greater nobility is here meant all the peers who are either hereditary, and as such Lords of Parliament, or those who may be Lords of Parliament without being hereditary Thus the whole body assembled in Parliament is called the "House of Lords "As an honorary title it is bestowed on certain official persons in respect of their office. Thus it is applied to the mayors of cities such as London and York, etc ; Lord Chancellor, Lords of Treasury, or the Judges of the High Court, etc *See* Selden "Titles of Honour", Burke Peerage, etc., Dodd, Peerage. (*Ency of the Laws of England*)

Lord advocate The chief crown lawyer and public prosecutor of Scotland.

Lord Chamberlain of England An officer having the government of the palace at Westminster

Lord Chancellor *See* Eng. Int. Act 1889 s 12 (1)

LORD CHANCELLOR is the Head of the Chancery Division of the High Court of Justice.

Lord Chief Justice Head of the King's Bench Division

Lords Justices Judges of the Court of Appeals

Lord Keeper "Lord Keeper in England is equivalent to 'Lord Chancellor" (*Stroude*).

Lord keeper of the great seal ex officio Lord and Privy Councillor, an office now merged in that of Lord Chancellor

Lord Lieutenant. Sovereign's representative in Ireland; head of the Magistracy in an English County. A principal military officer appointed by the Crown. *See* Eng Int Act, 1889 (c. 63), s 12 (9) , Anson, Constitution, Code, Military Forces of the Crown, Hallam, Constitutional History, Royal Commission, 1893, Manual of Military Law, War Office, (*Ency. of the Laws of England*)

Lord Mayor. Mayor of a large town like London, Liverpool, etc.

Lord of the Admiralty. One of the board of Admiralty

Lord of the bed-Chamber. Nobleman in attendance on a King

Lord of the Treasury. Member of Treasury Board.

Loss.

Lordship Rule over, Domain; Ownership of.

Lord Paramount. The King of England is styled the "lord paramount" as under the feudal system all lands are holden mediately or immediately of the King.

Lord Spiritual Bishop in House of Lords.

Lord's Day. Sunday.

Lord's Prayer The Our Father

Lord's Supper Eucharist

Lord's Table (Eccl) The communion table.

Lord's Temporal. Ordinary members of the House of Lords

HOUSE OF LORDS. The Upper Legislative Chamber of Parliament.

MY LORD Form of speaking to a bishop, the Lord Mayor, Judges of Superior Courts, etc.

OUR LORD SOVEREIGN The King.

THE LORD OR OUR LORD. God, among Christians Christ.

Lose. Be deprived of, cease to have; casually and involuntarily to part with the possession, so that the mind has no impress of, and can have no recourse to, the event

Lose or part with. The words "lose" and "part with" in S 7 of the Rent Act apply to all cases where a Zemindar disables himself, by his own act or is disabled by operation of law, either permanently, or temporarily, from exercising all the powers of an owner over his property [7 All 553=5 A W N. 108 (F B.) *See also* 16 All 337(340) (F B) , 7 All. 847 (849) , L.R. 2 All 152 (Rev.).]

The word "lose" refers to involuntary loss as by auction sale. The expression "part with" refers to voluntary transfer by sale, gift, etc , and proprietary right means the whole of such rights. [7 All 553 (F.B) , 5 A W N 108, per *Brodhurst, J.*)]

"Losing wrongfully" defined. Act 45, 1860, s 23.

Loss. Deprivation, detriment or forfeiture, damage, damages Its meaning is often governed by the context 45 A 380=21 A L J 220=L R 4 A. (Civ) 166=71 I C 609=A I R. 1923 All. 426, 10 Lah. 360=112 I C. 736 The word "loss" in Risk Note Form B means loss to the owner. 87 I.C. 1031=A.I. R. 1925 Nag. 333

The term "loss" as used in the Risk Note Form B and Chapter VII of the Railways Act does not mean pecuniary or other loss suffered by the owner of the goods though being wrongfully deprived of the possession, use or enjoyment thereof, but means loss of the goods by the Railway Company while in transit. 51 Cal. 695=28 C.W.N. 1001=79 I C. 126=A.I R. 1924 Cal. 725

Loss. "In its most general sense the word 'loss' means any deprivation. In some instances it may mean that which can never be recovered, and in others that of which a party is dispossessed."

"Loss" means any dealing with the goods which dispossesses the railway of them so as to render impossible delivery to the consignee, whether that

Loss.

dealing is done with or without the consent and knowledge of the railway administration 8 Lah 555 =102 I C 149=A I R. 1927 Lah. 471

LOSS, DAMAGE DETRIMENT Whatever is gone from us which we wish to retain is a *loss*, hence we may sustain a loss in our property, in our reputation, in our influence, in our intellect, and every other object of possession whatever renders an object less serviceable or valuable, by any external violence, is a *damage*, as a vessel suffers a damage in a storm whatever is calculated to cross a man's purpose is a *detriment*, the bare want of a good name may be a *detriment* to a young tradesman

LOSS, DETERIORATION OR DESTRUCTION The words "loss, deterioration or destruction," contained in S 75 of the Indian Railways Act, 1890, include loss caused by the Criminal misappropriation of the parcel by a servant of the Railway administration charge thereof, 19 B. 159 *See also* 5 Lah 523=85 I C 404=A I R 1925 Lah 255

'Loss of business,' meaning of. 56 C 819=1929 C 826.

Loss of complete package. Where in a consignment under risk note form B, the contents of some of the packages are missing, but all the packages are delivered, there is no loss of a complete package 27 B L R 1111=90 I C. 562=A I R 1925 Bom 534

Loss of consortium A deprivation of the full society, affection and assistance to which a wife is entitled

Loss of profits or gains (*in Income-tax Act*) 26 N L R 75=122 I C 689=1930 N. 183

"Loss" of ship in sect 158 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), includes capture followed by destruction by a foreign belligerent. *Swewright* v *Allen*, (1906) 2 K B 81 *Cf Austin Friars Steamship Co* v. *Frack*, (1905) 2 K B 315.

Lost. A thing is lost when it cannot be found, or when ordinary vigilance will not regain it.

Lost deed A deed which has been surrendered to be cancelled is not a "lost deed," so as to make parol evidence of its contents admissible.

Lost grant. The fiction of a "lost grant" is merely a presumption, from the long possession and exercise of right by user of an easement with the acquiescence of the owner, that there must have been originally a grant to the claimant, which had been lost.

LOST GRANT. It is open to the Court to infer a grant from immemorial user alone, when such user is open, as of right and without interruption But a grant will not be inferred if the user may be explained in some other way than by a grant 155 I.C. 719 =7 R.C. 614=60 C.L J. 321=A I R. 1935 Cal 253 There can be no presumption of a lost grant in favour of a fluctuating and unascertained body of person, who constitute the inhabitants of a particular village I L R (1937) 2 Cal 86=171 I.C. 785= 41 C W N. 503=A I.R. 1937 Cal. 245.

Lost instrument. A document or paper which has been so mislaid that it cannot be found after diligent search.

Lottery.

"LOST INSTRUMENT," within the meaning of the statute which allows secondary proof of the contents of instruments which have been lost, includes a letter that is beyond the territory of the state.

Lost motion As applied to a locomotive, a jarring or swinging motion, caused by its worn-out condition.

"Lost or not lost." A clause in marine policies of insurance, meaning that the contract is intended to embrace a loss which may have already happened

"Lost or parted" The expression 'lost or parted" is wide enough to cover a gift and there is no authority for holding that a gift of proprietary rights under the Act did not amount to losing or parting with them 3 U P L R (B R) 88=L R 2 A. 152 (Rev) *See also* 7 All 553=5 A W.N. 108.

Lot "Lot" is defined to be a contrivance to determine a question by chance, or without the action of man's choice or will

A lot means a great quantity or number, a great deal.

"LOT", as the term is used when speaking of a lot of goods, a lot of logs, etc, means the separate portion belonging to one person, and hence a distinct parcel or a separate part

The term "lot" sometimes means any contiguous quantity of land in the possession of or owned by, or recorded as the property of, the same claimant, person, or company.

LOT. That which causes, falls, or happens; chance fortune, hazard, anything used in determining a question by chance, or without a man's choice or will, a share (*English L Dict.*) One of several parcels into which a thing is divided. A resort to chance for the determination of question or for arriving at a result

Lot and scot Duties to be paid by persons exercising the elective franchise in certain cities before being allowed to vote (*Bouvier*)

Lotherwit. "Lotherwit' that is, that you may take amends of him which doth defile your bondwoman without your license." (*Termes de la Ley.*)

Loto "Loto" is a game of chance and gambling device.

Lottery Scheme for the disposal or distribution of property by chance. The term "lottery" has no technical meaning in the law distinct from its popular signification A lottery is a scheme for the distribution of prizes by chance.

A lottery is a scheme for the distribution of prizes by chance, or the distribution itself when the latter depends on chance.

"Lottery" is defined as a hazard in which sums are ventured for a chance of obtaining a greater value. Lotteries were sometimes considered nuisance in the eye of the common law. A scheme for the distribution of prizes by lot, by which a certain pecuniary consideration is paid for a chance in the distribution The word "lottery" is nowhere defined in the Cr. P. Code or in any other statute. Its common meaning is "a scheme for the distribution of prizes by lot or chance" 35 P.L.R. 753=A.L.R. 1934 Lah. 417=1934

Lottery

Cr C 1182=A I.R. 1934 Lah 840. "In Webster's Dictionary a lottery is defined to be, 'A distribution of prizes by lot or chance,' and a similar definition is given in Johnson. (*Taylor* v. *Smetten*, 52 L J M C 101, II Q B D. 207).

A lottery is a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize "A scheme for the distribution of prizes by chance" "A scheme by which a result is reached by some action or means taken, and in which result man's choice or will has no part, nor can human reason, foresight, sagacity, or design enable him to know or determine such result until the same has been accomplished" "Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public what the party who pays the money is to have for it . it is a lottery" (*State* v *Clarke*, 66 *Am Dec* 723) "The word 'Lottery' embraces the elements of procuring through lot or chance, by the investment of a sum of money or something of value, some greater amount of money or thing of greater value" (*U. S.* v. *Wallis*, 58 Fed 942, 943) "When small amounts are hazarded to gain large amounts, and the result of winning to be determined by the use of a contrivance of chance, in which neither choice nor skill can exert any effect, it is gambling by lot. (*Loiseau* v *State*, 62 *Am St. Rep.* 84.) "A lottery, within the meaning of the statutes forbidding lotteries, is a scheme devise or game of hazard, whereby for a smaller sum of money, or other thing of value, the person dealing therein by chance or hazard, or contingency, may or may not get money or other thing of value of greater or less value, or in some cases no value at all, from the owners or managers of such lottery." [*State* v. *Lumsden*, 89 N C 572, 573 (*Ame*) *See* Stutfield on Gaming, Coleridge and Hawksford on Gaming, [*Ency of the Laws of England*]

LOTTERY, in S 2 of 42 Geo 3, c 119, means "a distribution of prizes by lot or chance" [*Taylor* v *Smetten*, (1883) 11 Q B D 207, 211, Hawkins, J., *Cf. Barclay* v *Pearson*, (1893) 2 Ch 154, *Stoddart* v *Sagar*, (1895) 2 Q.B 474]

Lottery and prize chit. *See* 57 Mad. 923=67 M L J 163.

Lottery and wager A lottery is a distribution of prizes by lot or chance without the use of skill It is different from a wager. A wager is a contract between two persons that on the determination of a future uncertain event one shall win from the other and the other shall pay or hand over to him a sum of money or other stake It is not essential to a lottery that there should be a money prize [50 M 696, *Ref*) 33 Cr.L.J. 792=36 L W 610=139 I.C. 644=1932 M.W.N. 904=63 M L J. 554]

DRAWING LOTTERY. The word "drawing" with reference to a lottery is that the lots should be drawn by some mechanical or human agency involving their chance extraction. Where there was no physical or mechanical "drawing" to determine the lucky lots which depended on a sort of arithmetical progression based on an original number to be determined merely by the chance-death of a bondholder. *Held*, that the publication of the scheme involving such a lottery was no offence (A.L R. 1934 Lah 417=35 P L R. 753.)

Louver. An opening in buildings crossed by a series of slanting slats to exclude rain and snow and admit air

Love A term whose meaning is not synonymous with friendship (*Ame Cyc*)

LOVE Love between the sexes has different constituents from those found in mere friendship It is very variable in its constitution It may be refined, having elevated aims, or it may be gross, in which the baser-desires predominate.

Low Not high in character or condition; not haughty or proud, meek, lowly, lacking in dignity, refinement, or principle, vulgar, groveling, abject, mean, base, in a mean condition. (*Cent Dict.*)

Low church (*Eccles.*) The less sacerdotal and ritualistic party in the church of England.

Low church man A member of the Low church.

Low countries Netherlands

Low diligence That which persons of less than common prudence, or, indeed, of any prudence at all, take of their own concerns. (*Ame. Cyc.*)

LOW DILIGENCE "Low or slight diligence" is that which persons of less than common prudence, or, indeed, of any prudence at all, take of their own concerns.

Low land. Low lying country.

Low life Social life of the lower classes of people.

Low tide Level of the sea between ebb and flow, time of extreme ebb (*Ox. Dic.*)

Low water A term only predicable of those parts of rivers within the ebb and flow of tides, to distinguish the water line at spring or neap tides

"Low water mark" defined. Ben Act 4, 1887, S 2; Bom Act 6, 1886, S 2(3), Bom. Act 5, 1888, S 2 (*c*), Bur Act 4, 1905, S 4 (5).

LOW-WATER MARK The "low-water mark" of a fresh-water river is the point to which the river recedes at its lowest stage.

"Low water mark", as used in reference to tide waters, is the margin of the sea when the tide is out.

Low water mark is the line or the margin of the water at ordinary low tides, and not the lowest possible state of the water at some particular time, from natural causes.

"Low-water mark" means the lowest point reached by ordinary ebb spring-tides at any season of the year. Bur. Act IV of 1905 (Burma Port), S 4, Cl. 5; Bom Act VI of 1886, S. 2.

Applied to fresh waters; low water mark is the point to which the river recedes at its lowest stage; applied to tide waters, the margin of the sea when the tide is out.

Low wine. The produce of the first process of distillation of spirituous liquors by the application of heat to a still containing the material. (*Ame. Cyc.*)

Low wine.

LOW WINE. Low wine is the product of the first process of distillation of spirituous liquors by the application of heat to a still containing the material, and differs from spirits, in that the latter passes through a second distillation.

"Lower Burma" defined. Act 13, 1898, S. 3 (*d*), Act 6, 1900, S. 2 (*c*).

"LOWER BURMA" means the territories for the time being included in Lower Burma. [Bur Act VI of 1900 (L B. Courts), S 2, Cl (*c*).

'Lower passenger deck" defined. 57-8 V. c. 60, S. 268 (6),

Lower world. Hell.

Lowest "Lowest" in the meaning of a statute requiring that the contracts for public improvements shall be awarded to the "lowest responsible bidder", is that the contract, when awarded, shall be awarded to the lowest responsible bidder, but does not require the authorities to accept a bid when but one bid is made In such a case, there being no other bid with which to make comparison, such bid is not the lowest, but might as well be termed the highest

Lowest bidder A statute requiring municipal contracts to be given to the lowest bidder is not to be "construed literally, and accepted as an absolute restriction. In such case undoubtedly the bid should be *bona fide*, and should conform strictly to the prescribed specifications but in determining whether a bid is the lowest among several others the quality and utility of the thing offered—in other words, its adaptability to the purpose for which it is required—must be first considered. The offer in nominal amount may be exceedingly low, while the thing offered may be exceedingly worthless".

It ought hardly to be supposed that a law requiring municipal authorities to let a contract to the "lowest bidder" means absolutely that the contract shall be given to the lowest bidder without regard to his fitness, responsibility, or capacity to perform the work, and generally such laws are to be read as referring to the lowest or best bidder, or the lowest responsible bidder.

In the requirement that public work should be let to the lowest responsible bidder, the term "lowest responsible bidder" means one who complies with all the requirements of the statute, specifications, etc., not merely one whose bid is less than his competitors".

Lowest price The mere statement of the lowest price, in reply for a telegraphic enquiry, "at which the vendor would sell, contains no implied contract to sell at that price to the person making the enquiry" [*Harvey* v. *Facey*, (1893) A C 552; 62 L.J P.C. 127].

Loyalty. Faithfulness to the existing government; being true to allegiance; being devoted to the legitimate sovereign

LOYALTY "Attachment to the person of the reigning sovereign does not complete the idea of 'loyalty'. That comprehensive term includes within its meaning, not only affection to the person, but also to the office, of the King not only attachment to royalty but as the word itself imports attachment to the law and to the constitution of the realm: and he who would, by force or by fraud, endeavour to prostrate or subvert that law and constitution (though he may retain his affection for its head) can boast but an imperfect and spurious species of Loyalty" (*per* Crampton, J, *R.* v. *O'Connell*, 7 Ir L. R. 300).

L S. Letters originally used as an abbreviation for Locus Sigilli—the place of the seal, but now having acquired the popular force of an arbitrary sign for a seal, and by long usage and the general understanding of legal writers regarded as the true representation of a seal, in all legal precepts.

Ltd. An abbreviation often used for the word "limited."

Lubricum glossae non facile trahendum est in poenam. A maxim meaning 'A slip of the tongue ought not lightly to be submitted to punishment." (*Morgan Leg. Max*)

Lubricum linguae non facile trahendum est in poenam —A maxim meaning "A slip of the tongue ought not lightly to be subjected to punishment" (*Black L Dict*)

Lucet ipsa per se aequitas A maxim meaning "Equity shines by her own light" (*Peloubet Leg. Max*)

Luchcha (*H*) A libertine, a vagabond, a swindler, a common term of abuse.

Lucid Interval "Lucid interval" does not mean a perfect restoration to reason, but a restoration so far as to be able beyond doubt to comprehend and do an act with such reason, memory and judgment as to make it legal

The term *"lucid interval"* means not an apparent tranquillity or seeming repose, not a simple diminution or remission of the disease, but a temporary cure—an intermission so clearly marked that it perfectly resembles a return of health—and must be continued for a length of time sufficient to give certainty to the temporary restoration of reason.

LUCID INTERVAL. An interval of reason enjoyed by an insane person, or lunatic, as used in speaking of lucid intervals of insane persons, not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the party soundly to judge of the act.

Lucky "Lucky", as used in an agreement for the purchase of a horse, by which the purchaser agreed to pay £63, and, if the horse was lucky, would give seller £5 more, was too vague and uncertain a term to be considered in a court of law, and the only certain part of the agreement was that for £63.

LUCKY Fortunate, successful

"Lucky man" Where a person has four bids from contractors on a house that he intended to construct, and, on the opening of the bids, such person stated to one of the bidders "you are the lucky man", such phrase was merely a recognition that he was the lowest bidder, and was not equivalent to the award of the contract to him.

Lucrative.

Lucrative. Yielding lucre, gainful, profitable, making increase of money or goods. (*Webster Dict*)

"**Lucrative office**", as used in an Act providing that no person shall hold more than one lucrative office at the same time, except as expressly provided, means an office, the incumbent of which is charged with duties under the laws of the state, for which he is entitled to compensation

"LUCRATIVE OFFICE", within an Act prohibiting the holder of a lucrative office from holding any other office of profit under the state, means an office attached to which is a pecuniary salary.

Lucre Pecuniary gain as a motive.

Lucri causa "Lucri causa", or with a view to pecuniary profit, is a term used in the law of larceny to characterize the nature of a taking sufficient to bring the act within the definition of the crime of larceny

LUCRI CAUSA (*Lat*) Literally, "for the sake of gain," "with a view to pecuniary profit"

Lucrum facere ex pulli tutela tutor non debet A maxim meaning. "A guardian ought not to make money out of the guardianship of his ward."

Luggage. Baggage.

Luktah (*A.*) (*or Lukta*). Property which a person finds lying on the ground, and takes away for the purpose of preserving it in trust, a stray, a trove (*Mac Mah Law.*)

Lumber. Timber sawed or split for use in building.

LUMBER. "Lumber" is a word of doubtful or indefinite signification, and includes any timber sawed or split for use.

LUMBER. The word "lumber" is used in the article relating to floating lumber to designate all timber, whether in logs, boards, planks, or beams, or whether in rafts or otherwise, but does not include the sort of wood commonly called "driftwood"

Lumber wagon A term generally applied to an ordinary double wagon used by farmers.

Lumpers. In shipping, men who erect a staging around the exterior hull of a vessel placed in a dry dock for the purpose of repairs, grave the vessel, and put on the felting, if necessary and run the metal

MANIA SYNONYMOUS "Lunacy" is synonymous with "mania", whether total or partial, permanent or occasional.

Lunacy: Imbecility of mind, a weakness of mind between the limits of absolute idiocy on the one hand and of perfect capacity on the other. [*Ingram* v *Wyatt*, (1828) 1 Hag. E.R. at p 401]

AN INSANE DELUSION is not merely an unfounded, though colourable, suspicion [*Chambers* v *Queen's Proctor*, (1840) 2 Curt. at p. 448], nor even a belief which no rational person would have entertained [*Waring* v. *Waring*, (1848) 6 Moo. P. C at 353, 13 E.R. 715] It is a persistent and incorrigible belief that things are real which no rational person can conceive that the patient when sane would have believed [*Mudway* v *Croft*, (1843) 3 Curt 671]

Lunatic.

A LUCID INTERVAL is not necessarily a complete restoration to mental vigour previously enjoyed [Ex parte *Holyland*, (1805) 11 Ves 10, 8 R.R 67, *per* Lord Eldon, I .C] nor is it merely the cessation or suppression of the symptoms of insanity [*per* Sir John Dodson, in *Dyce Sombre* v. *Prinsep*, (1856) 1 Deane, at p. 110]

MORAL INSANITY is a term used to denote a case in which the character of a person is suddenly changed for the worse, or is by nature insanely perverted. Moral insanity is a generic term covering all those cases in which the moral faculties are more obviously deranged than the mental (kleptomania, erotic mania, pyromania, homicidal mania, irresistible impulse, etc).

PARTIAL INSANITY, is a term applied to the case of a man who is admittedly subject to an insane delusion who yet can reason sanely upon that delusion, and calmly argue with himself as to the extent to which he is not overpowered in its influence on his actions

The term "UNSOUND MIND" is used in many statutes indiscriminately to signify *non compos mentis* and lunacy Lord Eldon said that it imported a state contradistinguished both from idiocy and from lunacy, and yet such as to justify a commission [In re *Portsmouth*, (1815) Shelf Lun. 5] It does not necessarily import incapacity. As to lunacy, *see* the following older works on Lunacy, Bridal Collinson (a work of great value), Shelford, Phillips The chief modern text-books are Pope, Archbold, Elmer, Wood Renton, Heywood and Massey Lunacy Practice, Fry, Pitt-Lewis, Insane and the Law

"**Lunatic**" defined (*See also* Criminal lunatic, Person of unsound mind) Act 34, 1858, S. 32; Act 35, 18[illegible]8, S 23, Act 36, 1858, S 18, Act 27, 1866, S. 2, Act 14, 1912, S 3.

LUNATIC Sir William Blackstone, in the second volume of his Commentaries, p 304, says a lunatic or *non compos mentis* is one who had understanding, but, by disease, grief, or other accident, has lost the use of his reason A lunatic, indeed, is properly one that hath lucid intervals, sometimes enjoying his senses, and sometimes not, and that frequently depending on the change of the moon But under the general name of "non compos mentis", which Sir Edward Coke says is the most legal name, are comprised not only lunatics, but persons under frenzies, or who lose their intellects by disease, those that grow deaf, dumb, and blind, not being born so, or such, in short, as are judged by the Court of Chancery incapable of conducting their own affairs.

The term lunatic is variously derived from the Latin *luna* in consequence of the supposed influence of the moon on mental disorders (*cp* Hale, 1 P C. 31), and from lucidus, with reference to the lucid intervals enjoyed by sufferers from lunacy. Formerly "lunacy" necessarily indicated incapacity while it lasted It has now lost this precise signification, and is used in a great variety of senses and juxtapositions, sometimes as a general term (16 & 17 Vict. c. 96, 16 & 17 Vict. c 97) sometimes in contradistinction to idiots and imbeciles (Idiots Act, 1886, Eng) sometimes (in sec 341 of the Lunacy Act, Eng. 1890) as including "idiot" and frequently in conjunction with the terms "unsound mind" and "insane."

Lunatic.

A man of weak memory or of even more weak mental strength cannot be called an idiot or a man of unsound mind. (16 M.L T 529=26 I.C. 344)

LUNATIC. "A Lunatic is one who hath had understanding but, by disease, grief or other accident, hath lost the use of his reason He is, indeed properly one that hath lucid intervals, sometimes enjoying his senses and sometimes not, and that, frequently depending upon the change of the Moon." (*Jacob*)

"Lunatic" means an idiot or person of unsound mind Act IV of 1912 (Lunacy) S 3 (5).

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs. [Act XXVII of 1866 (Trustees), S. 2]

LUNATIC A person of undeveloped mind incapable of managing a large estate but not subject to delusions is not a lunatic within S 2, Lunacy Act XXXV of 1858 (2 A L J 154)

Lunatic, in 8 & 9 Vict c 100, S 44, included "every person whose mind is so affected by disease that it is necessary for his own good to put him under restraint." [*R.* v *Bishop*, (1880) 5 Q B D 259] This section is now embodied in sec 315 of the Lunacy Act, 1890 (53 & 54 Vict c. 5).

Lunaticus, qui gaudet in lucidis intervallis A maxim meaning "He is a lunatic who enjoys lucid intervals".

Lungi (*H.*) A coloured check worn by Muhammadans as a dhoti, also a turban with a check or gold border.

"Lurking house trespass" defined. Act 45, 1860, s. 443

Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house trespass". (*Penal Code*, S 443)

"Lurking house-trespass by night" defined. Act 45, 1860, S 444.

Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night". (*Penal Code*, S. 444.)

Lustful Lascivious.

Lycanthropy. Madness in which the patient imagines himself and acts like some beast.

Lying about. Cattle may be "lying about" a highway although there may be a keeper with them [*Lawrence* v *King*, (1868) L.R 3 Q B. 345]

Lying in grant. Passing by deed or charter, as incorporeal hereditaments.

Lying in livery. Fees and fee holds in land.

Lying in wait Waiting and watching in ambush with intent to kill In criminal law, hiding in ambush or concealment; being in ambush for the purpose of injuring or murdering another. (*Bouvier L Dict*)

Lying on "Lying on", as used in a will giving to testator's daughter that part of his land lying on the north east side of a certain road, imports, in law, as well as in fact, that the land extends to and borders upon the boundaries designated in the description.

"Lymph" defined. *See* Animal-lymph Lymph is colourless fluid from tissues or organs of the body, exudation from sore, matter from cowpox visicles used in vaccination.

Lynch law. "Lynch law", as defined by Anderson, is the action of private individuals, organized bodies of men, or disorderly mobs, who, without legal authority, punish, by hanging or otherwise, real or suspected criminals, without trial according to the forms of law. Lexicographers refer the origin of the term to the practice in the seventeenth century of a Virginia farmer named Lynch, who during the American War of Independence was presiding justice of the County Court of Pittsylvaria. The Court in that state for the trial of felonies sat at Williamsburg, 200 miles distant Horse thieves who had established posts from the north, through Virginia, into North Carolina, were frequently arrested and remanded to Williamsburg for trial. Not only was the attendance of witnesses at that distance rendered uncertain, but when they did appear they were sure to be confronted by false witnesses for the outlaws. Moreover, the difficulty of conveying the accused to Williamsburg was increased, and the sitting of the Court made uncertain, by the presence of the British under Cornwallis Accordingly the justices of the County Court of Pittsylvania assembled, and Judge Lynch proposed that since, for Pittsylvania, the Court at Williamsburg had practically ceased to exist, and, in consequence, heinous crimes went unpunished, the Court over which he presided should try all felonies committed in the country, that is to say, the place of trial was to be changed by mere resolution The plan was adopted with good results The thieves were disbanded, many being hanged, which was the lawful penalty The change of forum was against the words of the law, but justified, Lynch and others held, by the circumstances. Bouvier defines "Lynch Law" as a common phrase used to express the vengeance of a mob inflicting any injury and committing an outrage upon a person suspected of some offence. (*Words and Phrases*)

Lysol. Lysol, a liquid substance in which coal tar is the origin of the elements that give it its determining characteristic

M

"M of gospel" As used after the signature of a person signing a marriage certificate, sufficiently indicates that the person who signed the certificate was a minister of the gospel.

Mabab. (*H*) Literally, mother and father; but applied as an appellation to any one when invoking pity or protection.

Macadamizing is one mode of paving, deriving its name from the man who invented that particular mode.

The word "macadamize" has a fixed and definite meaning, and refers not only to the kind of material to be used in covering a street or road, but also the manner in which it is to be laid. It means to cover

a street or road by the process introduced by Macadam, which consists of the use of small stones, of a uniform size, consolidated and levelled by heavy rollers.

Mace An ornamental staff borne before Magistrates and certain other official persons, *e g*, the Speaker of the House of Commons, as a symbol of authority (*Ency of the Laws of England.*)

Machine. A construction more or less complex, consisting of a combination of moving parts or simple mechanical elements as wheels, levers, etc, with their supports and connecting framework, calculated to constitute a primemover, or to receive force and motion from a prime mover or from another machine, and transmit, modify, and apply them to the production of some desired mechanical effect or work (*Webster Dict · Ame Cyc.*)

The term "machine" includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result, but, when the result or effect is produced by chemical action, or by the operation or application of some element or power of nature, or of one substance to another, such modes, methods, or operations are called "processes".

"MACHINE" includes the Engine that works it (*Stroude*)

Machinary. "Machinery" is defined by Webster as the working parts of a machine, engine, or instrument, arranged and constructed so as to apply and regulate force, as the machinery of a watch, the means and appliances by which anything is kept in action Worcester's definition is "an artificial work which serves to apply or regulate moving power or to produce motion; an engine, a piece of mechanism".

'MACHINERY', implies the application of mechanical means to the attainment of some particular end by the help of natural forces (*per* Davey, L.J., *Chamberlayne* v. *Collins*, 70 L.T. 217).

Looms of the sort which the weaver works with his hands and feet known as a "maggom" or European loom are not "machinery" within the Madras District Municipalities Act The machinery contemplated in the Act is machinery worked by power such as steam, water, or electrical power and machinery worked by hand such as handlooms or sewing machines is excluded (92 I C. 873=27 Cr. L J 361= 23 L W 413=1926 M W N. 463=A I R. 1926 Mad 430)

The question in the appeal was whether a tank belonging to the appellants and used in connection with the supply of water to Calcutta, was "machinery" within the meaning of S 101 of the Bengal Municipal Act so as to be excluded in assessing the holding upon which it was for the purpose of Municipal rates under that Act. *Held*, affirming the High Court, that the tank was not "machinery" within the meaning of S 101.

A completed machine or a number of completed machines may, of course, according to the ordinary use of language, be properly described as "machinery", so may those parts or members of a machine which, when assembled as it is styled, form a complete machine, so also may some of such of those parts which, when assembled with the other necessary parts, would form a complete machine be styled "machinery".

The word "machinery" must mean something more than a collection of ordinary tools. It must mean something more than a solid structure built upon the ground, whose parts either do not move at all, or if they do move, do not move the one with or upon the other in interdependent action with the object of producing a specific and definite result [(1921) 48 I A 435=49 I C 190 (201-2)=15 L W. 25=26 C.W N 761=67 I C 926=1922 P.C 27]

Machinist A constructor of engines and machines, one skilled in their construction; one well versed in the principles of machines and their construction (*Webster Dict*)

Macleod Seer (*Mal*) Macleod seer is 25 to a para of salt or 3,000 to a garce Of the Madras seers there appear to be 4,800 to the garce in measuring salt. (*Log. Mal Man*)

Madad-maash. Grant of means of subsistence in general, also, assignment of revenue for the support of learned or religious Mahomedans, or of benevolent institutions, by the Government

Madad-i-maash, (*also Madad-Maash*) (P.) Aid for subsistence A revenue grant An article in the rent roll called Tamar Jama, consisting of allotments of lands, as a subsistence to learned or religious men, an item of the *Mazkurat*, and a branch of *Aimah* grants. (*Mac Mahn Law, Bad. Pow.* i, 531, iii, 448,)

Madagadadapatra (*Karn*) A bond for repayment of an advance to cultivators

Madagu (*Karn*) A sluice to let off water from a tank

Madai (*Tem*) A sluice, a channel, from a pond or the like for irrigation

Mada ma'sh [*See* Madad Maash] A grant of means of subsistence, an assignment for support of a religious house

Made A receiving order or other order of Court is "made" on the day it is pronounced, not when it is drawn up [In re *Manning*, (1885) 30 Ch D. 480 *See also* 4 All. 278=2 A W N. 26.

The expression *"made on Appeal"* in S. 39 of the Letters Patent, Calcutta High Court applies to cases in which the order has been made in the exercise of revisional jurisdiction or the power of superintendence vested in the Court. 9 I.C. 183 (185).

Made up. A railroad train is said to be *made up* when the cars are coupled together, and the train is completed, ready to start out on a trip over the road.

Madehola (*Karn*) Rich land.

Madhouse. *See* Asylums; Lunatic Asylams.

Madhyastanmar (*Mal*) Arbitrators answering to Panchayat, though the latter term is not known in Malabar Dharmakarti is also used. The Karnavar of the Tara answered to the village panchayat of Eastern districts. (*Log. Mal. Man.*)

Madi.

Madi A rice-field, a garden bed.

Madi field. Field sown with cotton and tur crops together, the usual practice being to have one row of tur for every five rows of cotton.

Madman. Locke defined a madman to be one who reasoned correctly from false premises, but that would embrace a very large class who are commonly supposed to be sane

MADMEN differ from idiots, in that mad men put wrong ideas together, and so make wrong propositions, but argue and reason right from them, but idiots make very few or no propositions, and reason scarcely at all.

Madness Consists of a perversion of the intellect. (*See* Lunacy, Insanity, Unsoundness of mind)

MADNESS, says Sir William Scott, "is a state of mind not easily deducible to correct definition, since it is the disorder of that faculty with which we are little acquainted, for all the study of mankind we have made but a very moderate progress in investigating the texture of the mind, even in a sound state In disease, where it has pleased the Almighty to envelop the subject matter in the darkness of disease, it will probably always continue so, but the effects of this disordered state are pretty well known We learn from experience and observation all that we can know, and we see that madness may subsist in various degrees, sometimes slight as partaking rather of disposition or humour, which will not incapacitate a man from managing his own affairs or making a valid contract. It must be something more than this—something which if there be any test is held by the common judgment of mankind to affect his general fitness to be trusted with the management of himself and his own concerns

Madras (*H*) A college an academy. (*Wil. Gloss.* 316.) A place for reading, a school

"Madras Act" defined Act 10, 1897, s 3 (30)

"MADRAS ACT" shall mean an Act made by the Governor of Fort St. George in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892 or the Indian Councils Acts, 1861 to 1909 or the Government of India Act [Act X of 1897 (General Clauses) S 3 (30)

"Madras Town of" defined. *See* City of Madras, Presidency of Fort St. George, Presidency of Madras, Presidency-town, Town of Madras.

Madumu (*Tel*) A stone sluice of channel by which the water flows to the fields.

Madupubidu (*Tel.*) Waste lands attached to the lands cultivated by a farmer, that he may bring them also into cultivation.

Mafi (*H.*) Remitted, free: applied to lands exempt from the payment of revenue An assignment of land revenue—the smaller grants and those not made to ex-rulers, or men of much local influence, or on account of distinguished political or military services are usually called m'afis. (Compare jagir.)

Mafrur. A person who has totally abandoned his place of residence and rights over the grove, is a *mafrur or farar ho Jawe.* [12 I C. 409 (Oudh).]

Magisterial.

Maganam (*Tam.*) A division of a revenue district, usually consisting of six or seven villages, the sub-division of a tahsildari. (*Wil. Gloss.*)

Magane (*Kanara*) An administrative sub-division of a district a group of landholdings (*Cf.* Amisham). (*Bad. Pow* iii. 147.)

Magani (*Tel*) Wet cultivation, the cultivation of low lands by artificial irrigation, lands that are so irrigated

Magazine A receptacle in which anything is stored, a storehouse, a warehouse.

"Magazine of explosives" includes, any ship or other vessel used for the purpose of keeping any explosive.'

Magis de bono quam de malo lex intendit A maxim meaning "The law favors a good rather than a bad construction"

Magis jus nostrum quam jus alienum servemus. A maxim meaning "we should follow our own rather than a foreign law."

Magisterial Pertaining or suitable to a master or Magistrate, of the rank of a magistrate, authoritative, proud, dignified.

MAGISTERIAL, MAJESTIC, STATELY, POMPOUS, AUGUST, DIGNIFIED The magisterial is something assumed, and is therefore often false, the majestic is natural and consequently always real. an upstart, or an intruder into any high station or office, may put on a magisterial air, in order to impose on the multitude, but it will not be in his power to be majestic, which never shows itself in a borrowed shape, none but those who have a superiority of character, of birth, or outward station, can be majestic · a petty magistrate in the country may be magisterial, a king or queen cannot uphold their station without a majestic deportment

Magisterial respects the authority which is assumed, stately regards splendour and rank. pompous regards personal importance, with all the appendages of greatness and power a person is magisterial in the exercise of his office, and the distribution of his commands, he is stately in his ordinary intercourse with his inferiors and equals, he is pompous on particular occasions of appearing in public, a person demands silence in a magisterial tone, he marches forward with a stately air; he comes forward in a pompous manner, so as to strike others with a sense of his importance.

Majestic is an epithet that characterizes the exterior of an object; august is that which marks an essential characteristic in the object, dignified serves to characterize a person's action: the form of a female is termed majestic, when it has something imposing in it, suited to the condition of majesty, or the most elevated station in society: a monarch is entitled august in order to describe the extent of his empire. A reply is termed dignified when it upholds the individual and personal character of a man as well as his relative character in the community to which he belongs. (*Crab.*)

Magisterial precinct.

Magisterial precinct. A justice's precinct or magisterial precinct is a local sub-division of a county, and has no corporate au onomy Its boundaries are fixed by orders and serve to define his territorial jurisdiction

Magister rerum usus, magistra rerum experientia A maxim meaning "use is the master of things, experience is the mistress of things."

"Magistrate" (defined *See also* Presidency Magistrate, District Magistrate, Sub-Magistrate and Honorary Magistrate), 44-5 V c. 69, s 39, Act 30, 1852, s 12, Act 20, 1856 s 61, Act 5, 1857, s 27, Act 11, 1857, s 11, Act 25, 1857, s 11, Act 36, 1858, s 18, Act 24, 1859, s 1, Act 5, 1861, s 1, Act 16, 1861, s 21, Act 1, 1867, s 1, Act, 25, 1867, s 1, Act 20, 1869, s 4, Act 1, 1872, s 26 *expln*, Act 9, 1874, s 3, Act 19, 1876, s 2, Act 1, 1878, s 3, Act 2, 1886, s 3 (6), Act 10, 1887, s 5 (7), Act 14, 1895, s 5 (5), Act 12, 1896, s 3 (*d*), Act 10, 1897 s 3 (31), Act 6 1901, s 2 (1) (*n*), Act 15, 1908, s 2 (1), Act 17, 1908, s 2 (1) (*vi*), Ben Act 4, 1866, s 3, Ben Act 3, 1867, s 1, Ben Act 4, 1871, s 1, Ben. Act 9, 1871, s 1, Ben Act 5, 1876, s 6 (11), Ben Act 3, 1884, s 6 (8), Ben Act 1, 1893, s 3 (4), Ben Act 1, 1899, s 3(25), Bom Act 5, 1878, s 3 (5), Bom Act 1, 1901, s 3(28), Bur Act 1, 1898, s 2 (36), Bur Act 4 1902, s 3 (8), E B & A Act 1, 1909 s 5 (37); Mad Act 3, 1864, s 2, Mad Act 2, 1866, s 2, Mad Act 7, 1871, s 1, Mad Act 3, 1879, s 3, Mad Act 5, 1882, s 2, Mad Act 4, 1884, s 3 (*x*), Mad Act 5, 1884, s 3 (*xiv*), Mad Act 2, 1888, s 2, Mad Act 4, 1889, s. 3 (*n*), Mad Act 1, 1891 s 3 (18), Mad Act 1 1903, s 3 (1) (*e*), P Act 1 1898, s 2 (32), U, P Act 1, 1892, s 2 (5), U P. Act 1, 1904, s 4 (27), U P Act 4, 1910, s 3 (5), Reg 5, 1800, s 2 (10), Reg. 7, 1891, s 3 (9), Reg 1, 1894, s 10 (*f*)

MAGISTRATE A public officer, invested with some part of the executive or judicial power of the state He exercises criminal jurisdiction

"Of Magistrates, some are Supreme in whom the Sovereign Power of the State resides, others are subordinate deriving all their authority from the Supreme Magistrate, accountable to him for their conduct and acting in an inferior capacity or secondary sphere" (*1 Bl Com* 146).

The President of the United States is chief magistrate of the nation The Governors are the chief Magistrates of their respective states.

In most modern Acts the meaning of '*Magistrate*" would be ascertained by referring to its Interpretation Clause and would often be controlled by the context.

"Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force [Act X of 1897 (General Clauses), S 3 (31)]

"The Magistrate" includes the Magistrate of the district, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate subordinate to the Magistrate of the district to whom the Magistrate of the district may have made over any duties under this Act. [Ben Act III of 1884(Municipal), S 6, Cl 8 *See also* 22 I C. 979]

Magistrate of a division.

(2) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class,", the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-Divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," the expression "Magistrate of police" shall be deemed to mean "Presidency Magistrate," and the expression "Joint Sessions Judge" shall mean, "Additional Sessions Judge" (*Crim Pro Code*, S 3)

"Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police and outside those limits a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. [European Vagrancy Act (IX of 1874), S. 3]

The definition of "*Magistrate*" in S 3 (31) of the General Clauses Act is not exhaustive and is inapplicable to the interpretation of an ordinance [44 M L. J 428=17 L W 426=1923 M.W N 288=32 M L T. (H C) 195=72 I C 381 (2)=24 Cr L J. 381 (2)=A I. R 1923 Mad 598]

The word "*Magistrate*" in S 122, Cr P. Code, implies the Magistrate who had made the order or his successor in office who is properly seized of the inquiry The same is the case with the superior Courts mentioned in S 123, Cr P Code. (5 S.L R. 87=11 I C 594=12 Cr L J 410)

"Magistrate of the district" defined. (*See also* District Magistrate) Act 5, 1861, s 1, Act 3, 1864, s 1, Act 22, 1867, s 2, Act 10, 1882, s 3; Ben Act 6, 1870, s 1, Ben Act 5, 1876, s 6 (10); Ben Act 3, 1884, s 6 (7), Ben Act 3, 1885, s 5

The words "the Magistrate of the District" shall denote the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure [Foreigners Act (III of 1864), S 1]

The words "Magistrate of the district" shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled. [Police Act (V of 1861), S. 1]

"Magistrate of the district" means the Chief Magistrate in a district [Ben. Act III of 1884(Municipal), S 6, Cl. 7.]

"*Magistrate of the district*" includes any Magistrate subordinate to the Magistrate of the district, to whom he may delegate all or any of his powers under this Act [Ben Act III of 1885 (Local Self-Govt), S 5 *See* 3 M H.C. App. 29]

"Magistrate of a division of a district" defined Act 10, (1882), S. 10.

Magistrate of Police.

"Magistrate of Police" defined (*See also* Police Magistrate.) Mad. Act 4, 1867, S. 2 (1).

Magna Carta is the Charter of Liberties granted in the ninth year of King Henry III. It is called, either for the excellency of the laws therein contained, or because there was another Charter called the Charter of the Forest, established with it, which was the less of the two, or in regard of the great troubles in obtaining it, and the remarkable solemnity in denouncing excommunication and anathemas against the brakers thereof (*Tomlins Law Dic*)

The circumstances leading up to the acceptance of the terms of the barons, and the promulgation of these in Magna Carta belong to the region of the history of constitutional law The statute was originally promulgated in 1215, was re-issued in 1216 and 1217, and in the shape which it finally took in 1225. Since that date, it has been confirmed thirty-four times, the last monarch who thus expressly recognized it being Henry VI. The charter is, says Coke, declaratory of the common law, but this is not quite accurate, for in many respects it altered the law (*See* M'Kechnies' Magna Carta, 1905)

Magna Charta The name usually given to the charter originally granted by King John, and afterwards re-enacted and confirmed by parliament (more than thirty times according to Coke), in the reigns of Henry III and Edward I (*Black L Dict, Ame Cyc*)

Magna componere parvis A maxim meaning "To compare great things with small things"

Magna culpa dolus est A maxim meaning "Great neglect is equivalent to fraud" (*Cyclopedic L Dict, Ame Cyc*)

Magna est dilictum seipsum interficere quam alium. A maxim meaning "It is as great a crime to kill one's self as to kill another" (*Morgan Leg. Max*)

Magna fuit magnae quondam reverentia chartae A maxim meaning 'Great was the reverence formerly paid to the Great Charter" (*Burrill.*)

Magna negligentia culpa est, magna culpa dolus est A maxim meaning 'Gross negligence is a fault, gross fault is a fraud"

Magnetic healing Defendant was charged with practising medicine without a licence, and it appeared that he was a magnetic healer The Court, in discussing the question as to whether it was within the authority of the Legislature to discriminate against a particular school of practitioners, said: 'We are not judicially advised that 'magnetic healing', so called, is so far based on co-ordinate arranged and systematized knowledge that it can be termed a science or that any considerable degree of instruction is a prerequisite to its prosecution, as it is actually practised by those whose knowledge does not go beyond the manifestation of the phenomena of magnetism. The Legislature, in judging of a matter of this kind, was authorized to give heed to the opinions of scientific men and, judged by such authority, it appears that, while there is a practice of magnetic healing knowledge, its prosecution is attended with danger to such a degree that the Legislature was justified in its effort to take it out of the hands of the empirics Thus J G McKendrick, Professor of the Institute of Medicine, University of Glasgow, in concluding his

Mahal

learned article on "Animal Magnetism" in the Encyclopaedia Britannica, says: 'It is evident that animal magnetism, or hypnotism, is a peculiar physiological condition excited by perverted action of certain parts of the cerebral nervous organs, and that it is not caused by any occult force emanating from the operator Whilst all the phenomena cannot be accounted for, owing to the imperfect knowledge we possess of the functions of the brain and chord, enough has been stated to show that, just in proportion as our knowledge has increased has it been possible to give a rational explanation of the phenomena It is also clear that the perverted condition of the nervous apparatus in hypnotism is of a serious character, and therefore that these experiments should not be performed by ignorant empirics for the sake of gain, or with a view of causing amusement" (*See* the same cited in Words and Phrases.)

Magnificence. Greatness in deed or appearance pomp, grandom, nobility.

Magnificence, splendour, Pomp. A large army drawn up in battle array is a magnificent specific from the immensity of their numbers and the order of their disposition, it will in all probability be a *splendid* scene if there be much richness in the dresses, the *pomp* will here consist in such large bodies of men acting by one impulse and directed by one will, hence military pomp, it is the appendage of power, when displayed to public view. (*Crab*)

Magus Dignum trahit ad se minus dignum. A maxim meaning "The more worthy draws to itself the less worthy" (*Burrill Dict*)

"Mahadevi". "Mahadevi" signifies a married woman [1 R 1933 P.C. 7=141 I C 1=37 L W. 57= 1933 P C 20=64 M L.J. 1 (P C.)]

"Mahal" defined Act 18, 1881, S 4 (7), Bom. Act 5, 1879, S 1, U P Act 3, 1901, S 4 (4), U P. Act 1, 1903, S 2, U P Act 3, 1899, S. 3.

MAHAL Unit of revenue assessment, an estate.

MAHAL. (*H*) A province, a district, as the Jangalmahals, on the west of Bengal, a division of a Taluk, or district yielding revenue according to assessment. In the language of the regulations a Mahal, or Mahal is called an estate, and is defined as any parcel or parcels of land which may be separately assessed with the public revenue, the whole property of the revenue payers in the Mahal being held hypothecated to government for the sum assessed upon it (Beng Reg xlii 1803, ch 2, Sec 2 and xi. 1822, Sec 29) Under the Mohammedan government the term was also applied to a head or department of Miscellaneous revenue derived from a tax on some particular class of things or persons, as *Mahal-i-mahal*, the duty on fish; *Nimak-mahal*, the revenue derived from the monopoly of the sale of salt; *Mahal-abkari*, the department of the excise: so in karnata, *Mahalu* meant revenue, or sources of revenue, chiefly territorial, but comprising other objects In Puraniya, the items of the village Hasto-bud, were termed Mahals: the word is in fact very vaguely employed In Cuttack, the plural Mahalat was applied to the lands which paid the full assessment to the state, in contrast to the Kilajat, or military estates paying a quit rent only, (*Wil Gloss*)

Mahal, an estate, a group of lands having some tenure or other connection, regarded as a unit for

Mahal and Mouza.

Land Revenue purposes, (*Bad Pow* 1 170) (N W P Pj &c) under the village or mahal system of Land Revenue Settlement (*Bad Pow* II. 30) (Bo) a division of a taluka the modern equivalent of the 'tarf' or 'peta' (*Bad Pow* III 308) (*Cachar*), use of the term in (see *Bad Pow.* III 434, 438)

Mahal and Mouza The word 'mahal' within Oudh Laws Act, 1876 and Oudh Land Revenue Act, 1879 means any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue and for which a separate record-of-rights has been prepared, 'Mauza' or village is, as a general rule a separate mahal, but a mahal may consist of two or more Mauzas or parts of Mauzas, or only a portion of one Mauza [7 Ind Cas 196 (198)=14 C W N 817=12 C.L J. 40=32 A 351=20 M L J 609 (P C)]

Mahaldar (*Mar*) A government officer in charge of the revenue and police of a district (*Wil Gloss* 319)

MAHALDAR (*Beng*) An officer in charge of a district, also the occupant or proprietor of an estate (*Wil Gloss* 319)

Mahal-jhadti (*Mar*) Annual rough statement of the receipts and disbursements of a district (*Wil. Gloss.* 319.)

Mahalkari. (*Bom*) Officer in charge of mahal, subordinate to the mamlatdar of the taluka (*Bad Pow.* III. 308)

Mahalla (*H*) A division of a town, a quarter, a ward (*Wil Gloss* 319) A ward of a town; sometimes especially the Muhammadan quarter

Mahalladar, (*H*) [See *Mahaldar,*] An officer in charge of a particular quarter of the town, bound to give information to the Darogha of the police of any disorderly conduct, or the presence of culprits (The Bengal Regulation XXIII of 1793) seems to have contemplated a female agent also in each ward, subordinate to the police, under the title of Mohaladarin Beng Reg XXII, 1793, sec 30 (*Wil Gloss*)

Mahal sadir-warid, (*Mar*) Contingent charges in the fiscal and police administration of a district (*Wil Gloss.* 319)

Mahall, sarai, (*P*) The women's apartments (*Mac. Mah Law*)

Mahalwar Procee ing by mahals or estates, not by individual holdings (*Bad Pow* II 30.)

Mahanadu (of a village) The great assembly, a sort of parliament of the leaders of agricultural castes.

Mahant, (*H*) The head of a religious establishment of the medicant orders of the Hindus. (*Wil. Gloss* 317)

A Mahant or the head of a Math is not a "trustee" in the sense in which that term is understood in English law The only law as to a Mahant and his office, functions and duties, is to be found in custom and practice, which is to be proved by testimony. But though a Mahant is not a trustee, in the English sense, he is, in view of the obligations and duties resting on him, answerable, as a trustee in the general sense, for the proper administration of the institution of which he is the head. The existence of a very wide discretion in the Mahant as to the application of the income of the Math or *asthal* is by no means inconsistent with a fiduciary obligation so to manage the property of the Math that the objects for which the Math exists shall be effectively served. (14 Pat 379=156 I C 1093=8 R P 62=16 Pat L T. 35=A I,R. 1935 Pat 111).

Mahanti. (*H*) The office and appointment of a Mohant (*Wil Gloss*)

MAHANTI A man of the writer or accountant caste the caste itself. (*Wil Gloss*)

Mahar or mhar (*Bo*) A village watchman and messenger (*Bad Pow.* III 309)

Maharaja (*great Raja*), a complimentary title of the larger ruling chiefs, but may indicate the sovereign over a tribal or other confideracy of Rajas or chiefs. (*Bad Pow*)

Maharani A queen, either in her own right or as wife of a raja

Maharashtra (*S.*) The Maratha country. (*Wil. Gloss* 318)

Mahasil (*or Masul*) "Mahasil" when used in connection with cultivation means the produce of land [57 I C 750 (Pat)]

Mahasulu (*Tel*) The produce of land, the harvest, the crop.

Mahatarfa A rate levied in Mysore State on lands in Government villages and Inam villages. (7 Mys L J 213)

Mahbas (*H*) A prison, a place of confinement. (*Wil Gloss* 319)

Mahbus-khana (*H*) A jail, a prison. (*Wil. Gloss* 319)

Mahbus-sanad. (*H*) A warrant of committal. (*Wil Gloss* 319).

Mahduda Village forest in Hazara.

Mahita (*Berar*) Revenue contract formerly held by a desmukh (*Bad Pow* III. 375).

Mahomedan Law. The expression rules of Mahomedan Law is not the same as 'the laws of the koran'. [8 Pat. 690=115 I C. 546=1929 Pat. 81 (F. B)]

Mahout An elephant-driver The mahout sits on the neck of the elephant, he bids it move forward by applying the pointed end of his goad, stops it by the but end and turns it by pressing his leg to the neck.

Mahr. (*A.*) A marriage settlement of property on the wife; it is a necessary concomitant of a contract of marriage among Mahomedans; a marriage portion or gift settled on a wife before marriage. Dower

MAHR is dower or marriage-gift among Mahomedans settled upon a wife before marriage. it may be either *Muajil*, prompt, immediate, or *muwajil*, deferred to some specified time. If no amount of

Mahr Maujjil

dower is agreed upon at the time of marriage, the wife is entitled to a customary provision, *Mahr-i-misl*, or one suited to her condition The written contract of dower or marriage settlement. (*Wil Gloss.* 320)

Mahr maujjil (*A*) Exigible dower

MAHR MUWAJJID (*A*) Deferred or inexigible dower.

Mahr-i-misl. Customary dower.

Mahr-nama or Mahr-nameh (*H*) A deed of dower or settlement; the document in which it is specified. (*Wil Gloss* 320).

MAHR NAMEH, is a deed of settlement of dower

Mahram (*A*) Any one to whom the women's apartments are open.

Mahrana (*H*) A fee paid to the Kazi at a wedding. (*Wil Gloss* 320)

Mahsud The name of a clan of Waziris They occupy the eastern slopes of the Sulaiman range north of the Gumal pass, and are divided from out frontier by the Batanis. They have proved themselves one of the most incorrigible tribes

Mahsul. (*H*) Collected, levied, revenue duty, public income from any source, as land, customs, excise, and the like the produce or return realized from anything (*Wil Gloss.* 320) Standing crops (14 P R. 1905=130 P L R 1904), a toll or tax (Sindh), the L R 'Mahsuli' was used of land that was allowed to pay in cash instead of in kind (*Bad Pow* III 329).

Mahto (*Ch Nagpur*). The official or king's headman and accountant under the Dravidian village system (*Bad Pow* I 119, 578).

Mahtoai The official landholding of the mahto (*Bad. Pow*)

Mahtum. The name of a low vagrant caste in the Punjab, some have been converted to Islam and some to Sikhism

Mahzar. (*Tel. H.*) A general application or representation, a statement laid before a Judge, a public attestation, or a document attested by a number of persons professing to be cognisant of the circumstances of the case, and submitted with their signatures, to the Court, also in the Northern Sirkars, a written agreement given by the Ryots conjointly to the Government for the performance of any duty.

Mahzar-nama (*H*) A written collective attestation, a petition by several persons jointy; list or roll of persons present. (*Wil Gloss* 321.)

Maid or Maiden. An unmarried woman, a "Virgin', a young unmarried woman, a girl; a female child; a female who has preserved her chastity; a female servant.

Maihem or Mayhem. Corporeal hurt, by which a man loseth the use of any member proper for his defence in fight. "As if a man's skull be broke, or any bone broken in any other part of the body; a foot, hand, finger, or joint of a foot, or any member be cut off; if by any wound the sinews be made to

Mail Bag.

shrink, or where any one is castrated, or if an eye be put out, or any fore-tooth broke, etc. But the cutting off an ear or nose, the breaking of the hinder teeth, and such like, was held no Maihem by the Common Law as they were not a weakening of a person's strength, but a disfiguring and deformity of the body" (*Glanv* lib. 4 c. 7 *Bract* lib 3 tract 2. *Brtton* c 25) Maihem is accurately thus defined; the violently depriving another of the use of such of his members as may render him the less able, in fighting either to defend himself, or to annoy his adversary. (Brit lib 1 c 25 1 Hawk P.C. c. 44. *Tomlins Law Dic*)

Maihemium est homicidium inchoatum A maxim meaning 'Mayhem is incipient homicide." (*Burrill*)

Maihemium est inter crimina majora minimum, et inter minora maximum. A maxim meaning "Mayhem is the least of great crimes, and the greatest of small crimes". (*Black L Dict.*)

Mai jumala The words in the sale deed "*mai jumala hakuk mutaallika har kism*" are not sufficient to convey the right of way. (6 L L. J. 176=1924 Lah. 488)

"Mai jumala hakuk mutaallika har kism" The words in the sale deed "*mai jumala hakuk mutaallika har kism*" are not sufficient to convey the right of way (6 L.L J 176=1924 Lah 488)

"MAILS" defined. Act 14, 1866, S 2

The term 'mail' means a bag, valise, or portmanteau used in the conveyance of letters, papers, and packages by any person acting under the authority of the post master general from one post office to another. Each bag so used is a 'mail' of which there may be several in the same vehicle, as the "way mail", the "general mail", the "letter mail", or the 'newspaper mail"

"Mail", in respect of transmission of postal articles includes, "every conveyance by which post letters are carried, whether it be a coach or cart or horse or vessel or any other conveyance, and also a person employed in conveying or delivering post letters.

A mail is a portable receptacle in which letters or packets of written or printed sheets are conveyed by post to an appointed station.

The word "mail" with some changes in the orthography, is found in many languages. In its original signification, it means a wallet, sack, trunk, or bag, and in connection with the post office means the carriage of letters, whether applied to the bag into which they are put, the coach or vehicle by means of which they are transported, or any other means for their carriage and delivery by public authority.

"Mail bag" defined. 54-5 V. c. 31, S. 9; Act 6, 1898, S 2 (*c*).

The expression "*mail bag*" includes a bag, box, parcel or any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article; Act VI of 1898 (Post Office) S 2, Cl. (*c*). *See also* 54 and 55 V. c. 31, S 9.

Mail matter

Mail matter. The term "mail matter" in modern statutes in reference to the mails is a term which has grown in modern legislation to be a substitute for the old-fashioned phrase "letters and packets", and is a generic term, which includes all matters which may be transmitted in the mails.

A letter or packet, to become part of the mail matter, must get into the mail in some of the ordinary ways provided by the postal authority.

"Mail ship" defined. Act 6, 1898, S 2 (*d*)

The expression "*mail ship*" means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of India or Her Majesty's Government or the Government of any British possession or foreign country. [Act VI of 1898 (Post Office) S. 2, Cl. (*d*)]

MAILED A letter is "mailed", when it is dropped in a street letter box as well as when it is deposited in the post office.

"Mailed," as applied to a letter, means that the letter was properly prepared for transmission by the service of the postal department, and that it was put in the custody of the officer charged with forwarding the mail.

Maim To inflict some permanent injury, to cripple "To maim is to wilfully and maliciously cut off or otherwise deprive a person of a hand, arm, finger, toe, foot, leg, nose, or ear, to put out an eye, or in any way to deprive the person of any other member of his body" *See also* L B R (1872-1892), 404

"A *Maim* [*See Mayhem*] is bodily harm whereby a man is deprived of the use of any member of his body, or of any sense which he can use in fighting, or by the loss of which he is generally and permanently weakened, but a bodily injury is not a Maim merely because it is a disfigurement" (*Steph. Cr* 142)

Main As an adjective, principal As a noun, a pipe through which a gas company or water company distributes gas or water

"MAIN" in respect of electricity means, any electric line which may be laid down by the undertakers in any street or public place, and through which energy may be supplied, or intended to be supplied by the undertakers for the purposes of general supply"

Main Branch (*of a river*). The "main branch" of a river is not necessarily that in whose channel water may be found at all seasons of the year at a point farthest removed from its mouth The largest volume of water is one indication of the main stream The length of the stream is another. It is obvious that two branches may pursue such a course that the source of the longest may be nearer the mouth of the river than that of the shortest.

Where one branch of a small stream has by consent retained the name of the main river in exclusion of others, that branch must be considered, in the absence of other circumstances, as the true boundary intended by the parties in a deed which calls for the stream by its name

Main channel. Bed of a river over which the principal volume of water flows; the middle of the principal channel from bank to bank

Maintain.

It is difficult to define the "main channel" of a river with precision, but it is sufficient to say that it is that bed of a river over which the principal volume of water flows

Mainpernor. "Mainpernors differ from Bail in that a Man's Bail may imprison or surrender him up before the stipulated day of appearance, Mainpernors can do neither, but are barely sureties for his appearance at the day Bail are only sureties that the party be answered for the special matter for which they stipulate, Mainpernors are bound to produce him to answer all charges whatsoever" (*3 Bl Com* 128)

Mainprise The taking or receiving of a person into friendly custody, who otherwise might be committed to prison upon security that he should be forthcoming (*Tomlin's L Dict*) "Mainprise,' is when a man is arrested, then the Judge may deliver his body to certain men to keep and to bring him before him at a certain day, and these be called Mainpernors and if the party appear not at the day assigned the mainpernors shall be amerced" (*Termes de la Ley*) To let one to Mainprise is to commit him to those that undertake he shall appear at the day appointed (*Tomlin's Law Dic*) Mainprise is wholly obsolete, but its nature has been recently considered in *In re Nottinghom Corporation*, (1897) 2 Q B 502, where an unsuccessful attempt was made to identify it with bail It is dealt with historically in *Pollock and Maitland*, Hist Eng Law, vol II. pp 582-588.

Mainprise and Bail. Manwood makes this difference between Mainprise and Bail He that is mainprised is said to be at large, after the day he is set to Mainprise, until the day of his appearance, but where a man is let to bail by any Judge, etc. until a certain day, there he is always accounted by the law to be in their ward of time, and they may, if they will, keep him in prison, so that he that is so bailed shall not be said to be at large, or at his own liberty (*Manwood*, p 167 *Tomlin's Law Dic*)

Main sea That part of the sea which lies not within the body of the country, that part of the sea lying outside of the *terroe fauces* or points on the opposite shore sufficiently near to enable persons standing on one shore to distinctly see and discern with the naked eye what is doing on the opposite shore It is also known as the "ocean", and is distinguished from the "sea", which has been said to include arms or branches of the sea which lie within the *fauces terrae*, or at least may be within the body of a county.

Mainsworn Forsworn, by making false oath with hand (main) on book (*Cyclopedic. L. Dict.*)

'Maintain" defined Act 7, 1903, S. 2 (*h*); Act 7, 1904, S. 2 (4)

MAINTAIN Webster's International Dictionary defines "maintain' to mean to hold or keep in any particular state or condition, to support; to sustain, to uphold, to keep up, to keep possession of, not to surrender, to continue; not to suffer to cease or fail, to bear the expense of.

To "maintain" an action is not always the same as bringing an action, it connotes the idea of supporting an action which has already been brought (per *Platt, B, Moon* v *Durden.*) "Maintain", as used in

Maintain.

a charter of a city authorizing it to set up, establish, keep, and maintain ferries, signifies to hold, preserve, or keep in any particular state or condition, not to lose or surrender, to continue

A deed containing a covenant requiring a certain passage way to be left open and "maintained" by the abutters in common should be construed to mean maintained in good order for use

The word "maintain" does not mean to provide or construct, but means to keep up, to keep from change; to preserve.

"The verb 'to maintain' signifies to support what is already brought into existence" "To repair" means to restore to a sound or good state after decay, injury, dilapidation, or partial destruction

"Maintain" also means to bear the expense of, to support, to keep up, to supply with what is needed

Maintenance Officious interference in another's suit, a legal term signifying the interference in a suit by some one having no direct interest in it

MAINTENANCE also means of subsistence, supply of necessaries and conveniences, aid, support, assistance; the support which one person who is bound by law to do so, gives to another for his living (*Bouvier L Dict*)

'Right of maintenance' generally includes 'right of residence' also (116 I.C. 105=1929 Sind 102.)

"Maintenance", as used in Ss 488 and 489, Cr P Code, does not include children's schooling fees [*Re Breed*, 45 L. Ch 191, *not foll* U B R (1887-1901), p 106, *ref.*) (1907-09) U B R 1=4 I C 758=11 Cr L J 40.

In the statute relating to bastardy, and providing that the father should be liable for the maintenance of the child, maintenance includes the expenses of lying-in or child-bed expenses, such as board, wages, and other charges attendant on nursing the child, and necessary expenditures at the birth of the child.

Within the meaning of a statute giving the Court jurisdiction to charge a man with the maintenance of his illegitimate child, the term "maintenance" includes the reasonable cost of supporting the child and the necessary expenses incident to its birth and burial, but does not include the value of services rendered by an attorney for the mother in the bastardy proceedings.

The marriage expenses of a junior member of a Malabar *tarwad* or *Aliyasanthana* family should be defrayed by the *Karnavan* or *Ejman* provided that the family has adequate funds and the *Karnavan* or *Ejman* has no valid and proper objections to the marriage Such expenses form part of a junior member's "right to maintenance" 49 Mad 407=1926 M.W.N. 413=95 I C. 401=24 L.W. 269=A I.R. 1926 Mad. 723=50 M.L.J. 434.

MAINTENANCE CHILAVU. The English word "Maintenance" is not a correct equivalent of the Malayalam word "chilavu" of which it is generally understood to a translation The term means "expenses" and is comprehensive in its significance (A.I.R. 1926 Mad. 723.)

A TRUST FOR MAINTENANCE AND EDUCATION does not, by implication, cease at 21, but is frequently one for life. (*Bayne* v. *Crowther*, 20 Beav. 400.)

Maintenance, works of.

THE "MAINTENANCE" OF A STREET within the meaning of an ordinance providing for the reconstruction and maintenance of a street for a period of years has the same meaning as the word "repair."

MAINTENANCE OF ROAD In a Municipal Act or Regulation '*Maintenance*" used in relation to any road or public work, includes the reasonable improvement and enlargement of such road or work" (*Stroude*)

Maintenance of a main road, within S. 13 of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict c 77), includes the removal of snow when it makes the road impassable [*Guardians of Amesbury* v *Justices of Wilts* (1883) 10 Q B D. 480

Maintenance of a prisoner, in Ss 4, 57, of the Prison Act, 1877 (40 & 41 Vict c *21*), includes the expenses of inquiring into the mental state of a prisoner who becomes insane, and of removing him to a county lunatic asylum, and maintaining him there during the currency of his sentence [*Mews* v. *R* (1882) 8 App Cas 339]

MAINTENANCE OF A PRISONER from public funds "includes all such necessary expenses incurred in respect of a prisoner for food, clothing custody, safe conduct, and removal from one place of confinement to another or otherwise," from the time the order of committal is made out until his death or discharge; and includes, the cost of his conveyance from where he is committed to his place of confinement, and the cost of his food, etc when in a lunatic asylum during the term of his imprisonment" (*Mullins* v *Surrey*, 51 L J Q B 145; L R 7 App Cas, *Stroude*)

THE "MAINTENANCE" OF PERSONS, includes their lodging and payment of the necessary rent, rates, and taxes

"Maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependents of the person against whom the order is made (Act XVIII of 1921 (Maintenance Orders Enforcement) S 2]

MAINTENANCE AND CHAMPERTY Maintenance (as) in the phrase champerty and maintenance The unlawful taking in hand, or upholding of a cause or person, metaphorically drawn from the succouring of a young child that learns to go by one's hand, and in law is taken in the worst sense (*Tomlins Law Dic*)

The doctrine of *Maintenance* is confined to civil and does not apply to criminal proceedings. (*Grant* v *Thompson*, 72 L T 264)

To assist an action out of charity is not *maintenance*, even though the charity be not discreet (*Harris* v. *Brisco*, 55 L J Q B. 423).

Maintenance, works of and alteration of works. 'It is very difficult to define what *works of maintenance* are. It is a very large term, and useful and reasonable ameliorations would not be excluded by it * * * Where a Ry Co has to maintain a Railway, I should not at all doubt for a moment that in 'maintaining' it they might use any reasonable improvement If, for instance, the Ry. were originally fenced with wooden palings and it was sought, when

Maira

they decayed, to replace them by an iron structure, I should say, that was fully within their power If the Ry was originally made in a deep cutting and it was thought desirable to face the cutting with brick to make it more secure, I should say, that was fair maintenance and if the Ry Station was found inconvenient and it was desirable when you came to repair it to alter the arrangement of the rooms or to alter the access or form of access and so to ameliorate at the same time that you repaired, I should say, all that was within the powers of maintenance given by the legislature. That is, that you may maintain by keeping in the same state, or you may maintain by keeping in the same state and improving the state,—always bearing in mind that it must be maintenance as distinguished from alteration of purpose". (*Per* Jessel, M R in *Sevenoaks Ry.* v *L C. & D Ry* 48 L. J. Ch 513, 11 Ch. D 625)

Maira (*Northern India*), A loam soil (*Bad Pow.*)

"Mairstry" defined. Mad. Act 1, 1903, S. 3 (1) (*f*)

Maitra (*S*) means what is received from friends (*Not partible*)

Majal (*S Kanara*) Land bearing two crops (irrigated) (*Bad Pow* III 146 note) Middling land one crop paddy, second crop dry grains. (*Sund Iyer's Mal Law*)

Majara (*S E. Pj*). An outlying hamlet, dependency, or offshoot of an original village location (*Bad Pow* II. 684)

Majesty A title of honour given to Emperors and Kings For many centuries this title was claimed as exclusively belonging to the Emperors of the Holy Roman Empire: In later times, the title was used by the sovereigns both of England, France and other countries It is frequently said that Henry VIII was the first English sovereign to be styled 'Your Majesty", but although it would seem that the title came into more general use during his reign it was in fact employed by some of his predecessors on the throne" (*See* Bryce, Holy Roman Empire, ed. of 1906, p 259, *Ency of the Laws of England*)

"Majhahas" defined [*See also* Majhas (or maghas)] Ben Act 2, 1869, S 1

The word "majhahas" shall include the tenures mentioned in the preamble to the Ben Act II of 1869 as bhet-kheta [Ben. Act II of 1869 (Chota Nagpur Tenures), S 1.]

Majhas (*or magh-has*) A certain lot or area in the village, the produce of which went to the chief (Manjhi) and later, to the ruler (Ben. Ch. Nagpur) (*Bad Pow.* I. 119, 577)

Majjattappan. (*Mal*) A caste of Vellalars or cultivating sudras residing in certain Hobalis of the Palghat Taluk, who are said to have come from Kangayam in the Coimbatore District and who are now so intermixed with the Nayars as not to be distinguished from them except when a Tiyan addresses them and gives them this appellation instead of Nayar In Kangayam they are called *Mannadi.* (*Log. Mal Man.*)

'Majkuri'. (*H*) The term *'majkuri'* according to Mr. Field was an older name of a Sikmi taluq which means older than the Decennial Settlement and the

Majum

definition of the word in Wilson's Glossary is much more favourable to the position of the tenants, because it shows that the tenure holders holding a *'majkuri'* taluq were only to pay the revenue through the zamindars (44 C L J. 385=99 I.C 258=A I R 1927 Cal 168)

Major continet in se minus A maxim meaning "The greater includes the less"

Major numerus in se continet minorem. A maxim meaning "The greater number contains in itself the less"

"Major union" defined Mad Act 5, 1884, S 3(*iv*)

Majore poena affectus quam legibus statuta est, non est infamis A maxim meaning "One affected with a greater punishment than is provided by law is not infamous" (*Cyclopedic L. Dict*)

Majoris summae minor in est A maxim meaning "on the greater sum the less is included,"

Majority. More than half, the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights

The word is usually referred to the only method of determining the acts of many, by a majority in numbers, The major part of members of parliament enact laws, and the majority of electors choose members of parliament; the act of the major part of any corporation is accounted the act of the corporation, and where the majority is, there, by the law, is the whole." (*Tomlins Law Dic*)

Majority of the corporation "Majority of the body" as used in a corporation by-law providing that corporate action might be taken and by-laws made and repealed by "the corporate body or a majority thereof" means a majority of the collective body of individuals who are members of the corporation, and not a majority of the capital stock "The term 'body' certainly refers to the collective numbers of individuals who are incorporated, and not to the aggregate amount of property, and the term the 'majority of the body' can therefore only mean a majority of the individuals composing the body".

Majority of stockholders. The phrase "majority of shareholders", as used in an Act relating to the removal of the offices of a corporation and providing that, on petition by a majority of the shareholders, proceedings for the removal of officers may be taken means a majority of the persons holding shares, and not the holders of a majority of the stock.

The words "majority of stockholders" of a corporation when used without other qualifications, indicates a majority in interest, and not in number.

Majority, age of. A person attains his or her majority at the age of eighteen (sometimes twenty-one), which age is completed on the day preceding the anniversary of the person's birth. (*See* Indian Majority Act.)

A person attains his majority at 12 O'clock at night of the day preceding his 18th or 21st birthday as the case may be. (*See* Indian Majority Act, Secs. 2 & 3, 1 Bl Com. 463:Day.)

Majum. (*H*) A decoction prepared from hemp leaves with water, ghi, sugar and milk. Also a preparation of bhang, chillies, and sugar for chewing.

Majumdar.

Majumdar (*H.*) A native revenue accountant, one who keeps the account of the Jama, or government collections under the native governments. In Hindustan he was the revenue accountant of a district subordinate to the Amil or manager, and removeable at pleasure · he kept the accounts of the revenue settlements, audited those of the kanungo, and possessed a general power of scrutinizing the revenue accounts and assets of his district.

Majus dignum trahit ad se minus dignum. A maxim meaning "The more worthy draws to itself the less worthy" (*Bouvier*)

Majus est delictum seipsum occidere quam alium A maxim meaning "It is a greater crime to kill one's self than to kill another" (*Burrill.*)

Makan. (*H*) A place, a station, an office. (*Wil. Gloss. 322*)

Makan Champal Makan champal being a covered building is a Makan [10 I C 186 (Oudh)]

Makandar (*H*). An officer, a place-man. In the south of India it is commonly applied to a person in charge of, or having the management of, a mahommedan mosque (*Wil. Gloss 322*)

Makandari. (*P*) The ownership of a place The office of Superintendent of a mosque (*Mac. Mhn Law*)

Make To bring into being, to cause to exist, to create, to construct, to frame, to fashion

"To MAKE", in itself involves a conscious act on the part of the maker" [*per* Collins, J., *Dickins* v *Gill*, (1896) 2 Q.B. 310]

"To make", in the mechanical sense, does not signify to create out of nothing, for that surpasses all human power It does not often mean the production of a new article out of materials entirely raw, but generally consists in giving new shapes, new qualities, or new combinations to matter which has already gone through some other artifical process

The word "makes" in S. 18 of the Press (Emergency Powers) Act should *prima facie* be taken to refer to the creator or author, and cannot be taken to include the printer *qua* printer. The printer is not the maker. (1937 M W N. 1067)

The word "makes" means creates or brings into existence. (38 All 430, *Rel on.* 111 I C. 435=29 Cr L.J. 851=A.I R 1928 Lah. 681.)

The terms "MAKE", "ORDAIN", CONSTITUTE, "ESTABLISH", AND "PASS", as used with relation to a grant of legislative authority to a municipal corporation to enact ordinances, mean the same thing

Make a contract, in the English Stamp Act, 1891 (54 & 55 Vict c. 39), S 59. See *Muller & Co.'s Margarine, Ltd.* v. *Inland Revenue Commissioners*, (1900) 1 Q.B. 310

Make a valuable security, in 24 & 25 Vict. c 96, S. 90, inserted to include instruments which were not valuable securities prior to delivery. [*R.* v *Gordon*, (1889) 23 Q B.D. 359 (C.C.R.); cf. *Revelstoke* v. *Inland Revenue Commissioners*, (1898) App. Cas. 565.]

Making a price.

Make an application. The words "he shall not be entitled to make an application under this section" in O. 21, R. 89, C P.C, cannot mean merely "he shall not be entitled to present an application" under the section, but the word "make" must mean "carry on" or "prosecute". (23 C. 958).

Make an award. To 'make an award' is to form and publish a judgment on the facts.

Make away with. Words charging the plaintiff with being the father of a bastard child by his sister-in-law, of which she was pregnant, and that he wished the defendant to "make away with it", are actionable *per se*, as importing a wish that the defendant should destroy the child as soon as born They import that the plaintiff applied to defendant to commit murder.

The words "made away with", in a charge that a person made away with some of another's logs, do not of themselves import a charge of larceny, and therefore are not slanderous *per se*

Make Good. To "make good" damage to property means to restore things to the condition in which they were before [*per* Cockburn, C J., in *Crofts* v *Haldane*, (1867) 36 L.J. Q.B. 85, 88].

Make it worth In a warranty that land was worth a certain sum, and that if it was not worth such sum, the grantor, "would make it worth" that sum, to "make it worth" means to make up the deficiency if the land was not worth the specified sum

"Make use of" an invention in the Patents Act, 1883 (c 57) See *British Motor Syndicate Co.* v. *Taylor* (1900) 1 Ch 577.

Maker and Drawer. Throughout the Neg Ins. Act, a clear distinction has been made between the words *"maker"* and *"drawer"*, the former word being used in a more general sense as applying to promissory notes, negotiable instruments and cheques, while the word "drawer" is restricted to bills of exchange or cheques only, and is nowhere used in connection with promissory notes. (18 Lah. 580=39 P.L.R. 958=A I.R. 1937 Lah 259.

Maker and endorser "The difference between a maker of a note and an indorser or guarantor is that the contract of the first, by its terms, imports an unconditional obligation to pay money, and that of the last, by its terms, imports a conditional obligation"

Making. The word "making", as used in patent laws, is as applicable to machines as to compositions of matter

"Making a false document" defined. Act 45 1860, S. 464.

Making a Market. A method sometime adopted by company promoters prior to share allotment in order to force a demand. Brokers are commissioned to buy in the market at a price slightly beyond the nominal value, a jobber is arranged with to sell them, and an artificially manipulated demand is started.

Making a price. Quotation by a jobber of the price at which he is prepared to buy or to sell.

Making award

Making award does not mean delivery of award The two indicate different stages 27 All. 459=2 A L J. 201=1905 A W N 47; nor does it mean filing the award (13 Bom. 119)

Making a will In common parlance, when it is used with reference to a will, it signifies the signing, sealing, and publication of it

Making an order The expression "the making of an order" in S. 77 of the Registration Act (III of 1877), means not merely recording it in writing but communicating it to the party concerned so as to bind him by it. (28 B. 8=5 Bom L.R. 622)

Making false entry. "Making an entry", within an Act making it a misdemeanor for any officer or clerk to make, with intent to defraud, any false entry in any book, embraces the erasure of figures constituting part of a number already written on an account book of a national bank, and a writing of different figures in place of those erased.

Making promissory note payable to bearer on demand A payee endorsing a promissory note in blank cannot be said to have "made a promissory note payable to bearer on demand" When a promissory note is drawn up, signed and delivered to the payee, it is 'made' once and for all and a subsequent endorsement is no part of the "making". [22 Ind Cas 77 (78)]

"Makful" and "mustaghraq" The words "makful" and "mustaghraq" are terms of art which are known to every conveyancer and in the proper context, connote only one meaning and no other. They are terms to indicate that a simple mortgage has come into existence [157 I.C 811=8 R.L. 141= 37 P.L R. 301=A I R. 1935 Lah 527.

'Makful and Mustagrah,' meaning of. *See* 11 A L.J 580=19 I.C. 661. *Also* 11 A.L.J. 570=19 I.C. 658.

Makkathayam (*Mal*) The ordinary law of inheritance from father to son. (*Moore's Mal Law*) System of inheritance through sons. (*Sun Iyer's Mal Law*)

Makkuvan (*Mal*) A tribe of fishermen. (*Moore's Mal Law*)

Makrani (*H*) An immigrant from the Makran coast. They are Sunny Musalmans and serve as soldiers and watchmen

Makta .(*A*) A contract, an agreement, in Telugu rent, rate

MAKTA. (*Lit.*) Contract or lease In the Southern districts a type of revenue free grant.

Maktagutta (*Tel*) A contract or lease of land at a fixed stipulated rate, not liable to extra cesses, the land so held

Makta-kaula (*Tel*) An agreement under which land is held at an annual quit rent for a stipulated period

Mal. A prefix meaning ill or evil; from the Latin "malus," bad or ill,(as) Malfeasance, malformation, maladministration, etc. Also an abbreviation for "Malabar"

MAL. (*A.*) Wealth, property, Revenue, rent derivable from land. (*Mac. Mah. Law*) The

Malabar, revenues of

full Land Revenue, *i e*, revenue not including the siwai (Ben),(*Bad Pow.* i 223, 268, 420) Property in general, term for full land revenue in Bengal

Malabar A tract of country in the west coast of India, account of (*Bad Pow.* iii. 151). Supposed exceptional state of landed rights in (*Bad Pow.* i. 95, iii 144) Dravidian origin of institutions in (*Bad Pow* iii 157) the Nayar caste of (*Bad Pow.* i. 135, 6, iii 157) Land tenures compared with Coorg. (*Bad Pow* iii 469) Mr Logans views of the tenures (*Bad Pow* iii 164) Development of the tenures (*Bad Pow* iii 171) Modern form of(*Bad Pow* iii. 172, 3) Mortgage or kanom tenures of) *Bad Pow* iii 161, 7) Tenants and their protection (*Bad Pow.* iii 177.) See also *Logan's Malabar Manual.*

Malabar, revenues of Different sources of the former revenues of Rajas in Malabar, are mentioned in *Mr Logan's Malabar Manual*

ADIMAPPANAM OR TALAPPANAM Adimappanam was the yearly payment of 1st and 2nd fanams which every Adiyan was obliged to pay to his Tamburan or patron, whether he was Raja, Naduvali, Desavali, or other great man

ADINYNYA URUKKAL OR WRECKS Rajas alone were entitled to shipwrecked vessels or Adinynya Urukkal

ANKAM. Was as high as 1,000 fanams or 250 rupees, was only leviable by the Raja. It was the money which he received as umpire between two combatants under the system of battle-wager These quarrels arose from private feuds and were meant to wipe off stains cast upon an individual's honor.

A preparation and training for twelve years preceded the battle in order to qualify the combatants in the use of their weapons. They were not necessarily the principals in the quarrel, generally their champions They undertook to defend the cause they had espoused till death It was indispensable that one should fall Battle-wager or trial by single combat was a source of considerable revenue to the Rajas in former times, for each combatant was obliged to deposit with the Raja a certain sum of money Women were the chief origin of the quarrels which occasioned these combats They were confined to the Nayars They were thought necessary to prove or disprove the charge of seducing women under particular protection It was not indispensable that the parties themselves in the quarrel should be the combatants Champions were admitted and, in general, substituted The champions settled all their worldly affairs before the onset of the combat, for it was unavoidable that one must fall A notification of twelve years took place before the day of combat.

ATTADAKKAM OR ATTALADAKKAM. Under the name of Attadakkam the Raja was entitled to the property of a Naduvali, or Desavali or an Adiyan (vassal), or any person who held lands in free gift, dying without heirs, and no Datt Swikaram or adoption could be valid without his sanction. A Naduvali and Desavali enjoyed the same privilege with respect to persons in the same manner dependent upon them.

CHANGNGATAM. Whenever a person wished to place himself under the special protection of a man of consequence, he paid from 4 to 64 fanams annually

Malabar, revenues of.

for Changngatam, or companionship or association, making some times an assignment of particular lands for the payment It was meant for the payment It was meant for the maintenance of a kind of honorary sentinel, a belted official peon of the present times, whom the patron furnished to the person who sought his protection, but this implied also a necessity for the patron to assist with a stronger force if required in his defence

CHERIKKAL OR PRIVATE DOMAINS. Rajas also possessed extensive private domains in proprietary right, whether by purchases, lapses, or escheats, called Cherikkal

Rajas and Naduvalis were besides entitled to EIMMULA and MUMMULAR, cows having 5 or 3 dugs. to CHENKOMBU, or cattle that had destroyed a man or any animal, to KANNADAPPULLI, cattle having a white spot near the corner of the eye, ANAPPIDI elephants, PUVAL a buffalo having a white spot at the tip of the tail, KOMBU, the tusks of an elephant killed, KURAKA, the leg of a deer, wild hog or other eatable wild animal, VAL, the tail of a tiger, TOL, its skin, and KINAITIL PANNI, a hog fallen into a well (*Log Mal Man*)

CHUNKAM Customs—land and sea—upon imports and exports By some said to be only $2\frac{1}{2}$ and 3 per cent and by others as high as 10 Naduvalis were also entitled to inland customs

ELA. The systematic usurpation of the estates of such neighbouring Rajas or Naduvalis or other chiefs as might be incapacitated from poverty or other cause from governing The Sastra says the peculiar duty of a king is conquest.

KALCHA This answered to Nazzur, or presents of from 2 to 1,000 fanams, according to the circumstances of the parties, of congratulation and condolence, were made to Rajas and Naduvalis by all ranks of people on occasions of the ascension of Rajas to their pattam or throne, of the opening of a newly-built palace, a marriage, a birth, the ceremony of placing rings on a child and a death in the family of Rajas and Naduvalis

KOLA OR CHARADAYAM Forced contributions levied by Rajas for particular emergencies according to the circumstances of the individuals.

PILA Fines levied in the same manner for intentional crimes according to the magnitude of the crimes and the circumstances of the individuals. It might be a total confiscation of property.

PONNARIPPU. The sifting of gold, or generally, gold dust, was considered a royalty and the perquisite of the Rajah or the Naduvali as the case might be.

PULAYATTA PENNA. Pulayatta-penna or degraded women, were a source of profit to Rajas; outcastes, not exclusively, but chiefly of the Brahman caste, they were made over to Rajas to take care of. As a compensation for their maintenance and for the trouble of preventing their going astray again, the family of the outcaste were in the habit of offering to the Rajas as far as 600 fanams or Rs. 150. The Rajas then disposed of them for money, but their future condition was not exactly that of a slave. They were generally bought by the coast merchants called Chetties, by whom they had offspring who

Mala in se.

came to be intermarried among persons of the same caste, and in a few generations their origin was obliterated in the ramifications of new kindred into which they had been adopted.

PURUSHANTARAM. Literally, the death of the man Sums varying from 120 to 1 200 fanams levied by Rajas from Naduvalis, Desavalis, heads of commercial corporation, from the holders of lands in free gift or under conditional tenure, and generally all persons holding sthanam, manam, or official dignities in the State They also, in common with other Janmis or private proprietors levied Purushantaram from their tenants as a fine of entry upon the decease of a proprietor or tenant It has been supposed that the Rajas were entitled under the head of Purushantaram to a certain share of the property of deceased Mappillas, but the prevalent opinion is that there was no fixed proportion, and that it was not levied generally upon the Mappillas, but was confined to individuals possessed of wealth and holding situations or privileges dependent upon the will or favour of the Raja. The Purushantaram was sometimes enjoyed by the Desavali and Naduvali, instead of the Raja, according to the extent of right and authority which was granted or usurped, and on all occasions they were exclusively entitled to the Purushantaram of their own private lands.

RAKSHABHOGAM Rakshabhogam payments were much to the same extent and for the same purposes. It implies an engagement of protection generally without being limited to any specific aid in the first instance.

TAPPU Fines levied by Naduvalis and Desavalis from their inferiors, and by Rajas from them, for accidental unintentional crimes.

Malachia (*H*) A class of thieves and dishonest persons in Bengal, now apparently extinct (*Wil. Gloss.* 3 24)

Mal-adalat (*H*) A revenue Court in olden times in which all questions between the government and landholders, and between them and their tenants, or officers charged with the collections, and over which the Collector presided, were determined. the courts were abolished by Beng. Reg II. 793 (*Wil Gloss* 322)

Maladministration Wrong administration

Mala fides is opposed to *bona fides*, and applies to the case of a person who possesses a property not his own, and which he knows, or might on reflection know, not to be his own. (*Tomlin's Law Dict*)

A *mala fide possessor* of real estate is one who is in possession knowing that the title is contested by a third person claiming a better right to it.

The taking of an estate after notice of a prior right makes one a *mala fide purchaser.*

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. A maxim meaning "Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided". (*Black. L. Dict,*)

Mala in se. (*Lat*) Acts bad or wrong in themselves. Acts are said to be *mala in se* which are

Mala in se.

contrary to the law of nature or rules of morality, such, for example, are murder, theft, robbery, and other crimes.

Acts *mala in se* are felonies or breaches of public duties, injuries to person or property, outrages upon public decency or good morals, and breaches of official duty, when done wilfully or corruptly.

Mala prohibita Acts *mala prohibita* are acts forbidden by law but not otherwise wrong.

Mala quia prohibita. Acts wrongful because prohibited by human laws, such acts are not necessarily wrongful in themselves, or *mala in se*, but have been rendered so by positive law Under numerous statutes various acts are forbidden, and the doing of them is punishable, which, however, are not criminal in themselves, these are prohibited acts (*mala quia prohibita*).

Malaranai In the District of Madura and Tinnevelly the word "Malaranai" is used in a very loose manner to indicate not only transaction wholly colourable but also transactions intended to have some other legal effect than the one which the language of the document imports. (1917 M.W.N 674=6 L.W 703=42 I C. 827)

Malaria A morbid condition produced by exhalations from decaying vegetable matter in contact with moisture, giving rise to fever and ague and many other symptoms, often characterized by their tendency to recur at definite and usually uniform intervals

Malay Federated States. The Malay Federated States, which are situated south of Siam, consist of the four native states of Perak, Selangor, Penang, and Negri-Sembilam, and cover an area of 2700 square miles, being about half as large as England, (*See* Colonial Office List; The Statesman's Year-book, British Malaya, by Sir Frank Swettenham, Hand book to the Federated Malay States, by H Conway Belfield, *Ency. of the Laws of England*)

Malba (*H*) Fund out of which common village expenses are defrayed. A collective term for the public expenses of a village community, such as the cost of entertaining visitors and of amusements, remuneration of such village servants, as are not paid by Government, fines imposed on the village, temple expenses, and the like.

Malba-kharch. Village expenses.

Malconduct. Official misconduct.

"MALCONDUCT" means essentially the same thing as "actual fraud and wickedness", though it is a less strong term, and does not include mere negligence, which did not proceed from evil motives or wickedness of purpose, but from mere omission of official duty.

It is malconduct in the office of an attorney and counsellor at law for him to insert an advertisement in a newspaper reading. "Divorces legally obtained very quietly, good everywhere. Box 2324, Denver"—for it is against good morals, and is a false representation and a libel on courts of justice, for which the superior Courts may strike his name from the roll of attorneys.

Male members of family.

Male agnate. *See* A.I.R. 1937 P.C. 242=41 C.W. N. 1126=(1937) 2 M.L J 711 (P C).

Male heir "In order to entitle a person to inherit by the description of 'Heir Male' 'Heir Female' of the body, it is essential, not only that the claimant be of the prescribed sex but, that such person trace his or her descent entirely through the male or female line, as the case may be." (*Stroude*)

The words "male heirs" are not words of inheritance, but are words of gift. (1927) 55 I A 74=52 B 176=47 C L J 198=30 Bom L.R. 282=107 I C 119 =27 L W 400=I.L T 40 B 86=26 A.L J 560=32 C. W N 925=A.I.R. 1928 P C. 33=54 M.L.J 245.

The use of the words 'male heirs' in a will do not import any limitation There is no reason under the Indian Law why a different effect should be given to that expression in a deed of family settlement. A. I R. 1925 P C. 306 (P C)

"Male heirs in the descending line" The words "male successors in the descending line" are not explanatory, but are used in a restrictive sense to exclude female heirs 7 C L J 291

Male issue The expression "male issue" is not confined to sons, but will include male descendants of the son. 8 B.L.R. 400

A will devising property to the "male issue" of a certain person means the whole class of male descendants, whether descended through or from males or females (*Words and Phrases.*)

Male line The words "male line," in a will may, under certain circumstances, be equivalent to "*ex parte paterna*"

Male line · Female line "The expression 'Female Line' is one habitually, I believe, used less strictly than the phrase '*Male Line*' The idiom of the English language seems to authorize me to designate all the maternal kindred as relatives in the Female Line, whether related to his mother on her father's side, or otherwise; but not to authorize an equally free application of the term 'Male Line' (Knight-Bruce, L J., in *Sayer* v. *Bradly*, 5 H L Ca. 873)

Male line Male lineal Properly means a line "commencing with a male and continued through males" (*Per* Earl Selborne, *D'Amico* v. *Trigona*, 58 L.J P.C. 23; 13 App. Ca. 815.)

"MALE LINEAL' has been construed to mean as though it were one word signifying, 'male in a line of males' It may be read as though it were a compound word, 'Male-line" (*per* Bramwell, B, *Thellusson* v. *Rendlesham*, 28 L.J. Ch. 953; 7 H.L. Ca. 429.) (See also *Stroude*).

Male lineal descendant. The term "male lineal descendant," in a will, was held not applicable to a male person claiming in part through a female.

The illegitimate son of a man belonging to one of the Sudra castes by a kept woman, or continuous concubine, is a "male lineal descendant" within the meaning of S. 22 of the Agra Tenancy Act, 1901. 30 A. 508=5 A.L.J. 629= (1908) A.W.N. 229.

"Male members of family" defined. Act 14, 1882, s. 78, *Expln.*

Male nephew.

Male nephew. "Male nephews" means sons of a brother to the exclusion of sons of a sister. (*Lucas* v. *Cuddy*, Ir. Rep 10 Eq 514, *Stroude*)

Male res se habet cum quo virtute effici debeat a tentatur pecunia A maxim meaning "That is a bad case wherein one attempts to accomplish with money that which ought to be prompted by virtue." (*Morgan Leg. Max.*)

Maledicta expositio quae corrumpit textum A maxim meaning "That is a bad exposition which corrupts the text" (*Morgan Leg. Max.*)

Malediction Evil speaking, curse, calling down of evil to a person.

MALEDICTION, CURSE, IMPRECATION, EXECRATION, ANATHEMA *Malediction* signifies a saying ill, that is, declaring an evil wish against a person. *Curse* signifying a bad wish declared upon oath, or in a solemn manner *Imprecation* signifies a prayingdown evil upon a person. *Execration* signifies the same as to ex-communicate, with every form of solemn *imprecation*. *Anathema* signifies a setting out, that is, a putting out a religious community as a penance The *malediction* is the most indefinite and general term signifying simply the declaration of evil, *curse* is a solemn denunciation of evil the former is employed mostly by men, the later by God or man; the rest are species of the curse pronounced only by man. The *malediction* is caused by simple anger, the *curse* is occasioned by some grievous offence, men, in the heat of their passion, will utter *maledictions* against any object that offends them, God pronounced a *curse* upon Adam, and all his posterity, after he fall

The term *curse* differs in the degree of evil pronounced or wished, *imprecation* and *execration* always imply some positive great evil, and in fact as much evil as can be conceived by man in the anger, the *anathema* respects the evil which is pronounced according to the canon law, by which a man is not only put out of the church but held up as an object of offence. (*Crab.*)

Malefactor He who is guilty, or has been convicted, of some crime or offence, an evil doer, a criminal.

Maleficia non debent remainere impunita, et impunitatis affectum continuum tribuit delinquenti A maxim meaning "Evil deeds ought not to remain unpunished, and impunity affords continual incitement to the delinquent" (*Morgan Leg Max.*)

Maleficia propositis distinguuntur. A maxim meaning "Evil deeds are distinguished from evil purposes." (*Burrill*)

'Maleki.' [*See* Malik] The word Malek or Maleki is often used in a sense which cannot on investigation justify the suggestion of an absolute owner or ownership in law. In the present case the term was held to have been used in the sense of permanent tenancy 91 I.C. 265=27 Bom.L R. 267=A.I. R. 1925 Bom. 294

Malfeasance Evil doing, ill conduct, the doing of what one ought not to do. the commission of some act which is positively unlawful, the doing of an act which is wholly wrongful, the unjust performance of some act which the party had no right to do, or which he had contracted not to do. (*Ame Cyc.*)

Malguzari.

MALFEASANCE is the doing of an act which is wholly wrongful and unlawful.

'Malguzar" defined. Act 18, 1881, s. 4 (9), Reg. 2, 1877, s. 2 (*d*).

MALGUZAR Lit. *Payer of the 'Mal'* Farmer of revenue in pre-British days converted at the first regular settlement into a proprietor. Malguzar is a person who pays revenue either to Government or a Zamindar, either on his own account or as a representative of others.

Primarily the word 'Malguzar' means rent-payer, it may also equally be applied to a tenure-holder or a raiyat In North Behar, however, it is generally applied to a tenure-holder 78 I C. 492=A.I.R. 1925 Pat. 194. *See also* 40 I C 42

The word "mulguzari' ordinarily means revenue, and not rent, much less actual rent (A.I.R. 1925 Pat. 421, *Reversed*) 106 I C. 571=54 I A. 432=26 A L.J 19=8 P L T 813=32 C W N 260=47 C L J. 90 =A I.R 1927 P C 250=54 M L J 293 (P.C).

A *malguzar* has no proprietary right in the land at all and the mere fact that settlement operations are conducted with him or the revenue is due from him does not confer any right to proprietary possession of the land on the *malguzar*. 108 I.C. 521=A.I.R. 1928 Lah 690.

There is usually in the villages of Kumaun a padhan or malguzar who is the head of the village community, collects the revenue and is also a police-officer, he manages the village common land and its affairs generally subject to the approval of the hissedars, and provides coolies for carriage, etc, according to custom. His remuneration commonly takes the form of padhanchari land, which is held by him rent and revenue free, as sirtan of the state as hissedar The holding by a padhan-hissedar of padhanchair or malguzari land in a khaekari village is not a holding of khudkasht. He holds it as a sirtan and not with hissedari right in it. 1938 A L.J. 4.

Malguzari (*H.*) Revenue assessment, or land capable of paying assessment. Paying revenue, assessed

It is a term applied to assessed lands, or lands paying revenue to government, also the rent of such lands. (*Fifth Report.*)

The word "malguzari" ordinarily means revenue, and not rent, much less actual rent (A.I R. 1925 Pat. 421, *Reversed.*) 106 I C 571=54 I A. 432=26 A L J 19=8 P L.T. 813=32 C.W.N. 260=47 C L.J. 90 =A.I R 1927 P C. 250=54 M.L.J. 293 (P.C.), *see also* 4 O L J. 148=40 I C. 42.

Inclusion of malguzari land within a municipal area does not change the rights and liabilities of the malguzar and the tenants *inter se*. Nor is the malguzar an owner as defined in S. 3 of the C. P. Municipalities Act. 20 N.L.J 238.

"Malguzari," "Malguzari Bakaya". The word Malguzari or the words Malguzari Bakaya cannot be limited to the actual rent but must be understood as meaning that the landlord was crediting the payment to whatever was due to him without making

Malguzari settlement.

any distinction between rent or otherwise [(A I R 1927 P C 250, Rel on) 9 Pat 747=I R. 1930 Pat. 603=126 I C 299=A I R 1930 Pat 301]

Malguzari settlement (*C P.*) See *Bad Pow* 1. 245, 111 387.

Malice. "Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse 31 Punj L R 73=121 I C 726 =31 Cr L J. 290=1930 Cr C 298=A I R. 1930 Lah 266

"MALICE', in common acceptation, means, ill-will against a person; but in its legal sense, it means, a wrongful act done intentionally without just cause or excuse" (*per* Bayley, J., *Bromage* v *Prosser*, 4 B. & C 255, Brett, L J., *Clark* v *Molyneux*, 3 Q B D 247). "Malice is a formal design of doing mischief to another; it differs from hatred" (*Jacob's Dic*) Malice in its common acceptation, is a term involving some intent of the mind and heart, including the will, and has been said to mean a bad mind, ill-will against a person, a wicked or evil state of the mind towards another, an evil intent or wish or design to vex or annoy another; a wilful intent to do a wrongful act; a wish to vex, annoy or injure another person or an intent to do a wrongful act, a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief (*Ame Cyc*)

"Malice" means wickedness of purpose, or a spiteful or malevolent design against another, a purpose to injure another, a design of doing mischief, or any evil design or inclination to do a bad thing, or a reckless disregard of the rights of others, or absence of legal excuse, or any other motive than that of bringing a party to justice"

"The meaning of the term malice in English law, has been a question of much difficulty and controversy; and those who made through the many disquisitions on the subjects in text-books and judicial opinions are almost tempted to the conclusion that the meaning varies almost infinitely, and that the only sense which the term can safely be predicated not to have in any given legal context is that which it has in popular language, *viz*, spite or ill-will It certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime; and even with respect to crime it has a different sense according as it is used with reference to murder, libel, or the capacity of an infant to commit crime, expressed by the rule *malitia supplet aetatem*" (*Ency of the Laws of England*) Ordinarily, the absence of reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff, would give rise to the inference of malice. (1 C.W.N 534.)

MALICE HATRED, AVERSION, ANTIPATHY ENMITY, REPUGNANCE, ILL-WILL, RANCOUR, MALEVOLENCE, MALIGNITY, MALIGNANCY *Hatred* is a very general term Hatred applies properly to persons It seems not absolutely involuntary. It has its root in passion, and may be checked or stimulated and indulged. *Aversion* is strong dislike. Aversion is an habitual sentiment, and springs from the natural taste or temperament which repels its opposites, as an indolent man has an aversion to industry, or a humane one to cruelty *Antipathy* is used of causeless dislike, or at least one of which the cause cannot be defined It is found upon supposition or instinctive belief, often utterly gratuitous *Enmity* is the state of personal opposition, whether accompanied by strong personal dislike or not, as "a bitter enemy" *Repugnance* is characteristically employed of acts or courses of action, measures, pursuits, and the like *Ill-will* is a settled bias of the disposition. It is very indefinite, and may be of any degree or strength *Rancour* is a deep-seated and lasting feeling of ill will It preys upon the very mind of the subject of it While *enmity* may be generous and open, *rancour* is malignant and private Malice is that enmity which can abide its opportunity of injuring its object, and pervert the truth or the right, or go out of its way, or shape course of action, to compass its ends "*Malevolence* commences with some idea or evil belonging to and connected with the object; and it settles into a permanent hatred of his person and of everything relative to him"—(*Gogan*) *Malignity* is cruel malevolence, or innate love of harm for the sake of doing it It is malice the most energetic, inveterate, and sustained. (*Smith Syn Dis*)

Malice aforethought" is the term used in law to designate the wicked and mischievous intent with which a man wilfully does a wrongful act, and is to be inferred from acts committed or words spoken.

"MALICE AFORETHOUGHT" is a condition of the mind which shows a heart regardless of duty and fatally bent on mischief, the existence of which is inferred from acts committed or words spoken

Malice in fact "Malice in fact" means express malice.

MALICE IN FACT OR ACTUAL MALICE, relates to the actual state or condition of the mind of the person who did the act

Malice in fact is where the malice is not established by legal presumption or proof of certain facts, but is to be found from the evidence in the case.

Malice in fact implies a desire or intention to injure, while malice in law is not necessarily inconsistent with an honest purpose.

Malice in law. "Malice in law" means implied malice

"MALICE IN LAW" simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts.

"Malice in law" means an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite, or a desire to injure another.

Malice prepense "Malice prepense is when one compasseth to kill, wound, or beat another, and doth it in *dedato animo* This is said, in law, to be malice aforethought, prepense, malitia, precogtata" (*Words and Phrases*).

Malicious. Done with malice or an evil design; wilful, indulging in malice, harboring ill-will, or enmity malevolent, malignant in heart, committed wantonly, wilfully, or without cause, or done not

Malicious.

only wilfully and intentionally, but out of cruelty, hostility or revenge; done in wilful neglect of a known obligation.

"MALICIOUS" means with a fixed hate, or done with evil intention or motive, not the result of sudden passion.

The term "malicious" imports an evil intent or wish or design to vex, annoy, or injure another person

MALICIOUS, 24 & 25 Vict. c 97, S. 51, means "where a person wilfully does an act injurious to another without lawful excuse.' [*Per* Blackburn, J, in *R* v *Pembliton*, (1874) L R 2 C C R 122

Malicious abuse of legal process A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court—the malicious perversion of a regularly issued process, whereby an improper result is secured.

There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object —not the purpose which it is intended by the law to effect, in other words, a perversion of it.

Malicious Act Bouvier defined a malicious act as "a wrongful act, intentionally done, without cause or excuse"

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse.

Malicious conduct. Malicious conduct is wilful neglect of known obligation, with reckless disregard of the consequences

Malicious damage Besides these offences against property which involve fraud or misappropriation, *e g*, forgery and larceny, there is another class where property is destroyed or damaged, and where the motive of the destruction is spite or ill-will, or an intent to injure, rather than fraud or misappropriation Such damage is termed malicious damage. *See* Archbold, Cr. Pl., Russell, Crimes, Stephen, Dig Cr. Law, Stone, Justices' Manual (*Ency of the Laws of England*)

Malicious injury. A malicious injury is defined to be an injury committed wantonly, wilfully, or without cause.

A *malicious and wilful injury* is an injury that is not only wilful and intentional, but must have been done out of cruelty, hostility, or revenge.

"Malicious intention", as used in an Act relating to libels, and providing that the truth of the matter contained in the publication is a sufficient justification, unless malicious intention is proved, means an actual malicious intention, or, in other words, express malice.

Maliciously With deliberate intention to injure, with ill-will, malevolence, grudge, spite, or enmity; wilfully.

"MALICIOUSLY," as used in criminal statutes, means nothing more than that the act should be done

Malicious prosecution.

voluntarily, unlawfully, and without excuse or justification.

"Maliciously means with ill-will, malevolence, grudge, spite or enmity."

"Maliciously" and "wilfully" "Maliciously" has been said to be the equivalent of "wilfully" (*Bouvier L Dict.*)

Maliciously has a somewhat larger meaning than "wilfully", which in an indictment would not, therefore, supply the place, it is presumed, of "maliciously" in the statute.

Maliciously wrongfully injuriously. In *M. R. Mogul Co.* v *Mc Gregor*, 23 Q B.D 598, (1892) A. C. 25, Bown, L J, said "The terms '*maliciously*', '*wrongfully*', and *injure*,' are words all of which have accurate meanings well known to the law, but which also have a popular and less precise signification. An intent to 'injure' in strictness, means more than an intent to harm It connotes an intent to do wrongful harm "Maliciously," in like manner, means and implies an intention to do an act which is wrongful, to the detriment of another. The term 'wrongful' imports in its turn the infringement of some right"

Malicious mischief "Malicious mischief, or damage is an injury done either out of a spirit of wanton cruelty, or black, diabolical revenge." (*Blackstone Com.*)

MALICIOUS MISCHIFF is the wanton of reckless destruction of or injury to property.

Malicious prosecution is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.

The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives [24 A. 363=22 A W N. 92 (*Mitchell* v. *Jenkins*, (1833), 5 B. and A.D, 595 *Fol*) *See also* 1 C.W.N. 534]

As a general rule of law, any person is entitled, though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender This principle is thus stated in *Lightbody's case*, 1882, 9 Rettie, 934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime In such cases to establish liability the pursuer must show that the informant acted from malice, *i e*., 'not in discharge

of his public duty but from an illegitimate motive,' and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord Shand added (p 940) "He has not only a duty but a right when the cause affects his own property"

Most criminal prosecutions are conducted by private citizens in the name of the Crown This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion; but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy (*See* H Stephen, Malicious Prosecution, 1888, Bullen and Leake, Prec. Pl, Clerk and Lindsell, Torts, Pollock, Torts, L Q.R., April 1898, Vin, Abr, tit. "Action on the Case" *Ency of the Laws of England.*)

MALICIOUS PROSECUTION means that the proceedings which are complained of, were initiated from a malicious spirit, *i e*, from an indirect and improper motive, and not in furtherance of justice [10 C.W.N 253 (F.B.)]

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION" "A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it"

"A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure."

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor, or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause."

"A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy."

The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution.

Malicious prosecution and malicious abuse of process of Court. As stated in Hale, Torts, p 361, "malicious abuse of process" is distinguished from "malicious prosecution in at least two respects *First*, in that what of probable cause is not an essential element, and, *second*, that it is not essential that the original proceeding shall have terminated If a plaintiff bring suit in a justice Court on a valid demand, and upon the return day, instead of joining issue, discontinues the action and sues over, and then repeats the performance several times without any excuse, and solely for the purpose of vexing and harassing the defendant, it is unquestioned that the defendant may recover the damages occasioned him by the improper use of the process of the Court.

Malicious publication. A publication, qualified or privileged, is malicious in the law of slander and libel, if it is not made in good faith If not made for the reason which renders it privileged, but from a wrongful, indirect, and ulterior motive, and it is false, it is malicious.

Malicious wrong. An intentional action, when done without just cause or excuse, is what the law calls a "malicious wrong."

"Malignantly" *See* 18 B. 758.

Malik (*II*) A proprietor, an owner, a lord, a cultivator possessing hereditary rights, also a landlord, a Zamindar A master, an owner, a proprietor, a cultivator possessing a hereditary or proprietary right in the land he cultivates, or a person having a beneficial and hereditary interest in the revenue paid by the cultivators, and responsible to the Government for its share.

Ordinarily the word "malik" imports full ownership, but having regard to the context and the setting in which that word occurs it may denote a life estate. Where, however, the will expressly states that the interest given to the "malik" is descendible on his or her heirs, no question of life estate can arise (1930 A L J 1391=A I R 1930 All 652, 14 Cal. 296, 91 I C. 265=129 I C 433, 30 All. 84, 31 All. 308=2 I.C. 474, 1924 Nag. 195.

The word "malik" is not a term of art, and does not necessarily define the quality of the estate taken, but the ownership of whatever that estate may be 1 P. 295=1922 P H.C.C. 70=3 Pat L T. 273=A I R 1922 P 362 *See also* 165 I C 865=1937 Oudh 181; 25 O C 345=1922 Oudh 278, 120 I C 387=6 O.W.N. 169=4 Luck 452=A I R. 1929 Oudh 19.

MALIK. The word "malik" imports full proprietary rights, unless there is something in the context to indicate an intention to the contrary (49 I A 1, 57 I A 291 *Ref* 58 I A. 270=59 Cal 142=34 L W 51=8 O W N 944=33 Bom L. R. 1257=1931 M W N 989=134 I C. 648=I R 1931 P C 296=54 C L J 393=1931 A L J 555=A I R 1931 P C. 179=61 M L J 501 (P C). 35 C.W.N 903=16 Pat L T. 245 (251, 255).

The term "malik," when used in a will or other documents as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred, but the meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning [10 C 1035 11 I A 126 (P C). Ref to.) 66 I C. 193 =26 C W N 425=3 P L.T. 133=15 M L W. 434=24 Bom L R 576=35 C L.J 427=20 A L.J. 362=1922 M W.N. 368=30 M.L T. 242=1 Pat 305=49 I.A. 25 =A I.R. 1922 P.C. 63=42 M.L.J. 492 (P.C.). *See also* 13 Pat 550=1934 Pat 398; 134 I.C. 865='931 Oudh 385, 4 Luck 452, 1931 A.L J 555=58 I.A. 278 =I R. 1931 P C 296=134 I.C 648=54 C I. J. 393= 1931 M W N. 989=33 Bom.L R 1257=8 O W.N. 944 =34 L W. 51=35 C W N. 903=A.I.R. 1931 P.C. 179 =61 M L J. 509 (P.C.).]

The word "malik" in a will executed by a Hindu imports full proprietary rights, unless there is something in the context to qualify it The mere fact that the donee or legatee happens to be a Hindu woman does not displace the presumption of absolute ownership implied by the use of the word "malik". [10 Luck. 606; 153 I.C. 878=7 R.O. 409=

Malik.

1935 O.W.N. 68=A.I.R. 1935 Oudh 198, 66 I C. 724=15 S L.R. 202, 64 I.C. 397=23 Bom.L R 858, 64 I.C. 752=A.I R. 1922 Nag 73, 68 I C 555=1922 Oudh 278; 66 I.C. 628=A.I.R. 1921 Cal. 727=25 C W N 527, 60 I C. 619=? Lah. 175=A.I.R. 1921 Lah 11, 35 Bom. 279; 6 I C 141, 95 I C 193=1 Luck. 265=29 O C 215=3 O. W. N. 557=A I.R. 1926 Oudh 381 (F.B).]

The words *"malik"* or *"malkiyat"* in a formal document imply an absolute estate unless there is something in the context to qualify it, and deeds in favour of females must be interpreted in the same way as any other deeds A.I R 1924 Lah. 347.

MALIK. A devisee or donee described as a "malik" has a full right of alienation unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred (A I R 1922 P C 193, *Foll.* 92 I C 657=1 Luck 120=13 O L J. 416=29 O C. 153=A I R 1926 Oudh 332)

The use of the word *malik* in a will does not necessarily imply that the estate conferred is an absolute estate The word *malik* is not a term of art, it does not necessarily define the quality of estate taken by the donee A I R 1922 P C 193, *Appl* , 90 I C 757=7 P L T 310=A I R 1926 Pat 76

Malik and kabiz. The words "malik" and "kabiz" in a will unquestionably carry the signification of a full ownership in the property, [38 All 446, (P C) and 31 All 308, *Foll* , 35 Bom 279 and 21 Bom 376, *Dist* 75 I.C 902=A I R 1924 Nag 195]

The word can appropriately be used to constitute a person an absolute owner It is not however, a "term of art," it does not necessarily define the quality of the state taken but the ownership of whatever that estate may be [65 I C 974=46 Bom 153=24 Bom L R 551=20 A L.J 289=35 C L J 314=26 C W N. 129=15 M L W 412=30 M L T 149=49 I A 1=A.I.R. 1922 P.C. 193=42 M L.J. 385 (P.C)]

The term "malik," when used in a will or other documents as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred, but the meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning. [(1889) 10 C 1035, 11 I A 126 (P.C.) *Ref. to* 66 I C 193=26 C.W N 425=3 P L T. 133=15 M L.W 434=24 Bom L R 576=35 C L J 427=20 A L J. 362=1922 M W N. 368=30 M.L T. 242=1 Pat 305=49 I A. 25=A I R. 1922 P C. 63 =42 M.L.J 492 (P.C.).

The use of the word 'Malik' implies absolute ownership in the absence of anything in the context or surrounding circumstances to qualify the meaning. The mere fact that the donee is a widow is no such qualification. (64 I C. 397=46 Bom. 162=23 Bom.L.R. 858=A I R. 1922 Bom. 179.)

The mere absence of an express power of alienation does not suffice to qualify the presumption of

Malik adna

absolute ownership implied in the word 'Malik'. (64 I C. 752=4 N L.J. 253=A.I R. 1922 Nag. 73)

The use of the word 'Malik' in connection with a devise to a widow indicates an absolute estate 68 I C. 555=9 O.L.J. 327=25 O.C 345=A I.R. 1922 Oudh 278.

The word 'Malik' usually denotes an absolute owner unless there is anything in the other clauses of the will to curtail the force of that word (66 I C. 628=25 C W N 527=A I R. 1921 Cal 727.)

The use of the word 'Malik' implies absolute ownership unless there is anything in the context or surrounding circumstances to qualify such meaning and it is not so qualified by the fact that the donee is the widow of the testator. (60 I C. 619=2 Lah 175=A.I R 1921 Lah 11)

The word "malik" means owner in the full sense of the word, but it is not a term of art and its meaning can always be qualified by the addition of other words which contradict the idea of absolute ownership (A I R 1922 P C 63 *Foll* , 120 I C 387=6 O. W N 169=4 Luck 452=A I.R 1929 Oudh 19)

Although the person in respect of whom the word malik is used in wajib-ul arz is a Hindu widow it cannot be said that she is meant to take only a limited estate [A I R 1922 P.C 63 and A I R. 1923 P C 90, *Ref* 95 I C. 193=1 Luck 265=29 O C. 215=3 O.W N 557=A I R. 1926 Oudh 381 (F.B)]

A devisee or donee described as a "malik" has a full right of alienation unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred (A I R 1922 P C 193, *Foll* 92 I C 657=1 Luck 120=13 O L J. 416=29 O C. 153 =A I R 1926 Oudh 332)

The use of the word *malik* in a will does not necessarily imply that the estate conferred is an absolute estate The word *malik* is not a term of art, it does not necessarily define the quality of estate taken by the donee [A I R. 1922 P.C 193, *Appl* 90 I.C. 757=7 P.L.T. 310=A I R 1926 Pat. 76]

'Malik' confers on the donee a heritable and alienable estate but the context may qualify or cut down the absolute rights. (30 C L.J. 51; 53 I C 602.)

"Malik" means literally one who holds 'Mulk' or land. Milkiat or Malikiat implies something appertaining to *'Malik'* The word is in common every day use in the country, cannot be converted into a technical term of conveyancing. (1 Pat L W 375=39 I C 755)

When the word "malik" is used ordinarily, its effect is to give an absolute estate to the person in connection with whom it is used. But the context of the will must be looked into and the will must be construed as a whole in order to determine the meaning of the word in any particular case. (7 Pat. 396=108 I.C 323=A I R. 1928 Pat. 348)

Malik—Absolute ownership—No difference whether it is applied to sons or to Hindu widow. *See* Wajib-ul-arz. 12 R D. 139.

Malik adna. Inferior proprietor.

Malik Ala.

Malik Ala. Superior proprietor.

MALIKA (Bo), a tenure (*Bad Pow* iii. 287)

Malikah (*A*) A queen

Malikana is what relates or belongs to a person as master or head man The malikana of a Mocuddim, or head ryot, is a share of each ryot's produce received by him as a customary due (*Fifth Rep*)

MALIKANA is a right to a portion of the benefits of an estate in consideration of rights which are proprietary (50 Cal 822=1924 Cal 197=77 I C 707)

Malikana is compensation paid to the proprietor of resumed lands for the loss of his right when the land is farmed It is distinct from revenue and is governed by different considerations (35 C W N 1233)

Malikana is what is due to the Malik or proprietor when deprived of the management of his estates Annual allowance to deposed Rajahs (*Moore's Malabar Law*)

Malikana comes under the definition of "Land Revenue" given under in S 2 of Act XI of 1859 [31 C. 256=31 I A 52=8 C W N. 649 (P C)]

Malikana (*Ben N W P*), an allowance to an exproprietor, who is kept out of his estate (refusal of S, &c), or who has lost it all but this vestige (Bihar), (*Bad Pow* i 516) (N W P), an allowance to an excluded owner if he refuses the settlement (*Bad Pow* ii 84) (Pj) means a rent or fee paid in cash by a tenant to the malik or proprietor—usually calculated at so many *annas* per *rupee* of Government Land Revenue *Bad Pow* ii 550, *note*, 717 *note* (Sindh), the chief's or over lord's rent or fee for land-occupation (*Bad Pow* iii 327)

Malikana and dhasturat *See* 39 Cal 1=12 I.C. 114 (P C)

Malikanadari right The *Malikanadari* right can only come into existence by arrangement [(1922) 49 I A 399 (411)=2 P 38 (51)=32 M L T 1=1923 M W N 361=27 C W N 925=36 C I J 499=3 Pat L T. 605=A I R 1922 P.C 272=71 I C 984=45 M L J 460]

Malikana rusum Proprietary dues

Malikhana khangi Fees levied on cultivators by a landholder for his household expenses

'Malik' and 'Nirbuyade malik'. *See* 22 C L J 316=31 I C. 405.

Malik and Waras. There is no real difference in the meaning of the words 'malik' (owner) and 'waras' (heir) when they are used in *Wills*. (24 B 420=2 Bom. L.R. 46)

In absence of facts showing contrary intention, the words 'Malik' and 'Waris' indicate absolute estate (66 I C 720=15 S L.R. 202.)

Malikhissa The share of the owner, or of the state.

Maliki. (*A*) The second Sunni Mahamadan school, that founded by Malik. It is puritanical, fierce in its dogma, severe in its morals, and those who profess it are undoubtedly the most fervent, the most fanatical, of believers.

Malitus hominum.

"Malik jaez misl mere ke" A Hindu bequeathed his property to his wife saying that after his death his wife was to be *"Malik jaez misl mere ke"* (lawful owner just as I am), and that she would have power to execute a will, just as the testator had, in favour of any person she pleased. *Held*, that the will conferred on the widow an absolute right of ownership in the property devised to her [(30 A 84, 29 A 217; 20 C 126, *foll*, 9 O.C 119 *overruled*) 12 O C 157=2 I C. 924]

"Malik-makbuza" defined Act 18, 1881, S 4 (10); Act 11, 1898, S 2 (1). *See also* A.I R 1937 Nag. 184

Malik-maqbuza (*Or M. qabza*), proprietor of plot, or holding in his possession, used of a person having full right in his own holding, but who has lost (or never had) any share in the profits of the entire village or estate) (in Pj) (*Bad Pow* ii 641.) 651, 671, 6 (in C P *Bad Pow* ii 387, 388) in Nimar C P), (*Bad Pow* 475, 479-81)

Malik mukhtyar Absolute estate conferred by the use of the above words is a gift [36 M L J 511= 17 A L J 522=21 Bom L R 496=1 U P L R (P C) 39=1919 M W N 313=10 LW 339=24 C.W.N, 57 =50 I C 457 (P C)]

"Malik mustakil kamil" 'Malik Mustakil Kamil' means permanent and full ownership This right confers only a life estate and not absolute estate upon a widow (1922 P H C.C 74=A.I.R. 1923 Pat. 87)

Malik owner There is no magic in the use of any particular word or form of words, the deed must be construed as a whole and its fair import deducted in the ordinary word It is not that the word "malik-owner" is a term of art, it does not necessarily define the quality of the estate taken, but the ownership of whatever that estate may be (6 R O. 648=150 I C 425=11 O W N 917=A.I.R. 1934 Oudh 337)

'Malik wari' or "malikwa waris" The use of the words "malikwa waris" confers absolute estate on female donee (A I.R. 1922 Nag 73)

Malingering "Malingering" has been defined as a deception practised by any body, from which they try to make out that they are sick when they are not sick.

Malish (*Per*) The threshing and trading out of corn

Malitia est acida, est mali animi affectus A maxim meaning "Malice is sour, it is the quality of a bad mind".

Malitia hominum est obviandum A maxim meaning "The malice of men is to be averted." (*Morgan Leg. Max*)

Malitia supplet aetatem. A maxim meaning "Malice supplies (or makes up for) age; wickedness of design supplies the want of age". (*Burrill.*)

Malitiis hominum non est indulgendum. A maxim meaning "No indulgence ought to be shown to the malicious desires of men." (*Morgan Leg. Max., Ame. Cyc*)

Malkana

'Malkana'. The term "malkana" is as much appropriate to describe proprietary interest as under proprietary interest. [6 R O 347=147 I C 1011=A L.R 1934 Oudh 71=10 O W N. 1263=17 R D 1132= 14 L R. 908 (Rev.)=A.I R. 1934 Oudh 47.]

Malkhana (*H.*) A treasury, a store-house (*Wil. Gloss. 323*)

Mallar (*Tam.*) Agricultural labourers of the Pallar tribe. Cultivators generally

Malleable "Malleable" means capable of being drawn out and extended by beating, capable of extension by hammering.

Malpractice As applied to attorneys at law, evil practice in a professional capacity and a resort to methods and practices unsanctioned and prohibited by law, misbehaviour, practice contrary to established rules (*Cent Dict*), improper or immoral conduct, objectionable practice (*Standard Dict*), evil practice, illegal or immoral conduct

Proof that an attorney appeared both for plaintiff and defendant in actions involving the same issue, or that he used a legal process in an abusive and oppressive manner, warrants his disbarment for malpractice

MALPRACTICE (*in a physician*) "Malpractice" is mal or bad practice, and it may be defined generally as negligent acts committed by a physician in treating his patient Malpractice may be defined to be First, wilful acts on the part of a physician or surgeon towards a person under his care, by which such person suffers death or injury, second, acts forbidden by express statute on the part of a physician or surgeon in treating a patient, by means of which such patient suffers death or unnecessary injuries

Malt. Malt is barley or other grain steeped in water until it germinates, and then dried in a kiln, thus evolving the saccharine principle It is used in brewing to make malt drinks, which consists in preparing drinks by the influsion of malt, as beer, ale, and porter

Malt liquor. An alcoholic liquor, as beer, ale, or porter, prepared by fermenting an infusion of malt.

It is a matter of common knowledge that the word "beer", when used without a prefix, signifies malt liquor, and that whenever malt liquor is not intended to be expressed by the use of this word some prefix is used, such as "root beer", etc

The generic term "malt liquor" includes both non-intoxicating and intoxicating malt liquors.

'Malt trader", means and includes, a maker of malt, a dealer in malt, a roaster of malt, a brewer of beer for sale, and a vinegar maker

Maltreatment This would include improper or unskilful treatment by a surgeon of his patient, which may result from ignorance, neglect or wilfulness, not necessarily implying that the conduct of the surgeon in the treatment of the patient's wounds was either wilfully or grossly careless.

Malugamsari-bhumi. (*Tel.*) Land paying revenue to Government.

Man.

Malum hominum est obviandum A maxim meaning "The malicious plans of men must be avoided". (*Bouvier*)

Malum in se Literally "a wrong in itself." An act involving illegality from the very nature of the transaction

An offence *malum in se* is one which is naturally evil, as adjudged by the sense of civilized community, such as murder, arson, theft, and the like

Malum non habet efficientem, sed deficientum, causam A maxim meaning "Evil has not an efficient, but a deficient, cause" (*Morgan Leg. Max*)

Malum non praesumitur A maxim meaning "Wickedness is not presumed" (*Burrill*)

Malum prohibitum An act made wrong by legislation a forbidden evil (*Anderson L Dict*)

Malum quo communius, eo pejus A maxim meaning "The more common an evil is, the worse it is" (*Morgan Leg Max*)

Malus usus est Abolendus A maxim meaning "An evil custom ought to be abolished" (*Bouvier.*)

Malzamin (*A*) Bondsman for the discharge of a debt, or payment of rent (*Mac Mah Law*)

Malzamini (*P*) Written security for the due payment of a debt or revenue (*Mac Mah Law.*)

"Mamlatdar" defined, Bom. Act 3, 1876, s. 3 (a) Bom Act 2 1906, S 3 (a)

MAMLATDAR(*Bo*) is the native Land Revenue officer in charge of a taluka or division of a district. (*Bad. Pow* III. 308)

The word *"Mamlatdar"* shall include any Revenue-officer exercising for the time being the powers of a Mamlatdar, of a Mukhtyarkar, or of a Mahalkari, and any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mamlatdar under this Act. Bom Act II of 1906 (Mamlatdars' Courts), S. 3, cl. (a)

Mamlatdari, (*Mar*) The office or duty of a Mamlatdar, the collection or farm of the revenue, the administration of a district (*Wil. Gloss*)

Mamluk A purchased slave or captive. (*Mac. Mah Law*)

Mamool (*Mamul.*) Practised, established, usual, customary.

Mamul (*Bo.*), customary dues the Government Land Revenue assessment, the 'custom' due to the State (*Bad. Pow* III. 297)

"Man" defined. Act 45, 1860, s. 10.

The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age. (Penal Code, S 10)

MAN Any human being, whether male or female; (*See* Gen. Cl Act, 1897) a person of the male sex, a male of the human species above the age of puberty a male adult of the human race, as distinguished from a woman or a boy, one who has attained manhood, a married man, a husband. (*Webster Dict, Ame. Cyc*)

Man.

"No doubt the word 'man,' in a scientific treatise on Zoology or fossil organic remains, would include men, women and children as constituting the highest order of vertebrate animals. It is also used in an abstract and general sense in philosophical or religious disquisitions But in almost every other connection the word 'Man' is used in contradistinction to 'Woman.' Certainly, this restricted sense is its ordinary and popular sense" (*per* Byles J, *Chorlton* v. *Lings*, L R 4 C P. 392, 38 L.J C.P 33).

The use of the term, 'man" in an Act exempting certain property, to the children of the deceased man, is used as a generic term, and includes females as well as males

Man, an official holding of land (Santal Perg)= 'watan' of Central India, Manjhi-man, the holding of the headman (*Bad Pow* 1 595)

Man contraction of 'maund'. A measure of weight of 40 seers (sir) or 80 lbs. av (*Bad Pow* 1 242)

"Man and his heirs" A grant "to a man and his heirs" without anything to control the ordinary meaning of the words, must mean an absolute grant 15 B. 222=18 I A 22 (P C)

Man and wife. "I find the common acceptance of the term 'man and wife" in everyday life, and even in our best literature, to be the same as 'husband and wife,' and its use is most common

Man Friday "To write of a person that he is a "Man Friday" to another is not an actionable Libel without an innuendo (*Forbes* v *King*, 1 Dowl, 672, 2 L J Ex 109), the 'Man Friday' we all know was a very respectable man although a black man, and black men have not been denounced as criminals yet" (*per* Denman, C J, *Hoare* v. *Silver-locke*, 17 L J. Q B 308, 12 Q B, 632; cited in *Stroud's Jud Dic*)

Man of straw To say that a person in trade is a "man of Straw", is to impute insolvency (*Eaton* v. *Johns*, 11 L J Ex 150).

Mana The house of a Nambuduripad.

Manage To control according to law, to direct, govern, administer, to conduct, carry on, to direct the concerns of to have under control and direction

The words "*manage*" *and* "*control*" are held to be synonymous

Management. Management is defined as government, control, superintendence, physical or manual handling or guidance, the act of managing by direction or regulation, or administration, as the management of a family, or of a household, or of servants, or of great enterprises, or of great affairs.

MANAGEMENT means administration, control, etc, and one of the synonyms of "management" is "government", which means control so that under a power to provide for the management of slaughter houses a city has power to prohibit the operation of slaughterhouses within the city (*Words and Phrases*)

"Manager" defined. 6 Edw. 7, c. 58 s 13, Ben. Act 7, 1876, s 3 (6), am. Ben Act 2, 1905, S. 2, E B. & A Act 1, 1907, S. 2.

MANAGER is one who has the conduct or direction of any thing, the person who manages "*Manager*" includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not. [Act VII of 1913 (Companies) S 2, cl. 9] The expression "Manager" as used in sec 74 of the Companies Act, 1882, includes every person or body of persons who conducts or conduct the affairs of a company and to whom its management, subject to the control of the Directors, is entrusted (35 I C 482) "A Manager, (of a company) in ordinary talk is a person who has the management of the whole affairs of the Company not an agent who is to do one thing or a servant who is to obey orders and do another, but a Manager who is entrusted with power to manage the whole of the affairs" (*per* Blackburn, J., *Gibson* v. *Barton*, 44 L J. M C 86).

Managing owner.

Ordinarily the word "manager means one who has the conduct or direction of anything, as the manager of a teacher, of a lottery, of a ball, etc.

The manager is the person who really has the most general control over the affairs of a corporation and who has knowledge of all its business and property, and who can act, in emergencies, on his own responsibility He may be considered as the principal officer. The very term implies a general supervision of the affairs of the corporation in all its departments.

"Manager" as applied to an officer of a corporation, implies the idea that the management of the affairs of the company have been committed to him, so that one dealing with a person held out as manager before the company can be held liable for his acts, need not show affirmatively that it had so authorized him.

Manager of estate (*in Ben Land Reg Act*) means every person who is appointed by the Collector, the Court of Wards or by any Civil or Criminal Court to manage any estate or revenue-free property or any part thereof, and every person who is in charge of an estate or revenue-free property or any part thereof on behalf of a minor, idiot or lunatic, or on behalf of a religious or charitable foundation or as a trustee or executor [Ben Act III of 1876 (Land Registration) S, 3, cl 6]

Managing agent An agent having a general supervision over the affairs of a corporation, or such an agent as has the power of general manager, an agent invested with the general conduct and control at a particular place of the business of a corporation.

A "managing agent" must be some person vested by the corporation with general powers involving the exercise of judgment and discretion, as distinguished from an ordinary agent or attorney, who acts in an inferior capacity and under the direction and control of superior authority, both in regard to the extent of his duty and the manner of executing it.

An agent who is invested with the general conduct and control at a particular place of the business of a corporation is a "managing agent."

"Managing khot" defined. Bom. Act 1, 1880, s. 26.

Managing officer in the Gujarat Taluqdars Act (Bom Act VI of 1888), S 29 (e)—*See* 34 B. 142=11 Bom L R. 1358.

Managing owner. The general agent for the owners in respect to the care of the ship and freight is called the "manager." If he is a part owner, he is also called "managing owner."

Manai

Manai. (*Tam*) [*See* Mana] A house a dwelling; the ground on which a house stands, and that which is adjacent and attached to it, backyard a garden and the like it also denotes land held in a village, and when the word is used by itself in deeds, of transfer in the Tamil provinces, it signifies ground conveyed without the rights and privileges accompanying Mirasi holdings. (*Wil Gloss.*)

Manaivari (*Tam*) House-tax (*Wil Gloss*)

Manaladittarisu. (*Tam*) Land become waste by an accumulation of sand upon it.

Manal-taram (*Tam.*) Sandy soil.

Manavari Land depending solely on timely rains for cultivation.

MANAVARI (*Tam*) Land of which the cultivation depends solely upon rain, not being irrigated artificially, dry cultivation A reservoir of water fed by the rain only.

Manbote. A compensation paid to the relations of a murdered man by the murderer or his friends.

Mandalam (*Tam*) An ancient division of the Peninsula comprehending the districts of North and South Arcot and Chingleput.

Mandal, Mundul, (*H*) The headman of a village, who sometimes act as the agent of the Zamindar, letting the lands and receiving the rents of the villagers In Puraniya, it is the common title of any respectable Sudra

Mandal (*Ben*) is the common name for a village headman. (*Bad Pow* i 676) (*Assam*), an assistant to the mauzadar (*see Bad. Pow* iii. 420)

Mandamus Mandamus is an action or judicial proceeding of a civil nature, extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that the issue is discretionary, to enforce only clear legal rights, and to compel Courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, and public boards, commissions, or officers, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official (*Ame. Cyc.*)

The prerogative writ of *mandamus* is in form a command issued in the King's name from the King's Bench Division of the High Court of Justice and directed to any person, corporation or inferior Court of Judicature requiring him or them to do something therein specified which appertains to his or their office and which the Court holds to be consonant to right and justice. It is used principally for public purposes and to compel performance of public duties though it may also be used to enforce private rights when they are withheld by public officers. 10 Pat. 218 =I.R 1931 Pat 97=129 I.C. 529=11 P.L.T. 839=1930 Pat. 538 (F B).

The prerogative writ of mandamus is a command issuing from the King's Court and directed to any person, corporation, or inferior Court of Judicature, and directed to any person, within the dominions,

Mandatary.

requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the Court has previously determined, or at least supposes, to be consonant to right and justice. (*see* Black Com, bk iii. p 110)

It is prerogative writ, introduced to prevent disorder from a failure of justice and defect of police; and therefore ought to be used on all occasions where the law has established no specific remedy; and where in justice and good government there ought to be one (3 Burr. 1265 1 Black Rep. 352, 552, Cowp 378 (*Tomlin's Law Dic.*).

"It is a high prerogative writ of a most extensive remedial nature, and may be issued in some cases where the injured party has also another more tedious method of redress, as in the case of admission or restitution to an office, but it issues in all cases where the party hath a right to have anything done, and hath no other specific means of compelling its performance A Mandamus, therefore, lies to compel the admission or restoration of the party applying, to any office or franchise of a public nature, to academical degrees; to the use of a meeting-house, etc. It lies for the production, inspection, or delivery of public books and papers, for the surrender of the *regalia* of a Corporation; to oblige Bodies Corporate to affix their common seal; to compel the holding of a Court, and for an infinite number of other purposes, which it is impossible to recite minutely. But on this part of the subject it is to be particularly remarked, that it issues to the Judges of any inferior Court, commanding them to do justice according to the powers of their office, wherever the same is delayed. For it is the peculiar business of the superior Court to superintend all inferior tribunals and therein to enforce the due exercise of those judicial or ministerial powers with which the Crown or Legislature have invested them, and this not only by restraining their excesses, but also by quickening their negligence, and obviating their denial of justice A Mandamus may therefore be had to a subordinate Court to enter up judgment, (*Raym*, 214) to a Spiritual Court to grant an administration, to swear a churchwarden and the like (3 Comm 110, (*Tomlin's Law Dic*) On this subject, *see* Comyns, Digest, tit "Mandamus," Bacon, Abridgement, tit. "Mandamus," Willick, Treatise on Mandamus, Gude, Crown Practice, Tapping, Law and Practice of the High Prerogative Writ of Mandamus, High, Treatise on Extraordinary Legal Remedies, Shortt, Information, Mandamus, and Prohibition, Short and Mellor, Crown Office, Practice, (*Ency. of the Laws of England.*)

Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam. A maxim meaning "Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one." (*Burrill*)

Mandatarius terminos sibi positos transgredi non potest. A maxim meaning "A mandatory cannot exceed the bounds of his authority" (*Bouvier*).

Mandatary or mandatory. As an adjective, containing a command, perceptive, imperative, peremptory (*Black L Dict*). As a noun, one to whom a command or charge is given; a person who has gratuitously undertaken to perform certain duties,

Mandate

and who is therefore bound to apply ordinary skill and diligence, but no more *See also* 1 S L R. Cr 50 =8 Cr L J 170

Mandate (*in the Law of Contracts*). A bailment of goods, without reward to be carried from place to place, or to have some act performed about them, a bailment of personal property in regard to which a bailee engages to do some act without reward

A *mandate* is a contract by which a lawful business is committed to the management of another, and by him undertaken to be performed without reward.

A MANDATE, PROCURATION, OR LETTER OF ATTORNEY is an act by which one person gives power to another to transact for him, and in his name, one or several affairs

A 'MANDATE' is a writ, process, or other written direction issued pursuant to law out of a court, or made, pursuant to law, by a court or judge thereof, commanding a person to do, or to refrain from doing, an act therein specified

AN INJUNCTION ORDER is a mandate.

Mandatory (*See* Mandatary) A "mandatory" provision in a statute is one which must be observed, as distinguished from a "directory" provision, which is one which leaves it optional with the department or officer to which it is addressed to obey it or not, as he may see fit

The directions in a statute which are not of the essence of the thing to be done, but which are given with a view to the orderly and prompt conduct of the business, and by a failure to do which the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory.

Mandatory injunction. A "mandatory injunction" is one which commands the defendant to do some positive act

"MANDATORY INJUNCTION" are those which require of a party the performance of some act

Mandatum (*Lat*) The contract of Mandate.

Mandatum nisi gratuitum nullum est. A maxim meaning "Unless a mandate is gratuitous, it is not a mandate."

Mandatum non suscipere cui libet liberum ese susceptum autem consummandum est, aut quia primum renanciandum est, per semet ipsum aut per alium eandem rem Mandator exequatur. A maxim meaning "Every person is at liberty to refuse a command, but being undertaken, it is to be performed, or first refused in person, that the principal may have an opportunity either to do the thing himself, or by the hands of another." (*Morgan Leg Max*)

Mandi or Mundy. (*H*) A market, a special market, one for any particular article: perhaps the original of the word Mondovy, called, the mart at Mirzapur (Reg. ix. 1810, S. 43) A whole sale shop (*Wil. Gloss*)

Mandir (*Sanskrit.*) A house, a place, and especially a temple.

Mangalam. (*Mal*) Tiya marriage in North Malabar. (*Sun. Mal. Law*)

Maniam.

Mangalasutra. (*S*) The lucky thread, a string having in the centre a piece of gold or other valuable material tied by the bridegroom round the neck of the bride, at the time of the marriage, and worn by the latter as long as the husband lives: in South India where the practice is peculiar, it is usually called Tali in Upper India, it is a string or a piece of silk tied round the wrist, and worn only during the marriage celebration

Mangni (*H*) Betrothing Asking in marriage (*Mac Mhn Law*)

Manhole A means of entering sewers or drains for their inspection and cleansing It is treated as part of the sewer itself, and not as a mere accessory thereto [*Swanston* v *Twickenham Local Board*, (1883) 11 Ch D 838]

Mania That form of insanity where the mental derangement is accompanied with more or less excitement, sometimes amounting to a fury, a condition in which the perversion of the understanding embraces all kinds of objects, and is accompanied with general mental excitement

The individual in such cases is subject to hallucinations and illusions. He is impressed with the reality of events which have never occurred and of things which do not exist and acts more or less in conformity with his belief in these particulars The mania may be general and affect all or most of the operations of the mind, or it may be partial and be confined to particular subjects.

Mania a potu The term "mania a potu" is used to designate a species of temporary insanity resulting as a secondary effect produced by the excessive and protracted indulgence in intoxicating liquors

Mania transitoria The term "emotional insanity" or "mania transitoria," applies to the case of one in the possession of his ordinary reasoning faculties, who allows his passions to convert him into a temporary maniac

Maniakaran. (*Tam.*) Headman of a village

MANIYAKARAN. (*Tam*) A superintendent in general the headman of a village, the superintendent of a temple in the Tamil countries it is especially applied to a subordinate native officer employed in the collection and management of the revenue under the native Tahsildar, by whom he is appointed, and to whom he is responsible The term usually implies the *Vatta Maniyakar*, or collector of a small district of two or three villages. the officer is a kind of head peon, who in concert with the heads of villages, superintends not only the collection, but the cultivation, the reaping and selling of the crop, when the revenue is paid in kind, and settles petty disputes. (*Wil. Gloss.*)

Maniam. (*Tam*) Superintendence or management of affairs,—a subordinate officer under the Collector for collection of revenue.

KOIL-MANIAM (*Tam.*) Superintendence of temple.

KUDI-MANIAM (*Karn*). Superintendence of village.

SUNKA-MANIAM (*Karn.*) Superintendence of custom-house.

UR-MANIYAM (*Tam.*). Superintendence of a village.

Maniyam.

VATTA-MANIYAM (*Tam*). Superintendence of a district.

Maniyam (*M*) Inam, revenue-free grants (grama-maniyam, etc) (*Bad Pow* III 82, 120)

Manifest. As an adjective, obvious, apparent, plain (*Lapham* v *Curtis*, 26 Am Dec 310), needing no evidence to make it more clear, that which is open, palpable, uncontrovertible

"MANIFEST", as used in an act providing that the board of supervisors may correct any manifest clerical or other error in any assessment or returns made by any officer to such board, means something which is apparent by an examination of the assessment roll or return, needing no evidence to make it more clear, "that which is open, palpable, incontrovertible" It is synonymous with "evident", "visible", "plain," "obvious to the understanding" from an examination of the roll or document, or, at the most, only requiring a mathematical calculation to demonstrate it.

MANIFEST. (*Noun*) A sea-letter, one of ship's papers, document giving particulars of the various packages comprising the cargo of a ship, port of departure and the port for which she is bound

A *manifest* is a declaration of the entire cargo, a "*bill of lading*" is a declaration of a specific part of the cargo A manifest is essentially a summary of all the bills of lading

Manifesta probatione non indigent. A maxim meaning "Manifest things require no proof"

Manifolding Term applied to a fraudulent trick with half-notes A man cuts a bank-note in two, sending one half to one tradesman with an order for goods, and the other half in the same way to another getting credit from both for prompt despatching of goods.

Maniyagadu (*Tel*) A superintendent in general, the headman of a village.

Manjaneer Puthiran "Manjaneer Puthiran" is used as synonymous with a Dattaka son (29 M 161= 16 M L J. 22.)

Manjha (*Punjabi*) Land lying between the land in the immediate proximity of a village and that on the boundaries of its lands. Also the name of the upland region between the Sutlej and the Bias on the one side and the Ravi on the other; it is the original home of the Sikhs, and contain their capital Lahore and their sacred city Amritsar Manjha is also the name of the dialect of Panjabi spoken in this district.

Manjhi (*Ben*). A chief of a group villages or tribal section under the Kolarian form (*Bad Pow* I. 497.) Headman of a Santal village.(*Bad Pow* I 593)

Manki. A chief of a tribal union or parha (*Kolarian*) (*Bad Pow* I 117, 576) (Another form of manjhi; cf majhas, which is the mainjhi-has or chief's allotment) (*Ibid*)

Mankind The race or species of human beings, in law, females as well as males.

Manner. Mode of action, way of performing or effecting anything, method, style; the way of managing, the way of doing a thing, the method of procedure, general method.

Manor

A Thief "taken with the *Manner*" is one "taken with the thing stolen about him" (*Cowel, Mainour Stroude*)

'MAYNOUR' (*or mamour, or manner*), is when a thief hath stolen, and is followed with Hue and Cry and taken having that found about him which he stole, that is called Maymour. And so we commonly use to say, when we find one doing an unlawful act, that we took him *with the maynour* or *manner*" (*Termes de la Ley*)

TAKEN WITH THE MAINOUR means taken the very act" (3 Bl Com 71, Vf, 4 Lb. 307).

The word manner in a street improvement contract giving the engineer the power of directing the manner in which the work shall be done, "means the power to control the work, not only as to its character, but also as to the particular means used to accomplish it"

The term "manner" in a statute providing that a railroad, may agree with the public authorities as to the manner, terms, and conditions upon which the railroad, may occupy a highway, means the method or mode of laying the tracks.

Manner and Form "The words" in Manner and Form' refer only to the mode in which the thing is to be done, and do not refer to as to the thing which is to be done or the time for doing it" (per *Campbell, C. J, Acraman* v *Herniman*, 16 Q B 1003, 1004).

The expression "manner and form", as used in a plea, covers matters of both substance and form (*Words and Phrases.*)

The expression "in such manner," as used in a corporation by-law providing that shares of stock shall be transferable "in such manner" as the company shall direct, is not synonymous with "in such form" "By the word 'form' is meant the mode, or external appearance, of the thing The word "manner", although it includes the form, is much more comprehensive It is synonymous with 'method' or 'peculiar way', and hence he who is authorized to prescribe the 'manner' has authority to direct the peculiar way in which anything is to be done.

"Manner prescribed" defined. Act 7, 1880, S. 4.

Manni (*Tel*) A land measure commonly designated a ground (60 x 40 ft=2,400 square feet.)

Manomania distinguished Mania is a condition in which the perversion of the understanding embraces all kinds of objects, and is accompanied with general mental excitement It is distinguished from monomania, which is the perversion of the understanding in regard to a single object or a small number of objects.

Manor. A house, dwelling, seat, or residence. MANOR. seems to be derived of the Fr manoir, habitatio, or rather from manendo, of abiding there, because the Lord did usually reside there. (*Tomlin's Law Dic*)

A manor has thus been defined as "a certain circuit of ground granted by the King to some baron or man of worth as an inheritance for him or his heirs,

Manpan.

with the exercise of such jurisdiction within the said compass as the King saw fit to grant and subject to the performance of such services and yearly rents as were by the grant required" "This word Manor is a word of large extent, and may comprehend many things (*Hill* v *Grange Plowd.* 168) as Demesnes, rents and services (Co Littl 310 b, 319b) lands, meadows, pastures, woods, commons, advowsons appendant (*Ive's Case*, 5 Rep 11 Dart, 139)

Manpan (*Mar*) Any honorary rights or privileges attached to respectability of station or official rank, the honours and presents due to the Mankari, the rights of the village hereditary officers

MAN PAN (*Bo. Berar*), the dignities, precedence, &c, of the hereditary officers, one of the elements in the watan,' (*Bad. Pow* i. 180, 1, iii. 373)

Mansab (*A.*) Office, dignity. A military title and rank conferred by the Moghul government of Delhi, regulated by the supposed number of horses the holder of the title could, if required bring in to the field, varying from ten to ten thousand jagirs were assigned for the maintenance of his force, which was in the highest and lowest grades.

Mansabdar (*Hindustani*). A title expressing rank, according to the number of horsemen the holder could bring into the field, under the Moghul Government.

Mansion or Mansion house A dwelling-house or place of residence. "'Mansion' is most commonly taken for the chief messuage or habitation of the Lord of a Manor, the Manor House where he doth most remain or continue, his Capital Messuage, as it is called" (*Termes de la Ley*)

A "mansion house", not only includes the mansion or dwelling house,but also such houses as are appurtenant thereto, as the kitchen, laundry, smokehouse, or dairy.

Manslaughter. Manslaughter is unlawful homicide without malice aforethought." (*Steph Cr Law 158*) Manslaughter is the unlawful killing of a human being without malice, express or implied "Homicide, which would otherwise be murder, is not murder, but *manslaughter*, if the act by which death is caused is done in the heat of passion, caused by provocation, unless the provocation was sought or voluntarily provoked by the offender as an excuse for killing or doing bodily harm". (*Steph Cr. Law 161.*)

"MANSLAUGHTER is voluntary homicide, committed under the influence of sudden passion arising from an adequate cause but neither justified nor excused by law".

Manslaughter is the intentional killing of a human being in the heat of passion, on a reasonable provocation, without malice and without premeditation, and under circumstances that will not be justifiable or excusable homicide.

"The true nature of manslaughter is that it is homicide, mitigated out of tenderness to the frailty of human nature. Every man, when assailed with violence of great rudeness, is inspired with a sudden impulse of anger which puts him upon resistance before time for cool reflection, and if during that period he attacks his assailant with a weapon likely to endanger life, and death ensues, it is regarded as done through heat of blood,or violence or anger, and not through malice, or that cold-blooded desire of revenge which more properly constitutes the feeling, emotion, or passion of malice". (*Words and Phrases.*)

Manumanual occupation

Mansubdar. (*H*) A nobleman holding a mansab or military rank with certain number of horses, although sometimes wholly engaged in the civil service of the state. (*Wil Gloss*)

Mansubdaran. (*H.*) An aggregate term for the assignments of land revenues to the Mansabdars. (*Wil. Gloss.*)

Mantrap. A gun or other device to catch trespassers It is an offence to set or place, or cause to be set or placed, any mantrap, spring-gun, or engine calculated to destroy human life or to inflict grievous bodily harm, with the intent that the same, or where by the same, may destroy or inflict grievous bodily harm on a trespasser or other person coming in contact therewith But they may lawfully be set in a dwelling house by night for its protection (see *R.* v *Smith*, 1902, noted in Archb Cr Pl, 23rd ed, p 853)

Manu. A great Hindu sage and writer of an important Smriti that bears his name The author of the most important of the Hindu Smriti. (Institutes of Manu or Manavadharma-sastra), ideas of land-holding (*Bad Pow.* i 126, 227) Village 'community' (Joint village), unknown to Manu, (*Bad-Pow*, i 128 *note*). (Dhammathat) of Burma: (*Bad. Pow.* iii 490)

Manual. Signifies what is employed or used by the hand. and whereof a present profit may be made; a thing is said to be in the Manual Occupation of one, where it is actually used or employed by him. (*Tomlin's Law Dic*)

Manual instruction, in Technical Instruction Act, 1889, c 76 (by s 8), means "instruction in the use of tools, processes of agriculture,and modelling. in clay, wood, or other material."

MANUAL LABOUR, in Employers and Workmen Act, 1875, c 90, s 10 does not mean the mere user of the hands in matters incidental to the employment but the user of the hands as the real and substantial part of the employment [*Bound* v. *Laurence*,[(1892), 1 Q.B. 226; *cf Morgan* v *London General Omnibus Co*, (1884). 13 Q B.D. 832. Manual Labour is labour performed by hand] In order to determine whether a person is engaged in "manual labour" it is necessary to look at such person's real and substantial employment, not what he may be called upon to do incidentally in the course of his employment (*Bound* v. *Lawrence*, (1891), 61 L J M C. 21) Therefore a grocer is assistant, the substantial part of whose employment is to sell and deliver goods to customers although he may be incidentally engaged in lifting heavy goods, is not a person engaged in "manual labour" (*ibid*), nor is an omnibus conductor [*Morgan* v *London General Omnibus Co.*,(1884), 13 Q.B D. 832], nor a tramcar driver [*Cook* v. *North, Metropolitan Tramways Co.* 1887, 18 Q.B.D 683.]

Manual Occupation. A Butcher's work may be a "Manual Occupation" (*Shaw* v. *Poynter*, 2 A. & E. 312; 4 L.J.K.B. 16).

Manufactory.

Manufactory. A manufactory is a house or place where anything is manufactured.

Webster defines a "manufactory" to be a building or collection of buildings appropriated to the manufacture of goods. It is something more than a building. It includes not only the building, but the machinery necessary to produce the particular goods manufactured, and the engines and other powers required to propel such machinery.

"**Manufacture**" defined Act 5, 1888, s 4 (6), Ben. Act 7, 1864, s 3, Bom Act 5, 1909, s 2 (15), E.B and A. Act 1, 1910, s 3 (15), Bom Act 5, 1878, s. 3 (11), Bom Act 2, 1890, s 3 (*g*), Mad Act 1, 1886, s 3 (18) Mad Act 4, 1889, s. 3 (*f*), U. P. Act 4, 1910, S. 3 (20), (10 Pat L T. 393).

MANUFACTURE. "The process of making a thing by art" (*Burrill*) The word "manufacture" is a compound word of Latin origin derived from the words "manu," by hand and "facere," to do, to make, to form, but the meaning is not confined to that which is done by hand alone, but by machinery as well (In re *Tecopa Min, etc, Co*, 110 Fed 120,121 *See also* 110 I C 788=29 Cr.L J 756=1928 Pat 506)

Lexicographers define 'manufacture' to be 'the process of making anything by art, or reducing materials into a form fit for use by the hand or by machinery' Mr Brande defines 'manufacture' as a term employed to designate the changes or modifications made by art or industry in the form or substance of material articles with a view of rendering them capable of satisfying some want or desire of man, 'manufacturing industry' in the application of art, science, or labour to bring about certain changes or modifications

"Manufacture" is descriptive either of the practice of making a thing by art, or of the thing when made.

Manufacture is the transforming or fashioning of raw materials into a change of form for use The functions of commerce are different. The buying, selling, and the transportation incidental thereto, constitutes commerce, and the regulation of commerce.

"It will appear from the various decisions that the definitions of 'manufacture' and 'kindred terms' as given by the lexicographers, do not afford a true test in law as to what may or may not be included within the meaning of those terms. The Courts have cited those definitions generally, but have, not adhered to them in particular cases When, therefore, the usual question arises—whether or not a given industry, or thing, is to be classed as manufacture, or a given person, natural or artificial, as a manufacturer, it is not safe to rely upon the lexicographer, it is necessary to look to the decisions. With this caution, the following definitions are given, some of which apply to the thing made; others to the process of making, since the word "manufacture" may be descriptive, either of the making a thing by art, or of the thing when made.

As a noun, manufacture is defined as: (1) the process of making anything by art, or reducing materials into a form fit for use, by the hand or by machinery (*Worcester Dict.*), (2) anything made or manufactured by hand, or manual dexterity, or by machinery. As a verb, the word is defined as meaning to form by manufacture, or workmanship, by the hand or machinery, to make by art and labour. (*Ame Cyc.*)

Manufacture.

"The word '*Manufacture*'," said Abbott, C.J., in *R.* v. *Wheeler*, 2 B. & Ald. 349, has been generally understood to denote, either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines, or, it may, perhaps, extend also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. No mere philosophical or abstract principle can answer to the word 'Manufactures.' Something of a corporeal and substantial nature,—something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is required to satisfy the word." (See also *Gibson* v *Brand*, 4 M. & G. 199)

OTHER DEFINITIONS "The production of articles for use from raw or prepared materials, by giving these materials new forms, qualities, properties or combinations, whether by hand-labour or by machinery." (*Century Dict.*)

Manufacture is (1) The application, to material, of labour or skill, whereby the original article is changed to a new, different, and useful article, provided the process is of a kind popularly regarded as manufacture, or (2) the product of such process.

"Whatever is made by human labour, either directly or through the instrumentality of machinery" (*Abbott L Dict.*)

"MANUFACTURE" includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture. [Act II of 1911 (Patents and Designs), S. 2, cl (10)].

"Manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of remaking, altering or repairing any explosive [Explosives Act (IV of 1884), S 4; 22 I.C 425 (427)]

To constitute a manufacture, within the customs duty acts, there must be a transformation. Mere labour bestowed on an article, even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a transformation ensues, and the article becomes commercially known as another and different article from that as which it began its existence.

Every alteration in an article does not confer on it a new character as a manufacture. To constitute a new and different article and a manufactured article, it must be so changed as to have a positive and specific use in its new state.

The offence of manufacture of an excisable article necessarily includes that of possession and the two

offences cannot be called "distinct" for the purposes of S. 35 of the Criminal Procedure Code. (25 Cr. L J. 83=76 I C 19=A I R 1924 Nag 32.)

Manufacture and trade To "manufacture" is to make, the operation of making whatever is used by man, anything made from raw materials by hand, anything made from raw materials by hand, by machinery, or by art To "traffic" is to trade, either by barter, or by buying or selling, to trade, to pass goods or commodities from one person to another for an equivalent in goods or money, etc.

Manufacture of machinery "The word 'Manufacture of machinery' may be construed in one of two ways Either it may mean the machine when completed or the mode of constructing the machine" (*per* Parke, *B*, *Morgan* v. *Seaward*, 6 L J Ex 156).

'Manufacture of salt" defined Act 12, 1882, S 3.

"MANUFACTURE OF SALT" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence. [Salt Act (XII of 1882), S 3]

"Manufactured articles" The application of labour to an article, either by hand or mechanism, does not make the article necessarily a "manufactured article", within the meaning of that term as used in the tariff laws They are not manufactured articles until they have been manufactured into new or different articles, having a distinctive name, character, or use.

"Manufactured goods," would mean, not merely goods produced from the raw state by manual skill and labour but, such as are ordinarily produced in Manufactories, (*Parker* v. *G. W. Ry*, 6 E. & B 109, 25 L J.Q B. 221.)

Manufacturer "A 'manufacturer' is defined to be one who is engaged in the business of working raw materials into wares suitable for use, who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process A manufacturer prepares the original substance for use in different forms He makes to sell, and stands between the original producer and the dealer and first consumer, depending for his profit and on the labour which he bestows on the raw materials".

Manufacturer's lien. In general, where goods are delivered to the manufacturer, the manufacturer has a lien on them for his labour and expenses bestowed on them.

A mechanics' manufacturers' lien is a simple right of retainer personal to the party in whom it exists, and not assignable or attachable as personal property or as a chose in action of the person entitled to it

"Manufacturing"—*See* L B R (1893—1900), 336.

Manufacturing "establishments" includes all the usual and necessary appliances for storing, manufacturing, weighing, packing, and delivering the manufactured article after the process of manufacture is completed In order that a particular article or class of articles should constitute a part of an "establishment", it is not essential that they be actually employed in the process of manufacture.

Manukye. The "*Manukye*" is now a safe and proper guide when not in conflict with justice or equity and the present feelings of the Burmans. (2 Rang. 328=84 I C 966=A.I.R. 1925 Rang 34.)

Manumission The freeing a villein or slave out of bondage. (*Tomlin's Law Dic*) The act of giving liberty to one who has been in just servitude with the power of acting except as restrained by law.

Manumitted person One who having been a slave has been made free.

Manumittere idem est quod extra manum vel potestatem ponere A maxim meaning "To manumit is to place beyond hand and power" (*Morgan Leg Max.*)

Manure includes all imported substances which subserve the purpose of enriching the soil and thus increasing the crops upon it, it is synonymous with Fertilizer. (*Ame Cyc*) Street sweepings also may be Manure (*R* v *Freke*, 5 E & B 944.)

MANURE made on a farm in the usual course of husbandry is so far regarded as an incident of the realty, or appurtenant to it, that, in the absence of any agreement concerning it, it will pass under a deed of the farm The rule is one of policy, designed to promote the interests of agriculture. There is no reason for its application when the sale is not of the farm, but only of a small parcel of land off the farm, on which the manure happens to be piled. There is nothing in the nature of manure, prior to actual incorporation with the soil, which makes it necessary to regard it as a part of realty It may be sold by the owner of the farm separate from the land Such a sale amounts to a severance of it from the land, and constitutes it personal estate.

Manure, regarded as a part of the annual produce of a farm, differs essentially from crops generally and other productions of a farm. They are raised for the purpose of removal; they are designed, perhaps with the exception of hay and fodder, to be sold and disposed of as a part of the income and profits of the land, while the manure is never, unless by the most thriftless husbandman, sold or disposed of off the farm, nor used for any purpose but the improvement of the land (*Words and Phrases*)

Manuscript Something written with the hand, a book or paper written with the hand, or a writing of any kind, in contradistinction to a printed document (*Webster*), books written with the hand.

Manyam (*Karn.*) [*See* Maunium.] Tam. Land in the South of India, held either at a low assessment, or altogether free from considerations of services done to the state or community as in the case of the officers and servants of a village. These tenures are distinguished as *Tarapadi-manyam*, when it is inherited or held from an uncertain period, as an independent right, and *Dambala-or Sanad manyam*, when held by virtue of a specific grant from the ruling power They are also distinguished as *Sarva-manyam* When the holder is entitled not only to the revenue of the state, but the rents of the cultivators; and as *Ardhamanyam* where the holder has a claim only to the government share of the revenue, the former is not frequent except in the case of grants made to temples conjointly by the

Manyam.

State and the cultivators. the term is also laxly applied to any free grant or perquisite held in hereditary right by members of a village community, or hereditary village servant (See *Wil Gloss*)

Manyam (*Tam*) Fee, grant, remuneration by occupancy of land rent free The word 'maniam' appears to correspond pretty closely with the word 'Inam' Land in the south of India, held either at a low assessment, or altogether free, in consideration of the services done to the State or community, as in the case of the officers and servants of a village (as) Tarapadi manyam, Dambala manyam, Sarva manyam, Ardha manyam, Kawal manyam.

GUDIMANYAMU (*Tel*) Land granted for the maintenance of a temple.

KANIMANIYAM (*Tam.*) Hereditary land exempt from all tax

KUDIMAKKALMANIYAM (*Tam.*) Rent-free lands assigned to the village servants

MERAIMANIYAM (*Tam*) A grant of a portion of the gross produce of cultivated lands in kind, now commuted for money

TOTIMANYA (*Karn*) An allowance in land to a village servant

Maniyakaran, (*Tam.*) The holder of rent free land, or any hereditary right or privilege.

Many Multitudinous, numerous but sometimes recognized as synonymous with the terms "diverse" "several", "sundry", and "various" being of a certain number, large or small

"Map" defined *See* Reg 3, 1889, S. 33 (1).

MAP is a drawing upon a plain surface, representing a part of the earth's surface and the relative position of objects thereon.

Mappilla (*Mal*)—(1) A bridegroom or son-in-law (2) The name given to Muhammadan, Christian or Jewish Colonists in Malabar who have intermarried with the natives of the country The name is now confined to Muhammadans (*Moore's Malabar Law*) Mappilla (*Maplah, vulg*), is a tribe of Arabian settlers on the West Coast, who adopted local usages and in Malabar became 'Kanam' landholders (*Bad Pow* iii 170 and *note*)

The Mappillas are a tribe of Mussalmans in Malabar "whom Europeans call Mappillas. They are supposed to be descendants of the Arabs who first settled on the Malabar Coast, and in some families the inheritance by nephews, instead of sons, is observed, the same among the Nayars but generally the succession is by sons Some derive the name from Ma, mother, and pilla, son implying that they are the sons of their mothers, but that their fathers are unknown in consequence of the promiscuous intercourse between the first Arab settlers and the Native women of Malabar Others, from Makkal, daughter, and pilla, son, literally, but meaning son in-law, that is, son to the man whose daughter he has married Makkalpilla is usually pronounced Mappilla Makkalpilla is the common word for son-in law in Tamil Mokhaeepilla or people from Moghaee, as Mocha is usually pronounced, is another derivation. The Rajas, in writing to a Mappilla, designate him Jonakan, and they are often called

Marginal note.

Jona Mappillar. The Nestorian Christians are called Nassrani Mappillas, Mappillas form a fairly large population in Malabar. (*Log. Mal Man.*)

Maqaddam (*A*) (1) the headman of a village, especially when not regarded as proprietor, or when in old days, the ruler or chief regarded, himself as the only proprietor, (2) C P an executive headman (as lambardar implies the revenue paying headman.) (*Bad Pow*) Maqaddam, use of the term (N.W P.) See *Bad Pow* ii 161 note (C.P) ii. 505

Maquaddami-tenure (*N W P*) See *Bad Pow.* ii 181

"Mara bapika vanshamanthi". The expression 'Mara bapika vanshamanthi" means "from among my family on the father's side, *i e*, from amongst my paternal agnates" and not from "among the descendants of my father. 10 Bom.L.R. 97.

Marabout. (*Corrupt form*) A Muhammadan Saint or mendicent.

Marakkal (*Tam.*) A grain measure in use at Madras, being one-twelfth of a kalam

Maramat. (*H*) Mending, repairing.

MARAMAT (*Mar*) The entire operations or processes of any art, as in agriculture manuring, ploughing, harrowing, sowing (*Wil Gloss.*)

Maratha (*Mahratta, Marhatta*), name of a tribe or group of tribes in W India, inhabitants of Maharashtra See *Bad Pow* iii 252 *note* early and late tribes of (*Ibid*) iii 200, 253 gradual advance of, in securing the Land Revenue of the country (*Ibid*) iii 205, (C.P.). policy in Land Revenue adm. (*Ibid.*) ii 460.

Marathas. Of *Sudras* 113 I C 497.

Marauder One who, while employed in the army as a soldier, commits larceny or robbery in the neighbourhood of the camp, or while wandering away from the army. (*Bouvier.*)

Mare The female of the horse, or equine genus of quadrupeds (*Webster Dict*)

"Marfat." The use of the word 'Marfat' cannot be used to resist the claim of purchaser. 64 I.C. 124.

'Marfatdar' Use of the term negatives recognition of tenancy by landlord. *See* 19 C L.J 62=20 I C. 664.

Margarine. A fatty substance said to be a chemical compound consisting of a base which has been termed glycerine, and of margaric acid (*Ame. Cyc*) "Margarine" means, all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not"

Margin. A part of a page at the edge, left uncovered in writing or printing an uncovered bordering spage (*Webster*) the line where the earth and water meet around a lake, the border or side of a highway, A covering deposit with a broker, accompanied by instructions as to prices that are not to be exceeded.

Marginal note It seems that marginal notes in an Act of Parliament are not to be relied upon in constructing the Act In the case of *Claydon* v. *Green*, 1868 L.R. 3 C. P at P. 521, Willes, J., said "It

Marginal note.

appears from Blackstone's Comment vol i. p. 183, that formerly at one stage of the bill in Parliament it was ordered to be engrossed upon one or more rolls of parchment. That practice seems to have continued down to the session of 1849, when it was discontinued, without, however, any statute being passed to warrant is (*see* May, Parliamentary Practice, 3rd ed , p 382). Since that time the only record of the proceedings of Parliament is to be found in the copy printed by the King's printer. But I desire to record my conviction that this change in the mode of recor ding them cannot affect the rule which treated the title of the Act, the marginal notes, and the punctuation, not as forming part of the Act, but merely as *temporanea expositio* The Act when passed, must be looked at just as if it were still entered upon a roll, which it may be again if Parliament should be pleased so to order, in which case it would be without these appendages, which, though useful as a guide to a hasty inquirer, ought not to be relied upon in construing an Act of Parliament."

It is well-settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago There seems to be no reason for giving the marginal notes in an Indian Statute any greater authority than the marginal notes in an English Act of Parliament 3 Ind Cas 359 (361)= 11 Bom.L.R. 516=8 C W N. 699=1 A.L J. 384=7 O. C. 248.

Marhi (*Hindi.*) A hill temple.

"Marhi" means a mutt. The word 'marhi' only means a mutt or temple and a person does not divest himself all authority over his house, merely by calling it a 'marhi.' 63 I.C. 370=15 S L.R. 38=1921 Sind 1.

Mari. The name of a tribe on the borders of Afghanistan and Baluchistan in partial allegiance to the Khan of Khelat. Also the name of a wild tribe resembling the Khands.

Maricham (*S-Mal*) The Sanskrit name for pepper The Hindustani word *Mirch* is evidently derived from it.

Marigommu (*Tel*), **Marigomby** (*Karn*) An outlet by which the surplus water of a tank is carried off.

Marimai (*Punjabi*). The Goddess of Cholera. She is propitiated in the Kangra District by the Pachbala and the Satbala ceremonies. (R C. Temple)

Marine. A general name for the navy of a kingdom or state. As an adjective, pertaining to the sea. As a noun a soldier that serves on board of a ship and fights in naval engagements · also the whole navy of a kingdom or state; the whole economy of naval affairs (*Webster*) (as) the Royal Marine.

MARITIME, MARINE, NAVAL, NAUTICAL. *Marine* is a technical term, employed by persons in office, to denote that which is officially transacted with regard to the sea in distinction from what passes on land; hence we speak of the marines as a species of soldiers acting by sea, of the marine society, or marine stores. *Naval* is another term of art as opposed to military, and used in regard to the arrangements of government or commerce; hence we speak of naval affairs, naval officers, naval tactics and the like. *Nautical* is a scientific term, connected with the science of navigation or the management of vessels, hence we talk of nautical instruction, of nautical calculations. The *maritime* laws of England are essential for the preservation of the naval power which it has so justly acquired The *marine* of England is one of its glories The *naval* administration is one of the most important branches of our government in the time of war. *Nautical* tables and a *nautical* almanack have been expressly formed for the benefit of all who apply themselves to nautical subjects. (*Crab.*)

Marine Adventure. A lawful marine adventure is when any property is exposed to maritime perils, or when any pecuniary benefit or security is endangered by exposure to maritime perils.

Marine corps. A military body designed to perform military services, and while they are not necessarily performed on board ships, their active service in time of war is chiefly in the navy, or aiding naval expeditions.

"Marine Court" *See* Navy Dis. Act 34 of 1934

Marine insurance Marine Insurance is a contract whereby one party, for a stipulated sum, undertakes to indemnify the other against loss arising from marine perils.

A contract of marine insurance is a contract of indemnity, whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed against marine losses, *i e.*, losses incident to marine adventure. Such indemnity, however, does not put the assured in the same position in which he would have been if no loss had taken place; it only replaces him in the position in which he was at the beginning of the adventure. (*Arnould*, 336-338).

The origin of contracts of marine insurance is clouded in obscurity and has been the occasion of much learned discussion by numerous and eminent writers on the subject The conclusions reached can be hardly more than speculative, but the consensus of the best opinions is that insurance of marine risks was practiced by the Greeks, the Rhodians, and the Romans during their respective periods of commercial supremacy Whether it merely lay dormant after the fall of the Roman Empire or whether it continued to exist in another form is not satisfactorily explained. Its revival in modern times is traced to about the close of the twelfth or the beginning of the thirteenth century when it came into use in Italy and was subsequently introduced into England and the continental countries. (*Ame. Cyc.*) Arnould, Marine Insurance, Phillips, Marshall; Park, on Marine Insurance De Hart and Simey, Marine Insurance Act.

Marine Society. A full account of the origin of this Society will be found interesting, and is given in (*Tomlins Law Dic.*)

Mariner. A seaman or sailor; one whose occupation is to assist in navigating ships. "Mariner or Seaman" includes merchant seamen. (*Morrell* v. *Morrell*, 1 Hagg. Ecc. 51). The term also includes

Maris et foeminae.

the whole profession, as well of the Royal Navy as of the Merchant Service, from the highest officer to a common seaman. (*Re Hays*, 2 Curt. 338)

Maris et foeminae conjunctio est de jure naturae. A maxim meaning "The union of male and female is founded on the law of nature." (*Bouvier L. Dict.*)

Maritagium est aut liberum aut servitio obligatum, liberum maritagium dicitur ubi donator vult quod terra sic dota quieta sit et libera ab omni seculari servitio A maxim meaning "A marriage portion is either free or bound to service" it is called frank marriage when the giver wills that the land thus given be exempt from all secular service. (*Peloubat Leg. Max.*)

Marital. Relating to, or connected with, the status of marriage pertaining to a husband.

Maritime. Pertaining to the sea or ocean or the navigation thereof

Maritime Contract. A contract concerning the sea, a contract to be performed on the high seas, a contract which relates to the business of navigation of the sea or to business pertaining to commerce or navigation to be transacted or done on the sea or in seaports (*Holt* v. *Cummings*, 48 Am Rep 199).

Maritime Law. Law relating to harbours, ship and seaman, an important branch of the commercial law of maritime nations.

Lord Mansfield speaks of maritime law being "not the law of a particular country but the general law of nations" (*Luke* v. *Lyde*, 1759, 2 Burr. 883, 887). It is used as a compendious expression for the whole body of principles and usages embodied in the various codes of law formulated either in very early times, as the Rhodian laws, or in mediaeval and later times, such as the laws of Oleron (a Breton Island), or of Wisbuy (a town in Gothland), or of the Hanse Towns, and the Ordinance of Louis XIV dealing with maritime commerce, and adopting certain common principles of law. This general maritime law is not, however, part of the law of England; for "the Admiralty Court which administers maritime law in England, administers not that maritime law which is called the common maritime law, and is not the law of England alone, but the law of all maritime countries, but the English maritime law. This latter is not the ordinary municipal law of the country, but it is the law which the Admiralty Court, either by Act of the Legislature or by reiterated decisions and traditions and principles, has adopted as the English maritime law. Neither the laws of the Rhodians, nor of Oleron nor of Wisbuy, nor of the Hanse Towns are of themselves any part of the Admiralty law of England. But they contain many valuable principles and statements of marine practice, which, together with principles found in the Digest, and in the French and other ordinances, were used by the judges of the Admiralty Court when they were moulding and reducing to form the principles and practice of their Court" (Lord Esher, *The Gas Float Whitton*, No. 2, 1896 P. 42; *The Gaetano and Maria*, 1882, 7 P D. 137, 143). "There is no general maritime law, as such, regulating all maritime transactions between persons of different nationalities at sea, which is not limited as administered in some Court. A general maritime

Maritime Territory.

law can be understood in the sense of the general maritime law as administered in English Courts, that being, in truth, nothing more than English law, though dealt out in somewhat different measures in Common Law and Chancery Courts, and in the peculiar jurisdiction of the Court of Admiralty" (*Willes, J Lloyd* v. *Guilbert*, 1865, L.R 1 Q B. 115). The maritime law of England and Scotland has been declared to be the same (*Currie* v. *M'Knight*, (1897) App Cas. 97, *Ency of the Laws of England*, Indian Naval Armaments Act, 1923, and Naval Discipline Act, 1934

Maritime Lien A lien or claim for salvage, damages, or wages, made in respect of any maritime adventure charged upon the vessel.

MARITIME LIENS. A maritime lien is defined by Lord Tenterden to mean a privileged claim upon a thing in respect of service done to it or injury caused by it, to be carried into effect by legal process Judge Curtis adopts Pothier's definition of a hypothecation as an accurate description of a maritime lien "The right which a creditor has in a thing of another, which right consists in the power to cause that thing to be sold, in order to have the debt paid out of the price."

A maritime lien is a claim or privilege upon a maritime *res*, i e, ship, freight, or cargo, which may arise *ex contractu*, *i.e.*, for services rendered to the *res*, such as salvage, or *ex delicto*, *i.e*, for compensation for damage by collision, and is enforced by proceeding *in rem*, or against the *res* by arrest in Admiralty It differs from a common law or possessory lien in that "it does not include or require possession. The word is used in maritime law not in the strict legal sense in which there can be no lien without possession actual or constructive, but to express as if by analogy the nature of claims which neither presuppose nor originate in possession. (See *Abbott Shipping Marsden Collisions*)

Maritime perils are the perils consequent upon or incidental to the navigation of the sea, and comprise perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures and restraints, and detainments of princes and peoples, jettisons and barratry, and any other perils either of the like kind or designated by the policy (*Ency of the Laws of England*)

Maritime Service A service rendered upon the high seas or a navigable river, and which has some relation to commerce or navigation--some connection with a vessel employed in trade, with her equipment, her preservation, or the preservation of her crew (*Black L Dict*) service performed on waters within the ebb and flow of the tide

Maritime Territory: Some writers on public law have used this term as a synonym of territorial waters "If," observed Twiss, "the law of nations be held to a portion of the law of each nation in such matters as are within its scope, then there may be no valid objection to the use of the phrase maritime territory in the sense of territory subject to the law of the sea, but inasmuch as the term territory in its proper sense is used to denote a district within which a nation has an absolute and exclusive right to set law, some risk of confusion may ensue if we speak of any part of the open sea over which a nation has only a concurrent right to set law as its maritime territory" (*Ency. of the Laws of England.*)

Maritime warfare: War on the sea.

Mark as a noun, a visible sign made or left upon anything, a line, point, stamp, figure, or the like, drawn or impressed so as to attract attention and carry some information or intimation, a token, a trace (*Webster Dict*) Some change made in some part of an animal by a knife or other means, such as boring or slitting the ear In the case of illiterate persons "mark" takes the place of a signature A thumb mark or finger impression serves as even a better and surer identification than a signature As a verb, to mark is to make a visible sign upon something; to affix a significant mark to, to draw, cut, fasten, brand, a token upon, indicating or intimating something, to affix an indication to

"Market" defined (*See also* Bazar This word is also used in combination with other words (as) Municipal Market, Private market, public market Ben. Act 3, 1899, S 3 (24), Mad Act 4, 1884, S 3 (xi); Mad. Act 5, 1884, S 3 (15), Mad Act 3, 1904, S. 3 (16)

A public place for buying and selling

"Market implies a public time and appointed place of buying and selling goods, also purchase and sale" (*Wharton*) The word "market" is incapable of definition in the true sense of that word, that is, by the characteristic or crucial mark common to all the instances It is a thing which can only be described 113 I C 506=30 Bom L R 1128=52 Bom 780=12 A I. Cr R 30=30 Cr L.J 168=A.I R 1928 Bom 413.

A market is a place set apart for the meeting of the general public of buyers and sellers freely open to any such, to assemble together, where any seller may expose his goods for sale and any buyer may purchase 26 Cr L J 1053=87 I C 973=A.I R. 1925 Mad 1053

MARK, BADGE, STIGMA Mark is employed either in a good, bad, or indifferent sense, Badge in an in different one; Stigma in a bad sense, a thing may either be a mark of honour, of disgrace or of simple distinction, a badge is a mark simply of distinction, the stigma is a mark of disgrace

MARK, PRINT, IMPRESSION, STAMP The word mark is the most general in sense, whatever alters the external face of an object is a mark, a print is some specific mark, or a figure drawn upon the surface of an object, an impression is the mark pressed either upon or into a body, a stamp is the mark that is stamped in or upon the body The mark is confined to no size, shape, or form, the print is a mark that represents an object, the mark may consist of a spot, a line, a stain, or a smear, but a print describes a given object A mark is either a protuberance or a depression, an impression is always a sinking in of the object The stamp mostly resembles the impression unless in the case of the seal, which is stamped upon paper, and occasion an elevation with the wax

To MARK NOTE, NOTICE We mark and note that which particularly interests us, the former is that which serves a present purpose, notice that which may be of use in future The impatient lover mark the hours until the time arrives for meeting his mistress; travellers note what strikes them of importance to be remembered when they return home; to notice may serve either for the present or the future

As a noun, "Market" is also used to denote a franchise or liberty derived from the Municipality or in some cases held by prescription which presupposes a grant, and may be granted to a public body or a private person It generally means a designated place in a town or city to which all persons can repair who wish to buy or sell articles there exposed for sale As a verb the word "market" is equivalent to sell

Market due, 75 I C 52=19 N L R. 122=24 Cr.L J. 516=A.I R 1923 Nag 264

"Market Garden", means, "a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market "Gardening" (58 & 59 V c 27, S 6)

Market overt In open market, *i e*, a place sanctioned by law or custom for selling and buying and open to the public, a place, market, or shop for the public sale of goods

In all places, outside the City of London, a Market place, or spot of ground was set apart by custom for the sale of particular goods, that was originally the only Market Overt (2 Bl Com 449), to be called Market overt it must be open, public and legally constituted (*Downshire* v *O'Brien*, 19 L R. Ir 380.) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller (*See* 2 Co. Inst 713, The case of Market Overt, 38 Eliz., 5 Co Rep 83b, Com Dig, "Market", E,)

Market and Fairs A fair is a greater sort of market, usually held once or twice a year or at stated periods or at festival times when people congregate in large numbers. A market is less than a fair and is usually held once or twice a week or even daily. (*Bacon's* Abr, "Fair") Every fair is a market, but every market is not a fair (2 Inst. 406); (*See also* Gunning, Law of Tolls *Bacon's* Abridgment, Vol III, tit "Fair" Coymns, Digest, Vol V, Tit "Markets, Pease and Chitty, Markets and Fairs)

Market Price or Value The price fixed by buyer and seller in an open market in the usual and ordinary course of lawful trade and competition, the price or value of the article established or shown by sales, public or private, in the ordinary way of business, the fair value of the property as between one who desires to purchase and one who desires to sell, the current price (*Century Dict*)

"Market value" defined. Bom. Act 4, 1898, S. 71 (1).

It is the price it would fetch in the market under the state of things for the time being existing The phrase "market value" in a contract for the sale of goods means the price in the market to an ordinary consumer, irrespective of the particular contract. (*Orchard* v *Simpson*, 1857, 2 C B N.S 299).

By market value is meant the price which would be obtainable in the market for that concrete parce

Market value.

of land with its particular advantages and its particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights 33 B 483=11 Bom.L.R. 674.

"For the purposes of determining the market value, (for the purpose of pre-emption) the Court may consider the following among other matters as evidence of such value, (*a*) the price or value actually received or to be received by the vendor from the vendee or the amount really due on the footing of the mortgage, as the case may be, (*b*) the amount of interest included in such price, value or amount, (*c*) the estimated amount of the average annual net assets of the property, (*d*) the land revenue assessed upon the property, (*e*) the value of similar property in the neighbourhood, (*f*) the value of the property as shown by previous sales or mortgages." [Pun. Act II of 1905 (Pre-emption) S 24]

The phrase "market value" in S 23 of the Land Acquisition Act excludes from consideration all circumstances which would not affect the market as such and the value is to be measured not by the standard of any individual's capacity or incapacity 9 Bom.L R 1232

The market value of a land means simply the price which, at a given time and place, the land would fetch on sale according to the then rates of the market, and this value depends upon pre-existing general considerations apart from the individual projects of a particular purchaser. 10 Bom L R 907.

The *market value* of a land should be estimated according to what it would be if laid out in the most lucrative and advantageous way in which the owner could dispose of it When the land has any special adaptability for any purpose the tribunal assessing the compensation should have regard to the contingent value arising from the possibility of the land being purchased by people for that purpose 3 Mys L J 261. *See also* 5 Luck 514=8 O W.N 44=130 I.C. 856=A I R. 1931 Oudh 137.

"MARKET VALUE AT THE TIME OF AWARDING COMPENSATION This expression means the "market value at the time when Land acquisition proceedings under the Act X of 1870 are taken" as opposed to its known market value in the past and its probable market value in the future 15 B 279 *See also* 63 P R. 1907=83 P W R. 1907, 9 Bom L R. 99 (103)

'Market value' of land, meaning of 17 C.L J. 34=18 I C. 638.

Marketable Such things as may be sold, such for which a buyer may be found.

"Marketable security" defined. Act 2, 1899, S. 2 (16-A)

MARKETABLE SECURITY" means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom. Act II of 1899 (Stamp), S 2 (16-a) It is security of such a description "as to be capable of being sold in any stock market, an instrument which will be treated on the stock exchange as something which can be bought and sold" (*per* Esher, M.R *Brown* v. *Inl. Rev.* 1895, 2 Q.B. 598).

Marriage

Marketable security, in the Stamp Act, 1891, Sch. 1 See *Knights Deep, Ltd* v *Inland Revenue Commissioners* (1900), 1 Q B 217

Marketable Title A term which when applied to real estate is used to designate a title free from reasonable doubt, one that is not only good, but indubitable, a title in which there is no doubt involved either as to matter of law or fact, a title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would, in the exercise of that prudence which business men ordinarily bring to bear on such transactions, be willing and ought to accept, a title reasonably free from such doubts as would affect the market value of the estate. (*Ame. Cyc*)

Marking and Signing The word "signing" means the writing of the name of a person so that it may convey a distinct idea to somebody else that the writing indicates a particular individual whose signature or sign it purports to be A "mark" is a mere symbol and does not convey any idea to a person who notices it, often even to the person who makes it. 25 C 911=2 C W N 642.

Marksman In the case of a marksman, his mark affixed to an endorsement or other document in the handwriting of another is sufficient to bind the person whose marks is affixed 7 Mad 55 *foll in* 7 Mad 76, *See also* 28 B 262 (264)=5 Bom I R 1032, 26 Bom 246 (249)=3 Bom L. R. 834, 35 C 813 (817).

The attestation of a deed by persons unable to sign their own names is worth next to nothing 11 M I.A. 268=8 W R. (P C) 22=2 Suth 83=2 Sar 281

Marla. a Land Measure.

MARLA (*or Mandla*), (*Pj.*), the twentieth part of a kanal (*Bad Pow* II. 559)

Maroti *See* Marwat.

"Marriage" defined Act 15, 1865, S 2, Mad. Act 4, 1896, S 2

MARRIAGE. Marriage is a civil and religious contract, whereby a man is joined and united to a woman, for the purposes of civilized society. (*Tomlin's Law Dict*)

Marriage is generally the conjunction of a man and woman, in a constant society, and agreement of living together, until the contract is dissolved by death or breach of faith, or some notorious misbehaviour, destructive of the end for which it was intended It is one of the rights of human nature, and was instituted in a state of innocence, for preservation thereof, and nothing more is requisite to a complete marriage, by the laws of England, than a full, free, and mutual consent between parties, not disabled to enter into that state by their near relation to each other, infancy, pre-contract or impotency. (*Tomlin's Law Dic*)

"Marriage", as understood in Christendom, may, for the purpose, of creating the status of "Husband" and "Wife" be defined as, the voluntary union for life of one man and one woman, to the exclusion of all others" (*per* Penzance, J O *Hyde* v *Hyde*, L.R.P D & A. 51; 15 P D 76 In law

Marriage.

"marriage" may mean either the acts agreements, or ceremony by which two persons enter into wedlock, or their subsequent relation created thereby. In the latter sense, it is the civil status or personal relation of one man and one woman joined together in a matrimonial union which was lawfully entered into, is intended to continue during the joint lives, is not dissoluble by their consent or agreement, and which involves the reciprocal rights and obligations imposed by law on such a union. (*Ame. Cyc.*)

Though the *Asura* form of marriage, when actually performed (among Hindus) may be recognised as valid, an agreement for such a marriage cannot be legally enforced 32 Mad 185=18 M.L J. 403=4 M.L.T. 1=3 I.C. 554 (F B)

The distinctive mark of the *asura* form of marriage is the payment of money for the bride, and the absence of such payment of a bride-price is a distinctive mark of the approved form 37 Bom 295 =14 Bom.L R 1182=17 I C 949 *Lush* on Husband and Wife, *Macqueen* on Husband and Wife, *Eversley*, Domestic Relations, *Edwards and Hamilton*, Law of Husband and Wife, *Crawley*, Husband and Wife, *Clancy*, Husband and Wife, *Mayne's* Hindu Law *Roper* Husband and Wife.

MARRIAGE, MATRIMONY, WEDLOCK. Hasty *marriages* cannot be expected to produce happiness, young people who are eager for *matrimony* before they are fully aware of its consequences will purchase their experience at the expense of their peace. *Wedlock* is the old-English word for matrimony, and is in consequence admitted in law, when one speaks of children born in wedlock. One speaks of living happily in a state of wedlock, of being joined in holy wedlock

MARRIAGE, WEDDING, NUPTIALS. Marriage denotes the act of marrying Wedding and nuptials denote the ceremony of being married.

Marriage brokerage The act by which a person interferes for a consideration to be received by him, between a man and a woman, for the purpose of promoting a marriage between them. (*Bouvier*)

Marriage brokage contract. An agreement for the payment of money or other consideration for the procurement of a marriage (*White* v *Equitable Nuptial Ben. Union*, 52 Am Rep. 325.)

Marriage Insurance. A so-called contract of insurance which is in effect a contract in restraint of marriage, and therefore void; a speculation in marriage futures. (*Ame Cyc.*)

Marriage settlement. A deed executed and making a settlement of property in consideration of a marriage about to take place (per *Hill, J., Foster* v. *Fowler*, 5 Jur. N S 99). A post-nuptial settlement is not strictly a *"Marriage Settlement"* (*Fowler* v *Foster*, 28 L J Q B. 210), except it be in pursuance of an ante nuptial agreement (per *Bowen L J., Courcier* v. *Bardsh*, 27 S.J. 276).

Marriage settlements proper are contracts or agreements between a man and woman before marriage, but in contemplation and generally in consideration of marriage, or contracts between both or either of them and a third person, in consideration of their marriage, whereby the property rights and interests of either the prospective husband and wife, or of both of them, are determined, or where property is secured to either or to both of them, or to their children Strictly speaking marriage settlements are confined to agreements entered into before marriage, or ante nuptial agreements There can be of course no contract between husband and wife based upon the consideration of marriage after the marital relation has been entered into Conveyances, however, either voluntary or for consideration, between husband and wife, gifts, and mutual agreements after marriage concerning property rights may in proper cases be upheld. Such transactions have been often designated as post nuptial settlements, in distinction from settlements agreed upon before marriage

Marshalling securities.

MARRIAGE SETTLEMENT, in S 4 of the Bills of Sale Act, 1878 (41 & 42 Vict c 31), includes an informal memorandum of agreement for a marriage settlement. [*Wenman* v *Lyon*, (1891), 1 Q B 634]

"Marriage with another woman" defined Act 4 1869, S 3.

"MARRIAGE WITH ANOTHER WOMAN" means marriag of any person, being married to any other person during the life of the former wife, whether the second marriage shall have taken place within the dominions of her Majesty or elsewhere. [Act IV of 1869 (Divorce), S. 3, Cl. (8)

Marriageable woman A woman able to bear children to her husband. (*26 Ame. Cyc* 926).

Married man A widower would come under the term a "married man" (*Goss* v *Sharpe*, 23 Rettie, 146).

Married woman. *See* 25 M L J. 65=1913 M W N. 697=20 Ind Cas 934 (935)

Marry in 24 & 25 Vict c 100, S. 57 (Bigamy), means "go through the form of marriage" The statute is equally contravened whether the second marriage is a valid one or not. [*R* v *Allen*, (1872) 1 C.C R 367 *See also* Penal Code, S. 494]

Marshal As a noun, an officer of the peace, appointed by authority of a city or borough, who holds himself in readiness to answer such calls as fall within the general duties of a constable or sheriff (*Anderson L Dict*) As a verb, in general usage, to arrange or rank in order, and in the sense in which it is used in Courts of equity, so to arrange different funds under administration that all parties having equities therein may receive their due proportions (*Ame Cyc.*)

Marshalling assets and securities The doctrine of marshalling assets and securities is that where a creditor has a lien on two funds in the hands of the same debtor, and another creditor has a lien on one of them only, equity, on the application of the latter, will compel the former to take his debt out of that fund to which the latter cannot resort.

Marshalling securities. "If a person having two estates mortgages both to *A*, and then one only to *B*, who had no notice of A's mortgage, *B*, may, as against the mortgagor, compel the payment of the first mortgage out of the estate on which he had no charge. "This is called *Marshalling Securities"* (per *Kay, L.J., Flint* v. *Howard*, 62 L.J. Ch. 812).

Marsiah.

Marsiah. (*A*) An elegy, especially one recounting the circumstances of the death of Hussain, the third Imam.

Marsiahkhan (*Hindustani*) The Officer in a Shiah community who chants the Marsiah

Mart. Market

Marte suo decurrere, (*Lat.*) "To run by its own force" (*Burrill.*)

Martial. Pertaining to or suited for war.

MARTIAL, WARLIKE, MILITARY, SOLDIER LIKE *Martial* is both a technical and a more comprehensive term than warlike, on the other hand *warlike* designated the temper of the individual more than martial we speak of martial array, martial preparations, martial law, a court martial, but of a warlike nation, meaning a nation who is fond of war, a warlike spirit or temper, also a warlike appearance, inasmuch as the temper is visible in the air and carriage of a man *Military* signifies belonging to a soldier, and *Soldierlike* like a soldier

We speak of *military* in distinction from naval, as military expeditions, military movements, and the like, but in characterizing the men we should say that they had a *martial* appearance, but of a particular place that it had a military appearance, if there were many soldiers. *Military*, compared with *soldierlike* is used for the body and the latter for the individual The whole army is termed the *military* conduct of an individual is *soldierlike* or otherwise.

Martial law is the law of war, that depends upon the just arbitrary power and pleasure of the King, or his Lieutenant, for though the King doth not make any laws but by common consent in Parliament, yet in time of war, by reason of the necessity of it, to guard against dangers that often arise, he useth absolute power, so that his word is a law. (*Tomlins Law Dic.*)

MARTIAL LAW It originally meant the law administered by the Court-martial which dealt with "the offences and miscarriages of soldiers contrary to the laws and rules of the army." (*Hale Hist of Com. Law*, 40.)

The term *Martial Law* has sometimes been used as equivalent to that branch of modern statutory law known as military law, "which governs the soldier in peace and in war at home and abroad" by a precise, ascertained and well-defined body of rules administered by recognised tribunals.

The term *Martial Law* has also been often applied to acts done under paramount military necessity in repelling an invasion or crushing an insurrection in virtue of the common-law right and duty to repel force by force and to take whatever measures may be necessary for the protection of life and the prevention of crime. For these purposes it is justifiable not only for soldiers but also for citizens, having regard to the situation in which they are respectively placed, to use whatever physical force may be necessary for any legitimate warlike operation, even though it involves the destruction of property, the personal constraint of individuals, and the killing of rebels and mutineers while engaged in the commission of their crimes [*see Case of Ship Money*, 3 St Tr. 825, *R.* v. *Pinney*, (1832) 3 St. Tr. (N.S.) II; 5 C. & P. 254, 37 R R. 599, "Featherstone Riot Report;" Parl Papers, 1893-4, c. 7234, *Ency of the Laws of England*]

Martial law, in the most usual sense of the term, meaning "the suppression of ordinary law, and the temporary Government of a country or parts of it by military tribunals" (*Dicey*, p 283) is unknown to the English Constitution. "So Martial Law cannot be made in England without authority of Parliament" (*Comyns Dig*, pt H, 23) Some European countries recognize what is sometimes called the suspension of the Constitutional guarantees, and the Declaration of a State of Siege" (*Anson Law of Constitution*; *Ency of the Laws of England*)

"Martial law" is also used to denote acts of war or of State exercised against aliens and on territory not subject to the municipal law. It forms part of the laws and customs of war, and is limited only by the rules of International Law It is defined by Professor Holland as "such rules as are adopted at his own discretion, by a commander-in-chief in the field, supplementing, or wholly or partially superseding, the laws ordinarily in force in a given district," (Laws and Customs of War, 1904 ed, s 8, p, 4). "Martial Law," said the Duke of Wellington, "is neither more nor less than the will of the General who commands the army, in fact, Martial Law is no law at all"

"Martial Law, which is built upon no settled principles but is entirely arbitrary in its decisions, is (as Sir Matthew Hale observes, Hist C L. c 2) in truth and reality no law but something indulged rather than allowed as a law The necessity of order and discipline in an army is the only thing which can give it countenance, and, therefore, it ought not to be permitted in time of peace, when the King's Courts are open for all persons to receive justice according to the laws of the land" (1 Bl Com 413).

The introduction of Martial Law does not abrogate or suspend the operation of the Cr P. Code in any particular area (45 Mad 14=68 I C 26=23 Cr.L J 490=14 L W 465=(1921) M W N 708=A I R. 1922 Mad 215=41 M L J 441

Marumakkathayam (*Mal*) The law of inheritance through the female line. (*Moore's Malabar Law*) System of inheritance through nephews and nieces. (*Sun. Mal. Law.*)

Marupattam (*Mal*) A counterpart of a lease or need executed by a tenant promising certain rent (Gundert's Malayalam Dictionary). (*Moore's Malabar Law*, 9 M L J 300.)

Marwari A native of Marwar, but especially those settled in other parts of India as Bankers, merchants or traders

Marwat. Oudh, a land grant given as compensation for bloodshed (*Bad Pow* II. 241)

A grant made to grantee who was killed fighting for the Talukdar, is called marwat and is not transferable nor resumable [A I R 1924 Oudh 124=10 O. L.J. 335=5 L.R Oudh 13 (Rev)=77 I C. 352.]

Marwati grant. A person inheriting land comprised in a *Marwati grant* has a hereditary right thereto. (3 U P L.R 83)

Maryada.

Maryada (*Mal*) which in Tamil means honour, respect, signifies in the Malabar province custom, or usage, and corresponds exactly with the Hindustani word mamool (*Log Mal Man, Sun Mal Law*)

Marz-ul-maut (*A*) If a malady has continued for a sufficiently long time and has, in fact, became a part of the physical system of the mariz (patient), so that he has become more or less accustomed to it and has consequently lost all fear of death on its score, it would cease to be *marz-ul-maut* The crux in all these cases is to find out the state of the mind of the deceased in order to ascertain whether there was such a preponderance of apprehension of death at the time of the execution of the deed in question that death seemed to him more probable than life It would be unsafe to introduce into the already highly technical doctrine of *marz-ul-maut*, considerations regarding the apprehensions of the deceased at periods distinctly and definitely prior or subsequent to the time when the document in dispute was executed and disposition made [(3 C W N. 57, 31 Cal 319, 30 Bom 537, 31 Bom 264, 3 Pat L W 232, 35 Cal 1, 35 Cal 271, 40 All 238 and A I R 1925 Cal 537, *Ref to*) 11 Lah L J 404=A I R 1929 Lah 721, A I R 1926 Cal. 401, 65 C L J 34=A I R 1937 Cal 500]

Masahati village (*H*) A village, situated in wider Zamindaries, the boundaries of which are not demarcated and for which no traverse data could be prepared

Masan. (*Hindi*) A place usually on the bank of a river, where dead bodies are burnt.

Masani *See* 83 P R 1891.

Mashrut diwani (*H*) Conditional assignment under the old Mohammadan rule for the remuneration of a fiscal functionary (*Wil Gloss*)

Mashrut-faujdari (*H*) Assignments under Mohammadan rule to the officers charged with the military and police establishment (*Wil Gloss*)

Mashrut-i-thanujat (*H*) Conditional assignments for the support of police or military stations under the Mohammadan government

Masjid (*A*) A mosque, a place of worship (*Mac Mah Law*)

MASJID A Muhammadan Church The first Masjid was built on the spot where Muhammad's camel of its own accord stopped on his arrival at Medina after his fight from Mecca.

The word 'masjid' etymologically means a place where the head may be laid down in prostration (for prayer). It is not implied that the prostration may be made only in a masjid The word does not connote any building (138 I C 810=I R 1932 Bom 434 =34 Bom L R 655=A I R 1932 Bom 356

Masnad (*A.*) A cushion, a seat, a throne Compare Gaddi

"**Masonry building**" defined Ben Act 3, 1899, s. 3 (25), Ben Act 1, 1900, S. 4.

MASONRY BUILDING The expression 'masonry building', in the Calcutta Municipal Act does not include a detached wall standing by itself. (8 C.W N 487)

Master and servant.

Mass A religious ceremonial or observance of the Catholic church, a Catholic ceremonial celebrated by the priest in open church, where all who choose may be present and participate therein; the sacrifice in the sacrament of the eucharist or the consecration and oblation of the host (*Webster*) In *Webster* v *Sughrow*, (48 L R A 100), it is said: "It is a solemn and impressive ritual, from which many draw spiritual solace, guidance, and instruction It is religious in its form and teaching"

"**Master**" defined. 33-4 V c 90, s 30, 48-9 V. c. 49, s 12, 54-5 V c, 31, s 9, 57-8 V. c 60, s 742, Act 19, 1850, s 25, Act 1, 1859, s 118, Act 1, 1867, s 1, Act 9, 1874, s. 3, Act 8, 1878, s. 3 (*h*), Act 9, 1879, s 3, Act 7, 1880, s 2, Act 5, 1883, s 3, Act 4, 1884, s 4 (5), Act 6, 1884, s 5 (6), Act 7, 1884, s 3 (3), Act 2, 1896, s 3 (8), Act 10, 1897 s 3 (32), Act 15, 1908, s 2 (2), Act 17, 1908, s 2 (1) (*vii*), Ben Act 3, 1867, s 1, Ben Act 4, 1887, s 2, Ben Act 1, 1899, s 3 (26), Bom Act 6, 1879, s 3 (4), Bom Act 6, 1886, s 2 (5), Bom Act 5, 1888, s. 2 (*e*), Bom Act 1, 1904. s 3 (29), Bur Act 1, 1898, s 2, (37), Bur Act 4, 1905, s 4 (6); E B & A Act 1, 1909 s 5 (38), Mad Act 2, 1905, s. 5 (7), P. Act 1, 1898, s 2 (33), Reg 3, 1876, s. 3.

MASTER "One who not only prescribes the end, but directs, or at any time may direct, the means and methods of doing the work" (*Basley* v *Troy, etc., R Co*, 52 Am Rep 129) "One who not only prescribes the end of his work, but directs, or at any moment may direct, the means also, or, as it has been put, retains the power of controlling the work" [*Pollock, Torts* (4th ed) 72.]

"Master" includes every person (except a pilot or harbour master) having for the time being command or charge of a vessel. provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship. [Explosives Act (IV of 1884), S 4]

Master and Servant He is to be deemed a master who has the superior choice, control, and direction of the servant, and whose will the servant represents, not merely in the ultimate result of the work, but in the details (*Ame. Cyc*)

"One who exercises personal authority over another, is the master and that other is his servant."

"A person employed by another to render personal services to the employer" is a servant. (96 *Fed.* 183, 184.)

A servant is "a person that attends another for the purpose of performing menial offices for hire, or who is employed by another for such offices or other labour, and is subject to his command" "A person who, by contract or operation of law, is for a limited period subject to the control of another in a particular trade, business, or occupation." The relation between a Master and a Servant, from the superiority and power which it creates on the one hand, and duty subjection, and as it were allegiance on the other, is, in many instances, applicable to other relations, which are in a superior and subordinate

Master Builder.

degree; such as lord and bailiff, principal and attorney, owners and masters of ships, merchants and factors, and all others having authority to enforce obedience to their orders, from those whose duty it is to obey them, and whose acts, being conformable to their duty and office, are esteemed the acts of their principles (*Tomlin's Law Dic*) (As to Master and Servant. *See* Comyns, Digest, title 'Master and Servant", Bacon, Abridgment, title "Master and Servant and Apprentice," Hertslet The Law relating to Master and Servant, Macdonell, Law of Master and Servant, Smith A Treatise on the Law of Master and Servant, Eversley, Law of Domestic Relations (*Ency of the Laws of England*)

Master Builder A contractor who employs men to build (*Standard Dict*)

Master in Chancery. An officer of a court of chancery who act as an assistant to the judge or chancellor.

Master of Mint An officer who receives bullion for coinage, and pays them for it, and superintends everything belonging to the mint He is also called the warden of the mint (*Tomlin's Law Dict*)

Master and Deputy Master of the Mint The Master of the Mint was the title given to the chief officer who had the charge of the coinage under the regulations A Deputy Mint Master was one who was associated with him later, these officials usually being selected for their scientific knowledge, and they were each salaried *See* Anson, Law and Custom of the Constitution, 2nd ed, vol II p 181, (*Encycl Brit*, art "Mint")

Master of the Rolls An assistant to the Lord Chancellor in the High Court of Chancery, who in his absence heard causes there, and made orders and decrees (*Tomlins Law Dic*)

The Master of the Rolls, one of the judges of the Court of Appeal, was originally an officer of the Court of Chancery By the English Public Record Act, and subsequently by an order in Council, all the records belonging to the Sovereign were placed under his charge and superintendence *See* Lord Hardwicke, Office of the Master of the Rolls, Coke, Institutes pl iv p 95 Legal Judicature in Chancery, Comyns, Digest, Smith's Chancery Practice, 1845, Hayne's Outlines of Equity, Pollock and Maitland, History of English Law, Kerly, History of Equity

Master of ship. The person entrusted with the care and navigation of a ship

"MASTER OF SHIP" includes any person in charge of a decked vessel European Vagrancy Act (IX of 1874), S 3.

Master of the ship One who commands a ship on a voyage under an appointment from the owners, one who for his knowledge of navigation and for his fidelity and discretion has the government of the ship committed to his care and management, the commander or first officer of a ship, a captain etc (*Bouvier L Dict*)

"Master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship Act X of 1897 (General Clauses), S. 3 (32).

Masters of the English Supreme Court *See* The Annual Practice, Archibald and Vizard on Practice at Judges' Chambers, Chitty's Archbold's Practice, Bennet's Practice in the Master's Office, Daniell's Chancery Practice Seton's Judgment and Orders (*Ency of the Laws of England*)

Master of the Temple The Master of the Temple was originally the superior of the Order of Knights Templars, one of the most powerful and splendid of all the heads of the great monastic bodies of Middle Ages. The order was dissolved in 1307 *See* Addison, The Knights Templars and Temple Church, Baylis, The Temple Church

Master of the Wardrobe An officer of considerable importance at Court who had the charge and custody of all former Kings' and Queens' ancient robes remaining in the Tower of London, and all hangings, bedding, &c for the King's houses. (*Tomlin's Law Dic*)

Mata" defined Bom Act 6, 1887, S. 2 (2)

Matabar (A mutabar), a headman in Chittagong, (*Bad Pow* i 676)

"Matadar" defined (*See also* REPRESENTATIVE MATADAR) Bom Act 6, 1887, S 2 (4)

"Matadar'family" defined Bom Act, 6, 1887, S. 2 (1)

Matapitarau (S) means mother and father.

Matasi (*C P*), name of a soil a yellowish earth in which rice is grown (*Bad Pow* ii 429)

Matathipathi, A *matathipathi* is not a mere trustee in respect of the property of the *math*, but has a beneficial interest in it He has a right to possession of the *math* building, has a right to reside in the *math*, and he has a right to be maintained out of the income of the *math* It is also inaccurate to say that a *matath-pathi* is in exactly the same position as a *dharmakarta* of a temple 13 Mys L.J 228=40 Mys H C R 277

Mate The first officer of a vessel under the master, a respectable officer of the ship. The deputy of the master in a merchant ship

Mate's Receipt Receipt given by the mate of a ship when goods are brought alongside for loading.

MATE'S RECEIPTS are not negotiable instruments *See* 41 Cal 670 (P.C)

Material As an adjective, relating to or consisting of matter corporeal, not spiritual, physical, substantial as opposed to formal (*Johnson Dict*)

MATERIAL As a noun, the substance or matter of which anything is made (*Webster Dict*), everything of which anything is made (*Bouvier L. Dict*), any article employed in the erection and completion of buildings, something that goes into and forms part of the finished structure

The use of the word "materials' in cl (*c*) of the C. P Code, S 60 (*c*), C. P. Code, 1908 has not th

e

Material alterations

effect of limiting the exemption in the clause so as to exclude the house itself in which the agriculturist lived, and the buildings which he used in the exercise of his calling The provision cannot be construed to exempt merely loose materials of buildings and those only. 7 B. 530

Material alterations. It is a general rule of law that any material alteration in a written instrument, if made after its execution, and without the privity of the party to be affected by it, is fatal to its validity (*Taylor on Evidence*, 1906, ed., S 1820). An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any way whatever. (*Stephen's Digest of the Law of Evidence*, 1904 ed., art 89, and *Taylor, ibid.*, S 1822)

"When a deed is altered in a point material by the plaintiff himself or by any stranger without the privity of the obligee, be it by interlineation, addition, raising, or by drawing of a pen through a line, or through the midst of any material word, the deed thereby becomes void (*Pigot's case* 11 Rep. 27.)

"Material defect with reference to intended use." The words "material defect in the property with reference to its intended use" in cl. (*a*) of sec 108 of Transfer of Property Act (IV of 1882) have reference to the nature and condition of the property demised, and a defect in the lessor's title, is not included within the meaning of the words 17 C.W N 960=19 Ind. Cas 815

Material Detriment· In considering what is "Material Detriment" to land regard must be had to all the circumstances and the mode and manner of the user of the land etc. (*Re Gonty and Manchester S & L. Ry* 1896, 2 Q B 439).

Material evidence The word 'Material' used in the phrase 'material evidence' makes no difference in the meaning of the expression" (*See Stroude* 1170)

Material fact The "Material facts" that are to be stated in pleadings mean those that are "material to the party pleading" (per *Lopes, L J Darbyshire* v *Leigh*, (1896), 1 Q B 554, 65 L J Q B 360).

Material irregularity *See* 10 A 506=8 A W N. 195=3 A. 424, 9 C 103, 7 A 289, 9 A 511 *R*)

Material men Persons "whose trade it is to build, repair or equip ships, or to furnish them with tackle and provision (necessary in any kind)" (Report by Sir Leoline Jenkins, given in his life, vol. II, p. 746, and quoted in The Neptune, 1834, 3 Hag, Adm. 142; (*Ency of the Laws of England.*)

Material Particulars The illustration to S 114, Evidence Act (I of 1872) uses the words "in material particulars", but what are material particulars must depend upon the facts of the particular case 14 Ind Cas 849 (859)=(1912) 1 M W N. 207=13 Cr L J. 305 =22 M.L.J. 490=11 M L.T. 1 supp=35 M. 247.

"Material propositions" defined, Act 5, 1908, Sch. I, O. 14, r. 1 (2).

Materially substantially, essentially in "an important degree"

"Materially alter" (with reference to a building) defined; (Ben. Act 1, 1900, S. 4.)

Matron.

Materiality: The property of substantial importance or influence, especially, as distinguished from formal requirement (*Bouvier L. Dict.*)

Math. Although there are some differences between debuttar property and property dedicated to a math, where the math is an idol installed in it, property appertaining to a math, whether dedicated to the idol or not, is not the personal property of the head of the math, and when the holder or Mahant is not only a *sanyasi* but also a celibate, the property is utterly incapable of passing to natural heirs. The fact that the holder executes a *hibanama* in which he describes the math as his math carries little weight; the math with the idol cannot be his personal property The presumption in the case of a mahant who is a *sanyasi* and a celibate, having no family of his own, and who is free from all worldly attachments, is that the property held or acquired by him is so held or acquired on behalf of the math to which his life is entirely devoted A presumption of the same kind would arise in respect of the property subsequently acquired by such celibate Mahant. 6 R.P. 705=150 I C 61=A.I R 1934 Pat. 431

Matham· (*Mal*) House of a Chakkiyar. (*Sun. Mal Law*)

Mathaut (*H*) Capitation, poll-tax contribution, impost, applied in Bengal to an extra or occasional cess or tax imposed upon the cultivators for some special purpose, or under some incidental pretext either by the state or the Zamindar, or the principal revenue officer of a district, these taxes were in part abolished and in part consolidated by Beng. Reg. viii, 1793

Mathematical: Demonstrable by the use of mathematics or by the rules of surveying, which is a branch of the science of mathematics, accurate.

Matiyar (*N W.P.*), a clayey soil. (*Bad. Pow.* ii, 76)

Matri, (*S*) A mother, either a natural mother or a step mother, a father's wife other than the parent· a name applied to a class of female divinities of a mystical character, the mothers of the gods, the personified sakties or energies (*Wil. Gloss* 335.)

Matri-banthu, (*S.*) A mother's cognate relation.

Matridatta (*S*) Given by a mother to a bride at her marriage, constituting an item of woman's property in Hindu Law. (*Wil. Gloss.* 335.)

Matrimonia debent esse libera· A maxim meaning "Marriage ought to be free'. (*Morgan Leg. Max*)

Matrimonial causes. Causes relating to the rights of marriage, between husband and wife.

Matrimonium subsequens legitimos facit: A maxim meaning "A subsequent marriage makes the children legitimate" (*Peloubet Leg Max.*)

Matrimonium subsequens tollit peccatum praecedens. A maxim meaning "Subsequent marriages cure precedent criminality" (*Morgan Leg Max.*)

Matron: "The chief female officer of a prison" (Prisons Act (Eng.) S. 71).

Matrons, Jury of.

Matrons, jury of: According to the practice of Courts in England, in two classes of cases the one criminal the other civil the question whether a given woman is with child or not may come to be submitted to the decision of a jury of matrons or other discreet women. In the first case, the use of this means of inquiry is obligatory by the Court, in the second, optional and upon the petition of a private litigant The procedure is of high antiquity, stated by Blackstone (4 Com. 395), to have prevailed, "as early as the first memorials of our laws will reach," and by Sir Lloyd Kenyon declared to be, as to its employment in civil suits, coeval with the common law itself. Its origin is either to be found in the analogy suggested by the ordinary trial by jury, and in the idea that a person should be tried by his (or her) peers, or with more probability in the practical reason that, in the matter to be decided, matrons were regarded, however mistakenly, as experts In early ages, when medical knowledge was scarce and scanty, and poor in quality, resort to a jury of matrons was, no doubt, the best and surest means of inquiry. Modern experience, however, does not justify the continued existence of a procedure which has often led to wrong results, and for which the medical profession furnishes a more easily available as well as a more reliable, substitute. (See *Ency of the Laws of England.*) Fleta, Lib. 1. cap. 38, Coke, 3 Inst. 17, Hale, Pleas of the Crown, 1. p. 369, 11 pp. 413, 414, 2 Hawkins, Pleas of the Crown, cap. 58, Ss 9, 10; The State Trials, Vol. XIV, pp 630, 631, 634, 4 Black. Com p 395, Chitty, Criminal Law, I pp. 759, 760, IV. p 443, Archbold, Criminal Pleading, 1905, 23rd ed p 229 Tidy, Legal Medicine, 1883, part II, p. 107; Taylor, Medical Jurisprudence, 1905, 5th ed by Fred J. Smith. M D. pp. 35, 36, 39, 40, Luff, Forensic Medicine, 1895, Dixon Mann, Forensic Medicine, 1903, Hamilton and Godkin, System of Legal Medicine, 1895, p. 417, Guy and Ferrier, Forensic Medicine, 1895, p. 85.

Matter. Some substance or essential thing, opposed to form (*Bouvier L. Dict.*) In law, a fact or facts constituting a whole or a part of a ground of action or defence.

MATTER, MATERIALS, SUBJECT The matter which composes a moral discourse is what emanates from the author; but the materials are those with which one is furnished by others. Writers of dictionaries endeavour to compress as much matter as possible into a small space; they draw their materials from every other writer.

The word matter is taken for the substance, and for that which is substantial, the subject is taken for that which engages the attention, we speak of a subject of conversation and matter of curiosity. Nations in a barbarous state afford but little matter worthy to be recorded in history, people who live a secluded life and in a contracted sphere have but few subjects to occupy their attention. (*Crab.*)

Matter (cause or) "Cause or matter" is a most comprehensive term. It includes every proceeding in the Court of Justice, every proceeding between a plaintiff and a defendant, and every criminal proceeding by the Crown, is a "cause;" and every proceeding in the Court not in a case is a 'matter" (Judicature Act, 1873, S. 100.)

Maturity.

'Matter in issue." "It is the "matter in issue," not the subject-matter of the suit, that forms the essential test of *res judicata* (4 A 55=1 A.W.N. 110 (*See* C. P. C, S.11.)

Matter in suit. Means entire matter in controversy and not one of the several issues in the case. (1929 A. 805, 6 R. 775=115 I C 665=1929 R. 67.)

"Matters and causes testamentary." These words comprehend "all matters and causes relating to the grant and revocation of Probate of Wills, or of Administration." (20 & 21 V, c. 77, S. 2, c. 79, s. 2.)

"Matter directly and substantially in issue." The word "substantially" signifies "in effect" though not "in express terms" And the word "directly" is used in contradistinction to the words "incidentally" any 'collaterally" 25 C. 136

Matters in controversy The expression "matters in controversy" in S 2, sub-s 2 of the Code of Civil Procedure 1908, cannot be pressed so as to exclude matters which, though as it happened they were common ground, must have been actually decided, if any question had arisen, and were the foundation of the whole determination. [42 I A. 91=42 C. 914 (925)= 19 C W N. 449=1915 M W.N 485=17 M.L.T. 312= 21 C.L.J 419=2 L W 377=13 A.L.J 540=17 Bom.L. R. 432=28 I C 710=29 M.L J 70]

"Matters in controversy in the suit" are not merely matters which arise on the face of the plaint as at first presented. They may include matters which are of vital importance between the parties but which may come to arise and in respect of which the parties may be at controversy at a subsequent stage of a suit and the question as to whether a suit survives or not within the meaning of R. 1 of O. 22, C P. C in such a matter. 5 O.W.N. 633=110 I.C. 826=A.I.R 1928 Oudh 362.

Matters of state The returns submitted to an Income-Tax Collector, any statements made before him or any orders that may be made by him do not refer to matters of State.' [1 I.C. 705 (706).]

Mattotti (*Mal*) Sub-mortgage also called kizhkanom. (*Sun. Mal. Law*)

Matua. (*A,*) In law a person of incompetent understanding, who can only imperfectly apprehend the nature of legal acts, as for instance, knowing the nature of a sale, but incapable of appreciating the profit or loss attending it. (*Wil Gloss.* 335.)

Mature A bill or Note is mature when it becomes due, and when payable "On Demand" it "Matures" at once. [*Edwards* v. *Walters*, (1896) 2 Ch. 157; 65 L.J. Ch 557.]

"Maturity" defined. Act 26, 1881, s. 22.

MATURITY Applied to commercial paper, the time when the paper becomes due and demandable. (*Bouvier L. Dict.*)

The maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable. [Act XXVI of 1881 (Negotiable Instruments), S. 22.]

Maufi-khidmati tenure

Maufi-khidmati tenure Maufi-khidmati lands are lands held in lieu of service, and persons holding such lands are usually village servants or malguzar's servants [6 I R (Nag) 88=146 I.C. 404=A I R 1933 Nag 313]

Maujjil (*A.*) Exigible dower payable on marriage. (*Mac Mah Law*)

Maula (*H.*) A Judge, a learned or venerable person, an assistant A person connected with another by the relation of Wila, or mutual assistance, as a cause of inheritance, such as an emancipated slave to whom the master bequeaths his property, a slave, especially one emancipated (*Wil Gloss* 335)

Maulana (*H*) A learned Musalman, a teacher, a doctor, in the Maratha countries the master of a Musalman school.

Maulavi (*H*) A learned and religious man The Law officer appointed in the Courts for the interpretation of the Mahomedan law

Maulud (*A*) A hymn in honour of Muhammad's birth Mauluds are chanted on the first eleven nights of Rajab, the month in which the Prophet was born, and also at funerals.

Maulvi (*or Maulvi*) A learned Mussalman, a law doctor, a teacher of Arabic

"**Maund**" defined Act 9, 1890, s 3 (17), Ben Act 7, 1864, s 3, Bom Act 2, 1890, s 3 (*n*), Mad Act 4, 1889, s 3 (*f*).

MAUND (*H*) A measure of weight of general use in India, but varying in value in different places Four principal varieties are specified by Mr Prinsep (1) the Bengal maund containing 40se ers, (2) the maund of central India, consisting of half the quantity, of 20 seers, (3) the maund of Guzerat, consisting of 40 seers, but of lesser value making the Bombay maund 28lb avoirdupois, and (4) the Maund of Southern India fixed by the Madras Government at 25 lb In Bengal there were also two kinds of maunds, the Bazzar maund of the value above described, or more correctly 82 lb being based upon the computation of 80 sicca rupees to a seer, and 40 seers to the maund, the rupees weighing 179, 166 Tr grs, and the factory maund introduced into the company's commercial transactions in 1787, apparently for the convenience of converting it into English weight, the factory maund being 74 lb 10, oz 10,666 drs, and three such maunds being almost exactly equal to 2 cwt (*Wil Gloss*)

"Maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains troy [Act IX of 1896 (Railways), S. 3 (17)]

Maunium. (*See* Inam) A grant of land, or assignment of the Government share of the produce therefrom, to the revenue officers and the public servants of the villages in the Northern Circars

'**Maurasi, mokurari, Istimarari**' *See* 33 All. 236 = 20 I C 200, also 255

Maurasidar and durmaurasi mokarari The word Maurasidar does not convey the idea of a right to fixity of rent, durmaurasi mokarari implies fixity of rent. (7 C L J 284)

Maurusi (*H*) Hereditary held or holding by inheritance. (*Wil Gloss*) The usual term for a tenant with right of occupancy (in Upperl.) (*Bad. Pow* ii 704) Hari (Sindh), a special class of tenant in the upper districts. (*Bad Pow.* iii 328.)

Maurushi mukaddam (*H*) The headman of a village, holding his office by hereditary descent in some places he is looked upon as the proprietor of the village lands

Maurusi kashtkar. Occupancy tenant (shartia maurusi).

"**Mauza**" defined Ben Act 5, 1875, s 2, Ben Act 7, 1876, s 3 (7) (Sub), Ben Act 2, 1906, S. 2, E.B & A Act 1, 1907, S 2)

MAUZA A village, understanding by the term one or more clusters of habitations, and all the lands belonging to their proprietary inhabitants a Mauza is defined by authority to be 'a parcel or parcels of lands having a separate name in the revenue records, and of known limits' (Directions to Settlement Officers) The lands, however, are not always contiguous and compact, but may have outlying portions intermixed with those of other villages, but these are brought under one head with the rest in the revenue settlement of the Mauza

"Mauza" includes every village, hamlet, tola and similar sub-division of an estate, pargana or village by whatever name such sub-division may be known [Ben Act V of 1875, S 2, *see also* Ben. Act III of 1876, S 3 (7)]

Mauza-asli The chief village, or that originally settled in Kamaon, the one named in the Patta granted to the Padhan

Mauza-dakhili All the villages and the lands which are comprised in the assessment settled with the original or principal village

Mauzadar (*Assam*) A revenue agent having charge of a group of villages bound to collect the revenue and responsible for it (*Bad Pow.* iii 419)

Mauzawar (*Hindustani*) By villages, said of a settlement made, not with a Zamindar, and not with the individual ryot, but with each village as a unit. By villages assignment of the Government revenue on the lands comprised within the village limits and dependencies, settled either with the whole community of proprietary villagers or an individual representing them, distinguished therefore from a Zamindari settlement as not recognising a single proprietor and from a Ryotwar settlement as not formed with each cultivator separately.

Mauzina A village register kept by the village accountant shewing the extent of the lands, the average rate of rent per bigha, the amount of cultivated and waste, and the persons paying or exempt from revenue.

Maveshi A *wajib-ul-arz* conferred grazing rights on non-occupancy tenants and other non-proprietary residents of a village over *shamlat* land in respect of their *maveshi Held*, the term *maveshi* is of somewhat wide meaning, but having regard to the fact that the right of grazing which proprietors in villages concede to non-proprietors infringes largely upon the rights of the former, it is not unreasonable to restrict the rights in respect of "Cattle" used for agricultural and domestic purposes. (86 P.R 1911= 229 P.W.R. 1911=13 I.C. 716.)

Maveshi.

Maxims.

Maxims. A *maxim* is a sure foundation or ground of art, and a conclusion of reason, so sure and uncontrollable as that it ought not to be questioned, and what is elsewhere called a principle, and is all one with a rule, a common ground or axiom. (*Co. Litt.* 10 b, 11 a. *Tomlin's Law Dic.*)

"MAXIMS are the foundations of the law, and conclusions of reason, therefore ought not to be impugned, but always to be admitted, but they may by reason be conferred and compared the one with the other, though they do not vary" (*Powd* 27)

Maxims in law Positions and theses are conclusions of reason, and universal propositions, so perfect, that they may not be impugned or disputed. (*Cowell, Co Litt.* 343, *Tomlin's Law Dic*)

"Law, like moral philosophy or politics, has its maxims which sum up in a pregnant sentence some leading principle or axiom of law, so called, says Coke, *"quia maxima est ejus dignitas et certissima auctoritas atque quod maxime omnibus probetur"* The merit of the maxim is twofold. It is a useful generalisation of law wherein every student who would become his own may note, as Wingate says, how the same key opens many locks, or, to put it in another way, how all the cases are reducible to a few theses The other merit of the maxim lies in its epigrammatic form Like the proverb, it embodies "the wisdom of many and the wit of one" The latinised dress in which it generally appears is only part of this epigrammatic form—Latin more than any other language lending itself to point and brevity These qualities of the maxim—its sententiousness and its epigrammatic point—have made it at all times a favourite form of legal currency, tendered and accepted generally—or, to take another metaphor, a portable armoury of legal weapons The maxim has, however, the defects of its qualities Brevity makes it occasionally—obscure. It disguises, at times—a fallacy But it would be unfair to quarrel with the maxim for such reasons because it does not condense into a sentence the significance of a volume, or because it is apt at times to tyrannise over the mind. Nowhere more than in its maxims does the robust good sense of the common law of England display itself, and does not one of those very maxims warn the critic that no one ought to be wiser than the laws?" See *Ency. of the Laws of England* The maxims of English law like the rules of the common law, derive their source and sanction from an immemorial antiquity, from frequent judicial recognition, and from the imprimatur of the sages of our law. One writer, indeed—Wingate—has gone so far as to describe them as "prime emanations of the Eternal Wisdom"

MAXIMS are principles and authorities, and part of the general customs or Common Law of England, and are of the same strength as Acts of parliament, when the Judges have determined what is maxim. (*Terms de Ley, Doct & Stud. Dial.* 1 c. 8, *Tomlins Law Dic.*)

Lord Bacon puts it quaintly thus: "This delivering of knowledge in distinct and disjointed aphorisms doth leave the wit of man more free to turn and toss and to make use of that which is so delivered to several purposes and applications."

May

A maxim in law is said to be a proposition of all men confessed and granted, without argument or discourse—Maxims of the Law are holden for law. (*Tomlins Law Dic*)

MAXIM, PRECEPT, RULE, LAW Maxim is a moral truth that carries its own weight with itself. Precept, Rule and Law, signify the thing specifically chosen or marked out, all borrow their weight from some external circumstances the precept derives its authority from the individual delivering it, in this manner the precepts of our Saviour have a weight which gives them a decided superiority over every thing else the rule acquires a worth from its fitness for guiding us in our proceeding the law, which is a species of rule, derives its weight from the sanction of power Maxims are often precepts inasmuch as they are communicated to us by our parents; they are rules inasmuch as they serve as a rule for our conduct, they are laws inasmuch as they have the sanction of conscience We reverence the precepts of religion as the foundation of all happiness, we regard the rules of prudence as preserving us from errors and misfortunes, we respect the laws as they are the basis of civil society

Maxima illecebra est peccandi impunitatis spes A maxim meaning "The greatest incitement to guilt is the hope of sinning with impunity" (*Peloubet Leg Max*)

Maxima ita dicta quia maxima est ejus dignitas et certissima auctoritas, at que quod maxime omnibus probetur (*Co Litt 10 p 11 a*) Maxim is so called because its dignity is the greatest, and its authority the most certain, and because it is universally approved by all

Maxime paci sunt contraria vis et injuria. A maxim meaning "The greatest enemies to peace are force and wrong." (*Burrill*)

Maximum The word applied to a Railway Rate means the highest limit which is not to be exceeded (*per* Miller, *Commr, Skinningrove Co.* v *N E. Ry.* 5 Ry & Can. Traffic Co 265)

Maximus erroris populus magister. A maxim meaning "The people is the greatest master of error" (*Morgan Leg. Max.*).

"May", is generally permissive not mandatory. (6 Luck. 591=131 I.C. 443=14 O.L J 184=1931 Oudh 127)

In general, May is an auxiliary verb qualifying the meaning of another verb by expressing ability, contingency, possibility, or probability (*Webster Dict*), to have permission—be allowed (*Anderson L Dict.*), to be possible As used in statutes, in its ordinary sense the word is permissive and not mandatory, merely importing permission, ability, possibility, or contingency, but it has been properly construed as employed in an imperative or mandatory sense when the legislature imposes a positive duty not a discretion or where a public duty is involved, where a right is given or a duty imposed, or where a matter of public policy and not merely a private right is involved, where the statute directs the doing of a thing for the sake of justice or the public good, or where the statute imposes a duty or confers a power on a public officer for public purposes, or for the purpose of enforcing a right but not to create one;

May.

although it should be construed as meaning "must" or "shall" only where public interests and right are concerned, and where the public or third persons have a claim *de jure*, that the power should be exercised, nevertheless whether the word is to be construed as mandatory and imposing a duty or merely as permissive and conferring discretion is to be determined in case from the apparent intention of the statute as gathered from the context as well as the language of the particular provision, and it is always used in a permissive sense unless necessary to give effect to the intent of the legislature So, too, in various other instruments or writings the word has been construed as being either permissive or mandatory according to the intent of the parties using it (*Ame Cyc*, *see also* 3 M L T. 269=18 M.L.J 150=31 M 185=7 Cr L J. 346)

Per *Das, J.—Prima facie* the word "may" is an enabling word, but there is no doubt whatever that under certain circumstances enabling words may have a compulsory force It is a question in each case whether the power conferred by use of the word "may" is one which is intended by the legislature to be exercised, and there is no doubt on the authorities that, although the statute in terms has only conferred a power, the circumstances may be such as to create a duty [*Julius* v *Lord Bishop of Oxford*, (1880) 5 A C 214, *Ref*, 130 I C 785=12 Pat L T 127=1931 Pat 1]

"The word "MAY" "IT SHALL BE LAWFUL," "IT SHALL AND MAY BE LAWFUL," "EMPOWERED," "SHALL HEREBY HAVE POWER", "SHALL THINK PROPER", and such like phrases, give, in their ordinary meaning, an enabling and discretionary power "They are potential and never in themselves significant of any obligation" (*per* Lord Selbourne, *Julius* v. *Oxford*, Bp 49 L.J.Q B 585, 5 App Cas. 235).

MAY, in rules of court, has been held to mean may or may not—to give a discretion which is called a judicial discretion, but which still is a discretion [*Att Gen* v *Emerson*,(1889) 24 Q B D 58, in Public Health Act, 1875, S 211 *R* v *Barclay*, (1881) 8 Q B D 306, 486, in Arbitration Act, 1889 (52 & 53 Vict c 49), S 5 ("means must"), *Re Eyre and Corporation of Leicester*, (1892) 1 Q B. 136]

May in the Companies Act, 1862 (25 & 26 Vict c S. 69, does not give an absolute, but only a judicial 89), discretion And its exercise is regulated by judicial decisions and the *cursus curiae—i e.* the fetters which the Courts have imposed on themselves [*Accidental Marine Co* v *Mercati*, (18 66) L R 3 Eq 200; *Northampton Coal and Iron Co* v *Midland Waggon Co*, (1878) 7 Ch D 500, *City of Moscow Gas Co* v. *International Financial Society*, (1872) 7 Ch App 225, *Western Canada Oil, &c Co* v. *Walker*, (1875) 10 Ch App. 628 (*contra*), *Pure Spirit Co.* v *Fowler* (1890)25 Q B D 235]

May and must. Cotton, L J, observed " 'May' never can mean 'Must', so long as the English language retains its meaning, but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word 'may', it becomes his duty to exercise that power"(*Re Baker*: *Nichols* v *Baker*, 59 L J. Ch. 661, 44 Ch. D. 262, *see also* 28 C 434=5 C W N 609.)

The law on the point is thus laid down in *Julius* v *Oxford* where a power is deposited with a public officer for the purpose of being used for the benefit of persons (1) who are specially pointed out, and (2) with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised" (49 L.J.Q.B. 580=5 App. Cas. 214).

"Enabling words are construed as compulsory whenever the object of the power to effectuate a legal right."

May and shall, "*May*" may sometimes mean "shall" 29 O C. 80=A.I R. 1925 Oudh 419.

The word "may" is sometimes used to give a discretion to Courts but it is also sometimes used merely to show that the Courts are given the jurisdiction to exercise a power and not to give them a discretion to decline to exercise the jurisdiction granted to them Enabling words are always compulsory where they are words to effectuate a legal right 1913 M. W N 605=14 M L T. 96=20 Ind Cas 704 (712).

When the word "may" is used, the ordinary rule of interpretation is that the requisite condition being fulfilled the Court will and ought to exercise the powers it may exercise, and the word "may" though primarily permissive is in certain circumstances treated as mandatory. 102 I C 661=51 Bom 492=29 Bom L R 897=A.I R. 1927 Bom. 399 *See also* 35 Cal. 194=12 C W N 450, 10 Bom.L R 345, 15 Cal 667, 16 M 71, 12 B L R. 423, 9 A.W N. 4, 13 B 37, 4 All 515=2 A.W N. 121. (1901) 2 K.B. 117=84 L T 530=49 W R. 488=70 L.J , K B. 590=65 J.P. 359 =17 T.L R 426. (1913) 1 K B 561=108 L. T 76= 82 L J K B I53=77 J P 148=29 T.L.R. 157=23 Cox. C C, 273, and *Golden Horshoe Estates Company Ltd*, v *The Crown*, 1911 A C. 480=105 L.T. 148=80 L J P C 135

The word 'may" in S. 35, Cr. P Code, not only confers a power but also imposes a duty of putting it in use The word "may" in that section should be read as meaning "shall" 26 S.L R 416=141 I,C. 280 =I R 1933 Smd 46=34 Cr.L.J 143=1933 Cr.C. 33= A.I R. 1933 Smd 9.

The word "may" in s. 44 of the Code of Civil Procedure Act V of 1908 has the same force as the word "shall" 1913 M.W N. 605=14 M.L.T. 96=20 I C. 704 (714). The words "may make rules" denote that the provisions are not mandatory but enabling and permissive The word "may" does not have the force of "shall" except where a statute directs the doing of a thing for the sake of justice or the public good. (*Bishop of Oxford's Case*, 5 A.C. 214, ref to).

"May be " "Any balance that may be due," refers to a future balance (*Broom* v. *Batchelor*, 25 L.J. Ex. 299, 1 H. & N. 255) Pollock, C.B., said,—"May be" is, in my judgment, clearly future. As far as I can bring my knowledge of the English language to bear upon the subject, 'may be' is much oftener used with reference to the future than the past or the present." On the other hand Bramwell, B., in the same case said,—"may be" is the present tense and *prima facie*, means, 'now may be ' It is occasionally used in the future tense, no doubt, as, for instance, 'may be due to-day' or 'may be due to-morrow.' I apprehend you may use it to indicate future applications. A thing 'may be black,' or 'it may be fit to eat,' or 'it may be

May be allowed to appeal.

fit to cook.' If you use the words 'may be' without indicating the time, to my mind the expression applies to the present or, more correctly, not to a question with reference to the future." (*cited in Stroud's Jud. Dic*)

"May be allowed to appeal" The words "may be allowed to appeal" in S. 592, C. P. Code, (O. 44, R. 1.) C P. Code, implies that a discretion is vested in the Judge to allow or disallow the petition. 26 M. 437.

"May be presumed to have been made with such intent as aforesaid." *see* 22 C. 185, *See also* 25 B. 202; 7 Bom L.R. 767.)

"May presume" defined Act 1, 1872, s. 4.

MAY PRESUME. Whenever it is provided by this Act that the Court *may presume* a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. (Evidence Act, S. 4 *see also* 8 I.C. 1096.)

To read the words "may presume" in S 53 of the Transfer of Property Act, 1882, as the equivalent of "shall presume" would be to wrest the words from their natural meaning, and to disregard the well recognised distinction between the two phrases. The words of the section vest the Court with a discretion in the matter and do not impose on it the obligation to presume an intent to defraud. 7 Bom L R 267.

May pronounce. The words "it *may pronounce*" in O. 20, R. 2, C. P. Code are not mandatory; the Judge has an option to pronounce the judgment written out by his predecessor or his own judgment (44 Ch D 262, 59 L J Ch 661; 62 L T 817, 38 W R. 417, 21 C. 484, *ref*) 33 All. 236=7 A L J. 1189=8 I C. 1096.

"May take cognizance of" a complaint. *See* 13 C. 334.

Mayhem Mayhem at common law is defined as the violently depriving another of the use of such of his members as may render him less able in fighting to defend himself or to annoy his adversary. (4 *Blackstone Comm* 206)

Glanville defines Mayhem as "the breaking of any bone or injuring the head by wounding or abrasion."

Mayor. The chief magistrate, or officer of a city or municipal corporation the chief or executive municipal officer of a city.

MAYOR is "the Chief Governor of Magistrate of a city or town-corporate, as the Mayor of London, the Mayor of Southampton &c" (*Tomlin's Law Dic.*)

Mayor's Court. An old court established in some cities, in which the mayor sat with the powers of a police judge or committing magistrate in respect to offences committed within the city, and sometimes with civil jurisdiction in small causes. (*Black L. Dict.*)

Mayukha. The Mayukha is a commentary to the Mitakshara and nothing more. It does not declare new law but merely explains the prevailing law before it was written. 151 I.C. 699=7 R.P. 117=A.I. R. 1934 Pat. 260.

Mean.

Mayukha and kaustubha. The Mayukha and Kaustubha are paramount authorities in Bombay and Gujarat No distinction is drawn between the two in the Bombay school, the one being considered complementary to the other. (12 M.I.A. 397, *Ref*) 151 I C. 699=7 R P. 117=A.I.R. 1934 Pat. 260.

Maza. (*H*) A Hindustani word meaning "taste".

Mazdur, (*H*) a labourer.

Mazduri (*H*) labour

Mazhabi (*Hindi*) A name given to Sikh converts from Islam, in some places especially to a Sikh of the sweeper caste.

Mazkurat (*H*) are items or particulars of deductions allowed by the Mohammadan governments to the Zamindars on closing their revenue accounts, to cover the expenses of managing and collecting the revenue · the admitted fees and personal allowances of the Zamindars, and petty assignments for charitable or religious purposes were also usually included under this head of remission (*Wil. Gloss 337*)

Mazkuri (*Ben*) Of a defendant or subordinate interest under a Zemindar. (*Bad. Pow.* i. 526)

Mazkuri-makaddam, (*H*) A nominal or migratory cultivator, a tenant at will having no hereditary right of occupancy. (*Wil. Gloss.* 337.)

Mazumdar (*corruption of A maj-muadar*), a Revenue-accountant under the Amil under the Mahratha rule: a registrar of Revenue records in the State Office and auditor of the revenue accounts and transaction (*Bad. Pow.* i. 261 (C.P.) see *Ibid* ii. 467)

M.D The initial letters of the phrase Doctor of Medicine.

"The degree of M D. is something more than a mere honorary title. It is a certificate attesting the fact that the person on whom it has been conferred has successfully mastered in curriculum of study prescribed by the authorities of an institution created by law for the study of medicine, and by law authorized to issue such certificate. It thus has legal sanction and authority, but it has more, in practical affairs. It introduces its possessor to the confidence and patronage of the public. Its legal character gives it a moral and material credit in the estimation of the world, and makes it thereby a valuable property right, of great pecuniary value." (*Words and Phrases*)

Meadow. Low ground adjacent to streams; a tract or low level land producing grass which is mowed for hay

"In general, where *meadow* or pasture land is named, in English law, it must be understood of Ancient Meadow or pasture." (Woodf. 147, citing *Tresham* v. *Lamb*, 2 Brownl & Gold 46).

Meal The pulverized grain ground but unbolted; food that is eaten to satisfy the requirements of hunger. (*Ame Cyc.*)

Mean. As a noun, the middle between two extremes; and that either in time or dignity (*Jacob L. Dict.*) As a verb, to have in mind, view, or contemplation, to intend. (*Century Dict.*)

Mean.

"MEAN" AND "INCLUDE" Where the Legislature defines a word or phrase to "mean"—not merely to "include,"—certain things or acts "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in the definition." (*per* Esher, M.R. Gough)

Means In one sense, "means" is that which produces a result, that through or by the help of which an end is attained, an immediate agency or measure, cause In another sense, property, resources or income. (*Webster Dict.*), money estate

The expression "*means*' in S 488, Cr. P Code, does not signify only visible means such as real property or definite employment. If a man is healthy and able-bodied he must be taken to have the means to support his wife. 1926 M W N 146=92 I C 862 =27 Cr L J 350=6 Cr R 65=A I R 1926 Mad 346= 50 M L.J. 44

"Means" of a person would include share in joint Hindu family. (149 I.C 171=1934 A L J 247= 1934 All 396.

"Means of support" In its general sense, all those resources from which the necessaries and comforts of life are or may be supplied, such as lands, goods, salaries, wages, or other sources of income

'POSSESSED OF SUFFICIENT MEANS." *See* 119 I C 697=1929 N 319, 1929 L 821.

Meantime. The intervening time (*Webster Int. Dict.*)

"IN THE MEANTIME" are words of relation, and refer not only to a time that is to begin, but to a time which is also to end. (*Stevens* v. *Dethick*, 3 Atk. 39, 43.)

Measurage Measurage "in old English law was a toll due for the use of a common bushel or other instrument, to measure dry or wet goods imported or exported." (*Hale, De Portibus Maris*, Ch 6)

Measure "Measure" used in respect of measuring goods means a vessel ordinarily used as a Measure the material of which it is made being immaterial (*Washington* v *Young*, 19 L.J Ex 348, 5 Ex. 403)

"Measurement" includes finger impressions and foot-print impressions Identification of Prisoners Act (XXXII of 1920), S 2.

"Measuring instrument" "includes, any instrument of length, capacity, volume, temperature, pressure or gravity, or for the measurement and determination of quantities" of any substance (*See* English Weights and Measures Act, 1889)

Meat. Is a term which applies not only to the flesh of all animals used for food, but, in a general sense, to all kinds of provisions fit for the sustenance of man. (*State* v. *Morey*, 60 Am. Dec. 439).

Meat house. A building in which meat is stored and kept

Meat market A word sometimes used as synonymous with the term "butcher shop".

Mechanic. An artificer; an artist; an artisan; a handicraftsman, a labourer; any skilled worker with tools; one employed in mechanical labour (*Worcester Dict.*), one skilled in a mechanical occupation or art (*Webster Dict*), more specifically one who practices any mechanical art.

To be a mechanic, it is necessary that the person should be an operative engaged in a business requiring some particular skill in doing work.

MECHANIC. Is sometimes used as synonymous with artificer *Jackson* v *Hill*, 13 Q.B D 618, 48 J P. 488.

The term includes all mechanics whether master, workmen, or journeymen, who personally work with their own tools and with their own hands, it is used in contradistinction to contractors, superintendents, capitalists, or mere owners of machinery

It is a term somewhat loosely applied but always excluding agricultural labourers or labourers engaged with pick, shovel, or spade or similar tools, and sometimes restricted to those employed in making or repairing machinery. (*Imperial Dict*)

Mechanical Pertaining to the science of mechanics or mechanism, skilled in mechanics, bred to manual labour, belonging to or relating to those who live by hand labour, belonging to the artisan class, done as if by a machine or without conscious exertion of will, proceeding from habit, not from intention or reflection, as a mechanical action or movement, pertaining to or in accordance with the principal laws of mechanics, depending upon mechanism or machinery (*Imperial Dict*)

"Mechanical movement" If the combination and arrangement of mechanical parts intended for the translation or transformation of motion. (102 Fed 159, 168)

Mechanics liens A mechanic's lien is a species of lien in favour of persons who have performed work or furnished materials in and for the erection of a building. It is not a general, but a particular lien, and is in its nature peculiar and of an equitable character, and has been said to be somewhat analogous in its aims to the equitable lien of a vendor for unpaid purchase-money of lands sold. The lien is given to secure priority of payment of the price and value of work performed and the materials furnished, and springs out of the appropriation and use by the landowner of the mechanic's labour or the furnisher's materials (*Ame. Cyc*) *Mochon* v *Sullivan*, 1 Mont. 470, 472, it is said "The doctrine upon which it is founded is upon the consideration of natural justice, that the party who has enhanced the value of property, by incorporating therein his labour or materials, shall have a preferred claim on the said property for the value of said labour or materials . . . . . The theory of the lien is, that the party by whom the labour is performed or materials furnished for the erection or repair of buildings, on credit, retains his claim to them after they have entered into the structure and become inseparably connected with it" (27 *Ame. Cyc.* 1.)

Mechanism The arrangement and relation of the parts in a machine.

Medal. A piece of metal bearing devices and inscriptions, struck or cast to commemorate a person, an institution, or an event, or as an appreciation of special merit or skill.

Medhatithi

The word "medal" in a testamentary gift will pass curious pieces of current coin kept by the testator with his medals (*Bridgman* v. *Dove*, 3 Atk. 202. Wms. Exs 1066, 27 *Ame. Cyc.* 455.)

Medhatithi A writer on Ancient Hindu Law—who wrote a commentary on Manu Dharma Sastra.

Mediation is the technical term in international law which signifies the interposition by a neutral and friendly state between two states at war or on the eve of war with each other, of its good offices to restore or to preserve peace The term is sometimes used as a synonym for intervention, but mediation differs from it in being purely a friendly act The phrase "armed mediation" is a misnomer (See *Ency. of the Laws of England*)

Medical Of, pertaining to, or having to do with the art of healing disease, or the science of medicine, containing medicine, used in medicine

Medical and Surgical Whether a service rendered is or is not 'Medical or Surgical Assistance" "depends upon the nature of the service rendered, and not necessarily upon the person who renders it' [(per *Pollock, B*, *Honeybone* v *Hambridge*, 56 L J Q B. 48, 18 Q B D 418)

Medical assistance, in the Franchise Acts. See *Kirkhouse* v *Blakeway*, (1902) 1 K B 306.

'**Medical attendance**" is attendance by a physician regularly licensed. (*People* v *Pierson*, 98 Am. St. Rep 666.)

"**Medical attendant**" is one to whom the care of a sick person has been entrusted

"**Medical college**" is term which refers to those schools and colleges of learning teaching medicine in its different branches, at which physicians were educated, or schools teaching the nature and effects of medicine, how to compound and administer them, and for what maladies they are to be used; also surgery.

"Medical corporation" defined. 49-50V, c. 48, S 27.

"Medical diploma" defined 49-50V c 48, S. 27

Medical examination of the person of the accused may be made with his consent which need not 'necessarily be in writing.' 60 Cal 179=141 I.C 622=1932 Cal 723.

Medical Jurisprudence. Sometimes called Forensic or Legal Medicine is described in Dr. Taylor's standard work on the subject as a branch of medicine, and he defines it as "the science which teaches the application of every branch of medical knowledge to the purposes of the law."

"**Medical officer**" means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of the Local Government to be a medical officer. Act IV of 1912 (Lunacy), S. 3 (7).

"**Medical practitioner**" defined. (*See also* Registered Medical Practitioner.) Ben. Act 5, 1880, S. 2; Bom. Act 1, 1877, S. 2 (4); Bom. Act 4, 1879, S. 2 (4); Bom Act 1, 1892, S. 4 (*d*).

Meet

"**Medical practitioner**" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Local Government to be a medical practitioner. (Lunacy Act (IV of 1912), S. 3.)

"**Medical Soap**" is a soap used for remedial purposes *See* (66 Fed, 731) where the term is distinguished from a toilet soap, in that the latter is used for cleansing purposes only.

"**Medical Subordinate**" defined Act 5, 1869, Pt. I, Cl (*e*) (6), (Ins Act 12, 1894, S. 4), Act 9, 1894, S. 3 (8).

"Medical Subordinate" means an Assistant Surgeon, Apothecary or qualified Hospital Assistant (Prisons Act (IX of 1894), S 3.)

"**Medical treatment**" is a term which, "in its enlarged sense, includes surgery, and in a restricted sense, as used in medical parlance, may mean a division of the curative art, exclusive of surgery"

"**Medicated article**" *See* 27 B. 551=5 Bom L.R. 498.

Medicinal Having the properties of a medicine; adapted to medical use or purposes; curative (*Century Dict*)

Medicine A remedial substance, any substance administered in a treatment of diseases, a remedial agent, any substance liquid or solid that has the property of curing or mitigating diseases a combination of drugs in largely varying proportions. The term is sometimes employed as referring to the art of a physician, or of healing the art and science of curing diseases.

In its common signification the term Medicine "includes all learning having for its object the care of the health and the cure of the ills of the human body. Within very recent times "the practising physician or family doctor kept in his own office his drugs, compounded them himself, and not seldom maintained a dental chair wherein he seated his patients and dosed or extracted their ailing teeth. He had not only been taught dental surgery and pharmacy, but practised both under his degree from a college of medicine." *In re* Philadelphia Medico-Chirurgical College," (190 Pa. St. 121, 123, 42 Atl. 524. Cited in *Ame. Cyc.*)

Medipalu (*M*). See *Bad.-Pow.* III. 125 note.

Meditate. To keep the mind in a state of contemplation, to dwell on anything in thought; to think seriously, to muse, to cogitate, to reflect; to contemplate, to keep the mind fixed upon; to design; to plan by revolving in the mind (*Webster Dict.*)

Meerasadar. The holder or possessor of a mirasi or heritage. (*Fifth Rep.*)

Meerassee. (*See Mirasi*) Hereditary, hereditary property. The land of a Meerassadar. (*Fifth Report.*)

Meet. As an adjective, fit or suitable. As a verb, to come upon or against, front to front, as

Meeting.

distinguished from contact by following and overtaking" to come together by mutual approach, to fall in with another; to come face to face hence to converge, to come together with hostile purpose.

"**Meeting**" defined *See* General meeting, Special meeting.

MEETING The coming together of persons generally for common purpose or common consultation An assembly.

MEETING, in 32 & 33 Vict. c. 19. s. 4 (Stannaries), does not apply to acts done by a single person, as the *prima facie* meaning of the words is "the coming together of more than one person" *Sharp* v. *Dawes* (1876) 2 Q B D 29

"The word '*Meeting*' implies a concurrence, or coming face to face, of at least two persons." [(per *Coleridge, C J, Sharpe* v *Dawes*, 46 L J Q B. 104.)

"One swallow does not make a summer, or does the presence of one share-holder constitute a "Meeting" (*Re Sanitary Carbon Co.*, W N. (77) 223, (*Stroud*, 1185).

MEETING, INTERVIEW. A meeting is an ordinary concern, and its purpose familiar, meetings are daily taking place between friends an interview is extraordinary and formal, its object is commonly business; an interview sometimes takes place between princes, or commanders of armies

ADJOURNED MEETING—If a continuation of the original meeting. *See* 55 M L.J. 385.

"MEETING" includes an adjourned holding of a meeting, Act XLVII of 1920 (*Imperial Bank of India*), S. 2, cl. (*g*)

Meeting-house. A house to meet in for religious worship, or conducting a meeting

Mehal, mahl, mhal, maal, mohaul, mehaul, mehaal, mal. Places districts, departments Places or sources of revenue, particularly of a territorial nature lands. Mahal denotes the places or lands yielding a revenue, but mal is the rent or revenue itself arising from the lands. (*Fifth Report.*)

"Mehal" and "Mahalwari". The "*mehal*" used in the Bengal Regulations means not the property of one person but the property held under one title whether by one person or many. The word "*mahal wari*" is used in the Regulations in contradistinction to Mauzawari which defines every separate Mauza or village. 51 C L J 297=A I.R 1930 Cal 411.

Mehmany. What relates to a guest; hospitality. Allowance for entertaining pilgrims, travellers and strangers in general.

Mehraban (*Persian*) Friendly, gracious, a title prefixed to names and technically regarded to be equivalent to 'esquire'.

Mehtur A prince. A head man. A menial servant of the lowest description. (*Mac. Moh Law.*)

Mehwasi: see Mevasi.

Mel. (*Tam.*) A prefix implying superiority in place, excess in quantity, etc., over, above, etc.

Melior est conditio.

Meladhikaram. (*Mal*) Supreme power or authority.

Melancholia A form of insanity, the characteristics of which are extreme mental depression, associated with delusions and hallucinations.

In *People* v. *Krist*, 168 N Y. 19, 28, it is said. "In melancholia the eyes are just the opposite (of staring), the melancholia is rarely willing to look you in the face, but turns away and avoids his fellows and is exclusive."

MELANCHOLIA consists in unfounded and morbid fancies of the sufferer regarding his means of subsistence or his position in life, or in distorted conceptions of his relations to society or his family, or his rights or duties, or of dangers threatening his person, property, or reputation. "When the melancholia hallucination has fully taken possession of the mind it becomes the sole object of attention, without the power of varying the impression or of directing the thoughts to any facts or considerations calculated to remove or palliate it" (*Connecticut Mut L. Ins. Co* v *Groom*, 27 *Am Rep.* 689.)

Mel-anubhavom Panayam: (*Mal*) Usufructuary mortgage where interest alone is paid. (*Sun. Mal Law.*)

Melati (*Mal*) Rent in kind paid to the owner of fields or gardens, entrusting cattle to the charge of another.

Melcharath. When a *melcharath* is granted, that does not *ipso facto* put an end to the interest of the *Kanomdar*. The latter has his full rights till he is fully redeemed A melcharath granted without authority can be satisfied by the person who has authority 73 I C. 376=A I.R 1924 Mad 245.

Melchilavu (*Mel*) Pocket expenses allowed to junior members. (*Sun. Mal. Law.*)

Meleralai (*Tam*) An engagement for an increased share of the crop to be relinquished to the cultivators.

Meleruttu-kachcheri (*Mal*) Chief office of registry of lands and revenue.

Melior dabit nemen rei. A maxim meaning "The better gives a name to a thing."

Meliorem conditionem suam facere potest minor, deteriorem nequaquam. A maxim meaning "A minor can make his condition better, but by no means worse" (*Burrill.*)

Melior est conditio possidentis, (or defendents) A maxim meaning "The condition of the party in possession is the better one."

Melior est conditio possidentis, et rei quam actoris. Many advantages are enjoyed by a person in possession. A maxim meaning "The condition of the party in possession is the better one, and that of a defendant is better than that of a plaintiff." (*Burrill.*)

Melior est conditio possidentis ubi neuter jus habet. A maxim meaning "Where neither has the right, the condition of the party in possession is the better." (*Burrill.*)

Melior est justitia.

Melior est justitia vere praeveniens quam severe puniens A maxim meaning "That justice which absolutely prevents (a crime) is better than that which severely punishes it." (*Burrill.*)

Melius est da spatium tenuemque moram; male cuncta manistrat impetus A maxim meaning "It is best to always allow one's self an interval for deliberation: all things are done badly that are done with violence and precipitancy." (*Morgan Leg. Max*)

Melius est in tempore occurrere, quam post causa vulneratam remedium quaerere. A maxim meaning "It is better to meet a thing in time, than after an injury is inflicted, to seek a remedy." (*Burrill*)

Melius est jus deficiens quam jus incertum. A maxim meaning "Law that is deficient is better than law that is uncertain."

Melius est omnia mala pati quam malo concentire A maxim meaning "It is better to suffer all wrongs, than to consent to wrong." (*Burrill*)

Melius est petere fontes quam sectari rivulos. A maxim meaning "It is better to go to the fountain head than to follow little streamlets" (*Black L Dict*)

Melius est recurrere quam male currere A maxim meaning "It is better to run back than to run badly, it is better to retrace one's steps than to proceed improperly."

Melius est ut decem noxii evadant quam ut unus innocens pereat A maxim meaning "It is better that ten guilty persons escape than that one innocent person perish." (*Morgan Leg. Max*)

Melius et tutius si non festines A maxim meaning "It is better and safer not to be in haste" (*Peloubet Leg Max.*)

Melkanam. (*Mal.*) A mortgage over and above the first mortgage, a second mortgage to a third party. (*Moore's Malabar Law, Bad. Pow* iii. 169) Mortgage upon mortgage, an additional advance upon the security of occupancy paid by the occupant of an estate to the proprietor

Melkanom or melcharth (*Mal*) Kanom with direction to redeem a prior kanom. (*Sun Mal. Law*)

Melkaram (*Mal*) Additional Government share of the crop; tax paid a year in advance.

Melkoyima. (*Mal*) *Lit.* upper sovereignty. The right of the sovereign over temples. (*Moore's Malabar Law.*)

Meikkoyma was the ancient right the sovereign power in Malabar possessed over property of which the ownership was in others.

Melkoyimma (*Mal.*) (See *Melkoyima*) Authority superior power or function.

Mel-madai (*Tam*) Land first watered, that which is situated nearest the sluice; as opposed to *Kilmadai*, land watered later, that which is situated remote from the sluice.

Melpattom: (*Mal.*) Lease of trees with no interest in land; enures for one year. (*Sun. Mal. Law.*)

Member.

Melurasi (*Tel.*) The grain in the crop threshed but not measured, a heap of winnowed corn.

Meluveram (*Tel.*) The proportion of the crop claimed by the government. (*Wil Gloss.* 338.) or superior landholder.

Melvaippu (*Tam.*) A quit-rent or a small proportion of the crop paid by the holder of a Manyam.

Melvaram The share of the produce due to the landlord or the state. (*Wil. Gloss.* 541) The landlord's share of the crops, as distinguished from the kudivaram. 1 L W. 41.

Melvaram and Kudiwaram 'Ancient Hindu Law recognised only two beneficial interests in the land, *viz*, (1) that of the Sovereign or his representative, and (2) that of the cultivators holding the land either individually or as members of a joint family or a joint village community." Neither the Sovereign nor the cultivators have unlimited proprietary right or full ownership in the modern sense The Sovereign's right consisted in his power to collect a share of the produce of the cultivated lands known by the name Melvaram in the southern districts of the Presidency, and the Melvaram is not rent in the strict sense of the term. The share of the ryots of the cultivators is known by the name kudivaram and by ryots is to be understood the cultivators who employ, superintend, and assist the labour and who are everywhere the farmers of the country, the creators and payers of land revenue. The ryots' right to the land arises from mere occupation and is not derived from the Sovereign in the manner in which the right of an English tenant is under modern English Law derived from the landlord." . . . "The Melvaram and Kudivaram rights are the two principal independent interests in land all other interests are derived from or are subordinate to either the one or the other" *Srinivasa Iyengar's Forty Years of Progress in the Madras Presidency.*

Melwaram-tirvai (*Tam.*) The fixed rate of the Government demand on the share of the crop.

Melvaram-tirwai (*Tam*) or (*Melwaram Tirvai*) The fixed rate of the Government demand on the share of the crop. (*Wil Gloss.* 338)

Melvasi (*Tel. Karn*) Additions, excess, addition made to the rate of the Government assessment. Extra produce partly appropriated to the use of temples and other religious purposes.

"Member" defined, Act 21, 1860, S. 15, Act 6, 1882, S. 45, Act 10, 1904, S. 2.

MEMBER A person considered in relation to any aggregate of individuals to which he belongs; particularly one who has united with or has been formally chosen as a corporate part of an association or public body of any kind. In anatomy, a limb.

(*c*) "*member*" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules: Act II of 1912 (Co-operative Societies), S. 2, cl. (*c.*)

A "MEMBER" OF A BODY VIRTUE OFFICIO, is none the less a member *e g.* a Churchwarden would be a Member of the Vestry of his parish (*Leftly* v. *Monnington*, 4 Ex. D. 307).

Member of building society.

"Member of building society" is not a Term of Art, and it may mean different things according as you apply the term to persons outside the society or as you apply it to the rights which arise under the rules to persons within the society" (*per* Bowen, L J, *Re Blackburn Building Society*, 52 L J Ch 902, 24 Ch D. 437)

Member of a company, in the Companies Act, 1862 (25 & 26 Vict c 89, S 23). See *Allen* v. *Gold Reefs of W Africa, Ltd*, (1900) 1 Ch. 656, *Punt* v *Symons & Co, Ltd*, (1903) 2 Ch. 506

Member of an industrial society—See *Gwendolen Freehold Land Society* v. *Wicks*, (1904) 2 K B 622

"Member of a family" defined. 6 Edw. 7 C 58, S. 13

"Member of a matadar family" defined. Bom. Acl 6, 1887, S, 2 (3).

'Member of an agricultural tribe' Punjab Act II of 1905 (Pre-emption) S 3, Cl. 4, Punjab Land Alienation Act, 1900

Members of Parliament The members of the House of Commons, are usually so styled though in fact the Peers are also strictly speaking, Members of Parliament, which consists of King, Lords, and Common (*Tomlins Law Dic*)

Members of Police Force In the Police Act, the expression "member of a police-force" means any person appointed or enrolled for the performance of police duties under any enactment specified in the Schedule- Police (Incident to Disaffection) Act (XXII of 1922), S. 2.

"Member of unlawful assembly" defined Act 45, 1860, S 142

MEMBER, LIMB. Member is a general term applied either to the animal body or to other bodies, as a member of a family or a member of a community limb is applicable to animal bodies, limb is therefore a species of member, for every limb is a member, but every member is not a limb.

Membership As applied to a body of persons, a term which implies, not only the enjoyment of its privileges, but subjection to the rules governing it.

Memorandum A note to help the memory; a brief note in writing of some transaction, or an outline of some intended instrument, an instrument drawn up in brief and compendious form.

"The object of a memorandum is as frequently to help the memory of another person as that of the writer." (*Ame. Cyc*)

"Memorandum of appeal" defined Reg. 1, 1877, S 17.

Memorandum of Association The document which contains particulars of the specific objects for which a company is established, and covering the whole scope of operations, beyond which it is not legal to go

MEMORANDUM OF ASSOCIATION OF COMPANY. Means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act. Act VII of 1913 (Companies), S. 2, Cl. 10

Meni Vilachchal.

"MEMORANDUM OF ASSOCIATION OF COMPANY"—What amounts to 57 All. 810=1935 A W.R. 559=1935 A.L.J. 527=1935 All. 310

Memorial. In Law, a short note, abstract, memorandum, or rough draft of the orders of the court, from which the records thereof may at any time be fully made. (*Ame. Cyc.*)

Memory. A term sometimes used as synonymous with the word "mind"

MIND AND MEMORY. *In re* Forman, 54 Barb. (N Y) 274, 286, it is said. "The use of the words mind and memory as convertible terms is not so unphilosophical as it might at first seem to be, for without memory there could be no mind, properly speaking. Without any memory, a person would be the mere recipient of a succession of present sensations, like the lowest type of animal life."

"TIME OF LEGAL MEMORY". The time of legal "Memory" in English Law hath been long ago ascertained to commence from the beginning of the reign of Richard I". (2 Bl Com 31, citing 2 Inst 238, 239)

Memsaheb. The appellation among Indian servants of an English married lady.

Menace A menace is a threat to injure whether it be to reputation person or property As a noun, it means a threat, a threat or threatening, the declaration or indication of a disposition or determination to inflict an evil, the indication of a probable evil or catastrophe to come, the show of an intention to inflict evil As a verb, to act in a threatening manner. (*Webster*)

Threat to allege mere sexual immorality may amount to a *"Menace"* (*R* v. *Tomlinson*, 1895, I Q B. 706)

Menavan (*Mal*) The village or district accountant in Malabar according to some the appropriate designation of a Sudra according to others, of a Nair, writer or accountant. (*Wil Gloss* 339)

Menavan or Menon, Is the accountant or register, and answers to Karnam and Kanakkanpilla The appellation is generally, if not always confined to an accountant of the caste of Nayar. (*Logan Mal Man*)

Menchilavu The word "menchilavu" means that which is usually allowed beyond what is strictly required for food and clothing alone Under the expression, therefore, come the sums which are required for keeping up a respectable appearance consistent with the position and dignity of the family to which a person belongs, sums required for a reasonable amount of travelling to holy places in the case of a member of an aristocratic family etc, for light conveniences and comforts, which, though they might be called luxuries when indulged in by a low class individual would come under the head of 'necessaries' in the case of persons belonging to families which cannot be classed with the lower sections of the community. (1913) M W.N. 379=18 Ind. Cas. 234 (235).

Mend, an earthen ridge round a field to retain water: (*Bad. Pow.* II. 38 note.)

Meni Vilachchal. The distribution of wet land produce, according to the scheme drawn up by

Menial.

Mr Rickards and approved by Government (1803-4) is known as the Vilachal meni pattam scheme. (*Logan's Mal. Man*)

Menial. As an adjective, belonging to the retinue of servants, belonging to the retinue or train of servants. As a noun, the word is said to mean a domestic servant; one of the train of servants, a company or retinue; the company or collected number of a household or family. (*Richardson Dic*).

A barkeeper in a tavern is a 'menial servant." "In short, all the hirelings employed in service in and about the household affairs, or whose business it is to assist in the economy of the family; the stable boy, the coachman, and all that class of hirelings, fall within the reason of the law. In legal phrase, they are menial servants; and whether, in common parlance, they are called servants, or whether, as that term seems degrading, courtesy gives them a less offensive appellation, as gardener, housekeeper nurse, coachman or barkeeper, they are menial servants, are servants within the meaning of the law." (*Ame. Cyc*)

Menial Servant. A "Menial Servant" is a subordinate domestic servant

Menial servants are those usually employed in or about a house, or who render personal services to, or are in close personal relationship with, their employers. In the absence of special agreement, their engagement is for a year, the service being determinable by one calendar month's notice, or, on the part of the employer, by paying a month's wages in lieu of notice No general rule can be laid down for determining whether servants are menial servants, or not, each case depends upon its own facts.

The term *Menial Servant* may best be explained in accordance with all the authorities and the ordinary use of the word, as denoting those persons whose main duty is to do actual bodily work, as servants for the personal comfort, convenience, or luxury, of the master his family and guests, and who, for this purpose, become part of the master's residential, or quasi residential, establishment. It is not easy to conceive any clearer statement, or one which could be given to a jury with greater propriety" *per* Collins, J, *Pearce* v. *Lansdowne*, 62 L J Q B 441, citing *Roberts and Wallace on the Employer's Liability Act*, 3rd Ed, p. 214)

Mennokki. The common name formerly for accountants in the Kurumbranad and Polwye and Pyurmala Districts,and in the Kartavus or lordships of Vadakkampuram and Kilakkampuram or the Northern and Southern Divisions of the Calicut District (*Logan's Mal. Man.*)

Menon (*Malabar*) the accountant or (patwari) of the Amisham or Amshom. (*Bad Pow.* iii 179.) A village headman in Malabar, A title originally conferred by the Zamorin on his agents and writers It is now used by all classes of Nayars In Malabar the village karnam is called Menon. (*Moore's Malabar Law*)

Mensa et. Thoro.—From bed and board.

Mens rea.—A guilty mind.

Mercantile agencies.

Mens testatoris in testamentis spectanda est. A maxim meaning "The intention of the testator is to be regarded in wills." (*Black L. Dict.*)

Mensuration. A branch of pure mathematics.

It is a branch of Mathematics with which the court may be presumed to be acquainted, and of which it may take judicial notice. (*27 Ame Cyc.* 471)

Mental As used to describe the condition of a person, a word which refers to his senses, perceptions, consciousness, and ideas

In *New York Mut L Ins Co.* v. *Terry*, (21 L. ed 236) it is said "When we speak of the 'mental' condition of a person, we refer to his senses, his perceptions, his consciousness, his ideas If his mental condition is perfect, his will, his memory, his understanding are perfect, and connected with a healthy bodily organization If these do not concur, his mental condition is diseased or defective."

Mention To direct attention to; to speak briefly of, to name casually or incidentally, to refer to.

Mera. (*Marat*) Fees in kind paid to village servants.

MERA, (*Tel. Karn.*) is a portion of the crop given as a perquisite to the holders of a proprietary right in the village lands, or to the hereditary village officers and servants, out of the common stock from the threshing floor. (*Wil Gloss* 339, *Bad. Pow. Vol.* III, 89)

"Mera Shufa". The words *"Mera Shufa"* are words denoting a pre-emption demand on a particular property but they do not, when repeated twice, by themselves constitute a valid *tulab-i mawasibat* under the Muhammadan Law. (1897) A.W.N. 93, *Dist*) 10 I C. 143 (All)

Mercantile Pertaining to merchants or the business of merchants, having to do with trade or the buying and selling of commodities; having to do with trade or commerce.

MERCANTILE, COMMERCIAL *Mercantile* respects the actual transaction of business or a transfer of merchandise by sale or purchase; *Commercial* comprehends the theory and practice of commerce hence we speak in a peculiar manner of a *mercantile* house, a *mercantile* town a *mercantile* situation, and the like, but of a *commercial* education, a *commercial* people, *commercial* speculations, and the like.

Mercantile Agencies A mercantile or commercial agency is an institution which by and with the co-operation of merchants, manufacturers, bankers, and others ascertains, registers and makes known to parties in interest the financial standing, general business reputation, and credit ratings of individuals firms, and corporations engaged in mercantile or industrial enterprises throughout on the world. (*Standard Dict.*)

A mercantile agency is a bureau of information acting as the agent of its employers, and its object is to collect and impart information to those who pay for it.

Mercantile agent.

Mercantile agent. In Factors Acts.—See *Inglis* v. *Robertson,* (1898) App. Cas 616; *Cahn* v *Pockett's Bristol Channel Steam-Packet Co*, (1899) 1 Q B. 643.

"Mercantile business" is a term which refers to the buying and selling of articles of merchandise as an employment, it implies operations conducted with a view of realizing the profits which come from skilful purchase, barter, speculation, and sale.

"Mercantile character" is a term which, when used in reference to a business firm, means generally received opinion in the community respecting its solvency, the probity and punctuality with which it performed its obligations, and the efficiency with which its affairs are managed. (48 *Am Dec.* 59)

"Mercantile commercial agencies" are establishments which make a business of collecting information relating to the credit, character, responsibility, general reputation, and other matters affecting persons, firms, and corporations engaged in business, for the purpose of furnishing this information to its customers (27 *Ame. Cyc* 473).

Mercantile custom. In respect to evidence of mercantile usage; to support such a ground there needs not either the antiquity, the uniformity, or the notoriety of custom which, in respect of all these grounds, becomes a local law. The usage may be still in course of growth; it may require evidence for its support in each case, but in the result it is enough if it appears to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient imported by the parties into their contract. 7 M I A 263 (282)=4 W. R. (P.C) 8=1 Suth. 357=1 Sar. 681.

Merchandise. A term of a very extended meaning, covering all articles of commerce, the objects of commerce, the subjects of commerce and traffic, any article which is the object of commerce, or which may be bought or sold in trade, all kinds of personal property which is bought and sold in the market.

The term applies only to articles having an intrinsic value in bulk, weight, or measure, and which are bought and sold. (72 *Am. St Rep* 326)

The usual meaning of "Merchandise" in a Charter Party is, "'Articles Shipped from the Port with reference to which the contract of carriage is made', or 'Goods ordinarily shipped from the port of shipment", (per Charles, J., *Vanderspar* v *Duncan,* 8 *Times Rep.* 30).

Merchandise Broker A broker who buys and sells goods and negotiates between the buyer and seller, but without having the custody of the property.

Merchandise marks. *See* Gray Sebastian. Finch (1904), and Kerly on Trade Marks, 1905, *See* Merchandize Marks Act.

Merchandise Traffic. "'Merchandise Traffic', is used in a more limited sense than the word 'Traffic &" (per Peel, Commr. *Harrison* v. *Mid Ry,,* 8 Ry. & Can Traffic Ca. 62).

MERCHANDISE NOT IN EXISTENCE", includes future crops of fruit.

Mere skill.

Merchant. One who buys and trades in say any thing; and as merchandise includes all goods and wares exposed to sale in fairs or markets; so the word Merchant extends to all sort of traders, buyers, and sellers (*Tomlins Law Dic.*)

MERCHANT strictly means a buyer, but, by extension, one who buys to sell, or buys and sells; one whose business is to buy and sell merchandise, and who does both, not occasionally or incidently, but habitually and as a business; one who is engaged in the business of buying commercial commodities, and selling them again, for the sake of profits, one who is engaged in the purchase and sale of goods; a person who buys goods to sell again". (*Ame. Cyc.*)

Merchant According to Karachi mercantile usage 'merchant' means a member of merchant class of Karachi and includes a broker and also a person actually dealing in sale and purchase of goods. 13 S.L.R. 201=55 I.C. 76

Merchant appraiser. An expert selected, as an emergency arises, on the request of an importer of goods for reappraisal, to reappraise goods imported, about which there is a dispute between the revenue department of the Government and the importer as to the amount of tariff taxes that should be assessed thereon. (27 *Ame Cyc* 481.)

Merchants Accounts Accounts between merchant and merchant,which must generally be current, mutual, consisting of debts and credits for merchandise.

Merchant shipping *See* Abbott, Merchant Shipping (4th), 1901, Temperley, Merchant Shipping Act (2nd), 1907, (*Ency of the Laws of England.*)

Merchant vessel A term which may include a steamboat used to carry passengers and their baggage and small freight.

Merchantable. Salable, and fit for the market, sound and undamaged, such as is generally sold in the market, vendible in market However, the context or the custom and usage of the trade may control the meaning of the term in the connection in which it is employed in any particular case

MERCHANTABLE As between Manufacturer and Merchant goods are "merchantable" if they are reasonably fit for some of the merchant's purposes though not for others or all his purposes (*Jones* v, *Padett,* 59 L J. Q.B. 261, 24 Q B D. 650.)

"Merchantable quality". *See* Sale of Goods Act, S 16 (2) I L.R (1937) Mad. 479=A I R. 1937 Mad. 40=(1937) 2 M.L J. 131.

Mercis appellatio ad res mobiles tantun pertinet. A maxim meaning "The term merchandise belongs to movable things only." (*Burrill.*)

Mere. Only; only this; nothing else; simple, bare.

"Mere forbearance". *See* 24 All. 504=22 A.W. N. 166.

"Mere skill". In the expression 'mere skill' the word "mere". (Bengal Gambling Act (II of 1867)

Merely.

S. 10), is used in legal language in its meaning derived from its Latin origin and imports the meaning "pure skill". 23 Ind. Cas. 484 (486).

"MERE RIGHT TO SUE", meaning of. *See* A I.R. 1937 Lah 934.

"Merely" is a term which is to be given a reasonable construction according to the subject-matter.

The words "MERELY ON THE GROUNDS THAT NO CHARGE WAS FRAMED" in S. 535 of the Cr. P. Code means a case where the offence being a petty one and the evidence being fairly taken, the court framed no charge at all. But where the Court frames a charge, then it cannot be said that the conviction is invalid merely on the ground that no charge was framed Such a case does not come under S 537 (a) of the Cr. P. Code. 40 Cal. 168=16 I C 161=13 Cr L J. 593

Merger. Is the destruction or "drowning" by operation of law of the less in the greater of two estates coming together and vesting without any intervening estate in one and the same person in the same right. "Whenever a greater estate and a less coincide and meet in one and the same person without any intermediate estate, the less is immediately annihilated, or in the law phrase is said to be merged that is, sunk or drowned in the greater (*2 Black. Com.* 177; *Tomlins Law Dic.*)

MERGER is the absorption or extinguishment of one estate or contract in another, being an operation of law not depending upon the intention of the parties.

MERGER. SUSPENSION · EXTINGUISHMENT. Merger is accomplished by operation of law and is distinguishable from suspension, the latter being the partial absorption occasioned by the temporary union of two estates or interests' · 'Extinguishment' also differs from merger and more especially denotes the annihilation of a collateral subject, right, or interest, in the estate out of which it is derived" (6 *Cru. Dig* 467)

Merit. A term which may be, but is not necessarily, synonymous with "fitness".

Merits In practice, a matter of substance, as distinguished from matter of form; the real or substantial grounds of action or defence, in contradistinction to some technical or collateral matter raised in the course of the suit.

"Decision 'upon merits' means a decision not merely upon formal points"; *Staffordshire Ry.* v. *Lond & N W.Ry.*, 6 *W.R* (*Eng*) 54

The word "merits" should be understood as meaning the strict legal rights of the parties, as contradistinguished from those questions of mere practice which every Court regulates for itself, and from all matters which depend upon the discretion or favor of the Court.

Where the word is used in speaking of the determination of a prosecution on the merits it implies a consideration of substance, not of form; of legal rights, not of mere defects of procedure, or the technicalities thereof.

"The term 'MERITS OF THE CASE,' applied to criminal proceedings, must mean the justice of the case in reference to the guilt or innocence of the prisoner of the offence with which he is charged; and then as to his defence on the merits, this means a substantial and not formal or technical defence to the charge."

A trial of the merits of an action generally means the elicitation of evidence in support of the averments of fact set out in the pleadings

Mesne A term which signifies merely intervening, middle, intermediate.

Mesne incumbrance is a charge on property subordinate to another.

Mesne Lord is one holding of Superior Lord. (*Termes de la Ley*)

Mesne Process means, "preliminary, and not final, process" (per *Lush, J., Mainwaring* v. *Milner*, L.R. 4 Q B 152)

"Mesne profits" defined. Act 14, 1882, S. 211, *Expln.*

MESNE PROFITS Intermediate profits. The profits or other pecuniary benefits which one who dispossesses the true owner receives between disseizin and the restoration of possession; those which are received intermediate the original entry and the restoration of the possession of the premises. (*English L Dict*)

"MESNE PROFITS" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. Act V of 1908 (Civil Procedure Code), S 2, cl 12

"Message" defined. Act 13, 1885, S. 3 (3)

MESSAGE A communication sent by one person to another. (*English L. Dict.*); Used in respect of a Telegraph is a substance with a message written upon it; A conversation through a Telephone is a *"Message"* (*A G.* v *Edison Telephone Co*, 50 L.J. Q B 152, 6 Q.B.D. 244)

Messenger One who bears a message or an errand, the bearer of a verbal or written communication, notice or invitation from one person to another or to a public body, an office servant. (*Webster.*)

Messuage A house or in legal acceptation, dwelling house with the adjacent buildings and curtilage, a dwelling house with some adjacent land assigned to the use of it. This word is synonymous with or, at least, as comprehensive as, House, or Dwelling House. (*Fenn* v. *Grafton*, 2 Bing.N.C. 617)

Metal. 'The word 'Metal' taken in its ordinary sense does not include the precious metal," as gold or silver. [(per *Parke, J., Casher* v. *Holmes*, 2 B. & Ad 597. *See also 27 Ame. Cyc.* 485.

'METAL' is a firm, heavy, and hard substance, opaque, fusible by fire, and concreting again when cold into a solid body such as it was before, which is malleable under the hammer and is of a bright glossy and glittering substance where newly cut or broken." (*Johnson's Dict.*)

Metal

Metallic.

Metallic. Being, containing, or having characteristics of a metal.

Metalling clause. A clause in a marine insurance policy, specifying the non-liability of the underwriters for loss caused by ordinary wear and tear

Metayer System A system of farming, common in certain continental countries, under which the produce of the land is divided in definite proportions, frequently in equal shares between the farmer and proprietor of the land The latter usually provides part, and sometimes the whole, of the stock necessary for cultivating the farm *See* Mill, Political Economy, Book II Chap. 8, Fawcett, Manual of Political Economy, Book II chap 7, (*Ency of the Laws of England*)

Metelotage The hire of a ship or boat (*Wharton*)

Meter An instrument for measuring.

WATER METER is "a contrivance to regulate the distribution of water by adjusting the quantity and price."

Metes and Bounds The boundary line or limit of attract, which boundary may be pointed out and ascertained by rivers and objects, either natural or artificial, which are permanent in character and erection, and so situated with reference to the tract to be described that they may be conveniently used for the purpose of indicating its extent. (*Ame Cyc*)

Method "Placing several things and performing several operations in the most convenient order, it may also signify a contrivance or device" (per *Lawrence, J, Hornblower v Boulton*, 8 T R 106)

Methomania An irresistible craving for alcoholic or other intoxicating liquors, accompanied by peculiar symptom described by medical authors and manifested by the periodical recurrence of drunken debauches (27 *Ame. Cyc* 486)

Methylated Spirits. To "Methylate" means, to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and 'methylated spirits' means, spirits so mixed

Meti (*Mal*) Treading-out or threshing corn

Metikoru The landlord's share of the crop. Compare Melwaram

Metric System A system of weights and measures, first adopted in France and afterwards in other countries in which the unit is multiplied or divided according to a uniform decimal notation; A system of measures for length, surface, weight and capacity, founded on the metre as a unit.

Metropolitan Police Fund, in 49 & 50 Vict c. 22 (Met Pol Act, 1886), S 7, "means the rates, contributions, and funds for the time being applicable for defraying the expenses of the Metropolitan Police Force."

Metus quen agnoscunt leges in excusationem criminis est talis qui cadere possit in constantem virum A maxim meaning "The fear which the law acknowledges in the excuse of a crime is such as can fall upon a steady man." (*Morgan Leg. Max.*)

Midshipman.

Metta (*Tel.*) High and dry land, not capable of irrigation, but depending on the rain, and therefore unfit for rice

Mettaguddalu (*Tel*) High lands, fields only fit for dry cultivation.

Mettajaga (*Tel.*) High ground, hills, hillocks.

Mettavari (*Tel*) The crop of the dry cultivation

Meum est promittere, non dimittere. A maxim meaning "It is mine to promise, not to discharge." (*Black L. Dict.*)

Mevasi (*Bo.*), verious meanings assigned to. *See Bad.-Pow.* III 279 note

"Mhowra flower" defined. Bom. Act 5, 1878, S 3 (13).

Miadi sarbarakari. Miadi sarbarakari—Kabuliyat—Construction—Permanent tenancy, if created. *See* A I.R 1934 Pat 632.

Miadi sarabarakar (*Orissa*). The tenure of a *miadi sarabarakar* is not permanent heritable and transferable Its duration is limited to the period of settlement and the tenure-holder has no claim as a matter of right to re-appointment The history of the tenure in Orissa traced 11 Pat 757=141 I C. 340=I R 1933 Pat 63 (2)=14 Pat.L.T. 743=A.I.R. 1933 Pat. 74

"Miadi sarbarakars"—Status of. *See* 15 Pat.L.T 639=A I R 1934 Pat 632

Michaelmas There are two Michaelmasses, one, the old Michaelmas, which falls on October, 11, and the other, the new Michaelmas, which falls on September 29 (27 *Cyc* 486.)

Michaelmas Term In England, one of the four terms of the courts of common law, beginning on the 2nd and ending on the twenty-fifth day of November of each year. (*Burrill L Dict.*)

Michavaram or Micharam (*Mal.*) The balance of Pattam or rent payable to the Janmi after the interest on the money lent or advanced by the tenant has been deducted. Equivalent to Purappad. (*Moore's Malabar Law, Sun. Mal. Law*)

Michavaram (*Tam Mal*) The landlord's share of the crop

Microbe A germ of disease so infinitesimal that it derives its name frm the powerful glass by the aid of which it is claimed the germ may be detected. (*Cyc.*).

Middle. Equally distant from the extremes or limits mean · middling. (*Century Dict.*)

Middleman. A person employed to bring two or more parties together; the parties, when they meet, do their own negotiating and make their own bargains, an agent who merely brings the parties to the sale together, and upon whom does not devolve the duty of negotiating for either, and who may contract for and receive commissions from both.

Midshipman A person who occupies a middle position between that of a superior officer and a common seaman.

Midwives.

Midwives "Midwives have been known from the very earliest times They were apparently recognised as a separate class of the community at the Court of Pharaoh when Moses was born. Passing to more recent times, there is some ground for believing that in England in the sixteenth century, it was the custom for the bishop to grant a licence to any midwife presented to him by "honest women of great gravitee" as "a sadde woman, wyse and discreet, havynge experience, and worthy to have the office of a midwife" (*Andrew Ford's* Breviary of Health); but this practice fell into disuse soon after the death of Queen Elizabeth, and from that time down to 1902 any woman, however ignorant and untrained, could in this country style herself a midwife and practice as such for gain, without any supervision or regulation It was otherwise on the Continent In France, Germany, Austria, Russia, and nearly every other country in Europe, no woman could practise as a midwife unless she had been properly trained and had obtained a certificate of efficiency. Now at last midwives have been organised into a semi-professional body in England and Wales. In 1902, after long continued effort on the part of the Midwives Institute, and of the Association for Promoting the Compulsory Registration and Training of Midwives, an Act was passed "to secure the better training of midwives and to regulate their practice" This act is known as Midwives Act, 1902, 2 Edw, VII c. 17. (*Ency. of the Laws of England.*)

Might. Is equivalent to "had power" or "was possible"

"Might and ought" In deciding the question, of *res judicata*, as to whether any matter might and ought to have been made a ground of defence or attack in a previous suit, one important test is, whether the matters in the two suits are so dissimilar that their union might lead to confusion. 35 B 507=13 Bom L R 895

The word "might" in Expl. II to S. 13 of the C P Code 1882, presupposes that the person defending or attacking in the former suit had knowledge of the matter at the time of that suit and could have made it a ground of defence or attack therein. 9 Bom L R. 1020 *See also* 25 Bom 189

"Might and ought to have been raised" in the previous suit. *See* C. P. Code, S 11.

Migrans jura amittat ac privilegia et immunitates domicilii prioris A maxim meaning "One who emigrates will lose the rights, privileges, and immunities of his former domicile" (*Black L Dict*)

Migrating family. The ordinary presumption of law is that, when a person leaves one district and goes to another where a different custom prevails, he carries his personal law with him and unless there is something to show he had abandoned his personal law and had adopted the law of his new district he will continue to be governed by the personal law of his old district. (103 I C. 170)

The Hindu Law is the personal law of the Hindus and governs them wherever they may be so long as they remain Hindus. A Hindu leaving India and settling down in Burma is governed by Hindu Law, so long as he is a Hindu. 6 Rang 367=111 I C. 839 =A.I.R. 1928 Rang. 206.

Mile.

The law existing at the time of migration continues to govern the migrated member until it is renounced. 27 N L.R 75=I R. 1930 Nag 289=124 I. C. 609=A.I R. 1930 Nag. 225.

Mihmani (*H.*) Hospitality, reception under the Mohammeddan government, a deduction from the revenue, allowed to Zemindars to defray the cost of their entertaining travellers, pilgrims and strangers in general also a cess levied in some places by the Zamindars under pretext of providing for similar purposes. (*Wil. Gloss.* 341.)

Mihman-khana (*H*) A house where a visitor is accommodated, a place for the reception of strangers or visitors in general sometimes found in village and towns. (*Wil Gloss.* 341.)

Mihnutanah Service money Payment for work done (*Mac. Mah Law*)

Mihta or Mihte, the village headman in the Jhansi villages (*Bad Pow* II, 120)

Milage (See also *Mileage.*) A fee or allowance of a certain sum per mile for travelling expenses allowed to officers and others according to certain settled scales

Where a Railway Company is entitled to so much *"per mile"* for the carriage of passengers or goods, the *mileage* is to be reckoned "by the usual and reasonable route, though it may not be the shortest available route." (*Myers* v. *Lond & S W. Ry.*, L.R. 5 C.P.I , 39 L J C.P. 57.)

Milan (*comparison*), **Milan-khasra** (*H*) A field list comparing the present state with that of the last year, etc (*Bad. Pow.* II, 280.)

Milan-jamabandi (*H*) An appendix or supplement to the account of the revenues of a village, shewing the varieties that occur in the extent of land in cultivation

Milch cow. A term which may include a heifer (*Ame Cyc*)

Mile. A measure of length or distance containing eight furlongs, or one thousand seven hundred and sixty yards, or five thousand two hundred and eighty feet.

MILE. When a distance is mentioned in an Act passed prior to 1890, without defining how it is to be measured (*a*), it is to be measured "as the crow flies," and not by the nearest mode of practicable access. Formerly it was considered that miles should be computed according to the English manner, allowing 5280 feet or 1760 yards to each mile, and that the same shall be reckoned, not by straight lines as a bird or arrow may fly, but according to the nearest and most usual way (*b*). This method of measurement was first called in question by Parke, J., in *Leigh* v. *Hind* (1829), 9 B. & C. 779 (which, however, was a case upon the construction of a contract, and not of a statute), and his opinion was followed by the Queen's Bench in *R.* v. *Saffron Walden* (1846), 9 Q B 79, where Patteson, J, said: "We have nothing to guide us except the words of the statute, 'the miles' We must therefore lay down an arbitrary rule, and I think the best rule will be to take the distance as the crow flies." This decision was acted upon in *Lake* v. *Buttler* (1854), 5 E. and B. 99, where

Mile.

Crompton, J, said "If this question were quite new, the convenience would be all in favour of construing the distance as that measured in a straight line, and the recent authorities being all in favour of this construction, we ought to adhere to it, so that the legislature might know how such general words in an Act will be construed by the Courts."

The term indicates a straight line, and not by the usual methods of travel, (Macon, etc, *Counties* v. *Trousdale* Country, 2 Baxt. (Tenn) 1, 10.

Mileage (See *Milage*) A compensation allowed by law to officers for their trouble and expenses in travelling on public business, payment allowed to a public functionary for the expenses of travel in the discharge of his duties, according to the number of miles passed over.

"MILEAGE" is a recompense to an officer for the expense and labour of the travel which he has to perform in the discharge of his duty. It can hardly perhaps be called a fee, it seems rather an equivalent or reimbursement for toil or travel actually undergone." (*Davidson* v. *Miller*, 1 Can L J N S 9, 11.)

Mileage rate. A rate of a certain sum per mile charged by railway and canal companies for the conveyance of traffic over their undertakings.

Milestones. Highway authorities are empowered to maintain, replace, or set up milestones on highways, these traffic expenses being a lawful charge upon the highway rate.

Military Pertaining to war or to the army, concerned with war, also the whole body of soldiers, an army. (*Black L Dict*)

Military age. The age at which a person might enlist in the army, navy or air force, the age at which one becomes liable to military service

Military attache An army officer detailed on duty with the diplomatic representative of his county at a foreign capital.

Military commission A Court organized in time of war or suspension of civil power to try offences against military law or cognizable by courts martial.

"Military Court" defined. *See* Court-martial.

Military Courts. Courts which administer military law, whether in the army or navy, they are usually termed courts-martial.

Military Courts of inquiry. "By virtue of its prerogative the Crown may direct commissions or Courts of Inquiry, to examine into the truth of allegations, and report on matters connected with the administration, or the government in matters of discipline, of the army, or of other forces under military law These Courts sit both in military and in naval matters under rules of procedure which are on the whole similar, but which differ in certain respects. In several instances the exercise of the prerogative is subject to legislative enactment as *e.g.* under the Regimental Debts Act. 1893, 56 Vict. c. 5 or under sec 72 of the Army Act, 1881, 44 & 45 Vict. c. 58.

Military forces.

They are not, strictly speaking, Courts, since they possess no power of deciding judicially upon matters examined into by them, they sit usually in secret; they have no power of compelling civil witnesses to attend, and they do not in all cases take evidence on oath. They are assemblies of persons directed to make inquiries into matters of administration or discipline, either for the information of Ministers of the Crown, or of any officer in command of troops, to assist them in arriving at correct conclusions on any subject on which it may be expedient for them to be informed. Committees and Boards are Courts of Inquiry, and differ from them only to this extent, that the objects for which they are assembled do not involve points of discipline." (*See* Clode, Military Forces of the Crown, Thring, Criminal Law of the Navy. Manual of Military Law, War Office, 1907, Stephens, Gifford and Smith, Manual of Naval Law; *Ency of the Laws of Eng. land.*)

"Military custody" defined. Act 5, 1896, Pt, I, cl. (*e*) (18).

MILITARY CUSTODY. In respect of army discipline " 'Military Custody', means, according to the usages of the service, the putting the offender under arrest, or the putting him in confinement "

MILITARY CUSTODY, (MILITARY PRISONERS, MILITARY PRISONS,) Military custody may mean either arrest or confinement of a person subject to military law (*i e*) military prisoner pending charges to be brought against him, or, in certain cases of less serious offences, confinement (in a military prison) in execution of the sentence; or, in other cases, it may mean detention after sentence until the person can be duly sent to a proper public civil or military prison, or penal servitude prison, in which the sentence is to be executed (*See* Manual of Military Law War Office. 1907 *Ency of the Laws of England*)

"Military decoration" defined. 44-5 V. c. 58, s. 190 (18)

MILITARY DECORATION In the Army Act, 1881, " 'Military decoration', means, any medal, clasp, good-conduct badge, or decoration."

"Military departments" The department of Government which deals with the national army, navy and air force.

Military fever (*Med.*) Typhoid or typhus fever (*Webs*)

"Military forces" defined. *See* Her Majesty's Military Forces

MILITARY FORCES. In the English Army Act is synonymous with " 'Regular Forces' and 'Her Majesty's Regular Forces,' which terms mean, Officers and Soldiers who are liable to render continuously for a term Military Service to Her Majesty in any part of the world, including the Royal Marines and Her Majesty's Indian Forces and the Royal Malta Fencible Artillery; and, subject to this qualification that when the Reserve Forces are subject to Military Law, such Forces become, during the period of their being so subject, part of the Regular Forces." (Sub-s. 8, S. 190.)

Military Government.

"Military government" denotes the dominion exercised by a general over a conquered state or provinces.

MILITARY GOVERNMENT is the dominion exercised by a general over a conquered state or province. It is therefore a mere application or extension of the force by which the conquest was effected to the end of keeping the vanquished in subjection, and being a right derived from war, is hardly compatible with a state of peace.

Military hospital. Hospital for the care and treatment of the sick and wounded of an army.

"Military jurisdiction" is a jurisdiction which supersedes to some extent the local law, and is exercised by a military commander under the direction of the executive. In Ex p. Milligan, 4 Wall (U S.) 2, 141.

Military law, Military law is the law by which the armed forces of the Crown are governed both in peace and war, and abroad as well as in the Kingdom. Growing out of the prerogative of the Crown to make articles of war for the troops when about to be engaged in actual warfare, it was subsequently extended under statutory authority to the general government of the forces at all times. It is now contained in the Army Act, and Army Orders.

"MILITARY LAW" is defined to be a code of rules and ordinances prescribed by competent authority for the government of the military state considered as a distinct community.

Military law is a branch of law as valid as any other, and it differs from the general law of the land in authority only in this. that it applies to officers and soldiers of the army, but not to other members of the body politic, and that it is limited to breaches of military duty.

Military manoeuvres. In order to provide facilities for enabling large bodies of troops to be exercised over extensive tracts of country for military instruction, powers were first given to the military authorities enabling them, within certain limits, to occupy lands for this purpose. The English Act under which such military manoeuvres are now regulated is the Military Manoeuvres Act, 1897, 60 & 61 Vict. c 43

Military necessity. The necessity which in war attends military operations.

"Military officer" defined. Act 2, 1902, S 2 (1) (*e*).

Military order. A command proceeding from a military superior, and association of military persons under a bond of certain peculiar rules (as) Knights in the Middle ages.

"Military police-officer" defined. Act 15, 1887, s. 3 (1) ; Act 5, 1892, s. 2 (1) ; Act 4, 1904, S. 2 (a) ; Reg. 2, 1888, s. 2 (1), Reg. 4, 1890, s. 3 (1).

There shall be six classes of *Military police-officers* namely :—

(*i*) subahdars,
(*ii*) jamadars,
(*iii*) havildars,
(*iv*) naiks,
(*v*) lance-naiks,
(*vi*) sepoys,

and such grades in each class as the Local Government may direct. Bur. Act XV of 1887 (Military Police) S. 5, Cl. 1.

Military post. A military post is a place at which troops are posted or intended to be posted.

Military purposes. "'Military purposes,' includes, rifle or artillery practice, the building and enlarging of barracks and camps, the erection of butts targets batteries and other accommodation, the storing of arms, military drill, and any other purpose connected with military matters approved by the Secretary of State." (Eng. Army Act, S. 23.)

"Military reward" defined 44-5 V. c. 58, S. 190 (19), Act 5, 1869, Pt. I, cl (*e*) (12)

MILITARY REWARD. "'Military Reward,' means, any gratuity or annuity for long service or good conduct it also includes any good conduct pay or pension, and any other military pecuniary reward."

"Military service" defined 33-4 V. c. 90, S. 30.

MILITARY SERVICE Service rendered to the Crown in the army, or other military or naval forces, either by officers holding commissions, or, as in the case of the rank and file, by enlistment for a term of years in the army or militia, and reserve of each force, or in territorial force, or upon offer and acceptance of such service in the volunteer forces without such limitation.

MILITARY SERVICE, "Military Service" includes, "military telegraph and other employment whatever in, or in connection with, any military operation."

"Military Service" includes the volunteer army of the State. (*In re* Burns, 87 Fed 796, 797)

"Military or naval service," within a policy of life insurance which provides that the policy shall be void in case the insured shall enter in any military or naval service without the consent of the insurer, means only such service as will require the person entering into it to do duty as a combatant, and hence an employment by the military authorities in constructing a railroad bridge is not within the prohibition of the policy

"Military stores" defined. Act 11, 1878, s 4.

Military testament or Military will. Military men, officers and soldiers have the privilege, when on actual military service, of making nuncupative or other informal wills, freed from the restrictions imposed by law in the care of other wills. (Manual of Military Law, War Office : Ind. Suc. Act, 1925.)

Militia is the National Soldiery the standing force of the nation. (*Tomlins Law Dic.*) *See* Clode, Military Forces of the Crown : Anson, Law and Custom of the Constitution; Manual of Military Law, War Office, 1907.

Milk. A white fluid of female mammals, secreted for the nourishment of the young. (*Webster Dict.*)

"MILK" would include cream, or milk from which the cream has not been removed.

Milk

MILK "Milk, commercially speaking, means, Skimmed Milk" (*per* Mathew, J, *Lane* v. *Collins*, 54 L.J M C 76).

MILK (*H*), or Malik Possession, property, mastership, proprietary right, also real property, landed possessions it is sometimes applied to the possession of rent free lands (*Wil. Gloss* 341)

MILK (*A Property*), applied to revenue free grants under the Moghul Empire, which were made in perpetuity and included the land, so that the grantee was freehold owner (*Bad Pow* 1, 531) in the N W.P. (*Bad Pow* II 155).

Milk or Milkiat. Land held in absolute property, and free of rent (*Puraniya*)

Milkiyat property in land, ownership; Proprietary right. (*Mac. Mah. Law*)

Milkiyat Sarkar Government ownership.

'Milkiyyat' and 'Malik wa qabiz'—Use of these words in Hindu will—Effect—Presumption as to full ownership. *See* 8 Lah 181.

"Mill" defined Act 2, 1896, S 3 (6), P. Act 3, 1905, S. 3; Reg 4, 1898, S 3 (4).

MILL. A house or engine to grind corn, or other substance and is either a water-mill, wind-mill, horse mill, hand-mill, etc And besides corn and grist-mills, there are paper mills, pulling or tucking mills, iron-mill, oil-mills, etc (2 Inst 621, *Tomlins Law Dic*)

A "mill", as defined by Webster, has two significations (1) "A complicated engine or machine for grinding and reducing to small particles grain, fruit, or other substance, or for performing other operations by means of wheels and a circular motion, as a gristmill for grain, a coffee mill, a cider mill, a barkmill The word is now extended to engines or machines moved by water, wind, or steam, for carrying on many other purposes".

The original purpose of mills was to grind grain for food and in this sense it has been defined as a machine for grinding any substance as grain, by rubbing and crushing it between two hard, rough, or indented surfaces But in modern usage, the term "mill" includes various other machines or combinations of machinery, such as saw-mills, cotton-mills, or woollen-mills to some of which the term "manufactory" or factory is also applied. But not every establishment, or structure, for the accomplishment of work by machinery is a mill. The term "mill" is used to denote the building or collection of buildings with machinery by which the processes of manufacturing are carried on.

"MILL" means any contrivance whereby the water-power of any canal is used for grinding, sawing or pressing, or for driving or working machinery or for any other similar purpose, and includes all subsidiary works and structures connected with any such contrivance except the canal itself [Punjab Act III of 1905 (Minor Canals), S. 3, Cl. 10 *See also* Punjab Act IV of 1898, S. 3 (4).]

"MILL", as used in a conveyance of a mill, includes the waters, flood gates, and the like, which are all necessary to the use of the mill.

Minar.

"By the grant of mill, the millstone doth pass, albeit at the time of the grant it be actually severed from the mill". (Touch. 90, *Place* v *Fagg*, 4 M. & R. 277)

Mill-dam. A mill-dam is a dam built for the purpose of furnishing water-power for a mill.

"Mill-gearing" defined Act 15, 1881, S. 2.

MILL-GEARING. In the English Factory and Workshop Act, 1901, "Mill-gearing, has been defined to comprehend every shaft, whether upright oblique or horizontal, and every wheel, drum, or pulley or other appliance, by which the motion of the first moving power is communicated to any machine appertaining to a Manufacturing Process" (S. 156).

Mill house The term "mill house" means a building or house used for milling purposes. A mill house is a building inclosing mill machinery or used for milling purposes.

A policy of insurance on a mill includes not only the mill house but the machinery, while a policy on the "mill house" will only include the building.

Mill privilege A mill privilege has been said to embrace the right which the law gives the owner to erect a mill thereon and to hold up or let out the water at the will of the occupant for the purpose of operating the same in a reasonable and beneficial manner.

Mill run The term "Mill run" used in a lumber contract has been held to mean, in effect, the entire output of a saw-mill

Mill site. A mill site is said to be the same as a mill privilege, and has been held to include not only all the land the mill covers, but so much land as may be necessary for the purpose of erecting and working a mill (*27 Ame. Cyc.* 510)

Mill tally The term "mill tally" used in a logging contract has been held to include all that is saved and set apart as property to be classed as lumber.

Mill wright A mill wright is an engineer who designs, constructs, and erects mills, their motors, machinery, and appurtenances, particularly flouring and grist mills (*Century Dict.*)

Mill yard A mill yard of a saw-mill is the place appropriated for the deposit of logs to be sawn, and for the piling of lumber which has been manufactured from such logs

TIDE-MILL A tide-mill is a mill placed upon a dam thrown across a creek or inlet from the sea, in which the tide naturally ebbs and flows, and wherein water is raised by the flow of the tide, and at high water and the turn of the tide, the water is stopped by the dam and the sluice-gates, and kept to that height, until the tide has so far ebbed, below the dam, as to create a fall, by means of which the mill is worked a few hours, until the return of the flood tide prevents it. (*Ame. Cyc*)

Milling. "Milling" has been held to be synonymous with "manufacturing." (*27 Ame. Cyc.* 510.)

Minar. (*Arabic.*) A minaret, the balconied tower of a mosque, or an isolated tower, as the Kutb Minar, which is 240 feet high. Also a small obelisk used to mark distance, a kos-minar.

Minatur innocentibus.

Minatur innocentibus qui parcit nocentibus. A maxim meaning "He threatens the innocent who spares the guilty."

Mind. In its legal sense, a term meaning the ability to will, to direct, to permit, or to assent, a word sometimes used as convertible with the word memory.

"**Mine**" defined. Act 8, 1901, S 3 (*d*)

"MINE" A "mine," properly speaking, is the pit or excavation in the earth from which the ore is taken The term is certainly used to include the bed or vein or ore into which the pit enters, so far as may be necessary to the working of the mine, and the whole series of shafts and subterranean passages and chambers connected with it, but neither in ordinary parlance nor in strict technical language if a "mine" understood to indicate the entire ore bed with which the shaft may be connected The ore may extend indefinitely, but the mine is the pit from whence it is extracted (*Words and Phrases*)

"MINES", according to Jacob's Law Dictionary, "are quarries or places where anything is digged."

Other definitions are "(As a noun) an excavation in the earth from which some useful product is extracted, a deposit of useful material" (*English L. Dict.*)

"An excavation made for obtaining minerals from the bowels of the earth" (*Bouvier L Dict*)

Whether any excavation in the earth be a mine or not is said to depend upon the mode in which it is worked and not on the substance obtained from it (*Rex* v. *Dunsford*, 2 A & E 568)

As to *Mines*, *see* Macswinney on Mines, Quarries and Minerals and Hamilton and Forbes on Management and Rating of Collieries Jones and Bellot's Miner's Guide.

MINE, MINES, MINERALS "The primary meaning of the word 'Mine' standing alone, is an underground excavation made for the purpose of getting minerals. (*Bell* v *Wilson*, 35 L J Ch 37) 'Minerals', on the other hand, means primarily all substance—other than (and underneath) the agricultural surface of the ground,—which may be got for manufacturing or mercantile purposes whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open working The particular signification of each of these words may be varied largely by the context" [(per *Kay, J.*, *Mid Ry.* v. *Haunchwood Co*, 51 L.J. Ch. 778=20 Ch D. 552)

MINE, VEIN, SEAM, AND, QUARRY Speaking generally a "mine" may be defined to be "an excavation in the earth which yields minerals." The word is, however, used in several senses and to ascertain these senses precisely it is necessary to contrast it, on the one hand, with vein or seam, and, on the other hand, with a quarry. In its primary sense mine appears to exclude that notion, In a secondary sense however, a mine may mean a closed vein; and a vein or seam may, in a secondary sense, be called a mine. The distinction between a mine and a quarry is in part shown by the derivations or supposed derivations of the two words. It is said that the medieval Latin term minare means "to lead a passage

Mineral

underground", and that the French word *quarriere* means 'the place where stones are cut in squares."

The primary legal sense of each word is consistent with these different derivations Generally speaking, if the article sought for is obtained by underground workings, the place from which it is obtained is a mine, if it is obtained by surface workings the place is a quarry [(*Bell* v. *Wilson*, (1865) 2 Drew & Sm. 399, 62 E R 671, *Ency of the Laws of England*]

A brickfield or a gravel or ordinary clay pit, is a quarry whereas an underground excavation for limestone, clay, or slate is a mine. However, in a secondary sense of each word, this distinction is often disregarded, or even transposed It is common to speak of an iron mine, even when the iron is worked from the surface, and it is invariable to speak of a gold mine, although gold is nearly always worked from the surface. On the other hand, it is common to speak of a slate quarry, although the workings are underground. And the strict legal meanings of "mines" and "quarries" may be varied by the context The word "mine" is generally wide enough to include the space created by the working of the minerals, and the words "vein", "seem," and "quarry", are, it is apprehended in their proper senses, capable of similarly extensive meanings. Thus the owner of a mine is, as such, *prima facie* the owner of the chamber which contains the minerals, and his interest in that chamber is the same, whether it is filled with minerals, or they have been worked out, and it is left empty [*Eardley* v. *Granville*, (1876) 3 Ch D. 826]

"TO MINE", "MINING and Prospecting" "To mine" is defined to dig a pit or mine, to dig in the earth for minerals, etc. "Mining" and "prospecting" are generic terms, which include the whole mode of obtaining metals and minerals.

"Mine manager" "mine foreman," or "mine boss" The term 'mine manager" as used in a mining law is intended to mean any person who is charged with the general direction of the underground work, or of both the underground and top work, of any coal mine, and who is commonly known and designated as mine boss, or foreman, or pit boss.

"Miner" A miner is one who mines, a digger from metals and other minerals The term includes all artizans, labourers and other persons, working in and about a Mine.

"Miner's weight" As applied to coal mining, "miner's weight" means such quantity of coal as is computed at a ton in paying the miner who mined by the ton. (27 *Ame Cyc* 541)

Mineral. Any thing that grows in mines, and contain metals. (*Tomlins Law Dic.*)

The term "minerals" includes all such bodies of mineral substances lying together in seams, beds, or strata as are commonly worked for profit and have a value independent of the surface of the land, whether extracted from a mine or a quarry or even occurring as an outcrop. (L.R. 1933 Nag. 179=143 I C 586=29 N L R. 148.)

Minerals include granite, clay, limestone, freestone and the stone used (15 M.L.T. 277=23 I C. 144)

Mineral.

Primarily "mineral" means that which grows in a "mine." On the other hand, it sometimes means every substance forming part of the crust of the earth, other than or possibly even including, the layer which sustains vegetable life. In its legal sense, the word "minerals" has been held to include *prima facie* every substance which can be got from underneath the surface, whether by underground workings or by open quarrying [*Hext* v *Gill*, 1872, L.R. 7 Ch. 712], provided that such substance is part of the natural soil; and is of commercial value [*Hext* v. *Gill*, supra; *Hamilton* v. *N. B. Railway Co.*, ('886) 13 R 454], or at least has a use and value independent of the rest of the soil [*Johnstone* v. *Crompton* (1899), 2 Ch. 190]

"A mineral is a natural body destitute of organization or life. The word is evidently derived from mine, as being that which is usually obtained from a mine, but mineral bodies occur in three physical conditions of solid, liquid, and gas, and although the team is more frequently applied to substances containing metals, in its proper sense it includes all fossil bodies or matters dug out of mines, and is not confined to metals only, but primarily means all substances other than the agricultural surface of the ground which may be got for manufacturing or, mercantile purposes, such as stone or clay, whether got from a mine, as the word would seem to imply, or by open working, and whether containing metallic substances or substances entirely non-metallic. So it includes all metallic ores, slate and corrolites, calk and calcspar, coal, and salt In the broadest sense, as belonging to one of the three great divisions of matter, animal, vegetable and mineral, sand of course is a mineral. In the more restricted scientific sense and may or may not be a mineral according to what it is composed of So where parties do not appear to have intended a different meaning, oil or petroleum, gas, and water are embraced in the term, and it is said of water and oil, and still more strongly of gas, that they may be classed by themselves, if the analogy be not too fanciful, as minerals feræ naturæ (*Ame. Cyc*)

In the Upper Burma Land Revenue Regulation, unless there is anything repugnant in the subject or context, the expression "minerals" includes amber [Burma Regulation III of 1889 (Upper Burma Land and Revenue) S. 3, Cl. (1)].

Mineral lands include not merely metaliferous lands, but all such as are chiefly valuable for their deposits of a mineral character, which are, useful in the arts or valuable for purposes of manufacture.

Mineral and metal distinguished In its common and ordinary signification, the word "mineral" is not a synonym of "metal", but is a comprehensive term, including every description of stone and rock deposits, whether containing metallic substances or entirely non-metallic.

A mineral is anything that grows in mines and contains metals.

In the most general sense of the term, "minerals" are those parts of the earth which are capable of being got from underneath the surface, for the purpose of profit. The term, therefore, includes coal, metal, ores of all kind, clay and stone and slate.

Mining companies.

"Minerals" is by far a more general word than "Mines" [(per *Mellish, L.J., in Hext* v. *Gill.*)

Minerals and ore distinguished. 'The term 'minerals', though frequently applied to substances containing metals, in its proper sense includes all fossil bodies or matters dug out of mines. In its enlarged sense it comprises all the substances which formed or have formed a solid body of the earth. There is a difference, both in common and scientific parlance, between, 'minerals' and 'ore,' ore being a compound of a metal and some other substance.

Ore is "the compound of a metal and some other substance, as oxygen, sulphur, or arsenic, called its mineralizer, by which its properties are disguised or lost."

Oil in place under the soil is a mineral, and a part of the realty

"Mine-run coal". The words "mine-run coal," in a mining lease mean in mining parlance all of the coal that comes out of the mine from the picks, embracing lump, nut, and slack. (*Ame. Cyc.*)

Minha. (*A*) A deduction made from assessed revenue thence laxly used for alienated or partially alienated land.

Minima poena corporalis est major qualibet pecuniaria A maxim meaning "The smallest corporal punishment is greater than any pecuniary one." (*Burrill L. Dict*)

Minime mutanda sunt quae certam habent interpretationem A maxim meaning "Things which have had a certain interpretation (Whose interpretation has been settled, as by common opinion) are not to be altered". (*Black. L Dict*)

Minimum. The smallest amount or degree. (*Century Dict*)

Minimum est nihilo proximum. A maxim meaning "The smallest is next to nothing".

Mining. *Hindersley, V. C.* said, "*Mining*, is when you begin on the surface and, by sinking safts, you work underground in a horizontal direction, making a tunnel as you proceed, and leaving a roof overhead."

Mining and "milling" would seem to be, taken together, one industry, having for its object to obtain possession of material products in the state in which they were fashioned by nature. Mining, the process of extracting from the earth the rough ore, would seem to be the first step in the process; milling, or reducing, the second step, to writ, the further separating of the materials found together, the one from the other, and extracting from the mass the particular natural product desired.

Mining claim. A "mining claim is a parcel of land containing precious metal in its soil or rock; that portion of the public mineral land which the miner takes up and holds in accordance with mining laws, for mining purposes; a claim asserted under the mining laws of state, to certain lands of the government supposed to contain mineral deposits.

Mining companies. Comprise all mining projects carried on by joint stock association.

Mine foreman.

"**Mine foreman,**" means the person who shall have, on behalf of the operators, immediate supervision of a coal mine.

"**Mining district**" and "**Mineral district.**" The phrase 'mining district" means a section of country usually designated by name and described or understood as being confined within certain natural boundaries, in which gold or silver or both are found in paying quantities, and which is worked therefor, under prescribed rules and regulations "Mineral district" has been held to apply to no particular section of the state known and defined as such a district (*Ame Cyc*)

"**Mining land,**" "**mining ground**" and '**mineral land**' Lands from which mineral substances are taken may be termed "Mining lands" And mineral lands include lands which are chiefly valuable for their deposits of a mineral character and not merely metalliferous lands "Mining ground" means that land in which the owner works in good faith, by ordinary mining processes, deposits of stone or other minerals with a view of utilizing the products for commercial purposes

Mining lease The term "mining lease" includes a contract between the mining company and miner, whereby the former promises the latter to dig for mineral on certain of its property for a stipulated royalty, although there is no determinate term fixed

The term "mining lease" is properly used to designate an instrument which purports in consideration of a fixed annual rental to lease and convey for a term of years all the coal or other menerals on or under certain described land Such an instrument only authorizes the grantee to take out all the coal or mineral he can mine during the term, and is not an absolute grant of all the coal or mineral in the land.

ORDINARY LEASE DISTINGUISHED. A mineral lease differs from an ordinary lease in that, although both convey an interest in land, the latter merely conveys the right to its temporary use and occupation, while the former conveys a portion of the land itself

Mining partnership A mining partnership is where several owners unite and co-operate in working the mine.

Where persons engage in working a mine under an agreement by which some of them are to furnish the money, others to do the work, and all to share equally in the result, it constitutes a mining partnership.

Mining right. A mining right is a right to enter upon and occupy land for the purpose of working it, either by underground excavations or open workings, to obtain from it the minerals or ores which may be deposited therein By implication the grant of such a right carries with it whatever is incident to it and necessary to its beneficial enjoyment.

Mining rights must include incorporeal hereditaments lying in grant, but not in seisin, such as rights of way over the surface, the right to dig and drive slopes and entries, and the like, rights of an intangible nature, incapable of possession by the owner.

"**Mining rights**", and "**mining title.**" A "mining right" is a right to enter upon and occupy land for the purpose of working it, either by underground excavations or open workings, to obtain from it the minerals or ores which may be deposited therein By "mining title" is meant the title which the miner obtains by his discovery and location, followed up with a compliance with the statutory regulations to preserve his right of possession (*Ame. Cyc*)

Minister A person who is ordained in conformity to the customs of any organized Christian denomination is a duly ordained "minister"

The word is also applied to the administrative head of a department of state, one to whom the management of the affairs are entrusted, an officer of justice (obs), a representative of Government

The word "minister", when used in the title on foreign relations, shall be understood to mean the person invested with and exercising the principal diplomatic functions.

Minister Agent. They both perform the will of another, but the minister performs a higher part than the agent the minister gives his counsel, and exerts his intellectual powers in the service of another, but the agent executes the orders or commission given him, a minister is employed by government in political affairs, an agent is employed by individuals in commercial and pecuniary affairs, or by government in subordinate matters, a minister is received at court, and serves as representative for his government, an agent generally acts under the directions of the minister or some officer of government A minister always holds a public character, and is in the service of the state, the agent may be only acting for another individual, of which description all are commercial agents. (*Crabb*)

TO MINISTER, ADMINISTER, CONTRIBUTE Princes are often placed in the unfortunate situation that those who should direct them in early life only *minister* to their vices by every means in their power, it is the part of the Christian to *administer* comfort to those who are in want, consolation to the afflicted, advice to those who ask for it, and require it, held to those who are feeble, and support to those who cannot uphold themselves, it is the part of all who are in high stations to *contribute* to the dissemination of religion and morality among their dependents.

Ministerial. Acting at the commands of another, or acting as the agent for another or under superior authority, clerical, of or pertaining to ministry or service, a term sometimes used as synonymous with the word administrative (*Cyc*)

Ministerial act. A ministerial act may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done

Official action, the result of performing a certain and specific duty arising from designated facts, is a ministerial act.

The administration of an oath is a ministerial act.

Ministerial duty. A duty in which nothing is left to discretion, a duty performed by one acting

Ministerial duty.

under superior authority, or not with unlimited control; a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.

A ministerial duty, the performance of which may in proper cases be required of the head of a department by judicial process is one in respect to which nothing is left to discretion.

A ministerial duty arises when an individual has such a legal interest in its performance that neglect of performance becomes a wrong to such individual.

Ministerial office. An office which gives the officer no power to judge of the matters to be done, and requires him to obey the mandates of a superior, an office which is distinguished from an executive or judicial office

MINISTERIAL OFFICER An officer whose duty it is to execute the mandates lawfully issued by his superiors.

The essential and characteristic distinction between a judicial and a ministerial officer is that the former is to give judgment, which requires perfect freedom of opinion, but the latter is to execute, which supposes obedience to some mandate prescribing what is to be done, and leaving nothing to opinion (*Reid* v. *Hood*, 10 Am Dec 582)

The test of whether a person is or is not a ministerial officer depends, not on the character of the particular acts which he may be called upon to perform, or whether he exercises judgment or discretion with reference to such acts, but whether the general nature and scope of the duty devolving upon him is of a ministerial character, as distinguished from other classes of officers, such as executive, judicial, etc (*State* v *Loechner*, 59 L.R.A 915.)

Ministerialist. A supporter of the ministry or the party in power.

Ministerial reciqiunt vicarium sed non item pleraque judicaria A maxim meaning "The office of a judge, as a rule, does not admit of a substitute, as do purely ministerial offices" (*Morgan Leg. Max.*)

Ministry. The body of ministers of the state The term Ministry is wider than Cabinet, and includes all the holders of political office who come in and go out with the Prime Minister. In this respect Ministers may be contrasted with the members of the Permanent Civil Service, whose tenure is independent of party changes. Every department of State has a minister at its head to direct its working and represent it in the legislature. Some departments have more than one minister, and it is usual so to arrange offices that if possible every department shall be represented in both Houses of the Legislative. Where departments are not so staffed, some unattached junior member of the ministry represents the department in the house other than that in which the minister sits. (*Ency. of the Laws of England.*)

Minius est actionem habere quam rem. A maxim meaning "It is only less to have an action therefor than to have the property itself." (*Morgan Leg. Max.*)

Minor non tenetur.

"**Minor**" defined Act 10, 1865, S. 3; Act 1, 1869, S. 2, Act 15, 1872, S 3, Act 5, 1873, S. 3, Act 19, 1873, S. 3 (12), Act 3, 1877, S 3, Act 5, 1881, S. 3, Act 8, 1890, S 4 (1), Act 7, 1926, S. 2, Ben. Act 4, 1870, S. 1, Ben Act 9, 1879, S. 3, Act 16, 1908, S. 2, Bom, Act, 1, 1905, S. 2 (*d*), Mad Act, 1898, S. 2 (1), Mad. Act 1, 1902, S. 4, P. Act 2, 1903, S. 3 (*c*), U.P. Act 3 1899, S. 3 (*b*), U P. Act 3, 1901, S. 4 (5)

The term "minor", includes any person, male or female, who has not attained the age of majority

"MINOR" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years, and "minority" means the status of any such person [Act XXXIX of 1925 (Succession), S. 2 (*e*)]

"Minor" means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875 [Act V of 1873 (Government Savings Banks) S 3]

"Minor" means a person who has not completed the age of twenty-one years and who is not a widowe or a widow, [Act XV of 1872 (Christian Marriage), S. 3.]

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque aetatem, sed non cadit breve A maxim meaning "A minor before majority cannot act in a case of property, nor even agree, it should be deferred until majority, but the writ does not fail (*Black L Dict*)

"**Minor canal**" means a canal declared by a notification of the Local Government to be a minor canal, whether such canal has been or is constructed, maintained or controlled by Government or not, [Bur Act II of 1905 (Burma Canals), S 3, cl (2).]

"**Minor children**" defined. Act 4, 1869, S. 3 (5).

"MINOR CHILDREN" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years, in other cases it means unmarried children who have not completed the age of eighteen years [Act IV of 1869 (Divorce), S. 3, cl (5).]

Minor girl, taking or enticing of Where a girl under sixteen leaves the guardianship of husband of her own free will and stays with the accused, there is no taking or enticing of her under the Penal Code, 23 Ind Cas 473

Minor jurare non potest. A maxim meaning "A minor cannot make oath."

Minor minorem custodire non debet, allios enim praesumitur male regere qui seipsum regere nescit A maxim meaning "A minor ought not to be guardian to a minor, for he who knows not how to govern himself, is presumed to be unfit to govern others." (*Burrill L. Dict.*)

Minor non tenetur pacitare super haereditate. A maxim meaning "The minor is not bound to defend himself on account of his inheritance." (*Morgan Leg. Max.*)

Minor non tenetur respondere durante minori aetate, nisi in causa dotis, propter favorem. A

Minor qui infra.

maxim meaning "A minor is not bound to reply during his minority, except as a matter of favour in a cause of dower." (*Black L Dict.*)

Minor qui infra aetatem 12 annorum fuerit ultagari non potest, nec extra legem poni A maxim meaning "A minor who is under twelve years of age cannot be outlawed, nor placed without the law." (*Black L Dict.*)

"Minor under the jurisdiction of the Court of Wards". By the expression, "Minor under the jurisdiction of the Court of Wards" in the Indian Majority Act, 1875, is understood not a person, of whose estate the Court of Wards might, with the sanction of Government, take charge, but a person of whose estates the Court of Wards has actually assumed the management under the orders of Government 3 M 11

"Minor union" defined Mad Act, 5, 1884, S. 3 (*iv*)

"Minority" defined. Act 10, 1865, S 3, Act 1, 1869, S 2, Act 9, 1875, S 3, Act 5 1881, S 3.

MINORITY. The state or condition of a minor, infancy, a personal privilege allowed to an infant, by operation of law, *also*, a legal disability, also the smaller number of votes of a deliberative assembly, opposed to majority

Minor tenetur in quantum locupletior factus A maxim meaning "A minor is bound to the extent to which he has been enriched or benefited." (*Morgan Leg Max*)

"Mint" defined. Act 3, 1906, S. 2 (*b*).

MINT. The place where the kings money is coined. (*Tomlins Law Dict.*)

"Mint" in the Coinge Act includes the Mints now existing and any which may hereafter be established, Act III of 1906 (Coinage), S. 2, Cl. (*b*)

Mint price of bullion Number of coins into which a given weight of bullion is divided.

Minus solvit, qui tardius solvit. A maxim meaning "He does not pay who pays too late."

Minus solvit, qui tardius solvit, nam et tempore minus solvitur A maxim meaning "He pays little who pays late, for from the delay he is judged not to pay." (*Peloubet Leg. Max.*)

Minute. As a noun, a small portion, the sixtieth part of an hour or degree As a verb, to set down a short sketch or note of, to jot down, to make a brief summary of. (*Webster.*)

Minutes. In practice, memoranda of what takes place in court made by authority of the court In business law, memoranda of a notes of a transaction or proceeding.

THE MINUTES OF A COURT are the memoranda of what takes place in court and are made by authority of the court.

Minutes of a meeting The minutes of a meeting are *prima facie* evidence of what happened at the meeting. 26 B.L.R. 987=A.I.R. 1925 Bom. 49.

Mir (*A.*) A chief, a head, the head, of a department. Saids usually prefix this title to their names.

Mirasi tenure.

Mir-Akhor (*A.*) Master of the horse.

Miras (*Tam*) (*See* 1 L.W 41) Inheritance, inherited property or right; the term is used especially in the South India, to signify lands held by absolute hereditary proprietorship under one of three contingencies: (1) either as a joint co-parcenary tenure in the lands of a village, and either cultivated in common, or allotted annually or at some other stated period among the proprietors, (2) As one of several parcels or lots in which the lands of the village are divided, or, or (3) as a whole estate where all the lands of the village are the property of one proprietor (*See* Mirasi Papers) Mirasi means inheritance or heritability. *27* C W.N 1037=1923 Cal 705.

Miras talukdari pattas The words "miras talukdari pattas" imply a paramount and heritable estate. 58 I A 270=I.R. 1931 PC 296=134 I C 648=54 C. L.J 393=1931 M W N 989=33 Bom L R 1257=8 O. W N 944=34 L.W 51=1931 A L J 555=35 C.W N. 903=1931 P.C 179=61 M L.J 501 (P C)

The word *Mireshorotto* is a misspelling The use of the words *"Mireshorotto Jansudiya"* implies heritability from generation to generation *27* C.W. N. 1037=1923 C. 705.

Mirasi. Generally speaking, 'Mirasi' indicates ownership 8 Ind. Cas 158 (159), *See also* 1 L.W 41.

MIRASI (*Ben.*), added to the designation of any tenure, implies that it is permanent and hereditary. (*Bad. Pow.* 1 541) meaning of in (*M*) See *Ibid.* iii 115, general remarks on. (*Bad Pow* 1. 124, iii. 205 note.) Mirasi villages, right to the waste adjacent, *Ibid.* iii 119 modern provision for vestiges of the right *Ibid* iii 12 tenure (Cachar, Assam), See *Ibid.* iii. 434.

Mirasibabu (*Karn.*) of or belonging to hereditary, or rent-free land.

Mirasidar or Mirasdar is the holder of Mirasi or hereditary land rights. (*See* 1 L.W. 41). The holder of hereditary lands, or offices in a village

Mirasi-raiat, (*H*) A hereditary cultivator, one having a right to hold his land as long he pays the rent to the proprietor, and the government revenue. (*Wil Gloss* 343)

Mirasi tenure Except in Chingleput and Tanjore Districts, mirasi tenure, with hereditary rights has become practically extinct everywhere I R 1931 Mad. 613=132 I C 117=32 L.W 945=A.I.R. 1931 Mad. 135=60 M.L.J. 137.

The nature and extent of mirasidars in Miras villages vary from place to place in the presidency and the onus is on the mirasidars to prove that any specified incident attaches to miras rights in any particular district. (40 M. 410, 2 M. 149, *Ref.*); 32 L W. 945=132 I.C. 117=A.I.R. 1931 Mad. 135=60 M L.J. 137.

Lands may be held on Mirasi tenure by the deity in a Hindu temple as Juristic entity with all the rights and obligations incident to that tenure. 43 M. L.J. 531=45 Mad 565=16 L W. 247=24 Bom.L R. 1214=21 A L J. 250=*27* C.W.N. 317=A.I R. 1922 P. C. 325 (P.C.)

Mirdaha.

Mirdaha, formerly (*Bo.*) a land measurer (*Bad Pow* in 204)

'Mireshorollo Janmaiya' The words are used to connote that the tenancy should be heritable, to be enjoyed by the grantee from generation to generation. 27 C W N. 1037=A I.R. 1923 Cal. 705.

Mir-i-adl (*Persian.*) Lord of Justice, the title of the Chief Judicial authority of a subah under the Moghul Government He was assisted by a Kazi, who conducted the trial and stated the law, the mir i adl gave judgment.

Mirza (*Hindustani*) A prince. Moghuls prefix this title to their names and add Beg after them, as Mirza Muhammad Beg, Mirza, when affixed to a name, means prince

Mis This syllable added to another word signifies some fault or defect, as, Misconduct (*Tomlins Law Dic.*)

Misadventure. Mischance, misfortune, ill-luck

"'MISAVENTURE', or 'Misadventure', has in law a special signification for the killing of a man partly by negligence, and partly by chance" (*Cowel.*)

A misadventure is an accident by which injury results to another. When applied to homicide, misadventure is the act of a man who, in the performance of a lawful act, without any intention to do harm, and after using proper precaution to prevent danger, unfortunately kills another person

Misapplication. Improper, illegal, wrongful, or corrupt use or application of funds, property, etc , a term which does not of itself import wilfulness

DISTINGUISHED FROM "EMBEZZLEMENT" The terms "Embezzlement" and "misapplication" used with reference to funds, are not convertible terms. 'Misapplication" is the broader, and covers "embezzlement" (100 Fed 832, 840)

"MISAPPLICATION" OF PUBLIC FUNDS covers cases of corrupt practices or of showing illegal favour, (*R. v. Norwich*, 30 W.R 752).

Misappropriate the wrongful conversion of or dealing with anything by the person to whom it has been intrusted (*Steph Cr Law. 275-279*)

Misappropriation A term which does not necessarily means speculation, although it m. y mean that.

"Misappropriation of property" defined Act 45, 1860, S. 403, *expln. 1*

Misbehaviour. Illconduct, improper or unlawful behaviour.

The term "misbehaviour", in a statute providing that the award of arbitrators may be vacated if the arbitrators were guilty of misbehaviour, is used to imply a wrongful intention, and not a mere error of judgment, on the part of the arbitrators

"Miscarriage". *See* 9 M. 369=1 Weir 331

MISCARRIAGE. A term sometimes used as synonymous with abortion.

"Miscarriage" (In Medical Jurisprudence) is, technically speaking, the expulsion of the ovum or embryo from a female within the first six weeks after conception.

Mischievous propensity.

Miscegenation. The term 'miscegenation" is variously employed to indicate the intermarriage, or the cohabitation or sexual intercourse, between persons of the opposite sex who belong to different races, or both marriage and cohabitation between them. (*Anderson L. Dict, 27 Ame. Cyc* 798.)

Another definition is "Mixture or amalgamation of races applied especially to sexual union between individuals of the black and white races." (*Century Dict.*)

MISCEGENATION is from the latin, miscere, to mix, and genere, to beget, meaning, therefore, a mixture of races, as in the case of the intermarriage of persons belonging to the white and black races.

Miscegenation is a purely statutory offence, in America, consisting in the intermarriage of a person of the white race with a Negro or a coloured person Most states in which the Negro or coloured people form an appreciable element have enacted these laws inhabiting intermarrying between the white and black races.

Miscellaneous The adjective "miscellaneous", as used in appropriation bills, to qualify the word "expenses", has a technical and well-understood meaning It is usual for the local bodies or corporations to enumerate the principal classes of expenditure, such as clerk hire, fuel, light, postage, telegrams, etc , and then to make a small appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen, and which it would be useless to specify more accurately. For such disbursements a round sum is appropriated, under the head of "miscellaneous expenses".

"Mischief" defined. Act 45, 1860, S 425.

MISCHIEF Malicious mischief, or damage, is a species of injury to private property, which the law considers as a public crime. This is such as is done, with an intent of gaining by another's loss, but either out a spirit of wanton cruelty, or wicked revenge. (*Tomlins Law Dic*)

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or dimmishes its value or utility, or affects it injuriously, commits "mischief" *Explanation 1.* It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not *Explanation 2.* Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly". (Penal Code, S. 425.)

Mischievous propensity. A mischievous propensity is a propensity from which injury is the natural result, and is applicable to a bull, who, without any hostile feelings against the man he injured, and with no disposition to gore mankind, yet because of his mischievous propensity to rush at a red object, attacked and gored a person wearing such a hand

Misconduct.

kerchief; and where a domestic bear hugged a man until his ribs were broken, though it might be the mode adopted by the animal to manifest his affection, yet if he had on other occasions previously shown his affection in that way, causing injury, and his owner knew it, it showed a mischievous propensity for which the owner was liable, because it was hurtful to those who were the objects of the bear's affection. (*Words and Phrases*)

Misconduct The term "misconduct" implies a wrongful intention, and not a mere error of judgment.

MISCONDUCT is not necessarily the same thing as conduct involving moral turpitude [15 Lah 354=149 I C 764=6 R L 741=35 Cr.L J 1010=1934 Cr C 479=1934 Lah 251 (S B)]

The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being, construed "Misconduct" literally means wrong conduct or improper conduct [59 Mad 789=163 I C 493=9 R M 24=1936 M W N 594=43 L W. 938=1936 Mad. 508=70 M.L.J 608.]

The word 'misconduct' as used in the Risk-note Form B is wide enough to include wrongful commission and omission, intentional or unintentional, or any act which the railway company wrongfully did or which it wrongfully neglected to do, or to put in another way, did what it should not have done and did not do what it should have done The word 'misconduct' denotes any unbusinesslike conduct and includes negligence or want of proper care which a bailee is to take under S 152 of the Contract Act I R 1931 Cal 241=129 I.C. 769=35 C W N. 133=52 C L J 235=1930 Cal. 815.

"Misconduct" in a Solicitor justifying the disciplinary jurisdiction of the Court is not confined to professional misconduct, but extends to conduct, which shows him to be an unworthy member of the legal profession [*Re Weare*, (1893) 2 Q B. 439]

A pleader who obtains adjournment of a case on grounds which, to his knowledge, were false is guilty of improper conduct. If a legal practitioner deliberately, for the purpose of impeding the course of justice, makes a statement to a Court which he knows or believes to be untrue and thereby gains an advantage for his client he is guilty of grossly improper conduct and as such renders himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction [54 Mad 520=1 R 1931 Mad. 481=131 I.C. 145=32 Cr.L.J 657=1931 M.W. N. 321=33 L W 425=1931 Cr. C. 470=1931 Mad. 422=60 M L J 393 (F.B).]

"MISCONDUCT". The word "misconduct" of arbitrator as used in S. 521, C. P Code para 15, Sch II, Act V of 1908 does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties (9 A W. N. 124 *See also* 12 C.L.R. 564; 30 Cal. 397, 9 All. 253; 29 All. 457.)

Misfeasance.

Misconduct and carelessness In usual parlance, *misconduct* means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand; and *carelessness*, negligence, and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor *Misconduct* is a violation of definite law, *carelessness* an abuse of discretion under an indefinite law *Misconduct* is a forbidden act; *carelessness*, a forbidden quality of an act, and is necessarily indefinite.

"Misconduct in law" in arbitration matters, meaning of *See* 14 Bom L R 1007=17 I C 696

Misconduct in office "Misconduct in office" may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected

Misconstrue. To construe wrongly, to interpret erroneously.

TO MISCONSTRUE, MISINTERPRET Misconstruing is the consequence of ignorance, misinterpretation of particular words is oftener the consequence of prejudice and voluntary blindness, particularly in the explanation of the law or of the Scriptures.

Misdemeanor or Misdemeanour (*in English Law*) a crime less than felony The term Misdemeanour is generally used in contradistinction to felony, and comprehends all indictable offence which do not amount to felony, as perjury, libels, assaults etc (*Tomlins Law Dic*)

The word "misdemeanor", in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a particular name, and they may be punished according to the degree of the offence, by fine or imprisonment or both (*Russell on Crimes*)

A CRIME OR MISDEMEANOR is an act committed or omitted in violation of a public law.

A crime or misdemeanor is an act committed in violation of a public law either forbidding or commanding it, which the state punishes in a criminal proceeding "It is a wretched state of slavery which subsists where the law is vague pr uncertain"

Miserama est servitus ubi jus est ant vagum, aut incertum. Miserable must be the condition of those people where the administration of the law is capricious and uncertain.

Misericordia domini regis est qua quis per juramentum legalium hominum de vicineto latenus amerciandus est ne aliquied de suo honorabili contenemento amittat A maxim meaning "The mercy of our lord the King is that every one should be amerced by a jury of good men from his immediate neighbourhood, lest he should lose any part of his own honorable tenement." (*Morgan Leg. Max*).

Misfeasance. The improper doing of an act which a person might lawfully do; a wrongful and injurious exercise of lawful authority, or the doing of the lawful act in an unlawful manner.

MISFEASANCE may involve to some extent the idea of not doing, as where an agent, while engaged

Misfeasance.

in the performance of his undertaking, does not do something which it was his duty to do under the circumstances, as, for instance, when he does not exercise that care which a due regard to the rights of others may require.

MISFEASANCE, BREACH OF TRUST, OR NEGLECT OF DUTY The words "any misfeasance or breach of trust, etc." in S 14 of the Religious Endowments Act ought not to be construed otherwise than in its ordinary sense, and they unquestionably cover any misfeasance, breach of trust, or neglect of duty with reference to the trust (23 M. 298=10 M.L.J. 86.)

Misfortune Illuck, illfortune, calamity, adverse fortune, an unlucky accident, mishap, or mischance

"MISFORTUNE," is something unforeseen which cannot ordinarily be guarded against (Re *Burgess*, 57 L. T. 200.)

The absconding of plaintiff's attorney constitutes a misfortune, within the statute authorizing the granting of new trials for unavoidable casualty or misfortune It does not require any stretch of language to hold that one who has suffered a judgment to be taken against him by default, by reason of the dishonesty of his attorney, has suffered a misfortune within the meaning of the Code, providing for setting aside judgment in such case

Like its synonym, "casualty" or "accident," "misfortune" may proceed or result from negligence or other cause, known or unknown

Misjoinder The improper joining together of parties to a suit as plaintiffs or defendants, or of different causes of action.

The joinder in one action of defendants against whom there is no common cause of action, but that against one is totally disconnected with that against the other, except in so far as it is historically connected as one matter in a transaction, is a misjoinder. The word "misjoinder" in S 99, C P Code, includes "non-joinder" (20 M.L.J. 344=7 M.L T 10 =5 I.C. 774=33 M 436)

Misl. (*A*) Similitude, an assembly, a corporation, an assemblage of persons of the same or like station and occupations, a collection of like or similar documents forming the body of public proceedings in judicial or in revenue matters. The name of the different parties, generally called confederacies, into which the Sikhs were divided in the period intermediate between the rule of the Gurus and the Supremacy of Ranjit Singh. (*Bad Pow.* II, 682)

Mislay. To lay in the wrong place, to lay in a place not recollected, to lose (*Webster.*)

Mismanagement Wrong or bad management (*Webster*)

"'Mismanagement' and 'Inattention' are not synonymous The one is active, the other passive; the one denotes commission, the other omission" (per *Vaughan, B, Brooks* v *Blanshard*, 2 L.J. Ex. 281; *Stroude*, 1209)

Misnomer The using one name for another; a misnaming (*Tomlins Law Dic*); mistake in a name, the giving an incorrect name to a person in a pleading, deed, will or other document.

Misrepresentation.

A description by initials only instead of by the full name would be a "Misnomer" (*Rust* v. *Kennedy*, 8 L. J. Ex 85)

Mispleading. According to its etymology and natural meaning, pleading amiss, or pleading wrongly.

"MISPLEADING", in its immediate and more usual sense, signifies essential errors or omissions in the defendant's defense, and it is also expressly defined to comprehend any mistakes or omissions, essential either to the action or defense, occurring either in the original or subsequent pleadings

Misprision Misapprehension, misconception, mistake A neglect, oversight, or contempt, as, for example, misprision of treason is a negligence in not revealing treason to the King, his Councils or a Magistrate, where a person knows it to be committed so of felony (*Tamlins Law Dic*)

"The word '*Misprision*' means a mere mistake" (per *Denman, C J, R* v *Convers*, 8 Q B 991).

MISPRISIONS ARE, in the acceptation of law, generally understood to be all such high offences as are under the degree of capital, but nearly bordering thereon. (*Yearb* 2 R 3 10 1 *Hawk P. C.* c. 20, 1, *Tomlins Law Dic*)

MISPRISONS ARE GENERALLY divided into two sorts: (1) Negative, which consists in the concealment of something which ought to be revealed and, (2) Positive, which consist in the commission of something which ought not to be done (*Tomlins Law Dict.*)

Misprision of Felony. "Every one who knows that any other person has committed Felony and conceals or procures the concealment thereof, is guilty of Misprision of Felony" (*Step Cr* 104, 105)

Misprision of Treason "Every one who knows that any other person has committed High Treason, and does not within a reasonable time give information thereof to a Judge of Assize, or a Justice of the Peace, is guilty of Misprision of Treason" (*Steph Cr* 104) *Termes de la Ley*, *Tomlin's Law Dict*)

Misra vazhi (*Mal*) Mixed part. Rule of inheritance among Ezhavas of S. Travancore in respect of self-acquisition which is a combination of Makkathayam and Marumakkathayam (*Sund. Iyer's Mal. Law*)

"Misrepresentation" defined Act 9 of 1872, S. 18.

"MISREPRESENTATION" means and includes—(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him, (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement. [Act IX of 1872 (Contract), S 18]

Misrepresentation may consist as well in the concealment of what is true as in the assertion of what is false. If a man conceals a fact that is material to the transaction, knowing that the other party acts on

Misrepresentation.

the presumption that no such fact exists, it is as much a fraud as if the existence of such fact were expressly denied or the reverse of it expressly stated.

The words "misrepresent", "misrepresentation,"do not, by themselves import wilful falsehood or malice; "misrepresentation of facts may be, and often is, innocent" (per *Crampton, J*, *Dowdall* v. *Kelly*, 4 Ir. Com Law Rep 556).

It is a misrepresentation if a party to a contract of insurance, either purposely, or through negligence mistake, or inadvertence, or oversight, misrepresents a fact which he is bound to represent truly

Miss A term commonly used to designate a woman who has never been married.

Missing ship Vessel which has not been heard or for a long period, and is supposed to have foundered

Mission Mission is well understood in common language. For more than 40 years the different Christian Churches have been engaged in establishing missions in various parts of the world The purpose is to Christianize, civilize, and educate the natives of those countries where the missions are established This is accomplished by preaching, by oral instructions, and by schools The whole machinery of the work at a selected spot in a foreign land is called a "mission".

Missionary. "A missionary is one who is sent upon a mission, especially one sent to propagate religion."

Mistake An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or a belief in the present existence of a thing material to the contract, which does not exist, some intentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence; in a legal sense, the doing of an act under an erroneous conviction, which act, but for such conviction would not have been done.

"MISTAKE", is not mere forgetfulness, it is a slip "made, not by design but, by mischance" (per *Russell C.J*, *Sandford* v. *Beal*, 65 L J Q B. 74)

Although the English word 'mistake' is used in the Tamil document, the word, according to its common use in such a context, is wide enough to cover all kinds of default and error including fraud [7 I C 217 (218)=8 M.L T. 236.]

"Mistake as to matter of fact" defined. Act 9 of 1872, S. 20.

Mistake of fact. A mistake which takes place when some fact which really exists is unknown, or some fact is supposed to exist which really does not exist. Mistake of foreign laws is a mistake of fact.

Mistake of law A mistake of law occurs when a person having full knowledge of facts comes to an erroneous conclusion as to their legal effect

MISTAKE OF LAW may be an ignorance or error with respect to some general rules of the Municipal Law applicable to all persons, which regulate human conduct, and the like, such as the rules making certain acts criminal, and those controlling the devolution, acquisition, or transfer of estates, or those prescribing the modes of entering into contracts.

Mitigate.

IGNORANCE OF LAW DISTINGUISHED. There is a clear and practical distinction between ignorance and mistake of law Much of the confusion in the books and in the minds of professional men upon this subject has grown out of a confounding of the two It may be conceded that at first view the distinction is not apparent; but it is insisted that upon close inspection it becomes quite obvious Ignorance implies passiveness, mistake implies action. Ignorance does not pretend to knowledge, but mistake assumes to know Ignorance may be the result of laches, which is criminal, mistake argues diligence, which is commendable Mere ignorance is no mistake, yet a mistake always involves ignorance Mere ignorance of the law is not susceptible of proof. Proof cannot reach the convictions of the mind undeveloped in action, whereas a mistake of the law, developing in overt acts, is capable of proof, like other facts (*Words and Phrases*)

MISTAKE OR INADVERTENCE. The words "mistake or inadvertence' in section 28 of the Court-fees Act mean mistake or inadvertence on the part of the Court or its officers, and not that on the part of an appellant or his advisers. [12 A 129=10 A.W N 39 (F B)]

"Mistake apparent on the face of the record" what is it to be a good ground for review *See* C. P. Code, O 47, R 1

Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the meaning of S. 5, Limitation Act, though there is certainly no general doctrine which saves parties from the results of wrong advice [169 I C 769=41 C W N 1189=46 L.W 219=1937 M W N 937=3 B R 756=39 Bom L R 1021=10 R P C 57=1937 A W R 979=18 Pat L T 878=1937 O W N 771=1937 R D 362=1937 O L R 427=1937 A L R 673=1937 P W N. 689=1937 P.C. 276 (P C.)]

Mistress. A woman who illicitly occupies the place of a wife (*Century Dict*)

In England mistress is the proper style of the wife of an esquire or gentleman. (*Black L. Dict*)

The Buddhist Law speaks of wives and concubines The mistress of Western Europe is not the concubine of the Bhammatalas So the application of the term to a wife or a lawful concubine is against the cause of religious virtue as well as the Buddhist Law. (4 Bur L.T 235=12 I C 191)

Mistrial An erroneous trial on the ground of some defect in the persons trying, an erroneous, invalid, or nugatory trial

Misuse To use amiss, to use wrongfully

Misuser. An abuser of any liberty or benefit; abuse of an office or franchise (*Black L Dict*)

Mitakshara Of all commentaries that by Vijnaneshwar called the Mitakshara on the institutes of Yagnayavalkya has obtained the foremost place in Hindu Law and is now acknowledged to be the most authoritative record of the Laws of the Hindus All over India its supreme authority is acknowledged, though in Bengal and Bombay its authority is only next to that of Dhayabhaga and Mayuka.

Mitigate To reduce in amount or degree (as) to mitigate the damage caused by a wrongful act,

Mitigating circumstances.

Mitigating circumstances are those which tend to disprove malice

Mitigating circumstances are those which, though not proving the truth of the charge, yet tend in some appreciable degree towards such proof, and thus permit of an inference that defendant was not actuated by malice in his charge They may be of such a nature as to show that defendant, if mistaken, believed the charge to be true when it was made

MITIGATING CIRCUMSTANCES are such as do not amount to a justification or excuse of the offence or act in question but may properly be considered in mitigation of the punishment or damages

Mitigation Diminution in degree, amount, or severity, moderation, a reduction in punishment or penalty. (*English L Dict*)

Mitiores pdenae nobis semper placuere A maxim meaning "It is more pleasing to the law to inflict a light than a severe punishment." (*Morgan Leg Max*)

Mitius imperanti metius paretur. A maxim meaning "The more mildly one commands, the better is he obeyed"

Mitta A Mitta is a sub-division of a district, an estate forming such a sub-division, a revenue estate created in the Madras territories under the permanent settlement "Mitta is the name given in Salem to estates created under the permanent settlement elsewhere called Zamindaries

Mittadar One who has a Mitta, the holder or proprietor of an estate forming the sub-division of a District

Mixed action Mixed actions are those which are brought for the specific recovery of lands, as in real actions, but have joined with its claim one for damages in respect to such property, as actions of waste, where, in addition to the recovery of the place waste, the de nandant claims damages

Mixed blood "Mixed blood", as the term is used in its ordinary signification, means a person in whose veins in some portion of foreign blood

Mixed commissions Is the name given in diplomacy to temporarily appointed bodies composed of delegates of two or more states charged with the drawing up of a scheme or project for the settlement of the details of a dispute or difference where the principle of the arrangement is already agreed upon (*Ency. of the Laws of England*)

Mixed currency Currency partly of coins and partly of convertible paper, both having legal tender

Mixed Government A form of government, such as the English Government which combines the three elements of a monarchy, an aristocracy, and a democracy, is sometimes termed a mixed government (*Ency. of the Laws of England*)

Mixed Laws A name sometimes given to those which concern both persons and property. (*Black L. Dict*)

Mixed presumption. "A presumption which consists chiefly of certain inferences which, from their strength, importance, and frequent occurrence, track, as it were, the observations of the law, and they, being constantly recommended by judges and acted on by juries, become in time as familiar to the courts, and occupy nearly as important a place, as a presumption of law itself" (*Ame Cyc.*)

Mixed Policy Marine insurance policy combining time and distance conditions—voyage and a period

Mixed question of Law and Fact. One mixed of law and fact

Mixture That which is mixed or mingled, a mass or compound consisting of different ingredients blended together, that which results from mixing, a compound or combination of different ingredients, parts or principles. (*Century Dict*)

Mob An assemblage of many people acting in a tumultuous and riotous manner, calculated to put good citizens in fear and endanger their persons and property, a riotous assemblage, a crowd of persons gathered for mischief or attack, a promiscuous multitude of rioters, an unorganized assemblage of many persons intent or unlawful violence, a disorderly crowd, a promiscuous assemblage of rough, riotous persons, a rabble. (*Standard Dic*)

Mob violence The infliction of some physical injury on person by a multitude of people acting in a riotous and unlawful manner.

A crowd of men, women, and children, numbering at times from 100 to 150, who invaded plaintiff's premises, and demoralized buildings thereon, and carried away materials without notice or warning, was a "mob", within the meaning of an Act, declaring that cities shall be liable in damages for the destruction of property therein by a mob or riot without the owner's consent and contributory negligence. (*Words and Phrases*)

Mobed and Behedins (*Parsi Religion*) The community of Zoroastrians in divided into two classes —Mobeds and Behedins—that is, priests and laymen A mobed's son may take to any other walk of life he is not restricted to his father's profession He may take to other occupations in life, when he does this he is known as Athornan [2 Ind Cas 701 (741), Davar, J]

Mobilia non habent situm A maxim meaning "Movables have no situs or local habitation"

Mobilia personam sequuntur, immobilia situm. A maxim meaning "Movable things follow the person, immovable their site or locality" (*Burrill*)

Mobilia sequntur personam Moveables follow the person (*i e*) the law of the person

Mocassa Peons, in the Northern Circars, who were paid by grants of land, subject to a quit rent only (*Fifth Report.*)

Mochi A cobbler, shoemaker, etc.; one of the village staff (*Bad Pow* 1. 151.) Workers in leather.

Mock To divide, to laugh at, to ridicule, to, treat with scorn and a contempt.

Mocuddim Placed before, antecedent, prior, foremost; head ryot, or principal man in a village who superintends the affairs of it, and, among other duties collects the rents of government within his

Mocuddim.

Mocurrer.

jurisdiction The same officer is in Bengal called also Mundul. (*Fifth Report.*)

Mocurrer. Fixed, established, permanent. What is fixed or settled. (*Fifth Report*)

Mocurrery As applied to lands, means lands let on a fixed lease The term is also applied to the Government dues from the Cavel (*Fifth Report*)

Mocurrerydar. Possessor of a lease or grant for a fixed period (*Fifth Report*)

Modan. (*Mal*) High lands on which a particular kind of a paddy can be grown. The oil plant, millet, etc, are also grown on such lands The rice grown on such lands is also called Modan (*Moore's Malabar Law, Sun. Iyer's Mal Law*)

MODAN (*Malabar.*) Hill-rice, grown on the uplands (*Bad Pow* III, 152)

Modan and Punam (*Mal.*) Mean generally high lands where a particular kind of paddy is capable of being cultivated, and where the oil-plant and millet and toor are also planted In the Northern Division that land only is called Punam in which there is a great deal of underwood, and which can only be cultivated once in six years, and Modan which is high land, but not overgrown with wood, and capable of being planted with coconut, etc, trees, but in the Southern Division Modan is the only name and Punam is not known. The Punam is never ploughed but always dug The plough could not make its way through the roots of the underwood The seed is sown, or rather placed in the holes dug (*Logan Mal Law*)

Mode "Mode" means the customary manner, prevailing style, the manner in which a thing is done

"**Model**" defined 52-3 V c 52, S 8, Act 15, 1889, S 2 (4)

MODEL. A copy or imitation of the thing to be represented, a facsimile in three dimensions, a reproduction in miniature of objects under consideration,

"MODEL" includes design, pattern and specimen [Act XIX of 1923 (Official Secrets) S 2, Cl (4)]

Moderate speed. "Moderate speed" is a relative term, depending upon the special circumstances "A speed which may be moderate in a fog through which daylight appears, is not a proper speed in a dense fog in which nothing can be discerned" (per *Brett, M R —The Beta*, 9 P D 134).

In navigation, the term means reduced speed, less than usual speed, such speed as would admit of the boat coming to a full stop within her share of the distance that separates her from another steam boat after the latter's whistle is audible. The term is however difficult to define with mathematical precision. (137 U. S. 330, 338) It often depends upon the circumstances of the particular case. (61 Fed 338, 355.)

Modica circumstantia facti jusmutat. A maxim meaning "A small circumstance attending an act may change the law." (*Black L. Dict*)

Modification. A change, an alteration which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact

Modify To change, or vary, to qualify or reduce.

"MODIFY" *See* 4 B 239, Colm Dig Cr. 62 of 1876.

Modus "Modus decimandi, is money, or other thing of value, given annually in lieu of Tithes" (*Termes de la Ley*)

Modus debt esse certus, rationabilis, et perantiquus A maxim meaning "A custom ought to be reasonable, certain, and very ancient" (*Morgan Leg. Max*)

Modus decimandi. (*See* Modus).

Modus de non decimando non valet A maxim meaning "A modus (prescription) not to pay tithes is void"

Modus et conventio vincunt legem A maxim meaning "The form of agreement and the convention of parties overrule the law." (*Broom Leg. Max*)

Modus legem dat donationi A maxim meaning "Custom gives law to the gift"

Mofussil Separated, particularised, distinguished, divided into distinct parts, detailed The subordinate divisions of a district in contradistinction to the term 'saddur' which implies the chief seat of Government, also the country as opposed to town; the interior of the country.

"The word "mofussil" in "the notice required to be sent into the mofussil" in para. 2, S 8 of Regulation VIII of 1819, is opposed to the sadr Katchari of the zemindar, and refers to the subordinate estate, the subject of the sale proceedings 14 C 365 =14 I A 30 (P C)

Mofussil dewanny adawlut. The Ancient Provincial court of civil justice (*Fifth report.*)

Moga It means the outlet through which water passes into a watercourse from a distributory

Moggu (*Kan*) Payment of wala wargadar (*Sund Aiyar's Mal Law*)

'Moggu', meaning of, in Canara Dt 10 I.C. 665.

Moghal (*H*) The designation of one of the great tartar tribes, the Mongol, or of a member of it as a title it was especially applied to the sovereigns of Delhi of the house of Timur, although they were equally at least of Turk descent, and presented in their appearance entirely Turkish characteristics. (*Gloss* 345)

Moghli. The term "*Moghli*" is a word of doubtful meaning and at the best imports no more than that the rent assessed represents a proportion of the Government revenue In no sense of the term does it constitute rent [(20 C W N. 1135, Ref) 90 I C. 352=7 P L.T. 71=1926 Pat. 80]

Moghul (*H*) [*See* Moghal.] The name given by Hindus to the great Muhammadan dynasty founded by Baber in 1526, and made paramount in India by his grandson Akbar

Mogul. *See* Mughal.

Mogullai. Government dues (*Macnaughten's Mohammadan Law*)

Mohammedan.

Mohammedan. A person who believes in the religion of Mohammad, and in Mohammad as a true prophet

Mohammedan law The Personal law of the Mahammadans that is administered to them in India

Mohammedanism Mohammedanism is the religion of those who acknowledge Mohammed to be the true prophet

Mohr or Mohur (*Persian.*) A seal, a seal ring A gold coin of the value generally of fifteen rupees

Mohrer, Mohir, Mohur, Morah, Moherrie. A writer, a clerk in an office (*Fifth Report*)

Mohurana (*Punjab*) Stamp duties levied by the Sikh Government.

"Moiety" means, generally, half part. (*Jacob.*)

"MOIETY. The half of anything, and to hold by Moieties is mentioned in the old books, in case of joint tenants etc (*Lit* 125; *Tomlins Law Dic*)

"Although the proper meaning of 'Moiety' is a half part, it is here, in my opinion, used by the testator, who seems to have been an ill-educated person, in the sense of an equal part or share I am not aware of any judicial opinion having been expressed on the meaning of this or a similar word; in the Imperial Dictionary, I find one of its meanings given as, a part or share, as distinguished from a half part" (per *Chatterton, V C Morrow* v *M'Conville*, 11 L R Ir 252 cited in Stroude Jud Dic)

Mokarrari. *Maurasi Mokarrari* patta implies grant at fixed rent (38 C L J. 372=1924 Cal 513 *See also* 12 C.W N. 175)

Apparently the word usually employed in creating a fixed rent in perpetuity is the word "mokarrari," but absence of such word is not conclusive against it. 1927 P C. 20=54 I A 48=1927 M W N 41=31 C W N. 514=52 M L J 412=54 Cal 166=45 C L J. 305=25 M L.W. 631=100 I C. 93)

'Mokarrari' does not by itself imply that any permanent interest was intended to be created but merely indicates fixity of rent (1925 Pat. 194=78 I C. 492.)

Mokasa or Mokhasa. The revenue-free grant of tract of land made to a relative of the superior holder in pre-British administration.

MOKASA (*A mukhasa*). The portion of the L. R. under the Marathas, devoted to some special purpose or person, Mokasadar, a grantee of the whole or a part of the local revenue on specified terms (*Bad Pow* II 477, III. 81, 205)

Mokhasa. The term "*mokhasa*" is explained to be the equivalent of the more generally known term "Jagheer" Each shows that the land is to be held for the benefit of the holder. Neither defines the duration of the holding. These terms, therefore, are consistent with either theory (the theories being that the grant is an absolute grant and that it is only for the life of the grantee), and the Court must judge between them by such indications as it can get. 26 I.A. 66 (68)=22 M 431 (433-4)=7 Sar. 528=1 Bom. L.R. 287=3 C W.N 378=9 M.L J. 157.

Mokurrari pattah.

MOKHASA A village of land assigned to an individual either rent-free or at low quit-rent on condition of service, or a village held Khas by the State, the revenue being paid to Government direct, or the share of the Government in a village or in the revenue paid by it. Mokhasa is a well-known tenure in Northern Circars. It implies a tenure subject to service (1930 M W.N. 945 *See also* 1 L.W. 41.)

"MOKHASA" "Mokhasa is a well known tenure in the Northern Circars and the term itself implies that it is a tenure subject to service" [3 A.L J. 55=29 M. 52=16 M L J 1=1 M L.T. 3=3 C L J. 1=10 C W. N. 161=8 Bom L R 1 (P.C.) (citing *Wilson's Glossary.*]

Mokhasadar. (*Tel*) (One who has a Mokhasa.) The holder of a village or lands at a quit-rent or rent free on condition of service Under Maharatta Government the Mokhasadar had much the same power as a Mamlatdar. "Holder of an assignment, the farmer of certain portion of the revenue of a village either on the part of the State or an individual"

'Mokhasa, mirasi, shrotriem, melwaram, kudivaram, thunduvaram swatantrum, ullkudi, kaniyakshi, sukhavasi, mirasi, mirasidar, ekabokam, miras' *See* 1 L W. 41=23 I C 113.

Mokkadugu. (*Tel.*) A second crop

'Mokra', 'mokarari', 'karar' The word 'Mokra'. admittedly is a corruption of the Arabic word Mokarrar which is derived from the word 'Karar' meaning agreement The inflexions of 'Karar', 'Mokarrar' or 'Mukarrara' which has taken the Indian form of Mokarrari means agreed upon or fixed. The word 'Mokarari' has assumed a special signification by usage, so that the word 'Mokarari' or 'Mokra' in itself does not signify perpetual fixity. But if a document indicate that it was used in place of Mokarari, it certainly would have the significance (I R. 1931 Cal 472=131 I.C. 584=52 C.L J. 583= 1931 Cal 265)

Mokurari. The use of the word *mokurari* does not in itself imply any permanent interest but merely fixity of rent (78 I C 492=1925 P. 194.)

The creation of *mokraridari* rights is equivalent to a permanent alienation [(10 P R 1896, Rev, foll) 25 P.R 1910=174 P L.R 1910=121 P.W.R. 1910=8 I C 306]

'Mokurari mourasi.' Meaning of. *See* 19 C.W N. 56=25 I.C 274. *See also* 52 I.C. 540=1934 Cal 782

Mokurrari, istimrari. Where in regard to ghatwalli tenures, the words "mokurraree istimrari" were used, although it was doubtful whether they meant permanent during the life of the person to whom they were granted, or, permanent as regards hereditary descent, their Lordships were of opinion that, coupling those words with the usage, the tenures were hereditary (1873) Sup.I A. 181 (186)=13 B L. R 124=3 Sar. 238=3 C G Sup Vol. 173=2 Suth, 818.

Mokurrari pattah. The words "with all rights" in a pattah do not increase the actual corpus of the subject affected by it The phrase means that the corpus being once ascertained, all the rights appurtenant thereto will pass with it. *Held*, on the facts, that the mineral rights were not included in the

Mold.

patta, which give the mokuraridar only surface rights, the mineral rights remaining in the zemindar grantor. (45 Cal. 87=44 I A. 246=22 M L T 358=15 A L J. 851=33 M L J 687=3 Pat L W 109=16 C L. J 584=1917 M.W N. 232=22 C W N 201=7 L W 90=20 Bom L R, 64=42 I C 651 (P C) (on appeal from 34 Cal 358)

Mold. A mold is a receptacle into which a softer material is injected to take its shape when hardened

Mold and mould The words "mold" and "mould" have the same meaning In the Century Dictionary it is said the proper spelling is "mold," like gold (which is exactly parallel phonetically), but "mould" has long been in use, and is still commonly preferred in Great Britain (*Words and Phrases.*)

Molten Melted, in a state of fusion or solution, made or produced by means of melting.

Momentum The quantity of motion in a moving body In the civil law, an instant, an indivisible portion of time (*Black L. Dict*)

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetae fit omnium rerum convenions et justa aestimatio A maxim meaning "Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made" (*Black L. Dict*)

Monetandi jus comprehenditur in regalibus quae nunquam a regio sceptro abdicantur A maxim meaning "The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal scepter" (*Ame Cyc.*)

"Money" defined (*See also* Coin, Grant of money or land-revenue, Mortgage-money, Trust-money) Act 17, 1879, s 2 (4).

MONEY (*Moneta*) That metal, be it gold or silver, which receives authority by the prince's impress to be current, for as wax is not a seal without a print, so metal is not money without impression. (*Co Lit* 207) Money is said to be the common measure of all commerce, through the world, and consists principally of three parts, the material whereof it is made, being silver or gold, the denomination or intrinsic value, given by the King, by virtue of his prerogative, and the King's stamp thereon. (1 Hale's Hist P H. 188) It belongs to the King only, to put a value as well as the impression, on money, which being done, the money is current for so much as the King hath limited. (*Tomlins Law Dic.*)

Money is "that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities, being accepted equally without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities." (*per* Darling, J., *Moss* v *Nancock*, 68 L J. Q.B. 660.)

Money is a sign which represents the value of all commodities bearing the impress of the authority by which it was issued and made a standard of value. It may be in metal, in leather, or in paper. Metal is the most proper for a common money.

Money decree.

Webster defines money "(1) Coin; stamped metal; pieces of metal, usually gold, silver, or copper, stamped by public authority, and used as the medium of commerce (2) Hence any currency usually and lawfully employed in buying and selling as the equivalent of money, as bank notes and the like."

"Money", in its strict, technical sense, is coined metal, usually gold or silver, upon which the government stamp has been impressed to indicate its value, in its more popular sense, any currency token, bank notes, or other circulating medium in general use as the representative of value; a generic term, covering everything which by consent is made to represent property, and passes as such currently from hand to hand The word designates the whole volume of the medium of exchange, regardless of its character or denomination.

The term "money" is used to designate the whole volume of the medium of exchange recognized by the custom of merchants and laws of the country, just as land designates all real estate. (*See also* 11 B. H C. 172)

Though the term "money" should ordinarily be construed in its strict limited signification, it is often used in a vague sense to denote a man's personal or moveable property (30 A. 455=5 A L.J, 519=1908 A W N. 205)

Prima facie "money" used in a will means moneys in hand or receivable at call, but as "money" is a term of elastic construction, it will receive a wider or more restricted construction according to the context in which it is found and the intention of the testator to be collected from the will as a whole. (112 I C 508=55 Cal 918=1928 Cal. 794.)

'Money', meaning of, in Dek Agr. Rel, Act. 16 Bom.L R. 683=27 I C. 178

"DECREE FOR THE PAYMENT OF MONEY." The expression "decree for payment of money" must be construed as including a claim to unliquidated damages (1926 M W N 691=97 I C 871=51 M L.J. 243 =A I R 1926 Mad 1021)

Money bill A bill for raising revenne was technically called a "money bill" at common law. It is a bill levying a tax on all or some of the persons, property,or business of the country for a public purpose.

Money, cash Money is applied to everything which serves as a circulating medium; cash is, in strict sense, put for coin only, bank notes are money; guineas and shillings are cash all cash is therefore money, but all money is not cash.

"Money, costs, charges and expenses" "When the legislature mentions 'money' 'costs' 'charges' and 'expenses' it means money decreed or ordered to be paid, together with the costs, charges, and expenses, to be ascertained in the usual way by the officers of the Court It is unnecessary to decide the further point; but I am of opinion, that with respect to costs, it is enough if they are ascertained by the officer of the Court, and that it is not necessary that there should be any order to pay after they are taxed" (*per* Parke, B, *Jones* v *Williams*, 10 L J. Ex. 257, 8 M & W. 349 cited in Stroude 1218).

Money decree. A decree for recovery of possession with costs is a money decree. (16 R.D. 385.)

Money demand

Money decree means a decree in a suit in which the Court only awards money [14 L R 877 (Rev)]

Money demand. A demand for a fixed amount of money, contradistinguished from damages, any demand arising out of contract, express or implied, which from its nature may enable a litigant to make affidavit that the amount sued for is actually due, a demand arising out of contract where the relief demanded is a recovery of money

MONEY DEMAND IS MORE COMPREHENSIVE THAN "DEBT" The term "money demand' is much more comprehensive than "debt," and includes all right ful claims, whether founded upon contract, tort, or penalties given by statute (120 Ala 206, 210, 24 So 847, *Words and Phrases*)

"Money due" does not mean money due and recoverable in law, and the term would include all money whether or not barred by limitation. (150 I C 645= 36 Bom L.R 32=1934 Bom 97.)

"Money due on a mortgage" Will not pass a sum merely charged on property (*Doulett* v *Hood*, 35 L.J. Ch. 253.)

Money had and received Where the plaintiff demands an account of the profits of the joint property under the management of one co-sharer and the sum due to the plaintiff can only be ascertained after taking account not only of the rent received but of the expense incurred in the management, it cannot be said that there is any particular sum "had and received" on plaintiff's behalf by the manager, within the meaning of Art 62 of the Limitation Act (XV of 1877) 13 Bom L R 1014=12 Ind Cas 586

Money in hand "There is no real difference between 'money in hand' and 'ready money'" (per *Lord Lyndhurst, L C*, in *Parker* v, *Merchant*, 1843, 1 Ph 356, 12 L J Ch. 385 (*Ency of the Laws of England*)

"Money in the funds" Does not include Foreign Bonds though guaranteed by the government of the country (*Burnie* v *Getting*, 2 Coll 324)

'Moneylender Meaning of *See* 16 M L T 98= 26 I.C 96

Money lent As a general rule an action for "money lent" will lie wherever one advances money as a loan at the request of another, the law implying a contract to pay therefor, where there is no express contract.

'Money likely to become due" *See* 33 B 258= 10 Bom. L R 1201.

Money out at interest. These words do not include Government Stock or Funds the principal of which cannot be recalled, it means "Money which is capable of being recalled at some time or other" (per *Ellenborough, C. J, R* v *St John, Maddermarket* 6 *East* 1?6)

Money paid. "An action for money paid is maintainable in every case in which there has been a payment of money by plaintiff to a third party, at the request of defendant, express or implied, with an undertaking, express or implied, to repay the amount. The request to pay and the payment according to it constitute the debt, and whether the request be direct as where the party is expressly desired by defendant to pay, or indirect, where he is placed by him under a liability to pay, and does pay, makes no difference" (*Ame. Cyc*)

Where plaintiff shows that he, either by compulsion of law, or to relieve himself from liability, or to save himself from damage, has paid money which defendant ought to have paid, the claim for money paid will be supported.

Money received. (Money had and received) An action for money had and received is an equitable action, governed by equitable principles, and in it plaintiff waives all torts, trespasses and damage. It may, in general, be maintained whenever one has money in his hands belonging to another, which, in equity and good conscience he ought to pay over to that other But where money is paid to a person, who receives it with a good conscience, and uses no deceit or unfairness in obtaining it, action for money had and received will not lie to recover it, even though it was paid by mistake; nor will the action lie where plaintiff, upon the same transaction, would be liable to a cross action to recover damages to an equal amount (*Ame Cyc*)

"Money or money's worth" Marriage is not a "valuable consideration in Money or Money's Worth". (*Floyer* v *Bankes*, 33 L J. Ch 1)

"Moneys owing", Meaning of, *See* 150 I.C. 645 =36 Bom L R 32=1934 Bom 97

"Mong mit" Means the Shan State of Mong Mit with its dependency Mong Lang. Burma Code, 1910 (Fourth Edition), p 659.

Moniers or moneyers Ministers of the Mint, also bankers. (*Cowel*)

Monigar A surveyor A supervisor, or manager. (*Fifth Report*), in South India, a village headman.

Monigar (maniyakaran) (*M*), a village headman (holding the free-grant of land (gramamaniyam) for his services) (*Bad Pow* iii 88)

Monition A monition, or admonition, issued by an ecclesiastical judge, is the first and lightest form of ecclesiastical censure, whether to clergymen or to laymen, it is of a preparatory character and consists in a warning or command to the party served with it to do, or abstain from doing, some act, to be followed, in case of disobedience, by some coercive sanction (per *Lord Selborne* in *Mackonochie* v. *Lord Penzance*, 1881, 6 App Cas 424, at p. 433 *See also* 7 App Cas 240) Disobedience to it entails the penalties incident to a contempt of court. (*Ency. of the laws of England*).

Monomania Mania on one subject; a derangement of mental faculties which is confined to some particular idea or object of desire or aversion; a derangement of a single faculty of the mind or with regard to a particular subject only; a form of insanity in which the subject may be sane on every topic but one, but is insane on some particular topic,

"Monomania" is a perversion of the understanding in regard to a single object or a small number of objects, with the predominance of mental excitement, as distinguished from "mania", which means a

Monomaniac.

condition in which the perversion of the understanding embraces all kinds of objects, and is accompanied with general mental excitement.

The term "monomania" is used to designate that species of insanity which is of the partial intellectual order. It is mania on one subject. In the simplest form of this species of mania, the understanding appears to be tolerably sound on all subjects but those connected with the hallucination.

Monomaniac. A person who is deranged in a single faculty of his mind, or in regard to a particular subject only, a person who is insane upon one or more subjects, whether it relates to one or more persons or things, and is apparently sane upon all others (*Ame. Cye.*)

Monometallism. System of a single metal standard of value in a national currency (*Cf Bimetallism*)

Monopolia dicitur, cum unus solus aliquod genus meracturae universum emit, pretium ad suum libitum statuens A maxim meaning "It is said to be a monopoly when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure" (*Black L. Dict*)

Monopoly A licence or privilege allowed by the king, by his grant, commission, or otherwise, to any person or persons, for the sole buying, selling, making, working, or using of any thing, by which other persons are restrained of any freedom or liberty that they had before, or hindered in their lawful trade (3 Inst 181 4 Comm. 159) It is defined to be where the power of selling any thing is in one man alone All monopolies are against the ancient and fundamental laws of the realm A by-law, which makes a monopoly, is void Monopolies by the Common Law are void, as being against the freedom of trade, and discouraging labour and industry, and putting it in the power of particular persons to set what prices they please on a commodity, (1 *Hawk.* P C.) Upon this ground it hath been held, that the King's grant to any corporation of the sole importation of any merchandise, is void (2 Rol. Abr, 214 3 Inst 182, *Tomlins Law Dic*)

A "monopoly" is defined as an exclusive right granted to a few of something which was before of comon right

A monopoly is a special privilege conferred on one or more persons, to the absolute exclusion of the others.

"A monopoly is that which has been granted, as a monopoly of trade, or of the manufacture of any particular article, to the exclusion of all competition It is withdrawing that which is a common right from the community, and vesting it in one or more individuals, to the exclusion of all others Such monopolies are justly odious, as they operate not only injuriously to trade, but against the general prosperity of society". (*Words and Phrases.*)

Monroe doctrine. A term applied to a principle of the United States polity, opposed to the extension of territorial dominion on the American continent by anyEuropean State. (*Ency. of the Laws of England*).

The first enunciation of the doctrine took place in 1823 in connection with a proposal of the continental Powers of Europe to hold a congress on the affairs

Month.

of South America. Mr. Canning, then British Minister of Foreign Affairs proposed to the United States, minister that hisGovernment should join that of Great Britain in protesting against the South American Republics The United States, he contended, were connected with Spanish America by their position and political relations Was it possible that they could see with indifference their fate decided upon by Europe? Had not a new epoch arrived in the relative position of the United States towards Europe which Europe must acknowledge. President Monroe, on communication of Mr. Canning's view, submitted it to the two leading American statesmen of the day, Mr Jefferson and Mr Madison Their replies were in accord with Mr Canning's suggestion, and the President, in a message of December 2, 1823, gave expression to them in the form since described by his name

After stating that the United States Government in certain discussions with Russia had asserted as a principle involving her rights and interests, "that the American continents, by the free and independent condition which they have assumed and maintained are henceforth not to be considered as subjects for future colonisation by any European Powers," the Message continued "The political system of the Allied Powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candour and to the amicable relations existing between the United States and those Powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety,

"With the existing colonies or dependencies of any European Power we have not interfered, and shall not interfere But with the Governments who have declared their independence and maintained it, and whose independence we have on great consideration and on just principle acknowledged, we could not view any interposition, for the purpose of oppressing them, or controlling in any other manner their destiny by any European Power, in any other light than as the manifestation of an unfriendly disposition towards the United States." (*Ency of the Laws of England*) On the application of this doctrine see Tucker, The Monroe Doctrine, Boston, 1885, Moore, Digest of International Law, 1906, vol ch xx., pp. 368-604)

Monster. A monster, that is, a being which has not a human shape, but in any part bears the resemblance of the brute creation,has no inheritable blood, and cannot be heir to any land, although born in marriage. Mere deformity in any part of the body, however, will not constitute a monster in law, provided the being has a human shape (Co Litt. 7 b; 2 Black. Com. 246, and *see* Taylor, Medical Jurisprudence, 5th ed., 198, 269 et seq; *Ency of the Laws of England.*)

"Month" defined. 52-3 V. c. 63, S. 3; Act 24, 1859, S. 1, Act 45, 1860, S. 49; Act 5, 1861, S. 1, Act 10,

Month

1865, S 3, Act 21, 1866, S. 3, Act 10, 1897, S. 3 (33), Ben Act 2, 1866, S 51, Ben. Act 4, 1866, S. 3; Ben Act 1, 1899, S. 3 (27); Bom Act 1, 1904, S 3 (30), Bur. Act 1, 1898, S. 2 (38), E.B. & A Act 1, 1909, S, 5 (39), Mad Act 1, 1891, S 3 (38), P. Act 1, 1898, S. 2 (34), U P. Act 1, 1904, s 4 (28), Reg. 3, 1876, S. 3, Reg 8, 1874, S 1

MONTH, signifies the time the sun goes through one sign of the zodiac, and the moon through all twelve, properly the time from the new moon to its change or the course or period of the moon, where it is called month from the moon A month is a space of time, containing by the week twenty eight days by the calendar sometimes thirty, and sometimes thirty one days, Julius Caesar divided the year into twelve Months, each Month four weeks, and each week into seven days. (*Tomlins Law Dic*)

Month is a word which may refer either to the calendar month or to the lunar month

"In a contract at law, '*Month*' means a lunar month, unless there is admissible evidence of an intention in the parties using the word to denote a calendar month" (Sug V & P 257, Dart 492)

The ordinary meaning in the English language is a lunar month and not the artificial month in the Gregorian calendar. On the older authorities in England, in all contracts (except there is some evidence to show that calendar month is meant), month means 'lunar month' In mercantile transactions 'month' means 'calendar month' Until 1850, in an Act of Parliament 'month' meant 'lunar month' and since 1850 it means a calendar month. [2 Ind Cas 573 (583)]

At common law the word 'month', when used without qualification, meant a lunar month, or twenty-eight days

"A month is regularly accounted in law 28 days, and not according to the solar month, nor according to the calendar" [*Co. Litt* 135 (*b*).]

"A month, in law, is a lunar month, or 28 days, unless otherwise expressed, not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks" (2 Bl Com. 141).

"In legal proceedings, the word '*months*', means lunar months, unless the contrary appear to be the meaning from the subject-matter to which that term is applied" (per *Bayley, J*, *Johnstone* v. *Hudleston*, 4 B. & C. 932.)

"Month" shall mean a month reckoned according to the British calendar [Act X of 1897 (General Clauses, S. 3 (33). *See also* 10 Cal 913]:

The word "month" shall mean a calendar month, Police Act (V of 1861), S. 1.

The term "month", whether employed in modern statutes or contracts, and not appearing to have been used in a different sense, denotes a period terminating with the day of the succeeding month numerically corresponding to the day of its beginning, less one. If there be no corresponding day of the succeeding month, it terminates with the last day thereof. (Words and phrases, *see also* 36 Cal. 516=13 C.W. N, 425=2 I.C. 573)

Moofty.

Month Stipulation to deposit on 30th of a month—month containing only 29 days—Deposit made on the 1st of next month is sufficient compliance (1926 Cal 1232.)

MONTH is generally a period of thirty days, Month in commercial matters means a calendar month, unless otherwise specified. *See* 29 M. 75.

In computing a month, as used in a criminal statute, the fraction of a day should be included

MONTHS *in vernacular documents* Even when lunar months are mentioned in a vernacular contract, the time is to be decided by reference to calendar months (6 Bom 85, 24 Cal 382, Foll, 47 Cal 446 at p 456 Not Foll, 7 C P L R 73; 1 N L R 150, Foll) 78 I C 338=1924 Nag 208 *See also* 2 C P L R. 265

Even when lunar months are mentioned in a vernacular contract the time is to be decided by reference to calendar months (6 Bom. 85, 24 Cal 382, Foll 47 Cal 446 at p. 456, Not foll.) 7 C P L.R 73

MONTH AND YEAR "Month" and "year" shall respectively mean month and year according to the British calendar [Act XXI of 1866 (Native Converts' Marriage Dissolution), S 3]

Monthly. Once a month

"**Monument**" *See* Ancient monument.

MONUMENT A monument is something designed and constructed to perpetuate the memory of some particular person or event.

The word "monument", in common usage, when it relates to a memorial for the dead, means a column, or some structure more imposing than a mere gravestone

In the English Ancient Monuments Protection Act, 1900, 63 & 64 V c. 34 "Monument, means, any structure, erection, or monument, of historic or architectural interest, or any remains thereof."

Monuments are also the visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey.

MONUMENT, MEMORIAL, REMEMBRANCER. These terms have, in their original derivation, precisely the same signification, and differ in their collateral acceptations, monument is applied to that which is purposely set up to keep a thing in mind, memorials and remembrancers are any things which are calculated to call a thing to mind; a monument is used to preserve a public object of notice from being forgotten, a memorial serves to keep an individual in mind. A memorial respects some object external of ourselves, the remembrancer is said of that which directly concerns ourselves and our particular duty. The memorial revives in our minds what we owe to another, the remembrancer puts us in mind of what we owe to ourselves, it is that which recalls us to a sense of our duty.

Monumenta quae nos recorda vocamus sunt veritatis et vetustatis vestigia. A maxim meaning "Monuments, which we call 'records,' are the vestiges of truth and antiquity." (*Black. L Dict.*)

Moofty. The Mohammadan law officer who declares the sentence. (*Fifth Report.*)

Mookassa and vritee tenures.

Mookassa and vritee tenures Lands conferred on *Mookassa* or *vritee* tenure were theoretically revenue-free They were granted in charity, for the support of the sovereign's relatives or supporters or in reward for military, religious or other services If the grant comprises a whole village it is known as *Mookassa* and if less as *vritee* (1938 N L.J. 112)

Moonshee. (See *Munshi*) Letter writer, secretary; Europeans give this title to the native who instructs them in the native language. (*Fifth Report*)

Moonshine business A term which refers to the unlawful manufacture or sale of spirituous liquors

Moonsiff (See *Munsif*) A Judge-Advocate, an arbiter A Judge having a limited jurisdiction. (*Macnaughten's Mohommadan Law.*)

Moor In navigation, to fix or secure a vessel in a particular place by casting anchor, or by fastening with cables or chains, to tie or fasten a vessel to the shore or to a buoy or some other stationary object

Moorage *Moorage* is a sum due by law or usage for mooring or fastening of ships to trees or posts at the shore or to a wharf. *Wharfage* is a toll or duty for the pitching or lodging of goods upon a wharf.

Mooring. Mooring "is such a mode of attachment as will allow a vessel to leave from time to time and to come back and re-take possession of the old attachment A claim to a mooring is not a claim of right of possession in land, but is only a claim to come back from time to time and use the same mooring This right is a part of the right to use navigable waters in the ordinary way of navigation" [per *Esher, M R, A-G* v. *Wright,* (1897) 2 Q B. 318]

Mootah In the Northern Circars, a small district or subdivision of a country, consisting of a certain number of villages, more or less A farm of several villages (*Fifth Report*)

Mootahdar. The holder of a Mootah A person on whom theZamindary rights of a Mootah are conferred by the Government under the conditions of a perpetual settlement.

Mootahdary. What relates to a Mootahdar.

Moot-case. A case which seeks to determine an abstract question which does not arise upon existing facts or rights

Mopillas. A tribe of Arabs settled on the Malabar coast.

Moplah. *See* Mapilla.

MOPLAH Mohomedans of Malabar and Kanara speaking Malayalam (*Sund. Iyer's Mal Law*).

'Moppu,' meaning of *See* 2 L.W. 272=28 I.C. 278.

"Moqadma." The word "moqadma" is very general and should be translated by the word "case" and applies not only to an original suit but to an appeal. [1931 All. 415 (2).]

Mora. "Mora is derived of the English word moore, and signifies a more barren and unprofitable ground than marshes, dangerous for any cattle to go there, in respect of mire and moorish soil, neither serves for getting of turfs there" (*Co Litt. 5a*).

MORA (C.P.) (*formerly*). A division of village land subject to the same assessment-rate (*Bad. Pow.* ii, 378.)

Morabu. (*Karn.*) Gravelly and stony soil.

Morah In Canara, rent in kind A field, let to a tenant-at-will, is reckoned and called a field of so many morahs.

Moral Of or pertaining to the rules of right conduct, concerning the distinction of right from wrong. (*Cent. Dict*)

Moral certainty Moral certainty is that degree of certainty which convinces and directs the understanding, and satisfies the reason and judgment, of those who act conscientiously upon it

Moral certainty is a state of impression produced by facts in which a reasonable mind feels a sort of coercion or necessity to act in accordance with it; the conclusion presented being one which cannot, morally speaking, be avoided consistently with adherence to truth

A moral certainty is that high decree of probability, though less than absolute assurance, that induces prudent and conscientious men to act unhesitatingly in matters of the gravest importance.

Moral consideration. The terms "moral obligation" and "moral consideration" are not convertible terms, even if there is any such thing as a moral consideration Natural love and affection are a good consideration for an executed contract or gift, and in this state a moral obligation is a good consideration for an express promise, but natural love and affection are not a moral obligation in such sense as will support even an express promise to make a gift. (*Words and Phrases.*)

Moral evidence As opposed to "mathematical" or "demonstrative" evidence, a term which denotes that kind of evidence which, without developing an absolute and necessary certainty, generates a high degree of probability or persuasive force. (*Black L. Dict*)

Moral insanity Moral insanity which is sometimes put forward as a defence to a charge of crime means, an incapacity to distinguish between right and wrong— an unconsciousness on the part of the person that the act he is doing, or is about to do, is a wrong and forbidden act, and one that he ought not to do.

"The law does not recognise moral insanity as an independent state, hence, however perverted the affections, moral feelings, or sentiments may be, a medical jurist must always look for some indications of disturbed reason. Moral insanity is not admitted as a bar to responsibility for civil or criminal acts, except in so far as it may be accompanied by intellectual disturbance." (*Tayl. Med. Jur.* p. 780.)

Moral insanity and legal insanity. "Moral insanity is a disorder of the feelings and propensities. Legal insanity is a disorder of the intellect. Dr. Prichard describes moral insanity as consisting in a morbid perversion of the feelings, affections, and

Moral law

active powers, without any illusion or erroneous conviction impressed upon the understanding Moral insanity may or may not impair the intellect or intellectual faculties Moral insanity not proceeding from or accompanied with insane illusion—the legal test of insanity—is insufficient to set aside a will"

Moral law "The eternal and indestructible sense of justice and of right written by God on the living tablets of the human heart, and revealed in his Holy Word."

Moral necessity That necessity which arises where there is a duty incumbent on a rational being to perform It presupposes a power of volition and action under circumstances in which he ought to act, but in which he is not absolutely compelled to act by overwhelming superior force Physical necessity cannot correctly be said to exist in cases where an agent is called on to exercise judgment and discretion—to act or not to act

Moral obligation "Moral obligation" means no more than a legal liability suspended or barred in some technical way short of a substantial satisfaction

A moral obligation is an imperative duty, which would be enforceable by law, were it not for some positive rule, which, with a view to general benefit, exempts the party in that particular instance from legal liability.

A moral obligation, in law, is defined as one which cannot be enforced by action, but which is binding on the party who incurs it, in conscience and according to natural justice.

Moral personality A term used in continental law to describe the legal status of bodies of persons having corporate capacity (*Ency of the Laws of England.*)

Moral turpitude Anything done contrary to justice, honesty, principle, or good morals, an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (*Ame. Cyc*)

A term not clearly defined—What constitutes moral turpitude, or what will be held such, is not entirely clear. A contract to promote public wrong, short of crime, may or may not involve it. If parties intend such wrong, as where they conspire against the public interests by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude When no wrong is contemplated, but is unintentionally committed, through error of judgment, it is otherwise (*Pullman's Palace Car Co.* v *Central Transp Co*, 65 Fed 158, 161.) Everything done contrary to justice, honesty, modesty, or good morals is done with turpitude, so that embezzlement involves moral turpitude.

Morality. Morality is defined by Paley to be "that science which teaches men their duty, and the reason of it" To make a contract against morals void as being against public policy, it must be against sound morals, and not merely against the morals of the times. (*Words and Phrases.*)

Morphia

Mora reprobatur in lege. A maxim meaning "Delay is reprobated in law" (*Burrill*)

Morchah (*Persian*) An entrenchment, the embrasures of a fort

More Greater in amount, extent, number or degree.

More, Morch or Mudi (*Karn*) A large measure of land, it is said to consist of 45 Guntas, each 33 ft square, or about 1 13/100th acre, it is also said to mean rent in kind.

More or less An expression which shows that the parties were to run the risk of gain or loss, as there might happen to be an excess or deficiency in the estimated quantity, words of safety and precaution and intended to cover some slight or unimportant inaccuracy, words used in contracts or conveyances, to qualify the representation of quantity in such a manner that, if made in good faith, neither party should be entitled to any relief on account of deficiency or surplus" (*Ame Cyc*)

The words 'more or less", when used in a contractfor the delivery of a certain quantity of personal property, more or less, will be construed to authorize a limited deviation from the quantity named

The words "more or less", as used in contracts relating to personality,and as applied to quantity, are to be construed as qualifying a representation or statement of an absolute and definite amount, so that neither party to a contract can avoid it or set it aside by reason of any deficiency or surplus occasioned by no fraud or want of good faith, if there is a reasonable approximation to the quantity specifically stipulated in the contract

In an agreement to manufacture, furnish, or deliver certain property not then in existence, or to be taken from a larger quantity, the addition of the words "more or less" will be given a narrow construction, and held to apply only to such accidental and immaterial variations in quantity as would naturally occur in connection with such a transaction.

"'ABOUT', AND 'MORE OR LESS', are words of general import, and I should have much difficulty in saying that evidence ought to be received to ascertain their meaning" [per *Littledale, J., Cross* v *Eglin*, 2 B. & Ad. 106, 9 L.J O.S K B. 145)]

In *Morris* v *Levison* (cited Say), it was held that an allowance of 3 per cent. either way would be a fair estimate for satisfying the word "about."

"The words '*More or Less* or '*Thereabouts*', in a contract for sale of land, will only cover a moderate excess or deficiency, and will never be suffered to be the instrument of fraud." (*Add. Con*)

Moreage "A sum due by usage for moreing or fastening of ships to trees or posts at the Shore." (*Hale, De Potibus Moris*, Ch. 6; *Stroude*)

Mori. (S. E Punjab), the stake driven in at the foundation of a new village. (*Bad -Pow* II. 679.)

Morning. A term meaning any time from sunrise till twelve o'clock.

Morphia is opium. 3 Lah. 230=23 Cr L.J. 580=68 I.C, 612=A.I.R. 1922 Lah. 216.

Morphine

MORPHIA is not included in the definition of opium under the Opium Act and the sale or transport of *Morphia* without a licence, though contrary to the rules, is not an offence under the Act 1 Lah 443=22 Cr L J 8=59 I C 40=2 Lah L J 711

Morphine is an alkaloid, the most important narcotic principle of opium

Morphine is both an opiate and a narcotic, which is so successfully and beneficially used in the modern practice of medicine and surgery for the alleviation of pain and suffering in so many of the ills to which flesh is heir.

Mors dicitur ultimum supplicium A maxim meaning "Death is called the 'last punishment,' the "extremity of punishment"

Mors omnia solvit A maxim meaning "Death dissolves all things"

Mors ultima linea rerum est A maxim meaning "Death is the closing limit of human transactions" (*Morgan Leg Max*)

Mortal wound The term "mortal wound" may apparently be used to designate a wound calculated and adequate to produce death, as well as one which is necessarily mortal One inflicting such wound cannot exonerate himself by showing that some conduct of the deceased or his agencies after the wound was inflicted lessened the chances of his recovery, and thus caused death

Mortality "The word 'Mortality' may under certain circumstances include every description of death, every termination of life to which mortals are subject It applies generally, however, to that description of death which is not occasioned by violent means," [(per *Bayley, J Lawrence* v *Aberdein*, 5 B & Ald. 112 *Gabay* v *Lloyd*, 3 B & C 793). In the law of insurance it is a term which refers to a death arising from natural causes, and not a violent death

Mortality tables Tables of mortality are an account kept for a great number of consecutive years of the ages at which men and women die, and taking the average of all such ages By this means the probable number of years any man or woman of a given age and of ordinary health will live may be arrived at with reasonable certainty

Mortally. In a mortal manner so as to cause death

"Mortgage" defined (*See also* English mortgage, Simple mortgage; Usufructuary mortgage) Act 27, 1866, S. 33, Act 28, 1866, Act 4, 1882, S 58 (*a*)

MORTGAGE. Document whereby one who borrows money charged on certain property as security for the repayment of the sum advanced *See* 27 Cal 587=4 C W.N 524, 30 M 426=17 M L J 444 (P C)

A mortgage is the conveyance of an estate by way of pledge for the security of a debt.

A mortgage of real estate, though "in form a conveyance of the legal title, is regarded as a mere security for the debt, the legal title remaining in the grantor."

"What is a mortgage? Everybody knows, it consists of two things: it is a personal contract for a debt

Mortgagee.

secured by an estate; and, in equity, the estate is no more than a pledge or security for the debt:—the debt is the principal, the Estate is the security Whether the mortgagee is, or is not, in possession of the pledge his right is precisely the same, with this difference, indeed, that he has never any right in equity to the estate except as a fund to pay him his debt, for every other purpose the estate is the estate of the mortgagor, and when the debt is paid all the mortgagee's right and interest in the estate ceases.

If the mortgagee has chosen to take possession, and help himself, he becomes then a bailiff without salary and is accountable for the profits, which are applicable, in the first instance, to pay the principal and interest on his debt and all other reasonable and proper allowances, but he is bound to be an Accounting party,—taking the estate in possession upon the principle and upon the obligation to account with the mortgagor for all the rents he receives He is bound to keep the account,—and to be ready to surrender up the pledge as soon as it has answered its purpose All the cases treat the mortgagee as soon as he is paid, as becoming a mere naked trustee, holding the legal estate for the benefit of the *cestui que trust*, the mortgagor" [(per *Plumer, V C*, *Quarrel* v *Beckford*, 1 Mad 278)

The term "mortgage" in Indian Law, means simple as well as usufructuary mortgage, and the one is as much the transfer of an interest in specific immovable property as the other [7 A 258 =5 A.W. N 8 (F B)].

CONTRIBUTORY MORTGAGE is a mortgage to several independent mortgagees securing their several advances on the same property for an example and form, *see* 2 Key & Elph Prec., 6 ed, 106, (*Stroude*)

Mortgage and charge There is a clear distinction between a mortgage and a charge, the former being a transfer of an interest in immovable property as a security for the loan whereas the latter is not a transfer, though it is none the less a security for the payment of an amount 51 A 612=27 A L J 367=116 I C 855=A I R. 1929 A 281

"Mortgage by conditional sale" defined. Act 4, 1882, s. 58 (*c*).

"Mortgage debt" *See* 13 All 330=11 A W N 66

"Mortgage-deed" defined Act 4, 1882, s 58 (*a*), Act 2, 1899, s 2 (17)

"MORTGAGE-DEED" includes every instrument whereby for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates to, or in favour of, another, a right over or in respect of specified property.

"Mortgage-money" defined. Act 4, 1882, s. 58 (*a*)

Mortgage property *See* 29 All. 385=4 A L J. 273=(1907) A.W N 97 (F B)

Mortgage security company. A term which may include a company authorized to loan its money on mortgaged security, although the business of the company is not confined to making such loans.

"Mortgagee" defined (*See also* Simple mortgagee, Usufructuary mortgagee) Act 28, 1866, s. 1, Act 4, 1882, s 58.

Mortgagee

MORTGAGEE, is one that takes or receives a mortgage *See also* 2 M 226, 9 All 97, 26 Bom 500

A "mortgagee" is a creditor having a lien or charge on land for his debt, with or without the right of possession

"Mortgagee" shall be taken to include every person to whom or in whose favour any mortgage pledge or charge is made or transferred Act XXVIII of 1866 (Trustees and Mortgagees Powers), S 1

"Mortgagee by conditional sale" defined Act 4, 1882, s 58 (*c*)

Mortgagee in possession One who takes possession of the mortgaged land by virtue of an agreement between him and the mortgagor

Mortgagium scuto magis quam gladio est A maxim meaning "A mortgage is used as a shield rather than a sword" (*Morgan Leg Max*)

'Mortgagor" defined Act 28, 1866, s 1, Act 4, 1882, s 58 (*a*)

MORTGAGOR He that gives a mortgage

The word "mortgagor" may include any person claiming under the mortgagor

"Mortgagor" shall be taken to include every person by whom any mortgagee pledge or charge shall be made Act XXVIII of 1866 (Trustees and Mortgagees Powers) S 1

Mortmain. In its primary signification, can alienation of lands or tenements to any corporation aggregated, ecclesiastical or temporal

"'Mortmain,' signifies an alienation of lands and tenements to any guild, Corporation, or fraternity, and their successors, *e g* Bishops, Parsons, Vicars, &c" (*Cowel. V Termes de la Ley*) The modern use of "Mortmain" connotes land alienated to, or for the purposes of, a charity (*Stroude*)

"The alienation of lands to corporations was looked upon as of great detriment to the Crown and the Lord, if any, of whom such land was held. By such alienation the lord was deprived of the valuable incidents of tenure (*e g*, escheat, wardships, etc) to which, had the land been held by a private individual, he would have been entitled Accordingly, from the earliest times we find in England the legislature providing against this class of alienation Alienation in mortmain (*se* whereby the land remained in mortua manu) in the strict and only proper sense of the term refers only to alienation to corporations and has nothing to do with alienation to charities

But inasmuch as the statutes that dealt with alienation of the one kind also dealt with the other, the term "mortmain" is sometimes loosely used to include alienation to charities" (*Ency of the Laws of England*)

The foundation of all the statutes of *Mortmain* was Magna Carta. By c 36, it is declared, "That it shall not be lawful for any to give his lands to any religious house, and to take the same land again to hold of the same house, &c upon pain that the gift shall be void and the land shall accrue to the lord of the fee," (*Tomlins Law Dic*)

Motion

Mortmain Acts Acts, the object of which was to prevent lands from getting into the possession and control of religious corporations

Mortuary In early English History, a sort of offering to the church as a penance

MORTUARY A gift left by a man, at his death, to his parish Church, for the recompense of his personal tithes and offering not duly paid in his lifetime A Mortuary is not properly and originally due to ecclesiastical incumbents from any, but those only of his own parish, to whom he minister spiritual instruction and hath right to their tithes But by custom in some places they are paid to the persons of other parishes, as the corpse passes through them (*Tomlins Law Dic.*) "'Mortuary, is that beast, or other chattel moveable which after the death of the owner (by the custom of some places) became due unto the Parson, Vicar, or Priest, of the Parish, in lieu or satisfaction of Tithe or Offerings, forgot, or not well and truly paid, by him that is dead" (*Termes de la Ley*)

Mortuus exitus non est exitus A maxim meaning "A dead issue is no issue"

Mosque A Muhammadan church

Mos retinendus est fidelissimae vetustatis A maxim meaning "A custom of the truest antiquity is to be retained" (*Ame Cyc*)

Most. Used before adjectives and adverbs to form a superlative phrase

"Most insolent upstart Where the defendant, the manager of a farm in which was working one Tulsi chamar against whom a money decree was obtained by plaintiff wrote on the process issued by Court for execution of decree "The decree-holder is a most insolent upstart" *Held* (*per Chamier, J*), the words were not defamatory, *per Karamat Husain, J* the defendant was liable in damage to the plaintiff (A L J 253=13 I C 506

Mota bhag (*Bo*), the major or primary division of a 'shared' village (*cf.* petabhag) (*Bad Pow* III 263)

Motasthal (*Bo*), land watered from a well (water raised in a bucket, mota), (*Bad Pow* III 223)

"Mother" defined *See* Parent

MOTHER Ordinarily a woman who has borne a child

The term may include, however, a woman pregnant with child, a woman who has either been delivered of or is pregnant with a bastard child In fact, a woman may be said to be the mother of the child begotten from the beginning of the period of gestation

The word 'mother' does not include grand mother 78 I C 932=A I R 1924 Lah 698

"Mother of minor" The addition to a woman's name of the words "mother of minor" must be considered as meaning that she was acting as the mother and guardian of her infant son. 15 C. 8 (P.C.)=14 I A 178

Motion A motion is a method of making an application to the Court where in the course of the

Motion.

proceedings it is necessary to invoke its assistance in any matter requiring to be speedily dealt with

A motion in practice means an application to court by one of the parties to a cause, or his counsel, in order to obtain some rule or order of court which he deems to be necessary in the progress of the cause, or to get relieved in a summary manner from some matter which would work injustice Properly a motion means an application for a rule or order, made *viva voce* to court or judge, but the term is now generally employed with reference to all such applications, whether written or oral (*Ame Cyc*)

Motion (*in Court Practice*) A "motion," in practice, is defined as an application to a court, by one of the parties in the cause, in order to obtain some rule or order

MOTION (*in local assemblies*) A motion is a proposal made to evoke action on the part of the council or other assembly, and when acted upon, it becomes the formal expression of the will or resolution of the city council,

MOTION (*In parliamentary law*) A motion is a "proposition made to the house by a member, which, if adopted, becomes the resolution, vote or order of the house"

NOTICE OF MOTION A notice of motion is not a motion, and should not be so treated

ORIGINATING MOTIONS Originating motions (which in practice are comparatively rare) are so termed where a notice of motion forms the initial step in the proceedings

Motive Motive is that which stimulates or incites an action, the mainspring of human action, some cause or reason that moves the will and induces action, the moving power which impels to action for a definite result

INTENT DISTINGUISHED Motive is the moving power which impels to action for a definite result, intent is the purpose to use a particular means to effect such result In the popular mind, intent and motive are not infrequently regarded as one and the same thing In law there is a clear distinction between them

INTENT DISTINGUISHED "Intent" and "motive" are not identical, and intent often exists where a motive is wholly wanting

"Motive or reward for doing" defined. Act 45, 1860, S 161, Expln.

Motor (*of a car*) A motor is the motion-producing contrivance of a car, not the entire car

"Motor car" defined Bengal Act 3, 1903, S 2.

'Motor cars' Cars must be automobiles

"Motor vehicle" defined Bom Act 2, 1904, S 1 (3); Bur Act 2, 1906, S 2; Mad, Act 1, 1907, S 2 (1), P Act 2, 1907, S 1 (3).

Motor vehicles A motor vehicle is defined as including all vehicles propelled by any power other than muscular power Exceptions to the application of the statutes is usually made as to traction engines, road rollers, and such motor vehicles as run only upon rails or tracks

Movable property.

An automobile in the sense in which that term has come to be commonly understood, is a motor vehicle, usually propelled by steam, electricity, or gasolene, and carrying its motive power within itself

"MOTOR VEHICLE" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power entirely or partially [Act VIII of 1914 (Motor Vehicles), S 2]

The terms "AUTOMOBILE" AND "MOTORCYCLE," as used in a statute, include "all vehicles propelled by other than muscular power, except railroad and railway cars and motor vehicles running only on rails or tracks, and road rollers"

AUTOMOTOR is defined as a self-propelled machine (*Standard Dict Addenda*), and as an automobile (*Webster Int Dict. Suppl*)

Mouje Grant of a mouje indicates 'a village in which there were peasant proprietors owning cultivable lands even then' The view that the word in the particular context merely means a defined place cannot be accepted [38 Mad 891 (892) view of Sadasiva Aiyar, J *Approved*. 43 Mad 92=1923 Mad 1, 70 I C 729 (F B,), *Reserved*) 117 I C 507=33 C W. N 578=52 Mad 453=29 M L W 804=31 Bom L R. 756=49 C L J 566=56 I.A. 146=1929 M.W N 553= 1929 P C 115=56 M L J 730 (P C)

'Mourasi' See *Mukarrari* 152 I C. 540=1934 Cal 782

MOURASI (*Lit*) Succession from generation to generation Signifies permanent tenure [56 Cal. 180 =117 I C 534=1929 Cal 451)

"Mouth of a river comprehends the whole space betwixt the lowest ebb and the highest flood mark." (*Horne* v *MacKenzie*, 6 Cl & F 644)

Mouza A place, a village, the cultivated lands of a village (*Fifth Report*)

Mouzawar By villages A term employed to designate a village settlement (*Fifth Report*)

Movable (*Moveable*) A movable is something substantive which has locality and may move or be moved, including money and bonds for money, but not a debt merely as such

Things movable, by their nature, are such as may be carried from one place to another, whether they move by themselves, as cattle or cannot be removed without an extraneous power, as inanimate things

"Movable", as an adjective applied to property signifies that it is capable of being moved or put out of one place into another, and therefore necessarily implies that such property has an actual locality and is susceptible of locomotion or a change of place

Movable estate The term "movable estate" seems to be regarded as synonymous with "personal estate"

"Movable property" defined. (*See also* Personal estate) Act 45, 1860, S 22, Act 10, 1865, S 3, Act 3, 1877, S 3, Act 6, 1882, S 44, Act 15, 1882, S 28, Act 10, 1897, S 3 (34), Ben Act 5, 1876, S 6 (8) Ben Act 3, 1884, S 6 (6), Ben Act 1, 1899, S 3 (28), Ben Act 6, 1908, S 3 (xii), Bom. Act 1, 1904, S. 3

Movable property

(31), Mad. Act 1 1891, S. 3 (19), Bur Act 1, 1898, S 2 (39), P Act 1, 1898, S 2 (35), U P. Act 3, 1892, S 2 (7), U P. Act 1, 1904, S 4 (21), Reg 3, 1889, S 37 (2), Reg 1, 1899, S 3 (11)

The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth (Penal Code, S 22)

"MOVABLE PROPERTY" includes growing crops [Act V of 1908 (C P Code), S. 2, Cl. 1[3]]

"MOVABLE PROPERTY" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property [Act XVI of 1908 (Registration), S 2, Cl (9)]

"Movable property" shall mean property of every description, except immovable property [Act X of 1897 (General Clauses), S 3 (34)]

Movable property includes money (24 All 27=28 I A 227=3 Bom L R 576, 32 Cal 719, 35 Cal 298)

Huts are not immovable property under S 19 of the Small Cause Court Act The word "movable" does not comprehend everything which a judgment debtor has a right to remove, but means property which is capable of being moved in an existent state (2 B L R A.C. 77=10 W R 416. *See also* 1922 All 45)

If movable property includes debt secured by a mortgage *See* 26 Bom 305, 13 Bom L R 233=35 Bom 388

Movables Goods, furniture, distinguished from real or immovable possessions, things substantive which have locality and may move or be moved.

A bequest of all testator's "movables" "doth pass all his personal goods, both quick and dead, which either move themselves,—as horses, sheep, and the like, or may be moved by another,—as plate, household stuff, corn in store etc, also all bonds and specialties, and by a devise of immovables do pass leases, rents, grass, and the like, but not any of those things that do pass by the devise of moveable, but debts will not pass by either of these devises" (*Touch* 447)

"Mover" defined *See* Prime-mover

MOVER A proposer, one who offers a proposition for consideration and adoption (as) the mover of a resolution in the Legislative Assembly

"Moving." *See* 4 I C 405 (Cr)

Mr Where a vakalatnama did not contain the name of the pleader after the word *'Mr'* in the printed form but bore the signature of the party as well as that of the pleader *Held*, that the ambiguity in the document was not a patent ambiguity such that section 93 of the Evidence Act would exclude evidence to explain it, but was a latent ambiguity which may be cleared up by extrinsic evidence under section 96 of the same act (19 N.L R 36=6 N L J 100 =71 I C 436=1923 Nag 182)

Mrigam nalkkali Four footed animals In the Southern Districts of Malabar a permanent allowance has, by ancient custom, been made by proprietors in fixing the pattam for estimated losses by animals whilst in the Northern Districts no allowance was made for this and other items such as Veli Nellu, but the proprietors take upon themselves the expense of protecting their fields from cattle and pay it out of their pattam, each contributing so much to one or more persons appointed to watch a particular tract (*Logan's Mal Man.*)

Mrs An abbreviation for mistress, generally made use of to distinguish the person named as a married woman.

The contraction "Mrs" is not a proper Christian name It only distinguishes the person named as a married woman, and is no name.

Muafi Area held partly or wholly free of revenue or rent.

MUAFI (*A=pardoned, excused*) Revenue-free holdings, properly speaking where the land belongs to the grantee and he is 'excused' the State dues, a distinction not observed in North I, any Revenue-free grant may be called muafii, especially if it is small No condition of military service was attached (N-W P), (*Bad Pow* II, 155)

Muafi lands (*C P*) (*Bad Pow* II, 478)

Muafi lands (*Pj*). (*Bad Pow* II, 699, 701)

Muafi lands (*Pj*) Assessment of on lapse of the grant, (*Bad Pow* II, 603)

For some peculiar reasons where small amounts are granted, more specially to a religious institution, the word muafi is wrongly used to cover not only the cases where the institution owns the property but also where it does not and merely enjoys the property assigned (123 I.C 835=1930 Lah. 46.)

"Muafi" and "Jagir" The difference between a muafi and a jagir is that the former is a remission of land revenue to the owner whereas the latter is an assignment of land revenue which is collected and paid to the jagirdar

"Muafi khairati" The entry *"Maufi khairati"* simply means the land is held rent free or at a low rent by the favour of or under an agreement with the Malguzar and such entry does not stand in the way of the landlord recovering arrears of rent assessing on the holding so recorded 89 I C 741=1925 Nag 452 *See also* 67 I C 305=1923 Nag. 163, 1 O.L.J. 680=26 I C 860, 89 I C 741.

MUAFI KHAIRATI lands may be lands held free in lieu of service on condition of service by persons who are not tenants, or they may be lands held by person who are tenants, but by favour of the malguzar hold the lands rent-free or at a low rent [9 N L R 97, *Dist*, 3 N L R 185, *Rel. on.*) 6 I R (Nag.) 88=146 I C 404=1933 Nag 313]

Muafi khairati tenant. A man may be entitled to hold certain land free of rent as long as he performs certain services, both tenure and exemption being dependent on the services and ending with them That is one class of *Muafi Khairati* tenant. (67 I C 305=1923 Nag. 163.)

Muafi khidmati grant Nature and incidents of —Grantee of—Person holding under—Status of. *See* 1938 R.D 160=1938 A.W.R. (B.R.) 91.

Muafi khidmati grant

Muafi rights

Muafi rights. Muafi rights are rights held by a tenant against the Zamindar and against no one else Such rights cannot be sold because they are resumable by the zamindar and the fact that such a sale is void as against the zamindar makes the sale absolutely void because it can be immediately defeated by the zamindar 4 O W N 1269=12 R.D 84=107 I C. 872=1928 Oudh 153

Muafidar A 'muafidar' is not necessarily though in fact he often is, the owner of the land exempted from the payment of revenue (14 Lah 156=1 R 1932 Lah 474=138 I C 387=33 P L.R 730=1932 Lah. 513)

Mua-jora (=the 'dead yoke'), a fee or share allowed to the improver of land, on the fiction that his yoke of cattle are dead, because the work that entitled him to share was done in the past (S Pj) (*Bad Pow* II 653)

Muakhiza. The root meaning of 'muakhiza' is "taking" and the word is generally used in the sense of taking satisfaction or calling to account Muakhizadar is a man who is responsible or called to account (9 A L J 550=34 A 446=15 Ind Cas 435)

Mu'amla (*A*) the L R regarded as a sum of money to be paid (*Cf* jama', which refers to the L.R as assessed, or as a sum declared) This use of the term is said to be incorrect, but it is universal in Northern India (*Bad.-Pow* I 269)

Muatab (*H*) Respectable, worthy of confidence, a person of credit, one who is responsible for the sufficiency of a surety, and who is liable for the amount, should both be principal and surety be defaulters (*Wil Gloss* 347)

Mubaiat (*A*) Entering into a contract of purchase and sale (*Wil Gloss* 347)

Mubarat (*M*) Separation by mutual consent (*Wil Gloss* 505) Dissolution of marriage by mutual consent, putting away a wife, dissolving partnership (*Wil Gloss* 347)

Much. A great quantity, a great deal, a term sometimes used as synonymous with "many" (*Ame Cyc*)

Muchalka (Muchalika) a 'recognizance', bond for responsibility formerly executed by Zamindars (*Bad Pow* I 511)

A solemn engagement, or declaration in writing by a tenant to the landholder

A written obligation or agreement, a bond, a deed, it is commonly applied to a counterpart covenant on the part of the cultivators of land, agreeing to the rates of assessment or rent, also to an engagement under a penalty to observe the conditions of any deed or grant, or to one exacted from thieves or suspected persons engaging to desist or refrain from any illegal acts, or to one from superior police or other officers engaging to be responsible for the conduct of the subordinates appointed by themselves, or to any penal recognisance which may be required by a Magistrate (*Wil. Gloss.* 348.)

Muchalka in-Darud "The engagement contains his" The title of a written declaration, which,

Mufassal kharch

under the Muhammadan administration of the Northern Circars, was produced by Aumildar, or Collector-General, signed jointly by the Desmooks and Despondeahs, purporting that they had not, in the way of bribery or otherwise, paid anything to the Government, except what is specified in the public accounts of receipts

Mucta *See* b'il mucta

Mucurrery Relating to what is fixed or established as mucurrery leases, muccurrery grants, etc (*Fifth Report*)

Muda (*Mal*) Means, literally, a fastening, or bundle, or package It is applied to the packages in a circular form, like a Dutch cheese, fastened with whisps of straw, in which rice is made up in the south of Malabar and Canara It is uniformly of the same size, containing 25 Macleod seers In the Sea Custom accounts the Muda of rice is reckoned at 81 lb and of paddy at 55 lb (*Logan's Mal. Man*)

Mudal (*Tam Tel Karn*) First, principal, chief

Mudalali (*Tam*) The chief man, the principal, proprietor

Mudalsambandham (*Mal*) Property connection as opposed to Pulasambandham or connection for pollution (*Sun Iyer's Malabar law, Moore's Mal law*)

Mudalvadai (*Tam*) A field first watered from a tank

Muddatukryam (*Tel*) Land mortgaged with option to the lender to consider it as his property if the mortgage is not redeemed within a stipulated period

Muezzin (*A*) The officer who chants the Azan.

Mufassal. (*vulg* mofussil), the plain or open country as distinguished from the capital or Presidency headquarters (*Bad Pow* I. 201)

MUFASSAL, (*H*) Properly separate, distinct, particular, in Hindustan, a subordinate, or separate district, the country the provinces, or the stations in the country, as opposed to the Sadar, or principal station or town any other place than the ordinary place of office or residence, its most usual application in Bengal, however, is to the country in general as distinct from Calcutta (*Wil. Gloss* 349)

Mufassal adalat (*H*) Formerly a provincial court of justice (*Wil Gloss.* 349)

Mufassal diwani-adalat Formerly a provincial court of appeal whose decrees were final in certain cases before 1793 these Courts were then merged into the city and Zila Courts (*Wil. Gloss* 349.)

Mufassal jama (*H*) The gross amount of revenue payable to the Zamindar or Malguzar by the Subordinate cultivators, and through him to the government, which is then the Sadar Jama or state revenue. (*Wil Gloss* 349)

Mufassal kannungo (*H*) A district or provincial accountant and registrar (*Wil Gloss* 349.)

Mufassal kharch (*H*) Charge of collection in the provinces

Mufassal settlement.

Mufassal settlement Formerly used for a sub-settlement (*Bad. Pow* II. 23)

Mufassal taluk (*H*) A subordinate, or dependent division of a district or estate (*Wil Gloss* 349)

Mufti. Mahomedan law officer (*Mac Moh law*) A Mohammedan law officer, whose duty it was to expound the laws which the Kazi was to execute the later in British India usually discharges the duties of the Mufti also (*Wil Gloss* 349)

Mughal-bandi The level and cultivated part of Orissa, from which the Mughal Empire derived its revenue (*Bad Pow*, I 474)

Muhab. (*A*) A gift, the thing given (*Wil Gloss* 349)

Muhallal (*A*) Lawful, made lawful, that which was not so before, as in law, a woman who having been divorced is married to another man that he may divorce her when she may be legally remarried to her first husband (*Wil Gloss.* 350)

Muhalli (*A*) One who makes lawful that which was illegal, a man who marries a divorced woman, that he may put her away and so enable her to be married again to her first husband (*Wil Gloss* 350)

Muhammadan. A follower of Muhammad, a Musalman.

"Muhammadan burial ground" defined *See* Public Muhammadan burial ground *See also* Bengal Burial Boards Acts

"Muhammadan registrar" defined. Ben Act 1, 1876, S 2

"MUHAMMADAN REGISTRAR" means any person who is duly authorized to register marriages and divorces among Mohammadans [Ben. Act I of 1876 (Maham madan Marriage and Divorce Registration), S 2]

Muharram The name of the first month of the Mahomedan year The mourning festival observed in that month by the Musalmans of India, in remembrance of Hasan and Husain, the grandsons of the Prophet (*Mac Moh Law*) The name of the great Shiah mourning, held on the first ten days of this month, in commemoration of the death of Husain, the third Imam at Karbala, A. H 61

Muharir A clerk, a writer, an office clerk.

Muharriar (*A*) [*See* Muharrir] office clerk or writer

Muhassil (*A*) A tax-gatherer, a bailiff, but applied especially to messengers formerly sent to collect arrears of revenue, and to live at the expense of the defaulter till the arrear was paid

Muhazarat (*H*) In law suing any one in a court of law, also disposing of expected property, or property in reversion, considered illegal a deed or document signed by all parties present (*Wil. Gloss.* 350)

Muhazir-nama (*H*) A document or certificate, or affidavit, signed by a number of persons, all of whom being present (*Wil Gloss.* 350)

Mukarrari

Muhib (*A*) A donee, the person to whom any thing is given (*Wil Gloss* 349)

Muhrim (*A*) A prohibitor, an interdictor, one who lays himself under certain restraints, or upon whom the season, as the month of Muharram, or his engagement as a pilgrim, imposes them, a relative within the prohibited degree of intermarriage (*Wil Gloss* 350)

Muhtal (*A*) A person who accepts the responsibility of one person for his claim upon another

Muhtamim-i-band-o-bast (*H*) A settlement officer, an officer of government employed to make a settlement of the revenue with the different villages and divisions of a district (*Wil Gloss.* 361).

Muhtarafah. (*A*) Atax on trades and professions or on artificers.

Muhtarfa (*A*) A house-tax, or kind of ground-rent, levied by the landlord, or a landlord community, on the non-agricultural residents in the village or estate [*Bad Pow* I 516 (in Coorg) *Bad Pow* III 481]

Muhtarifa A claim by zamindars for payment due to them from persons resident in the *abadi*, other than agricultural tenants is according to the wajib-ul-arz, called, "muhtarifa" It is not a cess but is only a rent 27 A 183=1904 A W N 204=1 A L J 537

Muhtasib (*H*) A superintendent of markets and police, an officer appointed to take cognisance of improper behaviour, as of indecency, drunkenness, gambling, also of the sale of intoxicating drugs and liquors, and false weights and measures (*Wil Gloss* 351)

Mujaphatjama (*Mar H*) Expenditure on account of presents by the state to public officers or to foreign powers, expenses incurred by one district on account of or to the debit of another (*Wil Gloss.* 351)

Mujawar (*A*) A servant who takes charge of mosques and graveyards

Mujtahid (*A*) A Muhammadan jurist of the highest authority, one competent to enunciate new doctrine

"Mukaddam" defined. Act, 18, 1881, S 4 (13), Act 1, 1883, S 2,

MUKADDAM (*C P*), The Hindi form of Muqaddam

Mukaddam. A leading man in a village

"MUKKADDAM" means the executive headman of a village [C P Act I of 1883 (Local Self-Government Act)]

Mukaddam Gomastha The *Mukaddam Gomashta* is a village servant and in that respect is in exactly the same class as the *Kotwar*, being merely higher than the *Kotwar* in the performance of practically the same duties A holding granted to him in lieu of service is village service holding. (101 I.C. 693= 1927 Nag. 208)

Mukarrari (*A*) [*See* Mokarrari] Fixed; said of rent or revenue the rate of which is permanently fixed. *See* 1925 Pat. 194.

Mukarrari-dar.

Mukarrari-dar (*H*) The occupant of a form of estate paying a fixed and permanent rate of rent or revenue

Mukarrari Istimrari The words 'Mukarrari Istimrari' do not in their lexicographical sense primarily imply any heritable character in the grant as the term "*Mourasi*", but they simply imply permanency from which in a secondary sense such heritable character might be inferred, it always being doubtful whether they meant permanent during the lifetime of the persons to whom they were granted or permanent as regards hereditary character, and the words do not *per se* convey an estate of inheritance (109 I.C 663=48 C L J 69=32 C W N 807=55 I A 212=28 M L.W 41=9 P L T 501=7 Pat 649=30 Bom L R 1361=1928 P C 146=55 M L.J 882 (P C), *Wil Gloss* 352)

Mukarrari-jama (*H*) A fixed and permenant rate of assessment. (*Wil Gloss* 352)

Mukarrari-patta. (*H*) A lease for a definite extent of land at a fixed sum, not liable to any extra charge. (*Wil Gloss* 352)

Mukayasthan (*Mal*) It is quite a modern term, introduced since Hyder's invasion, in lieu of the Taravattukarar or heads of villages Though it may be derived from the Sanskrit word Mukhyam or chief, it is doubtful whether Mukhyastan, which was unknown in Malabar, was not an imitation of the Persian word Mokhtusir, which was common in the Mysore durbar, and means a person of authority, a chief (*Logan Mal Man*)

Mukhasa (*Hindustani*) [See Mokasa] Private, said either of land retained under the direct management of the state, khas, or of land assigned as private property

Mukhasadar The holder of a village, or of lands at a quit rent or rent free on condition of service, under the Mahratta government the Mokhasadar had much the same powers as the Mamlatdar (*Wil Gloss* 353)

Mukhtar An agent, a steward, a representative (*Mac. Moh Law*)

A mukhtar is an attorney whether appointed specially or generally or certificated as a legal practitioner, and a *mukhtar nama* is a document which empowers him to act for the person by or on whose behalf the document is to be executed

The institution of proceedings against a mukhtar or other legal practitioner for professional misconduct under the Legal Practitioners Act amounts to "prosecution" of such legal practitioner. The proceedings though not criminal, are akin to criminal proceedings [170 I C 615=1937 A L R 690=10 R A 137=1937 A.W R 451=1937 A L.J 528=1937 All 506]

Mukhtari, (*H*) Agency, representation, the office or character of a representative (*Wil Gloss.* 353)

Mukhtar and Mukhtar-nama A Mukhtar is an attorney, whether appointed, specially or generally or certificated as a legal practitioner, and a ('mukhtar-nama' is a document which empowers him to act for the person by or on whose behalf the document is executed [108 P W R 1912=202 P L. R, 1912=15 Ind Cas. 122 (123).]

Mulgaini-chiti

Mukhtarkar The same as Mukhtar. (*Mac. Moh. Law*)

Mukhtiyarkar (*Sindh*), an officer of a taluka answering to the mamlatdar of Bombay (ordinarily mukhtar or mukhtiyar means any agent or attorney) (*Bad. Pow* III 343)

Mukhtyarnamah (*Hindi*) A written authority to act, a power of attorney

Mukkadam (*A*) A chief, a leader, the headman of a village or of a caste

Mukkampalu (*Tel*) One-third share of the gross produce of lands allowed to the cultivators.

Mukkatavali (*Mal*) The limit of the jurisdiction of a Kartavu of 3,000 men, extending to 3 Katam (*Logan Mal Man*)

Mukkuvar A tribe of fishermen in Malabar whom Europeans called Mucquasi.

Muklawa (*P*) The ceremony previous to cohabitation in the case of a wife married in childhood.

Mukshbhagdar, The chief or elder sharer in a 'shared village (*Bo*) (*Bad Pow* III 267)

Mukta (C P), A land tenure *see Bad-Pow.* II, 477

Muktasib, (*H*) In law one who makes profit, a gainer (*Wil Gloss* 353)

Mulagar (*Karn*) An owner, an original proprietor, one holding an estate originally through a loan or mortgage, a lessee, a mortgagee, the original holder of a perpetual lease (*Wil Gloss*)

Mulasadhanam, (*Karn*) An acknowledgment given by the principal cultivator to the government, or the landlord a grant or assignment to an original occupant or assignee (*Wil Gloss* 353)

Mulatto A "mulatto" is one begotten between a black and a white, and the term includes everyone coming within the definition, whether the taint in the blood be derived from the father or the mother

In legal as well as common parlance, the term "mulatto" is understood to be a mixture of the white and negro race, and all, therefore, who are tinged with the blood of the latter are mulattoes

Mulawargdar (Kanara) An ancestral estate (warg) holder (*Bad-Pow* III 147)

Mulayan (*Mal*) A servile tribe, or individual of it, the same as the Palayan, or the son of a Palayan. (*Wil Gloss* 354)

Mulazamat, (*H*) Assiduous service or atten, dance in law, continued watch over an insolvent debtor by his creditors, although he has been discharged by the Kazi, to discover if he possess or acquire any property that may be applied to the liquidation of his debts (*Wil Gloss.* 354)

Mulct A mulct is a fine imposed for an offence; a penalty

Mulcta damnum famae non irrogat: A maxim meaning "A fine does not involve loss of character" (*Black*)

Mulgaini-chiti (*Karn*) A permanent lease, the document conveying it (*Wil Gloss* 354) A heredi-

Mulgameti.

tary cultivator, a tenant holding a perpetual lease, not removeable as long as he pays his rent

Mulgameti. Per *Marten, J* —A mulgameti is one who is descended from a former ruler and owner of the village and still retains by regrant or otherwise some portion of the lands or interests therein of such former ruler and owner, but not necessarily any of his governing rights. (25 Bom L R 726=A.I R 1924 Bom 72)

Mulgeni. (*Karn*) Permanent hereditary tenure, lapses on failure of heirs to landlord (*Sun Iyer's Mal Law, Bad-Pow* III, 151)

Mulier amissa pudicitia haud alia abnuerit A maxim meaning "When a woman has lost her chastity she may be suspected of not refusing any thing else of a crime" (*Morgan Leg Max*)

Mulkwarg (*Karn*) Proprietary right (*Sun Iyer's Mal Law.*)

Mulk (*H*) A kingdom, principality, a country (*Wil Gloss* 354.)

Mulkgiri (=country-seizing), process of (Maratha) L R collecting at the point of the sword (*Bad Pow* III. 280)

MULKGIRI (*A*) The taking possession of a country, the periodical incursion of a military force for the collection of tribute or revenue

Mulki, (*H*) Relating to a kingdom or country' native domestic, provincial: the name of an era current in Puraniyathe same as the Fasli of Bengal, except that it commences two months earlier, on the first of Sravna, instead of the first of Aswin (*Wil Gloss* 354)

Mulki-adalat, (*H*) Formerly a provincial court of justice (*Wil Gloss* 354)

Mulki-diwani-adalat, (*H*) Formerly a civil and a criminal provincial court established at Benares in 1786, for administering justice to the province exclusive of the city the courts were abolished by Ben Reg VII of 1795 (*Wil Gloss* 354)

Mulla, (*H*) A Mohammedan lawyer or learned man, a judge, a magistrate the deputy of a Kazi, applied also in some parts of India, to the village Mohammedan schoolmaster who also has the charge of the village mosque, and sometimes acts as butcher for the Mohammedans of the village, he is more usually styled as Mulana (*Wil Gloss* 354)

MULLA. (*A*) A learned musalman. Also the name of a mosque officer whose duty it is to call to prayers, and on ordinary occasions to lead the prayers

"Mulla" is defined as a learned man This obviously is Etymological meaning, being the same as 'Moulvi' or maula, but it has also got the secondary meaning of a village schoolmaster or a person in charge of mosque It is equivalent to trustee (106 I C 891=27 M L.W 101=1928 Mad 282)

'Mulla and Devadayam'—Meaning of. *See* 27 L W 101

Mullagiri land *Mullagiri* land, assigned as remuneration for services useful to the village community, has no special character by reason being attached to the office of *mulla*, it is governed as regards inheritance by the personal law of the holder and as such it is partible [154 I C 684 (2)=7 R B 364=36 Bom L.R 1098=1934 Bom 495]

Mullanki land A female is not entitled to inherit what are called *mullanki* or *mullagiri* lands, that is lands assigned for the remuneration of a village *mulla* The duties of a *mulla* are of a religious and not a secular nature, and part of his duties is the performance of ceremonies in the mosque which a female is not capable of performing under the Mahomedan law (156 I C 656=8 R B 22=37 Bom. L R 257=1935 Bom 245)

Mulluvalli (*Mal*) Literally, thorn expense, the expense of taking care of plantations It is synonymous with Ali Silavu (*Logan's Mal Man*)

Mulpatta Title deed granted by Government (*Sun Iyer's Mal Law*)

Multa conceduntur per obliquum, quae non conceduntur de directo A maxim meaning "Many things are allowed indirectly which are not allowed directly" (*Burrill*)

Multa fidem promissa levant A maxim meaning "Many promises lessen confidence"

Multa ignoramus quae nobis non laterent si veterem lectio nobis fuit familiaris A maxim meaning "We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us" (*Black L Dict*)

Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt A maxim meaning "Many things have been introduced into the common law with a view to the public good, which are inconsistent with sound reason" (*Burrill L. Dict*)

Multa multo exercitatione facilius quam regulis percipies A maxim meaning "You will perceive many things much more easily by practice than by rules"

Multa non vetate lex, quae tamen tacite damnavit A maxim meaning "The law forbids not many things which yet it has silently condemned" (*Black L Dict*)

Multa transeunt cum universitate, quae non per se transeunt A maxim meaning "Many things pass with the whole, which do not pass separately" (*Burrill*)

Multakit (*A*) One who falls unexpectedly on any thing not sought for (*Mac Moh Law*)

Multani The name of a dialect of Panjabi, that spoken in the country about Multan

Multi multa nemo omnia novit A maxim meaning "Many men have known many things, no man has known everything" (*Black L Dict*)

Multifariousness. By "multifariousness" in pleading means the improperly joining distinct and independent matters, and thereby confounding them, as, for example, the uniting in one suit of several matters perfectly distinct and unconnected against on one defendant, or the demand of several matters of a distinct and independent nature against several defendants, in the same suit

Multifariousness.

Multifariousness consists in improperly joining in one plaint several distinct and independent matters and thereby confounding them

Multiple. Manifold, having many parts or relations

Multiplicata transgressione crescat poenae inflictio A maxim meaning "As transgression is multiplied, the infliction of punishment should increase"

Multiplicity of suits. "Multiplicity of suits" is a phrase descriptive of a state of affairs where several different actions are brought on the same issue The law abhors multiplicity of suits, and will not admit trivial distinctions. If two actions are brought for the same cause against the same person, the court will interfere and relieve.

Multiply. In the Copyright Act, 1862, in respect of reproduction of Fine Arts 'copy' implies reproduction, 'repeat', implies more than one, and 'multiply', implies many [per *Fitz Gibbon, L J, Green v Irish Independent Co*, (1899), 1 I R 391.]

Multitude A "Multitude of people, must be ten or more," (*Co Litt. 257a*)

MULTITUDE is an assemblage of many people.

According to some authors a multitude must be ten persons or more, but Sir Edw Coke says, he could never find it restrained by the Common Law to any certain number (*Co Litt 257, Tomlins Law Dic*)

Where two persons went to a mill, taking with them a workman and entering such mill, there was not an entry with a "multitude", which of itself tends to excite terror

Multitudinem decem faciunt A maxim meaning "Ten make a multitude". (*Black L Dict*)

Multitudo errantium non parit errori patrocinium A maxim meaning 'The multitude of those who err furnishes no countenance or excuse for error" (*Black L Dict*)

Multitudo imperitorum perdit curiam A maxim meaning "The great number of unskilful practitioners ruins a court"

Multo fortiori, is an argument often used by Littleton, and is framed thus "If it be so in a feoffment passing a new right, much more it is for the restitution of an ancient right," &c (*see* Co Lit 253, See 260, a, *Tomlins Law Dic*)

Multo utilius est pauca idonea effundere quam multus inutilibus homines gravari A maxim meaning "It is more useful to pour forth a few useful things than to oppress men with many useless things" (*Black L Dict*)

Munafa (*Pj*) 'Profit' *i e*, a money rent to the landlord (*Bad Pow.* II, 716)

Munara A minor survey mark between lands of a village.

Munda The title of the headman in the (Ben) kolarian villages (*Bad Pow* I. 117.)

"Mundari khunt kattidar" defined, Ben. Act 6, 1908, S. 8.

Municipal board.

Mundbandi (*Mar*) In the Dekhin, the partition of the lands of a village among the cultivators, whether proprietors or permenent tenants, agreeably to certain proportions, and subject to a collective rate of rent, at which they may be let to cultivators it corresponds apparently with the village Zamindari tenure of the north west provinces (*Wil Gloss* 355)

Mund-kari (*Berar*) old resident tenants (hit) those who cleared the stumps (*Bad Pow* III 363)

Mundi-mar (mund, a stamp of a tree), same as buti-mar (*Bad Pow*)

Mundkati (*Ajmer*), Land grant as compensation for bloodshed (*Bad Pow* II 329)

Mundpatti (*Mar*) An extra rate levied on the lands of a coparcenary village (*Wil Gloss* 355)

Munewar (*Mal*) An officer who keeps the district account in Malabar.

Munguttige (*Karn*) Rent or tax on land paid in advance

Munhat-ul-Khaliq A marginal commentary on Radd ul-Mukhtar by Mohamed Ameen, better known as Ibu Abideen, a work of some authority in Mohammadan Law

Munib-gumastah (*Hindustani*) A head clerk or manager.

Municipal Pertaining to a municipality, of or pertaining to a town or city, that which belongs to a corporation or a city, pertaining to corporate or local self-government, or the corporate government of a city or town The term is sometimes used in contradistinction to International (*Bouvier L Dict*)

"MUNICIPAL" has been defined to be that which belongs to a corporation or a city, and to include the rules or laws by which a particular district, community, or nation is governed

"The adjective 'municipal' is much more elastic in its meaning than is the word 'municipality' or even than the term "municipal corporation"

Municipal Act A municipal act is one which a public officer or agent is required to perform upon a given state of facts in a prescribed manner, and in obedience to the mandate of local authority, an Act of the Legislature constituting a Municipality and conferring powers on them

Municipal affairs Affairs relating to or involved in the local government of the inhabitants of any locality

"Municipal authority" defined Act 20. 1887, s. 2 (1), Act 4, 1899, s 2, U P. Act 1, 1892, S 2 (2), U P Act 3, 1894, s 3 (1), Ben Local Self-Government Act

The expression "municipal authority" includes a municipal corporation or a body of municipal commissioners constituted by, or under the provisions of, any law or enactment for the time being in force Act IV of 1899 (Government Buildings), s. 2

MUNICIPAL AUTHORITIES As applied to a town, the term refers to its selectmen (*Ame Cyc*)

"Municipal board" defined. U P. Act 1, 1891, S 2 (9).

Municipal bond

Municipal bond In its ordinary commercial sense, a negotiable bond issued by a municipal corporation, to secure its indebtedness (*Black L Dict*)

A statutory power to issue bonds includes power to make them negotiable unless restrained by positive enactment The character of municipal bonds is as well established as that of bills of exchange or promissory notes

Municipal by law *See* Municipal Ordinance, and Municipal Regulations

Municipal claim. Municipal taxes are "municipal claims"

"Municipal commissioner" defined Act 13, 1880 s 2 (1), Act 20, 1891, s 14, Bom Act 1, 1874 s 2, Reg 5, 1886, s 100

The expression "municipal commissioners" means a body of municipal commissioners or a municipal committee constituted under the provisions of any enactment for the time being in force [Vaccination Act XIII of 1880), s 2]

"Municipal committee" defined (*See also* Committee) Act 11, 1881, s 2, Act 20, 1891, s 212

Municipal corporation. A municipal corporation is an investing of the people of the place with the local government thereof

A municipal corporation is commonly called a "municipality"

A municipal corporation is a legal institution formed by charter from sovereign power, or an Act of the Legislature erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self government and improvement and local administration of affairs of state

A municipal corporation is a body corporate and politic, established by law to share in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town, or district incorporated

A municipal corporation is a public corporation created by the government for political purposes, and having subordinate and local powers of legislation an incorporation of persons, inhabitants of a particular place, or connected with a particular district, enabling them to conduct its local civil government

"Municipal council" defined Mad Act 4, 1884, s 3

MUNICIPAL COUNCIL is not a public officer (55 Mad 207=135 I C 311=1931 Mad 808=61 M L J 642)

"Municipal district" defined Ben Act 3, 1899, s 3 (26), Bom Act 3, 1901, S 3 (5)

"MUNICIPAL DISTRICT" shall mean any local area which is at present a municipal district, and any local area which may hereafter be constituted a municipal district [Bom Act III of 1901 (District Municipality), s 3, cl (5)]

"Municipal drain" defined U P. Act 3, 1894, s 3 (8).

Municipal Market

"MUNICIPAL DRAIN" means a drain belonging to the municipal authority or under its direction, management and control [U P Act III of 1894 (Sewerage and Drainage), s 3, cl (8)]

"Municipal duty" defined Act 4, 1857, s. 2

"Municipal election roll' defined Bom Act 3, 1888, s 21 (2).

"Municipal ferry" defined Ben. Act 3, 1884, s 148

MUNICIPAL FERRY *See* 21 C.W.N. 601=25 C.L.J. 639=35 I C 782

"Municipal fund" defined. Mad. Act 1, 1884, s. 3 (*x*)

Municipal highway The term Municipal "highway" as used in the statutes, is generally held, to include streets, unless the statute itself indicates a different intention

Municipal Law. "Municipal law" is defined by Blackstone to be a "a rule of civil conduct prescribed by the supreme power of the state, commanding what is right, and prohibiting what is wrong", a prescribed rule of civil conduct, the expression of the legislative will of the state according to the forms of the constitution, that which pertains solely to the citizens and inhabitant of a state, and is thus distinguished from *political law* and *commercial law*, a law confined to a particular district, community, or nation, in a strict sense, the law of a particular place, such as a city or town (*Burrill*)

The term municipal law, as now understood, has no reference to the law of municipalities or of local government, but is employed as signifying national or territorial law, as distinguished from international law or usage, *i e* it refers to the law which belongs to men as linked to others in some political society, and determines all questions of public and private right within the national jurisdiction

DIFFERENCES BETWEEN MUNICIPAL AND INTERNATIONAL LAW The distinctions between municipal and international law are very marked Municipal law, or the national law of any particular State, regulates the relations between the State and its subjects and the relations between the subjects of the State *inter se*, international law regulates the relations between civilised States, who are recognised as being within its sphere Again the two differ widely as to source The sources of municipal law are national or local custom, and legislation or statutes emanating from the sovereign legislative authority in the State Of international law the sources are the custom of usage of all the States composing the family of nations, and law-making treatise or agreements between such States. (*Ency of the Laws of England*)

Municipal lien A "municipal lien" is a creature of statute, and a claim passed on such lien must ever on its face all the facts necessary to sustain its validity

"Municipal market" defined Ben. Act 3, 1884, s 336, Bom. Act 3, 1888, s 398.

MUNICIPAL MARKET A market conducted under municipal regulations for the sale of provisions.

Municipal market

MUNICIPAL MARKET A "municipal market" consists—First, in a place for the sale of provisions and articles of daily consumption, second, convenient fixtures, third, a system of police regulations fixing market hours, making provisions for the lighting, watching, cleaning, detecting false weights and unwholesome food, and other arrangements calculated to facilitate the intercourse and insure the honesty of buyer and seller, fourth, proper officers to preserve order and enforce obedience to rules"

"Municipal office" defined Mad Act 1, 1884, s 3 (*y*)

Municipal ordinances are laws passed by the governing body of a municipal corporation for the regulation of the affairs of the corporation In modern municipal parlance, ordinance and by-law are convertible terms, meaning the local law of the municipality

Municipal overseer is a public servant 15 Mys L J 182

Municipal purpose A public or governmental purpose, as distinguished from a private purpose, a purpose intended to embrace some of the functions of government, local or general

Municipal regulations. The terms "by-laws", "ordinances", and "municipal regulations' have substantially the same meaning, and are the laws of the corporate district, made by the authorized body, in distinction from the general laws of the state They are local regulations for the government of the inhabitants of the particular place They are not laws in the legal sense, though binding on the supreme power of the state, from which alone a law can emanate, and therefore cannot be statutes, which are the written will of the Legislature, expressed in the form necessary to constitute parts of the law

Municipal Revenue The term includes all taxes collected for municipal purposes from all sources whatsoever

"Municipal slaughter-house" defined Bom Act 3, 1888, S 398

"Municipal town" defined Ben Act 3, 1867, S. 1.

"Municipality" defined Act 20, 1891, Ss 3 (1), 212, Act 16, 1903, S 2 (*a*), Ben, Act 5 1876, S 6 (12); Ben Act 3, 1883, S 2, Ben Act 3, 1884, S 6 (9), Bur Act 3, 1898, S 2 (7), Mad Act 4, 1884, S 3 (*rw*), U P Act 1, 1891, S 2 (*a*), U P Act 1, 1892, S 2 (1), U. P Act 3, 1894, S 3 (2), U P Act 1, 1900, S 3 (1), Reg 5, (2) 1886, S 2 (*2*), Reg 2, 1907, S 2 (*a*)

"The word *"municipality"* derives its name from the Roman municipium a free town possessing the right of Roman citizenship, but governed by its own laws Such a type of community was well suited to the political genius of the Anglo-Saxons, and towns formed on this self-governing model and protected by royal or baronial charters sprung up rapidly in mediaeval England The important part played by these well-ordered and peaceable trading communities in breaking down the power of the feudal barons is well known They helped, says the historian Robertson, more than any other cause to introduce regular government, police, and arts They are still the pillars of modern civilisation." (*Ency of the Laws of England*), Arnold's Law of Municipal Corporations, Lumley's Public Health, Glen, Public Health, Bryce, Ultra Vires, Grant on Corporations, Dillon on Corporations

"MUNICIPALITY" means any local area declared to be a municipality, Punjab Act III of 1911 (Municipal), S 3, Cl 9

Municipium A free, or privileged town, one that had the right of being governed by its own laws and customs (*Burrill*), the name given in the Roman law to a city enjoying the right of local self-government (*Ame Cyc*)

"Munim" The word "munim" connotes agency 19 N L.J 247

Muniment " 'Muniments,' are evidences or writings concerning a man's possession or inheritance, whereby he is able to defend the estate which he hath" (*Termes de la Ley*)

MUNIMENT. Support, defence, record, writing upon which claims and rights are founded and depend, evidence of title, charters

Muniments are evidences of title to estates, whether of public bodies or private persons, being called *Muniments*, (Corruptly mimments,) from Munic, to defend, because inheritances and possessions are defended by them (3 Inst 170) (*Tomlins Law Dic*)

Muniments of Title A general expression for all means of evidence, by which an owner, corporate or individual, may defend title to real property

Muniment-House, (*Munimen*) In cathedral and collegiate churches, castles, colleges, or public buildings, is a house or little room of strength, purposely made for keeping the seal, evidences, deeds, charters, writings, &c, of such church, college, &c (*Tomlins Law Dic*)

"Munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use, Official Secrets Act (XIX of 1923), S 2

Munnoverty A class of military tenants of a higher order, in the Northern Circars who were bound to bring their adherents with them into the field

Munnu or Nalu Meni Nilam. A paddy-field requiring only one para of seed and capable of producing three and four fold (*Logan's Mal Man*)

Munpattom (*Mal.*) Simple lease for one year where tenant advances rent (*Sun Iyer's Mal Law, Moore's Mal Law.*)

Munsarim (*P A*) an assistant in Survey (Berar) a Revenue Inspector or kanungo (*Bad. Pow*, III. 384)

Munshi (*Persian*) A writer, a secretary The word is very commonly used among Europeans to denote a teacher of Arabic, Persian or Urdu It is sometimes applied also to a native officer appointed to administer a town.

Munshi.

Munshiana.

Munshiana The practice of Munshiana at the Lahore Bar is that a litigant pays counsel for his clerk, or pays to the clerk direct, about 10 per cent of the fee paid to counsel, except where the fee is large, and that in the latter case the percentage is proportionately reduced The Munshiana system is very similar to that in force in England where a clerk is paid by his employer and receives fees from that employer's clients 6 Ind Cas. 736 (738)

"Munsif" defined (*See also* District Munsif, Honorary Munsif, Village-Munsif) U P Act 3, 1892, S 2 (4), U P Act 2, 1896, S 3 (3)

MUNSIF (*A*) Justice, an arbitrator, a judge. Under the British Government the term is applied to the native Judge of lowest rank

"Munsif" means any Munsif of competent jurisdiction within the district in which the panchayat is constituted Punjab Act VI of 1912 (Punjab Panchayat), S 2, cl 4

Munsif (*Village*) A just and equitable man Native Judge and Collector of revenue in the village, village headman

Munsif-dar, (*H*) A munsif or native Judge (*Wil. Gloss* 356.)

Munsif-katcheri, (*H*) The munsif court or office, (*Wil Gloss* 356)

Munsif-name, (*H*) The decree of a native judge or arbitrator, an arbitration bond (*Wil Gloss* 356)

Munta (*Tel*) A grain measure containing three seers and a half

Muntakhib (*A*) an abstract of the documents, in the older Survey records (N W P) system being a list of names, with the numbers of the fields held by each (*Bad Pow*)

Muppa Sthanam, (*Mal*) In certain families the first or senior Sthanam is called Muppa Sthanam (*Moore's Mal Law*)

Muppukalavu (*Tam*) Dues payable to the headman of a village deduction from the revenue on that account

Muquarrari[See *Mukarari*] (*A fixed*) (*Ben*) &c applied to rent, at fixed rates, but also to a tenure at such rates (*Bad Pow* 1 546) (cf Istimrari a tenure might be both istimrari and maqarrari, fixed, i e as regards the permanent tenure and the invariable rent.)

Murage a toll or tribute levied for the repairing or building of public walls" (*Termes de la Ley*)

Muraimir (*Tam*) Supply of water, for irrigation in settled order or rotation

Murdafarash (*Bengali*) The name of a low caste who remove dead-bodies.

"Murder" defined (*See also* Culpable homicide, Culpable homicide not amounting to murder) Act 45, 1860, S 300

MURDER —"Murder is when one is slain with a man's will, and with malice prepensed or forethought" (*Co. Litt* 287 *b*. *Termes de la Ley*).

Musical.

"MURDER is unlawful homicide with malice aforethought" (*Steph.* Cr 158, *See* 3 Co Inst, Hawk. P C, bk 1, c 30, Foster, Cr Law,, East, P C.; 3 Steph, Hist Cr Law, 1-107; Steph. Dig. Cr. Law, Archb. Cr Pl, 23rd ed., *Russell on Crimes.*)

Murei (*M*), custom of giving labour in rotation: (*Bad Pow* see ii 121)

Muri (*Mal*) a fragment, note, bond, receipt. (*Logan's Mal. Man Moore's Mal. Law.*)

Muripattaiyam (*Tam*) A promise or agreement in writing a bill of sale of a slave (*Wil. Gloss.* 357)

Murramut, Repairing, mending Charges for repairs.

Murshid (*A*) A teacher a spiritual guide, member of the higher order in a brotherhood of fakirs

Mursaddi The title of a class of Muhammadan devotees who have adopted the tenets of Nanak as their rule of faith

Musafirkhana (*Hindustani*) A rest house for travellers, a sarai The name among Hindus is dharmasala

Musaheb (*A*) A companion, an associate, a confidential servant, who is often also a relative, appointed as companion to a youth

Musalman, (*H*) A believer, a mohammad (*Wil. Gloss* 358)

Musammat, (*H*) A title prefixed in Hindustan to the names of respectable women in public documents and judicial proceedings (*Wil. Gloss* 357.)

Musa Sohag (*Hindustani.*) The name of small body of a Bechara Sunny fakirs, who dress as women Their patron saint Musa, who lived at the close of the 15th century, is said to have adopted this dress as a symbol that he was devoted to God as a wife to her husband

Musha The application of the doctrine of Musha depends on the nature of the property covered by a document The doctrine of Mushaa cannot be held applicable to a case in which there are defined shares in certain items of property, though undivided, and held by co-sharers for their convenience 65 C L J 34=A I R 1937 Cal 500.

Mushahara (*A*), (*Ben*) A percentage of the L R collections allowed to Zemindars (formerly) (*Bad Pow* 1, 432 note)

Mushakhas (*H*) Ascertained, stipulated applied to lands or district for which a settlement of the revenue has been made it is also applied to subordinate tenures for which the holders engage to pay a fixed rent annually upon the whole lot. (*Wil. Gloss.* 358)

Mushakhsidar (*N-W P Azimgarh*) (*Bad Pow* ii, 161.) (*Derajet, Pl*), a contractor for the village revenue (*Bad Pow* 1, 656 note.)

Mushrif (*H*) An examiner, an inspector, an officer of the treasury who authenticates accounts and documents. (*Wil Gloss.* 358.)

Musical Pertaining to music or the performance of music (*Standard Dict.*)

Muslim.

Muslim (*H*) A believer, applied especially to a Mohammadan; one who believes in the true faith (*Wil Gloss* 358) The common name of all who profess Islam; a Musalman or Muhammadan.

Mussad (*Mal*) An inferior class of Brahmans in Malabar who are allowed to eat with Nambudris but not to intermarry with them (*Moore's Mal Law*)

Mussundee The name of a sub-division of the Sikhs who were opposed to Govind, the last guru and with whom he forbade his followers to have any intercourse.

Must In its ordinary and mandatory sense, obliged, or required, although the term is often used in a directory or permissive sense as synonymous with may

Must and may. In *People* v *Thomas*, 32 Misc (N Y) 170, 173, it is said "The word 'must' is mandatory It imports a physical or moral necessity The word "may," when used in a statute which imposes an imperative duty, is construed to mean 'must,' but the word 'must' is peremptory It excludes all discretion, and imposes upon the court an absolute duty to perform the requirements of the statute in which it is employed"

Mustagir A farmer of land revenue A farmer, a renter, one who holds lands under a proprietor at a stipulated rate, also a farmer of revenue appointed to make the collections on the part of Zamindar or proprietor, on condition of paying a fixed sum (*Wil Gloss.*)

Mustagiri Renting, farming, holding in farm settlement in farm.

Mustajir (*A*) See *Mustagir*

Mustamin (*A*) Literally one who seeks protection, applied to any person who lives under a Government of a different religion to his own A person residing in a foreign country under a protection procured from the ruling power (*Mac Moh. Law*)

Mustard oil 158 I C 728=1935 Pat. 521

Mustaufi (*A*) An auditor of accounts, an officer deputed to inquire locally into any matter

Muster As a noun, a term sometimes applied to a troop of soldiers already enrolled, armed, and trained As a verb, to call together a military force, to accept or approve the troops collected

MUSTER Used in respect of an army means to make a shew of soldiers well armed and trained in some open field to shew men and their arms, and to enrol them in a book (*Termes de la Ley*)

"Mustered into service" as used in connection with the enrolling of troops for the purposes of war, or for the organizing of them into companies and regiments, is a term equivalent to "accepted" for military service.

Mustizo. An issue of a Negro and an American Indian. (*Ame Cyc.*)

"Muta" is a very vague and unsatisfactory form of contract for personal relations There must be definite time during which the relationship is to last and definite sum or thing specified as dower. 117 I.C 561 =A I.R. 1929 R 35.

Mutilate

Mutah (*A*) A temporary marriage, a lefthanded marriage, allowed by the Shiahs, but considered illegal by the Sunnis

Mutalalan (*Mal*) A proprietor of land or any other property

Mutalavakasam (*Mal*) Inheritance, right to property.

Mutale-duppa Revenue, income, profit

Mutalik (*H*) Dependent, a servant in Marathi it was applied, under the Peshwas government, to the deputy of any person holding a hereditary office acting for him in his absence, and allowed to use his seal the deputy or agent of a Despandya (*Wil Gloss* 359)

Mutasaddi (*A*) A writer, a clerk

Mutatis-mutandis With the necessary changes in points of detail (*Wharton L Lex*)

Mutawalli (*A*) The Superintendent or Treasurer of a mosque An administrator or procurator of any religious or charitable foundation. (*Mac Moh Law*) The warden of a mosque or of an endowment

Mutazala The name of an independent Muhammadan school, an offshoot of the Shiahs, and founded by Wasil bin Ata, a contemporary of Abu Hanifa.

Mute One dumb, who cannot or refuse to speak. (*Tomlins Law Dic*)

Muth-tha (*Tel*) The subdivision of a district in the northern circars, a large estate, including several villages, and corresponding with a zamindari, in Hindustan (*Wil Gloss* 359)

Muththadar (*Tel*) The holder of a Muththa, a landholder, a zamindar It is said to be sometimes applied to the Patil, or headman of a village (*Wil. Gloss* 359)

Muththadari (*Tel*) The tenure or office of a Muthadar

Muththawari (*Tel*) Settlement of revenue, or assessment by, muttha, or subdivisions of a district (*Wil. Gloss.* 359.)

Mutilate. To cut off a limb or an essential part of the body (*Webster Dict*), to deprive of some essential part, to render imperfect. (40 *Am Rep.* 269)

MUTILATE In 40 Am Rep 269, it is said. "'Mutilate' means something less than total destruction Mere mutilation of a will would not, of itself, take from a will all legal force. A mutilation, however, which takes from the instrument an element essential to its validity, would have the effect to revoke it"

TO MUTILATE, MAIM, MANGLE Men are exposed to be *mutilated* by means of cannon balls they are in danger of being *mangled* when attacked promiscuously with the sword, they frequently get *maimed* when boarding vessels or storming places One is *mutilated* and *mangled* by active means; one becomes *maimed* by natural infirmity. *Mutilate* and *mangle* are applicable to moral objects, *maim* is employed

Mutilation

only in the natural sense In this case *mangle* is a much stronger term than *mutilate*, the latter signifies to lop off an essential part, to *mangle* is to *mutilate* a thing to such a degree as to render it useless or worthless

Mutilation The depriving a man of any member, etc (*Tomlins Law Dic*) A word sometimes used in the sense of revocation

Mutiny The offence of mutiny implies collective insubordination, or combination on the part of two or more persons, subject to military law, to resist the lawful authority of superior military or naval officers, whether by violence or passive resistance, or to induce others to resist such lawful authority It is thus either (1) the overt act of insubordination, or (2) the combination which may or may not have resulted in such overt act, or (3) a combination to induce others to insubordination (*Ency of the Laws of England*) *Clode*, Military and Martial Law, *Simmons*, Courts Martial, Manual of Military Law, War Office, 1907

MUTINY In shipping parlance, a term which consists in attempts to usurp the command of the vessel from the master or to deprive him of it for any purpose by violence, or in resisting him in the free and lawful exercise of his authority, the overthrowing of the legal authority of the master, with an intent to remove him against his will, and the like In common parlance there is little or no difference between the term 'Mutiny' and 'Insurrection' (43 *Am Dec* 180)

Mutira Horsegram, answering to 'Kollu' in Tamil, 'Kooltee' in Hindustani

Muttedar (*Tel*) The holder of a Muththa, a landholder, a Zamindar, it is said to be sometimes applied to the Patil, or headman of a village

Muttha Artificial estates or parcels put up for sale during the attempt to make a Zamindari S (M) applied also to a subdivision of a Zamindari estate (*Bad Pow* III 17, 137) a sect or section of a tribe localized (in Orissa) (*Bad Pow* I 562)

Mutthadar (*Bo.*) Holder of the 'seal' a headman of a section in a shared village (*Bad. Pow.* III 267)

Mutual Reciprocally acting or related, reciprocally receiving, reciprocally giving and receiving, a word which denotes a common interest

"MUTUAL IS NOT SYNONYMOUS WITH 'COMMON" The latter word, in one of its meanings, denotes that which is shared, in the same or different degrees, by two or more persons, but the former implies reciprocal action or interdependent connection (*Black L Dict*)

Mutual, reciprocal Mutual supposes a sameness in condition at the same time reciprocal supposes an alteration or succession of returns Exchange is free and voluntary, we give in exchange and this action is mutual return is made either according to law or equity, it is obligatory, and when equally obligatory on each in turn it is reciprocal Voluntary, disinterested services rendered to each other are mutual, imposed or merited services, returned from one to the other, are reciprocal friends render one another mutual services, the services between servants and masters are reciprocal The husband and wife pledge their faith to each other mutually,

Mutual, open, current, account.

they are reciprocally bound to keep their vow of fidelity The sentiment is mutual, the tie reciprocal

Mutual accounts. "'Mutual Accounts', by which are meant not where one only of two parties has received money and made payments on account of the other, but where each of two parties has received and paid on account of the other" (Seton, 1358, *Phillips* v *Phillips*, 9 Hare 473)

An account is mutual within the meaning of Art 85 of the Limitation Act when there are transactions on each side creating independent obligations on the other Where the transactions create obligations on one side only, those on the other being merely complete or partial discharges of such obligations, the account is not mutual 111 I C 791=8 Ind Cas 141

Mutual benefit insurance companies are those organizations which are formed, not for profit, but for the mutual, protection, relief or benefit of their members or their members nominated beneficiaries. They are known by various names, usually as beneficial associations, or benevolent, friendly or fraternal societies. They resemble mutual insurance companies doing business without capital on the assessment plan, but differ from those companies in various respects The main point of distinction lies in the purpose of their organization They are usually formed, not as insurance companies, but as social or benevolent associations, insurance being an incident and not the main purpose of the organization, and the insurance feature is adopted, not for the purpose of gain, but for the object of benevolence (29 *Ame Cyc* 7)

Mutual combat A combat in which both parties enter willingly

Mutual conditions Where mutual covenants go to the whole considerations on both sides, they are mutual conditions, the one precedent to the other (99 Fed 606, 609)

Mutual consent 'Mutual consent' as used in S 488 (4), Cr P Code, means a consent on the part of the husband and wife to live apart no matter what the circumstances may be I L R (1937) All. 430=166 I C 894=38 Cr L J 312=9 R A 458=1936 A L J 1379=1936 A W R 1268=1937 A L.R 102=A I R 1937 All 115

Mutual covenant A covenant where either party may recover damages from the other for the injury he may have received from a breach of the covenant in his favour

"Mutual credits" The term "mutual credits" in S 39 11 and 12, Vic C 21 (Insolvent Act) mean simply reciprocal demands which must naturally terminate in a debt 19 C 146

Mutual life insurance A system of life insurance carried on by members of a company having no share holders and no subscribed capital, and dividing the whole of its profits amongst the policyholders

Mutual, open, current account. An account is not a mutual, open, current account if the nature of dealings is not such that the balance must shift on one side or the other 106 I.C 53=A.I.R. 1928 Nag. 127.

Mutual Pool.

A mutual, open and current account, between the parties is such as consists in reciprocity of dealings between them and not merely of items on one side, though made up of debits and credits In such an account, each party should be able to say to the other "I have an account against you" Although a shifting balance is a test of mutuality, its absence is not a conclusive proof against mutuality 7 Pat 238=107 I C 533=A I R 1928 Pat 221, 21 M L J 391 =8 I C 141, 23 L W 573=92 I C. 106=1926 Mad 224

Mutual pool. A method of gambling on horse races

Mutual testament A will made by two persons, each leaving his or her effects to the other Where a husband and wife executed a mutual testament by which each left his or her effects to the other spouse, and then bequeathed a number of legacies, the Court, upon the death of the wife, granted probate of so much only of the instrument as became operative upon her death (*Ency of the Laws of England*)

Mutuality The state or quality of being mutual, reciprocity, interchange

Mutuum A kind of bailment, the contract by which things are given in loan, which cannot be used without their extinction or alienation, and which, therefore, imposes an obligation on the borrower to restore as much of the article borrowed of the same kind and value as he received (*Tomlins Law Dic.*)

Mutwalli Means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act any person who is for the time being administering any wakf property, Act XLII of 1923 (Mussalman Wakf), S 2, cl. (*c*)

Muwajjal (*A*) Payment deferred. (*Mac Mah Law*)

Muwalat (*A*) Friendship, mutual assistance in law a contract of mutual amity by which each party acquires a claim to the property of the other to devolve on the survivors.

Muwallad (*A*) Literally begotten, an Indian born Arab whether of the whole or the half blood

Myal (*Mal*) Land on which rice plants are sown thickly for the purpose of transplanting, land watered by rain.

"My house" Where a testator, after dedicating a house to the service of the thakur, directed that the deity should be located in "my house," held, that "my house" meant the testator's family dwelling-house 31 C 166=8 C.W N 273

Myo-ok (*L B.*), an officer having charge of a township' (myo) composed of several circles and forming a sub-division of a district (*Bad Pow* iii 527 (U B.), iii. 536)

Myopia. (*Med*) The form "myopia" is used to designate shortness of sight.

Nadhwana

Mystery A covenant to teach an apprentice the "art and mystery of the tanning business" means that the covenantor is to make the apprentice as good a workman in the trade as those generally are who have regularly learned it

In a rule requiring an indictment to state a defendant's "*mystery*" the term '*mystery*" means his trade, art, or occupation, such as mercer, tailor, painter, clerk, school master, husbandman, laborer, or the like

N

N In conveyances, maps, charts and other instrument, "N" is a letter used as an abbreviation of the word "North"

N A An abbreviation for "non allocatur" meaning "it is not allowed"

N B An abbreviation for nota bene, mark well, observe, and also for *nulla bona*, no goods

N P An abbreviation for "Neither party", also for "Nisi Prius" and "notary public"

N. R An abbreviation for "New Reports", also for "not reported" and for "non-resident"

N. S An abbreviation for "New Style" (*Black L Dict*)

Nachchu (*Tel*) Waste land overrun with knot-grass

Nachni It is one of the crops of the konkan, and one of the cheapest grains It is the ragi of upper India

Nadagi (*Mal*) Planting lease in the northern part of South Kanara (*Sund Iyer's Mal. Law*)

Nadanirvari (*Tam*) A tax levied in the dry districts of Trichinopoly on lands watered by channels from rivers or water-courses

Nadar-munsib (*Karn*) An item of remission of revenue in Mysore, on account of the poverty of the cultivators

Nadayar (*S Kanara*), a military caste (*Bad. Pow.* iii 147)

Naddu, an ancient local union of villages or family settlements in S. India (*Bad Pow* i. 117 iii 148, 157, 467.)

Nadgi tenure If a *Nadgi* tenure holder neglects to cultivate the land, allows the hut to go into disrepair, carries away some of the building materials himself, and allows the rest to be stolen by others, he is liable to be evicted from his holding at the instance of the landlord No definite rule can be laid down that the overlord in *Nadgi* tenure has to bear the expense of all improvements 27 Bom L.R 82=86 I C 24=A I.R 1925 Bom 178

Nadgir watan. Use of the words, 'Kamavishi', 'amani' and 'vopundile'—Effect of. *See* 39 Bom L R. 572

Nadhwana *Nadhwana* is leviable not on the occupation of the land but on the use of water for irrigation Therefore it is not a 'cess' as defined by S 56 of the Land Revenue Act, nor does it come under S. 86 But that *Nadhwana*, must be included

Nadi

in 'Sayar' is clear from the definition of 'Sayar' which includes irrigation charges Dues which come under the definition of 'Sayar' can be sued for under S. 132 of the Agra Tenancy Act provided they are 'payable', and they are entirely different from the cesses referred to in the Land Revenue Act, 1938 A W R 38 (B R)

Nadi or Nadhi (*S*) common term for any river above the size of small stream

Nadi (*Ajmere*) *See* Nari A small embankment to retain irrigation water

Naduvali (*Mal*) Governor of a province Name given to petty chiefs under the old Malabar Rajahs (*Moore's Mal Law*)

He was not considered a Naduvali who had not at least 100 Nayars attached to his range, any number below that ranked a person as a Desavali (*Log Mal Man*)

Nafa Nuqsan *See* 26 A L J 172, 114 I C 45

Nagala (*Karn*) A measure of grain equal to four marakals

Nagla (*N W.P*) (locally), equivalent to patti

Nahri Irrigated from a canal. Land irrigated by canals by flow or lift (Land Revenue Assessment Rules, 1929, *Bad Pow*)

Nai, a village barber, surgeon, &c, (*Bad Pow* i, 151)

Naib, (*A*) A Vicegerent A Deputy (as) Naib-Kazi (*Mac Mah Law*)

Naib-i-Nazim, (*P*) Deputy of the Nazim or Governor (*Ibid*)

Naib-Tahsildar. The deputy or assistant of the Tahsildar

Naidu (*M*), a village headman a caste in South India (*Bad. Pow* iii 88.)

Naik *see* Nayak.

Naikins Naikins in Bombay are professional prostitutes and they form a class by themselves 14 Bom L R 1129=37 B 116=17 Ind Cas 834

Nair (*Mal*) [*See also* Nayar] Chief, Headman The Nairs are a peculiar description of Hindus, principally of the Military class in Malabar (*Fifth Report*) Nair is a caste of sudras in Malabar.

Naja Practice of levying rent of absconding tenants on those that remained (Ben) (*Bad Pow* i 421 note 629)

Najib (*A*) This term signifying originally 'noble' is applied among Mahomedans to irregular infantry Ranjit Singh, the Sikh ruler, had a regiment of Najibs consisting of Musalmans who joined him from Samru Begam on her death The British Government also retained some najib crops chiefly as a kind of militia.

Naka Is a cut in the water course from which water is carried direct into the fields Place of this cut (Naka) is always fixed by the Divisional Canal Officer when sanctioning a *warabandi*

Naked completely without clothing, mere, plain, imple; (as Naked truth.)

Nala.

Naked Confession is one that is not sufficient to lay a basis for conviction, it being a confession which relates no circumstances proven to have existed

Naked Contract Contract devoid of consideration

Naked lie A bare naked lie, is "saying a thing which is false, knowing or not knowing it to be so, and without any design to injure, cheat, or deceive, another person" (per *Buller, J*, *Pasley* v *Freeman*, 3 T R 56 *Ame Cyc*)

Naked possession Actual possession or occupation of land, without any apparent right to hold and continue such possession

"NAKED POSSESSION" is the lowest and most imperfect degree of title

Naked power Naked power exists when authority is given to a stranger to dispose of an interest in which he had not before, nor has by the instrument creating the power, any estate whatever.

A naked power is a power simply collateral and without interest, a right or authority disconnected from any interest of the donee in the subject matter

Naked promise A promise without consideration whereon therefore, no action can be founded

An oral promise to renew a note to be given by a debtor in payment of a past due debt is a naked promise, that involves no legal obligation, but rests entirely on the integrity and good faith of the one who made it, with no power of the courts to compel performance or award damages for nonperformance As was well observed by one who wrote the first work on common law that is now existent "A nude or naked promise is where a man promises another to give him a certain money such a day, or to build him a house, or to do him such certain service, and nothing is assigned for the money, or for the building, or for the service"

Naked woman A woman represented naked only to the waist, is not a picture of a "Naked" woman (*Common wealth* v *Dejardin*, 126 Mass. 46)

Naked trust Passive trust

Nakhuda (*Persian*) The Captain of a ship.

Nakra (*Maratha*), land entirely free of revenue, not even paying salami, judi, or udhadjama (*Bad. Pow.* iii 301)

Naksha jinswar Crop statement

Nakshbandia (*Hindustan*) The name of a community of fakirs of the Bashara order, followers of the saint Khwajah Baha-ud-din of Nakshband

Nal Nal means a closed wooden box into which the small amounts meant for the gaming house keeper are put by the gamblers 116 I C 455=30 Cr L.J 625=1929 Cr C 312=13 A..I.Cr.R. 58=A I.R. 1929 Lah. 720

NAL, a hollow reed, a measuring-rod (N W.P.) (*Bad.-Pow.*)

Nala, a ravine, a mountain or other stream a division of land among certain tribes (D.I. Khan. Pj.). (*Bad.-Pow.* ii. 654.)

Nalband.

Nalband (*Hindustani.*) A farrier

Nalika. (*Mal. Tam. Tel*) One-sixtieth part of a day, 24 minutes. (*Moore's Mal Law.*)

Nallabhumi (*Tel*) Black soil.

Nalubhayan: (*Mal.*) 4 kinds of produce, cocoanut, arecanut, pepper and jack. (*Sund. Iyer's Mal Law; Log. Mal Man.*)

Namazgah (*Hindustani*) A place of prayer, the part of a mosque where the prayers are said.

Namaz-i-janazah (*Persian*) The funeral service of the Mahommedans.

Namazisham (*Persian*) Evening prayer, the fourth prayer of the five appointed for each day.

Nambiar (*Mal*) A title adopted by certain Nayars, a Nayar caste. (*Moore's Mal. Law*)

Nambidi (*Mal*) An inferior class of Brahmans. A synonym for Elayad. (*Moore's Mal Law*)

Nambisan (*Mal.*) A class of temple servants. (*Sund. Iyer's Mal. Law*)

Nambiyar (*Mal*) The title of a division of the Nairs.

Nambudiri (*Mal*) The indigenous Malabar Brahmin. (*Sund Iyer's Mal. Law*)

Nambudripad (*Mal*) A head Nambudiri The affix 'pad' denotes superiority in rank, wealth and influence. (*Moore's Mal Law.*)

Nambutiri or Namburi. (*See* Nambudiri. A Brahman of Malabar.)

Nam debes melioris conditionis esse quam actor meus a quo jus in me transit. A maxim meaning "One should not be placed in a better condition than the person to whose rights he succeeds.'

"Name" defined 57 8 V c. 60, S. 742, Act 4, 1889, S. 2 (5).

NAME. That by which any person is known or called There is a name of a person, bodies politic and places, and of baptism and surname; also names of dignity, &c In some cases a name by reputation is sufficient. (*Tomlins Law Dic*)

A name is a word or words, designations or appellation, used to distinguish a person or thing or class from others, and more particularly one or more words used to distinguish a person.

"NAME" is a word of various meaning. A man's name is the synonym of his power and personality. It is often put metaphorically for the man himself. (*Carpenter* v. *Carpenter*, 34 Am. Rep. 716.)

"Name" includes any abbreviation of a name. Act IV of 1889 (Merchandise Marks), S. 2, cl. 5.

"Where a man calls himself by a name which is not his name, he is telling a falsehood." Lord Esher, M.R. *Reddaway* v. *Banham* (1895), L.R. 2 Q.B.D, (1895), p. 293.

ABBREVIATIONS OF NAMES. A name may be represented by an abbreviation consisting of a letter or letters, used for the name. Judicial notice will be taken of the ordinary and commonly used abbrevia-

Name

tions of Christian names and in certain cases also of the abbreviations of surnames and parts of surnames. In the case of less common abbreviations, the question is one of fact.

"CHRISTIAN AND SURNAME." May consist in the surname in full and the initials of the Christian name.

CHRISTIAN NAME AND SURNAME. In England, by the common law, since the time of the Norman conquest, a legal name has consisted of one Christian or given name, and of one surname, or family name.

CHRISTIAN NAME The Christian name is that which is given after his birth or at baptism, or is afterwards assumed by him in addition to his family name.

INITIALS. A Christian name may consist simply of a letter or letters, whether vowel or consonant. The use of initials however instead of a Christian name before a surname, is a common practice, and has come to be recognized as a sufficient statement of the person's name. (*Ame Cyc.*)

MIDDLE NAME OR INITIAL. Under the well settled rule that the law recognizes only one Christian name, it has been repeatedly held that the insertion, or omission of or mistake in a middle name or initial in a criminal as well as in a civil proceeding is immaterial. (*Ame. Cyc.*)

NAME, APPELLATION, TITLE, DENOMINATION. "Name is a generic term, the rest are specific. Whatever word is employed to distinguish one thing from another is a name; therefore, an appellation and a title is a name, but not *vice versa* A name is either common or proper; an appellation is generally a common name given for some specific purpose as characteristic A title is a species of appellation, not drawn from anything personal, but conferred as a ground of political distinction. An appellation may be often a term of reproach, but a title is always a mark of honour. An appellation is given to all objects, animate or inanimate; a title is given mostly to persons, sometimes to things. A particular house may have the appellation of "the cottage," or "the Hall", as a particular person may have the title of Duke, Lord, or Marquis. Denomination is to particular bodies, what appellation is to an individual; namely, a term of distinction, drawn from their peculiar characters and circumstances. The Christian world is split into a number of different bodies or communities, under the denominations of Catholics, Protestants, Calvinits, Presbyterians, &c., which have their origin in the peculiar form of faith and discipline adopted by these bodies.

NAME, REPUTATION, REPUTE, CREDIT. Name and repute are taken either in a good or bad sense; reputation and credit are taken in the good sense only: a person or thing may get a good or an ill name: a person or thing may be in good or ill repute, reputation may rise to different degrees of height; or it may sink again to nothing, but it never sinks into that which is bad; credit may likewise be high or low, but when it becomes bad it is discredit. Families get an ill name for their meanness; houses of entertainment get a good name for their accommodation, houses fall into bad repute when said to be haunted, a landlord comes into high repute among his tenants if he be considerate and indulgent towards them,

Name

ORIGINAL AND MODERN USE OF NAMES. "The names of persons at this day are only sounds for distinctions sake, although it is probable they originally imported something more as some natural qualities, features, or relations, but now there is no other use of them but to mark out the individuals we speak of, and to distinguish them from all others. (*Friedman* v. *Goodwin*, 9 Fed Cas. No 5, 119.)

PREFIXES AND SUFFIXES. The prefixes "Mr." and "Mrs" appearing before names of persons are not themselves names or parts of names. But certain well known and commonly used prefixes have come to be recognized as integral and essential parts of surnames.

SUFFIXES The addition of the abbreviations "Sr," or "Jr" or "2nd" or words of similar import to a name is no part of the name. Such additions are used merely to distinguish between two or more persons bearing the same name, especially when they live in the same community "Jr." and "2nd" being usually adopted to designate the son, when the father bears the same christian name as well as the same family name. When father and son bear the same name by the use of the name without the addition, the father is *prima facie* intended, and of two persons not father and son the elder is presumed to be intended, but slight evidence will be sufficient to rebut the presumption and identify the son or the younger person. Where the only difference between two names is in such an addition, they are presumed to refer to the same person until the contrary is affirmatively alleged and proved (*Ame. Cyc*)

Named. Means 'mentioned nominatim, if not by all their names, by some at least, either, their Christian or their surnames," (*per* Stirling, J., Re Jodrell, W.N. (89), 230, 34 S.J, 129), it "is also used in no unnatural sense, as synonymous with 'specified' or 'mentioned," or designated. (*Stroude*)

"ABOVE NAMED" means "above mentioned"

TO NAME, CALL A person is named by his name whether proper, patronymic, or whatever is usual. he is called according to the characteristics by which he is distinguished. The emperor Tiberius was named Tiberius. he was called a monster William the First of England is named William, he is called the Conqueror. Many ancient nations in naming any one, called him the son of some one as Richardson, the son of Richard, and Robertson, the son of Robert

TO NAME, DENOMINATE, STYLE, ENTITLE. Adam named everything, we denominate the man who drinks excessively "a drunkard;" subjects style their monarch "His Majesty;" books are entitled according to the judgment of the author.

Name-lender (*See* Benami transaction), That a person signed the pro-note as a mere "name-lender means that it was agreed that he was not to be sued upon it. 20 M L.J. 144=7 M L.T. 85=5 I.C. 757.

Namely. A term which imports interpretation, that is it indicates what is included in the previous term.

"NAMELY" AND "INCLUDING." "A difference, in grammatical sense, in strictness exists between the words 'namely' and 'including.' 'Namely' imports interpretation, *i e* indicates what is included in the

Nankar.

previous term, but 'Including' imports addition, *i e* indicates something not included" (2 Jarm 229, *Stroude*)

Names are merely used as one method of indicating identity of persons

Names are to designate persons, and where the identity is certain a variance in the name is immaterial.

Namesake. Person or thing with same name as another.

"Naming of arbitrator" meaning of. *See* 20 B. 227

Nam exemplo perniciosum est ut ei scripture credatur qua unus quisquam sibi adnotatione propria debitorem constituit A maxim meaning "Care is to be taken that writings shall not have such credit that a person by his own memorandum can make out another person his debtor."

Nam que haeret in litera haeret in cortice A maxim meaning "For he who confines himself to the letter, goes but half way"

Namgahran. (*Parsi religion*) A namgahran literally means a record of names Amongst Zoroastrians, it is customary when a priest recites prayers in a Parsi House to invoke blessings on the souls of the dead members of the family; and most families have a sort of book in which the names of the dead members of the family are recorded. 2 I C 701 (737)=11 Bom L R. 85=5 M.L.T. 301=33 B 509

Na-mukammal applied to joint-villages only *partly* divided into severalties. (*Bad Pow.* 1. 165.)

Nanak panthi (*Sanskrit*). A follower of Nanak Shah, the founder of the Sikh religion: a Sikh.

Nanakshahi (*Punjabi.*) A follower of Nanak Shah, a Sikh, The Sikh currency also was known by the name, as the rulers subsequent to Baba Nanak struck coins in his name and not in their own.

Nanda Devi. A name of Durga from the Cowherd Nanda, her foster-father. She is propitiated under this name in the Himalaya mountains

Nandavanam (*or Nandavanam Inam*) (*M*), flower gardens for temple-service (generally revenue free) (*Bad. Pow* III. 81.)

Nangar. Plough, In some places, one plough land is nearly 10 acres and capable of cultivation by a pair of bullocks.

Nanjai, or Nanjey, commonly pronounced Nanja or Nunja, corruptly Nunjah (*Tam*) From Nal good and shai cultivation, Nanja, (*Tel.*) Soil that is fit for the cultivation of rice, admitting of artificial irrigation, and hence commonly termed 'wet ground or soil,' in contradistinction to Punja, or dry cultivation soil

Nanjey land. Land capable of being irrigated sufficiently for the growth of rice with water supplied by Government.

Nankar (*Hindustani*) An assignment of the portion of land or revenue of an estate to the occupant of Zamindar as an allowance for his subsistence. *See* 23 I.C. 300.

Nankar

Nankar (*P.* making bread or subsistence), a money allowance (or free land), to support the (Ben.) Zamindar or (Oudh) Taluqdar (Ben.), the Zemindar's Nankar. See *Bad. Pow* i 515, 531. (Oudh), allowed to village managers *Ibid* ii, 226, 238.

Nankar patwarigari (*Sylhet*). See *Bad. Pow.* iii 446

Nankar service. *See* 23 I.C 300.

"Nankar village" A "Nankar village" means a village held by a proprietor in Mahomedan times in lieu of bread money or remuneration for services A I R. 1928 Pat 294.

'Naobad mahal' *See* 18 C W.N. 531=24 I.C 65

Napharugati-phaisala (*Tel*) Settlement of the revenue with individual cultivators, a Ryotwari assessment.

Naphtha. Naphtha, benzine, or benzol, and kerosene are all refined coal or earth oils, not differing in their nature, but only in the degree of inflammability; kerosene being much less inflammable than either of the others.

Napika (*Berar*), withered or spoiled crop. (*Bad Pow* iii 391)

Naqsha (*P*), any map or plan, a picture (*Bad. Pow*)

Nar (*Mal*) Young corn or paddy fit for transplanting

Nara or Nadi Leather rope, which is given in exchange by kotwars for hide

Narada. A great Hindu sage and writer of an important Smriti that bears his name

Naratta (*Karn Tel.*) Land broken by chasms and creeks.

Narcosis (*Med*) Insensible state

Narcotic (*Med*) Inducing drowsiness or sleep; a drug having such influence.

Nari (*Amer.*), a small embankment to retain irrigation water (*Bad Pow* ii, 341, 349)

Narkuttakai or Nel kuttakai (*Tam.*) A grain rent

Narrangal, pronounced nattangal (*Tam.*) A bed or part of a field, kept moist, in which rice is sown for the purpose of being transplanted when it grows up.

Narrow seas In English law, those seas which adjoin the coast of England.

Narru or Nathu (*Tam.*) Plants thickly sown for the purpose of being transplanted.

Narrukala (*Mal*) A bed or piece of ground from which young rice plants have been removed.

Narrunadavu or Nattunadavu (*Tam.*) The act of transplanting.

Narruppatti (*Mal.*) A bed or piece of ground in which rice plants have been sown for transplanting.

Naru, Nathu (*Tel. Tam*) Young plants of corn fit to be transplanted.

Natamkar.

Narwa (*or narva*), or *Narwadari* in Guzarat, the mode of distributing equitably the total Land Revenue assessment of a village among the co-sharers (*Bad Pow* ii. 260) (Narwadari), villages. (*Ibid* iii 259). Compared to the bhaiachara of N.W. P. (*Ibid* iii 265.) Form of Narwadari villages explained (*Ibid*)

Narwadar (*Persian*) A sharer in a narwa village.

Narwa-dhar (*Lalitpur dist N.W P.*), an allotment or rating of rent with reference to the general (comparative) value of the several holdings (*Bad. Pow* ii. 190)

Nasab (*H*) Under a Muhammedan Law, "nasab" or consanguinity is established by a valid marriage or the semblance of it, and not by "zina" or illicit intercourse. 14 W.R. 125.

Under Mahamedan law, the right of inheritance is founded on nasab or consanguinity, nasab comprehends, first, the parents and children how low soever second, the brethren and their children, how low soever, and the grand parents, how high soever, and third, the paternal and maternal uncles and aunts. A child of adultery has no nasab 4 B.L.R (A.C.) 103 =12 W.R. 512.

'Naslan Bad Naslan'. The words 'naslan bad naslan' and 'batnan bad batnan' have always been held as words denoting an absolute estate. They may not be words of art but the meaning which those words bear cannot connote any other estate than an estate of inheritance. (121 I.C 95=6 O.W.N. 722= 1929 Oudh 415. *See also* 155 I C. 909.)

The use of the words Naslan bad Naslan in a grant or conveyance shows an intention to convey an absolute interest. (65 I C. 707=8 O.L.J. 481.)

Lease called perpetual lease but using words *naslan bad naslan, batnan bad batnan*—Document conveys a heritable and transferable interest and the grantees are under-proprietors. 66 I.C 110=9 O.L, J. 104=1922 Oudh 42.

Nasty. Dirty, repulsively dirty.

NASTY, FILTHY, FOUL. The idea of dirtiness is common to these terms, but in different modifications. Whatever dirt is offensive to any of the senses, renders that thing nasty which is soiled with it, the filthy exceeds the nasty, not only in the quantity but in the offensive quality of the dirt, and the foul exceeds the filthy in the same proportion (as) *Nasty* place, with *filthy* surroundings, emitting *foul* orders.

Nata or Nada (*Mal*) **Nadu** (*Tam*). Country, as distinguished from town, a kingdom, a province or district

Natal. Of birth.

NATAL, NATIVE. The epithet natal is applied only to the circumstance of a man's birth, as his natal day; his natal hour; a natal song, a natal star. Native has a more extensive meaning, as it comprehends the idea of one's relationship by origin to an object; as one's native country, one's native soil, native village, or native place.

Natality. Birth rate.

Natamkar. Headman of a 'Nad' or a village group (*M.*) (*Bad.-Pow.* iii 88.)

Nation.

Nation. A body politic, a society of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength. The inhabitants of a territory united under the same Government, and possessing as a whole an independent status. The word is generally but inaccurately used as a synonym of State.

The word "nation", as ordinarily used, presupposes or implies an independence of any other sovereign power more or less absolute, an organized government, recognized officials, a system of laws, definite boundaries, and the power to enter into negotiations with other nations.

National Common to or characteristic of a whole nation.

National Anthem (*English*) "God save the king."

National Bank. A private or quasi-public corporation, organized under the general law, by individual stock-holders, with their own capital, for private gain and managed by officers, agents and employees of their own selection, a quasi-public institution under a sort of state control. (*Ame. Cyc.*)

National Bank Bills. The term "national bank bills" is used to designate "a kind or part of the national currency."

National currency. That which is issued under the sanction of the state currency laws notes or bills circulating by the authority of the government as money.

"NATIONAL CURRENCY", imports a particular species of money, or of currency circulating as money

National debt. Sum owned by State to persons who have advanced money to it. The money owing by Government, for which it pays interest, out of the National Funds. (*Tomlins Law Dic*)

NATIONAL DEBT is a term used to denote the pecuniary liabilities of a nation, collectively, to those who stand towards it in the relation of lender Loans, either to meet war expenses, to carry on great public undertakings, or to make up the recurrent deficits of a mismanaged revenue, are what constitute national debts proper. (*Ency. Brit*) It is so universal an institution that it has been described as the first stage of a nation towards civilisation (*ibid*) and *see* Southey's Sir Thomas More, or Colloquies on the Progress and Prospects of Society, 2nd ed., vol I, p. 180. For detailed information to the redemption of the national debt, see Sessional Papers, 366 of 1869, parts 1 and 2 C. 6359 of 1891; and C 8520 of 1897, Cd. 3476 of 1907. Budget speech of the English Chancellor of the Exchequer, April 19, 1907, (*Ency of the Laws of England.*)

National domain. The "national domain", properly speaking, comprehends all the landed estate and all the rights which belong to the nation.

National Insurance. Compulsory insurance system against ill-health, unemployment, etc., established by certain English statutes of 1911—1912.

Nationality. Distinctive national qualities; membership of a nation; race forming part of one or more political nations.

Native wife.

NATIONALITY is the condition or status of belonging to a Nation or State, either by birth or naturalisation.

"**Native**" defined. Reg. 12, 1887, S 2 (3).

NATIVE Inborn; inmate; born in a place, derived one's country or parents.

NATIVE, NATURAL. Everything native is according to its strict signification natural; but many things are natural which are not native Of a person we may say that his worth is native, to designate that it is some valuable equality which is born with him, not foreign to him, or ingrafted upon his character; but we say of his disposition, that it is natural, as opposed to that which is acquired by habit

Native born. (*See* Natural born.) All persons born in the allegiance of the King are native born and natural born subjects.

"**Native Christian**" defined Act 15, 1872, S. 3, Act 2, 1892, S. 2; Act 7, 1901, S 2

The expression "*Native Christians*" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts [Act XV of 1872 (Christian Marriage), S. 3.]

"**Native husband**" defined. Act 21, 1866, S. 3

"NATIVE HUSBAND" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew. [Act XXI of 1866 (Native Converts' Marriage Dissolution), S. 3]

"**Native law**" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews Act XXI of 1866 (Native Converts Marriage Dissolution), S. 3]

"**Native of India**" defined. 33-V. c 3, S. 6; 44-5 V c 58, S 190 (22)

Natives of high rank. There are examples, increasing, fortunately, in number, of men who disregard the prejudice of natives of rank to appear and be examined as witnesses in a Court of Justice. [Per *Sir James Colvile*. 12 M.I.A. 1=9 W.R. (P.C) 15=2 Suth 114=2 Sar. 348 Per *Sir Montague E. Smith* 2 I.A 87 (110)=15 B L R 67=23 W R. 208 =3 Sar. 423=3 Suth. 87, 3 I.A. 72 (81)=1 C 289=25 W.R. 235=3 Sar. 602=3 Suth 222; 12 I.A. 52 (63)= 11 C. 318 (335)=4 Sar. 590; 19 I.A. 157 (163)=19 C, 689 (696)=6 Sar. 213.]

"**Native officer**" defined. Act 5, 1869, Pt I, cl. (*e*) (4)

Native state. "*Native State*" means the territories of any Native Prince or State in alliance with Her Majesty. [Act XV of 1872(Christian Marriage), S. 3.]

"NATIVE STATE" means any State in India which is under the potection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy. [Act IX of 1876 (Native Coinage), S 2.]

Native wife. "*Native wife*" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and

Nativity.

shall not be a Christian, a Muhammadan nor a Jewess. [Act XXI of 1866 (Native Converts' Marriage Dissolution), S 3.]

Nativity (*nativitas*). Birth, or the being born in a place (*Tomlins Law Dic.*)

NATIVITY Birth, especially of Christs' Birth; also' of birth of the Virgina John the Baptist; horoscope

Nattamkaran or Nattamkar. (*Tam.*) The headman of a village or a district, one who directs and superintends the cultivation, and has chief authority over the village servants.

Nattan. (*Tam.*) The chief civil officer of a district under the native administration, whose authority is now confined to questions of caste, the post is filled by the tribe of original settlors and the mirasidars.

Nattanma-karan. (*Mal. Tam,*) The chief or headman of a village or district.

Nattanmaikara The headman of a district, but more commonly the headman of a single village

Nattar or Nadar (*Tam*) The people of a district, or a country, the chief persons among the agriculturists.

Nattuguttige (*Karn*) Favourable assessment on land where bent grass abounds.

Nattukaranam The registrar or accountant of a district, a village accountant.

Nattukaul (*Tel.*) Land granted on favourable terms, on condition of eradicating the bent grass on the fields.

Nattukottai Chetties The Chetties (Nattukottai) are generally deemed to be Sudras. The judgment in the High Court in this case describes them as Vaisyas, but apparently without any foundation for this in the evidence. The explanation for this may be that the Chetties now forming a prosperous class of the community are gradually claiming to be considered as Vaisyas. 46 I A 539 (548)= 44 M 740 (746)=(1921) M W N 689=30 M L.T 208 =26 C W N 417=15 L W. 521=4 U P.L R. (P.C) 21=1922 P C 228=64 I C. 439 (P C)

Nattukuttam (*Mal*) A general assembly of the people of a country.

Nattum (*Tam.*) A village, especially one inhabited by Sudras in opposition to an Agraharam or one inhabited by Brahmans; the part of the village lands on which the houses of the Mirasidars are built, the site of the dwellings of the villagers, as distinct from the lands attached to the village.

Nattumaniyam (*Tam*) Land held rent-free as the perquisite of the head man of a village.

Nattupattam (*Mal.*) Land in dispute let out to a third person

Natura appetit perfectum, ita et lex. Nature aspires to perfection, and so does the law.

Natura fide jussionis sit strict issimi juris et non durat, vel extendatur de re ad rem de persona ad personam de tempore ad tempus. The nature of the contract of suretyship is *strictissimi juris*, and cannot endure nor be extended from thing to thing, from person to person, or from time to time.

Natura non facit vacuum; nec lex supervacuum. Nature makes no vacuum; the law nothing purposeless.

Natura non facit saltum, ita nec lex. Nature makes no leap, nor does the law.

Naturae vis maxima, natura bis maxima. The force of nature is greatest; nature is doubly great.

Natural affection. The affection which a husband a father, a brother, or other near relative naturally feels towards those who are so nearly allied to him. It sometimes supplies the place of a valuable consideration in contracts, and natural affection is a good consideration in a deed.

Natural allegiance. That kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own.

Natural-born, native-born subject. At common law every body whose birth happened within the legiance of the Crown was a natural-born subject. "The character of a natural-born subject, anterior to any of the statutes, was incidental to birth only; whatever were the situations of his parents, the being born within the allegiance of the King constituted a natural born subject". (*Kenyon, C.J.*, in *Doc d Duroure* v. *Jones*, (1791), 4 T. R. p. 308. And this rule is still the foundation of our law. Children born in an English ship are born within the allegiance, and an ambassador's house is also reputed to be part of his Sovereign's realm, so as to confer upon the children of the ambassador born therein the character of natural-born subjects (Cockburn, Nationality, p 7, Westlake, International Law, 1904, part I, p 213, *Ency. of the Laws of England. See also* Co Litt. 8 a (Notes 1 and 2) and 129a, Cockburn Nationality, 1869; Weightman, Law of Marriage and Legitimacy, Piggott, Exterritoriality, and Nationality, parts i and ii, Westlake, International Law, 1904, Hall, Foreign Jurisdiction of the British Crown, Dicey, Conflict of Laws, Sir E. Clarke, Law of Extradition, Biron and Chalmers, Extradition, Browne and Powles' Divorce.

Every person born within its territories of a state, whether the parents are citizens or aliens, is a natural born citizen.

The natural "natural-born citizen of the United States" means all persons born in the allegiance of the United States.

Natural boundary. A river boundary is treated as a natural boundary.

Bluffs of rock and summits of mountain may be so steep and rugged as to constitute a natural boundary of land. The law does not require a vain and useless thing to be done, and there would be no sense in a law which required the erection of a fence over a bluff of rocks so steep and rugged that neither man nor beast could travel over it.

Natural butter and cheese. For the purposes of laws relating to adulteration, the terms "natural butter and cheese," is understood to mean the pro-

ducts usually known by the terms "butter and cheese", and which butter is manufactured exclusively form pure milk or cream.

Natural channel. The term "natural channel" includes all channels through which, in the existing condition of the country, the water, whether a living stream or surface water, naturally flows.

Natural child. "Natural child" is a phrase generally employed to designate children born out of lawful wedlock

The law denomites as "natural children" illegitimate children who have been acknowledged by their father.

Natural consequences Damages which are the natural consequences of an act, to be the basis of legal redress, must not only be the natural sequence of the wrongful act or omission, but must flow directly from it in observance of some well-understood and recognized material force. (*Words and Phrases.*)

Natural day The expression "natural day" is defined by Bouvier to be the period of time elapsing between sunrise and sunset.

Natural domicile (See *Domicile*) Vattel says. "The natural of original domicile is that given us by birth, and we are considered as retaining it until we have abandoned it in order to choose another"

Natural effect. The rule of law requires that the damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency. The term "natural" imports that they are such as might reasonably have been foreseen—such as occur in the ordinary state of things.

Natural equity. That which is founded in natural justice, in honesty and right.

Natural fool A natural fool is one who is such from his nativity

Natural fruits The natural production of trees, bushes, and other plants for the use of men and animals

Natural gas. Natural gas is a fuel—a substance which may be converted into heat by combustion with atmospheric air.

Natural heir. The words "natural heirs" and "heirs of the body" in a will, are considered as of the same legal import.

Natural import The natural import of words is that which their utterance promptly and uniformly suggests to the mind—that which common use has affixed to them. The technical is that which is suggested by their use in reference to a science or profession—that which particular use has affixed to them.

Natural infancy. A period of non-responsible life which is said to end generally with the sixteenth or seventeenth year.

Natural justice. By "natural justice" we mean that which is founded in equity, in honesty, and right.

Natural law. Natural law is the moral system framed by ethical writers, and, though the same as

the divine law, the latter is more authentic, since the former is formed and declared by the assistance of human reason.

NATURAL LAW is defined as "a law which so necessarily agrees with the nature and state of man that without observing its maxims the peace and happiness of society can never be preserved," and is so called "because a knowledge of them may be attained merely by the light of reason, from the fact of their essential agreeableness with the constitution of human nature."

Natural liberty The power of acting as one thinks fit, without any restraint or control, unless by the law of nature.

Natural life The period between birth and natural death, as distinguished from civil death.

Natural obligation One which in honour and conscience binds the person who has contracted it, but which cannot be enforced in a Court of Justice, moral or social obligation.

Natural persons Such as are formed by the Deity, as distinguished from artificial persons, or corporations, formed by human laws for purposes of society and Government.

Natural presumptions (*In evidence*) Presumptions of fact, those which depend upon their own form and efficacy in generating belief or conviction in the mind, as derived from those connections which are pointed out by experience

Natural religion. Religion independent of revelation.

Natural representatives Lineal descendants to the exclusion of the widow whose position is contractual and not "natural" (Re *Bromley*, 83 L. T 315).

Natural rights Rights which attach to person or property in the primitive state This term cannot, "without a contradiction in terms, be applied to an artificial subject-matter, like a house" (per *Thesiger*, L J., *Angus* v *Dalton*, 4 Q B D 169, 48 L J. Q B. 228, *see also* Indian Easements Act, S 7).

NATURAL RIGHTS are such as appertain originally and essentially to man such as are inherent in his nature, and which he enjoys as a man, independent of any particular effort on his side, as, for example, the right of providing for one's own preservation.

Natural rights arise from the natural position of a tenement. They are attached by law to the tenement and are in their nature proprietary rights. Easements, on the other hand, arise by express or implied grant.

"Natural salt" defined Bom. Act 2, 1890, S. 3 (*d*).

"Natural stream" defined Act, 5, 1882, S. 7, *expln. to ills. See also* 34 Mad. 295=8 I.C. 67.

NATURAL STREAM. A stream which flows in a known and natural course, whether under-ground or above ground, has the character of a natural stream. [6 Bom.L R. 291. *See also* 18 M. 320; Easements Act, S 7]

Natural year.

The definition of a natural stream given in the explanation to S 7 of the Easements Act (V of 1882) indicates that in the eye of the law the stream is the flowing body of water and a stream was defined by Lord Watson, in *M'Nab* v. *Robertson*, (1897) A C. 129, as "a body of water having as such body a continuous flow in one direction. [8 Ind. Cas 67 (71)]

Natural year. That period of time in which the sun was supposed to revolve in its orbit consisting of three hundred and sixty-five days and one-fourth of a day, or six hours.

Naturale est quidlibet dissolvi eo modo quo ligatur. It is natural for a thing to be unbound in the same way in which it was bound.

Naturalisation. "Naturalisation is the act of adopting a foreigner, and clothing him with the privileges of a native citizen.

NATURALISATION is the procedure by which an alien is made a subject or citizen of any State. It is the act by a nation of adopting a foreigner and admitting him to take part in its national polity. The naturalisation of aliens is a subject which is regulated by the municipal law of such individual State. *Naturalisations en masse* take place when territory is annexed by, or ceded to, another State The status of the inhabitants is usually the subject of special clauses in the treaty determining the conditions of the annexation or cession It is generally considered at the present day, that the inhabitants should have a right of option, enabling them to retain their existing nationality. (*See Ency of the Laws of England*, Phillimore, International Law, Dicey, Conflict of Laws, Wheaton, Elements of International Law, Westlake, International Law, Oppenheim, International Law.)

What does naturalization give? All that belongs to the character of a subject of the state. What does it take away? All that does not appertain to that character It makes the party *ipso facto* a state subject, to all intents and purposes" (Wilde, C.J., *Reg* v *Manning*, (1849) 4 Cox. C.C 37]

Naturalised citizen One who being born an alien, has lawfully become a citizen of the State under the state laws.

Naturally "Naturally", as used in an instruction authorizing the recovery of "such damages as have resulted *naturally* from the breach" of the warranty, is but the equivalent of "legitimately", "normally", or, in other words, embraces such damages as are the natural—that is to say, the legitimate, normal—result consequent upon the breach of the warranty

The term *"naturally impotent"*, as a cause for divorce, is to be construed as meaning incurably impotent, and not as referring to congenital incapacity.

NATURALLY, IN COURSE, CONSEQUENTLY, OF COURSE. The connection between events, actions, and things, is expressed by all these terms. *Naturally* signifies according to the nature of things, and applies therefore to the connection which subsists between events according to the original constitution or inherent properties of things *In course* signifies in the course of things, that is, in the regular order that things ought to follow. *Consequently* signifies by a consequence, that is, by a necessary law of dependence, which makes one thing follow another. *Of course* signifies

Naval Courts.

on account of the course which things mostly commonly or even necessarily happens as we expect it; whatever happens *naturally* happens as we expect it; whatever happens *in course*, happens as we approve of it; whatever follows *consequently* follows as we judge it right; whatever follows *of course*, follows as we see it necessarily.

Nature. General characteristics and feelings of mankind (as) human Nature.

AGAINST NATURE. Unnatural; immoral, irrational.

STATE OF NATURE. Unregenerate condition; condition of man before society was organized.

Nature, Law of (*See* under "Law"). Justinian's Institutes describe the *jus naturale* as that taught by nature to all animal creation, including the human race Blackstone, defines the law of nature as the "will of man's Maker". "For as God", says he, "when He created matter and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion, so, when He created man and endued him with freewill to conduct himself in all parts of life, He laid down certain immutable laws of human nature whereby that freewill is in some degree regulated and restrained and gave him also the faculty of reason to discover the purport of those laws" (Commentaries, 4th ed, 1770, bk 1. p. 39.)

Nau-abad (*= new or recent cultivation*). Used of certain taluqs of Chittagong. (*Bad-Pow.* 1. 490, 557.)

Naubaramad. Cattle brought for grazing from another district and from which tirni fees are leviable.

Naubatkhanah. (*Hindustani.*) A drum-stand; the chamber usually over the palace gate, where the band plays.

Nauji. (*Tel*) A measure, the eighth of a marakal.

Naulage. The freight of passengers in a ship.

Nausea. Inclination to vomit, loathing.

Nauseous. Loathsome.

Nauseous or offensive trade. A deed prohibiting the grantee from maintaining any "nauseous or offensive trade" on the lot, will not be construed to include a grocery or provision store.

Nautamkar. Head man or cultivator of a village (*Fifth Report.*)

Nautical. Pertaining to ships or to navigation.

Nautical assessors. Persons experienced in navigation, who are called upon by an admiralty judge to sit with him in cases involving questions of correct navigation, and advise him thereon.

Nautsellavoo (*Tam Mal*) Expenses or charges account of the headman.

Naval. Pertaining to the navy or ships or warships.

Naval Courts. Courts held abroad in certain cases to inquire into complaints by the master or seamen of a British ship or as to the wreck or abandonment of a ship.

Naval Courts-Martial.

Naval Courts-Martial. Tribunals for the trial of offences arising in the management of public war vessels.

"Naval forces" defined. Those which constitute the navy of the state

Naval law. A system of regulations for the Government of the navy

Naval reserve That which consists of those forces which are at the disposal of the Admiralty other than the Navy and the Royal Marines.

"Navgl service" defined. 33-4 V. c. 90, S. 30.

Navasadhya Reclaim, recovering land from the inroads of the sea. *See* 25 Bom. 32=2 Bom.L.R. 499.

Nave The word 'nave means the body or middle part, lengthwise, of a church, extending from the west end to the transepts or choir. Norman churches were built in the form of a cross, with a nave and two wings. The nave forms part of the body of the church, as distinguished from the chancel. *See* Bingham's Antiquities of the Christian Church, Gibs Cod., Burn, Eccles Law, Phillimore, Eccles. Law, (*Ency of the Laws of England*)

Navigable. Affording passage for ships.

'Navigable River" A river in which the public have a general right to fish, it must be a tidal river in which the sea ebbs and flows. (*per* O' Hagan, J., *Murphy* v. *Ryan*, Ir. Rep. 2 Cl. 149, 150. Water is navigable in law, although not tidal, and is navigable in fact, where it is of sufficient capacity to be capable of being used for useful purposes of navigation, that is, for trade and traval in the usual and ordinary modes. (*Ame. Cyc.*)

Navigate. To direct, or manage or steer a vessel, to pass by water.

Navigation is the art of sailing at sea, also the manner of trading. and a navigator is one who understands navigation, or imports goods in foreign bottoms (*Tomlins Law Dic.*) It is the science or art of conducting a ship from one place to another, and the science or art of ascertaining the position and directing the course of vessels, especially at sea, by astronomical operations or calculations, a nautical science or art, shipping. It includes the control, during the voyage, of every thing with which the vessel is equipped for the purpose of protecting her and her cargo against the inroad of the seas The term also includes the supply of necessary implements and skilful mariners. "The instruments are useless without the skilful mariners, and conversely, navigation includes two things,—the supply of the instruments or organs of the ship, and the living instruments, or seamen. If either of these is wanting by the negligence of the owner, or of those for whom he is responsible, there is improper navigation" (*per* Fry, L J, *The Warkworth*, 53 L J. P D & A. 66).

"NAVIGATION, for some purposes, includes a period when the ship is not in motion; as, for instance, when she is at anchor" (*per* Denman, J., *Hayn* v. *Culliford*, 3 C P.D. 417).

"FAULTS OR ERRORS IN NAVIGATION." This term applies "to faults or errors in sailing the vessel during the voyage" [(*per* Kay, L.J., *Dobell* v. *S.S. Rossmore Co*, 1895), 2 Q.B 408.]

Nazar.

Navis. (*Persian.*) A writer, a scribe, a secretary.

Navy. State's warships with their organization; the fleet or shipping of a State; or an armament at sea (*Tomlins Law Dic*) *The Navy of England*, "it had been observed, excels all others for three things, *viz.* beauty, strength, and safety for beauty our ships of war are so many floating palaces; for their strength so many moving castles, and for safety they are the most defensive walls of the land; and as our naval power gains us authority in the most distant climates, so the superiority of our fleet above other nations, renders the British Monarch the arbiter of Europe." (*Tomlins Law Dic.*)

NAVY SERVICE, PRESSING FOR "War itself is a great evil, but it is chosen to avoid a greater. The practice of pressing is one of the mischiefs war bringeth with it But it is a maxim in law, and good policy too, that all private mischiefs must be borne with patience for preventing a national calamity And as no greater calamity can befall us than to be weak and defenceless at sea in a time of war, so I do not know that the wisdom of the nation hath hitherto found out any method of manning our navy, less inconvenient than pressing, and at the same time, equally sure and effectual" Foster, J, *Case of Pressing Mariners* [(1743), 18 How. St. Tr. 1330]

Navy bills Bills of exchange drawn by naval officers against pay falling due.

Navy list. List of officers in the navy.

Navy yard By "navy yard" is meant not merely the land on which the government does work connected with the ships of the navy, but the waters contiguous, necessary to float vessels of the navy while at the navy yard.

Nawab A Viceroy, a Governor of a province under the Moghul Government, properly the deputy or local governor of a great province (as Oudh, Haidarabad, Bengal), under the Mughal Empire, now an honorary title. (*Bad. Pow.*)

Nawara. Peculiar estate in Jessore (Ben.). (*Bad Pow.* 1. 525 *note*).

Nayak (*or Naik*), A title given to certain Maratha chiefs and land-officers [*Bad. Pow.* 1, 179; 11 282, 3. (S. Kanara), *Ibid* 111 145 (Coorg); *Bad. Pow.* iii. 466]

Nayakvadi (*Tel. Karn.*) A peon stationed in a village by the Collector or landholder, especially to superintend the villagers in their cultivation, and see that the produce is not misappropriated or stolen, he performs also, on occasion, the functions of village watchman and police officer.

Nayar (*Mal*) The name of one of the leading castes of Kerala. The word is akin to Naik and Naidu, and signifies a leader, a soldier. (*Moore's Mal. Law*) *Nayar* is the term used for once ruling caste in Malabar. (*Bad. Pow.* iii. 147, 153, 156 *note*, 154, 157, 161).

Nazar. (*Hindustani*) A present; an offering; especially one made by an inferior on his presentation to a superior.

Nazar, nazarana. A free, offering tribute, a fine on transfer of land, and (C.P.) the sum paid down

Nazarana.

to secure a grant of the revenue-lease of a village. (*Bad. Pow.*)

Nazarana. Consent money or premium, *e g.*, for grant or renewal of a lease.

Under the C P. Ten. Act of 1898 the *nazarana* paid or agreed to be paid as price for the grant of a lease is rent; hence a suit by a landlord against the tenant for realisation of such *nazarana* is not cognizable by a Small Cause Court. (9 N L.R. 94=20 I.C. 261)

Nazarana-i hal. An actual or recent present, one recently exacted.

Nazrana-i-mansur ganj A granary or depot so named. A tax imposed by Alivardi Khan as a gift to his grandson Suraj-ad-daula, to whom, at the same time he granted tolls leviable at Mansurganj, a corn depot and market near the latter's residence

Nazarana-mukharari A permanent present, a tax imposed by Shujaa Khan, Governor of Bengal, ostensibly to defray the expense of the presents made by the subahdar to the Court of Delhi, but in reality the payment of fixed presents by the Zamindars to screen themselves from inquiries into their receipts and other pleas for extortion

Nazrana-subahdari Presents made to the Court by the subahdars or Governors of Provinces.

Nazarene. Of Nazareth, Christian (in) Jewish and Mohamadan use

Nazarite Native of Nazareth.

Nazdiki bhai The words 'nazdiki bhai" are vague and in interpreting such phrases as this and as *karabatian*, the practice of the tribe and all the surrounding circumstances must be looked at—in short, a reasonable and not a pedantic interpretation should be aimed at The word "nazdiki bhai" in a wajib-ul-arz taken in connection with succession to rights of occupancy are taken to include only descendants of the first occupier of the land. [39 P W R. 1913=70 P.L.R. 1913=19 I C 243 (244)]

Nazim (*A*) The chief officer of a province A Viceroy or Governor. (*Mac Mah Law.*)

NAZIM A Muhammadan officer, having charge of a 'chakla' or large district A district officer, properly, the magistrate or criminal officer (of the Nizamat), as opposed to the Diwan who had the (diwani or) civil and revenue admin in Oudh, used for a district officer (in general) under native rule (*Bad Pow*; *Fifth Report*)

"**Nazir**" defined. Act 10, 1859, S. 168

NAZIR (*modern*). The district 'sheriff' (*Bad. Pow.* i, 673)

A Supervisor or Inspector The executive officer of a Court. (*Macn. Mah. Law.*)

Nazir jemmadar Inspecting captain or officer A head peon. (*Fifth Report.*)

Nazr See *Nazar*. (*A*) An offering, a present made to a superior. (*Macn. Mah. Law.*)

Nazraneh. (*P.*) (See *Nazarana.*) Any thing given as a present, particularly as an acknowledgment for a grant of lands, public offices, and the like. (*Macn. Mah. Law.*)

Nearest of kin.

Nazul. Land or buildings in or near towns or villages which have escheated to the Government; property escheated or lapsed to the State: commonly applied to any land or house property belonging to Government either as an escheat or as having belonged to a former Government. (*Bad Pow.* i, 239.)

Neap tide The "neap tides" are those tides which happen between the full and change of the moon twice in every 24 hours

Near Close to or at no great distance, not distant from, not remote, but of reasonably easy and convenient access "Near" is a relative term, and its precise import can only be determined by surrounding facts and circumstances *See* Colm Dig. Cr. 14 of 1874.

" 'NEAR' has no precise meaning" (per *Pollock, C B, Chamberlaine* v. *Chester, etc, Ry.* 18 L J Ex 494) The meaning varies with the context

NEAR: NEXT. NEAREST "The words *'next'* and *'near'* are generally synonymous "Next" is synonymous with "nearest", 'near' is often the equivalent of "nearest" (*S. R.* v *Harvey*, I Bl W. 19.)

Near akin Closely related

Near co-sharer The expression "nearer co-sharer" in a wajib-ul-arz applies to the co-owner of a particular share in preference to the owners of other shares in a village. (7 A. 478=5 A W N. 85)

"Near of blood", "Nearest of kin", Nearest of kindred." These terms are used as synonymous with "Next of kin" (*Markham* v. *Invatt*, 20 Beav 579.)

" 'Near relative' includes a wife, father, mother grandfather, grandmother, child, grandchild, brother or sister. (*Stroude.*)

"NEAR RELATIVES" as used in devise to the testator's near relatives, should be construed to mean those who would take under the statute of distributions, and a devise should be distributed in the manner provided by such statute.

Nearest. Immediately adjacent to; next; in close proximity. (*See* "Near.") The word is synonymous with next (*Smith* v. *Campbell*, 19 Ves. 400.)

Nearest heirs. The "nearest heirs" are all those persons upon whom the law would cast the inheritance in the first instance upon the death of the ancestor intestate, and there can be no other heirs

Nearest in blood "Nearest in blood", as used in reference to the distribution of spoliation claims, includes those whose relationship to the original sufferer would entitle them to a share in his estate if it was to be divided under the statute of distribution among such of his surviving relatives as are next of kin

Nearest male heirs. The phrase "nearest male heirs" in a devise to testator's sons during their lives, and at their deaths to their or each of their nearest male heirs, was construed to mean the nearest male kindred of testator's sons at the death of each.

Nearest of kin The words "nearest of kin" were held, in a case involving the construction of a will directing the testator's property to be divided bet-

Nearest relations

ween his nearest of kin, to mean nearest blood relations.

Nearest relations. "Nearest relations", as used in a will giving property to be equally divided between testator's nearest relations, means brothers, to the exclusion of nephews and nieces It is not synonymous with "heirs"

"Nearly as possible" "As nearly as possible" is only an approximate phrase (per *Lindley, L J*, *Potter* v. *Burrell*, 66 L J Q B. 63)

Neat cattle "Neat cattle" more appropriately describes kine or animals of the bovine species than the term "cattle"

Neat herd Cowherd

Neat land "Land let or granted out to the yeomanarry (*Cowel*)

Neat profits "Neat profits" must mean after all charges and expenses have been deducted

Neatness (*In pleading*) The statement in apt and appropriate words of all the necessary facts, and no more.

Nebulous Cloudlike, hazy. vague; indistinct, formless.

Necessaries Such things as are useful and suitable to the party's estate and condition in life, and not merely such as are requisite for bare subsistence The word "necessaries" in S 68 of the Contract Act is not confined in its strict sense to such articles as are necessary to support life, but extends to articles fit to maintain the particular person in the state, degree and station in life in which he is (13 C W N 643=36 C 765=1 I C 724 *See also* 20 Bom 61. 32 All 325, 7 Cal 140 21 Cal 872, 185 P R. 1883, 96 P R 1888, 23 Mad. 314) Though an article may belong to a class of things that are unquestionably necessary, and though the particular article furnished may correspond in quality and price with the infant's means, yet, if it should turn out that the infant was already plentifully supplied with the thing purchased, it does not fall within the description of necessaries in that particular case (13 C W. N 643=36 C 765=1 I C. 724) The person who supplies an infant with goods as necessaries assumes the business of a guardian for the purpose of present relief which he is bound to execute as a prudent guardian, and he should, therefore, make himself acquainted with his necessities and circumstances (13 C.W N. 643=36 C 765=1 I.C 724)

NECESSARIES. Those necessaries which a husband is bound to furnish his wife are described in general as such articles of food or apparel or medicine, or such medical attendance and nursing, or such private means of locomotion or private habitation of furniture, or such provisions habitation of furniture, or such provision for or protection in society, and the like, as a husband, considering his ability and standing, ought to furnish the wife for her sustenance and the preservation of her health and comfort.

The question as to what are necessaries is a mixed question of law and fact Articles brought by minor for his wedding as well as the wedding presents to his wife may be necessaries. (36 Cal. 768=13 C.W.N. 643=1 I.C. 724)

Necessary charges.

Necessarily Indispensably, in a necessary manner, by necessity, unavoidably.

"Necessarily expended" "Necessarily expended" in an Act providing that the moneys necessarily expended by any officer in executing the duties of his office shall be a charge on the public funds,means such expenditures as are not only needful and proper, as contradistinguished from such as are needless and improvident, but also reasonable, appropriate, and customary in the execution of the particular official duty.

Necessarium est quod non potest aliter se habere A maxim meaning "That is necessary which cannot be otherwise."

Necessary Indispensable, requisite; indispensably requisite, useful, incidental or conducive, essential, unavoidable, impossible to be otherwise, not to be avoided, inevitable, (*Ame. Cyc.*, *Webster Cen Dic*)

The word "necessary" must be construed in the connection in which it is used. It is a word capable of various meanings It may import absolute physical necessity, or that which is only convenient or useful or essential

The word "necessary" has different significations, meaning sometimes indispensably requisite, at others needful, requisite incidental, or conducive to

The word "necessary" sometimes means such as must be, impossible to be otherwise, not to be avoided, inevitable

NECESSARY, EXPEDIENT, ESSENTIAL, REQUISITE. It is the duty of a manage of a school to provide the *necessary* article for the conduct of the classes In all the matters of dispute it is *expedient* to be guided by some impartial judge, it is *requisite* for every member of the community to contribute his share to the public expenditure as far as he is able. it is *essential* to a teacher, particularly a spiritual teacher, to know more than those he teaches.

Necessary appendages. "Necessary appendages" as used in a rule authorising a school director to provide the "necessary appendages" for the school house, and keep the same in good condition and repair during the time school shall be taught therein, should be construed to include a fence inclosing a school house site and separating it from adjacent lands. The word "appendage" does not necessarily mean simply the school apparatus to be used inside the building, nor can it be limited to such articles as brooms, pails, cups, etc,, but must be construed in a broader sense, to include fuel, fences, and the necessary out-houses.

Multiplication charts, being charts or cards containing the multiplication table, practical forms of business contracts, and brief mention of prominent historical events, are not a "necessary appendage" in a school house, such as a school director is required to provide

Necessary charges. "Necessary charges", as used in a statute authorizing towns to raise money for, certain specified objects and other necessary charges, may in general be considered as extending to such expenses as are clearly incident to the execution of

Necessary diligence.

the power granted, or which necessarily arise in the fulfilment of the duties imposed by law.

Necessary diligence "Necessary diligence" is that degree of diligence which men ordinarily engaged in and acquainted with a certain business will use in their own affairs.

"Necessary easement". One which is necessary for the enjoyment of the property as it stood at the time when such property was acquired under the title in virtue of which the easement is claimed (*Pyer* v. *Carter*, 1 H & N 916, *See* Easements Act, S 13.)

Necessary expenses. The term "necessary expenses", in a statute providing that a town may raise and expend money for the support of schools, and for all necessary expenses arising in the town, includes the expense of a suit against the agents or servants of a town, in which its interests are directly involved

Necessary implication "Necessary implication" is that which leaves no room to doubt It is not an implication upon conjecture.

The phrase "necessary implication", as applied in the law of statutory construction, means an implication that is absolutely necessary and unavoidable.

"NECESSARY IMPLICATION" does not mean to shut out every other possible or imaginary conclusion, and from which there is no possible escape, but means one leading to such a conclusion, as, under the circumstances, a reasonable view impels us to take, the contrary of which would be improbable and absurd.

"Necessary implication" is determining the intention of a testator was defined by Lord Hardwicke not as being the only possible conclusion, but because the court finds it so to answer the intention of the devisor. Lord Mansfield in 1773 defined it in the same way The term "necessary implication", he said, was used simply in opposition to "conjecture" The rule, as stated by Jarman, took its final form from a remark of Lord Eldon, in 1813, that "necessary implication" means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to the testator cannot be supposed.

Necessary means "Means necessary to the end," signifies any means calculated to produce the end, and is not confined to those single means without which the end would be entirely unobtainable

Necessary party To an action is one without whose presence a substantial decree cannot be made

PROPER PARTIES DISTINGUISHED. In actions in equity, "proper parties" are those without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy, and conclude the rights of all persons who have any interested in the subject-matter of the litigation, while "necessary parties" are those without whom no decree can be effectively made. In an action by mortgagees to have the liens of their mortgages adjudged to be lies on the money awarded as damages to the mortgaged premises by an easement in the premises acquired by the public subsequent to the execution of the mortgages, the owners of the fee to whom the award would belong in the absence of any lien in favour of the mortgagees, are proper, if not necessary, parties to the action

Necessary powers In considering the authority of a cashier of a bank to indorse and transfer a note payable to bank, the court said "In all agencies there must be, to some extent, implied powers conferred. An agent, to perform any act or discharge any function, is clothed with all such incidental powers as may be necessary to the performance of the act which the agency was created And by the word "necessary" is not meant that it is indispensable, and without which the act cannot be done, but such powers are implied as are convenient and proper, and as are usually exercised in the discharge of such agencies".

"Necessary provisions" "Necessary provisions" as used an act exempting from attachment and execution necessary provisions procured and intended for the use of the family of the debtor up to a certain amount includes vegetables planted and raised by the debtor for the use of his family and ripe for harvest though not severed from the soil

Necessary repairs Include not only those absolutely indispensable to safety, but such as are reasonably fit and proper under the circumstances.

"NECESSARY REPAIRS', as used in connection with the duty resting on a mortgagee in possession to expend money on the mortgaged premises, is construed strictly, and means such repairs as are absolutely necessary for the protection of the estate.

Necessary road A road cannot be necessary without being a convenience "Necessary" seems to include convenience, and something more, to wit, a convenience that is indispensable

Necessary self-defense "'Necessary self-defense,' as explained in the text books, as generally understood by laymen as well as by lawyers, includes every case where there is reasonable ground to apprehend a design to commit felony or to do some great bodily injury and where the circumstances are sufficient to excite the fears of a reasonable man"

Necessary tools. The tools of a debtor exempted from attachment are such as are necessary to enable him to carry on his trade in a convenient and usual manner

Necessary violence The word "necessary", in an instruction in a homicide case as to the effect of defendants using more violence than was necessary to repel the assault of deceased, means reasonably necessary, or what the prisoner, under all the circumstances, might reasonably believe to be necessary

Necessary wearing apparel. "Necessary" as used in a statute exempting from attachment the necessary wearing apparel, is not to be understood in its most rigid sense, implying something indispensable, but is equivalent to "convenient and comfortable."

NECESSARY WEARING APPAREL" includes a lace shawl, within the meaning of the exemption law, though of greater value than the owner ought to wear in her condition in life as to property.

Necessary wearing apparel.

"Necessary wearing apparel," within the meaning of the exemption law, does not include rings and jewelry.

Necessitas est lex temporis et loci. A maxim meaning "Necessity is the law of time and place" 8 Coke 69; Hal. P C 54

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus A maxim meaning "Necessity excuses or extenuates delinquency in capital cases, which would not operate the same in civil cases" (*Peloubet's Leg Max*)

Necessitas facit licitum quod alias non est licitum. A maxim meaning "Necessity makes that lawful which otherwise is not lawful" (*Morgan*)

Necessitas inducit privilegium quoad jura privata A maxim meaning "With respect to private rights, necessity privileges a person acting under its influence" (*Broom Leg Max*)

Necessitas non habet legem. A maxim meaning "Necessity shall be a good excuse in our law and in every other law."

Necessitas publica major est quam privata A maxim meaning "Public necessity is greater than private."

Necessitas quod cogit defendit A maxim meaning "Necessity defends what it compels." (*Peloubet Leg Max*)

Necessitas sub lege non continetur quia quod alias non est licitum necessitas facit licitum A maxim meaning "Necessity is not restrained by law, since what otherwise is not lawful necessity makes lawful." (*Morgan Leg Max*)

Necessitas vincit legem. A maxim meaning "Necessity controls the law"

Necessitas vincit legem, legum vincula irridet. A maxim meaning "Necessity overcomes law, it decides the fetters of laws."

Necessitate precepti; sed non necessitate medii A maxim meaning "Consent is necessary in the case of a contract executory, as an act of obedience to the law; but not essential to the validity of an executed contract." (*Morgan Leg Max*)

Necessities, necessaries. Necessity is the mode or state of circumstances or the thing which circumstances render necessary, the necessary is that which is absolutely and unconditionally necessary

Art has ever been busy in inventing things to supply the various necessities of our nature, and yet there are always numbers who want event the first necessaries of life. Habit and desire create necessities, nature only requires necessaries a voluptuary has necessities which are unknown to a temperate man, the poor have in general little more than necessaries

Necessitous. Poor, needy, narrow, destitute, pinching.

NECESSITOUS NEEDY. Necessitous expresses more than needy, the former comprehends a general state of necessity or deficiency in the thing that is wanted or needful. Needy expresses only a particular condition. The poor are in a necessitous condition who

Necropolis.

are in want of the first necessaries or who have not wherewithal to supply the most pressing necessities; adventures are said to be needy, when their vices make them in need of that which they might otherwise obtain it is charity to supply the wants of the necessitous, but those of the needy are sometimes not worthy of one's pity.

"Necessitous circumstances" A relative term dependent on the fortune of a person and condition in which he generally lived

"Necessitous men" are not, truly speaking, free men, but to answer a present emergency, will submit to any terms that the creditor, may impose upon them" (*Collins* v. *Denny Clay Co*, 41 Wash. 136, *Ame Cyc*)

Necessity Irresistible force, inevitable consequence, that which is essentially requisite, great or urgent public convenience.

NECESSITY *"Necessity"* is a question of fact. (*R.* v. *Cleworth*, 4 B. & S. 927)

The Law charges no man with default where the act is compulsory, and not voluntary, and where there is not a consent and election, therefore if there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason, as, in presumption of law, he cannot overcome, such necessity carries a privilege in itself Compulsion and inevitable necessity are considered, by Blackstone, among those causes from whence arises a defect of will, and under which, therefore, an action is not to be considered as criminal which would otherwise be so. These, he states to be a constraint upon the will whereby a man is urged, to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject. As punishments are therefore only inflicted for the abuse of that free will which God has given to man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force, necessity or compulsion. (*Tomlins Law Dic*) The *"Necessity,"* which justifies the non-performance of a contract must be "the occurrence of circumstances beyond the control of the contractor and such as renders the terms originally agreed upon, physically impossible or so clearly unreasonable as to be impossible in a business point of view" (*per* Lindley, J., *Hill* v. *Wilson*, 4 C P D. 333, 334, 48 L J. C P. 764, 41 L.T. 412).

NECESSITY Meaning of, when used in support of alienation of Hindu joint family property by *karta*. (10 Pat L.T. 811=116 I C 33=1929 Pat. 130.)

"Necklaces" Where a will gives "Necklaces of every description" to *A* and "Pearls" to *B.*; a Pearl Necklace would be included in the term "Necklaces" and would pass to *A*. (*A.-G.* v. *Horley*, 5 Russ. 173, L.J. O S. Ch. 31.)

Nec regibus infinita aut libera potestas. A maxim meaning "The power which is given to kings is neither unbounded nor at will." (*Morgan Leg. Max.*)

Necromancy. Dealings with the dead as means of divination, magic.

Necropolis. Cemetery—especially for a great town.

Necroscopy.

Necroscopy, (*Med.*) The examination of a body after death, *post mortem* examination.

Necrosis. (*Med*) Mortification of piece of bone or tissue.

Nec tempus nec locus occurrit regi. A maxim meaning "Neither time nor place bars the king"

Ne curia deficeret in justitia exhibenda A maxim meaning "Nor should the court be deficient in showing justice."

Nec veniam effuso sanguine casus habet A maxim meaning "Where blood is spilled, the case is unpardonable."

Nec veniam laeso numine casus habet A maxim meaning "Where the divinity is insulted the case is unpardonable" (*Morgan Leg Max.*)

Nedungadi (*Mal*) A subdivision of the Nayar caste which formerly ruled in Neduganad (South part of Walluvanad Taluk). (*Moore's Mal Law*)

Need A promise to pay an indebtedness at any time the creditor should "need" it is not a conditional promise, but the term "need" is used in the sense of request.

Needlessly. Without necessity, unnecessarily, wantonly, used in a statute with reference to mutilating or killing an animal, the term has been construed to mean without any useful motive without serving any useful purpose

Need not. Does not mean "must not." (*Stroude*, 1257.) "No further particulars *need be delivered*," suggests that the party may deliver other particulars if he chooses" (*per* Campbell, C J, *Fromant* v. *Ashley*, 1 E. & B. 725)

"NEED OF REASONABLY CREDITED NECESSITY" The need of "the reasonably credited necessity" spoken of in *Hanuman Persaud's Case* (6 M I A at p 393) has been paraphrased into "legitimate family purpose." Necessity therefore is not to be understood in the sense of what is absolutely indispensable but what, according to the notion of a Hindu family, would be regarded as reasonable and proper. (20 M. L.J. 855=8 Ind. Cas. 195.)

Needy. Wanting in means of living, very poor, indigent, necessitous.

A person is needy who is distressed by want of the means of living, very poor, indigent, or in necessitous circumstances.

The term "needy" may be used to characterize minor children who do not own property in their own names, although they earn their own living.

Neergantee. Distributor of water for irrigation.

Neer moodut or ner moodut A contract by which a mortgagee in Malabar advances a further sum on a landed estate at the expiration of the former term.

Ne faciat vastum vel estrepementum pendente placito dicto indiscusso That he commit not waste on destruction pending suit.

Nefarium est per formulas legis laqueos innectere innocentibus. A maxim meaning "It is infamous to lay snares for the innocent through forms of law."

Negative testimony.

Ne fictio plus valeat in casu fictio quam veritas in casu vero. A maxim meaning "A fiction is of no more value in a fictitious case than truth in a real case."

Negatio conclusionis est error in lege. A maxim meaning "The negative of a conclusion is error in law." (*Morgan Leg Max*)

Negatio destruit negationem, et ambae factiunt affirmativum A maxim meaning "A negative destroys a negative, and both make an affirmative."

Negatio duplex est affirmatio. A maxim meaning "A double negative is an affirmative." (*Peloubet Leg Max.*)

Negatio non potest probari A maxim meaning "Denial cannot be proved." There can be no proof of a negative proportion." (*Morgan Leg. Max.*)

Negationist Merely destructive critic.

Negative. As an adjective, a word implying denial, negation, or difference As a noun, a term used in photography to designate the original plate, made sensitive by chemicals, which is printed under the sunlight or other suitable artificial light by the camera

Negative averment (*In pleading*). An agreement in some of the pleadings in a case in which a negative is asserted

Negative condition. A condition by which it is stipulated that a certain thing shall not be done or shall not happen.

Negative covenant The term "negative covenant", and not the word "condition", is correctly used to designate a provision in a deed that the premises thereby conveyed are not to be used for saloon purposes.

Negative pregnant A negative pregnant is such a form of negative expression as may imply or carry with it an affirmative. A negative pregnant involves and admits of an affirmative implication, or at least an implication of some kind favourable to the adverse party.

Generally speaking, a denial in the precise language of the complaint is a negative pregnant with an admission that the alleged facts may have transpired on some other day or under different circumstances.

Negative servitude. The term "negative servidude" is used to designate a servitude in which the proprietor of the servient estate is barely restrained but by which he is not obliged to suffer something to be done upon his property by another

Negative statute. One which is enacted in negative terms, and which so controls the common law that it has no force in opposition to the statute. (*Cyc. Law Dic.*)

Negative testimony. Positive testimony is that which bears directly upon the facts in the case. Negative testimony is not as to the immediate fact or occurrence, but facts from which you might infer that the act could not possibly have happened In other words, the one is affirmative, the other negative. Therefore positive testimony is generally more reliable and is stronger than negative testimony.

Negative usage

Negative usage is not in strictness a custom, *See* 33 Bom 509=2 I C 701

Negi (*C P Sambalpur*) The deputy of a gaontiya, the same term is applied to the headman of a village (or rather local group of lands) in Lahul in the Pj Himalaya (*Bad -Pow* ii 516)

NEGI. The *Negi* of a *Kothi* is not a *zaildar* but a headman, there is no need for him to be *lambardar* of the patni and the succession is governed by the Land Revenue Rules 15 and 17 unless the *Kothi* falls within certain *jagirs*. (7 Lah.L T 13)

Neglect. A failure to do what is required, omission, forbearance to do anything that can be done or that requires to be done, the omission to do or perform some work, duty or act, the omission or disregard of some duty, the omission from carelessness to do something that can be done and that ought to be done, the omission or forbearance to do a thing that can be done or that is required to be done, negligence. Neglect to do a thing means to omit to do a duty which the party is able to do [(per *Pattesson, J*, *King* v *Burrell* 12 A & E 468).

Neglect or default "A 'neglect' and a 'default' seems to imply something more than the mere want of discretion with respect to the covenantor's own interests, something like the breach of a duty or legal obligation existing at the time, those words, in their proper sense, implying the not doing some act to secure his title which he ought to have done, and which he had the power to do, and the not preventing or avoiding some danger to the title which he might have prevented or avoided" [(per *Tindal, C.J*, *Wood-house* v *Jenkins*, 9 Bing 441, 442. Vf. Sug. V & P. 602, 604).

TO NEGLECT, OMIT The idea of letting pass or slip, or of not using is comprehended in the signification of both these terms, the former is, however, a culpable, the latter an indifferent action. What we neglect ought not to be neglected, but what we omit may be omitted or otherwise, as convenience requires.

'WILFUL NEGLECT', if question of law.(10 Lah 329)

Neglect of duty. Neglect of duty does not cease by repetition to be neglect of duty and if there be any doctrine of lulling to sleep, it must depend upon and can only be another way of expressing estoppel or ratification [128 I.C 669=1930 P.C 278=60 M L J. 149 (P.C)]

Neglected child As used in the Act relating to court, the words "neglected child" has been defined to mean any child who for any reason is destitute or homeless or abandoned, or dependent upon the public for support, or has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill-fame or with any vicious or disreputable persons, or whose home by reason of neglect, cruelty, or depravity on the part of its parents, guardian, or other person in whose care it may be, is an unfit place for such child

Negligence Negligence in law signifies a coming short of the performance of duty.

It is said very truly that the definitions of negligence, by courts and text-writers, are perhaps more numerous than of any other title in the scope of the

Negligence

law, and are not altogether harmonious Negligence is the absence of care according to the circumstance The sole standard is the want of that amount of care which is required to be shown in the circumstance of each particular case by a reasonably careful man. The amount of care required of a reasonable man will be different in different cases (123 I C. 301= 1930 Sind 186.)

The definition given by Judge Cooley in his work on Torts and quoted with approval in many decisions is perhaps the most comprehensive and accurate of any He defines it as "the failure to observe, for the protection of the interest of another person, that degree of care, precaution and vigilance, which the circumstances justly demand, whereby such other person suffers injury.

"NEGLIGENCE" is not an affirmative word, "it is a negative word, it is the absence of such care, skill, and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed" (per *Willes, J., Grill* v *General Iron Screw Collier Co.*, 35 L J C.P. 330)

It is the "omitting to do something that a reasonable man would do or the doing something which a reasonable man would not do" [(per *Alderson B*, *Blith* v *Birmingham W. W Co*, 25 L J.Ex. 212, 11 Ex 784.) "Negligence," in its legal acceptance, includes acts or omission as well as commission.

Negligence may consist as well in not doing the thing which ought to be done as in doing that which ought not to be done, when in either case it has caused loss and damage to another. *See* 1 Weir 324=7 M.H C 119

Negligence is "the absence of proper care, caution and diligence, of such care, caution and diligence, as under the circumstances reasonable and ordinary prudence would require to be exercised"

Negligence is a relative term and depends upon the circumstances of each particular case What might be negligence under some circumstance at some time or place may not be negligence under other circumstances at another time and place. All the surrounding or attendant circumstances must be taken into account, such as the opportunity for deliberation degree of danger, and many other considerations of like nature, affecting the standard of care which may reasonably be required in the particular case

NEGLIGENCE CARELESSNESS, LACHES While it has been said that the term "negligence" is synonymous with "carelessness" or laches, "it is readily distinguishable from and must not be confounded with such terms 'incompetence" "malice", "intent", "fraud', "malfeasance," contributory negligence," or "imprudence",

In *St Louis etc. Packet Co* v. *Keokuk etc, Bridge Co* 31 Fed, 755, 756, it was said In common speech the word 'negligence" is used as synonymous with "carelessness" but it has a much broader meaning in legal parlance"

NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE. A clear distinction exists between negligence and contributory negligence. Negligence is contributory when and only when, it directly and proximately induces the injury in whole or in part.

Negligence

NEGLIGENCE AND INTENT. The difference between intent and negligence, in a legal sense is ordinarily nothing but the difference in the probability, under the circumstances known to the actor and according to common experience, that a certain consequence or class of consequences will follow from a certain act.

NEGLIGENCE AND FRAUD. Fraud is a deceitful practice or wilful device resorted to deprive another of his right, or in some manner to do him an injury. It is always positive, the mind concurs with the act: what is done is done designedly and knowingly But in negligence, whatever may be its grade, there is no purpose to do a wrongful act, or to omit the performance of a duty.

NEGLIGENCE, GROSS NEGLIGENCE AND FRAUD It is inaccurate use of language to say that gross negligence is fraud, it is no more evidence of fraud to engross carelessness is evidence of design An agent may be liable because he has acted negligently or because he has acted fraudulently The line of demarcation may in some instances be very fine and by no means easy to draw, but there is no room for discussion that negligence and fraud must be placed in two distinct categories (1891) 2 Ch. 449, *Foll*, (1870) L R 6 Ch Appr 104, (1883) 25 Ch D 752=1867 L R 1 H L (S C) 145, (1889) 14 App. Cas. 337 at 368, (1893) 1 Q B 491 at 500, (1901) A.C. 477, *Ref.*) 13 C L J 165=7 I C. 270

NEGLIGENCE AND MALICE Negligence is distinguished from malice in that it arises from a failure of purpose, while malice arises from an evil purpose.

NEGLIGENCE NONFEASANCE MALFEASANCE. Negligence is strictly nonfeasance, and not malfeasance

Negligence, actionable "Any invasion of the civil rights of another person is in itself a legal wrong, carrying with it liability to repair its necessary or natural consequences in so far as these are injurious to the person whose right is infringed, whether the motive which prompted it be good, bad, or indifferent" (per *Lord Watson, Allen* v *Flood*, (1898) A C.I. at 92) Where, then, there is the right of another not to be interfered with, there arises a duty not to interfere; and any interference is default in duty, which may be treated as negligence in so far as the interference can be viewed as a failure to attain the standard of legal duty. (*Ency. of the Laws of England*)

CONTRIBUTORY NEGLIGENCE. "Negligence by itself affects no one with liability. Where negligence produces no damage to others it is not actionable. A man has a right to be as negligent as he pleases, provided only that in being negligent he does not interfere with the rights of other people. The corollary of this is that if one man sees another guilty of negligence he cannot stand upon his abstract rights, and, having sustained damage through ignoring the manifest consequences of the other's action, fix the consequences of his persistency on him. He is bound, so far as he can, to avoid the probability of damage brought into being by the negligent act of the other. If he does not do what he can in this direction, he is guilty of *contributory negligence*, and must himself bear the consequences of his want of care. *Contributory negligence*, then, is negligence in not avoiding the consequences arising from the negligence of some other persons, when means and opportunity are afforded to do so" (see per Coleridge, J, *Clayards* v *Dethick*, (1848) 12 Q.B. 439, at 445, 76 R R. 305)

Negligence per se The omission to do what the law requires, or the failure to do anything in a manner prescribed by law, is negligence *per se*

Negligent. Careless, heedless, want of attention

The term "negligent" imports a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Negligentia semper habet infortunium comitem. A maxim meaning 'Negligence has always had misfortune for a companion".

Negligently Without exercising the degree of care which a person of ordinary sense and prudence, under like circumstances, and in the performance of a like act, would have exercised

Negotiable Capable of being transferred by assignment, sale indorsement, or delivery; capable of being passed by assignment or endorsement

Negotiability. "Negotiability" is a technical term, derived from the usage or merchants and bankers in transferring, primarily, bills of exchange, and afterwards promissory notes.

"**Negotiable instrument**" defined Act 26, 1881, S 13.

NEGOTIABLE INSTRUMENT. (Negotiable) Paper Bills of Exchange, Cheques, and other documents as are by common usage negotiable and are dealt with as equivalents of coin

A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer *Explanation* (*i*) —A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. *Explanation* (*ii*) —A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank *Explanation* (*iii*),— Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option. A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. Act XXVI of 1881 (Negotiable Instruments), S. 13.

Where an Instrument, is by the custom of the Trade, transferable, like cash, by delivery, and is also capable of being sued upon by the person holding it *pro tempore*, there it is entitled to the name of a Negotiable Instrument, and the property in it passes to a *bona fide* transferor for value.

Negotiate. To effect something, to conclude by bargain, treaty, or agreement; to sell, to pass to transfer for a valuable consideration; to transfer, to sell, to pass.

Negotiate

A power of Attorney "*to negotiate*, make sale dispose of, assign, and transfer," a Promissory note, does not authorize its being pledged (*Jonmenjoy Coondoo* v. *Watson*, 53 L J P C. 80, 9 App, Ca. 561).

"Negotiated", when applied to a note, means more than indorsement merely, and includes delivery.

To NEGOTIATE, TREAT FOR OR ABOUT, TRANSACT. As nouns, negotiation expresses rather the act of deliberating than the thing deliberated · treaty includes the ideas of the terms proposed, and the arrangement of those terms transaction expresses the idea of something actually done and finished Negotiations are sometimes very long pending before the preliminary terms are even proposed, or any basis is defined, treaties of commerce are entered into by all civilised countries, in order to obviate misunderstandings and enable them to preserve an amicable intercourse; the transactions which daily pass in a great metropolis, like that of London, are of so multifarious nature, and so indefinitely numerous, that the bare contemplation of them fills the mind with astonishment. Negotiations are long or short, treaties are advantageous or the contrary, transactions are honourable or dishonourable.

"**Negotiation**" defined. Act 26, 1881, S. 14.

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Act XXVI of 1881 (Negotiable Instruments), S. 14

Negro A black man descended from the black race of South Africa.

Negus Ancient Ruler of Abyssinia.

Neighborhood. Adjoining or surrounding district; a near place, vicinity; adjoining tract or district, the place which is near one's habitation, the quality or condition of being a neighbour, or dwelling near.

NEIGHBOURHOOD "'Neighbourhood', as applied to place, signifies nearness as opposed to remoteness. Whether a place is in the neighbourhood of another place depends upon no arbitrary rule of distance or topography. One house may be said to be in the neighbourhood of another house,and not structurally adjoin it".

The term "neighbourhood" does not express any definite idea of distance. A few feet, or several hundred yards, or even a greater distance from an object would be in its neighbourhood.

"Neighbourhood" is defined as dwelling near; a place near, adjoining district; the inhabitants who live in the vicinity of each other. "Neighbourhood", in a covenant restraining business competition must be taken to mean the immediate neighbourhood of the place, and is equal to a distance sufficient to prevent competition. (*Stride* v. *Martin*, 77 L.T. 600)

A distance of twelve miles cannot be regarded as either "neighbourhood" or "vicinity" and these words include only suburbs or immediate surroundings of any town or village. (14 Ind. Cas. 975 (976) =14 Bom. L.R. 158=13 Cr.L.J 430).

Nemini in alium

NEIGHBOURHOOD, VICINITY. Neighbourhood is employed in reference to the inhabitants or in regard to inhabited places, that is, it signifies either a community of neighbours, or the place they occupy, but vicinity is employed for the place in general, that is, near to the person speaking, whether inhabited or otherwise

Neighbouring Situated or residing near by, being in the vicinity, adjacent.

"ANY ADJOINING OR NEIGHBOURING COLLIERIEES" These words apply to "those neighbouring mines only which, though not actually adjoining the seam of coal demised, might be or become connected with it by underground workings" (per *Lindley*, L J., *Re Roundwood Colliery Co.*, (1897) 1 Ch. 373, 66 L J Ch 194.)

Ne in crastinum quod possis hodie. A maxim meaning "Do not put off until to-morrow what can be done today"

Nek-mard (*P* =good or respectable man) (*Sindh*) a term used of the village headman (*Bad. Pow* III. 321)

Nel (*Tam*) Rice in the husk, paddy, fifty-eight kinds of which are grown in Malabar, a fundamental measure, eight grains being equal to the breadth of a finger.

Nela (*Karn*) Earth, ground, soil. *Kattani-nela* (Karn) A good soil. *Masubu nela* (Karn) A soil between red and black *Ken or Kenupunela* (Karn) A red soil. *Bili-nela or Savula-nela* (Karn.) White soil.

Ne licitatorem venditor apponat A maxim meaning "The seller should not appoint a bidder."

Ne lites immortales essent dum litigantes mortales sunt. A maxim meaning "let not strife be immortal, while those who strive are mortal."

Nelpalisa (*Mal*) Lending grain at interest

Nellar (*Mal.*) A rice store or granary.

Nellipatam (*Mal.*) Rent upon fields of growing rice.

Nelpura (*Mal*) A store or granary for rice.

Nelterige (*Mal*) Land tax, a tenure in terms not supposed to convey full proprietary right. (*Sun. Iyer's Mal. Law*)

Neminem cum alterius detriment et injuria fieri locupletiorum. A maxim meaning "No one can be made richer to the damage and wrong of another"

Neminem laedit qui jure suo utitur. A maxim meaning "He who stands on his own rights injures no one."

Neminem oportet esse sapientorem legibus. A maxim meaning "No man need be wiser than the laws."

Nemini hora est bona ut non alicui sit mala. A maxim meaning "No hour is favorable for one man but that is bad for another.

Nemini in alium plus quam licet concessum est legibus. A maxim meaning "More is allowed to no one against another, than is conceded by the laws."

Nemnook.

'Nemnook.' The word "*nemnook*" means provision, and is large enough to cover provision in land as well as in money. Villages and land may be allotted in payment of *nemnooks* 38 Bom L.R. 1265=64 C.L.J. 178=164 I C. 753=A.I R. 1936 P.C. 312 (P C)

Nemo ad littus maris accedere prohibetur. A maxim meaning "No one is prohibited from approaching the sea shore."

Nemo admittendus est inhabilitare seipsum A maxim meaning "No man is to be admitted to incapacitate himself."

Nemo ad regem appellet pro aliqua lite, nisi jus domi consequi non possit. A maxim meaning "No person should appeal to the king in any suit, unless he cannot obtain his right at home"

Nemo agit in seipsum A maxim meaning "No man acts against himself"

Nemo alienae rei sine satisdatione defensor idoneus intelligitur A maxim meaning "No man is considered a competent defender of another's property without security."

Nemo alieno nomine lege agere potest A maxim meaning "No one may sue at law in the place of another"

Nemo aliquam partem recte intelligere potest antequam totum iterum atque iterum prelegerit A maxim meaning "No one can rightly understand part of a thing till he has read through the whole again and again"

Nemo allegans suam turpitudinem audiendus est. A maxim meaning "No one alleging his own baseness is to be heard"

'NEMO ALLEGANS TURPITUDINEM SUAM EST AUDIENDUS' The maxim is applicable to India 45 M L J. 161=32 M.L T. 349 (H C)=1923 M.W N 423=18 L.W. 156=A I R 1923 Mad 711.

Father made a gift in favour of his minor son During the donee's lifetime the donor did or said nothing to suggest that the gift was fictitious. On the contrary, all his acts and statements tended to show that he intended to make a real gift. But when the minor donee died, it became convenient to the donor to ignore the gift and to claim that he remained all along owner of the estate and that the gift was meant only to enable the Court of Wards to take charge of the property. He also got a deed of relinquishment executed by the widow of the donee in his favour reciting that the gift in her husband's favour was fictitious *Held*, that the maxim *nemo allegans turpitudinem suam est audiendus* would be applicable, and the donor or his representatives cannot be allowed to take advantage of his own wrongdoing and deny that the gift was fictitious 1 Luck C 97=104 I C. 299=A.I R. 1927 Oudh 278.

Nemo bis in periculum veniet pro eodem delicto. A maxim meaning "No one should come twice into danger for the same crime."

Nemo bis punitur vexatur pro eodem delicto. A maxim meaning "No man is punished twice for the same offence."

Nemo bis vexari debet pro eadem caesa. No man should be harassed twice for the same offence. *See* **8 Lah. 496.**

Nemo debet in communione.

Nemo cogi potest praecise ad factum sed in id tantum quod interesse A maxim meaning "No person can be compelled precisely to the act, but to so much only as interests him"

Nemo cogitationis poenam patitur. A maxim meaning "No one suffers punishment on account of his thoughts"

Nemo cogitur rem suam vendere etiam justo pretio A maxim meaning "No man is compelled to sell his own property, even for a just price"

Nemo condemnari debet inauditus nec summonitus A maxim meaning "No one should be condemned unheard, or unsummoned"

Nemo contra factum suum venire potest (2 Inst 66) A maxim meaning "Nobody can come against his own deed"

Nemo damnum facit nisi qui id fecit quod facere jus non habet A maxim meaning "No one does damage, unless he is doing what he has no right to do"

Nemo dare potest quod non habet. A maxim meaning "No man can give that which he has not"

Nemo dat quid non habet. A maxim meaning "No one can give who does not possess"

Nemo debet aliena jactura locupletari. A maxim meaning "No one ought to gain by anothers loss."

Nemo debet bis punire pro uno delicto; et deus non agit bis in ipsum. A maxim meaning "No one should be punished twice for the same fault and God punishes not twice against himself."

Nemo debet bis puniri pro uno delicto. A maxim meaning "No man ought to be punished twice for one offence."

Nemo debet bis vexari pro una et eadem causa A maxim meaning "No one ought to be twice vexed for one and the same cause."

Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa. A maxim meaning "No one should be twice punished, if it appear to the court that it is for one and the same cause." (*Peloubet's Leg Max*, 5 Coke 61, *Broom Leg Max.* 294.)

Nemo debet esse judex in propria causa sua, Principle underlying S 556, Cr P. Code. *See* Cr. P Code 1898, S 556. 20 S.L.R. 171

Nemo debet esse judex in propria causa. A maxim meaning "No man ought to be a judge in his own cause"

Nemo debet esse testis in sua propria causa A maxim meaning "No one ought to be a witness in his own cause."

Nemo debet ex alieno damno lucrari A maxim meaning "No one should be enriched out of the loss of another."

Nemo debet immiscere se rei alienae ad se nihil pertinenti. A maxim meaning "No one should intermeddle with a thing that in no respect concerns him" (*Jenk. Cent. Cas.* 18)

Nemo debet in communione invitus teneri A maxim meaning "No one should be retained in a partnership against his will."

Nemo debet locupletari.

Nemo debet locupletari aliena jactura. A maxim meaning "no one ought to be enriched by another's loss."

Nemo debet locupletari ex alterius incommodo A maxim meaning "No one ought to be enriched at the expense of another"

Nemo debet rem suam sine facto aut defectu suo amittere A maxim meaning "No one should lose his property without his own act or negligence"

Nemo de domo sua extrahi potest. A maxim meaning "No one may be dragged from his own house"

Nemo duobus utatur officiis A maxim meaning "No one should hold two offices"

Nemo ejusdem tenementi simul potest esse haeres et dominus A maxim meaning "No one can be at the same time heir and landlord of the same fief"

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit. A maxim meaning "No one can understand the significance of a part of a writing until he has read the whole again and again"

Nemo est cogendus quis ad substituendum A maxim meaning "No one is compelled to substitute another in his own place."

Nemo est haeres viventis A maxim meaning "No one is an heir to the living"

The doctrine that *"Equity considers that as done, which should have been done"* cannot be applied to a case of a transfer of a *spes successionis*, *i. e.*, such as the interests of a reversioner There is no such character in law as the heir of a living person or his statutory next of kin. Possibilities coupled with an interest, such as contingent interests may be called contingent interests and a bare possibility such as a hope of inheritance, mere expectancies inasmuch as a possibility coupled with an interest is more than a possibility and is a present devisable interest 25 C W.N. 496=65 I C. 27=33 C L.J. 457=48 Cal 536

Nemo est supra leges A maxim meaning "No one is above the laws."

Nemo ex alterius detrimento fieri debet locupletari A maxim meaning "No one ought to be made rich out of another persons injury"

Nemo ex alterius facto praegravari debet A maxim meaning "No man is to be burdened in consequence of another's act."

Nemo ex dolo suo proprio relevetur aut auxilium capiat. A maxim meaning "No man is bound for the advice he gives"

Nemo ex dolo suo proprio re levetur aut auxilium capiat. A maxim meaning "Let no one be relieved or gain an advantage by his own fraud"

Nemo ex his qui negant se debere prohibitur etiam ali defensione uti nisi lex impedit A maxim meaning "No one denying that he is indebted, is prohibited from using any other lawful defence."

Nemo ex proprio dolo consequitur actionem. A maxim meaning "No one acquires a right of action from his own wrong."

Nemo potest esse.

Nemo ex suo delicto meliorem suam conditionem facere potest. A maxim meaning "No one can improve his condition by his own wrong."

Nemo factum a se alienum tenetur scire A maxim meaning "No one is bound to know the private act or deed of another unless it is done with himself"

Nemo forestam habet nisi rex A maxim meaning "Forests belong to no one but the king."

Nemo habetur agere dolose qui jure se utitur A maxim meaning "No one is held to act fraudulently who acts in exercise of his rights"

Nemo in alterius facto praegravari debet A maxim meaning "No one should be burdened by the act of another"

Nemo inauditus condemnari debet si non sit contumax A maxim meaning "No man ought to be condemned without being heard unless he be contumacious"

Nemo in propria causa testis esse debet A maxim meaning "No one ought to be a witness in his own cause"

Nemo invitus compellitur ad communionem A maxim meaning "No one can be compelled into copartnership against his will"

Nemo jus sibi dicere potest A maxim meaning "No one can declare the law for himself."

Nemo militans deo implicet se negotiis secularibus A maxim meaning "No one whose duty is with things divine should be allowed to deal with things secular"

Nemo mori potest pro parte testatus pro parte intestatus A maxim meaning "No one can die partly testate and partly intestate"

Nemo moriturus praesumitur mentire A maxim meaning "No one at the point of death is presumed to lie"

Nemo nascitur artifex. A maxim meaning "No one is born an artificer."

Nemo patriam in qua natus est exuere nec legeantiae debitum ejurare possit A maxim meaning "A man cannot abjure his native country nor the allegiance which he owes to his sovereign" (*Black L Dict*)

Nemo plus commodi heredi suo relinquit quam ipse habuit A maxim meaning "No one leaves a greater benefit to his heir than he has himself."

Nemo plus juris in alium transferre potest quam ipse habet. A maxim meaning "No one can transfer to another a greater (right) than he has himself"

Nemo potest contra recordum verificare per patriam. A maxim meaning "No one can verify by jury against a record."

Nemo potest episcopo mandare praeter regem. A maxim meaning "No one can give a mandate to a bishop except the king."

Nemo potest esse dominus et haeres A maxim meaning "No one can be both owner and heir."

Nemo potest esse.

Nemo potest esse simul actor et judex A maxim meaning "No one can be at once suitor and judge."

Nemo potest esse tenens et dominus A maxim meaning "No man can be at the same time tenant and lord."

Nemo potest exuere patriam A maxim meaning "No man can abjure his native country."

Nemo potest facere per alium quod per se non potest A maxim meaning "No one can do by another what he cannot do by himself."

Nemo potest facere per obliquum quod non potest facere per directum A maxim meaning "No man can do that indirectly which he cannot do directly"

Nemo potest gladii potestam sibi vel cujus alterius coercitionis ad alium transferre A maxim meaning "No one to whom is delegated a power of coercion can himself transfer it to another"

Nemo potest habere duas militias nec duas dignitates. A maxim meaning "No man can fill two offices or two dignities"

Nemo potest immittere in alienum A maxim meaning "No one can send anything into another's field"

Nemo potest mutare consilium saum in alterias injuriam A maxim meaning "No one is allowed to change his own mind to the injury of another" (*Morgan Leg Max*)

Nemo potest nisi quod de jure potest A maxim meaning "No man can do anything except what he can do lawfully"

Nemo potest renunciare juri publico A maxim meaning "No one can renounce a public right."

Nemo potest sibi debere A maxim meaning "No one can owe to himself"

Nemo potest sibi mutare causam possessionis A maxim meaning "No one can change for himself the cause of his possession"

Nemo praedo est qui pretium numeravit A maxim meaning "No one is a pirate who has counted out the price."

Nemo praesens nisi intelligat. A maxim meaning "One is not present unless he understands."

Nemo praesumitur alienam posteritatem suae praetulisse A maxim meaning "No man is presumed to have preferred another man's posterity to his own."

Nemo praesumitur donare. A maxim meaning "No one is presumed to give."

Nemo praesumitur donare vel suum perdere. A maxim meaning "Nobody is presumed to give a donation or to lose what is his own."

Nemo praesumitur esse immemor suae aeternae salutis; et maxime in articulo mortis. A maxim meaning "No one is presumed to be forgetful of his own eternal welfare, and particularly at the point of death."

Nemo tenetur jurare

Nemo praesumitur ludere in extremis. A maxim meaning "No one is presumed to trifle at the point of death"

Nemo praesumitur malus A maxim meaning "No one is presumed bad"

Nemo prohibetur plures negotiationes sive artes exercere. A maxim meaning "No one is prohibited from exercising several kinds of business or arts."

Nemo prohibetur pluribus defensionibus uti A maxim meaning "No one is prohibited from making use of several defences"

Nemo prudens punit ut praeterita revocentur sed ut futura praeveniantur A maxim meaning "No wise man punishes that things done may be revoked, but that future wrongs may be prevented."

Nemo punitur pro alieno delicto. A maxim meaning "No one is to be punished for the crime of another" (*Peloubet Leg Max*)

Nemo punitur sine injuria facto seu defalto, A maxim meaning "No one is punished except for some injury, deed or default."

Nemo qui condemnare potest absolvere non potest A maxim meaning "He who is able to condemn is also able to acquit."

Nemo redditum invito domino percipere et possidere potest. A maxim meaning "No one can take and enjoy the rent without the consent of the owner"

Nemo rem suum amittit nisi ex facto aut delicto suo aut neglectu A maxim meaning "No one can lose his own property, except by his own deed, transgression or neglect."

Nemo repente turpissimus A maxim meaning "No one becomes bad in an instant"

Nemo sibi esse judex vel suis jus dicere debet A maxim meaning "No one ought to be his own judge, or the tribunal in his own affairs"

Nemo sine actione experitur et hocin on sine breve sive libello conventionali A maxim meaning "No one goes to law without an action, and no one can bring an action without a writ or bill."

Nemo tenetur ad impossibilia A maxim meaning "No one is bound to an impossibility"

Nemo tenetur armare adversarium contra se A maxim meaning "No one is bound to arm an adversary against himself."

Nemo tenetur divinare. A maxim meaning "No one is bound to know a thing before it happens"

Nemo tenetur edere instrumenta contra se. A maxim meaning "No man is bound to produce writings against himself."

Nemo tenetur informare qui nescit zsed qusquis scire quod informat A maxim meaning "No one who is ignorant of a thing is bound to give information of it, but every one is bound to know that which he gives information of.

Nemo tenetur jurare in suam turpitudinem. A maxim meaning "No one is bound to testify to his own baseness."

Nemo tenetur seipsum.

Nemo tenetur seipsum accusare. A maxim meaning "No man can be compelled to criminate himself."

Nemo tenetur seipsum infortuniis et periculis exponere. A maxim meaning "No one is bound to expose himself to misfortunes and dangers."

Nemo tenetur seipsum prodere. A maxim meaning "No one is bound to betray himself."

Nemo unquam judicet in se A maxim meaning "No one can ever be a judge in his own cause."

Nemo unquam vir magnus fuit sine aliquo divino afflatu A maxim meaning "No one was ever a great man without some divine inspiration in him."

Nemo videtur fraudare eos qui sciunt et consentiunt A maxim meaning "No one is considered as defrauding those who know and consent."

Neota Nature of. "Neota" is not a legal but a social obligation and is therefore not recoverable by means of a suit. 34 P.L.R 218=A I R. 1933 Lah. 317 (1)

"Nephew" defined Act 10, 1865, s 86

The word "nephew," as generally used, means the children of a brother or sister.

The primary meaning, of '*Nephew*' or 'Niece,' is 'Child of Brother or Sister" (*per* Jessel, *M R Wells* v. *Wells*, 43 L J. Ch. 681.)

The words "nephews" and "nieces" apply only to children of brothers or sisters, Act XXXIX of 1925 (Succession), S. 99 (c).

GREAT-NEPHEW OR GREAT-NIECE is not included in a gift to "nephews and nieces" (*Shelley* v. *Bryer*, Jac. 207, *Falkner* v *Butler*, 1 Amb 514, *Crook* v *Whitley*, 26 L.J. Ch, 350)

"As regards the term '*Nephew' and 'Niece*,' popular language has attached a meaning which includes nephews and nieces by marriage, but I do not think there is any such popular usage with regard to the term 'cousin'" (*per* Bowen, L J, *Re Taylor, Cloak* v. *Hammond*, 56 L.J. 173, 34 Ch.D. 255)

Nepotism. Favouritism to relatives in bestowing office

Ne quaere litem cum licet figere A maxim meaning "Seek not a lawsuit when you can escape it."

Neque leges neque senatus consulta ita scribi possunt ut omnes casus qui quandoque inciderint comprehendantur sed sufficit ea quae plerumque accidunt contineri A maxim meaning "Neither laws or acts of parliament can be so written as to include all actual or possible cases, it is sufficient if they provide for those things which frequently or ordinarily may happen." (*Ame. Cyc*)

Ne quid in oco publico vel itinere fiat "Nothing shall be done (put or erected) in a public place or way."

Ner-kalanjiyam (*Tam.*) A granary for rice corn.

Ner-kuli (*Tam*) A grain or rice pit.

Nerpalisa (*Mal*) Another name for otti. (*Sun. Iyer's Mal. Law.*)

Net profits.

Nescis tu quam meticu losa res sit ire ad judicem A maxim meaning "You know little if you do not know that it is a tricklish thing to go to law."

Ne seipsum praecipites in discriminem A maxim meaning "Judge not too hastily."

Net. Clear of all charges and deductions, Clear of anything extraneous, with all deductions (as) charges, discount commissions, etc., free from expenses

"NET" is a term used among merchants to designate the quantity, amount, or value of an article or commodity after all fare and charges are deducted

Net balance Proceeds of sale after deducting expenses.

"NET BALANCE," as used in a telegram from a broker to his client reading, "We will give you a net balance tomorrow," means the balance of the proceeds after deducting the expenses incident to the sale

"**Net cash,**" does not necessarily mean ready money; though, sometimes, by trade custom, that might be the construction. (*Boden* v. *French*, 20 L J C P 143)

Net earnings Profits or earnings after deduction of expenses.

"NET EARNINGS," of a business means the excess of receipts over expenditures.

"Net earnings" means what is left after paying the legitimate cost and expense of making earnings by the use of property.

Net gains The term "net gains," when used in reference to a business, means the excess of receipts over expenditures "A stipulation for a share of the net gains is a stipulation for a share of profits as such"

Net income Income of a business deducting the expense only Profits or income of a business after deducting all necessary charges and expenses.

"NET INCOME," as used when speaking of the net income of an estate, is equivalent to rents, profits, or income,

"NET INCOME" in the Divorce Act (IV of 1869), S. 36, has its ordinary meaning—the amount of income minus deductions on account of income-tax, charges for pension fund and the like. 14 M 88.

Net premium In life insurance parlance, the part of the premium which is intended to meet the cost of the insurance, both current and future.

Net price. The correct price after deducting all discounts

Net proceeds. The sum actually received after making all deductions, what remains of the gross proceeds after all expense and loss incurred in realizing them are deducted.

The net proceeds of a sale of land is what remains of the gross proceeds after paying the expenses of the sale.

Net profits. Profits after all charges and expenses have been deducted the gain that accrues on an investmen after deducting the loss and expenses of

Net profits.

the business; the gain which accrues on an investment after deducting expenses and losses.

The term "net profits" means the surplus left after deducting for all losses.

NET PROFITS. In a contract of service whereby the plaintiff was to receive, in lieu of a salary, "five per cent. of the net profits" of the business, 'net profits" means the money received from the sale of goods after deducting their cost and expenses.

"NET PROFITS" OF A COMPANY is the sum divisible after discharging or making provision for every outgoing expense properly chargeable against the period, whether a year or less, for which the profits are to be calculated (per *Kekewich. J*, *Glasier* v *Rolls* 42 Ch D 453)

Net receipts. The "net receipts" of a business are the receipts of the business after deducting the current expenses.

Net rents and profits A testator in devising certain lands to his wife in trust, and providing that his wife should receive and take all the "net rents" and profits during her own life, to her own use, requires the trustees to receive the gross rents, and, after paying out of them the land tax and other charges on the estate, to hand over the "net rents", or what remains, to his wife.

Net sales. The term "net sales" would be taken to mean the proceeds of the sale after deducting the usual costs, commissions, and expenses incident to a sale

Net tonnage. The "net tonnage" of a vessel is the difference between the entire cubic contents of the interior of the vessel numbered in tons and the space occupied by the crew and by propelling machinery.

Net value. Net price. *See also* A I R. 1921 P.C 184 (P C).

NET VALUE Of corporate shares, the fair market value of the shares as sold in the usual method of selling such property. Of an insurance policy, the amount of the payments which have been made by the holder in excess of the yearly cost of insurance

Net weight The weight of an article after deducting from the gross weight, the weight of the boxes, casks, etc., containing the same.

Nettikut (*Mal*) Crest of hill. (*Sund. Iyer's Mal. Law*)

Neutrality. Neutrality in international law indicates the condition of a State which is not a party in a dispute between other states Strictly speaking, neutrality consists in the abstinence from any participation in a public, private, or civil war and impartial conduct towards both parties.

It is almost impossible to give a succinct definition of *neutrality* which can serve to determine its full scope. Several authors have nevertheless grappled with the difficulty. Thus Hubner says. "Neutrality consists in complete inaction with reference to the war, and in an exact and perfect impartiality, manifested by acts, with regard to belligerents, so far as this impartiality relates to the war and to the direct and immediate means of making it."

New design

"NEUTRALITY", says Azuni, "is the exact continuation of the peaceful state of a Power which, when a war breaks out between two or more nations, abstains absolutely from taking part in their quarrel."

The nation which, while preserving its natural liberty and its independence, remains at peace, while other nations are at war and which continues to maintain with the two belligerent nations the friendly relations of commerce, or only of sociality, or of humanity, existing before the outbreak of hostilities, may call itself neutral. On this subject, *see* Hall, The Rights and Duties of Neutrals, Ward, Treatise on the Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs, Vattel, Law of Nations, Hosack, The Rights of British and Neutral Commerce, Katchenowsky, Prize Law: particularly with reference to the Duties and Obligations of Belligerents and Neutrals, translated by Pratt, Phillimore, International Law, Twiss, Law of Nations in Time of War, Wharton, Digest of the International Law of the United States, Woolsey, Introduction to the Study of International Law.

Nevertheless This word has been used as equivalent in meaning to "notwithstanding."

New. Having existed or having been made but a short time ago; having originated or occurred lately, of late origin, recent; fresh, modern.

The word "new is a relative term. We have a striking illustration of this fact in the case of the Holy Scriptures. The cannonical books which appeared upon the advent of the Christian era, though now nearly 20 centuries old, are known in group as the New Testament, in contradistinction to the former cannonical books, which are known together as the Old Testament A county which has been taken from another, whatever its age, may properly be called a new county with reference to such other.

"New buildings" defined Bom Act 3, 1888, S. 337 (2), Bom. Act 3, 1901, S. 96 expln.

NEW BUILDING. A "new building" involves the constructing, in the main, of a building. That entire change of external appearance which denotes a different building from that which gave place to it, though into the composition of the new structure some of the old parts have entered, is what constitutes a new building. This newness of a structure must be in the external or main plan of the building, and not in its internal arrangement.

Newness of structure in the main mass of the building is that which constitutes a "new building" as distinguished from one altered.

What constitutes a *"New building"* is mainly a question of fact.

"New and original design" defined. Act 5, 1888, S 55

New design. "'Design', signifies something in the nature of a picture of drawing, or diagram—something to be applied to a subject matter of manufacture. It may be applied to pottery ware, to calico printing, and to a great many other things" (per *Crompton, J., Harrison* v. *Taylor*, 29 L J. Ex. 3.)

New installation.

New installation. The question whether there has been a new installation should be decided from the circumstances. If the engine that is substituted is of increased power and is not a mere substitute due to wear and tear it will amount to a new installation. 1930 M.W.N. 721.

"New invention" defined. Act 5, 1888, Ss. 21, 24.

New manufacture or Inventions The term "new manufacture or invention" in respect of Inventions and Designs may be applied to a process only (23 Cal. 702)

New market The word "new" in S 170, Local Boards Act is used in its ordinary signification as "for the first time opened or kept open" and therefore S 170 does not apply to a market which was not opened after the coming into force of the Local Boards Act of 1920 but was in existence even prior to that Act. 26 Cr L.J. 1053=87 I.C 973=A.I.R 1925 Mad 10 5.

New matter. The term "new matter", in the law of pleading, means matter outside the issues raised by a denial. A defense of new matter, therefore, is a defence based on a concession of plaintiff's claim and is limited to facts showing a defence, even though facts alleged by plaintiff are true

New nuisance. The continuance of that which was originally a nuisance may sometimes be regarded as a new nuisance.

New promise A renewal of a promise to pay a note barred by the statute of limitations is itself a new promise sufficient to remove the bar of the statute

New sentence or order.' *See* 167 I.C 790=64 I.A 148=46 L.W. 134=39 Bom L R 966=I.L R (1937) Bom 711=A I.R 1937 P C 119=(1937) 2 M L J. 323 (P.C.).

"New streets" may be made under different circumstances You may have the whole land on both sides belonging to one owner Then he makes a plan, he has an intention in his mind, and he has a plan drawn But that does not begin the street. To my mind that is not laying out the street within the meaning of the Act of Parliament The Act of Parliament does not care what people do upon paper It cares about what they do in point of fact, and upon the land When would such an owner begin to lay out and form a street? To my mind he would do so when he built his first house, having the intention to go on to make a street He would have begun to lay out and to form a street then, and it would then from that moment begin to be a street. But streets are formed in another way. Supposing that along the line of that which would eventually be considered a street there are a great many owners There is not any one of them who would make a plan for the whole; but it may be clear that all of them are intending to build there, and to build, having regard to a roadway—if there is an existing roadway certainly having regard to that. Then how will those people lay out and form a street? Why, each of them by what he does on his own land, would be laying out and forming a street. Which of them begins? I should say the one who begins first in point of time begins to form a street; and if you find that there are several proprietors along a line each of whom is

Newspaper

letting it be known, so that the tribunal comes to the conclusion that each of them intends to build not absolutely in a line but in the same direction, why then the tribunal would have the right to say that there is a common intention amongst all these people to build in a particular course. When they have done so, that course will produce a street, and therefore the first of them who in virtue of that, common idea begins to build and begins to form and lay out that street—he and all others are subject to the jurisdiction of the Board. There is another case which my Lord has alluded to,—where there shall be several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build,—that is to say, that one man at the end of the street may have that intent but the others have not shown by any act that they have any intent at all; they have not laid out their land as building land, they have not advertised it as building land—they have done nothing to show that intent Then the street really forms itself, as it were, by continuous action or successive action without any common intent Then you have to wait until you can see by the course of building that there is that common intent The moment you see that, you come to the conclusion that it is a street and that it is begun to be formed" (*per* Brett L J., *A G.* v *Rufford*, 1899, I C 537 cited in *Stroud Jud Dic.* 1271)

New term It is well understood that an adjourned term of court is not a new term of such court, but a continuance of the term at which the adjournment was taken

New trial. A *new trial* is a retrial in the same court

A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or decision by the court.

New trustee A person newly appointed, not an old one to whom power is given to act in the stead of another old trustee as well as for himself. (*Regardiner*, 55 L J. Ch. 714, 33 Ch D 590)

Newgate The name of a prison in London said to have existed as early as 1207.

"Newly discovered evidence" Proof of some new and material fact in the case, which has come to light since the verdict or judgment.

News Tidings, fresh events reported.

NEWS, TIDINGS News implies anything new that is related or circulated, but Tidings signifies that which flows in periodically like the tide News is unexpected, it serves to gratify idle curiosity; tidings are expected, they serve to allay anxiety In time of war the public are eager after news; and they who have relatives in the army, are anxious to have tidings of them.

News agent. Dealer in Newspapers.

News boy; news man. Hawking Newspapers.

News monger. Gossip.

"Newspaper" defined, Act 14, 1866, S. 2; Act 7, 1908, S, 2, Act 1, 1910, S. 2.

NEWSPAPER. Periodical — especially publication with the News, advertisement etc.

Newspaper.

A newspaper in the ordinary acceptation of the term is a publication in sheet form, intended for general circulation, published regularly at short intervals and containing intelligence of current events of general interest. It follows from this definition that if a publication contains the general current news of the day, it is none the less a newspaper because it is devoted primarily to special interests, such as legal, religious, political, mercantile, or sporting.

It is a publication which usually contains, among other things, what is called the general news, the current news or the news of the day"

NEWSPAPER ARTICLE Where a newspaper article is ambiguous and capable of an interpretation making it both defamatory and innocent it should be interpreted in favour of the accused and the more sinister interpretation should not be put on it 24 I.C. 974= 15 Cr L.J 565.

DAILY NEWSPAPER The term "Daily newspaper" in its popular sense means a paper according to its usual custom, is published six consecutive days in each week.

DAILY AND WEEKLY NEWSPAPER. A Sunday edition of a daily newspaper bearing a number consecutive with the issues of the other days of the week, is a daily and not a weekly paper. (*Ame Cyc.*)

OFFICIAL NEWSPAPER of a state or country is one in which the public acts of the state resolutions, advertisements, and notices are required to be published on are generally published.

PAPER ISSUED BY COLLECTION AGENCY. A paper issued by a collection agency showing on its first page that its purpose is to collect debts, and a large part of which paper contains notices warning the public against persons alleged to have failed to pay their debts, or asking for information as to such persons, is in no sense a newspaper, as that term is generally understood (*U S v. Burnell*, 75 Fed 824)

POLITICAL NEWSPAPER. A newspaper to be of a political party must profess to be so or be so known, it is not sufficient that it has, while professing to be an independent newspaper, supported a political party.

PUBLIC NEWSPAPER A newspaper is of itself a public print, and imports publicity A private newspaper would be, according to the definition of newspaper, a contradiction in terms (*Bailey v Myrick*, 50 Me. 171, 181)

SPORTING PAPER. *See* (1899) 1 Ch. 884, 68 L.J, Ch. 408.

"New tax." The words "new tax" are wide enough to cover the case of a tax which has been newly or recently imposed. 134 I C. 110=33 P.L R. 135=A.I.R. 1932 Lah 87,

Newspaper report. A rumour of current events printed in a newspaper.

News stand. Stall for sale of newspapers.

Next. The word "next" means nearest.

A reference to the next or following section or other division of a statute means the section or other division immediately following.

Nibandha

Next day. "Next day", in a legal sense, means the next business day

The next day on which notice of default in payment should be made after presentment and protest means the next business day Hence, where the protest was made on Saturday, the notice was properly mailed on the next Monday, leaving the intermediate Sunday out of the computation

Next friend. Prochein ami or next friend is said to be any person who will undertake the infant's cause It is not limited to any particular relative

The court may control a next friend, as well as a guardian ad litem, and should permit or direct what is most for the interest of the infant. In reason, there can be no difference between the power of a next friend and of a guardian ad litem The one is permitted by the court to prosecute on behalf and in the name of an infant, and the other is appointed by the court to defend the suit of an infant

NEXT FRIEND "Otherwise Prochaine Amy is he which appeareth in any Court for an Infant which sueth any action and aideth the infant to pursue his suit" (*Termes de la Ley*)

Next heir *See* 48 Mad 1=A I R 1925 Mad. 497, 40 C W.N. 737=A I R. 1936 P C 131 (P C)

"Next-of-kin" defined Act 2, 1874, S 3

NEXT-OF KIN Nearest in relationship according to the degrees of consanguinity; all persons legitimate or otherwise, of the same blood, nearest in blood relationship, next or nearest in blood; relatives in blood, those related by blood who take the personal estate of one who dies intestate, nearest relatives

The words 'next of kin' mean such of the distributees as are of the kindred or relations by blood'

"Next-of-kin" means nearest of kin, and does not include those who are entitled by representation

The words "next of kin," used simpliciter in a deed or will, means next of kin according to the statute of distributions, including those claiming per stirpes or by representation "They have a technical meaning, and this meaning is not the nearest of kin, but those of the kindred or relations by blood who, in cases of intestacy, by the statute of distributions succeed to the share in the intestate's personal property

"Next-of-kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatees of the deceased Act III of 1913 (Administrator General's) S. 4, cl 6

"The expressions "Nearest of kin," 'Nearest of Blood,' and 'Next of kin', are all synonymous" (*Seton*, 1575, 1576).

"Next personal representatives", or next legal representatives," his nearest of kin, in blood.(*Booth v. Vicars*, 13 L.J. Ch. 147)

Nexus. Bond of connection, (the *cash nexus*, consisting in money payments.) (*Oxford Dic*)

Nibandha. *See* 36 Bom. 94,

Nice.

Nice. Characterized by discrimination and judgment, exactly fitted or adjusted, accurate; apt; delicately constructed; fragile, tender, agreeable or pleasant

Nickname. A short name, one nicked or cut off for the sake of brevity.

NICK-NAME is a name added to or substituted for or altered from the simple or regular name.

"**Niece**" defined. Act 10, 1865, S. 86.

NIECE. The daughter of a brother or sister

The term "nieces", in its primary and ordinary sense, means the immediate descendants of the brothers and sisters of the testator.

NIECE OF HALF BLOOD. The term "niece", without qualification, does not include nieces of the half blood.

Nigadi chittu (*Mal.*) A document given by Collector to each payer of revenue, stating the amount of cash demandable. (Mysore)

Nigadi-shistam (*Mal*) A cash balance after payment of the government revenue, payable to the proprietor by the tenant or occupier, either under lease or mortgage.

Nigdi (*Kan*) Fixed. (*Sun Iyer's Mal. Law.*)

Night or Night-time. That portion of the twenty-four hours from sunset to sunrise, the period from the termination of day-light in the evening until earliest dawn of next morning, the time between the darkness after sundown and dawn and one hour before sunrise on the next day, the twenty-four hours where there is insufficient day-light to discern a man's features; that space of time during which the sun is below the horizon of the earth, except that space which precedes its rising and follows its setting, during which by its light the countenance of a man may be discerned (*Bouvier, Ame Cyc*)

"As to what is reckoned Night, and what day, (in connection with Burglary):—"anciently the day was accounted to begin only at sunrising, and to end immediately upon sunset; but the better opinion seems to be, that if there be day-light enough, begun or left, to discern a man's face withal, it is not night (to constitute burglary.) (*R.* v. *Tandy*, 1 C. & P. 297) But this does not extend to moon light, for then many midnight burglaries would go unpunished. and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night; when all creation, except beasts of prey, are at rest, when sleep has disarmed the owner, and rendered his castle defenceless." (4 *Bl Com 224*: *Co. Litt.* 153a.)

NIGHTLY, NOCTURNAL. Nightly and Nocturnal signify belonging to the night, or the night season., the former is therefore more familiar than the latter, we speak of nightly depredations to express what passes every night, or nightly disturbances, nocturnal dreams, nocturnal visits.

Night-Walker. A night-walker is a woman who strolls the streets at night for the unlawful purpose of picking up men for lewd purposes.

"NIGHT-WALKER" is a name applied to one who roams at night for evil purposes

Nihil de re accessit

NIGHT-WALKER. It also applied to "A woman walking up and down the streets to pick up men." [(per *Lawrence, J, Lawrence* v *Hedger*, 3 *Taunt* 15)

A "common night-walker" is one whose habit is to be abroad at night for the purpose of committing some crime, of disturbing the peace, or doing some wrongful or wicked act.

Night-walkers, are such persons as sleep by day and walk by night, being oftentimes pilferers, or disturbers of the peace. (Stat 5 Ed. 3 c, 14.) Constables are authorised by the common law to arrest Night-walkers, and hold them until the morning and it is said, that a private person may arrest any suspicious Nightwalker and detain him till he give a good account of himself. (*2 Hawk P.C. Tomlins Law Dic.*)

By the old English-law a "night-walker" seems to have been held simply as a suspicious person rather than a criminal.

Nigrum nunquam excedere Debet rubrum A maxim meaning "The black should never go beyond the red (*i.e.*,) the text of a statute should never be read in a sense more comprehensive than the rubric, or title)" (*Bouvier L. Dict*)

Nigudi or Niguti (*Mal*) Tax. (*Sun. Iyer's Mal Law.*) The land tax payable to Government.

Nihang Goshain An ascetic of *Nihang* order in which marriage is not allowed, cannot unless special custom is proved, renounce his vow of celibacy and marry. A son born of his marriage cannot be deemed to be his heir, and cannot succeed to the property belonging to his *gaddi*. The mere fact that a *Nihang Goshain* takes to himself a wife, insufficient to show that he can legally marry or adopt the life of a *grihast goshain*. 11 A.L J. 738=21 I C. 85

Nihil agitur si quid agendum superest: A maxim meaning "Nothing is done if anything remains to be done." (*Morgan Leg. Max.*)

Nihil aliud potest rex quam quod de jure potest (11 Rep 74). A maxim meaning "The king can do nothing but what he can do by law." (*Peloubet Leg. Max*)

Nihil capiat per breve Literally "That he take nothing by his writ" The form of judgment against plaintiff in an action, either in bar or in abatement. (*Black L. Dict.*)

Nihil consensui tam contrarium est quam vis atque metus (Dig 50. 17. 116) A maxim meaning "Nothing is so opposed to consent as force and fear"

Nihil cuiquam expedit quod per leges non licet: A maxim meaning "That which is contrary to law cannot be profitable to any one." (*Morgan Leg. Max*)

Nihil dat qui non habet. A maxim meaning "He gives nothing who has nothing"

Nihil de re accessit ei qui nihil in re quando jus accresceret habet A maxim meaning "Nothing of a matter accrues to him who, when the right accrued, has nothing in that matter."

Nihil dicit.

Nihil dicit or nili dicit: Literally "He says nothing" A form of judgment by default, a judgment rendered against a defendant for want of a plea, a species of judgment by confession.

Nihil dictum quod non dictum prius. "Nothing is said which was not said before"

Nihil est (*Lat.*) Literally 'There is nothing" a form of return made by a sheriff when he has been unable to serve the writ

Nihil est ad conciliandum gratius verecundia A maxim meaning "There is nothing more agreeable to conciliation than mutual respect." (*Peloubet Leg. Max.*)

Nihil est enim liberale quod non idem justum A maxim meaning "For there is nothing generous which is not at the same time just"

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est. A maxim meaning "Nothing is more consonant to reason than that a thing should be dissolved or discharged in the same way in which it was created."

Nihil facit error nominis cum de corpore constat. A maxim meaning "An error of name is nothing when there is certainty as to the person." (*Peloubet Leg. Max.*)

Nihil fit a tempore, quamquam nihil non fit in tempore A maxim meaning "Nothing is done by time; although everything is done in time." (*Morgan Leg Max.*)

Nihil habet forum ex scena. A maxim meaning "The court has nothing to do with what is not before it."

Nihil honestum amico est opportuno amicus A maxim meaning 'Nothing can be honest which is destitute of justice." (*Morgan Leg Max.*)

Nihil infra regnum subditos magis conservat in ranquilitate et concordia quam debita legum administratio · A maxim meaning "Nothing preserves in tranquility and concord those who are subjected to the same government better than a proper administration of the laws"

Nihil iniquius quam aequitatem nimis intendere A maxim meaning "Nothing is so unjust as to extend equity too far." (*Peloubet Leg. Max*)

Nihil in lege intolerabilius est eandem rem diverso jure censeri (*4 Rep 93-a*) A maxim meaning "Nothing is more intolerable in law than that the same thing be judged by different rules" (*Morgan Leg. Max.*)

Nihil interest ipso jurequis actionem non habeat an per exceptionem infirmetur A maxim meaning "The law does not concern itself as to who may not have the right to an action, or who may be injured by an exception." (*Peloubet Leg, Max.*)

Nihil magis justum est quam quod necessarium est. A maxim meaning "Nothing is more just than that which is necessary".

Nihil nequam est praesumeddum. A maxim meaning "Nothing wicked is to be presumed" (*Bouvier.*)

Nikal.

Nihil perfectum est dum aliquid restat agendum (*9 Rep. 9-b*). A maxim meaning "Nothing is perfect while something remains to be done" (*Morgan Leg Max*)

Nihil peti potest ante id tempus, quo per rerum naturam persolvi possit A maxim meaning "Nothing can be demanded before that time when, in the nature of things, it can be paid" (*Peloubet Leg Max*)

Nihil possumus contra veritatem A maxim meaning "we can do nothing against truth"

Nihil praescribitur nisiquod possidetur. (*5 B. & Ald. 277*) A maxim meaning " There is no prescription for that which is not possessed" (*Bouvier*)

Nihil quod est contra rationem est licitum A maxim meaning 'Nothing that is against reason is lawful" (*Black L Dict*)

Nihil quod est inconveniens est licitum A maxim meaning "Nothing inconvenient is lawful".

Nihil simile est idem A maxim meaning "Nothing similar is identical". (*Peloubet Leg. Max*)

Nihil simul inventum est et perfectum. (*Co Litt 230*) A maxim meaning "Nothing is invented and perfected at the same moment".

Nihil tam absurdum dici potest ut non dicatur a philosopho A maxim meaning "There is nothing so absurd but that it may, at some time, have been uttered by a philosopher" (*Morgan Leg. Max*)

Nihil tam conveniens est naturali aequitati quam unumquodque dissolvi eo ligamine quo ligatum est A maxim meaning "Nothing is so consonant to natural equity as that every contract should be dissolved by the means which rendered it binding", (*Broom Leg Max*)

Nihil tam conveniens est naturali equitati quam voluntatem domini volentis rem suam in alium transferre ratum haberi A maxim meaning "Nothing is so consonant to natural equity as to regard the wish of the owner in transferring his own property to another". (*Peloubet Leg Max.*)

Nihil tam naturali est, quam eo genere quidque dissolvere, quo colligatum est. A maxim meaning "Nothing is so natural as that an obligation should be dissolved by the same principles which were observed in contracting it". (*Bouvier*)

Nij-jot (*H* =own cultivation) *see* (*Bad. Pow*, 1. 515)

"Nij-jote" Means one's own cultivation A.I. R 1926 Cal 536=91 I.C. 480.

Nikah (*A.*) Marriage. In the language of the law this term implies a particular contract for the purpose of legalizing generation a betrothal. (*Mac Mah. Law*)

Nikal. Nikal is the water obtained in the process of emptying a watercourse at the end of a rotation of turns when a fresh rotation has to be started from the head of the watercourse.

Nikasi.

Nikasi. The word 'Nikasi' meant the gross income as distinguished from the net income. 11 O L J 364=74 I C 95=27 O C. 250=A.I.R. 1924 Oudh 92

Nikitu sishtam (*Mal*) Is where the Kudiyan gives to Janmakar in pattam whatever remains in the pattam after paying the Nikuti.

Nikuti chittu (*Mal*) Means the land-tax payable in money introduced by the Muhammadans (*Mysoreans*) A document given by the Sircar to every person who is to pay the Nikuti or public revenue showing the annual amount of Nikuti he is to pay

Nikuti vittu (*Mal*) Is the quantity of seed assessed in the time of Hyder by the Huzzur Nikuti accounts It is in contradistinction to the Vittu which is the seed required to sow the land for one crop (*Log Mal Man*)

Nil agit exemplum litem quod lite resolvit. A maxim meaning "An example does no good which settles one question by another"

Nil consensui tam contrarium est quam vis atque metus A maxim meaning "There can be no consent when under duress of force or fear". (*Morgan Leg Max*)

Nil facit error nominis cum de corpore vel persona constat A maxim meaning "A mistake in the name does not matter when the body or person is manifest".

Nil habuit in tenementis "He had nothing (no interest) in the tenements".

Nil similius insano quam inebrius A maxim meaning "Nothing more strongly resembles a madman than a drunken man" (*Morgan Leg Max.*)

Nil sine prudenti fecit ratione vetustas A maxim meaning "Antiquity did nothing without a good reason" (*Peloubet Leg Max*)

Nil tam proprium est imperio quam legibus vivere A maxim meaning "Nothing is so becoming to authority as to live according to the law" (*Peloubet Leg Max*)

Nil tam proprium imperii ac libertatis quam legibus vivere A maxim meaning 'Nothing is so peculiar to empire and liberty as to live in accordance with law". (*Morgan Leg Max*)

Nil Temere novandum A maxim meaning "Nothing should be really changed"

Nil utile aut honestum quod legibus contrarium A maxim meaning "Nothing is useful or honorable that is contrary to law". (*Peloubet Leg Max*)

Nilam (*Tam Mal*) A rice field.

Nilamuri (*Mal*) Also called cooderoopad Assignment of rent to creditor, no right of recourse against the tenant if the latter does not pay (*Sund. Mal Law*)

Nilattirvai (*Tam.*) Land assessment.

Nilava, or niluva (*Tel.*) Surplus balance (*Wil. Gloss.*)

Nilavari (*Tam*) Ground rent. Land tax.

Nirerumadu.

Nilgiri (Nilagiri=blue mountains) (*M*) *See* (*Bad. Bow.* iii, 184), Rights of settlers and planters: (*Ibid.* iii 189.)

Nilkhi (*Hindustani*) An officer who fixes or records the prices of articles.

Nillu (*Tel*) Water

Nillubutta (*Tel*) A fee paid in grain at harvest time to the village potter

Niluvu-anchana (*Tel*) Estimate valuation of standing crops.

Niluvu (*Tel*) The unreaped portion of a field partly reaped.

'Nimak sair'. Meaning of. *See* 6 Pat 29.

Nimak sayar mehal 41 Cal 286

'Nimhowla' tenure. Meaning of. 25 I.C 373.

Nimia certitudo certitudinem ipsam destruit A maxim meaning "Too great certainty destroys certainty itself"

Nimia subtilitas in jure reprobatur. A maxim meaning 'Too much subtlety in law is discoun tenanced".

Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit A maxim meaning "Too great subtlety is disapproved of in law, and such certainty confounds certainty"

Nimium altercando veritas amittitur A maxim meaning "By too much altercation truth is lost"

Nimtana The process of estimating a crop by measuring the grain obtained from a few handfuls taken from different parts of the field, the testing of a subordinate's work by the examination of a certain percentage of his operations

Nira (*S.*) **Nir** (*Tam*) Water.

Nirachalava (*Mal*) Full or heaped up measure.

Niragante (*Karn*) A village officer who superintends the distribution of water for irrigation

Niranikam (*Tam*) A village peon superintending the water courses.

Niranilai (*Tam*) Marshy ground

Nirapara (*Mal*) A full measure or para, especially one of corn, presented to the proprietor of an estate annually by the tenant

Nirarambam (*Tam*) Wet lands, lands irrigated artificially for rice cultivation Wet cultivation, as opposed to Kadaramba, dry cultivation

Nirattiper (*Mal*) The ceremony of giving water at the time of transferring an estate, either upon mortgage or sale, by which the bargain is ratified.

Nir attiper Vide Attiper. (*Moore's Mal. Law.*)

Niravatipairu (*Karn*) Corn grown by irrigation.

Nirdharita Meaning of the word 'nirdharita' indicated in 38 C.L.J. 350, *Foll. See* 58 Cal. 1046= 134 I.C. 1130.

Nirerumadu (*Tam*) High lands that cannot be irrigated.

Nirkal

Nirkal (*Tam*) A water-course, a channel for irrigation

Nirkanam (*Mal.*) Ratification of a deed of transfer of hereditary landed property by the proprietor's pouring water into the hand of the purchaser or mortgagee.

Nirkh (*Persian*). Market rate, price current, especially a rate of price fixed by authority

NIRKH, (*P*) price current, table of standard prices, etc., (*Ben*), a schedule of authorised rent rates of raiyats. (*Bad Pow.* 1 624, 628 *note* II 44.)

Nirkh-daroga (*Persian*) A clerk of the market, an officer who regulates the prices at which articles are sold in a public market.

Nirmudal. (*Mal*) Nirmutal, Nirumudal Equivalent to Nirmudalavadu, *i e*, water, etc The right to water and everything else Nirmudal and Kudimanir are identical tenures and the right acquired under them is the full ownership in everything but the name (*Moore's Mal Law.*)

Nir-Murai or Murai-nir (*Tam*) Water allowed to flow in turn for a fixed term to the fields of each cultivator in times of deficiency of water in the channel.

Nirmuttal (*Mal*) A further step in the total transfer of hereditary landed property, in which in consideration of an additional advance from the tenant, the proprietor with the consent of the next heir, parts with as much more of his rights as makes seven-eighths of the whole; the 'water' here is used apparently typically, the property (mutual) in it being made over to the new master

Nirodukal (*Tam.*) Low lands over which the surplus waters of a village are discharged

Nirozhikka *othi* Kanom (*Mal*) A mortgage like kanom, redeemable (*see* 42 M.L J 350) (*Sund Iyer's Mal Law*)

Nirpaichumaniyam (*Tam*) Rent-free land watered from a public reservoir

Nirsavi (*Tam*) Destruction of crops from deficiency of water

Niruvati (*Karn*) Wet cultivation, as that of rice.

Niruvati (*Karn*) Wet cultivation, as that of rice. *Nir-Murai or Murai-nir* (Tam) Water allowed to flow in turn for a fixed term to the fields of each cultivator in times of deficiency of water in the channel.

Nisfkhiraj (*Hindustani*). Land of which half the revenue is remitted or alienated

NISF-KHIRAJ (=*half-revenue*), a modern invented term in Assam for certain holdings allowed a revenue rate. (*Bad Pow.* III 406)

Nishudi (*Kan*) Release, Partition deed. (*Sund. Iyer's Mal. Law*)

Nisi. "The word "nisi" is often affixed, as a kind of elliptical expression, to the words 'rule', 'order', 'decree', 'judgment', or 'confirmation', to indicate that the adjudication spoken of is one which is to stand as valid and operative unless the party affected by it shall appear and show cause against it, or

No grace.

take some other appropriate step to avoid it or procure its revocation." A decree or judgment Nisi, is one that is conditional and requires something more to be done to make it absolute."

"JUDGMENT 'NISI' is nothing more than a rule to show cause why judgment should not be rendered."

Nisi prius (*Lat*) Unless before.

Nisi prius court. A court held in England for the trial of issues of fact, before a jury and a single presiding judge (*Burrill*)

Niskardar A *Niskardar* is not necessarily a *raiyat* 90 I C 114=1926 Cal 354.

Nis-santhana (*Sansk*) The word 'Nis-santhana' means 'without offspring of both sexes' (4 C. 397, 4 C. 23 (P C) referred to)

Nitroglycerin A term used to designate an explosive acid derived from nitric acid and glycerin.

As used in a fire policy prohibiting the insured from keeping any nitroglycerin on the premises, it includes its various compounds as dynamite, etc

The prohibition in an Act against transporting nitroglycerin upon vehicles engaged in passenger traffic, extends also to dynamite, which is made by mixing nitroglycerin with some solid and inert absorbent substance, and contains no other explosive ingredient.

Nitya naivedya deeparadhana *See* 1937 M.W.N 1032=46 L W 587=A I R 1937 Mad 852=(1937) 2 M L J 413

Nixe A nixe is a letter addressed to a fictitious person, or to a place where there is no post office, a decoy letter used by the post-office inspectors for the purpose of discovering any meddling or interference with the mails.

Nizam (*A.*) Administration, also an administrator, a viceroy.

Nizam Ruler of Hyderabad, Turkish regular army, or soldier in it

Nizamat (*A*) The Office of Nizam As an adjective Nizamat means criminal, as opposed to diwani or civil as the Nizam or governor exercised the highest criminal authority leaving the adjudication of civil causes to his diwan.

Nizamat-Adalat (*A*) A criminal court Under the Muhammadan Government the highest criminal court was so called and district criminal court was called the Faujdari Adalat

No. Not any, none, not at all, a word expressing negation, denial, or refusal, also used as an abbreviation of the word "number."

No Evidence. "No evidence" to go to a jury means, 'No reasonable evidence" (per *Pollock, C B.*' *Avery* v. *Bowden*, 6 E & B 973; 26 L J.Q B 4; Vf. (per *Cresswell, J* Lb *Cross* v *Williams*, 31 L.J. Ex. 147), "When we say that there is no evidence to go to a jury, we do not mean literary none, but that there is none that ought reasonably to satisfy a jury that the fact sought to be proved is established." *See also* 16 B. 414, S C. 274, Oudh.

"No grace" "No grace", as used in the body or margin of a note, means that the note is due or shall be due on the day of its maturity, according to its face, without the allowance of any days of grace.

"No instructions"

'No instructions.' As to the phrase "no instructions" it is difficult to lay down any hard and fast rule as to what is meant by it. "No instructions" is sometimes used when a party does not pay the fees to the vakil, it is sometimes used when he does not go to him at all and it is used just to show that he is not ready to go on, 108 I C 897=1928 M W N. 162=27 M L W 347=54 M L J 351

No knowledge or information. No knowledge or information", as used in a statement that a party had no knowledge or information as to certain matters, is equivalent to a denial of sufficient knowledge or information to form a belief concerning them.

Nok-paimasi (*Mal*) Measurement or survey by inspection and estimate, the most usual method under the native Government of Malabar

Noloepiscopari (*Lat.*) Unwillingness to accept office

"No mechanic" A statement in regard to a mason that he is no mechanic, that he cannot make a good wall or do a good job of plastering, that he is no workman, and that he is a botch, are slanderous *per se*, as imputing want of skill or knowledge

"No more" In an agreement by defendant to practice medicine no more in a certain place after a certain time, the term "no more" covers all time thereafter It is an agreement that he will never again practice medicine in that place

"No other heir of yours shall have right or interest The words, 'no other heir of yours shall have right or interest' used in a will, make the absolute estate given under the earlier part of the grant defeasible, in the event of a failure of issue living at the time of the grantee's death, in which event, the estate was to revert to the donor and his heirs 4 C 23 (P C)=3 C L R 339=5 I A 138

"No person" *See* L.B R (1893—1900), 405

"No reason to doubt" The phrase "no reason to doubt," in an instruction that if, from the evidence, the jury have no reason to doubt the defendant's guilt, then they might convict, exacted too high a degree of proof There may be a reason to doubt which does not justify a reasonable doubt, or the inference of probable guilt

"No Scholar" A charge that a physician is "no scholar" is actionable, as a learned education is considered as an essential qualification in a member of the medical profession

"No suit shall be instituted" The words "no suit shall be instituted against the Secretary of State in Council" are wide enough to include suits of every kind, whether for injunction or otherwise. 35 B. 362 =13 Bom L.R. 273.

"No suit shall be maintained etc." *See* 21 A 238 =19 A W.N 42.

Noabad. *See* Nau-abad.

Noabad lands. The determination of the precise nature of the right of the Government in *Noabad* lands is not free from difficulty. In respect of *Noabad* lands Government stands in the same position as an ordinary Zemindar and it may settle the lands like an ordinary Zemindar with whomsoever it likes, (24 I.C. 820; 24 C.W.N. 211; 17 W.R. 376; 9 W.R. 312; 9 C L J. 265; 26 C. 792; 20 C W N. 636, *Ref*) 26 C.W.N. 913=35 C.L.J. 580=A.I.R. 1922 Cal 337.

Noabad taluqs The word *noabad* by itself means newly cultivated. *Noabad taluqs* are temporarily settled estates A *noabad taluqdar* has got security of tenure for the period of a particular settlement; but at the expiration of the settlement, the taluqdar will be entitled to a fresh settlement, of the cultivated lands from Government on terms to be arranged between the *taluqdar* and the Government. As regards uncultivated lands, they are ordinarily at the absolute disposal of the Government at the expiration of the settlement and a taluqdar has no right to have a fresh settlement in respect of uncultivated lands 137 I C 311=56 C L.J 4=A I R 1932 Cal. 514

Nobiles magis plectuntur pecunia: plebes vero in corpore: A maxim meaning "The higher classes are more punished in money, but the lower in person"

Nobiles sunt qui urma gentilitiu antecessorum suorum proferre possunt A maxim meaning "The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors" (*Bouvier*)

Nobiliores et benigniores praesumptiones in dubiis sunt praeferendae. A maxim meaning "In cases of doubt, the more generous and more benign presumptions are to be preferred"

Nobilitas est duplex, superior et inferior 'There are two sorts of nobility, the higher and the lower" (*Peloubet Leg. Max*)

Noble, Grand A family may be either noble or grand, but it is noble by birth, it is grand by wealth, and an expensive style of living.

Nocent expressa, non expressa non nocent A maxim meaning "That which is expressed may injure, but that which is not expressed cannot injure" (*Morgan Leg Max*)

"Nochi, Nochi girl" A nochi is a girl, whom a prostitute keeps and trains up with a view to her becoming a prostitute 6 Ind. Cas. 210 (211).

Noise Loud, confused, or senseless sound. A municipal ordinance imposing a penalty for making any noise will be construed to mean such unreasonable noise as is of a nature disturbing to the community.

Noise alone may be of such character as to be productive of actual physical discomfort and annoyance to a person of ordinary sensibility, and, when it is of such a nature, may become a nuisance actionable at law, or subject to injunction.

Noise, Cry, Outcry, Clamour. These terms may all be taken in an improper as well as a proper sense. Whatever is obtruded upon the public notice, so as to become the universal subject of conversation and writing, is said to make a noise. A noise may, however, be for or against; but a cry, outcry, and clamour, are always against the object, varying in the degree and manner in which they display themselves, cry implies less than outcry, and this is less than clamour. When the public voice is raised in an audible manner against any particular matter, it is a cry, if it be mingled with intemperate language

Nokkichartta

it is an outcry. If it be vehement and exceedingly noisy it is a clamour, partisans raise a cry in order to form a body in their favour; the discontented are ever ready to set up an outcry against men in power; a clamour for peace in the time of war is easily raised by those who wish to thwart the government.

Nokkichartta or Nokkiyelutta primasi (*Mal*) These were terms in use for survey The latter seems to have been introduced only in Tippu's time The surveys, except what was made by Mr. Warden are not to be understood as meaning an actual measurement of the land by square feet, but merely a calculation of the quantity of seed necessary for sowing with respect to paddy, or an inspection of the number and a valuation of the produce of trees with respect to orchards. (*Log Mal Man*)

Nolle prosequi Literally "Will not prosecute" (*Burrill*) A voluntary withdrawal by the public prosecutor of pending proceedings in a particular case, a declaration on the part of the prosecuting attorney that he will not at that time prosecute a criminal case any further, a proceeding by which counsel for the state voluntarily declares that he will not further prosecute an indictment, or a particular count in either

"NOLLE PROSEQUI, is used in the law, where a plaintiff in any action will not proceed any further, and may be before or after verdict, though it is usually before, and it is then stronger against the plaintiff than a non suit, which is only a default in appearance, but this is a voluntary acknowledgment, that he hath no cause of action. A nolle prosequi is an acknowledgment or agreement by the plaintiff, that he will not further prosecute his suit as to the whole or a part of the cause of action, or where there are several defendants against some or one of them, and it operates as a release or perpetual bar," (Tidd Pract K.B cites Cro Car, 239, 243 2 Rol Ab. 100. (*Tomlins Law Dic*) *See also* Com Dig, "Indictment," Chit Cr Law, Archb Cr Pl, Short and Mellor, Cr. Off Pr)

A nolle prosequi has no greater effect than to annul or make void an indictment, and it does not mean that the indictment was either quashed or reversed.

Nomen dicitur a noseendo, quia notitiam facit A maxim meaning "A name is called from the word to know, because it makes recognition" (*Peloubet Leg. Max.*)

Nomen est quasi rei notamen A maxim meaning "A name is, as it were, the note of a thing."

Nomen non sufficit si res non sit de jure aut de facto: A maxim meaning "A name does not suffice if the thing do not exist by law or by fact."

Nomina si necis perit, cognito rerum, et nomina si perdas certe distincto rerum perditua. A maxim meaning "If you know not the names of things the knowledge of things themselves perishes, and if you lose the name of things, the distinction between the things is certainly lost" (*Morgon Leg Max.*)

Nomina sunt mutabilia res autem immobilis: A maxim meaning "Names are mutable, but things immutable." (*Peloubet Leg. Max.*)

Nomination.

Nomina sunt notae rerum A maxim meaning "Names are the marks of things."

Nomina sunt symbola rerum A maxim meaning "Names are the symbols of things." (*Peloubet Leg Max.*)

Nominal. Mr Anderson, in his Dictionary of the Law, defines "nominal" thus 'Existing in name only, apparent; formal. not real or substantial"

Nominal consideration "Nominal consideration" when used in reference to the value of property as a consideration for an exchange of property, means the inflated or trade value of the property

Nominal Exchange The state of the exchanges which depends upon the moneys of the countries, and not in the current demand for them at any given time.

Nominal maintenance. The fact that husband is a young boy of 16 is no ground for granting nominal maintenance. 4 Bur.L J. 258=27 Cr L.J. 725=A I.R. 1926 Rang. 88

Nominal par The par of exchange is the value of money of one country in that of another, and may be either real or nominal "Nominal par" is that which has been fixed by law or custom, and, for the sake of uniformity, is not altered, the rate of exchange alone fluctuating

Nominal partner One who is apparently or ostensibly a member of a firm, but who is not really so

NOMINAL PARTNER The term "nominal partner' is a term unknown to the law of partnership (*Words & Phrases*)

Nominate To select a candidate to be voted for a public office, or as a member of a legislative or representative assembly to name or to recommend for confirmation In a will the words "I nominate" may be used as the equivalent of the more formal and usual words, "I bequeath."

The word "nominate" means to recommend for confirmation

TO NOMINATE, NAME To nominate and to name are both to mention by name, but the former is to mention for a specific purpose. the latter is to mention for general purpose persons only are nominated, things as well as persons are named; one nominates a person in order to propose him, or appoint him, to an office, but one names a person casually, in the course of conversation, or one names him in order to make some inquiry respecting him. To be nominated is a public act, to be named is generally private, to be nominated is always an honour, to be named is either honourable, or the contrary, according to the circumstances under which it is mentioned a person is nominated as member of parliament, he is named whenever he is spoken of

Nomination Appointment; a resolution submitted to the electors that the party named is a candidate for their suffrage for an office named.

NOMINATION "Nominations" is equivalent to the word "appointments", when used by a mayor in an instrument executed for the purpose of appointing certain persons to office.

Nominee A person selected as a candidate for office, a person who has been selected by a party as its candidate for a public office.

Nomographer One who writes on the subject of laws.

Nomography A treatise or description of laws

Non. The common particle of negation.

Non-access. (*In Matrimonial law.*) absence of opportunities for sexual intercourse between husband and wife, the absence of such intercourse (*Black L. Dict.*)

Non accipi debent verba in demonstrationem falsam quae competunt in limitationem veram A maxim meaning 'Words ought not to be accepted to import a false description, which may have effect by way of true limitation" (*Bouvier*)

Nonage Being under age, Minority

Non alienat qui dumtaxat omittit possessionem A maxim meaning 'He does not alienate who merely gives up possession" (*Peloubet Leg. Max*)

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio A maxim meaning "A person may not be punished differently than according to what the sentence enjoins"

Non aliter a significatione verborum recedi oportet quam cum manifestum est aliud sensisse testatorem A maxim meaning "We must never depart from the signification of words, unless it is evident that they are not conformable to the will of the testator" (*Bouvier*)

Non-Ancestral property Property which comes to one in any other way than by descent or devise from a now dead ancestor, or by deed or actual gift from a living one. (*Brown* v. *Whaley*, 69 Am St Rep 793)

Ancestral property is realty which comes to one by descent or devise from a now dead ancestor, or by deed of actual gift from a living one, there being no other consideration than that of blood, as distinguished from "non-ancestral property," which is realty which comes to one in any other way

"Non-apparent easement" defined [*See* Fasement], Act 5, 1882, S. 5

Non-apparent servitude. "Non-apparent servitudes" are such as have no exterior signs of their existence

Non-arrival (*of ship*) A word in a charter which has been held to mean a failure to arrive within such time as may answer the purposes of the charter

Non-assessable. Not liable for assessment or taxation

Non auditur perire volens A maxim meaning "One who wishes to perish ought not to be heard"

Non autem deperditae dicuntur si postea recuperantur A maxim meaning "Nothing may be said to be lost which is afterwards recovered" (*Peloubet Leg Max*)

"Non-bailable offence" defined. Act 5, 1898, S. 4

Non bene conducti vendunt perjura testes A maxim meaning "The perjuries of witnesses hired

dishonestly are dangerous, since they are for sale to the highest bidder" (*Morgan Leg. Max*)

Non capitur qui jus publicum sequitur A maxim meaning "He is not snared who follows public right" (*Morgan Leg Max*)

Nonce For the nonce means for the occasion only

"Non-cognizable case" defined. Act 5, 1898, s 4, Reg. 2, 1883, s 2

"Non-cognizable offence" defined Act 5, 1898, s 4

"NON-COGNIZABLE OFFENCE" means an offence for, and "noncognizable case" means a case in, which a police officer, within or without a presidency-town, may not arrest without warrant. (Cr Pro Code, S 4)

Non-combatant Person in fighting services not required to fight

"Non-commissioned officer" defined. 44-5 V. c 58, s 190 (5)

NON-COMMISSIONED OFFICER (*Milit*) Officer of a grade below those with commissions

Non compos mentis (*Lat.*) One not of sound mind, memory, and understanding. (*Tomlins Law Dic*), Insane.

"NON COMPOS MENTIS" is a generic term, and includes all species of madness, whether it arises on idiocy, sickness, lunacy, or drunkenness.

Non concedantur citationes priusquam exprimatur super qua re fieri debet citatio A maxim meaning "Summonses should not be granted before it is expressed on what matter the summons ought to be made."

Non conductor Substance or object that does not conduct heat or electricity

Non conformists. Persons not conforming to the rites and ceremonies of the Church of England as by law established (*Tomlins Law Dic*)

Non consentit qui errat. A maxim meaning "He who errs does not consent"

Non constat (*Lat*) means "It does not appear" "It is not clear or evident"

Non content Negative voter in the House of Lords

Non-continuous easement A non continuous easement is one whose enjoyment depends on an actual interference of man at each time of enjoyment.

A NON-CONTINUOUS EASEMENT is one which requires an active interference to every instance of enjoyment, such as a way, which can be enjoyed only by actual use by the party, as by travelling on it.

Non creditur referenti, nisi constat derelato A maxim meaning 'The reference is not to be credited, unless the thing referred to be proved." (*Peloubet Leg. Max*)

Non crimen per se neqe privatum damnum sed publicum malum, leges spectant. A maxim meaning "The law regards a crime as working public evil; not merely as a wrong by itself or as a private loss."

Non dat

Non dat qui contra leges dat A maxim meaning "He gives nothing who gives contrary to law" (*Peloubet Leg Max.*)

Non dat qui non habet A maxim meaning "He who has not does not give."

Non de guerre (*Lat*) Assumed name under which a person fights, plays, writes etc

Non de plume. Writer's assumed name.

Non debeo melioris conditionis esse, quam auctor mens, a quo jus in me transit (*Dig.* 50 17 175, S 1.) A maxim meaning "I ought not to be in better condition than he to whose rights I succeed" (*Bouvier*)

Non deberet alii nocere quod inter alios actum esset. A maxim meaning "No one ought to be injured by that which has taken place between other parties."

Non debet actori licere quod reo non permittitur A maxim meaning "A plaintiff ought not to be allowed what is not permitted to a defendant"

Non debet adduci exceptio ejus rei cujus petitur dissolutio A maxim meaning "An exception of the thing whose abolition is sought ought not to be adduced." (*Peloubet Leg. Max*)

Non debet alteri per alterum iniqua conditio inferri (*Dig.* 50 17 74) A maxim meaning "No one ought to be put in an unfair position by the act of another." (*Morgan Leg Max*)

Non debet cui plus licet, quod minus est, non licere. A maxim meaning 'He who is permitted to do the greater may with greater reason do the less"

Non debet dici tendere in praejudicium ecclesiasticae liberatatis quod pro rege et republica necessarium videtur A maxim meaning "That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty".

Non debet melioris conditionis esse quam auctor meus a quo jus in me transit A maxim meaning "One cannot be in a better condition as to his title than the grantor whose title he takes." (*Morgan Leg. Max*)

Non decet homines dedere causa non cognita A maxim meaning 'It is unbecoming to surrender men when no cause is shown"

Non decipitur qui scit se decipi. A maxim meaning "He is not deceived who knows himself to be deceived". (*Peloubet Leg. Max*)

Non defendere videtur qui praesens negat se defendere. A maxim meaning "He who, when present, refuses to defend himself is regarded as submitting". (*Morgan Leg Max*)

Non definitur in jure quid sit "conatus." A maxim meaning "What an attempt is, is not defined in law".

Non differunt quae concordant re, tamestsi non in verbis Iisdem. A maxim meaning "Those things which agree in substance, though not in the same words, do not differ". (*Peloubet Leg Max*)

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta ex empto

Non exemplis

competere actionem A maxim meaning "A warranty of title is implied on the part of a vendor: so that, in case of eviction, an action for damages lies against him by the vendee" (*Morgan Leg. Max*)

Non effective (*Milit*) Soldier or Sailor not qualified for active service.

Non efficit affectus nisi sequatur effectus A maxim meaning "The intention amounts to nothing unless some effect follows".

Non enim tam auctoritatis in disputando, rationis momenta quaerenda sunt. A maxim meaning "In every argument, more respect is to be had to reason than to authority" (*Morgan Leg. Max*)

Non est arctius vinculum inter homines quam jusjurandum A maxim meaning "There is no stronger link among men than an oath." (*Peloubet Leg Max*)

Non est certandum de regulis juris A maxim meaning "There is no disputing about rules of law"

Non est deleganda reipublicae cura personae non idioneae A maxim meaning "The affairs of the republic should not be delegated to improper persons" (*Peloubet Leg Max*)

Non est disputandum contra principia negantem A maxim meaning "There is no disputing against a man denying principles" (*Peloubet Leg. Max*)

Non est justum aliquem antenatum post mortem facere bastardum,qui toto tempore vitae suae pro legitimo habebatur A maxim meaning "It is not just to make an elder born a bastard after his death, who during his lifetime was accounted legitimate"

Non est lex sed servitus, ad ea teneri quibus non consenseris A maxim meaning "It is not law but servitude to be held by what we have not consented to" (*Peloubet Leg Max*)

Non est novum ut priores leges ad posteriores trahantur A maxim meaning "It is no new thing that prior statutes should give place to later ones".

Non est recedandum a communi observantia A maxim meaning "There should be no departure from a common observance"

Non est regula quin fallat A maxim meaning "There is no rule but what may fail"

Non est reus nisi mens sit rea A maxim meaning "One is not guilty unless his intention be guilty".

Non est singulis concedendum, quod per magistratum publice possit fieri ne occasio sit majoris tumultus faciendi. A maxim meaning "There is not to be conceded to private persons which can be publicly done by the magistrate, lest it be the occasion of greater tumults".

Non exemplis sed legibus judicandum est A maxim meaning "Not by the facts of the case, but by the law must judgment be made".

Non ex opinionibus

Non ex opinionibus singulorum sed ex communi usu nomina exaudiri debent A maxim meaning "Names of things should be understood according to common usage, not according to the opinions of individuals"

Non expert One who testifies as to conclusions which may be verified by the adjudicating tribunal, and gives the result of a process of reasoning familiar to every-day life. (*Ame. Cyc*)

Non facias malum ut inde veniat bonum A maxim meaning "You are not to do evil that good may come of it" (*Peloubet Leg. Max*)

Nonfeasance The omission of a duty cast by law, the omission of an act which a person ought to do, neglect of duty, omission of what ought to be done. (*Tomlins Law Dic*)

NONFEASANCE is the omission of an act which a person ought to do

MISFEASANCE DISTINGUISHED A distinction exists between "nonfeasance" and "misfeasance" the one being a total omission to do an act which one promises to do, and the other a culpable negligence in the execution of the act. If a party makes a gratuitous engagement, and actually enters upon the execution of the business, and does it amiss through want of due care, by which danger ensues to the other party, an action will lie for misfeasance.

Non fecit vastum contra prohibitionem. Literally, "He did not commit waste against the prohibition"

Non human Other than human.

Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur a qua constituuntur A maxim meaning "A derogatory clause does not prevent acts from being dissolved by the same power which constituted them". (*Peloubet Leg Max*)

Non in legendo sed in intelligendo leges consistunt. A maxim meaning 'The laws consist, not in not being read, but in being understood" (*Bouvier L Dic*)

Non-intervention. Keeping aloof from other's disputes specially as a national policy.

Non-intervention will One which authorized the executor or executrix to settle and distribute the estate without intervention of the court and without the giving of bonds. (*Ame Cyc*) Wills which authorize the executor or executrix to settle and distribute the estate without the intervention of the court and without the giving of bonds are commonly designated as "non-intervention wills"

Non-joinder. The omission to join some person as party to a suit, whether as plaintiff or defendant, who ought to have been so joined, according to law.

Non-judicial day. One on which process of court cannot ordinarily issue or be executed or returned, and on which courts do not usually sit. (11 Am. St. Rep. 857.)

Non-party

Non-judicial oath. There is an essential difference between a judicial and a "non-judicial oath". A judicial oath is one taken before an officer in open court, and a non-judicial oath is one taken before an officer *ex parte*, or out of court

Non jus ex regula, sed regula ex jure A maxim meaning "The law does not arise from the rule, but the rule from the law". (*Peloubet Leg Max*)

Non jus, sed seisina facit stipitem A maxim meaning "Not right, but seisin, makes a stock (from which the inheritance must descend)"

Non-leviable assets Assets on which an execution would not be levied

Non licet quod dispendio licet. A maxim meaning "That which is permitted only at a loss is not permitted to be done"

Non-logical. Proceeding by other methods than logic (*Cf* Illogical.)

Non member One who is not a member (of a club, society or other organization)

Non multum distant a brutis qui ratione carent A maxim meaning "Not far removed from brutes are those who are wanting in reason." (*Peloubet Leg. Max*)

Non nasci, et natum mori, paria sunt. A maxim meaning "Not to be born, and to be dead-born, are the same"

Non-natural Deviating from the Natural

Non-negotiable Not-negotiable, not capable of passing title or property by indorsement and delivery

Non obligat lex nisi promulgata A maxim meaning "A law is not obligatory unless it be promulgated"

Non observata forma, infurtur annullatio actus A maxim meaning "When the form is not observed, it is inferred that the act is annulled"

Non obstante veredicto Literally "Not withstanding the verdict." (*Burrill*)

"Non-occupancy-raiyat" defined Act 8, 1885 s. 4 (*c*)

"Non-official commissioners" defined. Mad. Act 1, 1884, s. 3 (*l*) (am Mad Act 2, 1892, s. 3.)

Non officit conatus nisi sequatur effectus. A maxim meaning "An attempt does not harm unless a consequence follows."

Non ome demnum inducit injuriam A maxim meaning "It is not every loss that produces an injury" (*Black L Dict.*)

Non omne quod licet honestum est. A maxim meaning "Not everything which is permitted by law is honorable." (*Peloubet Leg. Max*)

Non omnium quae a majoribus nostris constituta sunt ratio reddi potest. A maxim meaning "A reason cannot always be given for the institutions of our ancestors"

Non-party. Free from party obligations or party prejudices.

Non-pecuniary damages.

Non-pecuniary damages. Damages, the amount of which cannot be determined by any known rule, but depend upon the enlightened judgment of an impartial court or jury. (*Ame Cyc*)

Non pertinent ad judicem secularem cognoscere de iis quae sunt mere spiritualia annexa. A maxim meaning 'It pertains not to the secular judge to take cognizance of things purely spiritual" (*Peloubet Leg. Max.*)

Non possessori incumbit necessitas probandi possessiones ad se pertinere. A maxim meaning "A person in possession is not bound to prove that the possession belongs to him"

Non potest adduci exceptio ejusdem rei cujus petitui dissolutio. A maxim meaning "A matter, the validity of which is at issue in legal proceedings, cannot be set up as a bar thereto" (*Broom Leg. Max*)

Non potest probari quod probatum non relevat. "A maxim meaning "That cannot be proved which, if proved, is immaterial"

Non potest quis sine brevi agere. A maxim meaning "No one can sue without a writ."

Non potest rex gratiam facere cum injuria et damno aliorum A maxim meaning "The king cannot confer a favour on one subject to the injury and damage of others." (*Broom Leg Max.*)

Non potest rex subitum renitentem onerare impositionibus A maxim meaning "The king cannot load a subject with imposition against his consent"

Non potest videri desisse habere, qui nunquam habuit. A maxim meaning "He cannot be considered as having ceased to have a thing, who never had it"

Non praestate impedimentum quod de jure non sortitur effectum. A maxim meaning "An impediment which does not by law produce a consequence avails nothing."

Non prosecuitor "Non prosequitur," in our practice, is commonly called a "non suit", and covers judgment by non prosequitur, nolle prosequi, and technical non-suits, and also judgments of non suit entered under statute or rules. According to the common law practice, a non prosequitur was entered where plaintiff failed to take any necessary step after defendant had appeared and pleaded

Non quod dictum est, sed quod factum est injure inspicitur. A maxim meaning "Not what is said, but what is done, is regarded." (*Black L. Dict*).

Non quod dictum sed quod factum inspiciendum est. A maxim meaning "Not what is said but what is done is to be looked to."

Non recusat ad minora dimittere lex. A maxim meaning "The law does not refuse to descend to the smallest details" (*Peloubet Leg. Max.*)

Non refert an quis assensum suum praefert verbis, aut rebus ipsis et factis. A maxim meaning "It matters not whether a man gives his assent by his words or by his acts and deeds."

Non refert quid ex aequipollentibus fiat. A maxim meaning "That which is gathered from equivalent expressions is of no consequence" (*Peloubet Leg. Max.*)

Non refert quid notum sit judici, si nolum non sit in forma judicii. A maxim meaning "No judge should import his private knowledge of the facts into a case." "It matters not what is known to the judge, if it is not known to him judicially" (*Bouvier L. Dict.*)

Non refert verbis an factis revocatio A maxim meaning "It matters not whether a revocation be by words or by acts."

Non-repair. Applied to a highway, a term said to mean any defect in a highway which renders it unsafe for ordinary travel

Non-residence Residence beyond the limits of any particular jurisdiction

ABSENCE DISTINGUISHED "Absence" and "non residence" are two entirely different things. Thus a man may reside on a homestead in one county, and yet be long absent therefrom in another county.

Non-resident One who does not reside in, or is not a resident of, a particular place, one who has his abode in another state; one who resides out of the state

TEMPORARY ABSENCE. A person who leaves the state on business trips for brief periods of time, but without an intent to change his residence, is not a non-resident.

Non resident alien. One who is neither a citizen of the State nor resident of the state; an alien not residing in the state.

Non-resident witness. One not within the jurisdiction of the Court; one not residing in the country in which the action is pending, and in which the deposition is to be taken.

Non respondebit minor, nisi in causa dotis, et hoc pro favore doti. A maxim meaning "A minor shall not answer unless in a case of dower, and this in favour of dower"

Non-sane. Not sound, not in a healthful state, broken, impaired, shattered, weak, diseased, unable either from nature or accident to perform the functions common to man upon the objects presented to the mind, actual incapacity of mind.

"NON SANE," when applied to the mind, means not whole, not sound, not in a healthful state; weak, diseased.

Nonsense. Where a matter set forth is grammatically right, but absurd in the sense and unintelligible some words cannot be rejected to make sense of the rest, but must be taken as they are, for there is nothing so absurd but what by rejecting may be made sense; but where the matter is nonsense by being contradictory and repugnant to something preceding, there the preceding matter which is sense shall not be defeated by the repugnancy which follows, but that which is contradictory shall be rejected. (*Tomlins Law Dic.*)

Non sequitur. Literally "It does not follow."

Non solent quae abundant vitiare scripturas. A maxim meaning "superfluity does not usually vitiate writings."

Non solet

Non solet deterior conditio fieri eorum qui litum contestati sunt quam si non, sed plerumque melior. A maxim meaning "Those who contest a suit, do not make their condition worse than if they had not, but rather better" (*Peloubet Leg Max*)

Non sui juris. "Not his own master."

Non suit. A renunciation of a suit by the plaintiff most common upon the discovery of some error or defect, when the matter is so far proceeded in that the court is ready to deliver their verdict (*Cowell. Tomlins Law Dic*)

A "non suit" is the name of a judgment given against the plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to the trial of the cause after it has been put at issue without determining such issue

A voluntary non suit is an abandonment of his cause by a plaintiff who allows a judgment for costs to be entered against him by absenting himself or failing to answer when called upon

Non sum informatus. A judgment which is rendered when, instead of entering a plea, defendant's attorney says he is not informed of any answer to be given to the action

Non sunt longa ubi nihil est quod demere possis A maxim meaning "There is no prolixity where there is nothing that can be omitted" (*Bouvier*)

Non temere credere, est nervus sapientiae. A maxim meaning "Not to believe rashly is the nerve of wisdom." (*Peloubet Leg Max*)

Non-union Not belonging to a trade union

Non-user. Literally "Neglect to use" a neglect to exercise an office.

NON-USER Failure to use or exercise, (with consequent lapse of right.)

NON-USER AND MIS-USER. "An Office, public or private, may be forfeited "(1) By *Mis-User*, or abuse; as if a judge takes a bribe, or a park-keeper kills deer without authority, (2) by *Non-User*, or neglect, which in public offices that concern administration of justice, or the common wealth, is of itself a direct and immediate cause of forfeiture, but Non-User of a private office is no cause of forfeiture, unless some special damage is proved to be occasioned thereby" (*2 Bl. Com 153.*)

Non valebit felonis generatio, nec ad haereditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis, generatio succedit in haereditate patris vel matris a quo non fuerit felonia perpetrata. A maxim meaning "The offspring of a felon cannot succeed either to a maternal or paternal inheritance, but, if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed." (*Black L Dic*)

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione. A maxim meaning "Confirmation is not valid unless he who confirms is either in possession of the thing itself, or of the right of which confirmation is to be made, and, in

Nor.

like manner unless he to whom confirmation is made is in possession." (*Bouvier.*)

Non valet exceptio ejusdem rei cujus petitur dissolutio A maxim meaning "A plea of the same matter the dissolution of which is sought, is not valid"

Non valet impedimentum quod de jure non sortitur effectum. A maxim meaning "An impediment is of no consequence, which by law has no effect". (*Peloubet Leg. Max.*)

Non verbis, sed ipsis rebus, leges imponimus A maxim meaning "We impose laws, not upon words but upon things themselves" (*Black L Dict*)

Non videntur qui errant consentire A maxim meaning "He who errs is not considered as consenting." (*33 Am. Rep.* 476.)

Non videntur rem amittere quibus propria non fuit. A maxim meaning "They cannot be said to lose a thing whose own it was not." (*Peloubet Leg Max*)

Non videtur cepisse ut per exceptionem a petitione removetur. A maxim meaning "He is not regarded as having obtained his right who, by exception, is removed from making his request"

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit A maxim meaning "He does not appear to have retained consent, who has changed anything through menaces." (*Black L. Dict*)

Non videtur perfecte cujusque id esse quod ex casu auferri potest. A maxim meaning "That does not truly belong to any one which can be taken from him upon occasion." (*Bouvier.*)

Non videtur quisquam id capere quod ei necesse est alii restituere aut quod ex casu auferri potest. A maxim meaning "One will not be considered as acquiring any property in a thing which he is bound to restore, or which can be taken from him on occasion" (*Morgan Leg. Max*)

Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur. A maxim meaning "He is not deemed to use force who exercises his own right and proceeds by ordinary action."

Nones. The calendar of the Romans had a peculiar arrangement They give particular names to three days of the month The 1st was called the "calends." In the four months of March, May, July, and October, the 7th day was called nones.

Noon Twelve O'clock in the day

Noon is the middle of the day; midday, the time when the sun is in the meridian, (*Webst. Dict.*) "Noon" has in common parlance a similar meaning, and refers to the middle of the day, not to a period after or before that.

Noon day, noon tide. The time about noon.

Nor. A negative connective or particle, introducing a second member or clause of a negative proposition, following neither, or not, in the first, as "or" in affirmative propositions follows either, sometimes, also used with the first member for neither; and sometimes the neither is omitted and implied by the use of "nor." (*Ame. Cyc*)

North

North In describing courses, the word "north" refers to the true meridian, unless otherwise declared

Northerly. North, due north.

Northwardly. Due north, towards or approaching towards the north, rather than towards any of the other cardinal points.

"North-West Frontier Province", defined Act 8, 1885, S. 4 (*c.*)

"NORTH-WEST FRONTIER PROVINCE" means the territories for the time being administered by the Chief Commissioners of the North-West Frontier Province. Pun, Regu VII of 1901 (N W F. P Law and Justice) S 2 (1), cl. (*c*)

"North-Western Provinces and Oudh Act" defined. Act 10, 1897, S. 3 (35).

Noscitur a sociis "The meaning of a doubtful word may be ascertained by reference to the meaning of the words associated with it." (*Broom Leg. Max*)

Noscitur ex socio qui non cognositur ex se. A maxim meaning "He who cannot be known from himself may be known from his associates" (*Morgan Leg Max*)

Nostrum A medicine, the ingredients of which are kept secret, for the purpose of restricting the profits of sale to the inventor or proprietor—a quack medicine. (*Webster Dict*)

Not. A word expressing negation, denial, or refusal

Not assignable. Not the subject of an assignment, not transferable so as to invest in the assignee a right of action.

"NOT BEING MERELY A SURETY FOR THE PRINCIPAL DEBTOR" *See* 9 B 320

"Not carried into execution." Under the English law, as well as under S. 84 of the Indian Trusts Act (Act of 1882), the unlawful agreement need not be fully carried out, to warrant the application of the rule as to persons *in pari delicto* Part performance of a substantial character would suffice to prevent the person *in pari delicto* from recovering 29 M 72= 15 M L.J 478.

"Not competent" *See* 12 M. 228, 11 Bom. 205.

Not exceeding The words "Not Exceeding" as in directing a sum of money connotes manner (*per* Bayley, J., *Cortis* v. *Kent W.W. Co*, 7 B & C. 340; See also *Henry* v. *Antrim*, 1900, 2 I R. 547.) A guarantee for *"not exceeding"*, a stated sum only limits the amount of the guarantor's liability (*Parker* v *Wise*, 6 M & S 239)

Not guilty. The general issue of plea of the defendant in any criminal action or prosecution. (*Tomlins Law Dic.*)

"Not inconsistent with the provisions of this act." These words in S. 1 of the Contract Act apply to "any usage or custom of trade" or "any incident of any cont ract." 14 Ben.L.R 76=22 W.R. 370, *see also* 18 Cal. 620 (627) (P.C).

"Not less than." The expression "not less than" in S. 18 of the Madras Rent Recovery Act, VIII of 1865, meant 'clear" (30 M 248.)

Note.

Not negotiable. When a cheque or bill has these words written across its face they do not limit the transfer of it from one to another, but in the case of a transferor not having a good title to the document the transferee is merely in the same position as the transferor, and cannot go back upon the original drawer for satisfaction.

NOT PROVED A fact is said not to be proved when it is neither proved nor disproved Act I of 1872 (Evidence), S. 3

Notagara. An officer who keeps the money accounts of a village, also a money-changer, a conjurer, a fortune-teller.

Notary Person with authority to draw up deeds and perform other legal formalities.

Notary, notaries, notary public A notary or notary public is a public officer whose function it is to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgments of deeds and other conveyances, and certify the same; and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage. (*Black L. Dict*)

"Notary Public" defined. Act 26, 1881, S. 3.

"NOTARY PUBLIC" includes also any person appointed by the Local Government to perform the functions of a notary public, Act XXVI of 1881 (Negotiable Instruments), S. 3.

The office of a notary public has long been known to the civil and to the common law. It exists and is recognised throughout the commercial world, and has been said to be "known to the law of nations." It is generally a public office. The office has grown from that of a mere scribe to a public office, and its functions, once simply commercial, have now a wider scope In general the office is ministerial and not judicial.

"The general functions of a notary are to receive acts and contracts to which the parties must give, or desire to give, an authentic form, to confer on such acts or contracts the required authenticity to establish their dates, to preserve originals or minutes of acts, which when prepared in the style and with the seal of the notary, acquire the name of 'original' acts; and to give authentic copies of, or authentic extracts from, such acts."

Notorial act. A notarial act consists of three parts first the title, statement of the time and place, and the name of the notary and witnesses, secondly, the stipulation or other transaction which is the subject of the act and, thirdly, a statement that the act has been read to the parties and approved and signed by them, and of the notary's signature and seal (*Brooke, p. 61.*)

"Note" *See* Currency note Promissory note, Note of hand.

NOTE As a noun, annotation; commentary, a short remark, a passage or explanation in the margin of a book, a minute, a memorandum; a short writing to assist the memory; in commercial law, a written promise made by one to pay another a certain

Note Broker

sum of money at a certain time, an abstract, a memorandum, an informal statement in writing.

Note Broker A broker who negotiates the purchase and sale of bills of exchange and promissory notes.

Note of hand A popular name for a promissory note. A name given generally by the unlearned in common to all those evidences of debts which are verified under the hand of the debtor, and which the creditor keeps.

"Note of Hand" and "book-accounts" mean only such debts as were evidenced by notes of hand, or book-accounts, and do not embrace a debt due from a devisee to the testator, evidenced by a bond and a mortgage.

Noted. Well known by reputation or report, eminent.

NOTED, NOTORIOUS. Noted may be employed either in a good or a bad sense, Notorious is never used but in a bad sense, men may be noted for their talents, or their eccentricities, they are notorious only for their vices.

Notes Promissory; Promissry Notes.

Nothus Nullius est filius A maxim meaning "A bastard is nobody's son" (*Peloubet Leg. Max.*)

"Notice" defined. Act 2, 1882, S 3, Act 4, 1882, S 3; Mad. Act 1,1884, S. 3 (*w*), Mad. Act 4, 1884, S 3 (*v*).

NOTICE, in its legal sense, may be defined as "information concerning a fact actually communicated to a party by an authorized person, or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in its legal consequences." (*See* T. P. Act, S 3, *See* Ind. Trust Act, S. 3, 13 All. 171, 30 B 275.

Notice is the making something known, of what a man was or might be ignorant of before And it produces divers effects, for, by it, the party who gives the same shall have some benefit, which otherwise he should not have had, the party to whom the Notice is given is made subject to some action or charge, that otherwise he had not been liable to, and his estate in danger of prejudice (*Co. Lit.* 309 *Tomlins Law Dic.*)

"Notice", is a direct and definite statement of a thing as distinguished from supplying materials from which the existence of such thing may be inferred" (per *Parke, B. Burgh* v *Lege*, 5 M. & W 420; 8 L J. Ex. 258.)

OTHER DEFINITIONS "The legal instrumentality by which knowledge is conveyed, or by which one is charged with knowledge."

The term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of the fact

In its popular sense, notice is equivalent to information intelligence, or knowledge.

ACTUAL NOTICE. Actual Notice is "When there is positive information of a fact" It is "Actual knowledge by the party of the very matter or thing, of which he is said to have notice." "It consists in express information of the fact." It is "knowledge brought directly home to the party" "However closely actual notice may in many instances approximate knowledge, there may be actual notice without knowledge." (*See* 29 *Ame Cyc.* 1113)

Notice to government.

"CONSTRUCTIVE NOTICE" DEFINITIONS OF "Legal inference from established facts." "Notice imputed by the law to a person not having actual notice" "Knowledge of any fact which would put a prudent man upon inquiry." "Knowledge of such facts as should induce inquiry, and as would lead to inquiry in the case of an ordinarily prudent man and which cannot be neglected without a voluntary closing of the eyes, and conduct inconsistent with good faith."

CONSTRUCTIVE NOTICE AND IMPLIED NOTICE. Constructive notice differs from implied notice, with which it is frequently confounded, and which it greatly resembles, in respect to the character of the inference upon which it rests; constructive notice being the creature of positive law, rests upon strictly legal presumptions, which are not allowed in the case of implied notice *Hayward* v *Mayse*, 1 App. Cas. (D. C. 133; 29 *Ame. Cyc.* 1114.)

NOTICE-ACTUAL AND CONSTRUCTIVE. Notice is actual, when it is directly and personally given to the party to be notified. Notice is constructive when a party by circumstances is put upon inquiry, and must be presumed to have had notice, or, by judgment of law, is held to have had notice

As an abstract proposition of law it cannot be laid down that the mere fact that a document is registered earlier is by itself sufficient to fix a subsequent encumbrancer with notice of such a document within the meaning of S 3 of the T. P. Regulation as it stands. 15 Mys L J. 385=42 Mys. H C R. 410. *See also* T P. Act, S 3

A notice may contain a description which is inaccurate, yet if it is covered by the terms of a statute, it is not thereby rendered invalid 30 Bom. L. R 339=109 I C 344=29 Cr. L J. 520=A.I.R. 1928 Bom. 136

Notice of dishonour Notice given by the holder of a bill of exchange to the drawer when the bill is refused or delayed payment.

"Notice to admit" For the purpose of saving the serious expense which would be caused if the parties to an action were required to prove by strict evidence all the points of their case, the Court constantly proceeds on admissions by the parties and the Rules of Court, contain various provisions on the subject. Thus any party to a cause or matter may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

"Notice to all the world". A phrase which has been construed to mean notice to all persons within the jurisdiction or state where the suit is pending. (*Shelton* v. *Johnson*, 70 Am. Dec. 265, *Ame. Cyc.*)

Notice to government. The object of a notice under S. 80, C. P. Code is to inform Government, or the public officers concerned, generally of the nature of the suit which is interded to be filed against them.

Notice to produce.

The notice need not set out all the facts and details of the case which the plaintiff intended to prove. 27 B. 189 (206).

Notice to produce In order that a party may be able at the trial or hearing of any cause or matter to give secondary evidence of a document in the possession of his opponent, he must serve a notice to produce such document If the document be not produced pursuant to such notice, upon proof of service of the notice, and of the document being in the possession of the party served therewith, secondary evidence may be allowed.

Notice to quit. A "notice to quit" is a notice which, on its expiry does, of itself or in accordance with a subsisting contract, puts an end to a relationship of Landlord and Tenant. (*See* T. P. Act, S. 106)

"Notification" defined Act 5, 1869, Pt I, cl. (*e*) (1) Act 2, 1876, S 3 (*c*), Act 20, 1883, S 3 (7), Act 16, 1887, S 4 (18), Act 17, 1887, S 3 (15), Act 20, 1891, S 3 (7), Ben Act 3, 1884, S 2 (1ns), Act 4, 1894, S. 2 (1), Ben Act 1, 1885, S 5, Ben Act 3. 1885, S 5, Ben Act 4, 1887, S 2, Bur Act 1, 1898, S 2 (40), Bur Act 2, 1898, S. 3 (1), E. B. & A. Act 1 1909, S. 5 (4), P Act 1, 1898, S. 2 (36), Reg 1, 1886, S. 3 (k), U P Act 1, 1900, S. 3 (2), Reg. 5, 1886, S. 2 (7); Reg 1, 1896, S 3 (3), Reg. 5, 1810, S. 2 (vi.)

"NOTIFICATION" means a notification published in the official Gazette. Pun Act XX of 1883 (District Boards), S. 3, cl 7. *See also* 20 Cal. 699.

"Notification" means a notification published by authority of the Local Government in the official Gazette Pun. Act XVII of 1887 (Land Revenue), S 3, Cl 15.

"Notified" defined Act 20, 1883, S. 3 (8), Act 20, 1891, S 3 (8), Reg. 5, 1886, S. 2 (8), Reg 5, 1910, S 2 (vii)

NOTIFIED "Notified" is used as implying a 'notice given" by some person whose duty it was to give it, in some manner prescribed, and to some person entitled to receive it.

"Notified" means notified in the official Gazette Pun. Act XX of 1883 (Dist Boards), S. 3, Cl. 8

"Notified area" defined Act 20, 1891, S 210 (2).

Notify. To inform; to make known; to give notice to, to inform by words or writings, or by any signs which are understood. (*Webster*)

Noting. A technical term, in commercial law, meaning a kind of initial protest. [*See* Notary, Notary public.] Noting is a minute made by a Notary on a Bill of Exchange of its Dishonour by non-acceptance or non-payment (*Byles, Ch. 19*). "As to the formality of making protest and preparing the certificate thereof it seems, it generally comprises three distinct steps, 1. Making the presentment and demand of payment. 2. Noting the dishonour, and 3. Authenticating the protest'.. (31 *Am. Rep.* 768.)

Noting a bill A notary's memorandnm written upon the face of a bill after being presented by him and not paid.

Notitia dicitur a noscendo; et notitia non debet claudicare. A maxim meaning "Notice is named from knowledge, and notice ought not to halt (*i.e.*, be imperfect)".

Notoriety. The state of being notorious or universally well known.

Notorious. Well known; talked of much; unfavourably known, Generally or commonly known, acknowledged or spoken of; publicly known and spoken of, generally known and talked of by the public, (as) Notoriously insane (*i.e.*,) universally believed to be insane (as) Notorious reputation (*i.e.*) manifest to the world; evident

"NOTORIOUS" is a word which may be properly used in an innocent and even laudatory sense, as being synonymous with distinguished, remarkable, conspicuous, noted. celebrated, famous, renowned. (*Knapp* v. *Campbell*, 14 Tex. Civ App. 199 (209).

Used in relation to entries of land, the word means "well known to a majority of all those conversant in the neighbourhood", (as) notorious survey.

"Notorious" is also used in connection with other words (as) Notorious character" "Notorious Liar". (10 Ark. 592 (596)) Notorious Possession (*39 Am. St Rep 139.*) Notorious Reputation" "Notorious resistance to lawful authority" (*4 Am. St. Rep. 368*). Notorious Survey (*Ame. Cyc*)

Nottakara. The village sharaf, who examines the coins handed to him by the thandalkara and accounts for the same to the nattanmaikara. He acts under the orders of the latter, and carries remittances to the taluka kacheri. In Malabar a moneychanger.

Notwithstanding "anything in this act to the contrary notwithstanding." This phrase is equivalent to saying that the Act shall be no impediment to the measure (*Dwar, 683, citing Cheme's Case; Cecil's case,* 7 Rep. 20.)

Nova constitutio, futuris formam imponere debet, non praeteritis. A maxim meaning "A new law ought to be prospective, not retrospective, in its operation". (*Broom Leg. Max.*)

Novation. Novation is the substitution by mutual agreement of one debtor or of one creditor for another whereby the old debt is extinguished, or the substitution of a new debt or obligation for an existing one, which is thereby extinguished. It is a mode of extinguishing one obligation by another the substitution, not of a new paper or note, but of a new obligation in lieu of an old one-the effect of which is to pay, dissolve, or otherwise discharge it.

In every novation there are four essential requisites, (1) A previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the extinguishment of the old contract; and (4) the validity of the new one. A novation is a new contractual relation. It is based upon a new contract by all the parties interested.

In order to operate as a novation under S. 62 of the Contract Act, the new contract must involve present supersession or extinguishment of the liability arising under the old contract. A mere agreement between the parties to effect such a supersession or extinguishment at a future date cannot constitute novation. A contract for sale between the parties amounts to such an agreement. (8 N.L.R. 7 and

Novation.

A I.R. 1921 Lah. 80, *Rel on*) 111 I.C. 402=A.I.R. 1928 Nag. 289.

The substitution of a new debtor by a tripartite agreement that he shall undertake the debt and become liable to the creditor, and that the latter shall discharge the old debtor, is called a novation (see per *Lord Selborne* in *Scarf* v. *Jardine*, 1882, 7 App Cas. at p 351) The inquiry whether there has been a novation usually resolves itself into two questions: (*a*) Has the new debtor taken over the liability? (*b*) has the creditor accepted him instead of the old debtor? The first question is usually determined by express agreement between the old and the new debtor The answer to the second has frequently to be inferred from the conduct of the new debtor and of the creditor, but both questions may turn upon inference (*Rolfe* v. *Flower*, 1865, L.R I P.C. 27)

Novatio non praesumitur A maxim meaning "A novation is not presumed". (*Morgan Leg Max*)

Novel, new. That is a novel sight which was either never seen before, or seen seldom, that is a new sight which is seen for the first time

Novel design In patent law, a phrase used to indicate a thing of distinct individuality of appearance, a representation, a picture, a delineation, a device which addresses itself to the senses and taste

Novelty. Quality or state of being novel, newness (as) Novelty of design in patent law.

Novice Probationary member of a religious order, new convert, beginner? tiro.

Novitas non tam utilitate prodest quam novitate perturbat. A maxim meaning "novelty benefits not so much by its utility as it disturbs by its novelty" (*Bouvier*)

Novum judicium non dat novum jus, sed declarat antiquum, quia judicium est juris dictum et perjudicium jus est noviter revelatum quod diu fuit velatum A maxim meaning "A new adjudication does not lay down a new law, but declares the ancient law, for a trial is a declaring of the law, and by a judgment the law is revealed anew, which, for a season, has been veiled" (*Morgan Leg. Max.*)

Now At the present time, at this time, at the present moment, or at a time contemporaneous with something done. The intent with which this word "now" is used must be gathered from the context and its peculiar significance in each case (78 Am St Rep. 439, 8 I C 736 at 740).

'ANY PROPERTY I NOW POSSESS', in a will would pass "all the property possessed by the testator at the time of his death". 53 L.J Ch. 1163

Now due owing or payable. The use in an Indian document of the words "now due owing or payable" in defining the claims transferred, coupled with the words which follow restricting the transfer of rights of suit in respect of such claims to those existing at the date of the deed, shew that rights of the nature of that now under consideration, accruing after the date of the deed, were not intended to pass —a view which is somewhat strengthened by the employment of the phrase "demands payable and to become payable" in the exception and reservation

Nudity.

which follows. 29 I.A. 138 (146-7)=25 M. 603 (612)= 6 C.W.N 865=4 Bom L.R. 839=8 Sar 316=12 M.L. J 479

'Now in possession *See* 21 M.L.J. 31=8 I.C. 736.

Noxa sequitur caput. A maxim meaning "Blame follows the person." (*Peloubet Leg Max.*)

Noxious· Hurtful, harmful, as Noxious trade or business, baneful, pernicious, (as) noxious thing; destructive (as) Noxious acid. (*Webster Dict.*)

"NOXIOUS" not only means hurtful and offensive to the smell, but it is also the translation of the very technical term 'nocivus', it is not necessary that the smell should be unwholesome, it is enough if it renders the enjoyment of life and property uncomfortable" (per *Mansfield, C J Lb.* I Burr 337)

"Noxious"—Injurious to public health. *See* 1904 A W N. 56 at 57, 1 A.L.J. 64; 26 A 387, 12 C W.N. 608=7 Cr.L J. 405

"NOISOME" AND "NOXIOUS" are sometimes used as synonyms (per *Foster, J, R* v. *White*, I Burr. 334).

Nubir septemdecin annis non Admittitur fore executorem. A maxim meaning "A person under seventeen years is not admitted to be an executor" (*Black. L. Dict*)

Nuda pactio obligationem non perit A maxim meaning "A naked promise does not make an obligation" (*Peloubet Leg. Max.*)

Nuda ratio et nuda pactio non ligant aliuem debitorem A maxim meaning "Naked reason and naked promise do not bind any debtor,' (*Black L Dict*)

Nude contract "Nude contract, nudum pactum, is a bare promise of a thing without any consideration" (*Cowell*)

"If a man bargains or sells, goods, &c. and there is no recompense made or given for the doing thereof, as if one say to another, I sell you all my lands or goods, but nothing is agreed upon what the other shall give or pay for the same, so that there is not one thing for another, this is a Nude Contract, and void in law, and for the non-performance thereof, no action will lie The law, in fact, supposes error in making these contracts, they being, as it were, of one side only." (*Tomlin's Law Dic.*)

Nude pact An agreement without consideration

Nudity Obscenity. Mere nudity in painting or sculpture is not obscenity It is a false delicacy and mere prudery which would condemn and banish from sight all such objects as obscene, simply on account of their nudity If the test of obscenity or indecency in a picture or statute is its capability of suggesting impure thoughts, then indeed all such representations might be considered as indecent or obscene. A proper test of obscenity in a painting or statute has been held to be whether the motive of the painting or statute, so to speak, as indicated by it, is pure or impure, whether it is naturally calculated to excite in a spectator impure imaginations, and whether the other incidents and qualities, however attractive, were merely accessory to this as the primary or main purpose of the representation. (*Words and Phrases.*)

Nudum pactum.

Nudum pactum. Literally, "A Nude Pact." A promise that cannot be enforced, either at law or in equity an executory contract without a consideration, or a naked promise, a voluntary promise, without any other consideration than mere good-will or natural affection. (1 *Am. Rep.* 576.)

Nudum pactum est ubi nulla subest causa praeter conventionem, sed ubi subest causa, fit obligatio et parit actionem A maxim meaning "Where there is no other consideration than the agreement itself, the contract is naked, and obligeth not, only where there is a consideration, is there an obligation which will give a right of action" (*Morgan Leg Max*)

Nudum pactum ex quo non oritur actio "Nudum Pactum is that upon which no action arises."

Nudum pactum inefficax ad agendum A maxim meaning "A naked agreement is insufficient for an action" (*Peloubet Leg Max.*)

Nugae in seria mala ducunt A maxim meaning "Trifles lead to serious mischief" (*Morgan Leg Max*)

"**Nuisance**" defined, (*See also* Public nuisance), Ben Act 3, 1899, S. 3 (29), Bom Act 3, 1888, S 3 (*z*), Bom Act 3, 1901, S 3 (15), Mad Act 4, 1884, S. 3 (*xvii*), Mad Act 5, 1884, S 3 (*xvii*), Mad Act 3, 1904, S 3 (19), U P Act 3, 1894, S. 3 (7).

NUISANCE: The term "nuisance" means literally annoyance, anything which works hurt, inconvenience, or damage, or which essentially interferes with the enjoyment of life or property.

"Nuisance" includes any act, omission, place, or thing which causes or is likely to cause injury, danger or offence to the sense of sight, smell or hearing or which is, or may be, dangerous to life or injurious to health or property. U P Act III of 1894 (Sewerage and Drainage), S 3, Cl. 7

"I do not think that the '*Nuisance* for which an action will lie is capable of any legal definition, which will be applicable to all actions and useful in deciding them. The question so entirely depends on the surrounding circumstances, the place, where, the time when, the alleged nuisance, what, the mode of committing it, how, and the duration of it, whether temporary or permanent, occasional or continual, as to make it impossible to lay down any rule of law applicable to every case, and which will be also useful in assisting a jury to come to a satisfactory conclusion It must at all times be a question of fact with reference to all the circumstances of the case Most certainly, in my judgment, it cannot be laid down as a legal proposition, or doctrine, that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour, must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at mid-day which would not be a nuisance at mid-night. That may be a nuisance which is permanent and continual, which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose, may be a nuisance if unreasonably loud and discordant, of which the jury alone must judge, but

Nuisance.

although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every ten minutes, or the bell ring continually, I think that a jury would be justified in considering it to be a very great nuisance. In general a kitchen chimney, suitable to the establishment to which it belonged, could not be deemed a nuisance; but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might very properly be treated as one The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, will furnish an indefinite number of examples in which some apparent natural right is invaded, or some enjoyment abridged, to provide for the more general convenience or necessities of the whole community" (per *Pollock, C B., Bamford* v *Turnley*, 31 L J Q B 292)

EAVES-DROPPERS, are such as listen under walls or windows, or the eaves of a house, to hearken after discourse and thereupon to frame slanderous and mischievous tales, are a common *Nuisance.* (*Tomlins Law Dic*)

NUISANCE, PUBLIC AND PRIVATE. Nuisances may be divided into two main headings, *viz.* (1) public nuisances, which injuriously affect the welfare of the community, and are dealt with by or in the name of Crown, or by corporate bodies specially authorised by statute to intervene, and (2) private nuisances, which specially affect individual persons or their property and for the suppression of which the individuals aggrieved are entitled to invoke the assistance of the Courts.

The divisions are however not exhaustive, and to some extent overlap each other, for the same act may often cause a public nuisance and also cause special damage to individuals.

Nuisances are of two kinds, public or common, which affect the public, and are an annoyance to all the King's subjects, and private nuisances which may be defined, to be any thing done to the hurt or annoyance of the lands, tenements, or hereditaments of another (*Tomlins Law Dic*)

The difference between a public and private nuisance is that in regard to the former the rights which are common to all subjects have been infringed, generally speaking such rights are unconnected in any way with possession or title to immovable property A private nuisance on the other hand is one which affects a particular section of the community, those who come particularly within the scope of its operation. 169 I C 66=9 R P. 541=3 B. R. 526=A I R. 1937 Pat. 302.

NUISANCE PER SE AND PER ACCIDENS. A nuisance at law or a nuisance *per se* is an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings. (64 *Ame. Rep.* 229,) The number of things which are nuisances *per se* is limited, and by far the larger class of nuisances is that which may be termed nuisances in fact or nuisances *per accidens*, and consists of those acts, occupations, or structures which are not nuisances *per se* but may become nuisances by reason of the circumstances or the location and surroundings It has, however, been said of certain acts, occupations, or structures that they are nuisance *per se* in certain localities, whereas in other localities they would not be nuisances.

Nuisance.

PERMANENT, CONTINUING RECURRENT AND TEMPORARY NUISANCES. A permanent nuisance is one of such a character and existing under such circumstances that it will be presumed to continue indefinitely, and as a rule consists of some building or structure Nuisances consisting of acts done, or particular uses of property, may be properly termed continuing when they are of such a character that they may continue indefinitely, or on the other hand may be discontinued at any time, recurrent when they occur from time to time but are not continuous or uninterrupted, and temporary when from their nature they will not be continued or repeated, (*Ame Cyc*)

Nul prendra advantage de son tort demesne. A maxim meaning "no one shall take advantage of his own wrong." (*Morgan Leg. Max.*)

Nul sans damage avera error ou attaint. A maxim meaning "No one shall have error or attaint without loss." (*Peloubet Leg Max.*)

Null. Of no legal force or effect, void, of no binding force or validity, of no efficacy, invalid, nugatory, useless.

Null and void. This is a term which according to the context may sometimes mean void, and sometimes voidable. (*Ame. Cyc.*)

Nulla A stream-let, rivulet, water course. (*Fifth Report.*)

Nulla curia quae recordum non habet potest imponere finem neque aliquem mandare carceri, quia ista spectant tantummodo ad curias de recordo. A maxim meaning "No court which has not a record, can impose a fine, or commit any person to prison; because those powers belong only to courts of record" (*Peloubet Leg Max*)

Nulla emptio sine pretio esse potest A maxim meaning "There can be no sale without a price." (*Bouvier.*)

Nulla falsa doctrina est quae non permisceat aliquid veritas A maxim meaning "No doctrine is so false but it may be mixed up with some truth." (*Morgan Leg Max.*)

Nulla impossibilia aut inhonesta sunt praesumenda; vera autem et honesta et possibilia. A maxim meaning "No things that are impossible or dishonorable are to be presumed, but things that are true and honorable and possible." (*Black L Dict*)

Nulla pactione effici potest ut dolus praestetur. A maxim meaning "It cannot be effected by any agreement, that there is no accountability for fraud" (*Peloubet Leg Max.*)

Nulla poena capitis nulla quae hominum remve ejus destraut esse potest nisi legibus praefinita. A maxim meaning "There can be no capital punishment, or form of punishment destructive either to the individual or his property, which is not established by law before the fact." (*Morgan Leg. Max.*)

Nulla res vehementius rempublicam continet quam fides A maxim meaning "Nothing binds the republic more closely than the fidelity of its citizens" (*Peloubet Leg Max.*)

Nulla sasina, nulla terra. A maxim meaning 'No fee no land." (*Morgan Leg. Max.*)

Nullity of marriage.

Nulla unquam de morte hominis cunctatio longa est. A maxim meaning "There should be no long delay in matters involving human life" (*Morgan Leg Max.*)

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestia A maxim meaning "Without modesty, no virtue, no knowledge, can preserve its place and dignity." (*Black Law Dict*)

Nulle regle sans faute. A maxim meaning "There is no rule without a fault." (*Bouvier Law Dict*)

Nulle terre sans seigneur. A maxim meaning "No land without a lord" (*Peloubet Leg. Max.*)

Nulli differemus justitiam A maxim meaning 'To no one should we delay justice

Nulli enim res sua servit jure servitutis, A maxim meaning "No one can have a servitude over his own property."

Nullity. A thing which is null and void, an error in litigation which is incurable (*Wharton L Lex*), a proceeding that is taken without any foundation for it, or that is essentially defective, or that is expressly declared to be "nullity" by a statute.

Nullity of marriage. There are two classes of cases in which marriages are, or may be, declared null and void, Marriages which are void *ab initio*, and marriages which are only voidable at the suit of one of the contracting parties. The former class may itself be subdivided into two heads, namely, the case of marriages which are, *ex-necessitate rei*, no marriages at all, and marriages which are only rendered absolutely null and void by statute. To put the most extreme case, a ceremony of marriage performed between two persons of the same sex would, by the law of nature, and by all laws human and divine, be nothing but a mockery and absolute nullity. Again in all Christian countries—in all countries where monogamy is recognised as the fundamental principle of marriage—a ceremony or form of marriage, gone through by a person already united to another living person in lawful wedlock cannot by any possibility be of any binding force or validity, assuming of course, that proof of the validity of the former marriage and of the survival of both parties at the date of the bigamous marriage, be available (see *In re* Wilson's Trusts, 1866 L.R. I Eq. 247.)

A marriage is said to be void when it is good for no legal purpose and its invalidity may be maintained in any proceeding, in any Court between any parties, whether in the lifetime or after the death of the supposed husband and wife, and whether the question arises directly or collaterally (*Shelford, Mar, and Div.* 479, 480.)

A voidable marriage is one which, as the word implies, requires some proceeding to set it aside; and until set aside by decree of a lawfully constituted authority, it is a good marriage. Proceedings to set it aside can only be taken during the lifetime of the parties themselves; after the death of either of the parties, the validity of the marriage is beyond question.

Nullity suit.

Nullity suit (*or suit for Nullity of marriage.*) A term used in reference to a suit to annul a pretended marriage, which has for its purpose a decree that a marriage that is void or voidable shall be judicially declared to be void. (*See* Ind Divorce Act) It differs essentially from a "divorce suit"—A divorce suit is for the purpose of dissolving a marriage which the parties thereto had legal capacity to enter into.

Nullius charta legibus potest derogare. A maxim meaning "No one's written deed can derogate from the laws." (*Peloubet Leg. Max*)

Nullius filius Literally "The son of nobody" a bastard.

Nullius hominis auctoritas apud nosvalere debet, ut meliora non sequeremur si qui sattulerit A maxim meaning "The authority of no man ought to prevail with us, so that we should not follow better opinions should another present them" (*Peloubet Leg Max*)

Nulli vendemus, nulli negabimus aut differemus justitiam vel rectum A maxim meaning "Justice and right shall be sold, denied, or delayed to no one" (*Morgan Leg Max*)

Nullum anarchia majus est inobedentia A maxim meaning "There is no evil greater than anarchy." (*Morgan Leg Lax*)

Nullum crimen majus est inobedentia. A maxim meaning "No crime is greater than disobedience" (*Bouvier*)

Nullum crimen patitur is qui non prohibet cum prohibere non potest A maxim meaning "He who fails to prevent that it is not possible for him to prevent is guilty of no crime." (*Morgan Leg Max*)

Nullum damnum sine remedio. A maxim meaning "There is no loss without a remedy" (*Peloubet Leg Max*)

Nullum exemplum est idem omnibus. A maxim meaning "No example is the same for all purposes."

Nullum iniquum est praesumendum in jure. A maxim meaning "No in equity is to be presumed in law."

Nullum matrimonium, ibi nulla dos. A maxim meaning "No marriage, no dower"

Nullum medicamentum est idem omnibus A maxim meaning "No medicine is equally effective upon all." (*Morgan Leg. Max*)

Nullum simile est idem. A maxim meaning "Nothing which is like another is the same, *i.e.*, no likeness is exact identity."

Nullum simile est idem, nisi quatuor pedibis currit. A maxim meaning "No like is identical, unless it runs on all fours (and then it is not like, but identical" (*Morgan Leg. Max*)

Nullum tempus aut locus occurrit reipublicae. A maxim meaning "No time or place affects the state." (*Morgan Leg. Max.*)

Nullum tempus occurrit regi. A maxim meaning "No time bars (or runs against) the King." (*Burrill.*)

Numb er.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam (or) nullus alius preter regem potest episcopo demansare inquisitionem faciendam: A maxim meaning "No other than the king can command a bishop to make inquisition." (*Black L. Dict.*)

Nullus commodum capere potest de injuria sua propria A maxim meaning "No man can take advantage of his own wrong." (*Broom Leg Max*)

Nullus debet agerede dolo, ubi alia actio subest A maxim meaning "Where another form of action is given, no one ought to sue in the action de dolo"

Nullus dicitur accessorius post feloniam sed ille qui novit principalem feloniam fecisse et illum receptavit et comfortavit A maxim meaning "No one is called an accessory after the fact, but he who knew the principal to have committed a felony, and received and comforted him." (*Peloubet Leg. Max.*)

Nullus dicitur felo principalis nisi actor, aut qui praesens est, abettans aut auxilians ad feloniam faciendam: A maxim meaning "No one is called a principal felon except the party actually committing the felony, or the party present, aiding and abetting in its commission" (*Morgan Leg. Max*)

Nullus idoneus pesfs in re sua intelligitur A maxim meaning "No person is understood to be a competent witness in his own cause."

Nullus jus alienum forisfacere potest: A maxim meaning "No man can forfeit another's right"

Nullus liber homo capiatur, vel imprisonetur aut exulet, aut aliquo modo destruatur, nisi per legale judicium parium, suorum, ve per legem terrae· A maxim meaning "No freeman shall be taken, imprisoned, or exiled or in any other manner destroyed, save by the lawful judgment of his peers, or by the law of the land."

Nullus liber homo disseisietur de libero tenemento suo,nisi per legale judicium parium suorum vel per legem tere: A maxim meaning "No freeman shall be dispossessed of his freehold, save by the lawful judgment of his peers, or by the law of the land." (*Morgan Leg Max.*)

Nullus recedat e curia cancellaria sine remedio: A maxim meaning "No one ought to depart out of the court of chancery without a remedy," (*Bouvier L Dict*)

Nullus videtur dolo facere quo suo jure utitur: A maxim meaning "No man is to be esteemed a wrong-doer who avails himself of his legal right."

Numb: Enfeebled in, destitute of the power of sensation and motion; rendered torpid.

Number: A collection of units.

Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number. (Penal Code, S. 9.)

Numbers put by the Mills on bales of cloth at the request of the original purchasers would convey no meaning to an outsider. They are mere refe-

Number-karanam

rence numbers and do not give any warranty or indication of the quality or description of the contents 80 I.C 381=26 Bom L.R 442=1924 M.W.N 430=35 M L T 140=48 Bom 519=20 M L W 424=29 C W.N. 537=A.I R 1924 P.C 143=46 M L J 655 (P C).

Number-karanam (*Tam.*) A village accountant in some of the Tamil Districts, who was paid by a salary, and was numbered and registered in the Collector's books when the establishment of such accountants was first formed

Numerous parties The "numerous parties" mentioned in S 30 of the Code of Civil Procedure (1882) meaning of *See* 20 C 397

Numerus certus pro incerto ponitur · A maxim meaning "A certain number is to be substituted for one which is uncertain." (*Morgan Leg Max.*)

Nummus est mensura rerum communtandarum A maxim meaning "Money is the measure of things that are to be changed" (*Peloubet Leg aMx*)

Nnmuk sayer mahals. Regulation VIII of 1793 relates to the land revenue, and to settlements concluded with the actual proprietors of the soil, and has no relation to the *Numuk sayer mehals*, or any settlement made in respect of it with persons who were not proprietors of the soil. 5 M I A 467=1 Sar 472

Nun. A consecrated virgin or woman who by vow hath bound herself to single and chaste life, in some place or company of other women, separated from the world, and devoted to the service of God by prayer, fasting, and such like holy exercises (*Tomlins Law Dic*)

Nunc pro tunc Literally "Now for then" (*Burrill*) The Court will in certain cases allow a proceeding to be treated as being taken on particular date, although as a matter of fact not completed until afterwards Where this is done the proceeding is said to be taken *nunc pro tunc* Thus judgments and others may be entered *nunc pro tunc* Upon this subject the judgment of Hall, V C in *Turner* v *London and South Western Rly Co* 1874, L R. 17 Eq 561 may be consulted In that case judgment had been reserved but between the hearing and delivery of judgment the plaintiff died The learned Judge, after consideration and examination into the authorities came to the conclusion that he was able to deliver judgment and to direct that the judgment should be entered as of the date when the argument upon the case concluded This case was followed by North J, in *Ecroyd* v *Coulthard*, (1897) 2 Ch p 573, The applicability of the rule of *nunc protunc* which is really based on the maxim *actus curiae neminem gravabit* is confined to those cases only in which some hardship would be visited upon a party, without any fault of his unless he were relieved from it by allowing a proceeding as to be taken now for them, *i e*, for the proper time when it should have been taken A person who could have complied with the conditional order forthwith, but who delayed doing so for reasons of his own, cannot invoke this doctrine, and be heard to say that his authority and title related back to the date when the order imposing the condition was passed A I R 1930 Lah 497 (F B). On this point *see also* Annual Practice, Chitty's Archbold's Practice, Yearly Practice, Daniell's Chancery Practice, Daniell's Chancery Forms, Sander's Chancery Orders, Seton's Judgments and Orders.

Nutrition.

Nuncupative will A nuncupative will is one made without writing, before a sufficient number of witnesses

Nunjah (or nanja.) Wet land. Land which, from its situation, may be irrigated, and therefore fit for the cultivation of rice. (*Fifth Report*)

Nunjah Mail Punjah Dry land cultivation upon wet In Tinnevelly, when, from an accidental deficiency of water, land, which is usually cultivated with rice, happens to be unfit for that grain, they plough up the stubble and sow it with the best sorts of dry grain

Nunjah Taum Punjah. Wet land like dry. The least valuable of Nunjah land from the uncertainty as to water for irrigation.

Nunquam concluditur in falso A maxim meaning "It is never too late in action to show falsehood or forgery" (*Morgan Leg. Max*)

Nunquam crescit ex post facto praeteriti delicti aestimatio A maxim meaning "The quality of a past offense is never aggravated by that which happens subsequently"

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium A maxim meaning "We are never to resort to what is extraordinary, but (until) what is ordinary fails"

Nunquam fictio sine lege A maxim meaning "There is no fiction without law."

Nunquam nimis dicitur quod nunquam satis dicitur A maxim meaning "What is never sufficiently said is never said too much."

Nunquam praescribitur in falso · A maxim meaning 'Prescription is never founded in falsehood" (*Morgan Leg. Max.*)

Nuuquam res humanae prospere succedunt ubi negliguntur divinae A maxim meaning 'Human affairs never prosper where things divine are neglected" (*Peloubet Leg Mx.*)

Nuptias non concubitus sed consensus facit. A maxim meaning "Not cohabitation but consent makes the marriage"

Nurse. To nurse, used with reference to an adult, conveys the idea that the object of care in sick or is an invalid

Nursery A place where young trees are propagated, for the purpose of being transplanted into orchards, plantations, etc,

Nursing. Aid rendered in sickness or to invalids.

Nurture. To educate, to train; to bring up.

NURTURE Fostering care, bringing up.

Nutan chur Chur land that emerges only at ebb tide and remains under water at low tide. 1930 Cal. 764

Nutmegs A well known spice mentioned in the statutes imposing a duty on their importation. (*Tomlin's Law Dict.*)

Nutrition Food nourishing.

Nuxvomica

Nuxvomica. Seed yielding strychnine.

Nymph (*Mythol*) Semi—divine maiden of the sea or the mountain or the forest.

Nymphomania. Erotic insanity manifested in a female.

O

"**O A.**" as used in mercantile accounts, means "our account"

Oart (*Mal.*) A word used as meaning a garden The Portuguese word is Horta, and its origin is evidently from Hortus (*Log Mal. Man*)

'**Oath**" defined (*See also* Affidavit, Swear) 44-V. c 58, s. 190 (28); 44-5 V c 69, s 39, 52 V. c 10, s 11, 52-3 V. c 63, s 3, Act 30, 1852, s 13, Act 3, 1856, s. 2, Act 45, 1860, s 51, Act 10, 1897, s 3 (36), Ben. Act 2, 1866, s 51, Ben Act 4, 1866, s. 3, Ben Act 1, 1899, s. 3 (29), Bom Act 1, 1904, s. 3 (32), Bur. Act 1, 1898, s. 2 (41), E B & A. Act 1, 1909, s. 5 (42), Mad Act 1, 1891, s 3 (20), P Act 1, 1898, s. 2 (37), U P Act 1, 1904, s 4 (30).

OATH, is an affirmation or denial of any thing, before one or more persons who have authority to administer the same, for the discovery and advancement of truth and right, calling God to witness that the testimony is true, therefore it is termed *Sacramentum*, a wholly band or tie, it is called a corporal Oath, because among persons professing the christian faith, the witness when he swears, lays his right hand on the New Testament. (3 Inst 165 *Tomlins Law Dic*)

"Oath" includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing, Act X of 1897 (General Clauses) S 3 (36)

The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not. (Penal Code, S 51)

An *oath* is "A solemn appeal" to the Creator of the Universe that the truth only shall be witnessed"

Oath is "an appeal to the Supreme Being for the truth of what the party declares"

"An *oath* is a solemn adjuration to God, to punish the affiant if he swears falsely"

OTHER DEFINITIONS. "An appeal to God, by the witness, for the truth of what he declares, and an imprecation of divine vengeance upon him, if his testimony shall be false"

"An outward pledge given by the person taking it, that his attestation or promise is made under an immediate sense of his responsibility to God." (*Bouvier.*)

"A declaration or promise made by calling on God to witness what is said."

"A religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge any imposture or violated faith."

"A religious asseveration, by which a person renounces the mercy, and imprecates the vengeance of heaven, if he does not speak the truth."

Oath and religion.

"All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth, and avenger of falsehood." (*Omychund* v. *Barker*, 1 Atk. 21, 48, 26 Eng Reprint. 15, 2 Eq. Cas. Abr 397. See all this cited in 29 *Ame Cyc.* 1299.)

The purposes of the oath is not to call the attention of God to the witness, but the attention of the witness to God All that is necessary to an oath is an appeal to the Supreme Being as thinking Him the rewarder of truth and the avenger of falsehood. The form of the administration of the oath is immaterial, provided that it involves, in the mind of the witness, the bringing to bear of this apprehension of punishment and it cannot matter what words or ceremonies are used in imposing the oath provided he recognises them as binding by his belief. 10 O. & A L R 558=11 O L.J 485=1 O W N. 167=A I.R. 1924 Oudh 442

Where a person has no belief in a Supreme Being he can do nothing which would be binding on his conscience as an oath. (*Atty-Genl* v. *Bradlaugh*, 14 Q B D 667)

The omission to administer *oath to* a witness would not invalidate the proceedings or render inadmissible the evidence given 6 P L J 147=61 I C 703=22 Cr. L J 417=2 Pat L T 283

OATHS AND AFFIRMATIONS An oath may be defined as an avowal of truth before God or more exactly an appeal to God to regard the truth of the words of him who swears, and punish him if he utter falsehood In its broadest sense, it includes any affirmation or form of attestation by which a party signifies that he is bound in conscience to perform an act faithfully and truthfully (50 *Am St Rep.* 389)

ORIGIN AND NATURE OF OATH The practice of supporting a promise by an *oath* is probably as old as the existence of belief in a God, and it appears to have been utilised from the very earliest times to ratify and insure the fulfilment of any special contract or undertaking, by importing into the transaction the fear of Divine wrath in case of wilful failure to perform the obligation entered into. The use of the oath to bind the conscience was practised by the Medes and Persians and the ancient Egyptians and Assyrians as well as by the Greeks and Romans. It has probably prevailed in almost all the religions of the world, both ancient and modern The old Testament, contains numerous instances of *oaths* in support of covenants and promises, the earliest of which occurs in Genesis xxi. 23 "Now swear unto me here by God, that thou will not deal falsely with me, etc" (*Ency of the Laws of England*)

Oath and religion. "Oaths are as old as the creation The nature of an oath is not at all altered by Christianity, or other religion, but only made more solemn from the sanction of rewards and punishments being more openly declared" *Omychund* v. *Barker*, 1 Atk. 21 (45) 2 Eq Cas. Abr. 397, 22 Eng. Reprint 339.

All oaths spoken of in the scriptures, both of the old and new testaments, are obviously regarded as religious ceremonies.

CORPORAL OATH The term corporal oath must be construed as applying to any bodily assent to the oath by the witness.

Oath, Swear and affidavit.

JUDICIAL AND EXTRAJUDICIAL OATH. A judicial oath is one that is taken in some judicial proceeding. An extrajudicial oath or non-judicial oath is one that is taken outside of a judicial proceeding without special authority of law but taken formally before a person having authority to administer an oath or affirmation.

'Oath', 'swear, and 'affidavit' These words include Affirmation, Declaration, Affirmating, and Declaring in the case of persons by law allowed to declare or affirm instead of swearing" (s 3, Eng Interp. Act, 1889 *See also* General Clauses Act, 1897 S. 3 (36))

AFFIDAVIT. 'An affidavit is an *oath* in writing signed by the party deposing, sworn before and attested by him whe hath authority to administer the same." (*I Bacon's Abridgment*, 124)

AFFIRMATION An affirmation is a solemn and formal declaration or assertion that a declaration or affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases (*Black L. Dict*)

OATH OF ALLEGIANCE (ON NATURALISATION). An alien on becoming a naturalised British subject is required (See Naturalisation Act) to take an oath of allegiance in the following form—"I do swear that I will be faithful and bear true allegiance to His Majesty, his heirs and successors according to law, So help me God"

Oath worthy Credible

Obbidi (*Tel Tam*) Treading out corn, threshing by means of cattle

Obedient Submissive to authority, yielding compliance with commands, orders, or injunctions, performing what is required, or abstaining from what is forbidden

The word is of similar import to the word "amenable"

OBEDIENT, SUBMISSIVE, OBSEQUIOUS. One is *obedient* to command, *submissive* to power or the will, *obsequious* to persons *Obedience* is always to be obedient where obedience is due *submission* is relatively good, it may, however, be indifferent or bad: one may be *submissive* from interested motives, or meanness of spirit, which is a base kind of submission; but to be submissive for conscience' sake is the bounden duty of a Christian, *obsequiousness* is never good, it is an excessive concern about the will of another which has always interest for its end. (*Crabb.*)

Obedientia est legis essentia. A maxim meaning "Obedience is the essence of the law".

Ob infamiam, non solet juxta legem terrae, aliquis per legem apparentem se purgare, nisi prius convictus, vel confessus in curia A maxim meaning "On account of evil report it is not usual, according to the law of the land, for any person to purge himself, unless he has been previously convicted, or confessed in open Court". (*Morgan Leg. Max.*)

Obiter dictum. Is an expression of opinion (formed) by a judge on a question immaterial to the *ratio decidendi*, and unnecessary for the decision of

Object.

the particular case. It is in no way binding on any Court, but may receive attention as being an opinion of high authority.

Object. *As a noun*, the end aimed at, the thing sought to be accomplished (as) object aimed at; the aim or purpose (as) object not authorized by law; the thing sought to be attained (as) object of the law. (*See also* 17 Cal. 852.) *As a verb*, the term has been defined as meaning to vote against, to make exception

The word "object" includes whatever is presented to the mind, as well as whatever may be presented to the senses, whatever, also, is acted upon, or operated upon, affirmatively, or intentionally influenced by anything done, moved or applied thereto. (29 Fed. Cas. No 17, 406.)

The word 'object', in an Act making members liable personally for any such sum of money as a board shall appropriate to any object not authorised by law, signifies the thing aimed at—the thing sought to be accomplished. The objects to which money in the country treasury may be appropriated are designated by law, and it is not legally appropriable to any other purpose. It is for a diversion of money from legitimate objects, and not for appropriation to a proper object, although in an irregular and unauthorised manner, that liability is imposed on members personally. It is what the money is appropriated to and not how it is applied that furnishes the test of personal liability under it. (*Words and Phrases.*)

The word "object" in S. 23, Indian Contract Act, is not used in the same sense as "consideration" It means purpose or design. (33 C. 702=10 C.W.N. 755)

OBJECT, SUBJECT. When *object* is taken for that which is intellectual, it is the thing that presents itself to the mind, it is seen by the mind's eye, the *subject*, on the contrary, is that which must be sought for, and when found it engages the mental powers, hence we say an *object* of consideration, an *object* of delight, an *object* of concern, a *subject* of reflection, a *subject* of mature deliberation, the *subject* of a poem, the *subject* of grief, of lamentation, and the like.

TO OBJECT, OPPOSE. To *object* to a thing is to propose or start something against it; but to *oppose* it is to set one's self up steadily against it: one *objects* to ordinary matters that require no reflection; one *opposes* matters that call for deliberation. We *object* to a thing from our own particular feelings; we *oppose* a thing because we judge it improper.

'OBJECT OF AN ACTION' is the thing sought to be attained by the action.

OBJECT OF ACTION, SUBJECT OF ACTION AND CAUSE OF ACTION. The 'object of the action' is not the cause of action or the subject of the action. The object of the action is brought into existence by the commencement of the action, which is long after the subject of action and the causes of action have had an existence. The object of the action is the thing sought to be obtained by the action. It is the remedy demanded and the relief prayed for, and is no part of the subject of action or the cause of action

Object.

OBJECT OF A CONTRACT is the thing which it is agreed on the part of the party receiving the consideration to do or not to do.

OBJECT OF A STATUTE is the aim or purpose of the enactment.

OBJECT OF LEGISLATION is to be determined by its natural and reasonable effect, and not by what may be supposed to have been the motives upon which the legislators acted

Objection That which is, or may be, presented in opposition, (as) objection to the admissibility of evidence.

The word 'objection', in a statement by an attorney that he desires to renew his objection to the findings of fact, was equivalent to the word 'exception'.

'OBJECTION TO THE ADMISSIBILITY OF EVIDENCE', in any cause can only be properly founded on the hypothesis that such testimony violated the law of evidence, in this that the law prohibits the proof in the manner proposed of the particular fact, or of its irrelevancy to the subject-matter of inquiry

OBJECTION TO A PLEADING is not equivalent to a defence to an action, but is construed as relating to some formal defect. (*Words and Phrases*)

"Objection and dispute" The words "objection" and "dispute" are not synonymous terms and they are not used in the same sense in Ss. 105 and 106 of the Bengal Tenancy Act (VIII of 1885) [23 C 257. *See also* 21 Cal. 776; 21 Cal 521, 24 Cal. 462 (F.B.)].

Oblations. Offerings to God and the Church. (*Tomlins Law. Dic*)

Obligate. To bring or place under obligation, to bring or firmly hold to an act

'OBLIGATED' means strictly, and in common parlance, to be bound.

Obligatio est juris vinculum, quo necessitate astringimur alicujus solvendae rei secundum nostrae civitatis jura A maxim meaning "An obligation is a tie of law, which binds us to render something according to the rules of our civil law.

Obligatio mandati consensu contrahentium consistit. A maxim meaning "The authority of an agent to contract for his principal rests on the consent of his principal.

"Obligation" defined. Act 1, 1877, S. 3.

OBLIGATION. An act which binds a person to some performance. A binding or state of being bound in law (*Burrill L. Dict*); an act by which a person becomes bound to another or for another, or to forbear something (*Webster Dict.*); the act which binds another man to some performance, something which binds or obliges us to do or not to do some act (32 Am. Rep. 371.) Obligation is the binding power of any oath, vow, duty, promise, or contract, or law, civil, political or moral. In its common acceptation, it will embrace every duty imposed by law, whether such be the creature of a statute, of a record, of a recognizance, of a sealed instrument or of a simple contract,

Obligation of contract

Bouvier says: 'Obligation in its general and most extensive sense is synonymous with duty. In the more technical sense it is a tie which binds us to pay or do something agreeably to the laws and customs of the country in which the obligation is made'.

Obligation, bond, will. Obligation is incurred under "a bond, containing a penalty with a condition annexed for payment of money, performance of covenants, or the like, it differs from a bill, which is generally without a penalty or condition, though a bill may be obligatory". (*Co Lit* 172) Obligations may also be by matter of record, as statutes and recognizances (*Tomlins Law. Dic*)

Obligation and duty "Duty and obligation, though the terms, in one of the senses of the latter, are often used interchangeably, are not the same thing 'Obligation', says Lord Coke, 'is a word of large extent', and, although it sometimes means only duty, and always includes this meaning, it often imports something more" [*Wood* v. *Wood*, 14 Rich. (S C.) 148, 156, *Ame Cyc.*]

"OBLIGATION" includes every duty enforceable by law. [Act I of 1877 (Specific Relief), S. 3]

Obligation, obligor, obligee, A person bound by an obligation is called the "Obligor" and the party to whom the obligor is bound is called the "Obligee".

Obligatory and binding. "I can see no difference at all between enacting that certain words shall be 'valid and obligatory' and saying that the agreement is to be 'confirmed and made binding' on the several parties I do not understand how an agreement which was not made 'binding could be made obligatory' The only meaning that I can attach to the word 'obligatory', when so used, is that the parties to the agreement are bound by its contents, just as the meaning of a contract being 'binding' is that the different clauses are 'obligatory' upon the parties to the contract."

Indeed the only difference that I can see between 'binding' and *'obligatory'*, is that the one uses an English word and the other a latin word to express identically the same idea, because 'obligatory' means 'binding' and 'binding', I suppose, means an 'obligation' or 'tie' (per *Stephen, J., Mid. Ry* v. *G W. Ry*, 5 Ry and Can Traffic Ca, 274, 275, cited in *Stroude Jud Dic*)

Obligation of contract. The obligation of the contract consists in the power and efficacy of the law, which applies to an enforced performance of the contract by a payment of an equivalent for nonperformance. The obligation does not inhere and subsist in the contract itself, *proprio vigore*, but is the law applicable to the contract.

The foremost approved lexicographers, define the word 'obligation' to mean the binding power of any oath, vow, duty or contract, an act, which binds any man to some performance. The obligation of a contract is, then, its binding power. It is that which compels its performance."

The obligation of a contract is found in the terms in which that contract is expressed, and is the duty thus assumed by the contracting parties, respectively, to perform the stipulations of the contract.

Obligation of record.

Obligation of record. A bond taken by an officer of the Court by authority of law, and required to be returned into Court, is, when so returned and placed upon the files, an 'obligation of record.'

Oblige. To constrain by physical, moral or legal force.

Obligee The party, in an obligation, to whom the obligor is bound

An obligee or creditor is the person in favour of whom some obligation is contracted, whether such obligation be to pay a sum of money, or to do or not to do something

Obligor. He who enters into an obligation or bond In its more technical sense, "the word "obligors" refers to the maker of a bond or writing which is obligatory, in its more general signification it designates the person who enters into an obligation in whatever manner it may be, to the doing or forbearing of an act, the person who has engaged to perform some obligation (*Ame Cyc*)

'OBLIGOR' OR 'DEBTOR' is the person who has engaged to perform some obligation

Obliterate. To deface, efface, to blot out, to destroy. Pasting over a piece of paper would constitute an "Obliteration" in law [*Finch* v. *Combe* (1894) P. 191, 63 L J P.D & A 117, so also strong black line drawn over and along the whole name is said to obliterate it *Obliteration* denotes covering over by some means words originally written so as to render them no longer legible, complete cancellation of such words

"Obliterate" and "cancel". To 'obliterate' is to blot out, to 'cancel' is to cross out The former leaves the words illegible, the latter leaves the words legible. By either method a will can be legally revoked in whole or in part.

A 'cancellation' is, in legal meaning, an equivalent to and synonymous with an 'obliteration' This cancellation or obliteration may be effected by words written across the instrument, as 'obliterated' or 'cancelled' The end may be equally well accomplished by any erasure, partial or complete.

Obloquy Blame, reprehension; censure, reproach. To expose one to 'obloquy' is to expose him to censure and reproach

Obnoxious. Offensive, odious, hateful

OBNOXIOUS, OFFENSIVE *Obnoxious* is, a much more comprehensive term than *offensive*· an *obnoxious* man is one whom others seek to exclude, an *offensive* man may possibly be endured. gross vices, or particularly odious qualities, make a man *obnoxious*, but rude manners, and perverse tempers, make men *offensive*; a man is *obnoxious* to many, and *offensive* to individuals.

Ob reverentiam personarium et metum perjurii. A maxim meaning "The embarrassment of a witness proceeds from his respect for an oath and his dread of perjury" (*Morgan Leg. Max.*)

Obscene A book would be obscene although the intention of the author is not to injure public morals but, to attack the iniquity of a particular religion· "The CONFESSIONAL UNMASKED, shewing the depravity of the Romish Priesthood, the Iniquity of the Confessional and the Questions put to Females in Confession" was held to be an "obscene," publication in asmuch as it glaringly detailed impure and filthy acts words and ideas, and was indiscriminatingly published to all classes of persons (*R* v *Hicklin*, 37 L. J M C. 89, L,R. 3 Q B 360, *Stroude*)

OBSCENE, INDECENT, INDELICATE IMMODEST. "Indecent" signifies something more than indelicate and less than immodest—something unfit for the eye and ear. *U S.* v. *Loftis*, 12 Fed. 671 (673), *citing Worcester Dict*) The term "obscene" means something offensive to chastity, decency, or delicacy; expressing or presenting to the mind or view something that delicacy and purity forbid to be exposed. Indecency is an act against good behaviour and a just delicacy. Obscenity is such indecency as is calculated to promote the violation of the law and the general corruption of morals.

"Obscene exhibition of person." By an "obscene exhibition of the person" is meant any offensive, disgusting, and indelicate presenting to view, show. or display of the person. (*State* v *Hazle*, 20 Ark 156 (159).

The words 'obscene and indecent exhibition of the person,' mean 'an exposure of those parts of the person which are commonly considered as private, and which custom and decency require should be covered and kept concealed from public sight They do not mean or include obscene or indecent prints, pictures placed on the clothes worn on the person (*Words and Phrases*)

Obscenity "Lewd, impure, indecent, calculated to shock the moral sense of man by a disregard of chastity or modesty" (*Black L. Dict*)

OTHER DEFINITIONS, "Impure, foul, filthy, offensive, disgusting." "Offensive to chastity, something that is foul, filthy and for that reason is offensive to pure minded persons" (8 Fed 732) The character or quality of being obscene; conduct tending to corrupt the public morals by its indecency or lewdness."

OBSCENITY. Includes on the one hand what is merely inauspicious, foul, or indecent, and on the other hand what is immodest, and calculated to excite impure emotions or desires. (*Anderson L, Dict.*)

Obscenity is applied to language spoken, written, or printed, and to pictorial productions, and includes what is foul, and indecent, as well as immodest, or calculated to excite impure desires (76 Mo. App. 313; *U S.* v. *Loftis*, 12 Fed 671.)

The obvious purpose of Acts passed against obscenity is to guard and protect the public morals, by erecting barriers which the evil-mined and lascivious may not overpass with impunity. (*U. S.* v. *Males*, 51 Fed. 41.)

"Obscenity was indictable at common law, on the ground that what tended to corrupt society amounted to a breach of the peace. The word obscenity cannot be said to be a technical term of the law and is not susceptible of exact definition in its judicial uses, though it has been defined in a general sense as meaning offensive to morality or chastity, indecent

Observance

nasty While it is not possible to define obscenity with any degree of practical certainty the test ordinarily followed by the courts in determining whether a particular publication or other thing is obscene within the meaning of the statutes is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall. Thus it has been held that where a publication or other article suggests to the young of either sex, or even to persons of more advanced years, thoughts of an impure and libidinous character it is obscene Another test of obscenity is that which shocks the ordinary and common sense of men as an indecency The true test of verbal obscenity is whether the particular language employed is calculated to corrupt morals or excite libidinous thoughts, and not whether the words themselves are impure"

Observance. Keeping a promise, performance of an obligation legal or moral, perceiving, watching, taking notice of

Observe 'Observe,' as used in liquor dealer's bond, providing that the liquor dealer shall *observe* all the provisions of the Abkari Act and Rules, the failure of the liquor dealer to pay the tax required by the Act is a breach of such condition, since 'observe' means to conform one's action or practice to; to keep, to heed or obey, to comply with

To OBSERVE, WATCH A general *observes* the motions of an enemy when they are in no particular state of activity, he *watches* the motions of an enemy when they are in a state of commotion, we *observe* a thing in order to draw an inference from it we *watch* anything in order to discover what may happen. We observe with coolness, we *watch* with eagerness. we *observe* carefully, we *watch* narrowly (*Crab.*)

OBSERVANCE AND PERFORMANCE 'Non-observance" is the proper term to use in respect of negative covenants, and 'non-performance' to affirmative covenants." (*Stroud.*)

Obsolete. Unrepealed, but not enforced.

OBSOLETE Discarded, disused, antiquated The expression "*obsolete*" in S 10 (2) (*vii*) of the Income Tax Act of 1922 includes cases of unfitness arising from whatever cause whether it is due to total destruction or supersession by new invention. (20 L W 859=85 I C 47=A I R 1925 Mad. 157. *See also* 1926 Mad. 462=50 M.L.J. 157.)

"Obstinate desertion" Desertion cannot be considered as obstinate (for the purpose of divorce) when the separation is acquiesced in by, and entirely satisfactory to, the other who neither entertains nor manifests any desire that the separation, or the cause which brought it about, should cease.

Obstruct. Obstruct does not necessarily mean to render impassable, as used in an ordinance punishing whoever shall obstruct any street or highway. The word evidently means to place an obstacle in the way, or an impediment which will interfere with the free passage along the street.

Obstruction to navigation.

To obstruct a highway means to stop up and wholly prevent travel upon a road, or render it unfit for travel

OBSTRUCT, HINDER, PREVENT 'Obstruct, hinder and prevent' are commonly used as synonymous, and are given as such in the dictionary But they are of different roots, and are employed conventionally to express varying shades of meaning Speaking etymologically, to obstruct 'obstruo' (Latin), is to build or set up something in the way; to hinder, 'hind' (Anglo-Saxon), as in 'behind,' 'hindmost' is to pull back, to prevent, is to come before, to thwart by anticipating In a more critical acceptation, 'obstruct implies simple opposition, 'hinder' implies action, and, to some extent, effectiveness, to 'prevent' is to be effective, but not necessarily by force, either active or inert Thus it may be that an officer of the law was *obstructed* in his duty, and *hindered*, perhaps, for a long time, but not finally *prevented*, from performing it (*Words and Phrases*)

"Obstructed and unobstructed heritage" The terms "obstructed" and "unobstructed" heritage (in Mitakshara Hindu Law), apply only to the inheritance of the property of a male, and have no application to the property of a female 27 M. 300 (F B)

Obstructing justice means impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.

Obstruction. An obstacle, an impediment, a hindrance, that which impedes progress Prevention, making hard, retarding the progress of any business. The word '*obstruction*' in S 186 of the Penal Code is not confined to physical obstruction only. Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant. (1937 A.W.R. 1179=1937 A L.J. 1344)

Obstruction of officer. "To obstruct an officer' means to oppose that officer It does not mean to oppose or impede the process with which the officer is armed, or to defeat its execution, but that the officer himself shall be obstructed It is opposition to the officer, and the words 'obstruct, resist, or oppose' have, in this connection, nearly the same meaning.

Obstruction of railroad. The term 'obstruction,' as used by railroad men, means that which may obstruct or hinder the free and safe passage of a train, or that which may receive an injury or damage such as would be unlawful to inflict if run over or against by the train, as in case of a cart or a man approaching on the track.

Obstruction to navigation By an 'obstruction' to the navigation of a river is meant such an impediment to the navigation that boats, in passing along the stream, cannot, by the use of skill and care, avoid being injured.

What is an unlawful obstruction to navigation must always depend upon the circumstances of the particular case In a sense, every vessel that is launched upon a river is an obstruction to its navigation, but such obstruction is not an unlawful one So long as the vessel, however guided or propelled, does not actually prevent or

Obtain.

render hazardous the navigation of the river by others, it cannot be considered an obstruction to navigation in the ordinary sense of the term.

Obtain To get hold, to gain possession of, to acquire, to maintain a hold upon, to keep, to possess, to secure The context often governs the meaning to be given to the term Thus in respect of a Patent "obtain" generally means obtaining from the Crown or Government, but by context it may mean "the becoming possessed, either by original grant, by assignment, or by any other title" (*Russell* v. *Ledsam*, 14 L J. Ex. 357.)

The word "obtaining" in section 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914, includes procuring or ordering the goods from the enemy as well as taking delivery of them on arrival 35 Ind Cas. 497 (500)

Obtemperandum est consuetudini rationabili tanquam legi A maxim meaning "A reasonable custom is to be obeyed as law." (*Peloubet Leg Max*)

Obvious Readily perceived by the eye, or intellect, seen or realized at the first glance, apparent in the exercise of ordinary observation and which is disclosed by the use of the eyes and other senses, patent, easily seen.

Obvious risks The phrase 'obvious risk' in an accident policy excepting an insurer from liability in case injuries result from exposure to an obvious risk includes not only a risk which may be readily perceived by the eye or senses, but one also that may be perceived by the intellect

THE OBVIOUS DANGERS OF AN EMPLOYMENT are those which are apparent. They are the apparent risks of the work They are the risks which are apparent in the exercise of ordinary observation, and which are disclosed by the use of the eyes and other senses. If the servant, fails to observe what is obvious, and suffers, he cannot charge the consequences on his master The risk so taken is impliedly assumed by him.

Occasion As a noun, that which immediately brings to pass an event, without being its efficient cause suitable juncture or opportunity, necessity or need. As a verb, to give occasion to, to cause incidentally, or casually.

OCCASION, CAUSE Webster defines an occasion, as distinguished from a cause, to be that which incidentally brings to pass an event, without being itself efficient cause of sufficient reason.

The word occasioned' as used in an instruction in an action for injuries that, if the jury could find the injuries were 'occasioned' by the negligence of the defendant, they should find for the plaintiff, is used as a synonym of 'caused', and the jury would not be misled thereby.

Where injunctions caused delay, and the delay resulted in loss, the loss was *occasioned* by the injunctions, though they might not be the direct *cause* of the loss

The statute giving a right of action for all damages *occasioned* by laying out, making, and maintaining a railroad, etc., refers to any damage which may be directly or indirectly *caused* by the railroad.

Occupancy.

OCCASION, NECESSITY. We are regulated by the occasion, and can exercise our own discretion, we yield or submit to the necessity, without even the exercise of the will. On the death of a relative we have occasion to go into mourning if we will not offer an affront to the family; when there is an attack on our persons, there is necessity of self-defiance for the preservation of life.

OCCASION, OPPORTUNITY. These terms are applied to the events of life, but the *occasion* is that which determines our conduct, and leaves us no choice, it amounts to a degree of necessity. the *opportunity* is that which invites to action, it tempts us to embrace the moment for taking the step. We do things, therefore, as the *occasion* requires, or as the *opportunity* offers. On particular *occasions* it is necessary for a commander to be severe; but a man of an humane disposition will profit by every *opportunity* to show his lenity to offenders.

Occasional. Occurring at times, but not constant regular or systematic. (*Webster*); happening now and then, incidental.

OCCASIONAL, CASUAL These are both opposed to what is fixed or stated, but occasional carries with it more the idea of unfrequency, and Casual that of unfixedness, or the absence of all design A minister is termed an occasional preacher, who preaches only on certain occasions, his preaching at a particular place, or on a certain day may be casual. Our acts of charity may be occasional, but they ought not to be casual.

Occultatio thesauri inventi fraudulosa. A maxim meaning "The concealment of discovered treasure is fraudulent" (*Peloubet Leg Max.*)

"Occupancy", defined. Bom. Act 5,1879, S. 3 (18).

OCCUPANCY. Possession, the act of taking or holding possession, the taking possession of things corporeal, which are without an owner, with the intention of appropriating them to one's own use; the taking possession of those things which before belonged to nobody. Applied to land, possession, actual possession, possession as owner. Of beasts *feroe naturæ*, the actual, corporal possession of them.

Occupancy is a mode of acquiring property by which a thing which belongs to nobody becomes the property of the person who took possession of it with the intention of acquiring a right of ownership upon it.

An island in the sea, precious stones on the seashore, and treasure discovered in a ground that has no particular owner, by the Law of Nations belong to him who finds them and gets the first occupation of them. (*Tomlins Law Dic.*)

IN INTERNATIONAL LAW. In time of peace, occupation is the term applied to the act by which a State occupies territory not under the actual sovereignty of any other state (*res nullius civitatis*). In this connection we must distinguish between municipal and international law. "Occupancy", says Blackstone "gave the right to the temporary use of the soil; so it is agreed upon all hands that occupancy gave also the original right to the permanent property in the substance of the earth itself, which excludes every one else but the owner from the use

Occupancy raiyat.

of it. There is some difference among the writers on natural law, concerning the reason why occupancy should convey this right and invest one with this absolute property. * * * However, all are agreed in this that occupancy is the thing by which the title was in fact originally gained; every man seizing to his own continued use such spots of ground as he found most agreeable to his own convenience, acquired title to it provided he found them unoccupied by any one else". (Blackstone Commentaries, 4th ed., 1770, Vol. II, p. 8)

OCCUPANCY, OCCUPATION. These are words which derive their meaning from the different acceptations of the primitive verb occupy; the former being used to express the state of holding or possessing any object; the latter to express the act of taking possession of, or keeping in possession. He who has the occupancy of land enjoys the fruits of it, the occupation of a country by force of arms is of little avail, unless one has an adequate force to maintain one's ground.

"**Occupancy-raiyat**" defined Act 8, 1885, s. 4 (b), Mad. Act 1, 1908, s. 3 (6).

Occupancy right. The term commonly used in reference to cultivators who have higher rights in the land they cultivate than mere tenants-at-will. The rights vary in different cases, but generally include right of transfer and of transmission by inheritance and undisturbed possession so long as the stipulated rent is paid.

Occupancy rights are creatures of statutes, or to be more precise the creatures of custom adopted by statute, which by defining the nature of the evidence which, a person claiming such rights is required to adduce, have extended such rights to larger class of ryots. They are creatures of customs or of statute only in the sense that acquisition of such rights by ryots does not depend upon the bounty or gift of the landlord, but they can be acquired against his will. This does not imply that the landlord cannot by grant confer on his tenant rights exactly similar to rights of occupancy He can in his grant define rights which he is granting to his tenant, by mentioning in detail in the different clauses of the Patta the exact incidents of the rights he is granting. If he does so, the ryot or tenant would get those rights (169 I C 700=A I.R. 1937 Cal. 27.)

"**Occupancy-tenant**" defined. Act 11, 1898, s. 44, Bom. Act 1, 1890, s. 3 (8); U P. Act 2, 1901, s. 16.

"**Occupant**" defined(*See also* Privileged Occupant. Registered Occupant). Ben. Act 5, 1875, s 2; Bom. Act 5, 1879, s. 3 (16).

OCCUPANT. One who occupies, or takes possession, one who has the actual use or is in the possession of a thing; one who takes possession or controls things actual; a person interested in the land which he possesses; a tenant in possession; a person holding a piece of property or office.

A man who only enjoys the use of premises in common with the public can, in no just sense, be said to be an occupant

Occupancy implies that a person is in actual, *bona fide* possession of the land as a resident. One who has never had actual possession cannot be an occupant.

Occupation and residence.

"Occupant" in the Tenancy Act includes every zamindar, tenure-holder, farmer and other person entitled to receive rents in respect of land, or holding land on a claim that he is so entitled, and every raiyat in occupation of land. Ben. Act V of 1875 (Survey), S. 2.

OCCUPANT AND OCCUPIER. 'A servant or employee claiming no title or interest in himself, or any right to the possession, is not an occupant, within the meaning of the rules of law governing ejectments. He is acting under the control of another, and it is only in another's right that he occupies the premises.

A husband, though the head of the family, is not in any legal sense the possessor or occupant of the house or land owned by his wife, and in or upon which the family reside.

"**Occupant of the place.**" These words in the Criminal Procedure Code (V of 1898), s. 102, are not intended to cover any person who may happen to be in the place at the time, but they refer to the person residing in, or being in charge of, the place." 23 I. C. 985 (999)=18 C.W N. 498=15 Cr.L.J. 385.

Occupantis fiunt derelicta. A maxim meaning "Things abandoned become the property of the (first) occupant."

Occupation. The principal business of one's life, vocation, calling, trade, the business which a man follows to procure a living or obtain wealth; that which occupies or engages one's time or attention, vocation, employment, calling, trade; the business in which a man is usually engaged, to the knowledge of his neighbour.

OCCUPATION is a "generic term, and includes every, species of that genus,—and holding or discharging the duties of a public office is one species of occupation, just as carpentering, tailoring, farming, etc, are species of occupation." (39 Am. Rep. 34.)

Occupation and possession, "*Occupation* includes possession as its primary element, but it also includes something more Legal possession does not, of itself constitute an occupation The owner of vacant house is in possession, and may maintain trespass against any one who invades it; but as long as he leaves it vacant he is not in occupation, nor is he an occupier" (*per* Lush J., *R.* v. *St. Pancras*, 2 Q.B.D. 588.)

There is a distinction between 'occupation' and 'possession, because there may be a legal or constructive possession where there is no actual occupation.

The word "occupy" is a word of uncertain meaning. Sometimes it indicates legal possession in the technical sense, as when occupation is made the test of rateability; and it is in this sense that it is said that the occupation or premises by a servant if such occupation is subservient and necessary to the service is the occupation of the master. At other times occupation denotes nothing more than physical presence in a place for a substantial period of time. 31 M.L T. 114=4 U.P.L.R. 97 (P.C.).

Occupation and residence. The word "occupation does not necessarily mean residence only. (99 I.C. 376=1927 All. 214 *See also* 10 Bom.L.R. 38=7 Cr.L.J. 44; 25 Cal. 425=2 C.W.N. 113.)

Occupation bridge.

Occupation bridge or road. Bridge or road, which is private, for the use of the occupant of the land.

Occupation franchise Right to vote as tenant in occupation of premises.

Occupation Lease An "Occupation Lease" is to be distinguished from an Agricultural Lease or a Building Lease, [(per *Williams, L J*, *Browne* v *Peto*, 69 L J Q B. 874) It is a lease which, according to the nature and situation of the property and the common experience of mankind is made for the convenience and comfort of personal occupation, including such amenities and advantages as not infrequently go with such kind of property *Browne* v. *Peto*, (1900) 2 Q B 653

"Occupation of house" defined. Act 20, 1891, s 62 (4).

Occupation tax It is not a tax upon property, but upon a pursuit which a man follows in order to acquire property and support his family.

Occupation tax and income-tax "An *'occupation' tax* is peculiar in its character. It is a tax upon income in the sense only that every other tax is a tax upon income, that is to say, it reduces a man's clear income by the precise amount of the tax. But it is an income-tax in no sense." (*Ame Cyc*)

ARMY OF OCCUPATION Army occupying and temporarily controlling a country.

Occupied. "The meaning of the word *'Occupied'* just as occupation, may vary according to the occasion or the subject matter. The meaning which it has received in considering what occupation was necessary to constitute a mansion-house in which burglary might be committed, or to give a right of voting or to make a party rateable to the relief of the poor, is no test of its meaning in respect of a pauper settlement Where a Statute requires "occupation in fact" a constructive occupation will not satisfy these words, [(per *Denman, C.J. R* v. *St Nicholas Rochester*, 5 B. & Ad. 226, 227; *Stroude Jud. Dic.*)

"Occupier" defined (*See also* Rateable owner or occupier) Ben. Act 3, 1899, S. 3 (30), Mad. Act 3, 1904, S. 3 (20); U P. Act 1, 1900, s. 3 (7), Pun. Act 3, 1911, S. 3.

OCCUPIER is one who is in the use or enjoyment of a thing, person having the actual use or occupation.

"OCCUPIER" includes an owner in actual occupation of his own land or building. U.P Act I of 1900 (Municipalities), s. 3, cl 7.

"OCCUPIER" includes an owner in actual occupation of his own land or building, and also any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used: for certain purposes occupier shall include hotel keeper, lodging house keeper, and any owner whose premises are let to more than one tenant: Pun. Act III of 1911 (Municipal), s. 3, cl. 10.

"Occupier" in S. 8 of the Explosives Act means a person in actual occupation of the premises and in control of the operations in progress there. The person who is obliged under the section to give notice

Ocean.

of the accident is the individual who is actually on the spot and in charge of the factory. 163 I C 400 (1)=37 Cr L J 839=18 N L J. 235.

The word "occupier" in S 17 of the Factories Act bears the same meaning as it bears in similar enactments in England, that is to say, a person who regulates a factory and controls the work that is done there. 15 Bom L R 328=20 I.C. 144=11 Cr.L.J 384

Occupier and owner. S 4 of the Easements Act shows that not merely the "owner" but even an "occupier', may acquire an easement and there is no *prima facie* reason why the enjoyment of a person as an "occupier" should not be tacked on under S 15, to his enjoyment as "owner" if there is no interruption in his user 40 L W. 514=152 I.C. 216=1934 M W N. 1042=A I R. 1934 Mad 575=67 M L J. 262.

OCCUPIER, OWNER, PROPRIETOR, MANAGER, AND SERVANT The word "occupier" denotes a person who is either a proprietor or owner or otherwise entitled to be in possession of the factory and control its working He may or may not actually occupy the building and even if he carries on the work through an agent, he does not cease to be the occupier He cannot therefore be any one who is a mere servant charged with specific duties either in regard to the control of the machinery, workmen or office A mukaddam is really a foreman of the operatives and a servant of the factory. He is neither a managing agent nor a person authorized to represent the occupier He cannot therefore be regarded as an occupier or manager. 29 Nag L R 72=144 I C 693=34 Cr.L.J. 821=1933 Cr.C 342=A I R 1933 Nag. 100.

Occupier, of factory. The word "occupier" in general means a person who occupies the factory either by himself or his agent He may be an owner, he may be a lessee or even a mere licensee, but he must have the right to occupy the property and dictate how it is to be managed. 55 Bom 366=133 I C 826=32 Cr L J. 1063 (1)=33 Bom.L R. 309= A I R. 1931 Bom. 308.

"Occupier's rate" defined Act 8, 1873, s. 36

Occupy. To take possession of, seize, employ, to take possession of and retain or keep. "To occupy" property denotes a physical possession, but "'occupy' is a word which in one form and another is not infrequently used of an incorporeal hereditament"

'Occupy' is to hold or keep for use, to possess, and to cover or fill. So to say that one occupies or has occupied land continuously is tantamount to saying that he has or had actual possession of the same

"OCCUPY" sometimes indicates legal possession in the technical sense, at other times mere physical presence at a place for a substantial period of time, 31 M.L.T. 114=4 U P L R 97 (P.C.).

Occur To befall, to happen, to meet with; come to one's mind, to take place. As used in regard to losses insurance policies, the term has been held equivalent to arise, or accrue.

Occurrence Happening, incident.

Ocean: Open sea, the high sea, that which is the common highway of nations, the common domain, within the body of no country and under the particular right or jurisdiction of no sovereign, but open

Ocean

free and common to all alike, as a common and equal right; the main sea

Ocean: Sex. As distinguished from sea within territorial bounds "that part of the sea which lies not within the body of a country is called the main sea or ocean." (*Hale De jure Maris*, c. 4.)

Octroi. is the French name of the local duty levied upon goods entering a town or district as distinguished from customs duties, which are those levied at the frontier, the levying place or system or officials.

Odavaram (*Tam*) Actual gross produce.

Oderunt peccare boni virtutis amore; oderunt peccare mali, formidine poenae: A maxim meaning "Good men hate sin through love of virtue bad men, through fear of punishment."

Odio et amore judex careat: A maxim meaning "Let a judge be free from hatred and love" (*Peloubet Leg. Max*)

Odiosa et inhonesta non sunt praesumenda. A maxim meaning "Odious and dishonest things are not to be presumed in law." (*Peloubet Leg. Max*)

Odiosa non praesumuntur A maxim meaning "Odious things are not presumed." (*Bouvier L. Dict.*)

Odium Hatred, dislike, repulsion, widespread reprobation attaching to person or action.

Odiya uriya, (*S*) The people and language of Orissa. ((*Wil. Gloss.*)

Oestimatio facit veditionem: A maxim meaning "A valuation makes a transfer."

Of. Owned by, as, property of another, belonging to, as clerk of the Court, from or proceeding from, as the cause, source, means, or agent, bestowing, belonging to, pertaining or relating to, as, in Court of the District; cause of accident; master of the house, concerning, residing in, as. A of the northern State. Goods "of" a person means *prima facie*, goods of his manufacture (*Powell* v. *Horton*, 2 Bing. N C. 668) "If I speak of the literary work of a given author, I imply that it was written by that author, that the picture 'of' a given artist was painted by that artist, and that manufactured articles stamped with a name or the manufacture of the party whose name they bear." [per *Bosanquet, J., Ibid*)

'Of owner.' *See* 41 Cal 104=21 I.C. 169.

Of record: As to matter in court, duly enrolled and filed in a court of record.

Of the blood: Of the kindred.

To be *of the blood* of a person is "to be able to trace descent from some progenitor of that person" to be descended from him or from the same common stock or the same couple of common ancestors. (*Black L. Dict*) To have in however small, a degree a portion of the same blood derived from a common ancestor.

"Of the clock": The phrase "of the clock" indicates "Mean Time as opposed to Solar Time, but a question might arise as to whether it means, Local Mean Time or the Mean Time commonly observed at

Offence.

any given place. Local Mean Time is the natural meaning" (*Steph. Cr. Law* 247, n 2.)

Of the half blood: A phrase which necessarily signifies that the consanguinity is collateral rather than lineal.

"Offence" defined. [*N.B.* This word is also used in combination with other words (as), Bailable offence; Civil offence; Cognizable offence, Forest offence; Non-bailable offence, Non-cognizable offence, Separate offence). 41-2 V. c. 23, s 7 Act 45, 1860, ss 4, 40, 177, 203, 212, 216; Act 5, 1869, Pt I, cl. (*e*) (*22*), Act 1, 1872, s 30, *expln*, Act 10, 1897, S. 3 (37; Act 5, 1898. S. 4 (*o*), Act 15, 1903, s. 2 (*e*), Ben Act 2, 1867, s. 15; Ben. Act 1,1899, s. 3 (30): Bom Act 1, 1904, s. 3(33); Bur. Act 1, 1898, s. 2 (42), E.B. & A Act, 1, (1909), s. 5 (43); Mad. Act 1, 1891, s 3 (21); P. Act 1, 1898, s. 2 (38); U.P. Act 1, 1904, s. 4 (31).

OFFENCE, is an act committed against law, or omitted where the law requires it, and punishable by it (*Tomlins Law Dic.*) 'Offence' is generally equivalent to a Crime' (*per* Collins, J, *Derbyshire Co.* v. *Derby*, 65 L.J. Q.B. 488). In its legal signification an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights, a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands. *See* S C. 143, Oudh L.B R. (1893—1900), 315, 26 M 607, 1 Weir 13. 52 M L J. 251, 10 I A. 171 (177)=10 Cal. 109.

"OFFENCE" means any act or omission made punishable by any law for the time being in force; (Act X of 1897 (General Clauses), S. 3(37); Criminal Procedure Code, S 4.

OFFENCES CLASSIFIED: OFFENSES MALA IN SE AND MALA PROHIBITA An *offense malum in se* is properly defined as one which is naturally evil as adjudged by the sense of a civilized community. An act which is *malum prohibitum* is wrong only because made so by statute.

FELONY AND MISDEMEANOR. Apart from treason, all crimes known to the English law are comprehended in the two classes of felonies and misdemeanors. Felony, as a term, is incapable of any satisfactory definition, and is descriptive of no offense. At common law felonies were crimes which, like treason, worked a forfeiture of the offender's lands or goods. If this test were applied, there would be no felonies at the present time, for forfeitures no longer follow conviction In England, long before forfeitures were abolished, the common-law test became obsolete. Parliament often declared offenses to be felonies without subjecting the offender to a forfeiture. At the present time, whether a criminal act is to be classed as a felony or a misdemeanor usually depends on the character of the punishment provided by the statute defining the crime. (*Rul. Case Law.*)

OFFENCE, TRESPASS, TRANSGRESSION, MISDEMEANOUR, MISDEED, AFFRONT. Offences are either against God or man; a trespass is always an offence against man; a transgression is against the will of God or the laws of men; the misdemeanour is more particularly against the established order of society; a misdeed is an offence against the Divine Law, an affront is an offence against good manners,

Offence.

OFFENCES AND CIVIL WRONGS. Certain kinds of wrongs are considered as of a public character because they possess elements of evil which affect the public as a whole and not merely the person whose rights or property or person have been invaded Such a wrong is called a crime Perhaps it can best be defined as any act or omission which is forbidden by law, to which a punishment is annexed, and which the state prosecutes in its own name

VIOLATION OF MUNICIPAL ORDINANCE OR MILITARY CODE AS CRIME At common law and independent of statutory enactments punishments for the violation of municipal ordinances were sometimes treated as in the nature of civil actions, the imprisonment, for the non-compliance with the order of the court imposing the payment of a fine, being looked on not in the light of a punishment, but as a means of compelling a compliance with the order of the Court and of enforcing payment Whether or not they are to be so regarded depends to a great extent on whether such offenses are made punishable by the general law as crimes If such, violations are not made crimes by law the proceedings to enforce or for a violation of such ordinances are more civil in their nature. If such offences are made crimes or misdemeanors by the general law of the state, the proceedings must be considered as criminal in their nature The distinction appears to be correct, for many of the offences which are punishable under municipal ordinance are not made offences against the state, by the general statute law, and are made so only by the ordinance in the particular case in question, and for this reason they may be termed quasi criminal.

The rules and regulations of the military code are merely disciplinary in their nature, designed to secure higher efficiency in the military service, and a violation of them may not constitute a criminal offence in the strict sense of that word.

"OFFENCES INVOLVING BREACH OF PEACE" The words "offence involving a breach of the peace" in S. 106 of the Cr P Code refer not only to a necessary breach of the peace but also to a probable breach of the peace. (30 C 93, 30 C. 366, 35 C. 315, 29 M 188, *ref.*) 33 All. 771=8 A.L J 925=11 I.C. 589=12 Cr. L.J. 405.

"An offence involving a breach of peace" in S. 106 Cr P. Code means an offence into which breach of the peace necessarily enters as a constituting element. An offence of which breach of the peace is not a necessary ingredient but the facts found show that in committing the offence the accused did acts involving a breach of peace is not included in the meaning of the above expression. 29 M 190 3 Cr L.J 461, *foll* 7 C W.N. 25 *diss*) 19 M L J. 66=4 M.L T 468=4 I C. 616=9 Cr.L.J. 88. *See also* 59 Cal 659=35 C W N. 1150=134 I C 1187=1931 Cal 645.

"OFFENCES OF THE SAME KIND." *See* 9 C. 371=11 C.L R 522, 138 I.C. 520=34 Bom.L R. 590=1932 Bom 277.

"OFFENCE PUNISHABLE WITH IMPRISONMENT." *See* 28 P.R. (Cr) 1910=8 I.C. 383.

"OFFENCES UNDER THE INDIAN PENAL CODE." *See* 10 I.A. 171=10 C. 109=4 Sar. 474 (P.C.)

Offend. To transgress the state laws or the moral or divine law.

Offer.

Offender. A term constantly employed to indicate persons implicated in the commission of crime. *See* 103 I C. 402=.927 Sind 241

Offensive Anything that causes displeasure, gives pain or unpleasant sensations "The disturbing cause must however be real, not fanciful something more than mere delicacy or fastidiousness"

In construing a restrictive covenant against use of premises for an offensive trade, it is to be supposed that the parties had in mind not "any business which might be offensive to a person of a supersensitive organization, or to one of a peculiar and abnormal temperament, or to the small class of persons who are generally annoyed by sights, sounds and objects not offensive to other people," but "ordinary, normal people", and that they "meant to prohibit trades and business which would be offensive to people generally, and would thus render the neighbourhood to such people undesirable as a place of residence" (29 *Ame Cyc* 1353)

"Offensive matter" defined. Ben. Act 5, 1876, s. 6 (13), Ben Act 3, 1884, s. 6 (10), Ben. Act 3, 1899, s. 3 (31), Mad. Act 3, 19 4, s 3 (21).

"OFFENSIVE MATTER" means dirt, dung, putrid or putrefying substances, and filth of any kind not included in the term "sewage" Ben. Act III of 1884 (Municipal) s 6, cl 10

"Offensive trades" defined Mad. Act 3, 1904, s. 3 (22)

"Offensive and dangerous trades" *See* 2 M L, T 54=5 Cr.L J. 189=30 M. 220=17 M L.J 371=6 Cr L J. 128

Offensive trade or business As to what constitutes an "*Offensive trade or business*" will depend on the situation of the premises, usage of the locality and other circumstances (*per* Tindal, C J, *Gutteridge* v *Munyard*, 7 C. & P. 129).

Offer. As a noun, a proposal to do a thing, a proposal to be accepted or rejected, first advance, the act of bidding, an attempt, endeavour. As a verb, to bring to or before, to hold out; to present for acceptance or rejection; to exhibit, to proffer, to make a proposal to.

The words 'we offer,' as used in the following offer in writing,' for a period of six months from date we offer for the product of the Robert E. Lee mine as follows,' etc, is equivalent to and synonymous with the phrase "we will buy"

A statement by a canvasser that the voter "would be remunerated for loss of time' or trouble taken is an "Offer" or "Promise.' (*Simpson* v *Yeend*, 38 L. J. Q B. 313)

'OFFERED FOR SALE' of properties means held for sale, though they had not been put on the market for sale. It does not require an actual proffer for sale to some particular person.

"OFFERED IN EVIDENCE" The words "*offered in evidence*" are synonymous with the word 'introduced' and mean that the evidence offered was introduced in evidence.

OFFER TO CONFESS JUDGMENT. An offer to confess judgment without costs which is not accepted, cannot be treated as an admission of the cause of action or the amount to which plaintiff is entitled.

Offerings.

Offerings; Oblations. Oblations generally mean anything offered to the Church by the pious and faithful. Under these terms are comprehended not only those small customary sums paid by a person when he receives the Sacrament at Christmas, Easter and Whitsuntide, but also those customarily paid at marriages, christenings, churchings, and burials. Such offerings once constituted the chief revenues of the Church, and, although voluntary at first, the same when once established by custom became recoverable as small tithes (*Ency of the Laws of England.*)

The offering in a religious sense is whatever one offers as a gift by way of reverence to a superior: the oblation is the offering which is accompanied with some particular ceremony. The wise men made on offering to our Saviour, all religious sacrifices are in the proper sense oblations.

"OBLATIONS, OBVENTIONS AND OFFERINGS, are generally the same thing, though Obvention has been esteemed the most comprehensive" (Jacob, Obvention Phil. Ecc. Law, 1242, *Ency of the Laws of England*)

"Office" defined (*N.B.*) This word is also used in combination with other words (as) Municipal office, public office, registered office of company, Revenue office (Act 11, 1876, s. 3)

OFFICE That function by virtue thereof a man hath some employment in the affairs of another, as of the King, or of another person. (*Cowell, Tomlin's Law Dic.*)

An office is 'the right to exercise a public or private employment, and take the fees and emoluments there unto belonging, whether public, as those of magistrates, or private, as of bailiffs, receivers,' etc. (*Bl. Com*)

The term "*office*" denotes a duty in the office-holder to be discharged by him as such It consists in a right and correspondent duty, to execute a public or private duty and to take the emoluments belonging to it (9 M.L J 355) Webster defines an office to be 'the place where a particular kind of business or service for others is transacted, a house or apartment in which public officers and others transact business, as a registrar's office, a lawyer's office.' "*Office*" includes place and employment, Govt. of India Act (9 & 10 Geo V Ch. 101), s 134, Cl. 5]

The word '*office*' has two meanings: the one popular, the other legal and technical. Thus we speak of the office of an executor, guardian &c. The legal meaning of the term always implies a charge, or trust, conferred by public authority, and for a public purpose" (*Ame Cyc*) An office is in this sense, a trust created for the public. It imports a duty or trust.

A common division of *offices* is into *judicial* and *ministerial*. It is laid down that the former cannot be exercised by deputy unless there be express authority Nor could they be assigned or granted for a term of years (*Reynel's Case*, 9 Rep 95, 77 E. R. 871) or in reversion. The same officer may be called to perform both judicial and ministerial acts, and will be civilly liable for neglect or failure to perform the ministerial but not the judicial acts. (*Ferguson* v. *Kinnoull*, 1842, 9 Cl. & Fin. 251; 4 St.

Office copy.

Tri. N.S. 785; 8 E.R. 412; *Ency. of the Laws of England.*)

An office may also be classed into *civil* and *military*. And civil may be classed into *political*, *judicial* and *ministerial* *Political* are such as are not connected immediately with the administration of justice, or the execution of the mandates of a superior officer. *Judicial* are those which relate to the administration of justice. *Ministerial* are those which give the officer no power to judge of the matter to be done, and require him to obey the mandates of a superior (*2 Bouvier L. Dict* 259, 4 *Jacob L. Dict.* 433; 2 *Tomlins L. Dict* 665)

Office, officer and servant *An office* is defined as a right to exercise a public or private employment, and to take the fees and emoluments belonging to it. The position of an officer appears to involve some discretionary authority, and is to be distinguished from that of a mere servant whose only duty is to obey orders, though it is not always easy to draw the line (*Ency of the Laws of England.*)

Office and employment Opposed to the conceptions of office and officer are those of employment and employee. While an office is based upon some provision of law, an employment is based upon a contract entered into by the government or employer with the employee. (84 Am. St. Rep 524.)

There is a difference between an *Office* and an employment, every Office being an employment; but there are employments which do not come under the denomination of Offices; such as, an agreement to make hay plough land, herd a flock &c which differ widely from that of an office. (*Tomlins Law Dic.*)

OFFICE AND PUBLIC TRUST. The terms 'office' and 'public trust' are nearly synonymous; at least, the term 'public trust' is included in the more comprehensive term office.' The terms have relation only to those persons and duties that are of a public nature.

OFFICE, CHARGE, FUNCTION. An office imposes a task, or some performance a charge imposes a responsibility; we have always something to do in an office, always something to look after in a charge; the office is either public or private, the charge is always of a private and personal nature: a person performs the office of a magistrate, or of a minister, he undertakes the charge of instructing youth, or of being a guardian. The office is that which is assigned by another: Function is properly the act of discharging or completing an office or business.

Office copy. An 'office copy' of a record or instrument is a copy made by an authorized officer; a transcript of a proceeding filed in the proper office; a copy made by an authorized officer, a copy made by the officer in custody of the record. An *Office Copy* is a copy of a document vouched as accurate by an Office or Officer thereunto duly authorized. (R. 7, Ord. 6 1, R.S C)

The following definition is that given in a leading work on evidence —"By an office copy is meant a copy authenticated by a person intrusted with the power of furnishing copies. It is admitted in evidence upon the credit of the officer without proof that it has been actually examined and it has ever been regarded even at common law, when tendered

Office dhara.

in evidence in the same Court, and in the same cause, as equivalent to the record itself." [Taylor on Evidence, 9th ed., 1895, p 1015; see *Denn* v. *Fulford*, (1761), 2 Bur. 1177; *Jack Boyle* v. *Kiernan* (1840) 2 Jebb. & S 231.]

Office dhara. The words "office dhara" ('office terms') do not constitute a written agreement to submit differences to arbitration. They are merely symbols to denote that such an agreement had been entered into, and the use of such symbols does not justify the Court in accepting oral evidence of the agreement. (6 S.L.R. 278=19 Ind. Cas. 926.)

Where a contract is alleged to be on "*office dhara*" and where the "office dhara" refers to the practice of certain firms as seen in printed forms used by them, a plaintiff relying on the term "office dhara," must produce and prove the printed forms abovementioned. A I.R. 1925 Sind 80.

OFFICE OF HONOR. The office of director of a state institution for the education of the deaf and dumb, appointed by the Government, is an office of honor though there are no fees, perquisites, profit, or salary. It is merely an honorable trust that is confided to the director of the institution. It is an office, and not merely an employment It is an 'office of honor,' and, if not of great distinction, it is one of a high, benevolent, and important trust.

OFFICE OF PROFIT. The term 'office of profit' is frequently used to designate officers otherwise known as 'lucrative offices.' It describes an office to which salary, compensation, or fees are attached, and the amount of the salary or compensation is not material.

"OFFICE UNDER THE CROWN." The Crown is said to be the fountain of *office*, but many offices have been created or regulated by statutory authority. Offices are held either immediately under the Crown or of some subordinate authority. (*Ency of the Laws of England*) It is said that the Crown in England cannot create new *offices* with fees or grant new fees to ancient offices, without the consent of the legislature for that would be to put a tax upon the subject. On the other hand, power in the Crown to dismiss an officer at pleasure does not imply power to reduce the fees of the office (*Cameron* v. *Kyte*, (1835) 3 St. Tri N.S. at p 620.) *See* generally, Bacon, Abr. tit. "*Office*", Cruise, Dig., tit. "Office," Chitty's Prerogative.

"Office under Her Majesty" defined. 52-3 V. c. 52, s. 8; Act 15, 1889, s. 2 (6).

"OFFICE UNDER HIS MAJESTY" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British Possession. Act XIX of 1923 (Official Secrets), s. 2, cl (6).

PUBLIC OFFICE. The words 'public office' are used in so many senses that it is impossible to give a precise definition covering all cases. It depends, not on what we call it, or even on what a statute may incidentally call it, but upon the powers wielded, the functions performed, and other circumstances manifesting the character of the position. Mechem, Pub. Off. 4 says: 'The most important characteristic which distinguishes a public office from an employment or contract is that the creation of a public office involves a delegation to the individual of some

Officer.

of the sovereign functions of government, to be exercised by him for the benefit of the public;;.... Unless the powers conferred are of this nature, the individual is not a public officer.' The test is that he should exercise something that can fitly be called a part of the sovereignty of the state.

Many efforts have been made to define a 'Public office,' but it is easier to conceive the general requirements of such an office than to express them with precision in a definition that shall be entirely faultless. It will be found, however, by consulting the cases and authorities, that the most general distinction of a public office is that it embraces the performance by the incumbent of a public function delegated to him as part of the sovereignty of the state.

Officer. An 'officer,' as defined by Cowell, is a function by virtue whereof a man has some employment in the affairs of another. Webster defines it to be a duty, charge, or trust

OTHER DEFINITIONS. Chief Justice Marshall says: 'He who performs the duties of a public office is an officer.' "The individual who is invested with the authority and is required to perform the duties incident to an office is an officer."

"Whether we look into the dictionaries of our language, the terms of politics, or the dictum of common life, we find that whoever has a public charge or employment or even a particular employment affecting the public, is said to hold or be 'in office.'",

The thought running through every definition of an 'officer' is that he shall perform some service or owe some duty to the government, state, or municipal corporation, and not merely to those who appoint or elect him His tenure must be defined, fixed, and certain, and not arising out of mere contract of employment.

"One of the earliest definitions of the word 'officium' is that function by virtue whereof a man hath some employment in the affairs of another, as of the King or another person. Again, it is said that the word 'officium' principally implies a duty, and in the next place the charge of such duty, and that it is a rule that, where a man hath to do with another's affairs against his will and without leave, this is an office, and he who is in it, an officer." (*Words and Phrases.*)

It cannot be doubted, as a general proposition of law that the word 'offices' or 'officers,' taken by themselves, means state or Municipal offices or officers only, and cannot be construed to mean the offices or officers of municipal or other corporations, unless there be language, expressly or by necessary implication, limiting their meaning to corporation officers.

"OFFICER" in the Companies Act includes any director, manager or secretary. Act VII of 1913 (Companies), S. 2, cl. (11); *see also* Act I of 1919, S. 2.

"OFFICER" in the Co-operative Societies Act includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society. Act II of 1912, Co-operative Societies), S. 2, cl. (*d*).

Officer.

OFFICERS—CIVIL AND MILITARY OFFICERS are distinguished into civil and military, according to the nature of their several trusts. (*Tomlins Law Dic.*)

"OFFICER COMMANDING THE DIVISION" defined. Act 2, 1902, S 2 (1) (*c*).

Officer de facto One in actual possession of an office.

Officer de jure. One who has lawful right to the office, but who is not in present possession.

"OFFICER EXERCISING (OR HAVING) THE POWERS (OR THE FULL POWERS) OF A MAGISTRATE", construction of references to. Act 5, 1898, S. 3, Act 10, 1882, S. 3

OFFICER HEARING APPEAL The words "officer hearing the appeal" occurring in R 6 of the Scheduled Districts Act, (XIV of 1874) implied that the appellant had a right to be heard in support of his appeal (28 M. 404)

"Officer in charge of a police station" includes, when the officer in charge of the police-station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or when the Local Government so directs, any other police officer so present. Cr. P. Code (Act V of 1898), S 4

An Assistant Sub-Inspector on duty in mofussil during investigation is not an officer-in-charge of the Police station for purposes of S 154, Cr. P Code when the first information report is made, unless he comes within the strict terms of S. 4 of that Code. (A I R. 1928 Cal. 771)

"OFFICER IN CHARGE OF A POLICE-STATION" defined. Act 5, 1898, S 4 (*p*), Ben. Act 4, 1866, S. 3, Ins. Ben Act 3, 1910, S 3

"OFFICER IN CHARGE OF A SECTION" defined. Bom. Act 4, 1902, S 3 (*c*).

"OFFICER IN THE CONSULAR SERVICE OF HER MAJESTY" defined, 33 V c 14, S. 17.

"OFFICER IN THE DIPLOMATIC SERVICE OF HER MAJESTY" defined. 33 V, c. 14, S. 17

"OFFICER OF COMPANY" defined. Act 6, 1882, S, 214, *Expln. I.*

"OFFICER OF POLICE" defined. Act 1, 1871, S. 3; Act 17, 1879, S. 38.

"OFFICER OF POLICE" includes also village-watchman, Cattle Trespass Act (I of 1871), S 3.

OFFICER OF THE POST OFFICE The expression "*officer of the Post Office*" includes any person employed in any business of the Post Office or on behalf of the Post Office, [Act VI of 1898 (Post Office), S 2, cl. (*e*)].

"OFFICER" (MILITARY) defined. 44-5 V c. 58, S. 190 (4), 56 V c. 5, S. 29; Act 45, 1860, S. 131 *Expln.*; Act 5, 1869, Pt. I, Cl. (*e*) (5). Act 2, 1874, S. 3, Act 15, 1910, S 3 (*a*).

JUDICIAL OFFICERS. Attorneys at law belong properly to the class of judicial officers, and derive their office by appointment.

An attorney or counselor at law holds an 'office or public trust,' within the meaning of the terms as used in law.

Official bond.

The general term 'officers' includes both magistrates and peace officers.

PUBLIC OFFICER. One participating in the exercise of the powers or receiving the emoluments of a public office is a public officer.

A public officer is one who holds a public office, which is an agency of the state, and whose duty it is to perform the agency.

A public officer is one who is appointed to discharge a public duty and receives a compensation for the same.

The term 'public officers' includes grand jurors and listers.

A health inspector appointed by the Board of health whose duties are to inspect and report concerning the premises on which nuisances are situated, and to serve notice for their abatement, is a public officer

"OFFICERS AND EMPLOYEES." The terms '*officers*' or '*employees*,' in a rule empowering railroads to give free carriage to their own officers and employees, cannot be construed to include the families of officers or employees.

Officia judicialia non concedantur antequam vacent: A maxim meaning "Judicial offices should not be granted before they are vacant."

Officia magistratus non debent esse venalia: A maxim meaning "The offices of magistrates ought not to be sold." (*Peloubet Leg. Max*)

Official: As a noun, an officer; As adjective, belonging to an officer, of a public officer; in relation to the duties of office. The term is sometimes applied to persons holding fiduciary positions to distinguish their transactions in such relation from purely private business,

The expressions "OFFICIAL" and "NON OFFICIAL," where used in relation to any person, mean respectively a person who is or is not in the civil and military service of the Crown in India. Provided that rules under this Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of this Act, or any of them, as officials. [Government of India Act (9 & 10 Geo. V, Ch. 101), S. 134.]

OFFICIAL. Pertaining to public office.

Official Act. Any act done by the officer in his official capacity, under colour and by virtue of his office.

Official action. Action is not official when taken by officials in their personal or individual capacity, though all be members of a municipal board and all concur.

"Official administrator" defined. 56 V c. 5, S. 29.

Official Assignee. A member appointed to wind up the estate of a defaulting debtor. *See* Presidency Towns Insolvency Act.

"OFFICIAL ASSIGNEE" includes an acting Official Assignee: Act III of 1909 (Presidency Towns Insolvency) S. 2 (*c*).

Official bond. A bond taken in pursuance of a public statute falls under the description of an 'official bond.'

Official broker.

An official bond includes an obligation under which the sureties may, on default of their principal, become liable to pay money to another.

Official broker One appointed to buy or sell specified securities in cases of non-delivery.

Official capacity. The capacity in which a person acts, because he is an officer, lawfully appointed and qualified, or because he lawfully performs duties that are of an official character. *See* I.L.R. (1937) Bom 464=170 I.C. 801=10 R. B. 121=39 Bom L.R 288=A.I.R. 1937 Bom. 307.

"Official Commissioner" defined. Mad. Act 1, 1884, S. 3 (*l*), am. Mad. Act 2, 1892, S. 3.

Official confidence. The words "communication in official confidence" in S. 124 of the Evidence Act import no special degree of secrecy and no pledge or direction for its maintenance but include generally all matter communicated by one officer to another in the performance of his duties. Where a person seeks to put in evidence a report made by one officer to another and where its production is objected to on the ground of its being detrimental to public interest, it is a sufficient cause for a Court to refuse to compel its production. The public officer in charge of the record is the sole Judge of the detrimental character of the document and his assertion as to its character is final and binds the Court (32 M. 62 *Dist.*, 5 Ch. 703, 18 B. 263; 5 H. and N 838, 9 T.L.R 551, *foll.*) Under the English law the privilege as to production of public documents before Courts of law extends to papers passing from hand to hand in the office with no special mark of secrecy on them and the ground on which the privilege rests is that a disclosure of such documents would be detrimental to public interest. (26 I C. 723)

Documents produced or statements made under process of law cannot be said to be made in 'official confidence' under S. 123, Evidence Act. 1 I.C. 705 (708).

Official duty. Official duties are the duties imposed on officers of the government.

The phrase 'faithful performance of official duty' as used in a bond requiring a faithful performance of official duty, should be construed as equivalent to a recital of all the statutory duties of the officer in the bond, and is as binding on the principal and sureties as if such duties were inserted in the bond.

An act requiring a bond by the cashier of a bank, conditioned for 'the faithful performance of the duties of his office, 'was complied with by a bond conditioned that he should 'faithfully perform all the duties of his office according to law and the by-laws of the institution.'

Official function: A function belonging to an office, whether exercised by the officer or by a subordinate acting for him.

A secret service operative, employed by the Secretary of the Treasury to aid in the detection, prosecution, and suppression of crimes against revenue laws, with which duty the secretary is charged while in the performance of such service, is acting on behalf of the State, in an 'official function.'

"Official Gazette" defined. Bom. Act 1, 1884, S. 3 (1); Act 19, 1924, S, 2.

Official Secrets Act, 1889.

"OFFICIAL GAZETTE", means, in the case of the Presidency of Bengal, the Gazette of India, in the case of the Presidency of Madras, the Fort St. George Gazette, and in the case of the Presidency of Bombay, the Bombay Government Gazette; Act II of 1913 (Official Trustees), S. 2, cl. (3). *See also* Act III of 1913, S 4.

"Official liquidator" defined. Act 6, 1882, S. 195.

Official mark The term "mark" includes any printed, embossed, or otherwise impressed stamp, device, or symbol, whether the same consists of a coat of arms or other distinctive device or seal, or merely a name, signature, or letter (*cf.* the definitions in the Trade Marks Act, 1905) and by "official mark" is meant any such mark impressed in the course of his duty by one holding an official capacity of any kind. Wherever such official mark appears, there is presumptive evidence of an official act, and an official has no right to use his official mark in his private capacity, as, for example, by way of a trade mark. (*Chase* v *Mayo*, (1876) 121 Mass (*7 Lathrop*) 343,) *Ency of the Laws of England.*]

Official misconduct. "By 'Official misconduct' with reference to officers, is meant any unlawful behaviour in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice or the execution of the laws; and under this head of official misconduct are included any wilful or corrupt failure, refusal, or neglect of an officer to perform any duty enjoined on him by law.' "

The phrase 'official misconduct' authorizing removal from office on account of official misconduct does not include drunkenness, inasmuch as drunkenness in itself does not indicate corruption or neglect of duty. (*Words and Phrases.*)

Official newspaper Official newspapers are those designated as such by state or municipal legislative bodies, or agents empowered by them, in which the public acts, resolves, advertisements, and notices are required to be published.

'Official receiver" defined. Act 3, 1907, S 19. *See* Provincial Insolvency Act, 1920

OFFICIAL RECEIVER. A court officer entrusted with duties under the Insolvency Act, in connection with the winding up of an insolvent's estate.

Official referee. Officer of court appointed to deal with actions concerning disputed accounts

"Official register." *See* 10 O.C. 238=6 Cr.L.J. 301.

"Official secret" defined. Act 2, 1896, S. 17 (1).

Official Secrets Act, 1889. By this Act (52 & 53 Vict. c. 52) it is made a misdemeanor to wrongfully obtain information as to any fortress, dockyard, office, etc,, of His Majesty, or, having such information, or any information relating to the naval or military affairs of His Majesty, to communicate the same to any person to whom it ought not in the interest of the State to be communicated at the time, and also for any official at any time corruptly or contrary to his official duty, to communicate any document, sketch, etc., or information to any such person as aforesaid. *See also* Indian Official Secrets Act.

Official stenographer.

Official stenographer. An official stenographer is an officer of the court charged with the duty of carefully reporting all the proceedings on the trial, and his certificate is entitled to the same force and credit as that of any other officer.

Official translation. The practice of the P C. Board is to accept the official translation of vernacular documents as correct (11 Pat.L T. 587=34 C W. N 1161=57 I.A. 296=127 I C. 743=A I R. 1930 P C. 242=50 M.L.J. 615 (P.C.).

Official trustee. The Official Trustee mentioned in S 6 of the Married Women's Property Act is not the legal person referred to in the Official Trustees Act of 1913, which is a corporation sole I L.R (1937) 2 Cal. 67=107 I C 912=41 C.W N. 517= A I.R. 1937 Cal. 379 *See also* Official Trustees Act 1913.

"Official year" defined Bom. Act 3, 1888, S. 3 (*bb*), Bom. Act 3, 1901, S 3 (10), Mad Act 4, 1884, S. 3 (*xi*), Mad. Act 5, 1884, S 3 (*xix*)

"OFFICIAL YEAR" shall mean the year commencing on the first day of April. (Bom Act III of 1901 (District Municipal) S. 3, cl IV.

Officiate: To 'Officiate' is 'to do the duty of an Office,' and the extent of the duty will be exactly in proportion to the sphere of that duty" [per *Crampton, J., R.* v. *Poor Law Commrs*, 3 Ir. Com Law Rep. 160]

"Officiator" defined. Bom Act 3, 1874, S. 4.

"OFFICIATOR" means the person actually performing the duties of an hereditary office for the time being, whether he be a representative watandar or a deputy or a substitute appointed under any of the provisions of the Hereditary Offices Act. Bom Act III of 1874 (Hereditary Offices), S 4

Officious will. A will wherein one leaves his property to his family.

Officit conatus si effectus sequatur. A maxim meaning "The attempt becomes of consequence, if the effect follows." (*Bouvier L. Dict*)

Officium (*Lat.*) An office.

Officium nemini debet esse damnosum A maxim meaning "An office ought to be injurious to no one." (*Peloubet Leg Max*)

Offset. (*See* Set off) An offset does not deny the existence or the merits of a claim, but is a contrary sum or claim, by which a given claim may be lessened or cancelled, it is a counter-claim

Offspring. The word 'offspring,' by the common law interpretation, embraces any heirs of a given description collectively as a class of persons, unless there is a direct intention plainly and clearly expressed to the contrary.

'OFFSPRING,' as used in a will making a certain disposition of property in case of testator's daughter dying without offspring by her husband, is a synonym for 'issue,' and issue cannot be lawful without marriage.

The term 'offspring,' in a mortgage on mares and their offspring, includes increase.

OFFSPRING, PROGENY, ISSUE. *Offspring* is that which springs off or from; *Progeny* that which is brought forth or out of; *Issue* that which issues or proceeds from and all in relation to the family or generation of the human species. *Offspring* is a familiar term applicable to one or many children, *progeny* is employed only as a collective noun for a number, *issue* is used in an indefinite manner without particular regard to number When we speak of the children themselves, we denominate them the *offspring*; when we speak of the parents, we denominate the children their *progeny*. The *issue* is said only in regard to a man that is deceased. he dies with male or female *issue* with or without *issue*; his property descends to his male *issue* in a direct line.

OFFSPRING ISSUE: DESCENDANTS "When a man uses the terms 'Offspring', 'Issue', or 'Descendants,' they are vague expressions which no doubt, on the particular context, may mean 'Children,' or 'remote descendant', but, *prima facie*, it can hardly be supposed to mean 'Children' when that simple word is so obvious as one to use The word 'Offspring' in its proper and natural sense extends to any degree of lineal descendants and has the same meaning as 'Issue," (*per* Kindersley, V C, *Young* v. *Davies*, 32 L J. Ch. 373) In *Lister* v *Tidd* (29 Beav. 818), "*Offspring*" was construed "Children," to the exclusion of grandchildren.

Often A word which implies repetition.

The words 'OFTEN OR DAILY' in an application for a life policy, requiring the applicant to state whether he uses intoxicating stimulants often or daily, is an inquiry as to his habit in that regard, not whether he uses such stimulants at all, but whether he uses any of them habitually.

Ogaravumuta (*Tel*) An allowance of grain given to the measurers of the crop

Ogga. (*Karn*) Seed for sowing.

Oikei mania Oikei Mania is a form of insanity manifesting itself in a morbid state of the domestic affections, as an unreasonable dislike of wife or child without cause or provocation.

"Oil" defined Reg. 6, 1910, S. 2 (*i*).

OIL "Oil is a mineral, and, being a mineral, is part of the realty. In this it is like coal or any other natural product which *in situ* forms part of the land. It may become, by severance, personalty, or there may by a right to use or take it originating in custom or prescription. Nevertheless, whenever conveyance is made of it, whether that conveyance is called a lease or a deed, it is, in effect the grant of part of the corpus of the estate, and not of a mere incorporeal right

Oil does not include gas. 115 I.C. 705=33 C W.N. 545=29 M.L W 690=1929 M.W N 378=7 Rang 157 =31 Bom.L.R 750=49 C.L.J. 527=56 I.A. 140=A.I. R. 1929 P.C. 108 (P.C.)

The words "OIL (OTHER SORTS)" in Part II of Sch. M to the City of Bombay Municipal Act include sweet oil and cocoanut oil 45 Bom. 1076=23 Bom. L.R. 353=61 I C. 49=22 Cr L J. 321.

"Oil field" defined. Reg. 6, 1910, S. 2 (*a*).

Oil well The term 'oil well,' as used in the pleadings in an action for a mechanic's lien for material furnished for an oil well, etc., will be construed to embrace not only the mere hole in the earth, in the

O. K.

drilling of which the plaintiffs performed labor or furnished material, but also the engine, boiler pump, piping, and appliances attached thereto.

O K. O K as used on a bill of lading, means that the goods are all right or in good condition.

"O K" is an abbreviation which has a well-defined meaning, and signifies all right

(*In Commercial Practice*) signifies, "correct", "approved" "accepted" "satisfaction", assented to."

Okkaliga (Okkalu). (*Karn*) A cultivator, a farmer, a tenant of the soil an inhabitant

Old. Advanced in age; dating from far back, a word which is not necessarily to be taken as meaning long-existing, or ancient (*Ame Cyc*)

OLD, ANCIENT, ANTIQUE, ANTIQUATED, OLD-FASHIONED, OBSOLETE *Old* respects what has long existed and still exists, *ancient* what existed at a distant period, but does not necessarily exist at present, antique, that which has long been ancient, and of which there remain but faint traces, *antiquated* old-fashioned, and obsolete that which has ceased to be any longer used or esteemed A fashion is *old* when it has been long in use, a custom is *ancient* when its use has long been passed, a bust or statue is *antique* when the model of it only remains, a person is *antiquated* whose appearance is grown out of date; manners which are gone quite out of fashion are *old-fashioned*; a word or custom is *obsolete* which is grown out of use. (*Crab*)

Old age For the purpose of obtaining relief under the Friendly Society Act "Old Age," means, "any age after 50" [s 8 (1-a), Friendly Soc Act, 1896 *See also* Old Age Pensions Act.

Old age pensions Weekly state payments to necessitous persons over 70 years of age

Old bailey The main criminal Court in England

Old enclosures and ancient enclosures The Terms "*Ancient inclosures*' and '*Old inclosures*' are used in private Inclosure Acts to denote inclosed lands in the ordinary sense of the words" (*per* Lopes L J in *Hornby* v. *Selnester*, 20 Q B D 797).

Old in crime Practiced, inveterate criminal.

"Old waste" defined Mad. Act 1, 1908, s 3 (7). *See* 21 M L J 31=8 I C. 736.

Old world. Antiquated, belonging to the Eastern Hemisphere.

GOOD OLD TIMES. An earlier generation.

Oleomargarine Oleomargarine is a product or compound made wholly or partly out of any fat, oil, and other

The term 'oleomargarine' is used to designate compounds resembling butter in appearance and flavor, put on the market as a substitute for it.

For the purpose of the statutory provisions relative to the sale of oleomargarine, the word 'oleomargarine' shall, in addition to its ordinary meaning, include butterine,' 'imitation butter,' and any article, substance, or compound made in imitation or semblance of butter or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils, or grease not produced from milk or cream.

Omne actum.

Oleron. Laws of "Laws of Oleron" were certain laws relating to maritime affairs made by King Richard I when he was in the Island of that name: (*Co Litt* 260b, 1 Bl. Com. 418.)

Oligarchy Government by the few; members of such Government.

Oliyakanom (*Mal*) Perpetual lease or kanom. (*Sun Iyer's Mal Law*)

Olograph. Same as Holograph.

Olographic will Same as Holographic will.

Olugu (*Tam*) An account kept by the village accountant of the measurement and extent of the fields of a village

Olympaid (*Olmpias*) An account of time among the Greeks, consisting of four complete years, having its name from the Olympic games, which were kept every fourth year, in honour of Jupiter near the city of Olympia, when they entered the names of the conquerors on public records. (*Tomlins Law Dic.*)

Olympus The divine abode of the Greek Gods.

Om (S) The mystic monosyllable to be uttered previously to any prayer, but so as not to be overheard by ears profane, supposed to consist of three letters, a,u,m, combined, being the type of the three vedas, or of the three great divinities, Brahma, Vishnu, and Siva.

Omen Occurrence or object portending good or evil presage, prophetic significance.

Omissio eorum quae tacite insunt nihil operatur: A maxim meaning "The omission of those things which are tacitly implied is of no consequence."

"Omission" defined (*See also* Illegal omission.) Act 45, 1860, s 33.

OMISSION "Omission" with reference to the performance of a duty involves the idea of a conscious or wilful omission. *Lond & S.W. Ry* v. *Flower*. 45 L J C P 54 *See also* 11 C P.L.R. (Cr.) 16. "Act" includes omission

"OMISSION TO PAY" meaning of. *See* 22 I.C. 25.

'OMIT TO SUE" The words of S 7 of C. P. C. of 1859 are —"If a plaintiff relinquish or omit to sue for any portion of his claim" It plainly includes accidental or involuntary omissions as well as acts of deliberate relinquishment, 11 M.I.A. 551=8 W. R P C 3=2 Suth 59=2 Sar 259.

The words "omit to sue" in S. 43 of the Code of Civil Procedure, refer to an omission which might have been avoided not to an omission to claim that, which a party could not know he was entitled to. 15 M. 296.

Omne accessorium sequitur suum principale. A maxim meaning "Every accessory thing follows its principal"

Omne accessum sequitur suum principale. A maxim meaning "Every increase follows its principal."

Omne actum ab intentione agentis est judicandum; a voluntate procedit causa vitii atque virtutis. A maxim meaning "Every act is to be esti-

Omne crimen.

mated by the intention of the doer: the cause of vice and virtue proceeds from the will." (*Peloubet Leg. Max.*)

Omne crimen ebrietas et incendit et detegit. A maxim meaning "Drunkenness excites to and discloses every crime;" (4 *Blackstone Comm* 26) "drunkenness both inflames (or aggravates) and reveals every crime." (*Coke Litt.* 247a)

Omne jus aut consensus fecit, aut necessitas constituit aut firmavit consuetudo A maxim meaning "Every right is either made by consent, or is constituted by necessity, or is established by custom"

Omne jus et omnis actio injuriam tempore finita et circumscripta sunt. A maxim meaning "Every law and every action is finished and circumscribed by the time of the injury." (*Morgan Leg Max.*)

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius "Every worthier thing draws to it the less worthy though the less worthy be the more ancient"

Omne magnum exemplum habet aliquid ex, iniquo, quod publica utilitate compensatur. A maxim meaning "Every great example has something of injustice, which is compensated by its public utility." (*Peloubet Leg Max*)

Omne majus continet in se minus A maxim meaning "Every greater contains in itself the less." (*Black. L. Dict.*)

Omne majus dignum continet in se minus dignum. A maxim meaning "The more worthy contains in itself the less"

Omne majus dignum trahit ad se minus dignum quamvis minus dignum sit antiquius et a digniori debet fieri denominatio A maxim meaning "Every more worthy thing draws to itself the less worthy, although the less worthy be more ancient, and from the worthier ought the denomination to be derived" (See *Coke Litt.* 355b.)

"Omne majus minus in se complectitur" is another form of the maxim (cited supra) meaning "Every greater embraces in itself the less".

Omne majus trahit ad sed quod est minus. A maxim meaning, "Every greater thing attracts to itself that which is less." (*Coke Litt* 43)

Omne malum nocens facile opprimitur: inveteratum fit plerumque robustius A maxim meaning "Every evil at its birth is easily rooted out; when grown old, it mostly becomes stronger" (*Morgan Leg. Max.*)

Omne nimium vertitur in vitium A maxim meaning "Every excess becomes a vice."

Omne principale trahit ad se accessorium A maxim meaning "Every principal thing draws to itself the accessory" (*Bouvier.*)

Omne quod solo inaedificatur solo cedit. A maxim meaning "Every thing which is built upon the soil belongs to the soil."

Omne sacramentum debet esse de certa scientia A maxim meaning "*Every oath ought to be founded on certain knowledge.*" (*Peloubet Leg. Max.*)

Omnia mala.

Omne testamentum morte consummatum est A maxim meaning "Every will is consummated by death"

Omne verbum de ore fideli cadit in debitum. A maxim meaning "Every word sincerely spoken constitutes an obligation." (*Peloubet Leg. Max.*)

Omnes actiones in mundo infra certa tempora habent limitationem A maxim meaning "All actions in the world are limited with certain periods"

Omnes bonos accusare addocet suspicionem. A maxim meaning "It behoves all good men to avoid suspicion" (*Morgan Lex. Max.*)

Omnes homines aut liberi sunt aut servi. A maxim meaning "All men are freemen or slaves."

Omnes in defensionem reipublicae vita bonisque omnibus cives tenentur A maxim meaning "All subjects are bound to defend the state with all their lives and all their possessions" (*Morgan Leg. Max.*)

Omnes licentiam habere his quae pro se introducta sunt, renunciare A maxim meaning "It is a rule of the ancient law that all persons shall have liberty to renounce those privileges which have been conferred for their benefit."

Omnes prudentes illa admittere solent quae probantur is qui in arte sua bene versati sunt A maxim meaning "All prudent men are accustomed to admit those things which are approved by those who are well versed in the art"

Omnes solvitur eo ligamine quo ligatur. A maxim meaning 'Every thing is loosed by that binding power by which it is bound."

Omnes sorores sunt quasi unus haeres de una haereditate A maxim meaning "All sisters are as it were, one heir to one inheritance." (*Peloubet Leg. Max*)

Omnes subditi sunt regis servi. A maxim meaning "all subjects are the king's servants."

Omnia delicta in aperto leviora sunt A maxim meaning 'All crimes that are committed openly are lighter or have a less odious appearance than those committed secretly"

Omnia deo grata, hominibus utilia, reipublicae honesta, privatis justa et commoda probant leges, et pro viribus cuique imponunt. A maxim meaning "The laws approve all things agreeable to God, useful to men, honorable to the State, just and advantageous to private persons, and impose themselves upon every one according to his faculties." (*Morgan Leg Max*)

Omnia honeste et ordine fiant. A maxim meaning "Let all things be done honestly and in order." (*Peloubet Leg Max.*)

Omnia lascivia legibus vetita A maxim meaning "All wantonness is contrary to law." (*Morgan Leg. Max.*)

Omnia libere et legaliter facienda, A maxim meaning "All things should be done freely and legally." (*Taylor L Gloss.*)

Omnia mala exempla bonis principiis orta sunt A maxim meaning "All bad precedents have their origin in good principles." (*Morgan Leg. Max*).

Omnia praesumuntur.

Omnia praesumuntur contra spoliatorem. A maxim meaning "All things are presumed against a wrong-doer," (*Bouvier L Dict*) or "despoiler"

Omnia praesumuntur in odium spoliatorem. A maxim meaning "All things are presumed in hatred of the spoliator. (*Morgan Leg. Max*)

Omnia praesumuntur legitime esse facta A maxim meaning "All things are presumed to have been done according to law."

Omnia praesumuntur legitime facta donec probetur in contrarium. A maxim meaning "All things are presumed to be lawfully done, until proof be made to the contrary"

Omnia praesumuntur rite esse acta All things are presumed to have been done rightly. 50 C L J 584=A I.R 1930 Cal 228

Omnia praesumuntur rite et solenniter acta All things are presumed to have been done rightly until the contrary is proved 34 C W N 599=A I R 1930 P C 201 (P.C)

Omnia prius verbis experiri quam armis sapientem decet A maxim meaning "It is the part of wisdom to exhaust negotiation before resorting to arms" (*Morgan Leg Max*)

Omnia rite actor. Where a compromise decree to which the Court's sanction had been obtained on behalf of a minor was subsequently challenged and the question arose whether in giving sanction the court had taken into account the interests of the minor *Held* (per *Costello, J*), that it could be assumed applying the maxim *omnia rite actor* that the court had taken the minor's interests into account 51 C L J 364=A I R 1930 Cal 539

Omnia quaecunque causae cognitionem desiderant per libellum expedire non possunt A maxim meaning "All things which require cognizance cannot be explained in a memorial." (*Morgan Leg Max*)

Omnia quae jure contrahuntur contrario jure pereunt. A maxim meaning "All things which are contracted by law perish by a contrary law"

Omnia quae movent ad mortum sunt deodando A maxim meaning "All things which cause death while they are in motion become Deodanda." (*Tayler L. Gloss.*)

Omnia quae nunc vetustissima creduntur nova fuere et quod hodie exemplis tuemur inter exempla erit A maxim meaning "All that we now consider as ancient was at one time new; and what we respect as examples, to-day, will in the future be received as precedents" (*Morgan Leg Max.*)

Omnia quae sunt uxoris sunt ipsius viri, A maxim meaning "All things which are the wife's belong to the husband" (*Bouvier L. Dict citing Coke Litt* 112 a.)

Omnia rite acta praesumuntur· A maxim meaning "All things are presumed to have been rightly done" *See* 50 C.L J, 585=1930 Cal. 228 *N B* A longer form of this maxim is "*Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*, meaning "All things are presumed to have been done regularly and with due formality until the contrary is proved." The same maxim appears in various other forms: *Omnia Praesumuntur*, followed—*by esse rite acta; by rite acta; by esse rite et solemnitur acta donec probetur in contrarium, by rite acta donec probetur in contrarium; by rite acta esse, by rite acta fuisse, by rite esse acta, by rite et solemniter acta, by rite et solemniter esse; acto or by solemniter esse acta* So too, the maxim sometimes apears in these words· *Omnia rite*, followed—*by acta, by acta esse praesumuntur; by esse acta, by esse acta praesumuntur; by et solemniter acta prcesumuntur*, or as *omnia rite*, followed—*by fieri praesumuntur*, or as omnia rite followed—*by praesumuntur* (29 *Ame. Cyc.* 1480. *See also* 50 C.L J 584=1930 Cal. 228, 34 C.W N. 599=1930 P C. 201.

Omnia uxoris durante conjugio mariti sunt. A maxim meaning "All things belonging to the wife are also the husband's while the marriage continues." (*Peloubet Leg Max*)

Omnibus. A very large kind of coach which serves to carry passengers and goods. An "Omnibus" is a carriage for the conveyance of passengers which plies for hire in a public street or place, and in which the passengers, or any of them, are charged separate fares (32 & 33 Vict. c, 115, Ss. 4, 5; 6 & 7 Vict c 86, S 2) "OMNIBUS" includes a 'Stage Carriage'

An ordinance providing for the licensing of omnibuses or vehicles in the nature thereof, applies to passenger street railway cars, as they are omnibuses, or, if not, they are vehicles in the nature of omnibuses They are open to all and intended for all, and the change of form that of anything known when the Act or ordinance was passed is not a change in the nature of the vehicle The form of the wheels or the character of the roadway over which a vehicle runs does not determine its nature so much as do the uses to which it is put and for which it was designed. (*Words and Phrases*)

Omnibus bill Bills of a multifarious character are not inappropriately called 'omnibus bills.'

Bills joining a number of different subjects in one, thereby putting the executive under compulsion to accept some enactments that they cannot approve, or to defeat the whole, including others that they think desirable or even necessary, are popularly called 'omnibus bills'

Omnibus infra regnum orantibus legis remedium patet A maxim meaning "The remedy of the law lies open to all within the kingdom who ask it," (*Peloubet Leg. Max*)

Omnibus line 'Omnibus line' means a line of coaches for the carriage of passengers and their baggage.'

Omnipotence. Infinite power.

Omnipotent. All powerful.

Omnis actio est loquela: A maxim meaning "Every action is a complaint." (*Morgan Leg. Max.*)

Omnis conclusio boni et veri judicii sequitur ex bonis et veris praemissis et dictis juratorum: A maxim meaning "Every conclusion of a good and true judgment follows from good and true premises and the verdict of jurors."

Omnis conclusio.

Omnis consensus.

Omnis consensus tollit errorem: A maxim meaning 'Every consent removes error," or, "consent always removes the effect of error"

Omnis contractus turpitudinis legibus invisus· A maxim meaning "Every dishonorable contract is odious to the law." (*Peloubet Leg Max*)

Omnis definitio in jure periculosa est, parum est enim ut subverti possit A maxim meaning 'Every definition in law is dangerous, for there is but little that cannot be over-thrown" (*Peloubet Leg. Max*)

Omnis definitio in lege periculosa. A maxim meaning 'All definition in law is hazardous"

Omnis exceptio est ipsa quoque regula A maxim meaning "Every exception is itself also a rule."

Omnis indemnatus pro innoxio legibus habetur A maxim meaning "Every uncondemned person is held by the law as innocent" (*Peloubet Leg. Max*)

Omnis innovatio plus novitate perturbat quam utilitate prodest A maxim meaning "Every innovation disturbs more by its novelty than benefits by utility." (*Bouvier L Dict*)

Omnis interpretatio si fieri potest ita fienda est in instrumentis ut omnes contrarietates amoveantur A maxim meaning "Every interpretation, if it can be done, is to be so made in instruments that all contradictions may be removed."

Omnis interpretatio vel declarat vel extendit vel restringit. A maxim meaning 'Every interpretation either declares, extends, or restrains"

Omnis nova constitutio futuris temporibus formam imponere debet, non praeteritis: A maxim meaning "Every new statute should give a form to future times, not to past." (*Peloubet Leg. Max*)

Omnis persona est homo, sed non vicissim A maxim meaning "Every person is a man, but not every man a person"

Omnis privatio praesupponit habitum. A maxim meaning "every privation presupposes former enjoyment."

Omnis prohibitio mandato equiparatur: A maxim meaning "Every prohibition is equivalent to a command." (*Morgan Leg. Max*)

Omnis querela et omnis actio injuriarum limitata est infra certa tempora: A maxim meaning 'Every plaint and every action for injuries is limited within certain times."

Omnis ratihabitio retrotrahitur et mandato priori aequiparatur: A maxim meaning "Every subsequent ratification has a retrospective effect, and is equivalent to a prior command"

Omnis regula suaspatitur exceptiones et omnis exceptio est regula· A maxim meaning "Every rule is subject to its own exceptions, and every exception is a rule." (*Peloubet Leg. Max*)

Omnium. The aggregate of certain portions of different stocks in the public funds; the aggregate value of different stocks in which the loan is funded.

On call

Omnium aliarum corrigere injurias et errores. Means "To right the unjust acts and errors of all other courts"

Omnium contributione sarciatur quod pro omnibus datum est: A maxim meaning "What is given for all shall be compensated for by the contribution of all." (*Bouvier L Dict*)

Omnium rerum quarum usus est potest esse abusus virtute solo excepta· A maxim meaning "There may be an abuse of everything of which there is a use, virtue only excepted"

Omnium stock Stock capable of being divided into proportionate parts of other stocks.

On account of Because of, by reason of, toward payment of.

"On account of or in trust for" A mortgagee in possession is in possession "on account of or in trust for" the mortgagor's to the extent of the mortgagor's interest The property is not in his possession, 'as his own property," but partly on his own account, *i.e*, to the extent of his interest as mortgagee and partly on account of the mortgagor to the extent of the mortgagor's interest. 10 I.C 994 (995).

"On active service". This phrase, when applied to a person enlisted in the Army means, that he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy. (*See* Eng. Army Act, S 189)

On allotment "'Allotment' is a popular term; it is not a technical term," it means, in company law "generally, neither more nor less than the acceptance by the company of the offer to take shares." (per *Chitty J*, *Nicol's Case*, 29 Ch. D. 426, 427.)

'On arrival" The words 'on arrival,' in an instruction to a consignee to sell goods on arrival, do not mean that the property consigned must be sold within one minute or five minutes after its arrival, but just as soon thereafter as it can be sold without a manifest sacrifice, and the length of time depends upon the circumstances of the case, it being for the Court to say what is a reasonable time.

An instruction to a factor to sell goods *on arrival* may be construed as requiring an immediate sale on the arrival of the goods, if possible, even though for less than the market price.

On bail. When a person is said to be 'on bail' or to have given bail,' it is intended to apply as well to recognizances as to bail bonds.

'On behalf of' The expression 'on behalf of' connotes some benefit to the person on whose behalf another person acts. 16 C.W N 551=15 C.L.J. 401= 15 I.C. 1007=13 Cr.L.J. 591=39 Cal. 344.

A contract by certain parties 'on behalf of' others *prima facie* imports that they made the contract only as agents,

On call. 'On call,' as used in an instrument payable on call, is equivalent to the expression 'on demand' or 'when demanded.'

'On call,' as used in a bond which by its terms is payable on call, signifies that it is payable imme-

On demand

diately; Money lent, either repayable on demand or at short notice.

On demand. When demanded. This phrase, when applied to payment, usually denotes a debt already due and actionable, but may be used to signify that demand is a condition precedent to the right to payment

Except in case of negotiable instruments the words 'on demand' require an actual demand before a right to the money arises 1919 M W.N. 185=9 L.W 427 =50 I C 87=37 M L J. 613, 52 Bom 88=30 Bom. L R. 1=107 I C 257=A.I R 1928 Bom 35 (F.B), 4 Cal. 283=3 C.L R 336, 6 M I.A. 211=1 Sar. 533.

In a Promissory Note payable *"on demand"* the words "on demand" mean "at once" no demand is necessary prior to bringing an action, (*Norton* v *Ellam*, 6 L J Ex. 121) The reason of the above rule may be traced to the Law Merchant under which "the debtor is bound to have the money ready *on demand"* (per *Blackburn, J, Brighty* v. *Norton*, 32 L.J Q B 40.)

"In general, where money is payable on demand' the law holds that the debtor is bound to find out the creditor and pay him" (per *Blackburn, J, Toms* v. *Wilson*, 32 L J.Q B. 37) The term "on demand" has been interpreted to mean "forthwith" or "immediately" when used in negotiable instruments which derive their peculiar characteristic from the law merchant. Such a construction cannot properly be applied to instruments falling outside the law merchant. Except in transactions connected with law merchant, the word "on demand" has a meaning and there should be a demand before cause of action can arise *See also* 12 T L T 527, 18 M L T 459= 31 I.C 335, 1926 Nag. 194

A note which by its terms is payable on demand is payable immediately.

The words *"on demand"* do not necessarily mean that there must be an express demand These words are merely equivalent to "forthwith" or "immediately" 25 Bom L R 839=A I R 1924 Bom 264.

Sometimes, the words 'on demand' indicate that the cause of action arises only after request. 46 M.L J 575=20 L W 103=34 M L T 350=1925 M W N 482=80 I C. 658=47 M. 692=A.I R 1924 Mad 680.

In the case of an ordinary agreement providing for payment "on demand," time runs from the date of the agreement and not from the date of demand. 116 I.C. 581=A.I.R 1929 Sind 140.

On deposit. 'Money on deposit' is money placed where the owner can command it at any time'

"On hand": A phrase which has been held ineffective, through vagueness, as a descriptive term for the purpose of identification of property by third persons, as used between parties to a transaction, with reference to given class of articles of commerce affected thereby, a term which would seem to relate to those, of that class, which are not merely in possession, but are also stock in trade in the regular course of business of a given person or concern.

"On Merits". Where a foreign judgment sued on was not *in absentum*, defendant having entered appearance and having been granted, leave to defend

On payment.

on terms, and that being passed after consideration of two affidavits of plaintiff's and one of defendant's the Court held that it was given *"on the merits"* within S. 13, Civil Procedure Code, Act V of 1908. 6 Bur.L T. 160=7 L B.R. 56=20 I.C. 971 (972)

On or about. With regard to time, a relative term, sufficiently definite in certain connections, but rendering the statement which it modifies insufficient for purposes to which definite accuracy is requisite With regard to place anywhere or every where upon, but not outside of

The expression 'on or about' a certain date is held to be just as consistent with a day or two after the date as before.

The words 'on or about,' in a lease of a mill privilege, consisting of land, water power, etc, and giving the lessee the privilege of laying logs, boards, and other lumber on or about said privilege, does not operate as a permission for the lessee to occupy lands of the lessor lying outside the mill privilege

On or before With relation to a specified time or event, immediately at or at any time in advance of, the instant of such time, or event, that is to say to the exclusion of any time after that to which the proposition has relation, not after.

'ON OR BEFORE,' as used in a contract entitling a party to a conveyance of a tract of land on the payment of a certain sum, on or before a certain date, is to be construed as authorizing a payment on any date before the specified day.

'On or before,' as used in a policy declaring that it shall determine if the premium is not paid on or before the day fixed, means at any time in advance of the instant of the expiration of the policy.

On or upon. At, near, adjacent to, on top of, resting upon, or contiguous to, at or near, indicating situation, place or position expressing the relation of nearness in place, conforming to, or, agreeing with. (*Century Dict*), bordering on; not necessarily implying actual contact

On upon The meaning of the word 'upon' in any particular case must depend on the circumstances. In agreements to do a certain thing upon the happening or the doing of an act, it sometimes means before sometimes concurrently, sometimes after.

Where there is a devise to A, in fee, and if he 'Dies without issue," then, "AT" OR "ON", OR "UPON," his death, over. A takes an estate in fee with an executory devise over in case he leaves no issue living at his death. (Doed. *King* v. *Frost*, 3 B. & Ald. 546)

'On,' 'over,' and along' as used in an ordinance authorizing a railroad company to construct a switch *on, over, and along a certain alley*, are all synonymous, and the word 'along' does not necessarily mean 'by the side of' We say, 'the troops marched along the highway,' by which we mean that they marched on or over, not by the side of it.

On payment "The meaning of the words 'on payment of Freight,' in a Bill of Lading or Charter Party, or is not that freight is to be paid either immediately before or immediately after the delivery of the cargo, but that the two acts are to be concur-

On presentment.

rent.' I Maude & P. 153, citing *Black* v. *Ross*, 2 Moore P.C N S 477)

"On presentment" defined. Act 26, 1881, s 21.

On reasonable request. An agreement 'to pay a debt on reasonable request' is equivalent to agreement to pay within a reasonable time after request, and the debt could not mature until demand was made, and a reasonable time for compliance had elapsed.

On sale or return. A contract on sale or return is defined by Judge Story as an agreement by which "goods are delivered by a wholesale dealer to a retail dealer to be paid for at a certain rate if sold by the latter, and, if not sold, to be returned"

On stocks 'In common understanding, an advance or loan of money "on stocks," bonds, bullion, bills of exchange, or promissory notes is an advance or loan where these species of property are applied as collateral security or are hypothecated to secure the return of the advance, or the payment of the sum lent'

On the door The phrase 'on the door,' in a statute requiring notice of a tax sale to be posted on the courthouse door, does not necessarily mean on the swinging panel which fills the opening or entrance to the building, but a conspicuous posting upon the building at the side of the opening, or upon a separate board or panel kept there for that purpose, is sufficient, to all reasonable intents and purposes

"On the footing of", means "on the same principles as" (per *Lindley, L J, Wilding* v *Sanderson*, 66 L J Ch 686, 1897, 2 Ch. 534)

On the line of · Along, or parallel to, the general direction of, near the line of; but not necessarily touching or bounded by. (*Ame. Cyc*)

"On the perusal of the application". The words 'on the persual of the application' in S 18 of Religious Endowments Act, XX of 1863, clearly indicate that the Judge is not bound to do more. If the application satisfies him he is not bound to give notice thereof to the opposite parties and hear them 24 M 687

"On the premises" On a sale of an undivided two anna share in a zamindari village, where the plaintiffs claiming pre-emption had made, within the limits of the zamindari, an immediate assertion of their intention to pre-empt, there was held to have been made a good demand "on the premises" as required by the Muhammadan Law 18 A. 298=16 A.W N. 17.

On trial: Actually in progress before the Court (as) case on trial.

On voyage. The phrase 'at sea' or 'on a voyage' or 'on a passage' are equivalent in meaning, and, when either of them is used in a marine policy to describe the time during which the liability of the insurer continues, it operates to continue the risk until the arrival of the vessel at the port of destination.

Onakulcha: (*Mal.*) Perquisite payable by the tenant to the jenmi at the onam. (*Sund Iyer's Mal. Law.*)

Onam. (*Mal.*) A national feast when Parasurama is said to revisit Malabar. (*Sund. Iyer's Mal. Law.*)

Oolcoody.

Once "Where a statute requires some act to be done periodically and recurrently once in a certain space of time, as, for instance, the inspection of the boilers of steamers once in six months, it would probably be understood to mean that not more than six months should elapse between the two acts. It would not be satisfied by dividing the year into two equal periods, and doing the act once in the beginning of the first and once at the end of the second period" (*Virginia and Maryland Steam Navigation Co* v *U S Taney and Campbell's Maryland Rep* 418, Maxwell on Interpretation of Statutes 4th ed., p 521, *Ency. of the Laws of England*)

Once in jeopardy A plea of former jeopardy for the same offence. (6 Am. St Rep. 757.)

One As an adjective, being a single unit, or entire As a noun, a single person or thing "If a devise be to 'one', of the sons of J S. he having several sons) the devise is void for uncertainty, and cannot be made good" (1 Jarm 370)

One man company. A company in which all the shares except those necessary for constituting a company, are held by one man, or in which one man is the moving spirit and has the control of the whole business

One man Market The term denotes a case of the entire dealings in a certain class of shares being in the hands of one jobber

One thousand · A numeral whose meaning, when employed in certain connections, may be controlled by usage or custom. (*See* 29 *Ame Cyc.* 1491)

"ONE THOUSAND DOLLARS A YEAR," stating the consideration of one year's employment, the phrase, unexplained, means one thousand dollors in gross, and not in instalments. (5 Am. St. Rep. 387.)

Onerous Burdensome; oppressive

Onerous contract, Burdensome contract, contract having a valid consideration.

Onerous deed A deed imposing a burden, and having a valid consideration.

ONEROUS DEED. Deed executed for valuable consideration,

Onerous gift Gift imposing some obligation on the donee. (*Ballentine*)

Only 'Liable *only* for the amount opposite his name,' as used in a subscription contract providing that a subscriber shall be 'liable only for the amount opposite his name,' is so construed as to make the contract a several obligation.

An indorsement on a bill of exchange to 'pay to J.S only' has been held to be a restrictive indorsement, which operates to put an end to the negotiability of the paper As to the meaning of this word *see also* 10 All. 418=8 A.W.N 93

Onslaught. Fierce attack

Onus probandi Burden of Proof;

Oobhayam: (*Mal*) Rice fields. (*Sund. Iyer's Mal. Law.*)

Oolcoody or Oolkoody or ulkudy. Hereditary tenant, and perhaps, proprietor of the land. (*Fifth Report*)

Ool Paracoody.

Ool Paracoody The fixed and permanent tenant of the Meerassadar. He has no property in the soil.

Ooralan · (*Mal*) Trustee of temple in Malabar. (*Sund. Iyer's Mal. Law*)

Ootibundee tenure. An Ootibundee tenure is one by which a ryot holds a certain area of land which is usually defined, but for which he pays rent according to the quantity of that land, which, year by year he cultivates The rent will vary according to the cultivated area. The landlord cannot vary at his pleasure the rate of rent without due notice being served on the tenant under law. 14 W R. 193.

Ootu Brahmaswom. (*Mal*) Endowments to choultries or Ootupura. (*Sun. Iyer's Mal Law*)

Ootu poora (*Mal*) Choultry.

Open Patent, visible, apparent. As an adjective, not closed, not concealed, not hidden, exposed to view, free from concealment, reserve, or disguise, not secret or secretive, plain and aboveboard, so public as to be practically avowed, As a verb, simply, to clear off obstructions

When used in connection with other words, the phrases have often received, judicial interpretation, as for example, the following, "*Open and notorious*" defect in the sidewalk, "*open and notorious insolvency*", "*open and peaceable entry*", "*open bar*" or "*open saloon*", "*open bulk*", "*open confession*", "*open corporation*", "*open court*", "*open estate*", '*open for business*"; "*open for the purpose of traffic.*" (*See 29 Ame. Cyc* 1494)

The words 'OUTWARD, OPEN, ACTUAL, VISIBLE, SUBSTANTIAL, AND EXCLUSIVE,' in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; free from concealment, dissimulation, reserve, or disguise, denoting that which not merely can be, but is, opposed to constructive, and imaginary, veritable, genuine, certain, absolute, real, at present time, as a matter of fact, not merely nominal, opposed to form, actually existing

Open account An open account is one in which some item of the contract is not settled by the parties, whether the account consists of one item or many, or where there have been running or current dealings between the parties, and the account is kept open with expectation of further dealings.

Open and current account. *See* 66 I C. 30=3 P.L T. 492=A.I R. 1922 Pat. 364, A.I R. 1927 Lah. 848.

An account is open and current when it is running, not closed, settled, or stated, so that there are reciprocal demands between the parties something upon which either party could sustain an action.

Open bulk. In the mass, exposed to view; not tied or sealed up.

Open cheque. An uncrossed cheque payable on presentation to "bearer" or "order" as the case may be.

Open corporation An open corporation is where all the corporators have a vote in the election of the officers of the corporation—usually applied to municipal corporations. (*Words and Phrases.*)

Open slip.

"Open court" defined. Act 5, 1898, s. 352 See also *Kimlier* v *Press Assn.* (1893) 1 Q.B. 65; 62 L.J. Q.B 154.

The term 'open court,' within the meaning of a rule declaring that the court shall be deemed always open for certain purposes, signifies the time when the court can exercise its functions.

The phrase 'in open court,' as used in the statute requiring an application for *certiorari* to be made to the court of common pleas of the country, in open court, is used to emphasise the distinction between the court in public session, and one or more judges of the court exercising the judicial functions in chambers.

Open cover. An open cover is an informal document handed by a marine insurance company to an applicant who at the time has no insurable interest, which entitles him or his assignee, on goods being shipped, and on payment of the premium, to get a policy on the goods shipped. It is peculiar in that it binds the insurance company not only to the actual applicant, but to any one who comes forward and produces it to them (*Ency. of the Laws of England*)

Open credit. Credit given by a banker to a customer without guarantee or security

Open fire (*Mil*) Commence firing,

Open letter Protest appeal etc printed in Newspaper, but addressing an individual.

Open mind. Readiness to weigh *pros* and *cons* of evidence.

Open mines A mine is open when it is devoted by its owner to make a profit by working and selling the minerals therein. 19 C.W N. 796=27 I.C. 471=20 C.L J. 527.

"Open place." *See* 27 C. 655.

Open policy A marine insurance policy, the full amount of which is not declared until the value of the property has been ascertained, one in which the interest of the assured is to be ascertained in case of loss.

An open policy of insurance is one in which 'the amount of liabilities is left open to be determined according to the actual loss, either, by agreement of the parties, or upon proof and compliance with its terms or with the rules of evidence.

An open policy is one in which the sum to be paid as indemnity in case of losses is not fixed in the contract, but is left open, to be proved by the claimant, or to be determined by the parties. This determination is called an 'adjustment of the loss.'

Open risk. An open risk is such as would in an instant appeal to the sense of an intelligent person. It is one so patent that a person familiar with the business would instantly recognize it.

Open season. 'Open season,' as used in the Game and Fish Acts, means the season wherein the killing of game or catching of fish is permitted.

Open slip. A slip of paper initialled by the underwriter, having reference to the terms of an open policy.

Open spaces.

Open spaces (*Parks and*) In modern times there has been much legislation for the preservation, acquisition and regulation of parks and *open spaces* in and near populous places, in the interests of the health and recreation of the populace. (*See* Hunter on Spaces 2nd ed., 1902)

Open the case. Make a statement of the facts of a case before calling evidence

Open the debate. To be the first speaker.

"**Open venire**" is a judicial writ by virtue of which jurors are selected and summoned by the officer.

Open verdict Affirming commissison of crime without specifying the criminal

Opening (*case*) Counsel's preliminary statement of the case

"**Openly enjoyed**" Where the owner of a dominant tenement, with the intention of preventing the use of a way, creates an obstruction of a permanent nature rendering such use impossible, the way cannot be said, during the continuance of the obstruction to have been 'openly enjoyed' within the meaning of section 26 of the Limitation Act 1908 1 C 422=25 W R 228 *See also* Easements Act, s 15.

Opera A musical drama, consisting of airs, choruses, recitations, etc, enriched with magnificent scenery, machinery, and other decorations, and representing some passionate action, (*Webster Dict*) a composition of a dramatic kind, but set to music and sung, accompanied with musical instruments, and enriched with appropriate costumes, scenery, etc

'**Opera-company**" is a company of persons who sing compositions set to music, as distinguished from a company of actors, who speak recite, or act in a drama or play

'**Opera-house**" is a house in which operas are represented The opera house and the theatre alike comprehended the stage, boxes, orchestra, pit, and the galleries (6 Am St Rep 786.)

Opera performance The performance of an opera is a 'theatrical exhibition' within the meaning of a statute imposing, on such exhibitions, a license-fee. (*Bell* v. *Mah*, 6 Am St Rep 786)

Operate To put in action and supervise the working of, to perform a work or labour; to effect any result, to bring about a specified result, to produce the proper or intended effect.

The word 'operate' means to put into or to continue in operation or activity, to work, as to operate a machine—and is distinct from maintaining or keeping in repair

Operating Acting. exerting some agency or power.

Operation The exertion of power, physical, mechanical or moral—action, as of an army or fleet —movement or machinery, exertion of power, method of working, process of operating.

Operation of law. A law is always in operation as long as it is the rule of conduct of the subject upon which it is intended to operate, that is, as long as the subject is bound to obey it, or conform his condition to its provisions The operation of a law

Opinion

can be nothing more than the obligation of a law. The law ceases to operate when it is no longer obligatory, and as long as it is obligatory it is in full operation *See* 128 I.C. 584=1930 Rang 308.

OPERATION OF LAW AND EXECUTION OF LAW **There** is a great difference between the operation of the laws, and the execution of the laws. A law may be in operation, and yet, from a defect of courts or officers of justice, it may not be possible to carry it into execution. The operation of a law is a part of its very existence. It ceases to be a law when it is no longer operative.

Operative A workman a labourer, one employed in a factory as workman a skilled workman, an artisan, especially those who operate a machine in a mill or manufactory.

The noun 'operative' is used to designate a manufacturer or artisan who performs the manual labor necessary to cause a mill or factory to operate.

'OPERATIVE' is synonymous with 'workman.' A closer definition would be 'a workman who performs manual labor in and about machinery'

An operative is one who obtains his living by coarse manual labour, as distinct from professional services.

Operative part, of a document as distinguished from the introductory matter, recitals, etc., refers to that part of the document which is intended to create or transfer rights

'**Operator**" defined Act 9, 1910, Ss. 14, (32) (1)

Ophthalmoscope An ophthalmoscope is a practical instrument used by oculists for examining the interior of the eye and other parts of the body.

Opinion The opinion which a witness is not allowed to give instead of a statement of fact is defined to be an inference of fact from observed facts

OPINION AND IMPRESSION An opinion as to the guilt of a defendant is different from a mere impression. The former disqualifies for jury service, while the latter does not

On the examination of a juror in answer to the question, 'Now, on the presumption that the facts were true as you read them in the paper, you formed an opinion did you not,' he answered, 'well, I think not, I formed an impression'! Commenting on this, the Court said "The word 'impression,' if it can properly be applied to a mental operation, does not reach the strength of an opinion. An opinion is a conviction which is based, and must be based, upon testimony. An impression is a mere fancy or lodgment in the mind, which is not based upon testimony, and the existence of which cannot be traced to proof, and in this case the juror himself distinguished between an 'opinion' and 'impression' by insisting that he had not formed an opinion, and did not entertain any at the time, but that it was a mere impression." In such a case the person would be competent to serve on the jury.

OPINION, SENTIMENT, NOTION We form *opinions* we have *sentiments* we get *notions* *Opinions* are formed on speculative matter. they are the result of reading, experience, and reflection *sentiments* are entertained on matters of practice, they are the

Opinion.

consequence of habits and circumstances, *notions* are gathered upon sensible objects, and arise out of the casualties of hearing and seeing Whatever difference of *opinion* there may be among Christians, there is but one *sentiment* of love and goodwill among those who follow the example of Christ, rather than their own passions the *notions* of a Deity are so imperfect among savages in general, that they seem to amount to little more than an indistinct idea of some superior invisible agent (*Crab.*)

Opinion (*Of Court*) The 'opinion' of a Court is the reasons given for its judgment.

Opinion of the Court or a Judge generally means judgment of the Court or Judge (*Ormerod* v *Todmorden Co*, 51 L J Q B 348)

The judgments of the law Lords delivered in the House of Lords are described as "opinions" The distinction between such opinions and the "judgments" of the Judges of the High Court and Court of Appeal is merely one of name. In the U S Court of America the statement of reasons delivered by a judge or Court leading to the decision pronounced in any of the Courts, is called an "opinion" (*Bouvier*) *Extra-judicial opinions, i e*, opinions expressed during the argument, or in the judgment of a case, but upon points not necessarily to be decided for the decision of the case are *obiter dicta* Judicial opinions constitute binding precedents

OPINION OF COURT AND DECISION OF COURT There is a manifest difference between a mere opinion and a decision, the former is a statement given by the Court for its conclusions, while the latter is the judgment or conclusion of the Court.

When a case is stated for the "opinion" of the Court, that would serve *prima facie* to indicate that the order made by the Court was only advisory Where the case is referred for the "decision" or 'determination" of a question, there is a *prima facie* difficulty in holding that the order embodying this determination or decision is advisory. But the use of these words or one of them is not decisive 50 I A 212 (224-5)=47 B 724 (739-40)=21 A L J 675=A I R. 1923 P C 148=28 C.W N. 307=39 C.L J 16=74 I C. 469=45 M L.J 295.

Opinions of counsel Advising clients is part of the duties of counsel. The advice given is a mere statement of opinion upon the facts set forth in the "instructions" laid before counsel, and in respect of his opinion a barrister undertakes no responsibility [*see* per *Lord Campbell* in *Purves* v. *Landell*, (1845), 12 Cl & Fin at p 102]

Opinionum commenta delet dies naturae judicia confirmat. A maxim meaning "The day destroys the comments of opinions, confirms the judgments of nature."

Opinio quae favet testamento est tenenda A maxim meaning "That opinion is to be followed which favours the will." (*Bouvier*)

"Opium" defined. Act 1, 1878, S. 3.

"OPIUM" includes also poppy heads, preparations or admixtures of opium and intoxicating drugs prepared from the poppy. Bur Act VII of 1909 (Opium), S. 2.

Opportunity to be heard.

Opium, as used in a life policy providing that the same should be void in case the insured should come to his 'death by opium,' means not the accidental or involuntary, but the rational and voluntary, use of opium

Opium water The only meaning which can be attached to the words "opium water' in the Rules and Directions made under the Opium Act is a mixture of water with capsules of the poppy or with the juice of such capsules of the poppy, or a mixture of such with neutral materials 169 I C 344=9 R R. 397=38 Cr L J. 765 (2)=14 Rang. 694=A I R 1937 Rang 194

Oportet legem brevem esse, quo facilius ab imperitis teneatur. A maxim meaning "Laws ought to be short, that they may be more readily comprehended by the unlearned" (*Morgan Leg. Max*)

Oportet quod certae personae certae terrae, et, certi status, comprehendantur in declaratione usuum. A maxim meaning "It is right that certain persons, lands, and certain estates should be comprehended in a declaration of uses" (*Peloubet Leg Max*)

Oportet quod certa res deducatur in donationem. A maxim meaning "It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance" (*Black L. Dict*)

Oportet quod certa res deducatur in judicium. A maxim meaning "A thing, to be brought to judgment, must be certain or definite" (*Bouvier L Dict*)

Oportet quod certa sit res quae venditur. A maxim meaning "A thing, to be sold, must be certain or definite" (*Bouvier L Dict*)

Oppa (*Mal*) Signature, subscription, a certificate (*Wil Gloss*)

Oppacharam (*Tam Karn*) A contract, an engagement, a bond. (*Wil Gloss*)

Oppandam (*Tam*) A compact, an agreement, a contract (*Wil Gloss.*)

Oppitta (*Karn*) Consent, agreement, signature, subscription (*Wil Gloss*)

Opponent Adversary, antagonist, opposing party in a suit

Opportunity Convenient time, suitable occasion, time or place favourable for executing the purpose of doing the thing in question, a fit or convenient time, a time favorable for the purpose, a convenience or fitness of time and place

Opportunity to be heard. 'Opportunity to be heard,' as used in an Act providing that where a party has not appeared in Probate Court he can only appeal when he had not due notice or 'opportunity to be heard,' means such opportunity as the party is entitled to by law. The fact that the party had no actual notice of the hearing, the published notice not having come to his personal knowledge until after the order was granted, does not amount to a want of opportunity to be heard If a fit and proper time and place has been fixed, and notice thereof given, which the law declares sufficient—in short, if all the opportunity is given which the law provides for—it cannot be

Opportunity to cross-examine

said in any legal sense that a party had no opportunity to be heard It seems to us that the want of opportunity to be heard, like the want of due notice, refers only to some act or omission in the proceedings which has deprived the party of his full legal rights in that matter. (*Cited in Words and Phrases*)

Opportunity to cross examine The term "opportunity to cross-examine" include the method of cross interrogatories, which, for many years, were the chief mode of cross-examination in the Courts of Equity An opportunity to administer cross-interrogatories under a commission is sufficient to render the evidence elicited by the cross-interrogatories relevant under S 33, Evidence Act. The words do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking evidence is necessary (19 B 749)

If a prisoner be present when a magistrate takes down a statement against him and he is not in any way hindered from cross-examining the witness, he is deemed by law to have had "full opportunity" to do so, even though he was not told by the magistrate that he may do so (*R* v *Shurmer*, 55 L J M C. 153, 17 Q B D 323, 55 L T 126, 34 W R 656)

Opposita juxta se posita magis elucescunt A maxim meaning "Things opposite when placed together appear in a clearer light" (*Peloubet Leg Max*) "Things opposite are more conspicuous when placed together" (*Morgan Leg Max*)

Opposite Over against, standing in front, or facing

In *Patching* v *Dubbins*, 23 L J Ch 45, Kay, I V C said —"The word 'Opposite' used in respect of a plot of land is not, *ex vi termini*, necessarily confined to land precisely opposite, between parallel lines drawn from the sides of the plot conveyed."

Opposite party The term "opposite party" in S 109, Civil Procedure Code, 1882 (O 22, R 10, C P Code, 1908) does not include an attaching creditor (20 M L J. 524=7 I C 66=8 M L T 237 *see also* 26 Cal 267, 31 C.W N 996=103 I C 860=1927 Cal 692)

Oppression An act of cruelty, severity, unlawful exaction, domination, or excessive use of authority

The word 'oppression' has not acquired a strictly technical meaning, and may be taken in its ordinary sense, which is an act of cruelty, or severity When a revenue officer, under colour of law, wilfully and unlawfully takes the property of another, or subject him to greater hardships than are necessary for the proper enforcement of the law, he is guilty of oppression It is not essential that an unlawful act should be a serious injury to a person to make it oppressive The exercise of unlawful power, or other means, in depriving an individual of his liberty or property against his will, is generally an act of oppression

Opprobrious Reproachful, scurrilous, infamous.

Oppu (*See oppa*) (*Mal.*) Signature, the fee given to a Jenmi for signing a document (*Moore's Mal Law*) A fee upon one of the parties signing a new mortgage-deed respecting land. (*Morgan's Mal Man.*)

Option.

Oppukanom (*Mal.*) Same as Opputhusi. (*Sund. Iyer's Mal Law*)

Opputhusi (*Mal*) Fees payable at the renewal of lease, originally expenses of the renewal. (*Sun. Iyer's Mal Law.*)

Optandum est ut li quo praesunt reipublicae legum similes sint, quae, ad puniendum, non iracundia sed acquitate ducuntur A maxim meaning "It is desirable that those set in authority over the state shall be like the laws of the state, which, in inflicting punishment, are influenced not by anger, but by justice." (*Morgan Leg Max*)

Optics Science of sight, the laws of light

Optima est legis interpres consuetudo A maxim meaning "Custom is the best interpreter of the law"

Optima est lex quae minimum relinquit arbitrio judicis, optimus judex qui minimum sibi. A maxim meaning "That system of law is best, which leaves least to the discretion of the Judge—that Judge the best, who relies least on his own opinion" (*Broom Leg Max*)

Optima evidentia rei praevalebit A maxim meaning "The best evidence of the matter will prevail."

Optimam esse legem, quae minimum relinquit arbitrio judicis, id quod certitudo ejus praestate. A maxim meaning "That law is the best which leaves the least discretion to the Judge, and this is an advantage which results from its certainty"

Optima statuti interpretatrix est (Omnibus particulis ejusdem inspectis) ipsum statutum A maxim meaning "The best interpreter of a statute is (all the separate part being considered) the statute itself" (*Bouvier*)

Optimi consiliarii mortui A maxim meaning "The dead are the best counsellors." (*Morgan Leg Max*)

Optimus interpres rerum usus A maxim meaning "Usage is the best interpreter of things" (*Broom Leg. Max*)

Optimus interpretandi modus est sic leges interpretare ut leges legibus concordant A maxim meaning "The best mode of interpretation is so to interpret laws that they may accord with each other" (*Black L Dict.*)

Optimus judex, quo minimum sibi A maxim meaning "He is the best Judge who relies least upon his own opinion." (*Peloubet Leg Max.*)

Optimus legis interpres consuetudo A maxim meaning "Usage is the best interpreter of laws." (*Bouvier L Dict*)

Option A wish, power or right of election, a choice, preference, a right granted to a person to buy or sell certain stock or shares at a specified price within a stated period or on an indicated day (*See* Put and Put and Call.)

An agreement in writing to give a person the 'option' to purchase lands within a given time at a named price is neither a sale nor an agreement to sell It is simply a contract by which the owner of property agrees with another person that he shall

Option

have the right to buy his property at a fixed price within a certain time. He does not sell his land, he does not then agree to sell it, but he does sell something, that is, the right or privilege to buy at the election or option of the other party The second party gets *in praesenti*, not lands, nor an agreement that he shall have lands, but he does get something of value, that is, the right to call for and receive lands if he elects The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or, rather from his point of view, he receives the right to elect to buy

The word 'option' is a synonym for 'choice' or 'preference'

OPTION, CHOICE We speak of *option* only as regards one's freedom from external constraint in the act of choosing one speaks of *choice* only as the simple act itself The *option* or the power of choosing is given the *choice* itself is made hence we say a thing is at a person's *option*.

Optional Not obligatory.

Or The word "or" is a disjunctive particle that marks an alternative, generally corresponding to "either," as, "either this or that," a connective that marks an alternative, as "you may read or may write that is,you may do one of the things at your pleasure, but not both." A conjunction marking distribution or an alternative (*See* 5 S L R 259=15 I C 830) "Or" *prima facie* has only an alternative significance. (Litt s 732, *per* Parke, B, *Elliott* v *Turner*, 15 L J C. P. 49, 2 C 446), but sometimes used as interpretative, or expository, of the former word. (Dwar 689, *Vf Hills* v *London Gas Co.*, 5 H. & N 312) The word 'or' is an alternative word It is, however, not always disjunctive and is sometimes interpretative or expository of the preceding word But no instances can be found where the term 'or' is used neither as alternative nor as synonymous [75 I.C 105=37 C L J 478=A I R 1923 Cal. 682. *See also* L.B R (1893—1900), 348]

In a legacy to "A, *or* his issue," "A, or his legal representatives," "or his personal representatives, "or his heirs," "or" denotes substitution

In a direction that income "be applied by the proper authorities for the purchase of books for the Young Men's Institute, *or* any public Library which satisfies certain conditions, or a power to sell "all *or* any" portion of a stock, etc., "*or*" implies discretion or choice.

The word "or" is often used to express an alternative of terms, definitions or explanations of the same thing in different words, as, wilful *or* malicious prosecution "Or" is sometimes used as an explanation of the preceding term, as, intoxicating *or* malt liquors, in which case, it has been held equivalent to "to-wit", or such other like expression as "that is to say", "otherwise called", "being"

"OR" IS SOMETIMES USED OR CONSTRUED AS "AND" In some statutes the word "or" is often used, and has been often construed, as if it were "and" It has been so used also in some rules of Court. It is likewise often so construed in different kinds of private writings, most frequently in wills, and also with considerably less frequency in others, such as deeds, bonds, leases or a company's by-laws. (*29 Ame. Cyc.* 1505.)

Or in future.

Or is. "Often construed as 'and,' and 'and,' construed as 'or,' to further the intent of the parties in acts, legacies, devises, deeds, bonds and writings" (*Bouvier*) "Or" used for "*and*" *See* (31 L W 754 =1930 M 510=58 M L J. 622, 91 I C. 539=27 Cr L J 107=1926 All 263)

It is sometimes necessary to read the conjunctions 'or' and 'and' one for the other (87 I.C 229=A I R 1925 Cal 1067)

'Produced *or* given in evidence' Here "or" has the force of "and" (113 I C 712=1929 Pat 60)

The word "or" in S 82 (2) of the Assam Land and Revenue Regulation must be regarded as having been used in the sense of "and" (43 C W N. 1359=A I R 1936 Cal 715)

The word "and" is sometimes construed as "or." *See* I L R 1937 Nag 13=A.I.R. 1937 Nag 310)

"'Or' has been construed to mean 'and' and *vice versa* And the power of the courts to do this in a proper case has never been questioned But a proper case can arise only when from a reading of the act as a whole it becomes apparent that the word used was mistakenly used" [*Carter* v *Mc Clellan*, 132 Iowa 502 (505)] Strictly the word "or" in itself, has no such meaning as "and", the true rule is that only when "or" is used by mistake, instead of "and," the latter may be substituted But the substitution, of "and" for "or" is, however, never judicially authorized, except where it is needed to conform to the clear intent of the legislative body or individual, using the word.

"The word '*or*' may be taken to signify 'and,' when it appears to be consistent with the meaning implied by the context and in order to carry out the manifest intent of the contracting parties," but not where such interpretation "would be inconsistent with any intent which can reasonably be gathered from the connection in which the word is used, from the whole contest, or from the light of the surrounding circumstances"

"You will find it said in some cases that 'or' means 'and', but 'or' never does mean 'and', unless there is a context which shows it is used for "and" by mistake Suppose a testator said, 'I give the black cow on which I usually ride to A B,,' and he usually rode on a black horse, of course the horse would pass But I do not think that any annotator of cases would put in the marginal note that 'cow' means 'horse" (See *Morgan* v. *Thomas*, 9 L.T. Rep N S. 281, 31 Wkly Rep 106)

STRICT CONSTRUCTION OF "OR" IN PENAL STATUTES. In penal statutes "or" cannot be interpreted "and" when the effect would be to aggravate the punishment, but this rule does not extend to the admission of the conjunctive construction where the word is used between the descriptions of different offences. (*Ame Cyc*)

CLERICAL ERRORS Other substitutions have been made for "or" where it has been found erroneously used for "on," or for "to." (*29 Ame Cyc.* 1507.)

"Or", "Nor" In a negative statement, "or" may be taken as equivalent to "nor", following a negative, it has the same effect as "nor."

"Or in future." *See 27* Mad. 348.

Or other proceeding.

"Or other proceeding." *See* 9 C 397; 53 P.R 1883

"Or otherwise" The words "or otherwise" in Article III of the China and Corea Order in Council, 1904, must at least include the operation of other Statutes, Imperial or Indian, applicable to the person in question [(1914) 1 L W 949 (994)=18 C W N 705=23 I C 678=15 Cr.L J 326=(1914) A C 599=4 Cr.L.R 225=3 Con L R 187]

"OR OTHERWISE" The expression "or otherwise" in S. 22 of the Bengal Tenancy Act, 1885 (VIII of 1885) means "or in a similar way", 2 C L J 570, must be construed *ejusdem generis* *See* 8 C L J 324=13 C W N 32=1 Ind Cas 155, *See also* 10 Bom L R 92=7 Cr L J 118

"Or the like" The words *"or the like"* in S. 23 (4), Bengal Tenancy Act (X of 1859), must be taken *ejusdem generis* with the rights spoken of previously (28 C 485=5 C W N 840)

'Or the survivors" The effect of the words *"or the survivors or survivor of them"* (in a will) was, in the circumstances of the case, held to take the case out of the ordinary rule that a legacy lapses where the legatee dies during the lifetime of the testator (26 M 433)

Oracle Place at which the ancient Greeks consulted their deities or advice or prophecy, person or thing serving as mysterious guide, wise or mysterious adviser

Oral The word "oral" in S 92, proviso 4 of the Evidence Act, is used in the sense or "not committed to writing', and includes all unwritten agreements whether come to by word of mouth or inferred from the acts and conduct of the parties (22 M 261=8 M L J 196)

Oral agreement Includes all un-written agreements whether they are oral or they are implied from the acts and conduct of parties. (10 Pat L T 669=1929 Pat. 717)

Oral contract An oral contract is a contract which is partly in writing and partly oral, or none of which is in writing.

"Oral evidence", defined Act 1, 1872, S 119.

Oral examination An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness

Oral testimony Oral testimony is that delivered from the lips of the witness

Orasa—orasa son(*s*) The son born of a union contracted with parental sanction is known as "orasa". The term "orasa" is admittedly borrowed from the Sanskrit "aurasa" used in works on Hindu law and has been corrupted into "auratha" or "orasa" Whether the word is spelt "auratha" or "orasa" it undoubtedly denotes a son born of a union contracted with parental sanction, in other words, a legitimate son In course of time, it acquired a special meaning, it came to signify a son who, by virtue of his position in the family and his competency to assume the duties of the father, was vested with a defined right in the parental estate.

Ordained minister.

Similarly in the course of time, the word was extended to include a daughter standing in the same position and vested with the same right [51 I A. 334=2 R 693=A I R 1924 P C 238=3 Bur L.J. 304 =29 C W.N 653=84 I C 867=48 M L J. 1 (P.C.)].

The designation *"orasa"* in the Dhammathats is not limited to a son, but connotes the eldest or first-born child who is competent to undertake the responsibilities of the deceased parent The status does not depend on the decease of the father, where the child is a son, or of the mother, where she is a daughter. It comes into existence on the fulfilment of three conditions, namely —(1) that he or she is the first born child, (2) that he or she attains majority, and (3) that he helps either in the acquisition of the family property, and the discharge of the father's responsibilities, or, if a daughter, helps the mother in the case of the property and the control and management of the household, which lie particularly within the mother's duties [(1924) 51 I A, 334=2 R 693=A I R 1924 P C 238=3 Bur. L J 304 =29 C W.N. 653=84 I C 867=48 M L.J. 1 (P.C)]

Oratory "Small chapel, place for private worship An oratory differs from a Church, for in a church there is appointed a certain endowment for the minister and others, but an oratory is that which is not built for saying mass nor endowed but ordained for prayer". (*Phil Ecc Law.* 1451)

Oravinahola (*Karn*) A swampy field.

Orchard An inclosure or assemblage of fruit or nut-bearing trees

A collection of fruit trees set out for the use of the farm, or for any other purpose.

Orchitis (*Med*) Orchitis is an inflammation of the secreting structure of the testicle It occurs sometimes spontaneously in an acute way It is apt to result from local injury. The pain in orchitis is intense, and often of a peculiar, sickening character.

Ordain To appoint, to institute, to clothe with authority Used of a clergyman or minister, to invest with ministerial functions or sacerdotal power, used with reference to the making of municipal ordinances, to make, constitute, establish, pass

The terms 'MAKE,' 'ORDAIN,' 'CONSTITUTE' 'ESTABLISH AND 'PASS' as used with relation to a grant of legislative authority to a municipal corporation to enact ordinances, mean the same thing

'ORDAIN' AND 'ESTABLISH' as used in an Act providing that the judicial power shall be vested in the Supreme Court and such inferior courts as the Local Government may from time to time 'ordain and establish' means instituted, formed, modelled, set in office, settled firmly

'Ordained minister' Within the meaning of the statute exempting ordained ministers from certain taxes, is to be construed as meaning a minister who is ordained over some particular society, either in corporated or unincorporated, which is entitled to his services and obligated to him for his support in some form or other The term does not include a minister who is merely authorised to preach

A statute authorizing the solemnization of marriage by 'stated and ordained ministers of the gospel'

Ordeal.

should be construed to include a person ordained as minister of the gospel according to the form observed in established churches

Ordeal (or Ordal) "An ancient manner of trial in criminal cases, for, when an offender being arraigned pleaded "Not guilty", he might choose whether he would put himself for trial upon God and the country, by twelve men, as at this day, or upon God only, and then it was called "The Judgment of God", presuming that he would deliver the innocent (*Terms de Ley*, 9 Rep 32) This trial, according to Blackstone, arose from the superstition of our ancestors, who, like other nations, were extremely addicted to divination, they therefore invented this among the methods of purgation or trial to preserve innocence from the danger of false witnesses, and in consequence of a notion that God would always interpose miraculously to vindicate the guiltless (4 Comm 342.) Of these there were several sorts, as by fire, by water, etc (*Tomlins Law Dic*)

"Order", defined, 7-8 V c 12, S 20 Act 14, 1882, S 2, Act 11, 1886, S 3 (6), Act 5, 1908, S 3

ORDER *As a noun*, a mandate, a command, a request, a species of writing, embodying a request, or direction, to deliver money or goods to a third person, in which sense it includes bills of exchange It also applies to written requests, which are not bills of exchange, whether for the payment of money or for the delivery of goods, and when used upon commercial paper, it is treated as a word of negotiability It is also used to mean a religious fraternity, with common rule of life (as), the Franciscan order "Order" also denotes sequence or succession (as) "Arrangement in alphabetical order" "chronological order". The word is used to denote a company to which distinguished persons are admitted as an honour or reward (as) The Victorian order, the order of Imperial Service, etc The word is also applied to "the judgment, or conclusion of the court, upon any motion or proceeding" (*Gilmn v Contra Costa County*, 68 Am Dec 290 *See* Civil Procedure Code 1908, S 3) *As a verb*, "ordered", has been construed as "required", or 'authorized" (*Ame Cyc See also* 1 L B R 124)

ORDER, METHOD, RULE *Order* is applied in general to everything that is disposed, *method* and *rule* are applied only to that which is done, the *order* lies in consulting the time, the place, and the object, so as to make them accord the *method* consists in the right choice of means to an end the *rule* consists in that which will keep us in the right way

ORDER, RULE The words 'rule' and 'order', when used in a statute, have a definite signification They are different in their nature and extent A rule, to be valid, must be general in scope and undiscriminating in its application, an order is specific and limited in its application The function of an order relates more particularly to the execution or enforcement of a rule previously made

"THE TERMS 'JUDGMENT,' 'DECREE,' 'DECISION,' AND 'ORDER' are more or less cognate as applied in legal proceedings, and closely allied in meaning The term 'order' is not infrequently used in a more restricted sense than the word 'judgment' (*See* Civil Procedure Code, S 3 definitions). It may be defined to be a command, direction, or decision of the Court or Judge on some intermediate point or issue in the

Order of course.

case, but without finally disposing of the main issue or issues in the cause Then it is merely interlocutory But the term is sometimes given a more extensive signification, even in legal controversies, and is occasionally used as a synonym of 'judgment' or 'decree' (*Words and Phrases*)

ORDER AND ORDINANCE An order of a municipality is not a law, but merely the form in which the body expresses an opinion, while an ordinance prescribes a permanent rule of Government An order is of a special temporary character.

"Order affirming decision" An order dismissing an appeal as time-barred on the ground that it was not preferred within the period prescribed by the Limitation Act is an "*order affirming the decision*" of the lower Court within the meaning of the section 110, Civ Pro Code 23 M L J 219=12 M L T 260=(1912) M W N 962=16 Ind Cas 486

Order book A book for entering orders for customers, (in Parliamentary law) the motions to be put to the House of Commons

Order cheque. A cheque drawn payable to a person's order

'Order for money' has a well-understood meaning and usually contains a request or direction to a third party, who is indebted to the maker of the order, to pay such money to the person named

"Order in Council" defined 7-8 V c 12, s 20

An *order in Council* is an order made by the sovereign "by and with the advice of His Majesty's Privy Council" Where issued under statutory powers they usually (but not invariably) recite those powers, and in certain (but not all) cases, mention the Minister to whose department the administration of the order falls

The Crown could not, excepting by Statute, deprive itself of freedom to make orders in council, even when these were inconsistent with previous orders 30 C W N 961=99 I C 265=A I R 1926 P C 131 (136)

Order (*in mercantile law*) An order is a brief note, resembling a bill of exchange, requesting the payment of money or the delivery of personalty to the bearer of the note

The word 'order' in a bill of exchange has a positive, fixed meaning, and means an order indorsed on or accompanying the bill

Order (*in parliamentary law*) A resolution or order is not a law, but merely the form in which the legislative body expresses an opinion An ordinance cannot be replaced or sustained by an order or resolution

Order of adjudication. In the Insolvency law an "Order of Adjudication" includes an order for the Administration of the estate of a deceased person (*See* Pro Ins Act, Pre T Ins Act)

Order of chivalry (as) Order of the Garter Order of the Bath, Order of the Star of India;—St George,—of the Indian Empire,—of the British Empire etc

"Order of course" A term used to designate "an Order made on an *ex parte* application, and to which

Order of court.

a party is entitled as of right, on his own statement and at his own risk" (Ann Pr, note to r 18, Ord 62, R S C, *Stroude*)

Order of court "In the practice of courts the term "order" means a decision made during the progress of the case, either prior or subsequent to final judgment, settling some point of practice, or some question collateral to the main issue presented by the pleadings and necessary to be disposed of before such issue can be tried in the court, or necessary to be determined in carrying into execution the final judgment" (*Ame Cyc*) "Any direction of a court, other than a judgment or decree, made in a cause" (*Anderson L Dict*) "Any direction in writing, granted by a court or judge, requiring or authorizing some act to be done" (*Burrill*) "*Order*" means the formal expression of any decision of a Civil Court which is not a decree, Act V of 1908, Civ Pro Code, s 2, cl 14 Every direction of a court or judge made or entered in writing, and not included in a judgment or decree, is denominated an 'order"

A direction of a court or judge made as prescribed by law in an action or special proceeding, unless it is contained in a judgment, is an order.

"ORDER OF COURT" does not always mean merely a "final order" but may include an "interlocutory order" such as an order of remand. (4 C W N 44) or a preliminary order

Order of discharge (*In Bankruptcy*) The discharge by order of court of an insolvent from all debts and demands proveable in insolvency

Order of the day Programme of business set down for the day

"Order passed on appeal" The phrase does not include an order refusing to admit an appeal after the period of limitation. 13 C L J 90=15 C W N. 848=9 I C 183

"Order respecting the possession of immoveable property" An order made under S 146 Cr P Code for the attachment of the property in dispute is not an order respecting the possession of such property under Art 47 of the Limitation Act 20 A 120 =17 A W N 214

BY ORDER According to the direction of a higher authority

"CALLED TO ORDER" (by the speaker in an assembly) Enforcing principles of decorum, and rules of procedure accepted by the assembly and enforced by the president

CLOSE ORDER (IN MILIT LAW) The usual formation for soldiers in line or column

GIVE ORDERS. Issue direction or command for something to be done.

HOLY ORDERS Those of Bishop, priest and deacon.

"IN ORDERS" Ordained

"IN ORDER TO" imports intent, or purpose.

"IS IN ORDER" "IS IN GOOD ORDER" Is in a condition which is fit for use, Placed and arranged as they ought to be (as) The papers are all in order

LARGE OR TALL ORDER (*Colloq.*) Difficult job

Ordinarily.

LAW AND ORDER Public peace; law-abiding state; absence of riot, normal state of constituted authority.

LOWER ORDERS denotes a class of persons occupying an inferior social rank

MADE TO ORDER Made according to special directions given to tradesmen to supply something according to given instructions or individual requirements.

MONEY ORDER OR POSTAL MONEY ORDER Remittance of money sent through the medium of the Post Office

OUT OF ORDER Not working rightly, not in proper condition not fit for present use, not in regular or prescribed order

POINT OF ORDER A question raised in a deliberative assembly as to whether proceedings are according to the rules.

SAILING ORDERS Written instructions given to the commander of a vessel before sailing.

SEALED ORDERS Instructions given in a sealed cover not to be opened until a certain specified time.

TAKE ORDERS Be ordained

Orderless. Without any order, disorderly.

Orderliness In good order

Ordinance A law, decree, or statute. (*Tomlins Law Dic*) In modern times the term "ordinance" is used to signify a rule or body of rules enacted by an authority less than sovereign

Ordinance of parliament Acts of parliament were often called ordinances, but originally there seems to be this difference between them that as ordinance was but a temporary Act, not introducing any new Law, but founded on Acts formerly made and such ordinances might be altered by subsequent ordinances but an Act of parliament is a perpetual law, not to be altered but by King, Lords, and Commons (*Tomlins Law Dic*)

Ordinance and order of a municipality. An order of a municipality is not a law, but merely the form in which the legislative body expresses an opinion, while an ordinance prescribes a permanent rule of government An order is of a special and temporary character

Ordinance and resolution of a corporation, 'Ordinance' is the generic term for acts of council affecting the affairs of corporations, and a resolution is only a less solemn or less usual form of an ordinance

Ordinance' is the generic term for acts of council affecting the affairs of the corporation, and we can make no distinction between them, founded on a difference of degree in which they affect those affairs 'Resolution' is only a less solemn and less usual form of an ordinance

A distinction is sometimes drawn between an ordinance and resolution, by which the one prescribes a permanent rule of conduct or government, while the other is of a temporary character and prescribes no permanent rule of government.

Ordinarily The word "*ordinarily*" does not mean solely or in the main It only means regularly and

Ordinarily lay

habitually, not casually, whether it be for a larger or a smaller portion of the day (15 Bom L R 68) *See* 30 Bom L R 387=109 I C 357=1928 Bom 140

"Ordinarily lay" in the phrase "Court to which appeals ordinarily lies" *See* 28 M L J 486=17 M L T. 446=*29* I.C. 71

Ordinarily resident These words as used in the Municipalities Act, do not require that the person should be one who is always resident in the division or carry on business therein 23 M.L J 591=17 I C 945 *See also* 157 I C 941

'Ordinarily resides' *See* 18 C.W N 1050=*20* I.C 370 *See also* 157 I.C 941

Ordinary As an adjective, regular, common, usual, methodical, according to established order, conforming to general order.

As a noun, a judicial officer, a tavern a place of eating. (*Webster Dict*)

ORDINARY. (*In Civil Law.*) 'Ordinary' is a civil-law term for any judge who hath authority to take cognizance causes in his own right and not by deputation.

ORDINARY (*in Ecc Law.*) Is he that hath ordinary jurisdiction in causes ecclesiastical, immediate to the King and his Courts of Common Law, for the better execution of Justice, as the Bishop, or any other that hath immediate jurisdiction in causes ecclesiastical." (*Co. Litt* 344a *Termes de la Ley.*)

THE ORDINARY. Bishop in his diocese.

Ordinary business 'Ordinary business,' as used in defining the duties of the cashier of a bank, mean only such things as are done by cashiers in general in the customary everyday routine of banking, and does not include the making of a contract by the cashier without express delegation of authority from the board of directors.

Ordinary calling. Enlisting is not the ordinary calling of a soldier, His ordinary calling is to attend drill and fight the battles of his country The enlisting of recruits is an extraordinary employment.

Ordinary care Ordinary care is the care usually bestowed on the matter in hand by persons accustomed to deal with such matters, and having the prudence of the general class of society to which the person, whose conduct is in question, belongs.

ORDINARY CARE is such care as a prudent man of requisite skill will take under the circumstances of the particular case

Ordinary care is such care as men of ordinary prudence would exercise with reference to their own property.

Ordinary care is that care which ordinarily prudent persons would exercise under the same, like, or similar circumstances, and the want of such care is negligence

Ordinary care means that degree of care which may reasonably be expected of a person in the situation of the person required to exercise such care.

Ordinary caution 'Ordinary caution,' means such caution as may naturally and reasonably be expected to exist under the circumstances of the particular case

The expression 'ordinary prudence and caution' is but a synonym for 'ordinary care'

Ordinary course of business "The ordinary course of business," as the term is used in the statement that an inability to pay debts in the ordinary course of business constitutes insolvency, does not mean an ability to turn out goods or other property to pay one's debts, without leaving in the debtor's hands assets to provide for other debts as they become due

Ordinary diligence (*See ordinary care*) Ordinary diligence is that care which every prudent man exercises under the same or similar circumstances.

Ordinary expenses (*of Municipality*) Any expense that recurs with regularity and certainty, and is necessary for the existence of the municipality, or for the health, comfort, and perhaps convenience of the inhabitants, may well be called an ordinary expense of the municipality

The 'ordinary expenses of a township,' within the meaning of an Act authorizing the township board to vote taxes for the necessary sums to defray the ordinary township expenses, has never been very satisfactorily defined, but it may well be said that such expenses cannot include less than the necessary expenses incurred in administering the government of the township under the Acts creating it and relating thereto, in such manner as will best promote the convenience, peace, health, prosperity, and happiness of the people residing therein

THE ORDINARY EXPENSES OF A STATE include the current expenses of the government, and debts to mature during the current fiscal year

Ordinary floods Ordinary floods, within the rule that a railroad company constructing an embankment is liable for failing to provide means to prevent damages by the collection of waters caused by ordinary floods, means floods, the occurrence of which may be reasonably anticipated from the general experience of men residing in the regions where such floods happen They are distinguished from *extraordinary floods*, which are floods of such unusual occurrence that they cannot be foreseen by men of ordinary experience and ordinary prudence

Ordinary inspection The rule that a railroad company is bound to make a 'reasonable and ordinary inspection' of foreign goods received for transportation means such an inspection as the time, place, means, and opportunity, and the requirements and exigencies of commerce, will permit.

Ordinary jurisdiction The expression "ordinary jurisdiction" is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders 13 B 520 (P C)=16 I A 156 (*See Letters Patent*)

Ordinary law The expression 'ordinary law' in S 22 (11) of the Oudh Estates Act includes custom and the terms of a talukdar's sanad 171 I.C 481= 1937 O L R 561=1937 O W.N 1058

Ordinary man or person. The expression "ordinary persons,' in common parlance, means men of

Ordinary navigation.

ordinary care and diligence in relation to any particular thing

Ordinary navigation Ordinary navigation is established or regular navigation Johnson assigns to the word 'ordinary' the meaning of 'established, regular, common, usual'

Ordinary negligence (*See ordinary care.*) Ordinary negligence is the want of such care and diligence as reasonably prudent men generally exercise.

Ordinary or common negligence is the want of that degree of care which ordinarily prudent men would ordinarily exercise under like circumstances

ORDINARY NEGLIGENCE is the failure to exercise ordinary care, or, in other words, that degree of care which an ordinarily prudent person would exercise under like circumstances, although the party has exercised some care, and it may be only slightly less than ordinary care

ORDINARY NEGLIGENCE may be defined to be the want of ordinary diligence, *gross negligence*, to be the want of slight diligence, and *slight negligence* to be the want of great diligence. (*Words and Phrases*)

"Ordinary powers' (*of Magistrates*) defined Act 5, 1898, S 36

Ordinary prudence 'Ordinary prudence' means such care and prudence as the average prudent man would exercise under like surroundings and in the like situation

Ordinary purposes In a contract to furnish all gas for ordinary purposes connected with the house, 'ordinary purposes' will be held to include the use of gas for gas range, fireplace, and street lamps in front of the house

Ordinary repairs All buildings are subject, more or less to natural and unavoidable decay and 'ordinary repairs,' when used in reference to buildings, means expenses reasonably incurred in keeping the property in good condition and order

Ordinary skill The ordinary skill which a person contracting to do a thing should be possessed of is that degree which men engaged in that particular work usually employ, not that which belongs to a few men only, of extraordinary endowments and capacities

Ordinary stock or shares The term refers to stock or shares that have no special privilege or right attaching to them, (as opposed to preference shares and debentures)

"Ordinary tenant" defined Act 11, 1898, S 62

Ordinary use A diversion of water for irrigation is not an ordinary use by a riparian owner, and so can only be exercised reasonably and with proper regard to the right of other proprietors to apply water to the same purposes

Ordination. Conferring of holy orders.

'ORDINATION,' is the putting a man into his place and office in the church, whereunto he had a right before by election, being like the installation of a magistrate in his office.

Organize

ORDINATION Of a clergyman or minister is the investiture of authority, the act or right of admitting and setting apart to the Christian ministry or to holy orders

Ordine placitandi servato servatur et jus. A maxim meaning "The order of pleading being preserved, the law is preserved" (*Peloubet Leg Max*)

Ordnance Mounted guns, cannon, department for military stores

"Ordnance map" defined 52-3 V. c. 66, s 65.

Ordnance survey The survey of the country connected with its military defence.

Ordonnance 'Ordonnance' is understood to be, in general, a compilation of prize law, as recognised among civilized nations (*Words and Phrases.*)

Ore Webster defines the noun 'ore' as the compound of a metal and some other substance, as oxygen, sulphur, or arsenic

Organ An organ is defined to be an instrument or medium by which an action is performed or an object accomplished

Organic A term which when employed with reference to the characteristics of a system of law has been held to import a scientific fitness and congruity

When examining a body of systematic law in order to determine whether certain characteristics are substantial or merely accidental, language is used according to the subject-matter, and in such a connection the word 'organic' does not import a physical, moral, or mathematical necessity, but rather a scientific fitness and congruity, having regard to inveterate usage, historical development, and the nature of legal things

Organic law 'Organic law' is a term usually applied to the supreme law only, and it imports a high degree of authority

The organic law of a territory takes the place of a constitution as the fundamental law of the local government It is obligatory on and binds the territorial authorities

ORGANIC LAW Constitutional law (68 Am St Rep 575)

Organization Formation, arrangement of parties, act of organizing, orderly connection of parts in and for a whole, Organized body or system or society.

ORGANIZATION implies a recognition of order and an obedience to duly constituted authority.

Organize To form with suitable organs to incorporate, establish; create, form. Give orderly structure, systematize, bring into working order.

The word, in some of its forms, is frequently used in the constitution and laws of the state, and as so used has no doubtful or ambiguous meaning. To organize a certain territory into a municipal corporation is a very different thing from that of extending the limits of an organized city over new territory.

A charitable bequest to an institution of learning to be organized contemplates that the institution is to be incorporated or formed.

Organized county

Organized county. The distinction between organized counties and established counties is that the establishing of a county is the setting apart of territory to be in future organized as political community or quasi corporation for political purposes, while the organizing is vesting the people of such territory with such corporate rights and powers

Organizing a county is the vesting the people of such territory with corporate rights and powers

'ORGANIZE' OR 'ORGANIZATION,' as used in reference to corporations, has a well-understood meaning, which is the election of officers, providing for the subscription and payment of the capital stock, the adoption of by-laws, and such other steps as are necessary to endow the legal entity with the capacity to transact the legitimate business for which it was created

Orgy. Drunken or licentious revel, revelry debenchery, secret rites in worship of Bacchus or similar gods

Orient The east, countries east of the Mediterranean

Oriental. Of the eastern or Asiatic world or its civilization

Origin, certificate of (*for purpose of customs duties*) A statement made by the sender of goods, before a recognised authority in the port of shipment as to their place of origin

Original. That which has served as a pattern of which a copy or translation is made, first hand, not initiative, novel in style, character or inventive

As a noun, origin source first copy As an adjective, pertaining to the beginning or origin, the first or primitive form of a thing, pertaining to the origin or beginning, initial, primal, first in order, preceding all others (*Ame Cyc*)

"ORIGINAL" (*in respect of copy-right*) The word "original" does not mean that the work must be the expression of original or inventive thought Copyright Acts are not concerned with the origin of ideas, but with the expression of thought, and in the case of "literary work" with the expression of thought in print or writing The originality which is required relates to the expression of the thought, but the Act does not require that the expression must be in an original or novel form but that the work must not be copied from another work—that it should not originate from another 48 Bom 308=19 L W 299 =26 Bom L.R 292=(1924) M W N 308=28 C W N 613=2 Pat.L.R 137=22 A L J 473=51 I A 109=83 I C 101=A I R 1924 P C 75=46 M L J 637 (P C).

The word '*original*' should be so construed as to allow a man the benefit of the use of his brain but adopting word for word a part of non-copy right work does not constitute an original work 65 I C 187=23 Bom L R. 1299.

Original Bill The first of a duplicate or triplicate set of foreign bills.

Original evidence Original evidence is an original writing or material object introduced in evidence

Original inventor The term 'original inventor' in patent law, is used to designate a pioneer in the

Original package.

art, one who evolves the original idea, and brings it to some successful, useful, and tangible result. Such a person is, by the law of patents, entitled to a broad and liberal construction of his claims, whereas an improver is only entitled to what he claims, and nothing more

Original jurisdiction The phrase 'original jurisdiction' means jurisdiction to entertain cases in the first instance, as distinguished from appellate jurisdiction

The words "original jurisdiction" in cl 39 of the Letters Patent of the High Court of Bombay, are only used in contradistinction to the words "made on appeal," mentioned earlier in the clause 50 I A 212 (218)=47 B. 724 (732)=25 Bom L R 908=A I R 1923 P C 148=21 A L J 675=18 L W 372=(1923) M W N 603=33 M L T 301=9 O & A L R 783=28 C W N 307=39 C L J 16=74 I C 469=45 M L J, 295

Original and appellate jurisdiction Distinction *See* 14 M I A 465=17 W R 292=10 B L R 101=2 Suth 564

Original literary work The word 'original' in S 1, sub-s (1) of the Copyright Act of 1911 does not in the expression "original literary work" in that sub-section, mean that the work must be the expression of original or inventive thought Copyright Act are not concerned with the originality of ideas, but with the expression of thought, and, in the case of 'literary work,' with the expression of thought in print or writing The originality which is required relates to the expression of thought, but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author 51 I A 109 (125)=48 B 308= A I R 1924 P C 75=19 L W 299=26 Bom L R 292= (1924) M.W N 308=28 C W N 613=22 A L J. 471=2 Pat L R 137=83 I.C 101=46 M L J 637

Original meeting According to parliamentary law, strictly speaking, an 'original meeting' and an 'adjourned meeting' constitute the same meeting.

Original owner The term "original owner" in cl. 2, S 4, Reg XI of 1825 does not mean the person who may for a time have had possession of the accreted land without having acquired a right to the site, but includes the ownership of the site 22 W R 238

Original package The term 'original package' does not seem to have received, and, perhaps, is not capable of, a precise definition that may be applied to it in all cases The idea for which it stands is, however, definitely known The method adopted by manufacturers and importers for packing and transportation of goods by sea or land differs with the character, bulk, and material of the merchandise itself The general purpose is to adopt that size and form of package best adapted to the safe and convenient transportation and delivery of the particular class of goods to be moved, because the convenience of trade will be best subserved thereby Such packages, being put up with a view to the convenience and security of transportation and handling in the regular course of trade, are the 'original packages' of commerce.

In the commercial sense, the case or box or bale in which separate articles are placed together for transportation constitutes the 'original package'

Original process

Where bottles of liquor are placed in a wooden box and shipped into the state to be sold on commission, the box is the 'original package.'

Original process The step taken to compel a defendant to appear in an action

Original suit Suit commenced in the first court The substitution of a plaintiff is not an original suit, but an incident of an existing one,—a step in it, and nothing more

Originally In the original time or in an original manner, primarily, from the beginning

Originating Summons "Every summons other than a summons in a pending cause or matter" An "*Originating Summons*," in English Practice means, 'a summons by which an action is commenced otherwise than by writ" (per *Esher, M R, Re Holloway*, (1894), 2 Q B 163)

Origine propria neminem posse voluntate sua eximi manifestum est A maxim meaning "It is manifest that no one by his own will can renounce his origin (put off or discharge his natural allegiance)"

Origio rei inspici debet A maxim meaning "The origin of a thing ought to be inquired into"

"Orissa" A Province in India constituted under the Government of India Act

Ornament Embellishment, decoration, that which adorns or beautifies that which adds grace or beauty to a thing

Ornamental serving to ornament, giving additional beauty, embellishing (as) ornamental trees

Ornamental timber "What is Ornamental Timber, is merely a matter of taste, one cannot say that what was planted for ornament must necessarily be considered as ornamental" [(per *Grant, M R, Mahon* v *Stanhope*, 3 Mad 523, n)

An injunction against cutting 'ornamental timber' is confined to timber standing for ornament or shelter, and the description is not the same as trees 'contributing to ornament'

Ornery A term which does not, in some of its uses, differ from the words "common" or "mean" (*Wimer* v *Allbaugh*, 16 Am St Rep 422)

"The word 'ornery' has not such a place in the English language that any lexicographer has ventured to define it or give it authoritative recognition It has much of the impress of provincialism Its use seems to be peculiar to certain localities of people It does not in some of its uses differ from the words 'common' or 'mean' As applied to a woman, it is not equivalent to saying that she is a prostitute." (*Ibid*)

Orphan A fatherless child, or an illegitimate child of a deceased mother According to more general usage a minor who has lost both of his or her parents (*Bouvier*) Sometimes the term is applied to a person who has lost only one of his or her parents. (*Powell* v. *Att Gen*, (1817), 3 Mer. 48, 36 E.R 19, 17 R.R. 8; *Luch's Case*, 1724, Hob. 247.

Osteopathy.

Orphan asylum An orphan asylum is a place of refuge for orphan children—a home Children are naturally dependent, and all need a home and protection Indigent orphans have no home unless it is supplied by charity To afford such a home, with support and protection, orpham asylums are provided by the humane

Orphans Court. A court having jurisdiction over or having the control of orphan children An orphans' court is a court of limited jurisdiction

Orphanage An institution or house for orphans, orphan asylum, an asylum or home for destitute orphan children, an institution for the care of destitute orphans

The term affords the suggestion of a charity, and was held to have been used with the intent to do so by one who collected money, ostensibly for an alleged "orphanage", the court remarking, lexicographers are not unanimous, but lean toward a meaning for 'orphanage' or 'orphan asylum' suggesting destitution of those relieved, rather than a profit seeking enterprise" (*Baker* v *State*, 120 Wis 135 (143), 97 N W 566)

Orre (*Tel.*) A heap of threshed corn

Orthodoxy Adherence to orthodox views

Oscillate To vibrate as a pendulum, to move backward and forward, to swing

Oscillatory Moving alternately one way and another, as a pendulum, swinging, vibrating.

'Ossees' The term 'ossees' is one of elastic signification Per *Wilson's Dictionary* quoted by *Maclean, C J* A testator, one who commands, recommends or bequeaths any thing, an executor, administrator or guardian appointed by will in distinction from wali or natural guardian 6 C.W N 310 at 331

Ostensible, Ostensible means capable of being shown, proper or intended to be shown, exhibited, declared, avowed, professed, apparent—often used as opposed to real or actual

Ostensible agency Ostensible agency exists in law where one, either intentionally or from want of ordinary care, induces another to believe that a third person is his agent, although he never in fact employed him

Ostensible owner *See* 170 I C 1005=10 R.P. 185=1937 P W N. 144=A I.R, 1937 Pat. 353.

Osteology Science of bones

Osteopathy "Osteopathy teaches neither therapeutics, materia medica, nor surgery Bacteriology is also ignored by it It depends entirely on manipulation of the body for diseases Its theory is that a large number of ailments are due to irregular nerve action, and that by manipulation they enable nature herself to right the evil It administers no drugs, it uses no knife It does not profess to cure all diseases When a case is presented requiring surgery or medicine, the osteopathy gives way to physicians Faith cure or magnetism has no place in the system It relies wholly upon manipulation aiding nature The main things taught in the school are physiology, anatomy, and the treating of diseases by manipulation. The system is new, and of neces-

Osteopathy.

sity imperfect as yet, but it is efficacious where the regular practice is ineffective Still a school of osteopathy is not a 'medical college' within the popular meaning of this term" (*Cited in Words and Phrases*)

'OSTEOPATHY' is defined as method of treating diseases of the human body without the use of drugs, by means of manipulations applied to various nerve centres chiefly those along the spine—with a view to inducing free circulation of the blood and lymph, and an equal distribution of the nerve forces Special attention is given to the readjustment of any bones, muscles, or ligaments not in the normal position. (*Ibid*)

Ostracise Exclude from society or a community.

Otbandi *See Utbandi* A kind of land tenure (*Bad. Pow.*)

Other Different from that which has been specified, not the same, different " 'Other' always implies something additional" (per *Erle, C J, Ayrton* v *Abbott*, 14 Q B 17) or something different Lord Tenterden in *Sandiman* v *Breach*, 7 B & C 99 said, —"Where a statute, or other document, enumerates several classes of persons or things, and immediately following and classed with such enumeration the clause embraces "other" persons or things,—the word "*other*" will generally be read as "other such like", so that the persons or things therein comprised may be read as *ejusdem generis* with and not of a quality superior to, or different from, those specially enumerated. The principle of this rule as regards statutes was explained by *Kenyon, C J*, in *R* v. *Wallis* (5 T R 379), wherein he said that if the legislature had meant the general words to be applied without restriction it "would have used only one compendious word" Yet, on the other hand, though "it is very likely that in former days the doctrine was applied strictly, there are cases which show that the modern tendency is to reject a restricted construction" (per *Esher, M R, Anderson* v *Anderson*, 64 L J Q B 458, (1895) 1 Q B 749)

The rule of *ejusdem generis* is by no means a rule of universal application, and its use is to carry out, not to defeat, the legislative intent When it can be seen that the particular word by which the general word is followed was inserted, not to give a coloring to the general word, but for a distinct object, then, to carry out the purpose of the statute, the general word ought to govern It is a mistake to allow the rule to pervert the construction (*Words and Phrases.*)

"Other association of individuals" *See* I L.R 1937 Bom 830=39 Bom L R 910.

Other building 'Other building', within the meaning of a statute making it burglary for any person to break or enter any shop, store, booth, tent, warehouse, or other building, means a building or like kind with those enumerated, and does not therefore embrace a chicken house

"Other cause of like nature" (*In Limitation Act (XV of 1877), S 14*). If there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that

Other sufficient reason.

cause is "of like nature to defect of jurisdiction," 14 I. C 437 (438)=6 L B R 43

"Other hereditary village offices" *See* 20 M L. J, 281=7 M L T 404=5 I. C. 1004

"Other intangible thing" The right of a simple mortgagee in the property mortgaged is only an intangible thing like a charge on immoveable property within the meaning of the S 54, Transfer of Property Act 24 M 449, *See also* 3 N L R 72(74)

"Other legal ground" The words "other legal ground" in S 32, Parsi Marriage and Divorce Act construed on the principle of "ejusdem generis" mean any other legal ground which is of the same kind as those previously mentioned 10 Bom L R. 1019

"Other legal proceeding" (*In Presidency Towns Insolvency Act (III of 1909)*, S. 17. This general expression coming after "suit" is of limited application, and must be construed on the principle of *ejusdem generis*, and does not include a criminal proceeding. 7 Ind Cas 963 (964)=12 Bom L R 750

"Other products". Plants such as jasmine and bela are included in the expression 'other products', in Ss 74, 75 and 78, Agra Tenancy Act II of 1901 7 A L J 397=6 Ind Cas 74

Other purposes The words 'other purposes have been extensively used in titles to statutes, reciting that they are for certain specified and *other purposes*, to cover any and every thing whether connected with the main questions indicated by the title or not (*Words and Phrases*)

"Other reasonable cause" *"Other reasonable cause"*, mentioned in cl (*f*) of S 13 of the Legal Practitioners Act, is not restricted to matters *ejusdem generis* with the matters mentioned in cls (*a*) to (*e*) of the section 19 M L.J 504 (F B)= 6 M L T 253=3 Ind Cas 344, (26 M 448 *F*)

Other relief The 'other relief' referred to in Art 95 of the Limitation Act need not be of the same kind as setting aside a decree obtained by fraud, but includes compensation for damage caused to the plaintiff by the fraud practised by the defendant 27 M 343

"Other sufficient cause". Whether the words "other sufficient cause" in O 47, R 1 of Civil Procedure Code of 1908 should be confined to reasons strictly *ejusdem generis* with those enumerated *See* 27 I A 197=24 M 1 (10)=4 C W N 725=2 Bom L R 771=7 Sar 678=10 M L J. 221.

'Other sufficient ground'. *See* 9 M L T 204=8 I C 868

"Other sufficient reason". The words "other sufficient reason" in O 47, R 1, Civil Procedure Code, (1908) mean other sufficient reason of the kind mentioned in the earlier part of the section (1882) A W N. 102 *See also* 13 I C. 318

Rule 1 of the O. 47 must be read as in itself definite of the limits within which review is, under the new Code, permitted and reference to practice under former and different statutes is misleading. So constructing the words, "any other sufficient reason" are to be interpreted as meaning a reason sufficient on grounds at least analogous to those specified

Other than.

immediately previously 3 Lah 127=30 M L T 295 =26 C W N 697=16 L.W 37=41 P L R. 1922=36 C L J 459=49 I A 144=72 I.C. 566=A I R 1922 P C 112=43 M.L.J 332 (P C).

Other than 'Other than' is not a reasonable substitute for 'contrary to' or 'at variance with,' and hence as used in an instruction that if a witness has made statements out of court 'other than' those made in his testimony, etc, is erroneous (*Words and Phrases*) (*See also Wrotesley* v. *Adams, Plowd* 195)

Other trustee. "Where four Trustees were appointed originally, and the power was to the surviving, or continuing, or other Trustee, to appoint new Trustees, it was held that the survivor of the four trustees who desired himself to be discharged, could, by force of the words 'other Trustee', appoint four new trustees in the place of himself and three others" (*Lewin* 786, *citing Camoys* v *Best* 19 Beav 414.)

Otherwise By other like means, contrarily, different from that to which it relates, in a different manner, in another way, in any other way, differently in other respects in different respects, in some other like capacity (61 Am Dec 706) *See also* 28 A 91= 2 A L J 589=1905 A W N 198=2 Cr L J 515, 15 Cal 350=5 I C 264)

'OTHERWISE' is defined by the Standard Dictionary as meaning 'in a different manner, in another way, differently in other respects', by Webster, 'in a different manner, in other respects' One of the usual meanings of 'otherwise' is 'contrarily' As a general rule "Otherwise" when following an enumeration, should receive an ejusdem generis interpretation (per *Cleasby, B. Monck* v *Hilton*, 46 L.J M C 167, The words 'or otherwise,' in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned, (*Cent Dict*) "A power to appoint" 'by will or *otherwise*', authorizes an appointment by deed,' (Sug. Pow. 211, citing *Irwin* v. *Farrer*, 19 Ves. 86)

The expression "otherwise" in Order 45, rule 3, Civil Procedure Code is intended to meet special cases such as when the point in dispute, though not measurable in money is of great public or private importance. 23 A. 227=28 I A 11 (P C)=5 C W N 193 *See also* 5 O.C. 168 (171)

"Otherwise adjusted" These words in O 21, R. 2 (1), Civil Procedure Code are wide enough to include an oral adjustment of the decree 91 I C. 705=A.I.R 1926 Cal 643.

"Otherwise as the nature of the relief granted may require". *See* 87 I C 1025=A I R 1925 Nag 382.

Oti. (*Mal.*) A piece of rice-ground.

Otti (*or otty*). (*Mal*). A form of mortgage which gives the mortgagee possession and the entire produce of the land, the landlord retaining merely the proprietary title and the right to redeem. (*Bad. Pow.* III. 169.)

"In former times the Otti deed was scarcely ever executed before the Pattola deed. It was the consequence of the mortgagor becoming involved in a greater degree than when he first incurred the debt to the mortgagee It is a deeper stage into debt. In the present times it is very usual for persons to borrow to that extent at once, without going through the preliminary step of Panaya Pattam to render it necessary to execute the Otti deed

In this deed the amount of the debt only is specified and not the pattam or rent In this stage of mortgage the interest of the debt is equal to the annual pattam, and the mortgagee pays no pottam to the proprietor It is also called Veppu (in Palghat) and Palisa Madakku (in Nedunganad and Walluvanad), which latter term is expressive of this characteristic feature The mortgagor under this deed and under the subsequent deeds, which indicate advanced stages of the mortgage, is not entitled to Polichcheluttu and its concomitant advantages, Sakshi, &, (*Logan's Mal Man*)

Ottidravyam, (*Mal*) The money advanced on usufructuary mortgage (*Wil Gloss* 384.)

Ottikaranam (*Mal.*) The deed or instrument conveying the property to the mortgagee

Ottikkum purameyulla Kanam (Literally) the Kanam which is in addition to the Otti May be considered the third stage of mortgage. The mortgagor has borrowed 10 per cent, more than the sum he had received when he executed the deed of Otti. The deed specifies the emount of debt with this addition, and makes no allusion to the pattam. (*Logan's Mal Man*)

Otti kooly kanum A form of mortgage, in Malabar, nearly similar to otty (*Fifth Report.*)

Ottikondavan (*Mal*) A mortgagee, lit., the purchaser of a freehold

Ottikumpuram (*Mal*) A tenure higher than otti which leaves to the Janmi merely nominal rights, (*Moore's Mal Law*) Further advance after Otti payable with the otti amount (*Sund Iyer's Mal. Law.*)

Ottikurikanam (*Mal*) A mortgage in which it is conditioned either that the occupant shall be at liberty to relinquish the estate without charge for dilapidations, ten per cent of the principal loan being deducted to cover all injuries, or that the owner may reclaim it when he pleases, in which case he is to pay for any additional plantations or order improvements (*Wil Gloss.*)

Otty or **Otti** (*See* Otti) A form of mortgage and transfer of landed property in Malabar.

Otty Kempunum or **Kempoonum** A similar contract in Malabar to Otty

Ottypar A deed by which the Janmi or proprietor of land, in Malabar, transfers his property to another

Ought. Must, bound in duty, bound by moral obligation.

CONTRACT "WHICH OUGHT TO BE PERFORMED WITHIN THE JURISDICTION" These words were held to mean a contract some part of which "was, by its terms, bound" to be so performed. (*per* Ld. Herschell, *Comber* v. *Leyland.*)

Ought.

'INQUIRY WHICH OUGHT REASONABLY TO BE MADE" Inquiries which "*ought reasonably*" to be made by a purchaser to prevent him from being affected by constructive notice, mean, such as "ought" to be made "as a matter of prudence, having regard to what is usually done by men of business under similar circumstances" (*per* Lindley L J, *Bailey* v *Barnes*, (1894) 1 Ch 35 63 L J Ch 77, 69 L T. 542

"OUGHT TO BE UNITED AS GROUNDS OF ATTACK OR DEFENCE." Where matters are so dissimilar that their union might lead to confusion, the construction of the word "ought" would become important Dissimilar matters, if their union does not lead to confusion, "ought to be united as grounds of attack or defence" but not otherwise under S 11, Expl IV, C P. C 20 C 79 (P C)=19 I A 234, *see also* 20 Cal 79, 25 Bom 189, 31 Cal 79

Ounce. An ounce Avoirdupois, is 1/16th of an Imperial Standard Pound

Our. Pertaining to us, belonging to us

"Our children," used in a husband's will in respect of his wife means the children of us two, and will not include the wife's children by a former marriage, even though she has had no children by the testator (*Re* Baynham, 7 Times Rep 587)

The words 'HER CHILDREN, OUR CHILDREN,' and MY CHILDREN,' used by a testator in making devises bequests to his wife and his children, mean substantially the same, and constitute no ground for any distinction or a different construction of the gift than the usual acceptation of the term 'children"

Our A/C "Our a" "and our a/c" when used in mercantile accounts, mean 'our account'

Oust Put out of possession, eject

Ouster. An ouster is the wrongful dispossession or exclusion from real property of a party entitled to the possession thereof

OUSTER is the actual turning out or keeping excluded a party entitled to the possession of any real property

An ouster is an actual deprivation of the possession of the whole or a part of the land

"Ouster or dispossession', is a wrong or injury that carries with it the notion of a change of possession for, thereby, the wrong doer gets into the actual occupation of the land or hereditament, and obliges him that hath a right to seek his legal remedy in order to gain possession and damages for the injury sustained" (3 Bl Com 167)

Out-and-out Completely, fully, entirely, without any reservation

OUT AND OUT, as used in a deed of trust containing a power to sell the trust property for a price or consideration to be paid 'out and out' in money, means a sale for cash 'Lexicographers define this expression as meaning completely, entirely, without reservation, consequently when applied to an act to be performed 'out and out,' it must mean 'ended and complete'

Out of. Beyond the limits of, from or beyond the inside of, not in or included in

Out house.

"Out of any fee" (in S 13 (c) of Legal Practitioners Act (XVIII of 1879.) *See* 6 Ind Cas. 736 (738)

Out of income. A direction in an agreement to pay certain allowances "out of income" of specified properties shows an intention to create a charge (1922) 49 I A 153 (166)=49 C 820 (836)=37 C L J 56 =21 A L J 1=A I R 1922 P C 107=31 M L.T 79 =4 U P L R. (P C) 70=24 Bom L R 1257=27 C.W N. 101=69 I C. 138=43 M L J. 385

Out of jurisdiction 'Out of the jurisdiction,' as used in an Act relating to witnesses, means 'without or beyond the state,' and so beyond the reach of any process of the court to compel testimony,

Out of the realm Out of or beyond the country 'Out of the realm,' as understood by the judges of England, Parliament, and law writers, meant, prior to the union of the crowns of England and Scotland, out of the realm of England, and subsequent to such union, signified out of the realm of Great Britain, including England and Scotland

Out of the state A foreign corporation is a person '*out of the state*,' within the meaning of an Act providing that when any person is outside of the state when a cause of action accrues it may be commenced within the time limit therefor after his return

Out of use 'Out of use' is defined to be 'not in employment'

"Out-building" or "Out house" A building adjacent to a dwelling house, and subservient thereto, but distinct from the mansion itself, (*Carter* v *State* 71Am St Rep 262), a building appurtenant to some main building, a building contributory to the habitation separate from the main structure, either within or without the curtilage, a house belonging to or used with the dwelling-house, a house contiguous to and used with the dwelling house or with a hotel, the two belonging to and being controlled by the same person

An 'out building' is something which is to be used in connection with a main building

Outdoor agitation. Agitation conducted outside Parliament or the Legislature.

Out doors. In the open air.

Out fitter Supplier of equipment.

Out flank (*Mil*) Extend beyond the flank of enemy

Out goings Expenditure.

Out house is shed or building near to or belonging to a main house An '*Outhouse*' must be that which belongs to a dwelling house and, in some respects, part and parcel of such dwelling-house (*per* Taunton, J, *R* v *Haughton*, 5 C & P 559) "An out house is a building without the mansion house, intended for the accommodation of the owner or occupant It is the subserviency of it to the mansion house that gives it the denomination of an out house, and not the fact that it is included within the same fence, or within what is denominated the curtilage or homestead."

A house contiguous to and used in connection with a hotel, the two belonging to and being controlled by the same person, is an outhouse.

Outfit

A thatched Pigstye in a yard adjoining the house may be an *"out house"* (*R* v *Jones*, 2 Moody, 308)

A freight-car body, which has been detached from the wheels and placed upon permanent posts near a track at a station, and to which a platform has been attached, thus constituting a structure to be used as a freight warehouse may be characterized as an outhouse

Outfit (*Of a Ship*) "That portion of the ship's furniture or apparel which ordinarily perishes, or is consumed in the course of her voyage, as provisions for the crew, spare ropes, and the like" (*Lowndes on Insurance*, 2 ed, II)

Outgoing Something that has gone out an expense, some payment which must be made to secure the income of the property The word is not however highly definite in its significance and has upon several occasions been characterized by the courts as large in scope, and must always be construed with reference, to context and circumstances

"ALL RATES AND OUTGOINGS TO BE ADJUSTED AS USUAL" This phrase means, "out-goings which would enure to the benefit of the purchaser" (*Country Estates Co* v *Graves*, 1895, A C 113)

Outlaw One who is put out of the law, deprived of its benefits and protection (*Burrill, Cowel*)

By the unlearned the word 'outlawed' is often used as applying to notes, bills, and other evidences of debt invalid by lapse of time, or as tantamount to the legal language 'barred by the statute of limitations' Thus, a barred note in popular phrase is said to be 'outlawed' and it will be given this sense in an agreement by one to pay a certain note in case the promissor therein did not pay it before it was 'outlawed' (*Words and Phrases*)

Outlawry The being put out of the law The loss of the benefit of a Subject, that is, of the King's protection (*Cowell Tomlins Law Dic*)

OUTLAWRY is an old process of the common law for compelling a person to appear before a Court of justice and meet a charge or claim made against him, and for punishing him for his contempt in not appearing and for evading writs or warrants issued for his arrest In the earlier procedure and old law books it bulked largely (*see* Vin Abr, tit "Utlawry", wilful refusal to be amenable to the justice of the Court is a crime of the highest nature, so it subjects the party to outlawry, forfeiture and other disabilities, for he loseth his legal liberty and is out of the King's protection, (Co Litt 128 1 Roll Abr 802 (*Tomlins Law Dic*)

Outlawry, legally speaking, is a judicial proceeding, and no one can be outlawed but in such a proceeding, and by due process of law *See also* on this Subject Pollock and Maitland, Hist Eng. Law, 3 Black Com, 283, 4 do, 319, 1 Chit Cr Law, 347, Short and Mellor, Crown Practice 384

Outlay. Expenses.

Out live Live longer than or beyond another

TO OUTLIVE, SURVIVE. To Outlive is literally to live out the life of another, to live longer to survive is to live after; the former is employed to express the comparison between two lives, the latter to denote a protracted existence beyond any given term one person is said properly to outlive another who enjoys a longer life but we speak of surviving persons or things, in an indefinite or unqualified manner it is not a peculiar blessing to outlive all our nearest relatives and friends, no man can be happy in surviving his honour

Out-number. Be more numerous.

Out patient. Patient not lodged in the hospital

Output. Amount of goods produced by manufacture

Outrage · A bold or wanton injury to person or property, wanton mischief, gross injury, aggravated wrong; forcible violation of other's rights, sentiments etc,, gross or wanton offence.

Outright. Entirely, once for all, altogether, without reservation (as) outright sale

Outsider. Non member of a society, circle, party or profession

Out skirts. Outer border of a city, town etc.

Outstanding, Still unsettled prominent, conspicuous (*Accounts outstanding*)

Outstanding accounts Such accounts as are due or unpaid In its mercantile sense, such accounts are generally deemed good and collectible, and from which, accounts deemed to be bad and uncollectible would have to be segregated and charged to profit and loss

Outstanding crop Crop in the field, not gathered and stored

Outstanding liabilities Debts and liabilities due and unpaid.

Outstanding title Such a title as a stranger could recover on in ejectment against either of the contending parties, superior title (*Ame. Cyc.*)

Outstay Stay longer than, or beyond time allowed.

Out voter Non-resident voter.

Outward Directed towards the outside; visible, apparent, superficial.

OUTWARD, EXTERNAL, EXTERIOR *Outward*, or inclined to the out, after the manner of the out, indefinitely describes the situation *External* is more definite in its sense, since it is employed only in regard to such objects as are conceived to be independent of man as a thinking being hence, we may speak of the *outward* part of a building, or a board, of a table, a box, and the like, but of *external* objects acting on the mind, or an external agency. *Exterior* is still more definite than either, as it expresses higher degree of the outward or external.

Outweigh. Exceed in weight, value, or importance.

Outwit. Overreach, prove too clever for.

Outwork. Advanced or detached part of a fortress etc.

"Outworks" defined 6 Edw. 7, c 58, S. 13.

Over · Above, an elevation above; at a higher level, higher than, in place or position; across, on the surface of

Over.

"*Prima facie* a Bridge 'over' a River, or 'over' a street, means, a bridge with an arch which shall clearly span it, and if I covenant to build a bridge over a river or a road, I must not block up or obstruct any part of it with piers or abutments, but must make an arch which shall span completely over, without contracting, it" [(per *Wood V C Clarke* v. *Manchester S & L Ry*, I J & H 636, 637)

Over. In the beginning or ending of the names of places, signifies a situation near the bank of some river; at St. Maryover, in Southwark (*Tomlins Law Dic.*)

Overboard. From within ship into water (as) throw overboard

Over capitalize Fix or estimate capital of a company too high

Over-charge A charge of a sum, more than is permitted by law Put excessive charge into gun, electric appliance etc

Overcome Prevail over, be victorious, get the better of.

Over crop Exhaust land by continuous cropping.

Overcrowding The word 'over-crowding' in by-law framed under the Municipalities Act means that houses should be at such distance from each other that one house is not injuriously affected by another house. 1931 A L J 206=53 All 500=133 I C 148= A I R 1931 All 147.

Overdraft A loan, the act of issuing cheques for more money than one has on deposit in a bank, an act by reason whereof the drawer obtains special credit from the bank upon his cheques, over-drawing of bank account, amount by which balance is overdrawn

"OVERDRAFT occurs when a depositor of a bank issues cheques for more money than he has in the bank. Sometimes the bank permits this to be done without security and without previous arrangement, and sometimes a previous arrangement to this effect is made, and security for the repayment of that amount is given, and a rate of interest is agreed on But every overdraft, whether by previous arrangement or not, and whether drawing interest or not, is a loan"

Overdraw To draw upon a bank by bills or cheques to an amount in excess of the funds remaining to the drawer's credit

The act of overdrawing an account is properly described as one whereby one unlawfully obtains money from a bank on his cheque, and the money is drawn from the bank by him who draws the cheque, and not by him who receives it, and it is drawn upon the account of the individual by whose cheque it is drawn though it be paid to and for the benefit of another

Over-drive. In respect of Cruelty to Animals Act "Over-drive" includes "over-ride" (*Stroud.*)

Overdue. Past the time of payment

A Bill of Exchange or Promissory Note payable on a stated day, is not "overdue" until the day after that day. (*Hinton* v *Duff*, 31 L J C P 199) As applied to negotiable paper, "overdue" may mean that the bill has come into the hands of an indorser so long after its issue as to charge him with notice of its dishonour, or that the period has elapsed in which it should have been presented (*Ame Cyc*) A Bill or Promissory note payable "On Demand," or a Cheque is "*Overdue*" is not paid within a reasonable time (*Byles on Bills*) "What is an unreasonable time for this purpose, is a question of fact." (*Rothschild* v *Corney*, 9 B. & C. 388)

As a general rule, a note or bill may be said to be overdue when the period has elapsed in which it should have been presented

Overestimate Put at two high a value, or estimate at two high an amount

Over expose (*In photography*) Expose to too much light or for a longer time than necessary

Overflow To fill beyond the brim of margin, to drown, submerge

TO OVERFLOW, INUNDATE, DELUGE What *Overflows* simply flows over, what *Inundates* flow into, what *deluges* washes away

The term *overflow* bespeaks abundance, whatever exceeds the measure of contents must flow over, because it is more than can be held to *inundate* bespeaks not only abundance, but vehemence when it inundates it flows in faster than is desired, it fills to an inconvenient height, to *deluge* bespeaks impetuosity, a *deluge* irresistibly carries away all before it

Over govern Subject to needless regulations and restrictions

Overhaul Pull to pieces for inspection, examine the state of (a machine etc)

Over-head charges (*In commerce*) charges due to office expenses, management, interest on capital, and other needs of the business concern

Over-head price A price including extras

Over-hear Hear as eaves-dropper, or unperceived

Over-issue To issue in excessive quantity, to issue in excess of legal limits (as) overissued stocks or shares Issue notes, shares etc beyond authorized amount or beyond one's ability to pay

Overissued stock. By overissued stock is to be understood stock to be issued in excess of the amount limited and prescribed by the Act of incorporation Certificates of stock issued in excess of the certificates that represent the full authorized capital of the corporation represent overissued stock Such stock is spurious and wholly void

Overladen Too heavily loaded.

Overland. By land and not by sea (as) overland route

Overleaf. On the other side of the leap of a book

Overlord Supreme lord, Suzerain

Overmaster. Get complete victory or control over

Overpeopled. Too thickly populated.

Over-persuade

Over-persuade. Persuade in spite of pre-possession.

Overpersuasion. A term sometimes used as equivalent to artifice; Deception Inducement, Promise (*Ame. Cyc*)

Overplus What remains after payment of the rent and the reasonable charges and expenses (*Lyon* v *Tomkies*, 1 M & W. 603) Surplus, superabundance.

'OVERPLUS' as used in an Act providing that the overplus on a distress shall be left in the hands of the sheriff, for the owner's use, means that which remains after payment of the rent and of the reasonable charges.

Overpower Reduce to submission, subdue; master

OVERPOWER, BEAR DOWN, OVERWHELM, SUBDUE. One is overborne or borne down by the exertion of individuals, overpowered by the active efforts of individuals, or by the force of circumstance, overwhelmed by circumstances or things only, overborne by another of superior influence, borne down by the force of his attack, overpowered by numbers, by entreaties, by looks, and the like, and is overwhelmed by the torrent of words, or the impetuosity of the attack

Over production Production of commodities beyond the reasonable requirements of commerce or home consumption

Over proof Containing more alcohol than proof spirit contains

Overrate Estimate too much, at too high a value; overrating means "rating by way of excess, and not one which ought not to have been made at all." (*per* Parke, B., *Allen* v *Sharpe*, 17 L. J. Ex. 214)

Overreach. Circumvent

Over-rent Exact too high a rent from tenant

Override Ride over enemy's country with armed force, trample under foot, claim superior authority.

Overriding trust. Trust that takes precedence of such others as have been previously declared.

Overrule. Set aside decision or argument by superior authority or by a higher court.

OVERRULE, SUPERSEDE. A man may be overruled in his domestic government or he may be overruled in a public assembly, or he may be overruled in cabinet; large works in general supersede the necessity of smaller ones, by containing that which is superior both in quantity and quality.

Overrun. Flood, harry, and spoil enemy's country.

OVERRUN, RAVAGE. To *overrun* and to *ravage* are both employed to imply the active and extended destruction of an enemy, but the former expresses more than the latter: a small body may *ravage* in particular parts; but immense numbers are said to *overrun*, as they run into every part: the Barbarians *overrun* all Europe, and settled in different countries; detachments are sent out to *ravage* the country or neighbourhood.

Overstock.

Overseas Across or beyond sea (as) overseas dominions of the British Empire.

Oversee. To oversee is to superintend.

Overseer. An agent; a superintendent; one who is employed, not to labour himself, but to overlook and direct the labour of those who are employed to do manual work (as) of planting, cultivating, and gathering the crop etc.

"An overseer is an agent, a superintendent, a sort of *alter ego*. His business is not to labor, but to oversee those who do work in subjection to his authority He might in special cases unite both capacities, and be both laborer and overseer. Where an overseer did not perform any labor except to supervise and superintend a farm and laborers, he is not a laborer, within the meaning of an Act giving laborers a lien for wages."

Overseer of highways. Wherever the word 'overseer' is used in the act relating to highways, it shall be construed to mean the officer of highways appointed over and for each road district.

Overseers of the poor Public officers in England created by statute to provide for the poor of every parish. Church wardens by the English statute are called Overseers of the Poor, and they join with the Overseers in making a Poor's rate, &c. But the churchwardens having distinct business of their own, usually left the care of the Poor to the Overseers only, though originally they were the sole Overseers of the Poor. (Wood's Inst. 93. *Tomlins Law Dic*) The general duties of an *overseer* of the poor are defined in the Overseers' Handbook, 1906, by W. Mackenzie. See for history, see Reeves, Hist. English Law, Shaw, Parish Law, Steer Parish Law; Burn, Justice of the Peace, Prideaux, Churchwarden's Guide

Oversell. Sell more of commodity, stock etc., sell more than one can deliver

Overside (*of loading and unloading ship*)—over the side from or into lighters

Oversight. Inadvertent mistake, omission to notice; a casual overlooking of something that should have been seen.

The term 'oversight' in an Act allowing the Court to vacate or correct mistakes in judgments given through inadvertence or oversight, does not apply to any judgment which was given upon the deliberate consideration and judgment of the court, though the court may have since adopted a different ruling as correct It will be seen that the case provided is where judgment is *given* through inadvertence or oversight, and not where an opinion is *formed* from inadvertence and oversight.

An entry in the Revenue Register made owing to a misunderstanding of a certain order can be rectified by the Revenue authorities, the case of error being of the same nature with "oversight" 36 Bom. 315=14 Bom.L.R. 124=14 I C. 473.

Overspend Spend too much, or more than what is allowed.

Overstate. State too strongly; exaggerate

Overstock. Lay in too large a stock of; (*i.e*) beyond the necessary or reasonable requirements,

Oversubscribe.

Oversubscribe. Subscribe more than the required amount of capital, loan etc.

Overtax. Burden with excessive taxes

Overthrow. Upset, knock down; vanquish put out of power, put an end to (as) an institution

'Overtime. Beyond regular hours of work (as) overtime employment of workman in a factory

'OVERTIME,' as used in relation to the services of railroad employees, is the time which they are delayed on their runs beyond that fixed by the schedule.

Over-tonnage. Providing of a greater tonnage of ships than is required for the freight to be shipped.

Overturn Upset, overthrow subvert.

TO OVERTURN, OVERTHROW, SUBVERT, INVERT, REVERSE To *overturn* is said of small matters, to *subvert* only of national or large concerns, domestic economy may be *overturned*, religious or political establishments may be *subverted*

We may *reverse* a proposition by taking the negative instead of the affirmative; a decree may be *reversed* so as to render it nugatory, but both of these acts may be right or wrong, according to circumstances likewise, the order of particular things may be *inverted* to suit the convenience of parties, but the order of society cannot be inverted without *subverting* all the principles on which civil society is built.

Over-valuation. Putting too high a value on a thing. Valuation in excess of the market value of the property. (31 Am. Rep 666)

Under the insurance policy providing that it should be void in case of overvaluation of the property insured, the term 'overvaluation' means a substantial overvaluation, that is, one which would not ordinarily arise from a difference of opinion.

Over-valuation or under-valuation By the phrase "over-valuation or under-valuation" in S. 11, Cl (1), Suits Valuation Act (VII of 1887) the Legislature intended to include all cases of erroneous valuation The language of the Act is comprehensive enough to cover a case wherein a court has exercised jurisdiction by reason of an arbitrary valuation, when no valuation ought to have been made, because the suit was incapable of valuation 31 C. 849=8 C W N. 705

Overweight Excessive weight beyond the weight allowed,—especially used of luggage.

Overwhelming. Irresistible by numbers or weight etc

TO OVERWHELM, CRUSH, To *overwhelm* is to cover with a heavy body, so that one should sink under it to *crush* is to destroy the consistency of a thing by violent pressure When many persons fall on one, he may be *overwhelmed* but not necessarily *crushed*. when a waggon goes over a body, it may be *crushed*, but not *overwhelmed*.

Overwhelming proof Proof sufficient to remove every doubt from the mind.

Own.

"Proof sufficient to remove every doubt from the mind is, in effect, overwhelming, because it establishes the fact sought to be proved, and no proof can usefully accomplish more than this result"

Overwork Work too much, exhaust with work; injurious amount of work

Overt, (*Fr*) Open, an opening, (*Tomlins Law Dic*)

Overt Act An open act which by law must be manifestly proved (3 Inst 12) (*Tomlins Law Dic*)

An overt act sufficient to justify the taking of human life must be some demonstration made by the deceased against the accused of such character as to impress upon him that he was in imminent danger of his life or some great bodily harm. In some instances the extent of the overt act which would induce the accused to act in self-defence is measured by the character of the deceased for a violent, quarrelsome, dangerous and turbulent disposition, notorious in the community or known to the accused

Overture An opening, a proposal

Ovum Germ in the female animal from which by fertilisation with the male sperm the young is developed

Owe Be under obligation to pay

'Owes' as used in a plaint charging that the defendant owes the plaintiff the price of an article sold, means simply to be obliged or bound to pay, and applies as well to an immature as to an overdue obligation

'Owes and is indebted,' as used in a recognizance declaring that the party owes and is indebted, etc, is synonymous with the words 'is held and firmly bound to pay' The language, though varied in form, has the same force and meaning.

Owing Held under obligation of paying, due, absolutely and unconditionally bound to pay, (as) debt owing.

The word 'owing' is often used in business transaction as synonymous with 'due' or 'remaining unpaid'

The phrase 'DEBTS OWING OR ACCRUING' in an Act authorizing an attachment of all debts owing or accruing from the garnishee to the judgment-debtor, includes all debts, though not presently payable.

Owelty equality. The term 'owelty' is usually, if not universally, applied to partition of lands.

Own To have a good legal title to; to hold as property, to possess; often used as synonymous with possess

'OWN' as used in the description of a deed conveying all the land 'which I own in the said town,' means all the lands claimed and possessed by the grantor and includes land conveyed to him, but to which he did not appear to have any title by record, or any other than a title acquired by possession.

The term 'OWN ESTABLISHMENT,' in a license to use an invention at the licensee's own establishment, cannot be construed to include an establishment owned by the licensee and others.

Own.

"OWN PERSONAL USE" These words in Arms Act (XI of 1878) rules mean use, not by a servant, nor by friend, nor by anyone else, but only by the master. 9 I C 720 (721).

'OWN RIGHT,' as used in a grant of property to a married woman in her own right, means to her own use and benefit.

OWN USE. Where a marriage settlement contained a limitation 'to the executors' to and for their *'own use and benefit,'* the words, though strong, as showing that the executors were entitled to take beneficially, will not be so construed where the opposite intention is shown by the entire context

"Owner" defined. (*See also* Dominant owner, Land owner, Rateable owner, Servient owner), Act 19, 1850, S. 25, Act 6, 1878, S 3, Act 8, 1878, S 4 Act 19, 1884, S 2 (3), Act 2, 1886, S. 24 (2), Act 20, 1891, S 3 (5), Act 8, 1901, S 3 (*e*), Act 2, 1902, S 3 (2), (*f*), Act 16, 1903, S 2 (*d*), Act 7, 1904, S 2 (6), Act 2, 1907, S 2 (*c*), Act 15, 1910, S 2 (*e*), Ben Act 3, 1867, S 1, Ben Act 4, 1871, S 1, Ben Act 3, 1876, S. 3 (9), Ben Act 5, 1876 S 6 (14), Ben Act 3, 1879, S 3, Ben Act 3, 1884, S 6 (11), Ben Act 1, 1887, S 2, Ben Act 4, 1887, S 2, Ben Act 3, 1899, S 3 (32) Bom Act 6, 1879, S 3 (5); Bom Act 7, 1879, S. 3 (7), Bom Act 6, 1886, S.2 (7), Bom. Act 3, 1888, S 3 (*m*), Bom Act 2, 1891, S 3 (*e*), Bom Act 3, 1901, S 3 (8), Bur. Act 3, 1898, S 2 (8), Bur Act 4, 1905, S 4 (7), Bur Act 2, 1910, S 3, Mad Act 7, 1871, S 1, Mad Act 4, 1884, S 3 (*xiv*), Mad Act 5, 1884, S 3 (*xviii*), Mad Act 3, 1885, S. 3 (3), Mad Act 3, 1893, S 2, Mad Act 3, 1904, S 3 (23), Mad Act 2, 1905, S 5 (8), P Act 2, 1902, S 2, U P. Act 1, 1891, S 2 (*e*), U P Act 3, 1894, S 2 (4), U P. Act 1, 1899, S 2, Reg 5, 1886, S 2 (6) Reg 2, 1907, S 2 (*d*), Reg 5, 1910, S 2 (*viii*), Pun Act 3, 1911, S 3

OWNER. "One who has dominion of a thing, real or personal, corporeal or incorporeal, which he has the right to enjoy and to do with it as he pleases—either to spoil or destroy it as far as the law permits—unless he be prevented by some law, agreement or covenant which restrains his right", one who owns, the rightful proprietor. *See also* 34 Cal 257=5 C.L J 148

The popular definition of the word 'owner' is one who has the right to own, exclusive right of possession, legal or just claim or title, proprietorship.

The word 'owner,' has always been construed to include and mean equitable owner, as well as the person who holds the legal title.

OWNER AND OCCUPIER *See* 34 Cal. 257=5 C L J 148, INDIAN FACTORIES ACT, S. 3.

"OWNER OR PROPRIETOR" of a property is the person in whom it is for the time being beneficially vested, and who has the occupation, or control, or usufruct, of it. (*Eglinton* v. *Norman*, 46 L.J.Q.B 559)

OWNER OF BOILER (OR MACHINERY) "Owner" (*under Boiler's Act*) includes any agent or hirer using any boiler or prime-mover, Bur Act II of 1910 (Steam Boilers and Prime-movers), S. 3 *See also* Boilers Act, 1923, S. 2.

"OWNER" includes also any person using any boiler or prime-mover as agent of the owner thereof, and any person using a boiler or prime-mover which he has hired from the owner thereof, Bur Act XVIII of 1882. Burma (Steam Boilers and Prime-movers), S. 2.

OWNER OF BUILDING OR LAND "Owner", used with reference to any building or land, (occurring in Municipal Act) includes the person who is receiving the rent of the building or land, whether on his own account or as agent or trustee, or who would so receive the rent if the building or land were let to a tenant C. P Act XVI of 1903 (Municipal), S 2, cl (*d*).

"Owner" includes—(*a*) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise, (*b*) a manager on behalf of any such person, (*c*) an agent for any such person, (*d*) a trustee for any such person Ben. Act III of 1884 (Municipal), S 6, cl 11 *See also* 21 I C 169

OWNER OF GOODS when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale or custody of such goods Bom Act VI of 1886, Port Trust (Karachi), S. 2, cl 7.

OWNER OF LAND The word "owner" (for purposes of land revenue) shall include zamindars, holders of patni tenures or of any rent-free tenure, dependent talukdars, grantees and farmers or holders of tenures paying revenue direct to Government Ben. Act VII of 1866 (Embankment), S 10.

"OWNER OF PALANQUIN" defined. Ben Act 2, 1891, S 48 (3).

OWNER OF SHIP. The word "owner" (*in respect of a ship*) includes any agent acting for and on behalf of the owner of a ship at the port at which such ship shall lie or be. Ben Act III of 1867 (Ports), S 1.

OWNER OF VESSEL "Owner" when used in relation to any vessel, includes any part-owner, charterer, consignee or mortgagee in possession thereof Bom Act VI of 1879, Port Trust (Bom), S. 3, cl. 5

"OWNER" includes also any agent to whom a vessel is consigned. Bur. Act IV of 1905 (Burma Port), S. 4, cl 7

"OWNER OF VILLAGE-CHANNEL" defined. Ben. Act 3, 1876, S 58

"Owner's rate" defined. Act 8, 1873, S 37

Owner's risk These words in respect of carriage of goods by a Railway or other common carrier, means, at the risk of the owner, minus the liability of the carrier for misconduct of himself or servants. (per *Bramwell, L J., Lewis* v *G W Ry*, 47 L J Q B. 134; 3 Q B D 195.) "OWNER'S RISK", only exempts the carrier from the ordinary risks of the transit and does not cover the carrier's negligence or misconduct, (*Mitchell* v *Lanc. & Y R*, 44 L.J. Q.B. 107; L R 10 Q.B. 256, Indian Railways Act, S. 72)

Ownership. Ownership is the right by which a thing belongs to an individual, to the exclusion of all other persons.

Transfer of stolen property passes no ownership to buyer 51 Cal 796=25 Cr.L.J. 1235=82 I C 163= A.I.R. 1924 Cal. 816.

OWNERSHIP OF PROPERTY is the dominion or right over a thing, real or personal, corporeal

Ownership

Ownership

or incorporeal, which the owner "to enjoy and to do with it as he pleases—either to spoil or destroy it as far as the law permits—unless he be prevented by some agreement or covenant which restrains his right."

The ownership of property by several persons is either (1) of joint interests, (2) of partnership interests, or (3) of interests in common

OWNERSHIP AND POSSESSION Ownership and possession are two distinct juristic conceptions and in every transfer of ownership from one person to another by the act of the party, a transfer of possession is not always necessary. 33 All 683=11 I.C. 762=8 A L J 746.

The ownership of property may be in the sovereign and the use of possession may be private or public, or the ownership may be public and the use private This depends upon the character of the ownership and dedication, and the circumstances of the use.

Ox-Oxen. 'Oxen' are included in the term 'cattle,' as used in a statute providing for damages for killing cattle.

Oyer and terminer. A Court or Commission of "Oyer and Terminer", is one to hear and determine. (*Termes de la Ley, Cowel, Jacob*)

It was a commission directed to certain judges in England and other gentlemen of the county to which it is issued, by virtue whereof they had power to hear and determine treasons, and all manner of felonies and trespasses (*Tomlins Law Dic*)

P

P A 'P.A.' as used in a promissory note reciting 'Int. at 6 per cent.' P.A is an abbreviation for 'per annum'

Pachbala (*Punjabi*) A sacrifice made to Mari Mai, consisting of a pumpkin, a male buffalo, a cock, a ram and a he-goat.

Pachotri A surcharge of 5 per cent on the revenue paid to village headman.

"Pachwai" defined. Ben Act 5, 1909, S 2 (16), E B & A Act 1, 1910, S 3 (16), U P Act, 4, 1910, S. 3 (7).

Pacification, (*Pacificatio.*) A peace-making, quieting, or appeasing. (*Tomlins Law Dic*)

Pacifist. Advocate of the abolition of war

Pacifism. Advocacy of the abolition of war

Paci sunt maxime contraria, vis et injuria A maxim meaning "Violence and injury are especially contrary to peace" (*Peloubet Leg. Max*)

Pack To place together and prepare for transportation, to put goods in a box, or clothing in a bundle

The term 'to pack,' in its ordinary signification, especially when used in reference to carriage, means to place together and prepare for transportation, as to make up a bundle or bale.

Package. A number of things bound together convenient for handling and conveyance; a bundle, a quantity pressed or packed together, a bundle or bale made up for transportation, a bundle or parcel.

The term 'package' means a bundle or parcel made up of several smaller parcels, combined or bound together in one bale, box, or other form of package

A package is a number of things done up conveniently for handling and convenience, a bundle put up for transportation or commercial handling.

Packed parcels The name given for a consignment of goods, consisting of one large parcel made up of several small ones (each bearing a different address) collected from different persons by the immediate consignor (a carrier)

Packer. "This is a term well understood in London, and means, a person employed by merchants to receive, and (in some instances) to select, goods for them from manufacturers, dyers, calenderers etc, and pack the same for exportation" (Arch. Bank, II ed, 37)

"Packet" defined *See* Clubbed packet

PACKET Two or more letters or things under one cover (11 Am Dec 133)

A letter is a message in writing A packet is two or more letters under one cover

Postal Packet In the English Post Office Act, 1875, 38 and 39 V c 22, "*Postal Packet,*" means, a letter, post-card, newspapar, book-packet, pattern or sample packet, circular, legal and commercial document, packet of photographs, and every packet or article which is not, for the time being prohibited by or in pursuance of the Post Office Acts from being sent by post

Packing jury An expression importing the improper and corrupt selection of a jury sworn and impanelled for the trial of a cause

'Packing a jury' as used in an article in a newspaper charging a justice of the peace with malpractice in packing a jury, must be construed as clearly importing the improper and corrupt selection of a jury sworn and impaneled for the trial of a cause.

Pact Covenant, compact

Pacta conventa quae neque contra leges neque dolo malo initia sunt omni modo observandu sunt. A maxim meaning "Contracts which are not illegal, and do not originate in fraud must in all respects be observed." (*Bouvier L Dic*)

Pacta dant legem contractui A maxim meaning "The stipulations of parties constitute the law of the contract." (*Black L Dict*)

Pacta privata juri publico derogare non possunt. A maxim meaning "By the bargain of private persons nothing can be derogated from public law," (*Morgan Leg. Max*)

Pacta privata non derogant juri communi. A maxim meaning "Private agreements cannot derogate from common right (or law.) (*Burrill L. Dict*)

Pacta quae contra leges constitutiones que vel contra bonos mores fiunt nullam vim habere indubitati juris est. A maxim meaning "That contracts which are made against law or against

Pacta quae turpem.

good morals, have no force, is a principle of undoubted law." (*Peloubet Leg. Max.*)

Pacta quae turpem causam continent non sunt observanda A maxim meaning "Agreements founded upon an immoral consideration are not to be observed." (*Black L Dict.*)

Pacta reciproca vel utrosque ligant vel neutrum · A maxim meaning "Mutual bargains bind both parties or neither." (*Morgan Leg Max.*)

Pacta traditione firmantur A maxim meaning "Agreements are confirmed by delivery" (*Morgan Leg Max*)

Pactis privatorum juri publico non derogatur. A maxim meaning "Private contracts do not derogate from public law" (*Black L Dict.* citing *Broom Leg Max* 695.)

Pacto aliquod licitum est, quod sine pacto non admittitur. A maxim meaning "By special agreement things are allowed which are not otherwise permitted." (*Black L Dict* —citing *Coke Litt.* 166)

Pactum de assedatione facienda et ipsa assedatione aequiparantur. A maxim meaning "An agreement to grant a lease is equivalent to the lease itself" (*Peloubet Leg. Max.*)

Pada, (*S.*) A head, title, or topic of legal or judicial proceedings, of which eighteen are enumerated, by Hindu law-givers (*Wil Gloss* 385)

PADA (*S*) A quarter; as before, but as a term in Hindu law, it signifies one of the four steps or stages by which law-suit is directed to proceed, *viz*, 1 Bhashpada, the declaration, the charge or plaint; 2 Uttarapada, the reply or defence, 3 Kriyapada, the essential matter, the evidence or proof, whether oral or documentary, 3 Sadhya siddhi-pada, the judgment or decision, (*Wil Gloss.* 385.)

Padaram (*Mal.*) A fee paid to the Raja, or his representative, on a transfer of landed property.

Padasaksha (*Mar*) Corroborative evidence. (*Wil Gloss* 386.)

Padasankaina (*S*) A mixed plaint in a law suit at law. (*Wil Gloss* 385)

Pada-vandanika (*S*) Property given by a husband to a wife at the time of marriage in return for her humble salutation or marks of deference. (*Wil. Gloss* 385.)

Paddy. Unhusked rice.

Padhmi. It is a woman espoused in lawful wedlock and possessed of a capacity to perform the religious ceremonies for the benefit of her husband. 7 Ind Cas. 543 (544).

Padi (*Tam*). A measure of capacity at Madras, one-eighth of a Marakal, being the same with the nali, or nazhi (*Wil Gloss.* 386).

Padiya (*Tel.*) Fallow, uncultivated, waste.

Padiyal (*Tam*) A hired servant especially one paid with grain.

'**Padugai**', 'meaning of. *See* 38 Mad. 108=18 I.C. 41:

Pagri.

PADUGAI. The padugai rising up from the river-bed and up to the flood-bank is not part of the river-bed and if it has been lying waste, is included in those poramboke lands which, must pass to the grantee under the expression "besides poramboke" in the inam title deed. 24 M L.J 31

Padugai land in the Trichinopoly and Tanjore taluks means land on the lower level bank of the river between the edge of the sandy stream bed and the high flood level bank It is known as padugai waste, padugai punjem, padugai garden, or merely padugai While the sandy river-bed is known as the Neerodi very occasionally, the high island (made of alluvial deposits) formed by two branches of a river dividing and rejoining within a few yards' distance might be called padugai and such land, if of small area, may, no doubt, be treated as part of the river-bed poramboke and may not be ordinary poramboke waste, 24 M.L J. 31=(1913) M.W.N. 261=18 Ind Cas. 41 (42).

Padugar (*Tam.*) Ground fit for moist cultivation rice ground.

Padugu (*Tel*) The lower part of a heap of corn, or part left after the rest has been carried away. (*Karn.*) A heap of ears of corn piled in threshing floor, ready to be trodden out.

Padunilam (*Tam*) Barren ground.

Paganism The religion of those who have not the knowledge of the true God, but worship idols. (16 Am. Rep. 82).

Page. In printing, when used as a measure of computation, a term which may mean two hundred and twenty-four words. (*29 Ame. Cyc.* 1553). The measure may however vary in different places and for different purposes.

Pagla (*Mar*) A village servant or officer, in the West of India whose duty it was to track fugitives and thieves by their footmark from one village to another, which was then to take up the search wherever the footmarks ceased the nearest village was made responsible for any property stolen. (*Wil. Gloss.* 387).

Pagoda (*H.*) The European designation of a Hindu temple in the South of India also the gold coin formerly coined at Madras, from its having the device of a temple on one face, but called by the natives Varaha (the origin of this term is doubtful) It is sometimes ascribed to the Portugese, sometimes to the Persian But-khada, and idol temple, or to the name of the goddess Bhagavati, who is represented on some of the coins, but neither rests upon sufficient authority).

Pagoda puramboke. The entry in the settlement register that a particular land is "pagoda poramboke" merely relates to the opinion of the revenue officers and is no authority for holding that the Government relinquished the right to levy assessment for all time. Where certain lands originally classified as pagoda poramboke were subsequently utilised for private purposes and thereupon the Government assessed the same to full revenue. *Held* that the procedure adopted was valid in law. (1928) M.W.N. 581=A.I.R 1928 Mad. 1176.

Pagri (*Hindustani*). A turban; also a poll tax formerly levied in the Delhi districts.

Pagudi.

Pagudi (*Karn.*) Toll, tribute, tax applied also in karnataka to an extra assessment under the Mohammaddan government, or to any addition to the fixed rates. (*Wil Gloss.* 387).

Pagudikaran (*Tam*) A collector, a tax-gatherer (*Wil Gloss* 387).

Pagvand A custom of inheritance under which sons by different wives each take the same share of the property, division being per capita (*Compare Chundavand*).

Pahal (*Punjabi*) A gate, the name of the Sikh ceremony of initiation instituted by Govind, the tenth Guru; it is performed by not less than five Sikhs, one of whom is usually a Nirmala and consists of the sprinkling of the novitiate with sugar and water which have been stirred together with a dagger or other iron weapon.

Paharaj is a title of the tenure as well as the person holding it *See* 32 C. 6 at 15.

Pahi (*H.*) A non-resident cultivator, a temporary occupant of village land, a tenant at will (*Wil. Gloss* 387)

Pai (*Mar*) A quarter, a fourth part, in currency the fourth part of an anna, but applied in Bengal to a smaller division, or one-twelfth, which was formerly a money of account, but since 1835, has been struck of copper, weighing 33 and one-third grains (*Wil. Gloss.* 388)

Paid. Applied, settled satisfied.

A debt is paid when the contract is performed pursuant to the stipulation made, but if, on an agreement, something collateral is received in satisfaction, although the demand is extinguished, the debt, technically speaking, is not paid. (*Words and Phrases*)

Paikari A cultivator without hereditary rights The term is the equivalent of the Tamil Parakudi

Paikasht, (*H*) The term usually employed in Hindustan for a migratory or non-resident cultivator, one who cultivates lands in a village to which he does not belong by birth or by hereditary claim and, holds his lands either for a stipulated term, or at pleasure of some member or members of the proprietary body (*Wil Gloss.* 389).

Paikasht-raiyat, (*H*) A non-resident or temporary cultivator (*Wil Gloss.* 388).

Paikasht-zamin, (*H.*) Land held on the tenure of temporary occupancy. (*Wil. Gloss.* 388).

Paimash Accounts prepared from time to time by the revenue officials in Malabar (*vide* chapter XVI). (*Moore's Malabar Law*).

PAIMASH. Measurement, measuring, survey. *Kolpaimasi* (*Mal.*) Regular survey, measurement by the kol or rod

Paimash-dar, (*H.*) A measurer, a surveyor. (*Wil Gloss* 389).

Pain. Some bodily suffering or corporeal infliction; mental distress, anxiety, grief, Anguish. (*Webster Dict*).

Painam, (*H*) A denomination under the Mohammadan Government of the principal divisions of a

Palabhogam.

Subah; for instance, the Subah of Bengal was divided into two chief Painams, the ceded lands of 1760, and the diwani lands of 1765, the latter was again subdivided into 26 Painams (*Wil. Gloss.* 389).

Painter. One who represents the appearance of natural or other objects on a surface by the means of colours

Painting A likeness, image, or scene depicted with paints (*Century Dict*)

Pair Two things of a kind, similar in form, identical in purpose, and matched or used together. (*Century Dict*).

Pais Assurance of land "by matter in pais, or deed, which is an assurance transacted between two or more private persons in pais in the country; that is (according to the old common law) upon the very spot to be transferred" (2 Bl Com 294).

Paisa, (*H*) A copper coin, which under the native government, varied considerably in weight and value in common parlance, it is sometimes used for money in general. In Marathi, Paisa also signifies a land measure equal to 7 and a half bighas (*Wil Gloss* 389)

"Paisalaivittathu" (*Tam*) **"பைசலாய்விட்டது"** Where the sale certificate issued to a purchaser of the equity of redemption in discharge of a mortgage contained the tamil word **"பைசலாய் விட்டது"** with reference to the mortgage debt. *Held*, that the word simply means that the amount of the debt is discharged and not that the mortgage right is given up so as to render S 101 of the T P Act unavailable to the purchaser (1928) M W N. 592

Pakka (*H*) Ripe, nature, correct, complete, as a statement substantial, solid as a building, also intellectal mature, intelligent, sharp, knowing the contrast in all respects of Kachcha (*Wil Gloss* 390).

Pakka adatia A *pakka adatia* is a *del credere* agent in Bombay who can allocate his principal's contracts to himself 19 I.C 29=15 Bom L R. 85

PAKKA ADATIA AND BROKER The difference between a *pakka adatia* and a broker is that the broker enters into the contract as agent for his client, he himself being not personally liable to the person with whom he contracts while the *adatia* does not make the contract with third parties as the agent but as principal the constituent having no right to be brought into contract with the third parties. 62 I C. 361=22 Bom L. R 1018=45 Bom 386.

Pakka adatia dealings are well established as a legitimate mode of conducting commercial business in the Bombay market The contract of a pakka adatia as that of any one else, may be by way of wager 45 I.A. 29=42 B 373

Pakka-ser (*H.*) A full or Pakka-ser, a measure of weight varying in different parts of India, and for different articles, but always the full or standard measure, in distinction to a smaller or less authentic, or kachcha-ser. (*Wil. Gloss.* 390)

Pakuti ola (*Mal*) See Amshapatram. (*Sund. Iyer's Mal Law*)

Palabhogam. (*Tam*) The tenure by which the inhabitants of a village hold their lands in severalty

Palaiya.

under an engagement among the coparceners, each being responsible for the revenue of his own holding and receiving the surplus for his own use such lands may be held by the same individual in more than one village also a village or lands so held. the term is also explained to signify merely possession by more than one individual distinguished as, Samudayam or where the lands are cultivated jointly and the produce is divided, and *Arudi karia* where the lands are divided amongst the proprietors and cultivated severally. (*Wil Gloss*)

Palaiya A military fief

Palaiyakara Formerly a military chief seised of a palaiya, thence any grantee of a palaiya (poligar)

Palaiyam. Wilson defines the term to mean a tract of a country subject to a petty chieftain or a Polygar "In the south of India especially in the Karnata, the poligara or poligar of early writers, occupying chiefly tracts of hill and forest subject to pay tribute and service to the paramount State, but seldom paying, either and more or less independent, subsisting in a great measure by plunder On the subjugation of the country most of the Polygars were dispossessed, some were pensioned and a few were allowed to retain some of their villages at a quit rent These have now subsided into peaceable landholders"

Palakosham (*Tam*) A register of land in the occupancy of different individuals

Palakunda (*Tel*) A certain grain fee given to the cultivators before the grain is measured, or a portion from each measure

Palam (*Tam*) A measure of weight at Madras; three tolas. (*Wil. Gloss*)

Palancheru (*Tam.*) Ploughed land prepared for transplanting.

"Palanquin" defined Mad. Act 4, 1884, s 3 (*xx*); Mad Act 5, 1884, s 3 (*iix*)

PALANQUIN. Covered litter used in India and other eastern countries, by princes, noblemen and ladies of rank.

Palegara or Palaiyakar (*Tel*) A petty chieftain in the south of India especially in karnataka, the poliga or Poligar, of early writers; occupying chiefly tracts of hill and forest, subject to pay tribute, a service to the paramount state.

Paleya. The Kanarese form of Palaiya.

Palfrey. One of the better sorts of horses used by noblemen or others for State and sometimes, of old, taken for a horse fit for a woman to ride. (*Tomlins Law Dic.*)

Palikapu (*Tel.*) An under-tenant, a cultivator.

Palinavakkalu (*Karn.*) A farmer who shares his crop with the Government.

Palisa (*Mal*) Interest. (*Sund. Iyer's Mal Law*)

Palisa madakkam. (*Mal*) (*Palisa*=interest, *Madakkam*=return) A tenure exactly equivalent to Otti (*Moore's Mal Law*); another name for otti in Nedunganad and Valluvanad Taluqs. In this the pattam is mentioned unlike otti. (*Sund. Iyer's Mal. Law.*)

Palsari.

Paliyapadu (*Tam.*) Lands in the possession of the palegar, for which he now pays revenue to the Government

Palkhi inam Where the Mahomedan rulers granted a village as *Palkhi Inam* to certain persons who were *Deshpande Vatandars* and under the English settlements the same was classified as *Deshpande Vatan, held*, that as the village was granted to the vatandars to pay their Palkhi expenses, it became an appandage of the vatan 46 Bom. 741=67 I C. 215= 24 Bom.L R 252=A I.R. 1922 Bom. 5.

Pallan (*Tam*) The name of a low and servile caste, or of an individual of that caste They are much on the same footing as the Pareyan, but, hold themselves superior to him, as they abstain from eating the flesh of the cow (*Wil. Gloss*, 392)

Pallapunadu. (*Tel*) Low ground capable of being ploughed.

Pallapupanta (*Tel*) A crop grown on low, moist or irrigable lands.

Palli. A small town or village. The word is often used in combination, as Trisirapalli (corruptly Trichinopoly) also a temple a school, it is also the name of a servile tribe of Hindus in the South, similar to the Pallar (*Wil Gloss* 392)

Pallivasal-maniyam (*Tam*) Rent free land attached to a Mahomedan mosque. (*Wil Gloss*. 392.)

Palliyal (*Mal*) A piece of ground upon which paddy is grown so that it may be transplanted afterwards into a Nanja field. (*Moore's Mal. Law.*)

Palmistry. The art of telling fortunes by the lines and marks in the palm of the hand. "A crafty science—that is, one by which the simple minded are apt to be deceived." (*Ame. Cyc.*)

In *State* v *Kenilworth*, 69 N J L. 114 (115); 54 Atl. 244, it is said that the term "was so used when, from the lines on the palm of a person the palmist foretold the age at which such person would marry and the duration of his life."

PALMISTRY A kind of divination, practised by looking upon the lines and marks of the hands and figures; being a deceitful art used by Egyptians formerly prohibited by state in England. (1 & 2 P, & Mc 4. (*Tomlins Law Dic*)

The practice of palmistry (or the telling of a person's fortune by investigation of the lines of his or her hand) was introduced into England by the gypsies.

Palmistry is at present a fashionable amusement and the subject of many treatises purporting to prove it to be a real science; but having regard to the wording of the Vagrancy Act of 1824, the practice whether scientific or not, and whether practised for gain or not, is illegal in England [Ex parte *Jones*, (1899) 1 Q B. 846, *cf. Penny* v. *Hanson*, (1887) 18 Q. B D 478.]

Palm off. 'To palm off' means to impose by fraud: to put off by deceitful means.

Palpable. Easily perceived; plain; obvious. (*Webster Int. Dict.*)

Palpatti. (*Mal*) Partition deed. (*Sund Iyer's Mal. Law*)

Palsari. Land used for propagation of lac

Paluganichittu

Paluganichittu. (*Karn.*) An agreement for a fixed term for an equal division of the crop between the proprietor and the cultivator or renter.

Paluku-amarike. (*Tel.*) Allotment of portions of land amongst the cultivators.

Pamphlet. A publication, usually a small book, bound in paper covers. (*Black L. Dict.*)

In construing a statute prohibiting the mailing of obscene books, *pamphlets*, pictures, papers, writings, print, or other publication, etc, the court said: 'In the statute under consideration the word 'pamphlet' is used as one of a group or class of words, 'book' 'pamphlet,' 'picture', 'writing,' 'print,' each of which is ordinarily and *prima facie* understood to be a publication, and the enumeration concludes with the general phrase 'or other publication,' which applies to all the articles enumerated, and defines each with the common quality indicated. It must, therefore, according to a well-defined rule of construction, be a published writing which is contemplated by the statute, and not a private letter, on the outside of which there is nothing but the name and address of the person to whom it is written.

Pan. (*H.*) Betel-nut. (*Mac. Mah. Law.*)

Pana. (*Tel.*) A sheaf of corn

PANA, OR PANNA. (*H.*) A large division, as a quarter, or a half of a coparcenary village and its lands under a separate headman, or mukkaddam in some places the lands are subject to periodical redistribution among the members of the community—North West Provinces. (*Wil. Gloss.* 393)

PANA (*S.*) Money in general wages, hire, price. (*Wil Gloss.* 393.)

Panayakaran, (*Mal.*) A mortgagee, a mortgagor one who borrows or lends on mortgages (*Wil. Gloss* 394)

Panayakkachitta, (*Mal*) A document given on a pledge or pawn. (*Wil. Gloss.* 394)

Panayam (*Mal*) A pledge or pawn. When used of land, if usufructuary, it is generally called Karipanayam or Kolu-panayam, if hypothecatory, Todupanayam or Chundi-panayam. (*Moore's Mal. Law.*)

Panaya-olakaranam. (*Mal.*) An instrument or deed of mortgage written on an ola or palm leaf (*Wil. Gloss.* 394.)

Panayapatta-kulikanam (*Mal*) A mortgage lease, under which the tenant, when it expires, has a title to compensation for any improvements he may have made.

Panayapattam. (*Mal.*) A mortgage lease, or one in which a sum of money considered as the equivalent of two-thirds of the estimated net produce or rent, is advanced to the proprietor in consideration of his relinquishing the estate to the lender for his usufruct, in lieu of interest on his loan.

Panayapattam kulikanom. Reclamation lease. (*Sund. Iyer's Malabar Law.*)

A mortgage lease, under which the tenant, when it expires, has a title to compensation for any improvements he may have made. (*Wil. Gloss.* 394.)

Panayappata (*Mal*) An article pledged or mortgaged. (*Wil. Gloss.* 394)

Panchayat.

Panayathukaran. Mortgagee. (*Sund Iyer's Malabar Law.*)

Panbatta. (*H*) A customary present of Pan made to, and exacted by, certain parties on particular ceremonial occasions.

Pancha. (*H.*) Five, the number five. it is also used as abbreviation for panchayat (*Wil. Gloss.*)

Panchait or Panchayat Five assembled. An assembly or jury of five persons to whom a cause is referred for investigation and decision, an ancient Hindu establishment. (*Fifth Report*)

Panchaiti. (*H.*) A court of arbitration; the award of such a court. (*Wil. Gloss*)

Panchait-khanagi (*H*) Domestic arbitration, a settlement of family quarrels by relations and connexions. (*Wil. Gloss.* 394.)

Panchait-nama, (*H*) The written award of a court of arbitration. (*Wil Gloss.* 394.)

Panchait sarkari. (*H.*) A court of arbitration appointed by the public authorities. (*Wil. Gloss* 394.)

Panchala (*Sanskrit*) An ancient name for the Punjab and the warrior tribe who inhabited it

PANCHALA. (*S*) An aggregate of five, thence formerly applied to the Panjab, or country of the five rivers. in the south of India it denotes five castes collectively, or those of the goldsmith, a carpenter, a blacksmith, brazier, and mason, who in Mysore, eat together and intermarry: among the Marathas they wear the Brahminical thread in other places the five castes are of an inferior order, and are the carpenter, weaver, barber, washerman and shoemaker (*Wil. Gloss* 395)

Panchanga. (*S*) An almanac, a kalendar, so named from its treating of five members (anga) or topics, or (1) the tithi, or lunar day, (2) the vara, the solar day, or day of the week, (3) the nakshatra, (4) the yoga, transits and conjunction of the planets, eclipses, and (5) the karana, or subdivisions of the lunar day these are the five essential parts of the kalendar, but it comprises other topics, as lucky, and unlucky days for undertaking any business, festival days and the like (*Wil. Gloss* 395)

Panchanga or Panchangakaran. (*S*) The almanac maker, the village astronomer, or astrologer who announces fit seasons for commencing to plough or reap, for celebrating marriages, or festivals or engaging in any business in the south he is usually a Brahmin, who holds his office by descent, and is paid by rent free land, a certain portion of the crop, or other privileges and fees. (*Wil. Gloss.* 395)

Panchangamaniyam. Land held rent free by the village astrologer.

Panchanga-mirasu (*Tam.*) The hereditary fee. and perquisites of the village astrologer (*Wil. Gloss.* 395.)

"Panchayat" defined. Madras Act 5, 1884, S. 3 (*xx*).

PANCHAYAT. A village council.

"Panchayat" means a panchayat constituted under the Panchayat Act; Punjab Act, VI of 1912 (Punjab Panchayat Act), S. 2, Cl. 1.

PANCHAYAT. The panchayat, is a body composed of some of the wealthy, influential and elderly men of a community or a caste entrusted by the community with the management of their social and religious matters One of the most important of the institutions of the Hindus which was copied by other communities also in their midst was the system of trusting the power of regulating the internal government of their community in all social and religious matters to a committee of a few headmen of their community. Such a committee has been known in India from the most ancient times as the panchayet. The most powerful weapon in the hands of the punchayet for enforcing their orders and behests has always been the power of ex-communication, which means exclusion from all benefits which a member of the caste is entitled to and ostracism from all social functions and religious rites. [2 I C. 701 (709) per *Davar, J*.]

Panchayat-jati (*H*.) An arbitration by persons of the same caste as the litigant parties (*Wil Gloss* 394).

Panchayattar. A native court of arbitration, consisting of five or more members chosen by the parties themselves, or appointed by Government for the determination of petty disputes among the people especially in matters affecting the usages of caste or occupation The term also applies to the proceedings of the native courts, and to the matter in dispute also to a member of the court, an umpire an arbitrator. (*Wil. Gloss.* 395.)

Panda (*H*.) The proprietary or presiding priest of a temple, usually, though not invariably, a Brahman, the office is hereditary, and in some places, as at Benares, the Panda officiates only on particular occasions, the duties of daily worship being performed by inferior priests or Pujaris in his employ a priest who is stationary in any particular place or shrine, a pilgrim guide. (*Wil. Gloss* 396.)

Pandaravadai (*Tam*.) A village or lands of which the revenue is paid direct into the public treasury, corresponding with the Khalsa or Khas collections of Mahomedans and British rule· the Pandaravadagai is said also to be a name given to villages in the palayams or palaygar districts of Madura and Tinnevelly, of which the inhabitants are Sudras and hold their lands by proprietary right.

Pandects. The books of the Civil Law, compiled by Justinian. (*Tomlins Law Dic.*)

Pandery A tax on shops and retail merchants in towns in the Northern Circars

Pandhri A tax on non-agriculturist formerly levied in villages.

Pandikai. (*Tam.*) Festival

BHOGI-PANDIKAI. The festival of enjoyment, when good wishes and presents, new year's compliments and gifts are interchanged, and Indra is worshipped. (*Wil. Gloss.* 421.)

Pandya (*Mar.*) The writer or accountant of a village or district. an officer employed in the customs: in Madras it is sometimes applied to the headman of a district. (*Wil. Gloss*)

Pandya. (*S.*) The ancient tamil kingdom, the capital of which was Madura it was known by the

name of Pandian to the Romans in the time of Augustus. (*Wil Gloss.*)

Panel. The 'panel' is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular action.

By the word 'panel' is meant the whole body of grand jurors

PANEL " 'Pannell' is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part And a jury is said to be impannelled when the sheriff hath entered their names into the pannell, or little piece of parchment (*Co Litt* 158b, *Termes de la Ley*)

Pangumalai. (*Tam*.) A list of roll of shares in a village shewing the amount of land cultivated by each member of the community, the changes of property, the original divisions, the quality of lands, and whether cultivated by the proprietors or by migratory cultivators.

Panikkar (*Mal.*) A teacher of gymnastics An instructor in the use of arms and in military exercise generally (*Moore's Malabar Law.*)

Paniyan (*Mal*.) A tribe of agricultural labourers living in the hilly tracts of the Wynaad (*Moore's Malabar Law*).

Panja (*H*.) (*also Punjab*). The hand with the fingers, extended: a representation of the same mounted on a staff and carried in procession at the Muharram, supposed to represent the hand of Ali. (*Wil Gloss*) A five fingered mark made by smearing the hand with henna and clapping it against a wall or other object, the five prongs denotes Muhamad, Ali, Fatimah, Hasan, and Husain. Also the figure of a hand carried in procession

Panjabi The language of the Punjab It is of Sanskrit origin and is spoken by the inhabitants of the Punjab. There are many different dialects, among them are the Manjha spoken in the Punjab proper, the Multani and the Pahari. In order of extent of use Punjabi is the fifth Indian language

Pannage. (*Old English Law.*) The right of Pannage is simply a right granted to an owner of pigs to go into the wood of the grantor of the right, and to allow the pigs to eat the accorns or beech mast which fell upon the ground. (*Chilton* v. *London*, 47 L J Ch. 435, 7 Ch D 562, *Termes de la Ley*, *Cowel Jacob*)

Pannagium est pastus porcurum, in nemoribus et in silvis, ut puta, de glandibus. etc. A maxim meaning "A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth." (*Black L Dict.*)

Pannai. (*Tam.*) A field or rice field, cultivated ground, tillage, husbandry.

Pannaikaran (*Tam.*) A husbandman, the foreman of agricultural labourers, especially of the Pareya tribe, a superintendent of cultivation.

Pannaisumai. (*Tam*.) A bundle of corn in the straw given to the labourers at harvest time.

Pannayal. (*Tam.*) A ploughman, an agricultural labourer.

Panta. (*Tel.*) A harvest, crop.

Pantacheruvu

Pantacheruvu. (*Tel.*) A tank for watering rice fields

Pantakailu (*Tel*) Measurement of the crop.

Pantamirasam (*Tel*) Scantiness of the crops

Pantasala (*Tel*) A granary

Pantheon. The Gods of a nation, temple of all Gods.

Pantomime A species of theatrical entertainment, in which the whole action is represented by gesticulation, without the use of words, and is a dramatic composition, within the copyright laws.

Pantoon Flat bottomed boat, closed hollow metal cylinder for use with others as support of a temporary bridge

Panwar-shadi. (*H.*) A kind of marriage in some parts of old Bengal of a female slave to a nominal or vagrant husband, who for a small payment, agrees to wed any number of such women cohabitation rarely follows, and the object of the arrangement is to provide a putative father for any child the woman may bear, by whomsoever begotten, and which then becomes the property of the owner of the female slave (*Wil Gloss*)

Papal bull A circular leaden seal, engraved on one side with images of Saints Peter and Paul, and upon the other with the name of the Pope issuing it, and the date of his accession to the pontificate It is used to seal official documents emanating from the holy see, and from this fact the document themselves have acquired the title of bulls.

"Paper" defined. Act 2, 1899, S 2 (18)

Paper or papers A manufactured substance composed of fibres adhering together, in form consisting of sheets of various sizes and different thicknesses, used for writing or printing, a substance used for writing and printing on, a written instrument, or document, any written paper or instrument, a writing, a printed sheet, a printed or written instrument, document, essay, or the like, a writing

"PAPER" includes vellum, parchment or any other material on which an instrument may be written [Act II of 1899 (Stamp), S. 2 (18)]

PAPER can generally be now used as a substitute for parchment (Ex p Curr 5 C B 496)

The term 'paper' in a contract for the furnishing of apparatus to make paper, includes all the various qualities of the article thus denominated, including pasteboard, which is a paper of a coarse and inferior quality.

Paper credit Credit given on the security of any written obligations purporting to represent money or property. (*Wharton*)

Paper currency 'Paper currency designates notes or bills circulating by authority of the general government as money, and includes both treasury notes, and those issued for circulation by national banks.

"Paper currency department" defined *See* Department of paper currency. A department of Government for issue of paper currency.

Para.

Paper mill The term 'paper mill,' as used in all laws relative to th employment of labor, shall mean any premises in which the manufacture of paper is carried on.

Paper money. Bank notes, bills of exchange and promissory notes.

The common term 'paper money' is, in a legal sense, quite as accurate as the term 'coin money.'

"Paper printed" *Quaere*—Whether the expression "paper printed" in S 3 of the Press and Registration of Books Act includes every piece of paper on which any letter, figure or sign is printed, so as to bring every such paper within the mischief aimed by the Act, and whether the word 'paper' is practically synonymous with "newspaper." (166 I C 263=38 Cr L J 145=38 Bom.L R 1115=A I.R 1937 Bom. 28)

Paper title A title to land evidenced by a conveyance or chain of conveyances, the term generally implying that such title, while it has colour or plausibility, is without substantial validity. (*Black L Dict*)

Paper wrapper A Cardboard Wrapper would also be a 'Paper Wrapper." (*Stroude*)

Papists Persons professing the popish religion, otherwise distinguished by the denomination of Roman Catholics The Papist seems to be considered by the Roman Catholics themselves as a nickname of reproach, originating in their maintaining the supreme ecclesiastical (and heretofore temporal) power of the Pope (*Tomlins Law Dic.*)

Par Equal A price that is equivalent to nominal value

'PAR' is the Latin word for 'equal.' It has been adopted in the English language, and continues to have the same meaning, and no other. Bills of exchange, stocks and shares, are at par, above par, or below par Bills are at par when they are sold at their nominal amount for coin or its equivalent

The word 'par' means equal, and to say that a bond is valued at par means that its value is equal to the face of the bonds

'Par' is equal. The word is used to denote a state of equality or equal value Bills of exchange, stocks, and the like, are at par when they sell at their nominal value, above or below par, when they sell for more or less Under such definition, the par value of a bond is not merely the principle sum due, but that sum with the accrued interest added

Par in parem imperium non habet A maxim meaning "An equal has no power over an equal," (*Bouvier L Dict.*)

Par of exchange Equalising of exchange as between the currency of one country and that of another 'Par of exchange' is the value of money of one country in that of another, and it may be either real or nominal.

"Par value", defined. *See* Established par value. The term 'par value' as used to refer to the value of bonds, etc., means a value equal to the face of the bonds.

Para. (*Mal.*) A measure of capacity, a rice measure. The para is the common grain measure of Malabar.

Para.

PARA. (*Beng.*) A village, part of a village or town it is commonly used in composition to form the names of villages in Bengal, as Gokul, para A cluster of houses situated at a little distance from the village to which they belong for the convenience of carrying on cultivation (*Wil. Gloss* 400)

Parabaik or palm leaf Comes within the definition of "Paper" in S 2, Stamp Act. (22 Ind Cas 75.)

Paracudy or parakudi. A temporary tenant from another village who cultivates the land of a Meerassadar or as holding of Government *See also* 27 Mad 291=31 I A 83=14 M.L J, 200 (P C)

Ul-parakudi (*Tam*) A cultivator who, although not a proprietor, has inherited the land he cultivates, and cannot be dispossessed as long as he pays the stipulated rent

Parade Display, master of troops for inspection

Parade ground. (*Milit*) Ground for holding a parade.

Paradox. A proposition seemingly absurd, yet true in fact. (17 Am. Rep. 40)

Paragoody warum or paracudi varam The share of a Paracoody (*Fifth Report*)

Paragraph. 'Paragraph' as defined by Webster, is a distinct part of a discourse or writing—any section or sub-division of a writing or chapter which relates to a particular point, whether consisting of one or many sentences.

PARAGRAPH. A distinct part of a discourse or writing, any section or sub-division of a writing or chapter which relates to a particular point, whether consisting of one or many sentences, a term synonymous with the word "section," and sometimes with "sentence"

Paragraphs in a pleading are only convenient subdivisions of that larger and more comprehensive statement which, the rules of good pleading require to be embodied as the essential elements of fact which lead to a legal conclusion, sufficient for the purpose of the party.

Parakudi An outsider, a new comer, a cultivator without hereditary rights *See* 1 L W 41

PARAKUDI (*Tam.*) A migratory or non-resident cultivator, one whose proper home is in another place, one not a member of the village community and having no proprietary rights, but holding and cultivating lands in the village, either for a stipulated term or at pleasure the Pahi-kasht cultivator of Hindustan. (*Wil. Gloss*)

Parakudivaram. (*Tam*) The share of the crop that is assigned to the cultivating tenant, the rest being the right of the Mirasdars or landlord

Parallel Extending in the same direction, and in all parts equally distant; having the same direction or tendency; like, similar.

"PARALLEL' in its popular sense would mean side by side (*Clarke* v. *Adie*, 2 App Cas 423, 46 L.J Ch 598).

Paramasana. When a tenant appropriates a portion of the rent due from him to the proprietor by way of interest due to him for loan advanced to the latter and pays the balance over to the landlord, such balance is called 'paramasana'. [9 O.L J. 141 =A.I.R. 1922 Oudh 75 (2).]

Paramba (*Mal.*) High land which is not capable of being inundated or irrigated artificially. It may be cultivated with Modan rice, the oil plant, etc, or with cocoanut and other trees. (*Moore's Malabar Law*)

Parambavaram. (*Mal*) The share of the proprietor in the produce of an estate which he has let or mortgaged

Paramount. Above upwards, that which is superior (*Black L Dict*)

The word 'paramount,' when used as descriptive of the rights which an electric car has in a street, means no more than that the right which such a car has in a street is only that other travellers shall turn off from its track in reasonable time to allow it to pass, but the car must be so managed as not to do any unreasonable injury to other travellers, and must be stopped if it appears that the other traveller is not turning out

"'PARAMOUNT' is a word compounded of two French words (par and monter), and it signifies in our law, the highest Lord of the Fee" (*Termes de la Ley*).

Paramour One with whom a person has illicit sexual relations.

Parampara (*S*) One after another in succession, hereditary, traditional

Parampari successive arrangements, series, lineage. (*Wil Gloss.* 400)

Paranoia The technical name of the form of insanity commonly known as "monomania", a form of mental distress known as "delusional insanity", the name given to a group of mental conceits, of which the most characteristic is a sense of injury or unjust persecution, and consequently justifiable resentment or redress

'PARANOIA' is the name given to a group of mental conceits, of which the most characteristic is a sense of injury or unjust persecution, and consequently justifiable resentment or redress Persons subject to paranoia are under a network of fixed and systematic delusions, and have impulses they do not resist which at times take a form injurious to others.

Parapet Low wall at edge of roof, balcony, bridge, etc, mound along the front of military trenches

Paraphernalia At common law the paraphernalia of a wife was of two kinds first, clothing, bedding, etc, suitable to her condition in life, and, second, her ornaments.

WIFE'S PARAPHERNALIA. Wearing apparel of the wife, and jewels and other adornments worn by her suitable to her rank or station in life are termed "paraphernalia."

A wife's paraphernalia consist of her apparel and ornaments suitable to her station and gifts from her husband (2 Bl Com. 435, 436; *Mangey* v. *Hungerford* 2 Eq. Ca. Ab, 156).

Parapu.

Parapharnalia, or paraphernalia, those goods which a wife is entitled to over and above her dower or jointure, after her husband's death. (*Tomlins Law Dic*)

Parapu (*Tam.*) Quit rent, a cess or tax imposed by a Zamindar, or by Government upon cultivators.

Parapurva. (*S*) A woman remarried one who was formerly the wife of another.

Parasara. A great Hindu Sage and writer of an important Smriti that bears his name

Parasava (*S*) The son of a man by another's wife, either one born of her during her husband's lifetime, when he is properly termed *kunda* or after the husband's death, when he is termed *golaka* (*Wil. Gloss* 400)

Paravail A tenant paravail signified the lowest tenant of land and was so called because he was supposed to make avail or profit of the land for another. (*Cowel, 2 Black Com.* 60.)

Parcel. 'Parcel' signifies a part of the whole, taken separately, and has for one of its meaning 'a small bundle.'

In its primary signification a parcel is a number or quantity of things put up together; a bundle or package, a quantity pressed or packed together, a small bundle (*Johnston Dict* —quoted in 17 Am Dec. 562)

PARCEL. In law, a part, a portion, a piece, a part of the whole taken separately, a part taken either separately or belonging to the whole, a share, a portion, a constituent or integral part an indefinite quantity or measure, a separate or separable part (*Century Dict*), a portion of anything taken separately, a fragment of a whole.

As used with reference to land, a contiguous quantity of land, in possession of, or owned by, or recorded as the property of, the same claimant, person, or company, part of an estate, and may be synonymous with lot.

A 'parcel of land' or 'parcel of real property' means a contiguous quantity of land in possession of, or owned by, or recorded as the property of, the same claimant, person, or company.

In S. 3, cl. (9), Act VIII of 1885, the term "parcel" or "parcels" means "entire parcel" or "entire parcels." It is not intended to include an undivided fractional share in a "parcel" or "parcels" of land. 25 C. 917 (N)=1 C W N. 521, 119 I C. 556=1929 Pat. 237.

Parcel of Mansion House 'Parcel,' within the meaning of the rule of law which makes it burglary to break into a house which is a parcel of a mansion house, means a house which is somehow connected with or contributory to a mansion house, such as a kitchen, smoke-house, or other building which is usually considered a necessary appendage of a dwelling house.

Parcenary An estate in equal shares, the holding of lands jointly by parceners when the common inheritance is not divided. (Litt. 56. *Tomlins Law Dic*)

Parcener. A term which has a well-defined meaning at common law, and applies only to lands descended by inheritance. (*2 Blackstone Comm.* 187.)

Parceners are persons holding lands in co-partnership, and who may be compelled to make division, (*See* Litt. 241, *Tomlins Law Dic*)

PARCENERS PARCENARY. Parcenary was in ancient times often and is now generally, called coparcenary Heirs in coparcenary are called coparceners, they constitute together but one heir to their ancestor; they resemble joint-tenants in that they have the same unities of interest, title, and possession, and they may properly be said to be jointly seised But, unlike joint tenants, they claim by descent only, and not by purchase.

"Many times parceners are called coparceners." (*Co Litt.* 164b)

Parcha A statement showing demand, etc., on a holding.

Parchment Skins of sheep dressed for writing It is said to have been invented by Eumenes II, King of Pergamus (who reigned B.C. 197 159), in consequence of the prohibition of the export of papyrus from Egypt by Ptolemy Epiphances. The probability is that some improvement was made in the manufacture at Pergamus, but Heredotus mentions writing on skins as common in his time. It was often used for deeds. (*Ency. of the Laws of England.*)

Parchuran (*Mar*) Coin of various currencies as distinguished from current coin (*Wil. Gloss.* 402)

Parda or Pardha (*H*) A veil, a screen, a curtain, especially one which excludes the woman of a family from the gaze of men (*Wil. Gloss.* 402.) Applied to females it signifies such as may not lawfully be exposed to the gaze of strange men. (*Mac. Mah Law*)

Pardanashin lady. A padanship lady, in the true sense of that term, is a lady living in seclusion, that is the *zenana*, and having no communication with any male strangers except from behind a screen. But a lady with a certain amount of education, who subscribes newspapers, manages her affairs and even appears in Courts is not a pardanashin lady. (A I R. 1929 Lah. 309, *Ref.* 129 I.C. 281=A.I.R. 1930 Lah. 985)

Principles of law laid down for, a Pardanashin lady ought not to be transmuted into legal disability [32 C W N. 929=A.I R. 1928 P.C. 303=55 M.L.J. 84 (P.C.)]

Pardah-nishin (*P.*) Sitting behind the curtain. Purdah. (*Mac. Moh Law*). A woman who observes the practice of seclusion; applied to a respectable female who observes the rules of seclusion, and who is on that account excused from personal appearance in a court of justice. (*Wil. Gloss.* 402)

"Parda-nishin" defined. Ben. Act 1, 1876, S. 2.

"PARDA-NISHIN." "Parda-nishin" means a woman who, according to the custom of the country, might reasonably object to appear in a public office. [Ben Act I of 1876 (Mahommed Marriage and Divorce Registration), S. 2.]

Pardon. A pardon is an act of grace proceeding from the power intrusted with the execution of the

laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed There are several kinds of pardons, thus a pardon may be full and unconditional, partial or conditional.

OTHER DEFINITIONS "The remission of guilt, amnesty, oblivion, or forgetfulness" (*Anderson L Dict*)

"The remitting or forgiving of an offence committed against the king." (*Jacob L. Dict.*)

"An act of grace, or governmental forgiveness of an offence, by which the penalty or crime is legally remitted." (49 Am Rep 71)

"An act of grace, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed" (7 Bacon Abr Tit. "Pardon" quoted in *Moore* v. *State*, 39 Am Rep. 558)

"A declaration of record by a sovereign that a particular individual is to be relieved from the legal consequences of a particular crime" (*Wharton Cr L.*, sec. 591)

"Any exercise of sovereign or executive clemency toward the guilty.. a suspension of the just sentence of the law, induced by the facts and circumstances of the crime or by the character and condition of the criminal." 26 N J L. (Ame) 326 (333)

The POWER OF PARDONING OFFENCES is one of the prerogatives of the Crown, and cannot be delegated to any subject within the realm, it is however, one of the powers usually entrusted to colonial governors in their commissions (*see* Re a Special Reference from the Bahama Islands, (1893) A C. 138) In England it is exercised upon the advice of the Secretary for State. (*for the Home Department*).

The power of pardoning offences is inseparably incident to, and is the most amiable prerogative of, the Crown, and this high prerogative the King is entrusted with upon a special confidence, that he will spare those only whose case, could it have been foreseen, the law itself may be presumed willing to have excepted out of its general rules, which the wisdom of the man cannot possibly make so perfect as to suit every particular case. (1 Show 284, *Tomlins Law Dic.*)

A pardon may in law be granted either before or after trial and conviction. If granted before trial, the pardon must be pleaded in answer to the indictment, or it is held to be waived.

PARDON AND AMNESTY. Amnesty is an act of oblivion; a general pardon of the offences of subjects against the government, or the proclamation of such pardon (*Webster Dict.*)

"Amnesty is a general pardon granted to those guilty of some crime or offence" (*Worcester Dict*)

Amnesty is a sovereign act of pardon and forgetfulness for past acts of a criminal nature (*Black L. Dict.*)

The word "pardon" in its generic sense embracing every character of pardon, includes amnesty Pardon and amnesty are not, however, precisely the same. Pardons are granted to individual criminals by name, amnesty to classes of offenders or communities They differ not in kind, but solely in the number they severally affect [53 Fed. 352 (354).] Amnesty is at least co-extensive in its meaning with the word "pardon" so far as its effect is concerned, because it effaces or wipes out the offence which has been committed 135 N C 118 (145) 47 S E. 403)

The power of the Crown to pardon includes the power to grant amnesty

An indefinite suspension of the sentence of a prisoner, on conditions, amounts to a conditional pardon (104 Am. St. Rep. 361.)

COMMUTATION OF SENTENCE OR PUNISHMENT is the change of a punishment to which a person has been condemned to a less severe one. (*Bouvier L. Dict.*)

CONDITIONAL PARDON, A pardon is conditional where it does not become operative until the grantee has performed some specified act, or where it becomes void when some specified event transpires

CONDITIONAL PARDON DISTINGUISHED FROM COMMUTATION OF PUNISHMENT. There is a material distinction between a conditional pardon and a mere commutation of punishment. A conditional pardon is a grant to the validity of which acceptance is essential It may be rejected by the convict, and if rejected there is no power to force it upon him A commutation is the substitution of a less for a greater punishment by authority of law and may be imposed upon the convict without his acceptance and against his consent (12 Am. Rep 563)

REPRIEVE A reprieve is the withdrawing of a sentence for an interval of time whereby the execution is suspended. (4 *Blackstone Comm* 394)—quoted in *Sterling* v *Drake*, 23 Am. Rep 762)

"Sometimes the judge reprieves before judgment, as where he is not satisfied with the verdict. or the evidence is uncertain or the indictment defective, and sometimes after judgment. The power of granting this respite belongs of common right to every tribunal which is invested with authority to award execution [2 Hale 412; 1 Ch Cr. L. 758 (759)]

Parens est nomen generale ad omne genus cognationis A maxim meaning "Parent is a general name for every kind of relationship" (*Peloubet Leg. Max*)

Parens patriae Literally "Parent of the Country." (*Burrill L. Dict*)

"Parent" defined (*See also* Father) Ben Act 1, 1876, S 2, Act 13, 1855, s 4, Act 13, 1880, s 2 (2), Ben Act 5, 1880, s. 2, Bom. Act 1, 1877, s 2 (1); Bom Act 4, 1879, s 2 (1); Bom Act 1, 1892, s 4 (*a*); Mad. Act 4, 1884, s. 3 (xvii); Mad. Act 5, 1884, s. 3 (xiv).

PARENT The word 'parent' or 'parents' may be held to mean one of both parents.

"Parent" is generally understood to mean father or mother (*Sibley* v. *Perry*, 7 Ves 530. 2 Jarm 103 105, but it may also mean any lineal ancestor. (*Ross* v. *Ross*, 20 Bea. 645.)

PARENT. (*Parens.*) A father or mother, but generally applied to the father; parents have power over their children by the law of nature, and the Divine Law, and by those laws they must educate, maintain,

Parent

and defend their children. (Wood's Inst 63, *Tomlins Law Dic.*)

In the legal or ordinary acceptation of the term, 'parent' does not include a step-father or step-mother.

"Parent" means the father of a legitimate child and the mother of an illegitimate child. [Vaccination Act (XIII of 1880), S 2]

Parent and child The term "parent and child" is used to indicate the relation existing between husband and wife, or either of them, on the one hand and their legitimate offspring on the other. (*Ame. Cyc*)

"Parent estate" defined. Ben Act 8, 1876, s 4 (xii).

Parental authority 'Parental authority' implies restraint, not imprisonment

Parental influence 'Parental influence' is not terror and coercion, but kindness and affection, which may bias the child's mind and induce the child to do that which may be imprudent, and which, if the child were properly protected, it would never do.

Parenthesis. A parenthesis is defined to be an explanatory or qualifying clause sentence, or paragraph, inserted in another sentence, or in course of a longer passage, without being grammatically connected with it. (*Cent Dist*)

PARENTHESIS is used to limit, qualify or restrict the meaning of the sentence with which it is connected, and it may be designated by the use of commas, or by a dash, or by curved lines or brackets," [53 Fed 81 (83), 3 C C A 440.]

Parentum est liberos alere etiam nothos. A maxim meaning 'It is the duty of parents to support their children even when illegitimate" (*Bouvier L Dict.*)

Parepatraks The very underlying idea of preparing parepatraks is to know year by year how much land has been under crop and how much left fallow, with a view to know the actual state of cultivation in each village. (90 Ind Cas 38)

Paresis The term 'paresis' is used to designate the wasting away of the brain tissue, without softening.

Paretu. *See* 34 Bom. 385=6 I.C. 530.

Pargana. A district, a province, a subdivision of a tahsil or district, a tract of country comprising many villages, but of which several go to constitute a chakla or zila: the actual extent varies, but the distinction is permanent.

Pargana-kanungo The record-keeper of a district.

Parganat-i-jama. The total amount of revenue assessed upon a province.

Parganat-i-kharch. The expenses and charges of a district to be deducted from the gross revenue.

Parganat-i nirkh. The rates of the valuation of the crops and the assessment of the revenue and other items of expense and receipt which ordinarily prevail or are established in a district (*Wil. Gloss.*)

Parish

Parganawar According to a district' settlement, assessment, etc

Parha. Transplantation of rice-seedlings

Pari delicto. *See* 'In Pari Delicto'

PARI DELICTO In a similar offence or crime, equal in guilt or in legal fault, (*Bouvier L Dict.*)

Pari delicto melior est conditio possidentis *See* In Pari Delicto.

Pari materia *See* 'In Pari Materia.'

Pari passu (*Lat*) With equal step, with simultaneous progress.

Paria copulantur cum paribus. A maxim meaning 'Like things unite with like" (*Peloubet Leg. Max*)

Paribus sententiis reus absolvitur A maxim meaning "When opinions are equal the defendant is acquitted" (*Peloubet Leg Max*)

"Paricharak" There is no special significance on the wood "*Paricharak*" It literally means a servitor of the deities Every Mohunt in his capacity as shebait is a *Paricharak* Mohunt (62 C L J 153)

Paridhavi (*S*) The forty-sixth year of the Hindu cycle (*Wil Gloss* 402)

Paries oneri ferundo uti nunc est ita sit A maxim meaning "The party wall is to remain intact for both tenements for ever" (*Morgan Leg Max*)

Parikshaka (*S H.*) An examiner, an investigator, a money charger, a banker, whence it is a common cognomen for persons of that class also, in *S.* and the Hindu dialects a judge in an inferior capacity, an assayer, a tester, a gauger, as the Parkhia of an opium factory employed to examine the quality of the opium

Parinaya Paraphernalia, ornaments or other property acquired by marriage (*Wil. Gloss.* 491.)

Parinayya (*S*) means dress, mirror bracelet and the like.

Parisankha (*S.*) is the deducing of a negative rule from a positive (*Ghosh*)

Parish. Did anciently signify what we now call the diocese of a bishop. but at this day it is the circuit of ground in which the people who belong to one church do inhabit, and the particular charge of a secular priest It is derived from a saxon word which signifies the precinct of which the priest had the care. (*Tomlin's Law Dic*)

A Parish, is the circuit of ground in which the people who belong to one Church do inhabit, and the particular charge of a Secular Priest" (Jacob Re Sandbach School, 1901, P. 20)

PARISH Webster defines the word 'parish' as a district of certain limits.

"Parochia' or 'parish' signifies, in a church sense, a competent number of Christians dwelling near together, and having one bishop, pastor, etc., or more, set over them. Therefore 'parish' in this sense, is the same as a particular church or congregation.

Parish.

'A parish is one of the ecclesiastical subdivisions of the territory of England, and consists of that circuit of ground which is committed to the charge of one person, or vicar, or other minister having cure of souls therein.

A parish is a corporation established solely for the purpose of maintaining public worship.

Various kinds of *Parishes*. There are at least four different kinds of parishes still in England —

(1) The "civil" parish, the unit of local government.

(2) The 'ecclesiastical" parish, the unit of church government

(3) The "land tax" parish, which is of importance only for revenue purposes.

(4) The "highway" parish, which was defined in the Report of the Committee of the House of Lords on Highways (p vi.) as "any parish township, or place maintaining its own highways, or which would maintain its own highways if it were not included in a highway district or an urban sanitary district."[See *Ency. of the Laws of England*, Shaw, Parish Law, 8th ed., Steer, Parish Law, Burn Eccl. Law, Phillimore, Eccl. Law, Caldwell Ecclesiastical Documents, Cripps Law of Church and Clergy]

Parish church. The term is applied sometimes to a select body of Christians, forming a local spiritual association, or to the building in which the public worship of the inhabitants of a parish is celebrated, but the true legal notion of a parochial church is a consecrated place, having attached to it the rights of burial and the administration of the sacraments.

A parish church is a place dedicated and consecrated to the service of God, and is common to all the inhabitants (*Corven's Case*, 1611, 12 Rep 342, see also *Fitzwalter's Case*, 1493, Year Book, 8, Hen vii Cripps Law of the Church and Clergy, Phillimore, Ecclesiastical Law.)

Parish clerk It appears that from very early times the parish priest had a clerk, whose original duties were to keep school, read the epistle, assist in the singing in church, and to accompany the priest when he visited the sick. The canon law (Decr Greg ix. lib III, Tit. I, c III) provided that every priest who has charge of a parish should have a clerk, who should sing with him, read the epistle and the lessons, and who should be able to keep school, etc (*Ency of the Laws of England*)

"In every parish the parson, vicar, &c, hath a Parish Clerk under him, who is the lowest officer of the church. They were formerly clerks in orders, and their business was at first to officiate at the altar for which they had a competent maintenance by offerings; but now they are laymen, and have certain fees with the parson, on christenings, marriages, burials, &c besides wages, for their maintenance" (*Tomlins Law Dic.*)

It is well settled that the Office of Parish Clerk is a Temporal Office" [*per* Chitty, J, *Lawrence* v. *Edwards*, No. 2, (1891), 2 Ch 72].

"A Parish Clerk, in the ordinary acceptation of the word, is not a Spiritual Person" (*per* Dr. Robertson, *Kemp* v. *Atienborough*, 30 L.T.O.S. 211).

Park

Parish Court The name of a Court established in some parish and corresponding to the country courts or common pleas courts in the other states.

Parishioner. A very large word, which takes in, not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties, although they are not resident (3 Atk. 577.)

Parity Being on a par with; analogy, close similarity (as) by party of reasoning

Parium eadem est ratio, idem jus A maxim meaning "Of things equal, the reason and the law is the same." (*Peloubet Leg Max*)

Parivartanam (*S*) Exchange, barter. in the south the term is applied to the deed by which rent free land is converted into land paying revenue, and an equivalent portion of assessed land is made exempt. (*Wil. Gloss*)

Parivedana (*S*) The marriage of a younger brother before that of the elder, which is considered to be an improper act.

Parivetta (*S*) A younger brother married before his elder. (*Wil Gloss.*)

Parivitti (*S*) A man whose younger brother is married before him (*Wil Gloss.*)

"Parjyapta haibek" The words "pariyapta haibek," whether they mean "descend to" or "devolve or go" or "shall become vested" have the effect of vesting the legacy at once 3 Bom L R 808 (P.C), 28 C 621=28 I A 159=5 C W N 729.

Park (*Lat parcus, Fr parque, i e locus incloses*) A large quantity of ground inclosed and privileged for wild beasts of chase, by the King's grant or by prescription. Manwood defines a park to be a privileged place for beasts of venary, and other wild beasts of the forest and chase, and differs from a chase or warren, in that it must be inclosed (*Manw. Forest Laws Tomlins Law Dic.*)

A PARK, says Blackstone, is an inclosed chase extending, only over a man's own grounds The word park, indeed, properly signifies an inclosure, but yet it is not every field or common which a gentleman pleases to surround with a wall or paling, and to stock with a herd of deer, that is thereby constituted a legal park, for the King's grant, or at least immemorial prescription, is necessary to make it so. (*Tomlins Law Dic*)

PARK. In its original signification, a tract of enclosed land, stocked with wild beasts of the chase, enjoyed by the owner, through royal grant or immemorial prescription; an inclosure over one's grounds; an inclosure upon a man's own land, in which beasts of park were kept, an enclosed chase extending over a man's own grounds (*Bouvier L Dict*)

In its common and ordinary signification, an open or enclosed tract of land for the comfort and enjoyment of the inhabitants of the city or town in which it is located; a piece of ground adapted and set aside for purposes of ornament, exercise, or amusement, a piece of ground enclosed for purposes of pleasure, exercise, amusement or ornament; a place for the resort of the public for recreation, air, and light, a place opened for everyone, a place for the resort of the public for recreation and light.

Park

PARK, CHASE, WARREN, FOREST. A *park* is distinguished from a chase or warren only in that it must not be enclosed, but must lie open. A park also must be distinguished from a forest, as a forest comprehends in itself both "a chase, a park, and a free warren" (*see* Manwood, Laws of the Forest, chap 1, p. 24) If all the deer in a park are destroyed it ceases to be park. The beasts of park are said to be the buck, the doe, the roe, the fox, and the marten (*Co Litt* 233a), (*Ency of the Laws of England*, Manwood, Treatise on the Laws of the Forest, Viner's Abr, sub. tit "park")

MUNICIPAL PARK A *municipal park* is a tract of land set apart and maintained for public use, and laid out and planted and ornamented in such a way as to afford pleasure to the eye, as well as opportunity for open air recreation.

PUBLIC PARKS AND STREETS *'Public parks,'* in the strictest sense of the terms, cannot be said to be in any proper sense parts of a street Streets and parks while they are both devoted to the uses of the public, are set apart for widely different purposes, a street being a place of passage, while a park is a place of rest or recreation

"A park" is a place of ground adapted and set aside for purposes of ornament, exercise, and amusement It is not a street or road, though carriages may pass through it

Parkhurst Prison, convict prison.

Parlance. Way of speaking proper to a specified class or subject (as) in legal parlance, in common parlance, in medical parlance.

"Parliament" defined. Act 1, 1872, S 57 (4), *Expln*

The Legislative Branch of the Supreme Power of Great Britain, consisting of the King, the Lords Spiritual and Temporal and the Knights, Citizens, and Burgesses, Representatives of the Commons of the Realm, in Parliament assembled. (*Tomlins Law Dic*)

The constituent parts of Parliament are, the King's Majesty sitting there in his royal political capacity and the Three Estates of the Realm, *i.e* the Lords Spiritual, the Lords Temporal (who sit together with the King in one House), and the Commons, who sit by themselves in another And the King and these Three Estates, together form the great corporation or body politic of the Kingdom, of which the King is said to be *caput. principium, et finis"* (1 *Bl Com.* 153)

"PARLIAMENT is the highest and most honourable and absolute Court of Justice in England, consisting of the King, the Lords of Parliament, and the Commons" (*Co. Litt.* 109*b*)

PARLIAMENT is the supreme authority in the kingdom, not only for the making, but also to provide for the execution of laws.

Parliamentarian. Skilled parliamentary debator.

"Parliamentary county," in England "means, a county or division of a county returning a Member or Members to serve in Parliament, (48 and 49 V c. 15, s. 19, C. 23, s. 33.)

Parliamentary law. 'Parliamentary law' as generally understood, means the rules and usages of parliament or of deliberative bodies. (*Webster Int Dict*) The recognised usages of parliament and legislative assemblies by which their procedure is regulated (*Bouv Law Dict*) A rule of parliamentary law is a rule created and adopted by the legislative or deliberate body it is intended to govern.

"Parliamentary stock" "In order to come within the description 'Government or Parliamentary Stocks or Funds', a fund ought to be either managed by parliament, or paid out of the revenues of the British Government, or, at least, guaranteed by that Government" (per *Wood, V C*, *Brown* v. *Brown*, 4 K. & J 706 cited in *Stroude's Jud Dic.*)

'Parliamentary Tax', is one that is imposed directly by Act of Parliament (per *Parke, B*, *Palmer* v *Earith*, 14 L J Ex 257)

Parochial building "Parochial Building" in English statutes includes "church, churchyard walls, schoolhouse, and schoolmaster's house

Parochial charity. In the English Local Government Act 1894, "Parochial charity" means a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to inhabitants of a single Parish, or of a single ancient Ecclesiastical Parish divided into two or more parishes or of not more than a few neighbouring parishes" (s 75)

Parochial electors The parochial electors of a rural parish are 'the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish" (L G Act, 1894, 56 and 57 V c 73, S. 2 (1) Thus many persons are parochial electors who do not contribute to the rates of the parish at all, such as owners who reside out of the parish, lodgers, and persons enjoying the service franchise

Parochial relief Excusal from payment of poor rate on the ground of poverty is not receiving *parochial relief*

In Mashiter *v* Dunn, 18 L J C.P. 13, *Maule, J*, said "a man is not receiving *parochial relief* because he does not pay the rate, any more than I receive money from a beggar, because I do not give him any when he asks me"

Parody. Composition on which an author's characteristics are ridiculed by imitation, feeble imitation; travesty.

Parol A word, speech, hence, oral or verbal, expressed or evidenced by speech only, not expressed by writing, not expressed by sealed instrument Also used to distinguish contracts which are made verbally, or in writing not under seal, from those which are under seal (*Bouvier L. Dict*)

'PAROL,' is a French word, which means literally 'word' or 'speech.' It is used to denote contracts which are made verbally.

Parol contract. A contract not entirely in writing is a parol contract.

"All contracts are, by the laws of England, distinguished into Agreements by Specially and Agreements by Parol"; a contract in writing not under

Parol evidence

seal, is said to be a "parol" contract (*Rann* v. *Hughes*, 7 T.R. 350-I n.)

Parol evidence of a Written Document, means Extrinsic evidence, whether verbal or otherwise. (*Best on Evidence*, S. 223.)

Parol lease. A parol lease is an agreement for lease made verbally, not in writing, between the parties

Parol license. Mr Freeman, in his note to *Lawrence* v. *Springer*, 31 Am St. Rep 713, 715, says "A parol license is founded in personal confidence, and is defined to be an authority given to do some act or a series of acts on the land of another without passing any interest in the land

Parol variation, is the general rule that evidence of contemporaneous parol agreement cannot be adduced to vary a written contract. (*See* Indian Evidence Act, Ss 91 and 92).

Parole A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole

PAROLE IS DISTINGUISHED FROM "PARDON" in *State* v *Peters*, 43 Ohio St 629 (650) where it is said that a parole of a convict who remains in the legal custody and under the control of the prison board, and subject at any time to be taken back within the inclosure of the penitentiary is not a pardon. The prisoner is not discharged, nor is his term of service shortened, he only being allowed to go outside the building and inclosure of the penitentiary, and remaining in the legal custody and under the control of the board of managers of the penitentiary.

PAROLE. Parole, in the usages of war, is the pledge on honour given by prisoners, that on release they will observe certain conditions, usually not to serve against the capturing government or its allies during the war then existing

In military law, a parole has been defined to be an agreement by a prisoner of war, upon being set at liberty, that he will not again take up arms against the government by whose forces he was captured, either for a limited period or while hostilities continue, when he has leave to depart from custody that he will return at the time appointed unless discharged. (*Black L. Dict.*).

Parra (*Tel.*) A measure of capacity, the fortieth part of a (*Tum*). it was also considered equal to five marakals.

Parricide. The crime of killing one's father, also a person guilty of killing his father (*Black L Dict.*).

Parsi. A worshipper of fire: the name of the race settled chiefly in western India, in the Bombay Presidency, who still observe the ancient magian religion they are distinguished as enterprising merchants, shipbuilders and traders. their ancestors fled from Persia to India upon the conquest of the former by the Mohammadans, and settled in the latter in the eighth century. (*Wil. Gloss.* 403).

Part.

Parsi religion. Religion of the Parsis one of the most solemn ceremonials enjoined by the religion promulgated by Zoroaster is the performance of certain religious ceremonies during the Muktad days. Muktad days are otherwise known as Dosla or Farvardigan days. These Farvardigan days are days that are sacred to the Furohurs. (1 Ind. Cas. 834 at p. 845).

Parson. Means the rector of a Church. The clergyman of a parish or church. Parson is a term which describes the functionary, whatever title he may bear, who for the time being has the cure of the parish as principal

"A Parson is one that hath full possession of all the rights of a Parochial Church. He is called Parson because by his person the church (which is an invisible body) is represented, and he is, in himself, a Body Corporate, in order to protect and defend the rights of the church (which he personates) by a perpetual succession" (1 Bl. Com 384).

Parson, parsonage The word "parson" properly signifies the rector of a parochial or parish church, because during his incumbency in his person he represents the Church which is an invisible body, and in the eye of the law he is the person who can sue or be sued on her behalf. The appellation of person is thus the most honourable as well as legal title that a parish priest can enjoy.

Parsonage, is sometimes taken for a dignitary in a church, and sometimes for the benefice itself. (*Tomlins Law Dic*).

PARSONAGE A house in which a minister of the gospel resides; the residence of the pastor, who conducts public worship in another building devoted exclusively to that object, a certain portion of land, tythes and offerings, established by the laws of this kingdom, for the maintenance of the minister that hath the cure of souls within the parish where he is rector or patron, a parish church endowed with a house, glebe, tithes, etc, or a certain portion of land. tithes and offerings established by law for the maintenance of minister who hath the cure of souls.

"A parsonage is but a house in which a minister of the gospel resides, and has no more relation to public worship than the clothes he wears or the horse he rides."

PARSONAGE DISTINGUISHED FROM "CHURCH": A parsonage house owned by a religious society stands upon a different footing than the church. There is no right of use in such parsonage house It is not a sacred building, like a church edifice, but is, properly speaking, an endowment or source of pecuniary revenue to aid in support of the worship in the church proper. Its use is not spiritual but temporal. Though it is ordinarily used as a residence for the pastor, there is nothing in its character or ownership to prevent its being used for other purposes, as circumstances may render it profitable or beneficial. (*Everett* v. *Asbury Park, First. Presb. Church*, 53 N. J. Eq. 500).

Parsonage lands. Parsonage lands are those of which a clergyman is seised by virtue of his office.

"Part", defined. Act 10, 1897, S. 3 (38); Ben. Act, 1, 1899, S. 3 (31); Bom. Act, 1, 1904, S. 3 (34); Bur.

Part

Act, 1, 1898, S. 2 (43), E B. & A. Act, 1,1909, S. 5 (44), Mad. Act, 1, 1891, S. 3 (4), P Act, 1, 1898, S. 2 (39), U P Act, 1, 1904, S 4 (32).

PART A fragment, a member, a piece; division, a section, a portion or moiety, a share; one of the portions, equal or unequal, into which anything is divided or regarded as divided.

A part is defined to be one of the portions, equal or unequal, into which anything is divided or regarded as divided, a piece a fragment, division, a member; a constituent—and is synonymous with section

The word 'part' may mean section, share, division.

"Part" shall mean a part of the Act or Regulation in which the word occurs Act X of 1897 (General Clauses), S. 3 (38).

Part owner. Co-owner, sharer with others of the ownership of property

The term 'part owners', is a term of common use in the law to denote a class of persons, distinct from partners, who own property jointly, but in different manner and by a different tenure. The term does not aptly describe partners.

Part-owners or quasi-partners Joint owners, or tenants in-common, who have a distinct, or at least an independent, although an undivided interest in the property.

Part payment 'Part payment,' within the meaning of an Act which provides that in any cause founded on contract, when any part of the principal or interest shall have been paid, an action may be brought in such case within the period prescribed for the same after such payment, means a voluntary payment made by the debtor himself or by some one authorised by him to make the payment, and does not include a payment made on a debtor's note by the sale of his property on execution or on any legal process whatever.

Payment of interest on a note by the maker, and indorsement thereof on the note by the holder is a 'part payment,' so as to take the note out of the statute of limitations. *See* Lim. Act, Ss. 19 and 20

Part performance In order to justify a claim based on the doctrine of part performance of a verbal agreement for the sale of real estate, the acts of part performance relied on must be clearly, definitely, and satisfactorily shown, and it must appear that such facts were done with reference to and in pursuance of the contract

The principle on which courts enforce oral agreements on the ground of part performance is that, when one of the parties has been induced to alter his situation on the faith of the oral agreement to such an extent that a refusal to enforce it would result, not merely in the denial of the rights which the agreement was intended to confer, but in the infliction of an unjust and unconscientious injury and loss to him, the other party will be held estopped by force of his acts from setting up the statute, but the acts constituting such part performance must have been in reliance on and in pursuance of the oral agreement, and must be related to and connected with it, though such acts are not confined to doing what the contract stipulates.

Partial loss

To apply the doctrine of part performance to a particular case, it must be shown that the acts of part performance are unequivocally referable to the alleged agreement, in other words, part performance always supposes a completed agreement. There can be no part performance where there is no completed agreement in existence. 27 O.C. 175=11 O.L.J. 619=82 I.C. 338=1 O.W.N 248=A I.R. 1925 Oudh 120.

When in pursuance of an agreement to transfer property the intended transferee has taken possession though the requisite legal documents had not been executed and registered, the position is the same as if the documents had been executed, provided specific performance can be obtained between the parties to the agreement in the same Court and at the same time as the subsequent legal question falls to be determined (24 C W N 463, *Foll*, 29 Mad 336, *not Appr.*; A I R. 1924 Mad. 271 and A I R. 1914 P.C. 27, *Ref.* 11 Pat.L.T. 478=123 I C. 799=A I R. 1930 Pat 53

Parta. Land revenue rate

"Partap" "Partap" means "iqball" an Urdu word and corresponds to the Latin word "felix" as applied to the Roman General Sulla and connotes prestige resulting from success and good fortune. A I.R. 1934 Lah. 777.

Partem aliquam recte intelligere nemo potest, antequam totum iterum atque iterum perlegerit A maxim meaning "No one can rightly understand any part until he has read the whole over and over again." (*Morgan Leg. Max*)

Partial. Of, pertaining to, or affecting, a part only, not general or universal, not total or entire.

Partial acceptance. Of a bill of exchange is "an acceptance to pay part only of the amount for which the Bill is drawn." (S. 19 (2b), English Bills of Ex. Act, 1882)

Partial average. (*See average.*) Partial or particular average arises where expenses are incurred for the benefit of only the ship or freight or cargo, and not all of them combined, in which case only the thing benefited is liable for the expense.

Partial defense (*In pleading*) A partial defense is a defence which only tends to mitigate plaintiff's damages.

Partial evidence. Partial evidence is that which goes to establish a detached fact in a series tending to the fact in dispute. It may be received, subject to be rejected, as incompetent, unless connected with the fact in dispute by proof of other facts.

Partial insanity 'Partial insanity' is used to designate the condition of a man who is mad as to a particular subject, but sane as to all other subjects.

Partial loss. The term 'partial loss' as employed in an insurance policy, is to be understood in its natural and usual sense, subject to such modifications of its ordinary import as may be necessary to the ascertainment of the actual understanding and intent of the parties.

Every loss which is not total is partial.

Partial restraint.

"This expression includes both a deterioration of all or any part of, and a total destruction of a part of, the subject of insurance" (Wood, 359, Park ch 6 215 Maude & P 525)

Partial restraint A 'partial restraint,' in the law relative to contracts in restraint of trade, is that which is restricted in its operation in respect to place, and this may be made in express terms, or it may result from a construction of the contract, when viewed in the light of the environments and circumstances surrounding the contracting parties.

Partial verdict A partial verdict is one by which the jury in a criminal case acquit the defendant as to part of the accusation and find him guilty of the residue

Particeps criminis One who assists another in any manner in carrying out a fraudulent purpose, an accomplice (5 Am St Rep. 912)

Mere presence at the scene of the perpetration of a crime does not render a person a *particeps criminis* To constitute him a party to the criminal act there must be not only presence upon the scene, but an actual *participation*—an aiding and abetting in the crime committed" (70 N L.L. 353 (355), 57 Atl 270)

Participate. The word 'participate' is derived from two Latin words, 'pars,' meaning part, and 'capio' meaning to take; and hence it means to take part, to share in common with others.

Participation. Participation in a crime does not include mere consent, where no aid is given and no encouragement rendered.

Participes plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum et quod in nulla parte sit defectus. A maxim meaning "Many parceners are as one body, inasmuch as they have but one right, and it is necessary that the body be perfect, and that there be a defect in no part" (*Morgan Leg Max.*)

Particular As an adjective, sole, single, individual, specific; of or pertaining to a single person, class or thing, belonging to one only; not general, not common, hence personal, peculiar, singular (*Webster Dict.*)

As a noun, a detail In the plural as a noun, details, the details of a claim, or the separate items of an account, sometimes called a bill of particulars

If a condition of sale provides compensation for any mistake in the description of the lots or for any error or misstatement 'in this particular,' the latter words will be construed 'in these particulars,' so as to embrace an error in the particulars" (Sug. V. & P, 15, citing *White* v. *Cuddon*, 8 Cl. & F. 766)

Particulars A statement that one has not heard the particulars of a transaction is contradicted by showing that he had heard the details. The words 'particulars' and 'details' are in fact synonymous, and in ordinary parlance convey the same meaning.

Particulars (*in pleading.*) The object of particulars in pleadings is to make a litigant state with sufficient fullness the nature of his claim or defence so as to enable parties to go to trial with a knowledge of the case which they have to meet, and thereby to save expense, and to prevent them from being taken by surprise, (per *Cotton L.J.*, *Hennessy* v *Wright*, (1888) 57 L J.Q.B 594, 595, *Spedding* v *Fitzpatrick*, (1888), 38 Ch. D 410, 413.) This shows the difference between particulars and discovery by interrogatories, the object of which is to make a litigant state what he knows about the facts to which the interrogatories relate (per *Bowen, L J*, *Turnock* v *Sartorie*, (1888), 33 Sol J 58) Particulars are intended to make a party's claim or defence plain, interrogatories to assist the party interrogating (*see* per *Buckley, L J*, in *G W Young & Co. Ltd*, v. *Scottish Union Ins Co*, (1907), 24 T L R. 73)

Particular agent A 'particular agent' is one authorised to do one or more particular things.

Particular partnership. A 'particular partnership' is defined as one where the parties have united to share the benefits of a single individual transaction or enterprise Two persons who buy land for immediate sale, purely as a speculation, on an agreement for a division of the profits, constitute a particular partnership

Parties. The word 'parties,' as used in an indorsement on the back of a note, as follows, 'Both parties agreed' that it shall be left in the possession of another, means the maker of the note and the payee.

The word "parties" in S 24 of the Bengal Civil Courts Act is not confined to the parties to an action, but must be construed with reference to the origin or inception of the right that is to be adjudicated upon 7 A. 775 (F B)=5 A.W.N 228

"Parties concerned," *See* 30 C. 155=6 C.W N. 373, (F B), 21 C. 29, 404, 24 C 55=1 C W.N. 3, (F B.), 27 C. 892=4 C W N. 613, 4 C W.N. 753.

Parties to suit. (*See Party*) At the head of every suit or proceeding in Court the names of the *parties* are set out, and if any change be made in the parties during the course of the action, the cause title should be amended accordingly. These names form the title of the action. In the selection of the parties there is twofold chance of error. The plaintiff may omit parties whose presence is essential, or he may add parties whose presence is improper. In some few cases he has an option and can join one or more parties as he chooses But, as a rule, the law is precise; certain parties are necessary and must be joined, certain other parties are unnecessary and must not be joined To make a false start in either of these respects will almost certainly involve the plaintiff in trouble and expense at some stage or other of the proceeding.

Parties to the suit in S. 47, C. P Code, means parties who have been properly made parties in accordance with the provisions of the Code. 11 Bom.L R 1225 (P.C)=31 A. 572=13 C W.N 1182=10 C.L.J 318=6 A L.J. 822=3 I.C. 864=6 M.L.T. 279=36 I.A. 168.

Parti land. Presumed to be within possession of Zamindar, 1929 Oudh 447.

Partings.

Partings Mixtures of bullion, of gold and silver. This is called a gold parting when gold predominates, and a silver parting when the silver predominates.

Partique. Licence for a ship to trade in specified ports, provided the port she sails from is free from infectious disease.

Partisan. Strong adherent of a party, side or cause.

Partisanship Party spirit.

Partition defined. *See* Imperfect partition, Instrument of partition, Perfect partition. U P. Act 3, 1901, S. 106

Partition The dividing of land descended among co-heirs or parceners, where there are two at least. (*Tomlins Law Dic*)

PARTITION is a division between co-owners (whether co-parceners, joint-tenants in common) of lands, tenements and hereditaments held by them, the effect of such division being that the joint ownership is terminated, and the shares of the parties vested in them in severalty.

PARTITION (*Sanskrit vibhaga*) is the adjustment of diverse rights regarding the whole by distributing them on particular portions of the aggregate (*Mitakshara.*)

A partition is a separation between joint owners or tenants in common of their respective interests in land, and setting apart such interests, so that they may enjoy and possess the same in severalty.

Partition implies an interest in different persons in the property to be divided.

The term "partition" in C P. Code, (S. 54) is not confined to the mere division of the lands into the requisite parts, but includes the delivery of the shares to their respective allottees. (11 B 662)

PARTITION AND DISTRIBUTION Distribution neither gives a new title to property nor transfers a distinct right in the estate of the deceased owner, but is simply declaratory as to the persons upon whom the law casts the succession and the extent of their respective interests, while partition, in most if not all of its aspects, is an adversary proceeding, in which a remedial right to the transfer of the property is asserted, and resulting in a decree which either *ex proprio vigore* or as executed, accomplishes such transfer.

PERFFCT PARTITION. *See* 116 I.C. 443=1929 All 448.

Partition wall (see *Party-wall.*) When open spaces are spoken of, "partition walls" do not mean blocks of buildings, but such walls as are used for partitioning spaces. (14 C 797)

Partners. Persons associated in the carrying on of a trade, industry or business jointly.

PARTNERS. Are where two or more persons agree to come into any trade or bargain in certain proportions agreed upon

In order to constitute a partnership a communion of profit and loss between the parties is essential, and this is the criterion to judge by, where the question is, whether persons are partners or not (*Tomlins Law Dic., Ind. Part Act.*)

'PARTNER' Assistant entitled to share of profits no partner. *See* 6 C.W.N. 429 at 438.

AGENT AND PARTNER—DISTINCTION. The word 'agent' does not of itself imply full authority to bind the principal, in the same way that a partner can bind his co-partner under S. 251, Contract Act. 48 Bom 20=25 Bom.L.R. 1014=77 I.C. 266=A.I.R 1924 Bom. 232.

SLEPPING PARTNER One who has money invested in a business, but takes no part in its management.

"Partnership" defined Act 9, 1872, S. 239.

PARTNERSHIP. A partnership is a contract of two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business and to divide the profit and bear the loss in certain proportions

Judge Story defines a partnership to be a voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits thereof between them.

"An agreement that something shall be attempted with a view to gain, and that the gain shall be shared by the parties to the agreement, is the grand characteristic of every partnership" (*Lindley, P*, 5 ed, 1)

"Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them. Act IX of 1872 (Contract), S. 239, *see* Ind. Partnership Act

The agreement to share net profits does not necessarily connote a partnership. 28 N.L.R. 198=140 I C. 708=A.I.R 1932 Nag. 138.

The members of a Hindu joint family carrying on a family business are not "partners" in view of the provisions of S. 5 of the Partnership Act 1936 A. M L.J. 130 *See also* Pollock's Digest of the Law of Partnership. For Forms of Orders, *see* Seton, Daniell's Chancery Practice, Annual Practice.

PARTNERSHIP AT WILL. In the case of a partnership at will, each partner is entitled to dissolution, it is a legal right under the Contract Act. The circumstances in which a court may order a dissolution of partnership during the term have no bearing in connection with a partnership at will. 46 M L J 158 =22 A.L J. 14=51 I.A. 154=79 I C. 944=A I.R 1924 P.C. 2 (P C.)

Partnership debt. A partnership debt is a joint debt, and not joint and several.

Partnership interest. A partnership interest is one owned by several persons in partnership, for partnership purposes.

Partus sequitur ventrem. The offspring follows the dam, the progeny belongs to the owner of the dam; the issue follows the mother. This is a maxim of the Roman Law and applied to the *status* of the issue of a female slave by a free-father in countries where slavery was recognized. It also

Party.

expresses the rule respecting property in the young of animals.

Party (*in practice.*) A party to an action or suit is one who is directly interested in the subject-matter in issue, who has set the court in motion, or has a right to make a defense, control the proceedings, or appeal from the judgment.

A party is ordinarily one who has or claims an interest in the subject of an action or proceeding instituted to afford some relief to the one who sets the law in motion against another person or persons Interest or the claim of interest is the test as to the right to be a party to legal proceedings almost without exception.

Though, technically speaking, persons to whose use a suit is pending are not plaintiffs, yet in common parlance they might with propriety be both said to be parties, where such use appears in the suit. *See also* 31 A. 572.

A corporation may be a party as well as a natural person

The word 'person' and 'party' and other word or words importing the singular number, shall be held to include firms, companies, associations and corporations.

A recognised agent is not a "party to the proceedings within S 195 (*c*) of the Cr P Code 3 Bur L T 108=8 I C 1202=12 Cr.L J 87. *See also* 3 I C. 864=31 A. 572

A decree-holder by becoming a purchaser at a sale held in execution of his decree does not cease to be a party to the suit within the meaning of section 47 of the C P Code. 11 I C. 987 (988)=13 Bom L R 661=35 B 452.

'ADVERSE PARTY' if includes *pro-forma* defendant. 118 I.C. 663=1929 A. 680.

Party, appearance of *Curgenven, J.*—When the party is represented by a pleader, the test of the party's "appearance" whether he be present in person or not, is whether the pleader is in possession of full instructions to conduct the case, so far as it can be conducted at that hearing, and, if so whether he acts upon these instructions and does not either withdraw or demonstrate in some other manner his unwillingness to proceed further. If he does withdraw either expressly or constructively or reports no instructions, or otherwise ceases fully to represent his client, it makes no difference that the client may himself be present, unless it is clear that he assumes charge of his own case; because it may be assumed that a party who employs a pleader is not himself prepared, upon the pleader's withdrawal, to undertake his function. 110 I.C. 377=A.I.R. 1928 Mad. 831.

Party interested. A person making a report of an offence to the police is a party interested. 171 I. C. 934=1937 A L.J. 845=1937 A.W.R. 729=A.I.R. 1937 All 664.

"Party interested in the result of the appeal." *See* C. P. Code, O. 41, R. 20.

Party of the first person. A deed must be read according to the manifest intention of the parties,

Parvatyakaran.

and if by mistake the words 'party of the first part' are written where 'party of the second part, should have been written, the mistake will not be permitted to defeat the intention of the parties, but the court will give effect to the deed so as to carry out the intentions of the parties.

Party-rate ticket. A party-rate ticket is a ticket for the transportation of a party of persons from one place to another at a rate less than that charged to each individual separately for a like transportation on the same trip, a concession shown to persons travelling in a party

Party spirit. Zeal for the conse of his party and against other parties.

Party system. System by which the members of a Government are all selected from one political party, the other or others being in opposition

"Party wall" defined. Ben Act 3, 1899, S. 3 (33).

PARTY WALL. A party wall is ordinarily a wall built partly on the land of one and partly on the land of another for the common benefit of both in supporting timbers used in the construction of contiguous buildings.

A party wall is a dividing wall between two houses to be used as an exterior wall for each.

A common or party wall is one which has been built at a common expense, or one which has been built by one party, but in which another has acquired an easement right. Every wall or separation between two buildings is presumed to be a common or party wall.

PARTY WALL This term appears to have at least four meanings apart from special statutory definitions. (*Watson* v *Gray*, (1880) 14 Ch.D 192). (1) A wall of which the adjoining owners are tenants in common *Wiltshire* v *Sidford*, (1827) 1 M. & Ry. 404) (2) A wall divided longitudinally into two strips, one belonging to each of the adjoining owners. Each owner can at common law use only his own part of the wall (*Matts* v. *Hawkins*, (1813) 5 Taun. 20, 14 R R 695). (3) A wall wholly belonging to one owner, but subject to an easement or right in others to have it maintained as a dividing wall between the two tenements The owner of the dominant tenement is at common law entitled to put on such a wall any weight he likes as long as he does not endanger the stability of the wall. (*Sheffield Improved Industrial Society* v. *Jarvis*, (1871) W N. 208). (4) A wall divided longitudinally into two halves separately owned, each half subject to a cross easement in favour of the owner of the other half. Each owner, in such a case, has at common law the right to put any amount of weight on the wall which will not injure its stability. (*Watson* v *Gray*, supra, Fry, J., at p. 195. *See also* A.I.R 1933 Sind 244; Emden's Building etc, Statutes (Matthews and Ball) 4th ed, 1907; and *Beven* on Negligence, *Glen* Building Acts.

Parum est latum esse sententiam nisi mandetur executioni. A maxim meaning "It is not enough that sentence be given unless it be carried into execution.

Parvatyakaran (*Tam.*) A subordinate office in the revenue department, a native Collector under the

Parwana-bazu.

Thasildar, having charge of the collections of one or more villages; it is sometimes applied to the head or manager of a village.

Parwana-bazu (*H*) An order from the old Moghul government to the chief financial authority of a district to relinquish the collection of an assigned amount of revenue to the person to whom it has been granted with the necessary jurisdiction (*Wil Gloss.*)

Parwanah (*Persian.*) A written pass or permit.

Parwana-i istaklal (*H*) An order declaratory of the right of permanent possession.

Parwana-i-subahdar (*H*) An order issued by the governor of a province for an assignment of revenue, or any other right or privilege. (*Wil Gloss* 404)

Parwang-i-bardar (*Mal*) An officer stationed in the antechamber of a great man to announce arrivals and obtain permission for them to enter. (*Wil Gloss*)

Pasama (*Mal.*) Soil of the best quality.

Pasamina (*Punjabi*) Woollen cloth, an important industry in the Punjab

Pasapu (*Tel.*) A gift, a settlement or assignment of land to a daughter.

Pasato. The name of the language of the Pathan tribes, it is of Aryan origin with an inter-mixture of Zand and Persian.

Pasha. Turkish military, or naval or civil officer of high rank.

"Pass" defined. Act 9, 1890, s 3 (15)

"PASS" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorizing the person to whom it is given to travel as a passenger on a railway gratuitously. Act IX of 1890 (Railways), S. 3, cl. 15.

The word 'passing' used of notes, includes any delivery of a note to another, for value, with intent that it shall be put into circulation as money, and does not necessarily import that the notes are transferred as genuine

'To pass counterfeit money' means delivery as money, or as known and conventional substitute for money, and does not necessarily mean to transfer for a valuable consideration received from the person to whom the bill is given.

The plain or ordinary and usual sense of the word 'pass,' as applied to coin or bank notes, is to deliver in exchange for something else, and is equally expressed by the words 'sell,' 'exchange', or 'deliver.'

In a written agreement for an exchange of real estate and other property, and providing that one of the parties should pay the taxes on his land up to passing of papers, the 'passing of papers' meant the execution and delivery of formal conveyances securing to each the title contracted for.

"Pass"—Passing of an Act "The date of the 'passing," of an Act means the time when the Royal Assent is given to a Bill which has passed both Houses of Parliament" (*per* James, L J, Exp Rashleigh, Re Dalzell, 45 L J. Bank. 31 2 Ch D. 9.)

It is also the date of its commencement where it provides no other commencement (33 G 3, c 13 S. 36 (1)), Interp. Act, 1889). *Hall* v. *L.B. & S Ry*, 55 L J Q B. 328 *See also* Ind General Clauses Act.

When an Act comes into operation on a stated Day it becomes law as soon as the clock begins to strike twelve on the previous night. (*Tomlinson* v. *Bullock*. 48 L.J. M C. 95, 4 Q B D. 230.)

Pass judgment Deliver judgment.

'Pass sentence' Give decision and prescribe punishment in a criminal case.

Passage "Passage," is "the hire that a man pays for being transported over Sea, or over any River' (*Cowel*) and that is its primary meaning (*Jacob*)

PASSAGE, (*Passagium*) Is properly over water, as way is over land, it relates to the sea, and great rivers, and is a French word signifying *transitum* (*Tomlins Law Dic*)

The words **"steerage passage"** mean the passages of all others but cabin passengers

Passage of an Act The 'passage' of an act, within the meaning of an act laying duties on goods imported from and after the passage of the Act, means the day on which it is passed, and not the time of its being signed by the Governor, Viceroy or Sovereign

The time of the passage of an act is the time when it has passed through the various stages rendered necessary by the provisions of Law to make it a valid statute, and been approved and signed by the Governor, and not the time when it was to take effect *Johnson* v *Fay*, 82 Mass (16 Gray) 144, 145.

Pass book A passbook used by a depositor in a savings bank is not negotiable paper, such as to justify the payment of the amount of the deposit to one having possession of the passbook.

A passbook is a book of the buyer or usually debtor party, in which he allows the other party to enter their mutual transactions, and thus these entries become in a great degree the written admissions of both parties Whatever is entered there by one party is entered with the other's consent.

Passed jointly The words "passed jointly" in explanation (1) to Art 182 of the Limitation Act 1908 refer to the decree which is passed jointly against more persons than one, and not a decree where a joint liability may be deduced, by refering to the surety bond executed by a third party for the due performance of the decree. 31 B 50=8 Bom L. R 807.

Passed on appeal. An order by the High Court reject ng an application for amendment of its own decree in appeal is not an order made on appeal within the meaning of cl. 39 of the Charter. 30 C. 679=30 I A 20 (P.C)

"Passenger" defined (*See also* Steerage Passenger) 57-8 V.c. 60, S 267; Act 6, 1884, S. 5 (7): Act 7, 1884, S. 3 (4), Act 10, 1887. S. 5 (2).

Passenger.

The word "*passenger*" means any person carried in a ship other than the master and crew, and the owner, his family and servants (M.S.A., 1894, S.267), *i e* someone who pays for his passage

The wife and father in-law of a Captain of a vessel, who were on the vessel and being carried by it to a place to which they wished to go, but who were being so carried by the captain's invitation without the knowledge of the owners, are not "Passengers" within the Merchant Shipping Act, 1854 (*The Lion*, L R 2 P.C. 525, 38 L.J. Adm. 51, 6 Moore P.C N.S. 163.)

Any one (other than the officers and crew) being carried by a ship, and towards whom the owners of the vessel have *qua* the voyage, any obligation or duty, would be "Passenger"

Payment of fare would be clear proof that a voyager was a passenger, but a voyager (other than the officers and crew) is also a passenger, though he pay no fare, if the owners of the ship carry him in pursuance of an obligation or duty (Judgment of P C, the Lion, sup)

OTHER DEFINITIONS. A 'passenger', in the legal sense of the word, is one who travels in some public conveyance by virtue of a contract, express or implied, with the carrier, as the payment of fare, or that which is accepted as an equivalent therefor

A "passenger" has been defined to be a person whom a railway, in the performance of its duty as a common carrier, has contracted to carry from one place to another place for a valuable consideration, or whom the railway, in the course of the performance of that contract, has received at its station, or in its car, or under its care.

Webster defines 'passenger' as one who travels in some conveyance, as a stagecoach or steamboat, a passenger or passer-by, one who is making a passage a traveller, especially by some established conveyance, a person conveyed on a journey.

A person who has purchased a ticket from a common carrier's agent, paid him therefor, and is in waiting at the depot, intending thereafter, as soon as possible, to take passage, or one who has gone to the depot with the intention in good faith to procure a ticket to take passage on the carrier's train at the first opportunity, and for this purpose has placed himself in the care of the carrier, and its servants and agents, preparatory to taking passage on its train, is a passenger.

One becomes a passenger when he puts himself into the care of the railroad company to be transported under a contract, and is received and accepted as a passenger by the company. There is hardly ever any formal act of delivery of one's person into the care of the carrier, or of acceptance by the carrier of one who presents himself for transportation, and so the existence of the relation of passenger and carrier is commonly to be implied from circumstances. These circumstances must be such as to warrant an implication that the one offered himself to be carried on a trip about to be made, and that the other has accepted the offer, and has received him to be properly cared for until the trip is begun, and then to be carried over the railroad.

Passenger train

One who enters upon depot grounds by the approaches furnished by the carrier is a passenger The fare does not have to be paid, nor the train entered, but the person must merely enter within the control of the carrier at the depot through the usual channels of business, with intention of becoming a passenger by either paying fare before or after entering the train

One who has a railroad ticket, and is present to take the train at the ordinary point of departure, is a passenger, though he has not entered the cars

One in good faith coming to the depot to take passage on the cars is a passenger, though he have not bought a ticket.

Where one in good faith inquired of a railroad agent for a ticket for passage in a freight train, and was referred to the conductor, but was injured before getting upon the train, held, that the relation of passenger was established

Where an employee of a railroad company, whose duties are not connected with the running of its trains, rides on one of its trains on a free pass, and is injured, the company is liable to him as to a passenger.

PASSENGER, in the Railways Act (IX of 1890), S 118, is used in a restricted sense of denoting a person who, without the permission of a Railway servant, enters any carriage of a Railway for the purpose of travelling therein as a passenger, 21 I.C. 894.

The expression "Passenger" in S. 109, Railways Act includes a class of passengers 51 Cal 168=28 C W N 388=39 C L J 107=25 Cr L J 1012=81 I C 788=A I R 1924 Cal. 687.

The expression a "Passenger" includes possible passengers. 42 M L J 21=45 Mad 215=30 M L T 134=(1922) M W N. 34=15 L.W 207=A.I R. 1922 Mad 35.

TO BE A CABIN PASSENGER, a person must (*a*) have a defined space allotted to his exclusive use, (*b*) pay a fixed higher fare for the entire voyage, (*c*) have duly signed contract ticket in the form prescribed therefor. (M S.A. 1894, S. 268, and 1906, S. 14).

A "STEERAGE PASSENGER", means all passengers except cabin passengers.

"LOWER PASSENGER DECK", means the deck next below the upper passenger deck.

"UPPER PASSENGER DECK", means the deck immediately beneath the upper deck or the poop or roundhouse and deck-house *see* Abbott, Merchant Shipping, Temperley, Merchant Shipping Act, Bell, Excise Laws.

Passenger station or depot. 'Passenger station' means nothing less than a place at which passenger tickets are ordinarily sold.

The expression "passenger depot," also means a depot building used for the reception of passengers

"Passenger steamer" defined. 57-8 V c. 60, S. 267.

The word "*passenger-steamer*" means any steamship carrying passengers from one place to another.

Passenger train. A passenger train consists of passenger, baggage, express, and mail cars.

Passenger train.

"A 'Passenger Train', *prima facie*, is a train advertised to take passengers generally,—people travelling from place to place,—upon the terms and in the manner ordinarily applicable to such passengers" (*per* Selborne, C., *Burnett* v *G N. of Scotland Ry*, 54 L.J.Q.B 535, 10 App Ca 147).

Mixed trains, made up in part of a passenger equipment and in part of freight cars, used for the transportation of passengers, are passenger trains, within the meaning of the terms of a contract giving a railroad company depot facilities for passenger trains.

"Passion" 'Passion' as used in a charge defining manslaughter as voluntary homicide committed under the immediate influence of sudden "passion" arising from an adequate cause, means any of the emotions of the mind known as 'anger,' 'rage,' 'sudden resentment,' or "terror,' rendering the mind incapable of cool reflection.

Passive bonds and shares Bonds or shares on which no interest is paid.

Passive trust. Where a special duty is to be performed by the trustee in respect to the estate, such as to collect the rents and profits, to sell the estate, etc., the trust is called 'active' All other trusts are denominated 'passive trusts, because there is no duty imposed on the trustee.

The prime requisite of a passive trust is that the trustee is made, in form, a mere holder of the legal title; the right to the possession and profits being in another.

Pass of arms. Conflict

Passover. A Jewish feast

Passport. Official document showing traveller's identity and commending him to protection in other countries.

PASS-PORT Signifies a license for the safe passage of any man from one place to another (*Tomlins Law Dic*) *See* Indian Pass-port Act, 34 of 1920, S. 2

Pass-word (*Milt*) Selected word or phrase distinguishing friends from enemies.

Past consideration A past consideration is an act done before a contract is made, and, though beneficial to the defendant, is not such a consideration as will support contract, unless done on request or under circumstances which the law declares to be good consideration for a promise. (*See* S 23, Contract Act).

Past due. 'Past due interest' means interest which is collectible on demand.

Past member. A.I.R. 1937 Lah 912.

PAST MEMBER (*of a company*) By mere death a member of a company does not become a part member Having died, though he cannot continue as a member his estate continues to be liable. 55 All. 417=143 I C 762=1933 All. 334

Pasteboard Pasteboard is thick paper of coarse and inferior quality.

Pastor. A pastor is one who has been installed, according to the usages of some Christian denomination, in charge of a specific church or body of churches.

Patent.

Pastoral Pertaining to rural life

Pasturage Pasturage is the right of grazing one's cattle on the estate of another.

A right of "Common Pasturage and Herbage", only authorizes taking what can be taken by the mouth or bite of cattle, and not to cut or carry away any part of the growth of the soil (*De la Warr* v. *Miles*, 5) L J Ch. 754)

Pasture Is any place generally where cattle may feed, and feeding for cattle is called Pasture, wherefore feeding grounds are called common of Pasture, but common of Pasture is properly a right of putting beasts to pasture in another man's soil, (*Tomlins Law Dic*) *See also* Williams, Rights of Common, 79, Elton, Commons and Waste Lands, 31.

"Pasture is a general name for herbage, acorns and nuts, and for leaves and flowers, and for all things comprised under the name of Pannage" (Britton, I 2, Ch 24, 1 Nichols' Ed 371 Va, Bracton, I 4, c 38, fol 222 Fleta, I. 4, c 19 Cowel)

"If a man doth grant all his pastures the land itself employed to the feeding of beasts doth pass, and also such pastures or feedings as he hath in another man's soil"

Pasupu (*Tel*) A gift, a settlement or assignment of land to a daughter (*Wil Gloss*)

Patakhas,—if arms or ammunition 53 All 226=130 I C. 626=1930 A L J 1467=1931 All 17

Patam A lease or simple lease in Malabar

Patambapattam (*Mal*) Rent of plantations or of dry lands

Patara (*Tel*) A pit for preserving grain.

Pat-bandi, (*H*) A statement of the particulars of the assets and debts of an estate as agreed upon between the heirs and claimants. (*Wil Gloss* 406).

"Patel" defined. Act 18, 1881, S. 4 (13-*a*).

PATEL. Village headman.

Patent. The word 'patent' means the exclusive privilege granted by the sovereign authority to an inventor with respect to his invention

A patent implies a grant from the sovereign power, securing to the inventor for a limited time the exclusive right to make, use, and vend the invention. It conveys to the inventor substantive rights, and secures to him a valuable monopoly, which he can enforce for his own advantage, either by using it himself, or by conveying the privilege to others He receives something tangible, something which has a present, existing value, which protects him from competition, and is the source of gain and profit. An instrument which falls short of this, which gives one limited and temporary protection, which is but a condition precedent to the definitive grant, and which conveys no monopoly or the right to proceed against infringers, is not a patent in the strict sense of the word. (U.S.) 97 Fed. 604, 605.

Patent.

A patent protects the first producer or inventor of an article against the manufacture, production, and sale of any such article without his consent.

A patent must combine utility, novelty and invention. It may in fact embrace utility and novelty in a high degree, but still be only the result of mechanical skill, as distinguished from invention A person, to be entitled to a patent, must have invented or discovered some new and useful art, machine, manufacture, or composition of matter, or some new and useful improvement thereon The fact that a device has gone into general use and displaced other devices, while in some cases evidence of invention, is not conclusive of patentability, and is not sufficient to support a patent where the changes made from the prior art are mere changes of mechanical construction, or form, size, or materials.

"Patent" means a patent granted under the provisions of the Patents and Designs Act. Act II of 1911 (Patents & Designs), S. 2, cl 11.

Patents (or *Letters Patents*) The King's grant or writings sealed with the Great Seal (*Tomlins Law Dic*)

Letters Patent for inventions are grants made by the Crown to a subject enabling the grantee to prevent all persons other than himself and those whom he authorises, from making using, exercising, or vending that which is the subject-matter of the letters patent, in other words, letters patent are grants of a form of trade monopolies. The term "monopoly" is not often in use, probably owing to the odium which attached to the term due to the oppressive grants of the Tudors, the grant is much more frequently styled" "a patent" On this subject *see* Edmunds on Patents, Terrell on Letters Patent, Cunningham on Patents, Frost on Patents, Fulton, Patents, Trade Marks and Designs, Lawson on the Patents, etc, Acts, Wallace and Williamson's Letters Patent for Inventions, Webster'sPatent Cases, Hindmarch on Patents; Higgin's Digest of the Law of Patents, Morris's Patents Conveyancing, Robinson on Patents (American Law), Gordon on Monopolies by Patents, (*Ency. of the Laws of England.*)

Patentability. Patentability may exist where combination of old elements produced a new and useful result or an old result in a new and useful manner, provided always that the conception and embodiment of the combination must involve the exercise of the inventive faculty, and not merely the skill of a mechanic familiar with the art. Invention must exist in every case.

Patentable subjects. 'Patentable subjects,' as defined by the patent law, are 'any new and useful art, machine, manufacture or composition of matter or any new and useful improvement on any art machine, manufacture or composition of matter'

Patent ambiguity. A patent ambiguity is that which appears ambiguous on the face of the deed or instrument.

An ambiguity is patent that is apparent on the face of an instrument, where the mere reading of it shows that something more must be added before the reader can tell which of certain things, or persons is meant.

Pathology

PATENT AMBIGUITY AND LATENT AMBIGUITY. A patent ambiguity is one which arises solely from the terms of the instrument, while a latent ambiguity is one not appearing on the face of the instrument, but which is developed by extrinsic evidence.

A patent ambiguity is an ambiguity appearing on the face of an instrument in question, and differs from a latent ambiguity which is an ambiguity arising from the fact that the words of the instrument apply equally well to two different things or subject-matters.

Patent danger. 'Patent dangers, are those seen, or by their presence perceptible to the senses.

Patent defect. A 'patent defect' is not that may be discovered by the exercise of ordinary diligence. Where it appeared that an animal sold was affected with a disorder and slightly lame from that cause, and that there was a knot on the leg affected which could be plainly seen, but the buyer took the animal without seeing it in motion, the defect was a patent one, and there could be no recovery in an action for deceit.

Patent leather. 'Patent leather' is a trade term used in the leather trade to designate glazed calfskin

Patent medicines. Patent medicines are medicines prepared for immediate use by the public, put up in packages or bottles labeled with the name and accompanied with wrappers containing directions for their use and the conditions for which they are specifics.

Patent right. A 'patent right' is the exclusive liberty conferred by letters patent from the sovereign on an inventor or his alienee of making and vending articles according to the invention.

A patent right, in its usual significance, means a privilege granted by the government to the first inventor of a new and useful discovery or mode of manufacture that he shall be entitled during a limited period to the exclusive use and benefit thereof

A patent right is a monopoly of a certain way of doing a thing.

Patentee Holder of a patent.

"PATENTEE" means the person for the time being entitled to the benefit of a patent. Act II of 1911 (Patents and Designs), S. 2, cl. 12.

Pater est quem nuptiae demonstrant. He is the father whom the marriage declares so

Paterfamilias (*Lat.*) Father of a family.

Paternity. Quality or state of being a father, fatherhood.

Paternoster. Lord Prayer in Latin

Pathan (*Hindustani*) This name as used in India includes all the natives of the country commonly called Afghanistan, and also the descendants of immigrants from that country into India.

Pathi. Pathi is a sub-division of a mahal in an imperfect partition and represents a district fractional part of a mahal 125 I.C. 578=1930 A.L.J. 1023=A I R 1930 All 729.

Pathology. The study of disease.

Pathological condition.

PATHOLOGY. 'Pathology' as used generally, means that part of medicine which explains the nature of diseases and their causes and symptoms

Pathological condition A 'pathological condition' means neither more nor less than diseased condition of the body

Patient The word 'patient,' in an Act providing that a physician shall not be allowed to disclose any information acquired in attending a patient, unless the provisions thereof are expressly waived by the patient, includes persons under disabilities, such as infancy, lunacy, etc, as such persons are patients, within the ordinary meaning of the term.

In a law relating to insane persons in lunatic asylums the word '*patient*' means any person detained and taken care of as an insane person in the asylum

Patika (*Mal*) A share, a portion especially of landed property, a half-portion

Patilki and kulkarniki vatan 24 Bom L.R 214 =A I R 1922 Bom 18

Patilpatwari (*Mar*) A comprehensive term for the officers of a village implied by the designation of the headman and the accountant

"Patit," "lapta paystha," "sasthal paystha" The word "patit" means fallow or uncultivated land and the words 'lapta paystha' mean contiguously formed land or accretions, as opposed to "sasthal paystha" land re-formed *in situ* 129 I.C 416=53 C L J 229=A I.R 1930 Cal 764

Patita (S.) An outcaste

Pativarachitta (*Mal*) A written engagement in a lease to pay or to receive half the produce

Pativaram (*Mal*) A half-share applied especially to a lease or tenure of land by which half the produce is to be given to the proprietor

Patla (*Tel*) Rice land yielding an intermediate crop between the first and second crops being under water during the wet season.

"Patni" defined Ben Reg. 8, 1819, S. 1. A land tenure in North India

PATNI (*S*) A *patni* or wife is a woman espoused in lawful wedlock and the word implies a competency to perform religious ceremonies for the benefit of the husband 6 N.L R. 103=15 I.C. 602.

'Patnibhagam' *See* 2 L.W. 272=28 I.C 278.

Patni lease A patni lease is a perpetual lease No doubt a special procedure is provided in the Regulation for bringing the patni taluks to sale, in the event of rent being in arrear but such a procedure does not affect the nature of the creation by the *Zamindar* of a subordinate tenure carved out of the parent estate to be held at a rent fixed in perpetuity 9 Pat L T. 593=A.I.R. 1928 Pat 482.

Patria potestas in pietate debet, non atrocitate consistere A maxim meaning "Parental authority should consist, in affection, not in barbarity."

Patriarch, Father or ruler of a family or tribe

Patriarchy. Tribal system or community under the patriarchal system.

Pattam.

Patrician A person of noble birth, a noble of ancient Rome.

Patrimony. An hereditary estate, or right descended from ancestors (*Tomlins Law Dic*)

"PATRIMONY" is not, necessarily, restricted to property derived directly from a father (*Green* v. *Giles*, 5 Ir. Ch Rep 25.)

Patriot Champion or lover of his country

Patriotism Love of one's country

"Patrol" defined *See* Road patrol. To go round or traverse a particular district for guarding, watching, inspecting or protecting (as) to patrol a camp, frontier, coast etc One whose duty is to patrol or watch or guard (as) coast patrol, customs patrol, army petrol, etc.

Patronage Protection, defence, the act or office of a patron To state 'that a loose woman is under the patronage of a man is a technical statement that she is supported by him for the purpose of sexual indulgence.'

Patronize The primary meaning of the word 'patronize' is to act as a patron to ward. To say a person patronized a house of ill fame, and to say that such a person was a patron of a house of ill fame, are synonymous expressions and are libellous.

Patta (*Tel*) A measure of land in the Northern Sirkars

Pattas and Muchalikas The pattas and muchalikas mentioned in S. 3 of Madras Act VIII of 1865 (Rent Recovery) embrace those written agreements only which are mutually interchanged, where there is an already existing relation of landlord and tenant between the persons entering into the agreement. 2 M. 67=6 I A 170 (P C)

Patta-amani. Designation of a village held under a lease by cultivators from government direct.

Patta chit (*Mal*) Lease deed. (*Sund. Iyer's Malabar Law*)

Pattachitta (*Mal*) A deed of lease, the written engagement given by the landlord to the tenant, also by the tenant to the landlord, agreeing to pay a certain amount of rent.

Pattadai (*Tam*) A corn rick a portion of the crop given as a compensation to the ploughman; a workshop.

Pattadar (*H*) One who holds a lease or engagement with government for his lands. (*Wil. Gloss.*)

Pattaikal (*Tam*) High land irrigated by water thrown up from a lower level.

Patta-kandam (*Mal.*) Rented corn fields.

Pattakaran (*Tam.*) A leaseholder, a tenant.

Pattakaran (*Mal.*) Simple lessee. (*Sund. Iyer's Malabar Law*)

Pattakattu (*Tam.*) Agreement for cultivation.

Pattakudissika (*Mal*) Arrears of rent.

Pattam (*Mal.*) Rent, hire, contract, lease (no doubt the patta of other dialects, but applied to the thing rather than to the document, as by the follow-

Pattamali.

ing), the pattam of an estate in Malabar is a stipulated portion of the produce, paid in kind in the case of grain in money in that of plantations.

Pattamali (*Mal*) A subordinate office attached to a temple subject generally to the Uralan. The office is as a rule hereditary: Rent-collector (*Moore's Malabar Law*)

Pattamaniyagar (*Karn*) The principal or managing holder of land held by several persons under a patta granted in the name of the principal. (*Wil Gloss*)

Pattamaniyakaran (*Tam.*) A principal inhabitant appointed for the collection of the revenue and management of village affairs

Pattaiyam (*Tam.*) A deed of gift either on paper or copperplate

Pattakdar. An officer employed originally to collect the revenues of government in Tanjore, and who in many cases, appropriated the estates and became identified with the Mirasidar (*Fifth Rep* 957, *Wil Gloss.*)

Pattapara (*Mal.*) A large measure, or para, used in measuring seed corn: the produce and the proportion of rent

Patta Patti A good deal of evidence was given as to the meaning of the words "*patta patti*" and it appears certain that when once *patta patti* is made the buyer has no longer a right to demand the goods themselves, nor is the seller obliged to deliver them, but the matter should be settled by the payment and acceptance of the difference resulting from the sale and re sale of the goods 55 I A 32=51 M 96=107 I C 29=A,I R 1928 P.C 30=54 M.L J 130.

Pattar (*Mal*) A name given in Malabar to foreign Brahmans (*Moore's Malabar Law*)

Tamil Brahmins of the East coast settled in Malabar, one class is known as cholıya or arya Pattars wearing the knot of hair in the front like Nambudiris (*Sund Iyer's Malabar Law*)

Pattarai (*Tam.*) Land irrigated from wells.

Pattavirutti (*Tam. Mal*) Rent free land held by Brahmans.

Pattayola (*Mal*) A lease, a deed of lease or of transfer of land upon mortgage

Pattern. A pattern is a mere model, which may be used to construct machinery and create working implements.

"**Patti**" defined, Act 18, 1881, S 4 (13*b*), 1930 A.L.J. 1023=A.I.R. 1930 All. 729.

Patti (*Karn*) A measure of land varying with different qualities of soil.

PATTI (*Hindustani.*) A share, a division of a village, a sub-division of an estate.

Patti of a Mahal. The expression "patti of mahal' in S. 188 of the N.-W. P. Land Revenue Act. XIX of 1873 is not intended to include the share of a co-sharer in a patti of an imperfect pattidari mahal It refers to a division of a mahal, distinct from the share of an individual co-sharer. 13 A. 224=11 A.W.N. 68.

Pave-pavement.

Pattidar (*Persian*) The holder of a share in a coparcenary village. The holder of one or more horseman's share in a Cis-Sutlej jagir.

GOSAVI-PATTI, Collection of a band of religious mendicants on their visiting a village. (*Wil. Gloss.*)

Pattidari. The name of a coparcenary tenure in Northern India, in which each sharer manages his own lands, but the general body is responsible for the default of any sharer.

Pattidari Jagir A Cis-Sutlej jagir held by fraternities, division being by horseman's share.

Pattipura A dwelling-house A gateway. (*Moore's Malabar Law*)

Patti-wasulu A statement of the revenue collected and remitted from a village to the district treasury a list of accounts or vouchers (*Wil. Gloss* 411)

Pattom. Rent (*See* Pattam)

Pattukattu (*Tel*) A term formerly in use for the hereditary proprietor or cultivator of land in a village paying a fixed assessment to the Government, considered the same as the Mirasidar.

Patwari. The village registrar and accountant.

Paunarbhava son of one born of a female, who becomes a widow and had not attained maturity or of a widow who had attained maturity For it is said in the text "having cohabited with others reenters her husband's family." (*Visvarupa Gosh, II.*)

"**Pauper**" defined Act 5, 1908, Sch I, O 33, R 1

"PAUPER," meaning of 152 I C 938=40 L W. 370=1934 Mad 561, 152 I C. 135=40 L W 783=1934 Mad 653=67 M L J 581, 155 I C. 1118=1935 A W R. 864 =1935 All 735

PAUPER. A pauper, as defined by Webster, is a poor person, especially one so indigent as to depend on charity for maintenance, or one supported by some public provision, one so poor that he must be supported at public expense The words 'pauper' and 'poor' have nearly the same meaning, and they both embrace several classes.

A pauper is a poor person, particularly one so indigent as to depend on public charity for support. A laboring man, who had always been able to make a living until his last sickness, is not a pauper, though without money or property with which to pay the expenses of that sickness.

"**Pauper leper**" defined. Act 3, 1898, S 2 (2).

Pautra. (*S*) A grandson, a grand daughter, the son or daughter of a son. (*Wil. Gloss.*).

Pave-pavement. To pave is to lay or cover with stone or brick, so as to make a level or convenient surface for horses, carriages, or foot passengers.

A *pavement* is not limited to uniformly arranged masses of solid material, as blocks of wood, brick or stone, but it may be as well formed of gravel, or other hard substances, which will make a compact, even, hard way or floor.

Pawn.

No particular material is necessary to constitute a pavement It may be made of anything which will produce a hard, firm, smooth surface for travel.

The term 'paving' includes the laying of a side-walk. 'Pavement' and 'side-walk improvement,' as used in an Act giving a city power to build and maintain suitable pavement of side-walk improvement, are convertible terms

Pawn A pledge or gage for payment of money lent (*Tomlins Law Dic*)

A pawn is that sort of bailment in which goods or chattels are delivered to another as a pawn, to be a security for money borrowed

A pawn is defined to be a bailment or delivery of goods by a debtor to his creditor, to be kept until the debt is discharged.

Pawn or pledge A bailment of goods by a debtor to his creditor, to be kept till the debt is discharged.

A *pawn* or pledge is a bailment of personal property as a security for some debt or other engagement (*Story on Bailments*, S 286)

A pledge or pawn is property deposited with another as security for the payment of a debt

PAWN AND LIEN. The contract of *pawn* is to be distinguished from a lien, under which there is a mere right to retain possession by way of security, and from a mortgage, in which (according to English law) the whole title in the property mortgaged is conveyed to the mortgagee (subject to the mortgagor's equity of redemption), and upon which possession may or may not be given to him (*Sewell v. Burdic*, (1884), 10 App Cas 74 *See also* Story on Bailments, Turner on the Contract of Pawn.

Pawn-broker. One who lends money on goods which he receives on pledge

PAWN BROKERS are persons who loan money in small sums on security of personal property *See* Turner's Pawn-brokers Act, Attenborough's Pawnbrokers Act

A pawn-broker is one who pursues the business of lending money upon interest, and receiving upon deposit as security for the payment of such loan and interest any personal property.

A pawnbroker has none of the characteristics of a broker, and is not an agent at all He contracts in his own name, has no employer, charges no brokerage, and always takes possession of the property Neither does he deal in money, notes, and bills of exchange, like brokers, and his business is to lend money on the security of personal property pawned or left with him. The verbal coincidence of the last two syllables of the longer word being 'broker is purely fortuitous, for a pawn-broker is not a broker at all (*Ame Words and Phrases*)

"Pawnee", defined. Act 9, 1872, S 172.

PAWNEE. The person with whom a pawn is deposited.

"Pawnor" defined. Act 9, 1872, S. 172.

Pawner or pawnor. The person depositing a pawn.

Payee.

"Pay" defined. Act 16, 1887, S. 4 (2); Act 17, 1887, S. 3 (5), Act 11, 1898, S 2 (7); Ben. Act 6, 1908, S. 3 (*xviii*). Mad. Act 1, 1908, S. 3 (8); U. P. Act 2, 1901, S. 4 (4).

"PAY," with its grammatical variations and cognate expressions, includes, when used with reference to rent, "deliver" and "render," with their grammatical variations and cognate expressions. Pun. Act XVII of 1887 (Land-Revenue), S 3, cl. 5.

A decree of distribution, distributing property to be held in trust by the trustees, that they should manage such property and 'pay over and deliver' the same, indicates that, as far as is consistent with the nature of the property, the beneficiaries are entitled to receive it in the same condition in which it was received by the trustees.

The word 'pay' indicates the discharge of an obligation, rather than an investment of money.

PAY DEFRAY. DISCHARGE. LIQUIDATE. To *pay* is the generic term here The rest are modes of payment Anything which provides for and covers the expenses of a transaction *defrays* it *Discharge* is to relieve from a pecuniary obligation. It is to do away with the burden and pressure of a claim. *Liquidate* is used only of debts. It is literally to clear off, and so to diminish or lessen The debt which in common parlance is *cleared off*, in finer language is *liquidated* (*Smith. Syn Dis.*)

"Pay and allowance" defined. Act 5, 1869, Art. 139

Pay day Day on which Stock Exchange settlements are concluded Day of each month on which a firm pays its employees.

"Payable" defined Act 8, 1885, S. 3 (6), Act 11, 1898, S 2 (7), Ben Act 6, 1908, S. 3.

PAYABLE, The word 'payable' is a descriptive word, meaning 'capable of being paid, suitable to be paid, admitting or demanding payment, justly due, legally enforceable'

Where a bank issued a paper which recited that a certain person had deposited in the bank a certain sum, payable to the order of another, the word 'payable' should be construed as an express promise to pay on demand

"Payable in advance." *See* Rat. Un. Cr. C 868.

Payable monthly. An averment that certain sums agreed to be paid were 'payable monthly' was in consistent with the idea that the payments were to be made in advance.

'Payable within one year.' *See* 39 Cal. 828=15 I C 287

"Payee" defined. Act 26, 1881, S. 7.

PAYEE, Person to whom a bill or note, or sum of money is payable.

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." Act XXVI of 1881 (Negotiable Instruments), S. 7.

The term 'payee,' in a non-negotiable note providing that the failure to pay interest when due, at the election of the payee, should make the principal and

interest at once due, would include an assignee of the instrument.

Payer. One who pays a bill, note, or account

Paying-in Slip. A printed form on which particulars and details of the amount are written when a customer pays a sum into a bank, indicating how it is made up.

"Payment" defined Act 15, 1887, S. 20, Act 8, 1885, S 3 (6), Act 11, 1898, S. 2 (7), Ben. Act 6, 1908, S. 3.

A payment is defined to be the performance of an obligation for the delivery of money or goods

Payment is defined to be the act of paying, or that which is paid, discharge of a debt, obligation, or duty; satisfaction of claim, recompense, the fulfilment of a promise or the performance of an agreement, the discharge in money of a sum due.

In legal contemplation, payment is the discharge of an obligation by the delivery of money or its equivalent, and is generally made with the assent of both parties to the contract.

"'Payment is not a technical word, it has been imported into law proceedings from the exchange and not from law treaties It does not necessarily mean payment in satisfaction and discharge, but may be used in a popular sense" (Dwar. 675, *citing Maillard* v *Argyle*, 6 M & G 40)

PAYMENT is not a word of technical legal meaning It is well understood by the layman and, indeed, was brought into law proceedings from commercial life. It may be defined as the performance of the consideration clause of a contract, or the satisfaction of a liability imposed by law. It implies a debt from him who pays to him who is to receive, and that when the payment is complete the debt will be discharged. Payment is not a contract, it is the discharge of a contract by the performance of its terms, while AN ACCORD AND SATISFACTION is the substitution and execution of a new consideration for that originally agreed on, or an agreement as to the amount of an unliquidated, liability and the payment thereof A GIFT is the voluntary, gratuitous and absolute transfer of property from one person to another, while the payment is the transfer of property absolutely in the performance of an obligation. Whether money transferred is a 'payment' or a 'gift' is entirely a question of intention, but in the absence of controlling facts it will generally be presumed to be a payment. (*Rul. Case Law*)

A bill, or promissory note, either of the debtor or a third person, is not a payment or extinguishment of a debt, unless accepted as such.

PAYMENT AND DISCHARGE. 'PAYMENT,' as well as 'discharge,' is used in two senses: First, performance of a contract to pay money according to its stipulation, second, extinguishment of a cause of action arising from breach of a contract. 'Payment,' as generally used has the latter meaning, and 'the defense of payment' is usually of the same import, denoting a new, affirmative, and independent fact set up by the defendant in confession and avoidance, and not in denial of the breach.

'Payment' means the full satisfaction Paid by money, and not by an EXCHANGE OR COMPROMISE, or

an ACCORD AND SATISFACTION, and it is only where the words used in connection with it plainly manifest a different intention that such legal import can be rejected.

PAYMENT AND SET OFF. The distinction between a 'payment' and a 'set-off' is that a payment is, by consent of the parties, express or implied, appropriated to the discharge of the debt, whereas a set-off is an independent demand, which the parties have not applied on the debt

A mere INDORSLMENT OF PAYMENT on a note does not amount to a payment, but is simply evidence thereof

PAYMENT TO THE PLAINTIFF'S ATTORNEY, OR AGENT, employed to collect a debt, is as effectual as payment to the plaintiff himself.

S 78 of the Negotiable Instruments Act XXVI of 1881, which provides that "payment must, in order to discharge the maker, be made to the holder" is imperative, and precludes the maker, when sued on the instrument, from pleading discharge by payment to any one but the "holder" 30 M. 88=16 M L J. 508= 1 M L.T. 377.

Payment down. In construing a contract for the sale of land, in the absence of special words or circumstances indicating a different intent, a stipulation for 'immediate payment' or 'payment down,' will be held to mean payment at the time when the deed is made out and executed.

"Payment in due course" defined. Act 26, 1881, S 10.

"PAYMENT IN DUE COURSE" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. Act XXVI of 1881 (Negotiable Instrument), S. 10.

Payment into court means deposit into Court to the credit of the creditor party. A payment into court is an admission of an indebtedness to the extent of the payment.

Payment of interest. Though a payment of interest, to satisfy the requirements of S 20 of the Indian Limitation Act need not be in money, but may be in goods or even by a settlement of accounts between the parties, yet, the payment must be of such a nature that it would be an answer to an action for the amount due. 29 M. 234=16 M L.J. 99.

"PAYMENT OF INTFREST AS SUCH." *See* 28 Bom.L.R. 569=96 I.C. 311=1926 Bom. 423.

Payment supra protest A payment made after protest has been made denying all or part liability.

Payakari. (*Tel., Karn.*) A temporary cultivator, one who cultivates the land of another for a stipulated term and a given share of the crop.

Payali, (*Mar.*) A measure of capacity containing four seers.

Payarapanta (*Tel*) The last crop of the year, consisting, as that usually does, of legumnous plants.

Payattu-pattam.

Payattu-pattam (*Mal*) A certain amount of rent or tax levied on dry lands.

Paychal (*Tam*) Irrigation, share of the expense of irrigation defrayed by the villagers in common.

Payin property. The more valuable part of a house and site is ordinarily the site, and so long as the corpus of site is unchanged, it will always remain the same. Hence where a house is built on *payin* land with *lettetpwa* funds, the house becomes *payin*. (10 Bur L R. 49, *Ref*) 164 I.C 1023=A I R 1936 Rang. 417.

Payir (*Tam.*) Growing corn; the Tamil term applies to cultivation in general.

Payirkaran, Payirkudi. (*Tam.*) A cultivator not holding any right by inheritance to the lands he cultivates

PARAPAYIR-KUDI (*Tam*) A temporary tenant, one holding his land of a proprietor, either for a stipulated term or from year to year

ULPAYIRKUDI. A permanent cultivator, holding his land as long as he pays the stipulated rent or revenue, and discharges all dues rendered by the proprietor or cultivator, transmitting the land to his descendants, although not empowered to alienate it by mortgage, gift or sale.

Payir-vali (*Tam.*) Cultivated fields

Peace. "Peace", particularly connotes "a quiet and harmless behaviour towards the King and his people" (*Cowel.*)

A 'time of peace,' as defined by Lord Coke, is 'when the courts of justice be open, and the judges and ministers of the same may by law protect men from wrong and violence, and distribute justice to all.'

PEACE, QUIET, CALM, TRANQUILLITY People are *peaceable* as they are disposed to promote peace in society at large, or in their private relations, they are *quiet*, inasmuch as they abstain from every loud expression, or are exempt from any commotion in themselves, they are *calm* inasmuch as they are exempt from the commotion which at any given moment rages around them; they are *tranquil*, inasmuch as they enjoy an entire exemption from everything which can discompose.

Peace officer A peace officer is a sheriff of a county or sub-division, or constable, marshal, or policeman of a city, town, village or township

The term 'peace officer,' signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city, or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

PEACEABLE, PEACEFUL, PACIFIC. Peaceable is used in the proper sense of the word peace, as it expresses an exemption from strife or contest, but Peaceful is used in its improper sense, as it expresses an exemption from agitation or commotion. A family is designated as peaceable in regard to its inhabitants, a house is designated as a peaceful abode, as it is remote from the bustle and hurry of a multitude. We are peaceable when we do not engage in quarrels of our own; we are pacific if we wish to keep peace or make peace, between others. Hence

Pecuniary ability

the term peaceable is mostly employed for individual or private concerns, and pacific most properly for national concerns subjects ought to be peaceable, and monarchs pacific.

Peaceable possession Peaceable possession is such as continues and is not interrupted by adverse suits to recover the estate.

PEACEABLE POSSESSION means a possession which is acquiesced in by all others, including rival claimants, and need not be maintained by force or threats.

Peaceably and quietly. In a covenant for quiet enjoyment " 'Quietly' does not mean 'undisturbed by noise. When a man is quietly in possession it has nothing whatever to do with noise 'Peaceably and Quietly' means, without interference,—without interruption of the possession" (per *Kekewich, J, Jenkins* v *Jackson*, 58 L.J. Ch. 124; 40 Ch D. 71).

Peaked roof A hipped or peaked roof is one running up from all four sides of the building to a peak or ridge in the centre

Peccata contra naturum sunt gravissima. Crimes against nature are the most heinous (Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished under law)

Pe Cen 'Pe Cen,' when used in a note for a certain sum of money at 10 per cent., was construed to mean 'per cent'

Pectoral Armour for the breast, a breast plate. (*Tomlins Law Dic.*).

Peculate. Embezzle

Peculiar knowledge. The 'peculiar knowledge' sufficient to constitute such experience and familiarity with a particular thing so as to render the person qualified to give expert testimony means with practical experience in the observation and use of an unusual and peculiar thing, which tends to give the person skill in respect to it

Peculiar name The trade mark law provides that where a person uses any 'peculiar name,' etc., to designate an article as one manufactured or sold by him, it shall be unlawful for any other person, without his consent, to use such trade mark or name, etc. We do not understand it to mean the proper and established name by which the compound or goods are known in the market It must be something new, not before in use, something of the manufacturer's own invention, or first put to use by him; something peculiar to him, and not common to him and others; not something indicating the actual kind, character, or quality of the compound

Peculiar use A bequest to a widow for 'her own proper use' is equivalent to 'her own peculiar use, 'as essentially belonging to her, or to her own use strictly

Pecuniary. Monetary, relating to money, consisting of money.

Pecuniary ability. Where an Act provides that divorce may be decreed on petition of the wife when the husband, 'being of sufficient pecuniary ability to provide suitable maintenance for her, refuses or neglects to do so.' *Held*, that the words 'pecuniary ability,' as so used, mean the possession of property

Pecuniary damage.

with which to furnish her maintenance, and do not include his capacity for acquiring property by means of labor

Pecuniary damage. 'Pecuniary' is a term of much narrower scope in the law of damages than the word 'necessary' The latter embraces all those consequences of an injury usually denominated 'general damages' as distinguished from 'special damages,' whereas 'pecuniary' damages cover a smaller class of damages within the larger class of general damages.

Pecuniary demonstrative legacy. In order to constitute a pecuniary demonstrative legacy, two things are necessary (1) There must be a gift of certain sum of money; (2) with reference to a particular fund as a primary, but not exclusive, source of payment.

Pecuniary injury. Injuries in the sense of wrongful invasions of a right may be pecuniary and non-pecuniary. Pecuniary injuries are such as can be, and usually are, without difficulty estimated by money standard Loss of real or personal property or of its use, loss of time, and loss of services are examples of this class of injuries Non-pecuniary injuries are those for the measure of which no money standard is or can be applicable. As the books phrase it, damages in such cases are 'at large. Bodily and mental pain and suffering are familiar examples of this class.

Pecuniary interest. 'Pecuniary interest,' within the rule of law which disqualifies a person to serve as a juror if he has any pecuniary interest in the suit, would not include the interest which a member of the society of Free Masons has in the result of a suit brought against the society as a corporation.

If a salary is attached to the office of Mayor, that is a "pecuniary Interest" which prevents a member of the Council from voting for himself. [Re *Louth*, (1894) 1 Q B. 767 *See also* Local Boards and Municipal Acts.]

Pecuniary legacy. An annuity given by a will, whatever may be the direction as to the mode of its payment, is a 'pecuniary legacy.'

A bequest of a specified amount of gold and silver to be kept on investment by a trustee is not a specific legacy, but is a pecuniary legacy.

Pecuniary legacy and specific legacy A specific legacy is a bequest of a particular thing or of money specified and distinguished from all other property of the same kind, the title of which would vest in the legatee on the death of the testator with the assent of the executors. It differs from a general or pecuniary legacy in this respect, that if the thing, security, or money bequeathed is lost, paid, or destroyed in the lifetime of the testator, the legatee will not be entitled to any recompense or satisfaction out of his personal estate, whereas a general legacy is to be paid out of the assets of the testator when converted into money, if the same is sufficient for that purpose.

Peddakapu. (*Tel.*) The headman of a village

Peddapanta. (*Tel.*) The great or principal crop, the first or best crop that is gathered in the beginning of the year.

Pedigree.

Peddle For the purpose of the act relating to the licences of transient merchants, etc., the word 'peddle' is defined as meaning to sell or offer to sale manufactures, goods, wares, or merchandise directly to a consumer, either by one going from house to house for the purpose of selling and delivering such goods, or for the purpose of taking orders for the future delivery of such goods from a pack or vehicle in any public road, street, square, or other public place

Peddler. The term 'peddler' has many definitions more or less full. Its popular definition is a small retail dealer, who, carrying his merchandise with him, travels from house to house, or from place to place, either, on foot or horse back or in a vehicle drawn by one or more animals, exposing his goods for sale and selling them.

PEDDLER The term 'peddler' is used in connection with the term 'hawker', usual phrase being 'hawkers and peddlers. The words used singly or together are perfectly synonymous It is derived from an old Scotch word, 'ped,' meaning a bag, and originally defined as one who went about from house to house carrying in a bag goods which he exposed for sale, sold, and delivered to whomever he might prevail on to buy Possibly a peddler was one who went on foot exclusively. Today, when there are many different methods of travel it seems clear that a peddler may adopt any one of them and yet remain a peddler The fact of locomotion is important, but the mode is entirely immaterial By a comprehensive and approved modern definition a peddler is one who goes from place to place and from house to house carrying for sale and exposing to sale goods, wares, and merchandise which he carries, or, better, he is an itinerant, solicitant vendor of goods who sells and delivers to consumers the identical goods which he carries with him The word *'dealer'* is sometimes used in contrast as devoting one who buys and sells at his place of business; an 'itinerant dealer' has been defined as one who travels from place to place while, engaged in his business of selling, and wouldin many instances be construed to embrace 'peddlers.' (*Rul. Case Law*)

In the Pedlars' Acts, "'Pedlar,' means, any Hawker Pedlar, Petty Chapman, Tinker, Caster of Metals, Mender of Chairs, or other person, who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any Goods, Wares or Merchandize, or procuring orders for goods wares or merchandize immediately to be delivered, or selling or offering for sale his skill in Handicraft" (S. 3, 34 & 35 V. c. 96)

Pedigree The term 'pedigree' means the 'lineage, descent, or succession of families.'

"The term 'Pedigree' embraces not only general questions of descent and relationship, but also the particular facts of birth, marriage, and death, and the times, when, either absolutely or relatively, these events happened, provided such facts are required to be proved for some genealogical purpose." (*Taylor on Evidence*, S. 642.)

PEDIGREE need not necessarily be ancient family record handed down from generation to generation, (86 I.C. 847=8 N.L.J. 29=A.I.R, 1925 Nag. 271.)

Pedlar.

The term 'pedigree' within the rule that questions of pedigree and ancestry may be proven by general reputation is not limited to the pedigree or ancestry of the human race, but is equally applicable whether the question concerns horses, cattle, dogs, or men.

Pedlar. *See* Peddler

Peep-abo. A statement in a letter addressed by a man to the wife of another, that she had played 'peep-abo' with him long enough, meant that she had acted libidinously towards him, and invited him to an adulterous intercourse and connection with her, and sought opportunities to effect it.

Peer. "Peers, Pares,' signifies in our Common Law those that are impannelled in an inquest upon any man, for the convicting or clearing him of any offence for which he is called in question; and the reason thereof is, because the course and custom of our nation is to try every Man in such case by his Equals or Peers. But this word is most principally used for those that be of the Nobility of the Realm and Lords of the Parliament, the reason whereof is, that although there be a distinction of degrees in our Nobility, yet in all public actions they are equal, as in their Votes in Parliament, and in passing in a trial upon any Noble-man, &c." (*Cowel.*)

Peerage. "Peerage" means, the Status and Condition of a Peer. (5 H L Ca. 716.) The dignity of the Lords or Peers of the realm. (*Tomlins Law Dic.*)

The *Peerage* of the United Kingdom of Great Britain and Ireland is an order of the State consisting of various ranks and degrees, the members of which possess certain personal dignities or titles of honour, usually transmissible to their descendants in a prescribed course of succession, and carrying certain privileges peculiar to the order *See* Dugdale, Baronage; Cruise on Dignities, The House of Lords' Report on the Dignity of a Peer; Hallam Middle Ages and Constitutional History, Freeman, Norman Conquest, Round, Peerage and Family History Pike, Constitutional History of the House of Lords.

Peers of the realm. The Nobility of the Kingdom, and Lords of Parliament, who are divided into Dukes, Marquesses, Earls, Viscounts, and Barons. (*Tomlins Law Dic.*)

All degrees of nobility and honour are derived from the King as their fountain, and he may institute what new title he pleases. Hence it is that all degrees of nobility are not of equal antiquity. (*Tomlins Law Dic.*)

Peeress. As we have noblemen, so we have noblewomen and these may be by creation, descent or marriage. (*Tomlins Law Dic.*)

PEERESS is the wife of a Peer, female holder of a peerage.

"If a woman, noble in her own right, marries a Commoner, she still remains noble,; but if she be only noble by marriage, then by a second marriage with a Commoner, she loses her dignity, for, as by marriage it is gained, by marriage it is also lost (*Dyer* 79; Co. Litt. 16.) Yet if a Duchess Dowager marries a Baron, she continues a Duchess still; for all the nobility are pares, and therefore it is no degradation." (1 Inst. 16 b. 2 Inst. 50.) (*Tomlins Law Dic.*)

Penal.

If a woman, noble by descent marries to an inferior degree of nobility, as if the daughter of a Duke marries a Baron, she shall have precedence only as a Baroness. (*Tomlins Law Dic.*)

A woman, noble in her own right, or by a first marriage, marrying a Commoner, communicates no rank or title to her husband.

A woman noble by marriage, afterwards marrying a Commoner, is generally called and addressed by style and title which she bore before her second marriage, but this is only by courtesy, as the daughters of Dukes, Marquisses, and Earls are usually addressed by the title of Lady, though in law they are Commoners. (*Tomlins Law Dic*)

Peishcush A present, a tax, particularly to Government, in consideration of an appointment, or as an acknowledgment for any tenure Tribute, fine, quit rent, advance on the stipulated revenues The tribute formerly paid by the Poligars to Government. The first fruits of an appointment, or grant of land

Peishwa Guide, leader. The prime minister of the Maharatta Government. (*Fifth Report.*)

Penal In the municipal law of England the words 'penal' and 'penalty' have been used in various senses Strictly and primarily they denote punishment imposed and enforced by the state for a crime or offence against its laws, but they are also commonly used as including any extraordinary liability to which the law subjects a wrong doer in favour of the person wronged, not limited to the damages suffered. They are so elastic in meaning as even to be familiarly applied to cases of private contracts wholly independent of statutes, as when we speak of the penalty of a bond.

PENALTY, FINE, FORFEITURE, DAMAGE. The term 'penalty' when employed without any qualification, express or implied, is calculated to mislead because it is capable of being construed so as to extend to all penalties, whether exigible by the state in the interest of the community, or by private persons in their own interests But the word has been frequently restricted in its meaning and held to apply only to a sum of money of which the law exacts the payment by way of punishment for doing some act which is prohibited or omitting to do some act which is required to be done." The terms 'fine,' 'forfeiture,' and 'penalty' are often used loosely and confusedly. But when discrimination is made, the word 'penalty' in its strict sense, is found to be generic in its character, including both fine and forfeiture. In general a 'fine' is a sum of money exacted of a person guilty of a crime or contempt, as a pecuniary punishment, the amount of which may be fixed by law or left to the discretion of the Court. It is true that a penalty like a fine is a pecuniary punishment inflicted by the law for its violation, yet there is a marked distinction which is recognised by the Courts. A penalty is that which is demanded for the violation of a statute, which may or may not be a crime. A fine is a punishment for the commission of a crime. Crimes, except the gravest, can be punished only by fine or imprisonment. A penalty is not in any legal sense a fine. Although in common parlance the term 'forfeit' strongly implies penalty

Penal action.

and is often used synonymously therewith, it is in its strict sense a divestiture of property without compensation in consequence of a default or offence. By *'damages'* is understood the indemnity or composition in money, which the law gives to the injured party for the breach of a contract or of a duty. In theory, they are precisely commensurate with the injury received, except in the case of exemplary damages, or smart money, where some element of fraud, malice, gross negligence or oppression enter into the controversy. A penalty on the other hand, is the punishment, generally pecuniary, inflicted by a law for its violation It has no reference to the actual loss sustained by him who sues for its recovery.

Penal action. A penal action is an action on a statute which gives a certain penalty to be recovered by any person who will sue for the same

A penal action is one allowed in pursuance of public justice under particular laws

An action for libel or slander is in the nature of a penal action.

Penal bond. No set form of words is necessary to make a 'penal bond' and an agreement between a husband and wife, on their separating, whereby the husband bound himself to pay the wife a certain monthly sum so long as she maintained good behaviour and should not remarry, 'and this I bind myself to do under a penalty of five thousand dollars, to be recovered by her in any court of law,' etc, was held a penal bond.

"Penal diet" defined. Act 9, 1894, S. 46 (9).

Penal law "A penal law is a statute which imposes a penalty." (per *Parke, B.. Spencer* v *Swannell*, 7 L J. Ex 75, 3 M. & W. 162.)

'PENAL LAWS' strictly and properly, are those imposing punishment for an offence committed against the state.

Penal statute. A penal statute is one which imposes a pecuniary penalty or other punishment for an offence.

A penal statute is one which provides a penalty for some offence of a public nature

A penal statute is defined to be one which imposes a forfeiture or penalty for transgressing its provisions, or for doing a thing prohibited.

Penal sum. A penalty or penal sum is a sum of money payable as an equivalent for an injury.

A penal sum is an amount greater than the value of the consideration—a forfeiture.

Penalty (*in Contract*) Penalty is a liability composed as a punishment on the party committing the breach of contract. Agreement to pay at default interest at a higher rate does not amount to penalty. 42 Cal. 652=19 C.W.N. 775=21 C.L.J. 79=27 I.C. 815.

The word 'penalty" is intended to embody the English equitable doctrine with regard to liquidated damages and penalties. (*Wallis* v. *Smith*, (1882) 21 Ch. D. 243, *Ref.*) 8 Rang. 236=125 I.C. 361=A.I.R. 1930 Rang. 193.

Penalty and forfeiture.

A *"penalty"* in a contract, is generally taken to mean not a sum to be recovered *eo nomine* but, a provision for securing the due performance of the contract.

A penalty may be defined to be an agreement to pay a greater sum to secure the payment of a less sum

A penalty is a sum stipulated to be paid in gross in the event of a breach of a contract, the articles of which covenant for the performance of several things, or where a large sum is agreed to be paid on the non-payment of a smaller sum, or the non-performance of a duty, the damages resulting from which may be ascertained with the reasonable certainty, and which is much less than the sum expressed.

A penalty is a sum named as damages to be recovered for violating an agreement or promise, in lieu of damages. An agreement that, if the interest on a note is not paid when due, the whole note-principal and interest—shall become due and payable, is not in the nature of a penalty or forfeiture, and one against which equity, by reason thereof, will not enforce its terms. There are no penalties, no damages called for Merely altering the day of payment is neither forfeiture of any property, nor penalty in damages for the breach of such agreement.

"PENALTY" may sometimes connote agreed liquidated damages. (*Fletcher* v. *Dyche*, 2 T.R. 32)

PENALTY (*in Criminal law*) A penalty is a punishment inflicted by a law for its violation.

A penalty is defined as a temporary punishment or sum of money imposed by statute, to be paid as a punishment for the commission of a certain offence,

A penalty is a punishment imposed by law or contract for doing or failing to do something that it was the duty of a party to do

A penalty is in the nature of a punishment for the non-performance of an act, or the performance of an unlawful act, and in the former case stands in lieu of the act to be performed.

The words 'penal' and 'penalty' strictly and primarily denote punishment, whether corporal or pecuniary, imposed and enforced by the state for a crime or offence against its laws.

The term 'penalty' is used very loosely in statutes in some cases, and might, without being much strained from its ordinary meaning, be held to embrace all the consequences visited by law on the heads of those who violate police requirements

'PENALTY' AND 'FINE' are not the same in law. A penalty is always recoverable in a civil action. A fine never is. A penalty, when recovered, goes to the party suing, a fine, to the state. A fine is defined in law to be a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor. This definition is wholly inapplicable to a judgment in a civil suit.

Penalty and forfeiture The noun 'penalty' is defined 'forfeiture' or a sum to be forfeited for noncompliance with an agreement; a fine, (*Worcester's Dict.*) These definitions show that in one sense, the

Penalty and punishment.

words 'forfeit' and 'penalty' are substantially synonymous

Penalty and punishment. 'Penalty' is synonymous with 'punishment,' in connection with crimes and is fixed by the law defining the criminal act.

Penalty clause (*in a contract*) The idea is very common that what is called a "penalty clause" in a contract is a mere *brutum fulmen*, an agreement that neither party has any intention of enforcing at all to any extent Such an agreement would certainly not be mentioned in the Contract Act and in fact would not be agreement at all. A penalty clause merely fixes a maximum for damages which would be difficult to state in terms of money, and anyhow does not deprive the aggrieved party of his right to damages that can be so estimated (12 N L.R 177 *Ref*) 68 I.C. 605=A I R 1923 Nag 98)

The whole principle of the law of penalty is this If in making provision for breach of contract the promisee stipulates from the promisor on the breach only for such compensation as the Court would deem reasonable in the circumstances then there is no penalty and the stipulation is not penal But if on the other hand the Court would on a proper consideration come to the conclusion that the stipulation was put in not by way of reasonable compensation to the promisee but in order that by reason of its burdensome or oppressive character it may operate *in terrorum* over the promiser so as to drive him to fulfil the contract then the stipulation is one by way of penalty 21 L W. 54=85 I.C. 261=A.I.R. 1925 Mad. 177=47 M L.J 833.

The question as to a stipulation being penal or not should be decided according to the circumstances of each case. (1924) M W.N 861=82 I C. 751=A I R. 1925 Mad. 84=47 M L.J. 605

Penalty of death When the words 'penalty of death' are used, they are understood, in a somewhat figurative sense, to signify the forfeiture of life It is less usual to say the penalty of imprisonment, or the penalty of whipping.

Penance An ecclesiastical punishment, which affects the body of the penitent, by which he is obliged to give a public satisfaction to the church, for the scandal he hath given by his evil example. And in the primitive times, they were to give testimonies of their reformation, before they were readmitted to partake of the mysteries of the church. In the case of incest, or incontinency, the sinner is usually enjoined to do a public penance in the cathedral or Parish church, or public market, bare-legged and bare-headed in a white sheet, and to make an open confession of his crime in a prescribed form of words, which is augmented or moderated according to the quality of the fault, and the discretion of the Judge. (*Tomlins Law Dic*)

Pendai-marakkal (*Tam*) A grain measure containing two and a half padis or measures.

Pendente lite. A purchaser *pendente lite* is one who by purchase acquires an interest in the matter in litigation pending the suit

Pendente lite nihil innovetur. During a litigation nothing new should be introduced During a litigation no change in the position of things, or of parties, can be made.

Penitentiary.

Pending The term 'pending' means nothing more than undecided.

'PENDING' is defined to mean depending remaining undecided, not terminated.

An action is considered as pending from the time of its commencement of the proceedings.

A legal proceeding is "pending" as soon as commenced and until it is concluded, *i.e* so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

An action would not cease to be a *pending action*, so as to prevent the operation of the statute of limitation, because the clerk of the court had failed for several terms to place it upon the docket or court calendar.

A suit is pending until final judgment is rendered *See* 3 I.C 61=5 N L R. 88.

An action is pending until the judgment is fully satisfied

A pending action is an action which has been commenced, and in which some proceeding may be taken (*Sherwood* v *Ray*) (1837) 1 Moo P C 353, *Hart* v. *Hart*, (1881) 18 Ch D 670, 680; *Fordham* v. *Clagett*, (1882) 20 Ch D 637, 653). So long as it is possible for any proceeding to be taken in a case, such cause is still pending (*per* Jessel, M.R, in *Fordham* v. *Clagett*, supra p. 653) For the purposes of sec. 24 (5) and (7) of the Judicature Act, 1873, an action is pending after final judgment so long as the judgment remains unsatisfied. (*Salt* v. *Cooper*, (1880) 16 Ch D 544)

An action is pending the entire time from the beginning of the action until final judgment has been pronounced and entered up, for until final judgment there cannot be said to be a termination of the action and it is therefore still pending

A prosecution will not be deemed pending where no indictment has been filed, but only preliminary proceedings begun before a magistrate.

A criminal case is pending against one as early as his arrest and commitment for a crime for which he is afterwards indicted.

Pending proceeding. A legal proceeding is said to be pending as soon as it is commenced and until it is concluded 12 S.L R. 20=47 I.C. 771.

Penetration. 'Penetration' as used in the rule that penetration only is necessary to be proved on a trial for rape, is a limitation upon and qualification of the meaning of the term 'carnal knowledge.' In limiting the 'carnal knowledge' mentioned in the definition of 'rape' to 'penetration' only, the Legislature intended to eliminate the question of 'emission' in such cases.

Penitentiary. 'Penitentiary,' is a word in common use, denoting a prison or place of punishment, and means the place of punishment in which convicts sentenced to confinement and hard labor are confined by the authority of the law.

The word 'penitentiary' whenever the same is used in any of the laws of the state as a place of punishment for crime, shall be construed to mean and refer to the state prison.

Penny.

Penny. An English bronze coin, $\frac{1}{12}$ of a shilling.

Pennyweight As every pound Troy contained twelve ounces, each ounce was formerly divided into twenty parts, called Pennyweights, and though the Pennyweights be altered, yet the denomination still continues. Every Pennyweight is subdivided into twenty-four grains (*Cowell. Tomlins Law Dic.*)

Penology Study of punishment and prison discipline.

"Pension" defined. Act 21, 1886, S 2 24 I.C. 803.

PENSION An allowance made to any one without an equivalent. (*Tomlins Law Dic.*)

PENSIONS. Regular allowances paid to an individual by government in consideration of services rendered, or in recognition of merit, civil or military are called pensions. *Military pensions* are divisible into two classes—invalid and gratuitous, and such as are granted as rewards for eminent services, irrespective of physical disability.

"Pension" is a periodical payment of money for past services. 58 Mad 469=157 I C. 608=41 L.W. 146=A I R. 1935 Mad. 249=68 M.L J 118

PENSION implies periodical payments of money by government to the pensioner. 58 I A 215=132 I C 727=35 C.W N 791=1931 P C 160=61 M L J. 208 (P C.)

A pension is a bounty for past services rendered to the public. It is mainly designed to assist the pensioner in providing for his daily wants.

A pension is a mere bounty or gratuity given by the government in consideration or recognition of meritorious past services rendered by the pensioner or by some kinsman or ancestor.

The word 'pension' in S 60, C. P. Code, has the same meaning as in S. 11 of the Pensions Act, namely, a periodical allowance or stipend, granted not in respect of any right, privilege, *perquisite* or office, but on account of past services or particular merits or as compensation to dethroned princes, their families and dependents. (4 B 432 31 A. 382 *Rel*) 24 I C 805=26 A 677=1 A.L.J. 338, *see also* 30 M. 153 (155)=2 M L J 33, 6 A.L J. 519 (522)=31 A. 382 =5 M.L J 388.

The word 'pension' as used in S. 60 (1) (*g*), C P. Code' is wide enough to cover all sorts of periodical payments in whatever shape they are made by the Government A Jagir that is realised in the shape of an assignment of land revenue is a pension within that clause, and is, therefore, exempt from attachment in execution of a decree. 18 Lah. 415=171 I.C. 6=39 P L R 80=A I.R 1937 Lah. 178.

The word 'pension' as used in the C. P Code "implies periodical payments of money by Government to the pensioner", and it does not apply to a person who draws rents not as a pensioner, but as a limited owner of the properties which yield them. 107 I.C. 78=13 R.N. 37=A.I R. 1937 Nag. 202.

'MILITARY PENSION.' *See* under 'pension' *supra*.

Pensionable office. "an Office coming within the provisions of any Act authorizing the grant of a superannuation allowance."

People.

Pensioner, from Pension, one who is supported by an allowance at the will of another, It is usually applied (in a public sense) to those who receive pensions or annuities from Government, who are chiefly such as have retired from places of honour and emolument. (*Tomlins Law Dic.*)

Pent road. A pent road is a road which is shut up or closed at its terminal point, and is a highway for the use of the public, though they are not open highways

Penultimate Last but one, as penultimate Saturday.

Penvali. The female line (*Mal.*). (*Moore's Mal. Law.*)

Penvazhi mupper (*Mal.*) The dignity of the senior lady in a Kovilagam (*Sund. Iyer's Mal. Law.*)

Penvali muppu (*Mal.*) The dignity of the first lady in a Royal family (*Moore's Mal Law.*)

Peon A footman, a foot soldier. An inferior officer or servant employed in revenue, police, or judicial duties Formerly he was sometimes armed with a sword and shield. (*Fifth Report.*)

Peonage. Serf, labour of enslaved debtors.

People. The word 'people' is comprehensive one, and is subject to many different meanings, depending always upon the connection in which it is used and the subject-matters to which it relates. The definition given in Anderson's Law Dictionary is 'ordinarily, the entire body of the inhabitants of a state, in a political sense, that portion of the inhabitants who are entrusted with political power'; and in Rap & L. Law Dict, among other definitions, the state or nation in its collective or political capacity.'

The people, in a legal sense, must be understood to be those who are invested with political rights, and who will be the sole organs through which the will of the body politic will be expressed

'PEOPLE,' when not used as the equivalent of 'state' or 'nation,' must apply to a body of persons less than a state or nation, and this meaning would be satisfied by considering it as applicable to any consolidated political body.

In a Marine Insurance, "People," means, the People of all nations in their respective collective capacities, and not bodies of insurgents acting in opposition to their rulers It also means, the governing power of the country, therefore if a corn vessel is seized and detained by a hungry mob, or a party of rebels, that is not a detention by "the People." (*Nesbitt* v. *Lushington*, 4 T.R 783.)

PEOPLE, NATION. People is the generic, and nation the specific. A nation is a people connected by birth; there cannot, therefore, strictly speaking, be a nation without a people.

PEOPLE, POPULACE, MOB. People is said of any body supposed to be assembled, as well as really assembled · populace is said of a body only when actually assembled The voice of the people cannot always be disregarded, the populace in England are fond of dragging their favourites in carriages. Mob designate not only what is low, but tumultuous. A mob is at all times an object of terror.

People.

PEOPLE OF A DISTRICT. The word 'people' in a will making a charitable bequest to a school district, and providing that the property bequeathed shall be under the control of one person, elected by the people of the district, must be understood in the political sense and means those, and only those, with whom the elective power is deposited.

The words 'PEOPLE OF A STATE' are synonymous with 'citizens,' both describing the political body who forms the sovereignty, and who hold the power and conduct the government through their representatives.

'PEOPLE OF A TOWN,' as used in town bonds reciting that they were issued in pursuance of a vote of the 'people of a town,' in popular signification is the same as 'inhabitants of a town.'

Pepper-corn A nominal rent, as its name implied, reserved where the land is to be held practically rent free, yet the landlord wishes, if necessary, by demanding the pepper-corn to have the tenancy at any time acknowledged by the tenant. In modern times building leases sometimes reserve a pepper-corn as rent for the first few years (*Ency. of the Laws of England.*)

Peptone. Peptone is a sirupy liquid resulting from a process consisting in finely cutting up the mucous membranes, or the whole stomachs, of animals, placing the same in a vessel containing acidulated water, and subjecting the mixture to heat, whereby an artificial digestion takes place akin to the action in the natural stomach.

Per annum Strictly speaking, the words 'per annum' mean by the year or through the year.

Per capita, Per head (Cf. Per Stirpes.)

A distribution per capita is when a number of individuals, *e.g* a class, even though in different degrees of relationship, take the fund distributable among them in equal shares Its opposite is Per Stirpes.

Per capita: per stirpes Where distribution is to be per capita, the members of the class take the property to be distributed in equal shares, the individual alone being considered in the distribution. In distribution per stirpes, the stock or family is considered, and children do not take concurrently with their parents.

Per cent. 'Per cent' is an abbreviation of the Latin term 'per centum.' and means 'by the hundred.' It is so used and understood by mathematicians, accountants, and all persons having occasion to use it.

Per curiam. A 'per curiam' is the opinion of the court in a case in which the judges are all of one mind, and the question involved is so clear that it is not considered necessary to elaborate it by an extended discussion.

Per month. An agreement to pay so much "per Month" for a stated service, means, that such payment is to be made "each month, or monthly, and gives a cause of action as each month accrues which, once vested, is not subsequently lost or divested by the service-giver's desertion or abandonment of his contract." (*per* Pollock, C.B., *Taylor* v. *Laird*, 1 H. & N. 273, 25 L.J. Ex. 329.)

Peremptory.

Per my et per tout. 'Joint Tenants are said to be *seised per my et per tout*; by the half, or moiety, and by all,' (2 Bl Com. 182.)

Lord Coke gives the exact force of the expression *'seised per my et per tout'* by describing the party so seised as one *qui nihil et totum habet.* (*Coke* in Note to *Murray* v *Hall*, 7 C.B. 455)

Per quod, by which, whereby, words made use of by a plaintiff in his declaration in the averring of particular damage to have happened, without which his action would have not been maintainable (*Tomlins Law Dic.*)

Per stirpes. A distribution of property "per stirpes and not per capita," means, that all the beneficiaries will not, necessarily or probably, take equal shares but, that the property is to be divided into as many parts as there are stocks and each stock will have one, and only one, of such parts though such Stock may consist of many persons whilst another may only consist of one person. (*Stroud.*)

Perambulation A travelling through, or over, as Perambulation of the forest is the surveying or walking about the forest, and to the utmost limits of it, by Justices, or other officers thereto assigned to set down and preserve the metes and bounds thereof. (4 Inst. 30, *Tomlins Law Dic.*)

Percentage The number one hundred has been found in practice for many purposes a useful standard upon which to calculate rates of interest and other similar payments.

The 'PERCENTAGE OF' a sum means portion of that sum, and is not synonymous with *'percentage on'*

The 'PERCENTAGE ON' a sum signifies the measure of what the sum in question will yield, and in no sense whatever imports a portion of such sum, or *'percentage of'*

Percolate. The word 'percolate' designates any flowing of subsurface water other than that of a running stream, open, visible, clearly to be traced.

Percolating waters. Percolating waters are those which pass through the ground beneath the surface of the earth without definite channels.

PERCOLATING WATERS are a part of the soil, and belong to the owner of the soil. It is essential to the nature of percolating waters that they do not form part of the body or flow, surface or subterranean, of any stream They may be either rain waters, which are slowly infiltrating through the soil, or they may be waters sweeping through the banks or bed of a stream, which have so far left the bed and the other waters as to have lost their character as part of the flow.

Peremptory, joined with a substantive, as action or exception signifies a final and determinate act, without hope of renewing or altering. (*Tomlins Law Dic.*)

Imperative, absolute, not admitting of question, delay, or reconsideration; positive, final, decisive, not admitting of any alternative; self-determined, arbitrary.

Any statement or declaration is peremptory which is meant to be final and determinate, and is therefore

Peremptory.

couched in absolute or positive language. There is no hope of further amendment or indulgence.

Peremptory challenge. Peremptory challenges are those which are made to the jury without assigning any reason, and which the courts are bound to respect.

A peremptory challenge of a juror is "used only in matters criminal, and alleged without other cause than barely the prisoner's fancy." (*Cowel*)

Peremptory day, is when business is to be spoken to at a precise day, but if it cannot be spoken to then, the Court, at the prayer of the party concerned, may give a farther day without prejudice to him." (*Jacob.*)

Peremptory mandamus A 'peremptory writ of mandamus' is an extraordinary remedy to coerce the performance of a pre-existing duty or a clear and specific legal right

A peremptory order for time to plead, means, that the order is final, unless varied by a subsequent order on special circumstances being shown for a further extension. (*Falck* v *Arthelm*, 24 Q.B,D. 176, 59 L.J Q B 161)

Perfect horse. To say that a horse is perfect must mean that he is at least sound, kind and all right.

Perfect machine A 'perfect machine,' in the sense of the word 'perfect' as applied to inventions, means perfected invention; not a perfectly constructed machine, but a machine so constructed as to embody all the essential elements of the invention, in a form that would make them practical and operative so as to accomplish the result

Perfect obligation. The obligation of a contract is perfect when the duty assumed by the contracting parties, respectively, to perform the stipulations, is a duty which is recognized and enforced by the law

"Perfect partition" defined. Act 18, 1881, S 136 (2) (ins.), U P Act 3, 1901, S 10, Reg. 1, 1886, S. 96.

Perfect and imperfect partition. When a division is sought to be made of an entire revenue-paying estate into two or more portions, and such portions would, notwithstanding such division, continue to be jointly liable for the revenue assessed on the entire estate, the partition effected is an "imperfect partition" as distinguished from a perfect partition where the entire estate being similarly divided into two or more partions, each of such portions is formed into a separate estate, each being liable separately for the revenue assessed thereupon. In either case the division must be a division of the entire estate, and not of a portion of the estate. 32 C. 1036 =1 C L J. 421.

Perfect repair: Does not mean more than "Repair." (*Mosse* v. *Killick*, 50 L.J C.P. 300.)

Perfect right A 'perfect right' is that which is accompanied by the right of compelling those who refuse to fulfil the corresponding obligation.

Perfect title. A perfect title is a grant of land which requires no further act from the legal authority to constitute an absolute title to the land taking effect *in praesenti.*

Perfumery

A perfect title always carries with it, in legal contemplation, lawful seisin in possession Such seisin in possession is coextensive with the right, and deemed to continue until ouster by actual possession of another under claim of right

Roughly speaking, there are no such titles as 'perfect titles'. "The contract in suit is to be regarded as a contract of sale,conditioned on the vendor exhibiting to the vendee a perfect title. This does not mean a perfect title in the strict sense of the word 'perfect'. But we suppose that it means a title that is perfect and safe to a moral certainty; a title which does not disclose a patent defect which suggests the possibility of a lawsuit to defend it, a title such as well-informed and prudent man paying full value for the property would be willing to take." (*Ame Words and Phrases.*)

Perfect war. "A perfect war is that which destroys the national peace and tranquility, and lays the foundation of every possible act of hostility." (*Ibid.*)

Perfecting press A printing press is said to be a perfecting press when at the same time it prints on both sides of the paper.

Perfectly safe. The words 'perfectly safe,' when applied to a person seeking credit in a mercantile transaction, mean that such person is in solvent condition and that the debt in contemplation can be made, if necessary.

Perforation. "The common meaning of 'perforation' is a hole or aperture passing through a body, but the word may also have a meaning synonymous with 'cavities' or 'cells,' and hence may mean a hole not passing entirely through, but into the centre or interior." (*Ame. Words and Phrases*)

Perform. An agreement to arbitrate, in which the parties stipulate to 'abide by and perform the award,' means that the parties will not in any wise revoke or prevent the making or publication of the award, and that when made and published it shall be final, and that they will perform any act required by the award which is within the scope of the authority conferred on the arbitrators by the submission.

A Theatrical or Music Hall agreement by an Actor or Singer not to "perform" elsewhere than at the place for which the agreement engages him, generally, connotes such a performance as he would give at such place, and does not prevent him from exercising his talents amongst friends gathered together on a Sunday evening for their mutual companionship and entertainment (*Kelly* v. *London Pavilion*, 77 L.T. 215; 14 Times Rep. 234.)

"Performed" and "performance" defined. 49-50 V. c. 33, S. 11.

"Performance" in the Copyright Act means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument. (*Copyright Act*, S. 35)

Perfumery. The word 'perfumery' as generally used, 'means not only a substance which emits an odor, but one which is handled, bought, sold, and used for the purpose of obtaining from it such odor whenever required.

Pergunnah

Pergunnah · A small district consisting of several villages, being a sub-division of a Chukla. (*Fifth Report*)

Peril. 'Peril' means exposure to injury, loss, or destruction, imminent or impending danger, risk, hazard, or jeopardy.

Perils of the lakes. The term 'perils of the lakes,' as used in a policy of marine insurance on a tugboat against the perils of the lakes, means the natural accidents peculiar to that element which do not happen by the invention of man.

Perils of the sea. They are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at all events to the injured ship.

'Dangers or perils of the sea' such as will excuse a carrier from liability, are those accidents peculiar to navigation that are of an extraordinary character, and arise from irresistible forces of overwhelming power, which cannot be guarded against by the ordinary exercise of human skill and prudence

PERILS OF THE SEA' is a phrase having the same meaning in Bills of Lading and Charter Parties, as in Policies of Insurance" [(per *Ld. Bramwell, Hamilton* v. *Pandorf*, 12 App Ca 527)

"PERILS OF THE SEA" Arnold defines the phrase as meaning, in policies, all kinds of marine casualties, such as shipwreck, foundering, stranding, and every species of damage to the ship or goods at sea by the violent and immediate action of the winds and waves, not comprehended in the ordinary wear and tear of the voyage or directly referable to theacts and negligence of the assured as its proximate cause. Incontracts of sea carriage, the words "perils of the sea" have been defined as "sea damage occurring at sea and nobody is at fault" (Lopes L J, quoted in *Hamilton* v. *Pandorf*, (1887), 12 App Cas. 518, 526), but this definition is not exhaustive, for damage caused by the negligent navigation of another ship colliding with the carrying ship is a peril of the sea and in a marine policy it has been defined as "all perils losses, and misfortunes of a marine character or of a character incident to a ship as such." (Lord Bramwell in *Thames and Mersey M I C.* v *Hamilton*, (1887), 12 App. Cas. 492) The expression has the same meaning in a contract of sea carriage as it has in a marine policy, but in the case of a contract of carriage the Court looks to what has been termed the remote as distinguished from the proximate cause of damage, whereas in the case of a policy the proximate cause can alone be regarded. (Lord Watson, *Hamilton* v. *Pandorf*, 12 App Cas. 518)

The following statement indicates the limitations of the phrase. "The term does not cover every accident or casualty which may happen. on the sea. It must be a peril of the sea. Again, it is well settled that it is not every loss or damage of which the sea is the immediate cause that is covered by these words. They do not protect, for example against that natural and inevitable action of the winds and waves which results in what may be described as wear and tear There must be some casualty, something which could not be foreseen, as one of the necessary incidents of the adventure. The purpose of the policy (or contract) is to secure an indemnity against accidents which may happen, not against events which must happen. Not only losses which are occasioned by extraordinary violence of the winds or waves are losses by perils of the sea.... If a vessel strikes upon a sunken rock in the fine weather and sinks, this is a loss by perils of the seas. And a loss by foundering owing to a vessel coming into collision with another vessel, even when the collision resu ts from the negligence of that other vessel, falls within the same category The Nantho, (1887), 12 App. Cas. 503; Abbott, Shipping, Carver, Sea Carriage, Scrutton, Charter-Parties.)

"The phrase '*Perils of the Sea*', whether understood in its most limited sense as importing a loss by natural accidents peculiar to that element, or whether understood in its more extended sense as including inevitable accidents occurring upon that element, must still in either case be understood to include such losses only to the goods on board as are of an extraordinary nature or arise from some irresistible force, or from inevitable accident or some overwhelming power which cannot be guarded against by the ordinary exertions of human skill and prudence. Hence it is that if the loss occurs by a peril of the Sea which might have been avoided by the exercise of any reasonable skill or diligence at the time when it occurred, it is not deemed to be, in the sense of the phrase, such a loss by the Perils of the Sea as will exempt the carrier from liability, but rather a loss by the gross negligence of the party" (*Story on Bailments*, S. 512 a.)

Period of limitation. The expression "the period of limitation" in S. 6 (1) of the Limitation Act (1908) means the period of limitation for the plaintiff's suit, the period of limitation for the suit which the person under disability or some one through whom he claims is entitled to institute, and not the period of limitation for a similar suit which some other person may have been entitled to institute. 22 A 33 (F B.)=19 A.W.N. 159.

Periphrasis Circumlocution, use of many words to express the sense of one (*Johns*) No Periphrasis, or circumlocution, will supply words of art, which the law hath appropriated for the description of offences in indictments. No Periphrasis, in indictment, or conclusion, shall make good an indictment which doth not bring the fact within all the material words of a statute; unless the statute be recited, &c. (*Tomlins Law Dic*)

Perish. To suffer destruction; lose life, come to an untimely end

TO PERISH, DIE, DECAY To perish expresses more than to die, and is applicable to many objects, for the latter is properly applied only to express the extinction of animal life, and figuratively to express the extinction of life or spirit in vegetables or other bodies. To perish expresses the end: to decay, the process by which this end is brought about.

Perishable goods. Goods which decay or lose their value if not consumed soon: (as) fish, fruits, vegetables, confectionary, &c.

Perjured. "Perjured,' as used in a statement that a person has perjured himself, is actionable; for it implies a direct legal crime.

Perjury.

PERJURED AND FORSWORN. The distinction taken in the English books between the words 'forsworn' and 'perjured' must have been founded on this. that the word 'perjured' implied that the false oath was taken in a judicial proceeding, whereas a man might be foresworn in an oath taken on occasion, when it could not amount to perjury

Perjury At common law perjury is defined as the wilful giving under oath in a judicial proceeding or in a court of justice of false testimony material to the issue or point of inquiry.

PERJURY, is defined to be a crime committed when a lawful oath is administered, by any who hath authority, to a person, in any judicial proceedings, who swears wilfully, absolutely, and falsely, in a matter material to the issue, or cause in question, by their own act, or by the subornation of others. (*Tomlins Law Dic.*)

PERJURY, is defined as the wilful and corrupt false swearing or affirming, after an oath lawfully administered, in the course of a judicial or quasi-judicial proceeding as to some matter material to the issue or point in question. '*Subornation of perjury*' is the crime of procuring another to commit perjury either by inciting, instigating or pursuading the guilty party to do so It is necessary that the perjury be actually committed to complete the crime. The suborner must also be aware that the person suborned intended to commit perjury.

"Permanent" defined Ben. Act 6, 1880, S *3 expln.*

'PERMANENT' is defined to mean not temporary, or subject to change; abiding, remaining fixed, or enduring in character, state, or place.

The meaning of the word 'permanent' according to lexicographers, is continuing in the same state, or without any change that destroys form or character, remaining unaltered or unremoved, abiding, durable, fixed, lasting, continuing; as a permanent impression, permanent institution

The word 'permanent" in S 38 of the B.T. Act, must in every case be construed with reference to existing conditions, and when a piece of land gets covered with sand the deterioration is permanent and with reference to existing conditions. *22* C.L J. 42=29 I C. 236 *See also* 20 Cal. 579.

Permanent abode. 'Permanent abode' in an Act declaring that a permanent abode is necessary to constitute a residence within the meaning of the law relating to elections, means nothing more than a domicile, a home, which a party is at liberty to leave as interest or whim may dictate, without any present intention to change it. It need not be an abode which the party does not intend to abandon at any future time.

"Permanent alienation" defined. Act 13, 1900, S. *2* (4) (sub. P. Act 1, 1907, S. 2) U. P. Act 2, 1903, S. 2 (3)

Permanent alimony. Permanent alimony is a provision for the support and maintenance of the wife out of her husband's estate during her life, according to her rank and condition in the community in which she resides.

Alimony in its strict technical sense proceeds only from husband and wife, and where the relation of husband and wife does not exist there can, strictly speaking, be no alimony. But the term 'permanent alimony' is often used to denote an allowance for the support of the wife after divorce, and though in this sense the term 'alimony' is a misnomer, a decree granting a permanent allowance for the support of the wife after the dissolution of the marriage bonds will not be considered erroneous merely because such allowance is improperly termed 'alimony'

Permanent building. A tin-shed is not a "permanent building" within the meaning of S 37, Revenue Sale Law (Act XI of 1859). (30 C. 498)

Permanent disability The 'permanent disability' for which recovery may be had in an action for personal injuries is the permanent reduction of the injured person's power to earn money, resulting from the injury, caused by the negligent act of the other party

Permanent employment. An agreement to give a person 'permanent employment' means nothing more than that the employment is to continue indefinitely, and until one or the other of the parties wishes for some good reason to sever the relation; it is opposed to temporary employment.

Permanent fixtures Though a screw may have been a chattel attached to the realty, yet if it was detached and carried away, an action for recovery would lie, and it is not an answer to such an action to say that the screw was a permanent fixture.

Permanent injunction. A permanent injunction means an injunction which shall remain in force until vacated by order of court.

Permanent injury. The term 'permanent injury' does not import an injury which will continue forever, but means an injury which is something more than a mere temporary inconvenience. Thus the erection of a dam may constitute a permanent injury to lands, even though it may not continue for ever

Permanent nuisance To speak of a nuisance as 'permanent' does not necessarily mean forever, or that the nuisance should be perpetual However, the word always conveys the idea of a continuance in the same state.

Permanent obstacle, entitling a shipowner to insist on an alternative place of Delivery, "means, that it is an obstacle which cannot be overcome by the shipowner by any reasonable means, except within such a time as, having regard to the objects of the adventure of both charterers and shipowner, is, as a matter of business, wholly unreasonable" (*per* Brett,L,J., *Nelson* v. *Dahl*, 12 Ch.D. 593)

Permanent policy. The words 'permanent policy' in a policy of life insurance, mean an insurance from year to year, and until terminated by an express notice by one of the parties to the contract to the other.

Permanent right. The words "sanbasani kaimi asat jotedari" indicate a permanent right. A.I.R. 1931 Cal. 87; 34 C.W N 887, 129 I C. 885.

"Permanent settlement" defined. Act 8, 1885, S 3 (12). An important land-tenure in India. *See* Ben. Per. Sett. Reg.

Permanent tenant. "*Permanent tenant*" means a holder of khoti land who has a right of occupancy

Permanent tenure.

in such land, Bom. Act I of 1880 (Khoti Settlement), S. 3, cl. 8.

"**Permanent tenure**" defined, Act 8, 1885, S 3 (8), Ben. Act 6, 1908, S. 3 (*xviii.*)

"**Permanent tenure-holder**" defined. U.P. Act 2, 1901, S 7.

Permanently located The word 'permanent' does not mean for ever or lasting for ever or existing for ever, as used in a contract providing that the lands conveyed to a railroad for its terminus and machine shops should be their permanent location, so that the condition is complied with as soon as the railroad company locates such terminal appurtenances on the land, and the removal of some of them eight years later is not a breach of the contract

Permanently settled Permanent settlement The expressions "permanently settled" and "permanent settlement" in S. 37 of the Revenue Sale Law contemplate the Permanent Settlement of 1793, 10 C.W.N. 503

Permanently-settled area. The appellants were grantees from the Government of land situated in the Sunderbans. The grant to the appellants was not made until December, 1880 *Held*, that the grant to the appellants did not come within the description of "permanently-settled area" within the meaning of S 179, read with S 2, sub-S 12, of the Bengal Tenancy Act, 1885, if the description was taken literally. 48 I A. 39=48 C 473 (479)=25 C W N 361 =14 L W 248=33 C.L J. 214=30 M L.T. 196=60 I C 1=40 M L.J. 232.

'**Permanently-settled estate**" defined Reg. 1, 1886, S 3 (*c*)

"**Permanently-settled portion of Goalpara**" defined. Reg 3, 1879, s 2 (4)

Permanently-settled portion of Sylhet defined Reg. 3, 1879, S. 2 (4).

"**Permission**" defined. 37-8 V c. 77, S. 14

'**Permit**' is defined. To grant permission, to give leave, to grant express license or liberty to.

PERMIT. Customs document authorising the removal of dutiable goods. *See also* 20 All. 186.

'Permit' conveys the idea of an allowance, a sufferance, a toleration, an authorization.

The word '*consent*' implies some positive action, while the word '*permit*' implies merely passivity.

Webster, in referring to the words '*permit*' *allow*, and '*suffer*,' says: 'Permit' is the most positive, denoting decided assent.

The words '*permit*' and '*suffer*' are *pseudo*' *synonyms* There is a shade of difference between their meanings. The word permit' seems to convey the idea of affirmative action, more than the word 'suffer'

As distinguished from '*allow*' or '*suffer*,' '*permit*' is more positive, denoting a decided assent, either directly, or by implication. '*Allow*' is more negative, and denotes only acquiescence or an abstinence from prevention. '*Suffer*' is used when our feelings are adverse, but we do not think best to resist

Perpetuating testimony.

"'PERMITTING AND SUFFERING' (*in a Covenant*) do not bear the same meaning as 'knowing of and being privy to', the meaning is that the covenantor should not concur in any act over which he had control" (*per* Bayley, J, *Hobson* v. *Middleton*, 6 B. & C. 303).

Pernor. A pernor of the profits of land, is one who enjoys the profits and is the same as a *Cestui que use* (*Chudleigh's Case*, I Rep. 123)

Perpetrate, Commit. One may commit offences of various degree and magnitude, but one perpetrate crimes only, and those of the more heinous kind A lawless banditti, who spend their lives in the perpetration of the most horrid crimes, are not to be restrained by the ordinary course of justice. he who commits any offence against the good order of society exposes himself to the censure of others, who may be his inferiors in certain respects.

Perpetua lex est nullam legem humanam ac positivam perpetuam esse; et clausula quae abrogationem excludit, ab initio non valet It is an everlasting law, that no human and positive law shall be perpetual; and a clause that excludes abrogation is invalid from its commencement

Perpetual. "Perpetual" is defined by Webster, as follows "Never ceasing, continuing for ever in future time, destined to eternal, as a perpetual covenant, a perpetual statute Continuing or continued without intermission, uninterrupted, as a perpetual stream, the perpetual action of the heart and arteries."

Perpetual curate "Permanent, or Perpetual, Curates, are Clerks who officiate in Parishes or Districts to which they are nominated by the proper authorities, and licensed by the Bishop." (*Phil. Ecc. Law.* 239.)

Perpetual injunction. "An injunction granted upon the final trial is called a perpetual injunction."

The words "perpetual injunction" in a decree enjoining the violation of a patent right, means only for the life of the patent, which must be determined by the statute and not merely by the terms of the grant in the patent.

Perpetual interest A perpetual interest has a duration equal to that of the property

Perpetual lease The term "perpetual lease" can only mean one for years, wherein the lessee has the covenant of the lessor for perpetual renewals

Perpetual succession. The term "perpetual succession" as used in a statute giving a certain company perpetual succession, would be intended merely to give the company continuous succession so long as it continued in existence, and not to define its duration.

Perpetual trust for charitable use "A perpetual trust for a charitable use is not condemned by the law against perpetuities."

Perpetuating (perpetuation of) testimony when action will lie. Any person who would, under the circumstances alleged by him to exist, become entitled upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event

Perpetuating the testimony of witnesses.

may commence an action to perpetuate any testimony which may be material for establishing any such right or claim.(*Ency of the Laws of England*) Daniell's Chancery Practice, Daniell's Chancery Forms, Mitford on Pleading, Seton's Judgments and Orders,' Story's Equity Jurisprudence, Taylor on Evidence.

Perpetuating the testimony of witnesses. If witnesses to a disputable fact are old and infirm, it was usual to file a bill in Chancery, to perpetuate, the testimony of those witnesses, although no suit is depending, for, it may be, a man's antagonist only waits for the death of some of them to commence his suit. 3 Comm. 450. (*Tomlins Law Dic*)

Perpetuity A perpetuity is a limitation of property which renders it inalienable beyond the period allowed by law.

A perpetuity is a limitation taking the subject thereof out of commerce for a longer period than a life or lives in being and 21 years and 9 months thereafter.

Perpetuity, Perpetuities, Rule against The rule against perpetuities makes void every estate or interest which is limited by way of executory devise, shifting use or declaration of trust (express or constructive), to arise at some future time, either at law or in equity, in any real or personal property, and is not such as must necessarily vest (if at all) within twenty-one years after the death of some person, or the last survivor of some persons specified in the instrument containing the limitation and living when the instrument first came into operation, or if no such person be specified, within twenty-one years from the time when the instrument first came into operation, provided if at the time when the instrument first comes into operation or the period so defined comes to an end, there be a child *en ventre sa mere*, who would if born be entitled under some limitation contained in the instrument, such child, if afterwards born alive, may for the purposes of taking some benefit under such limitation be considered as actually living at the above mentioned time. (*See Cadell* v *Palmer*, (1833), 7 Bli N S 202, *Palmer* v. *Holdord*, (1828), 4 Russ 403, *Abbiss* v *Burney*, (1881) 17 Ch. D 211; Fearne, Cont. Remrs, 1 Jarm. Wills,; Lewis on Perpetuity,, Marsdon on Perpetuity, Gray, Rule against Perpetuities, (*Ency. of the Laws of England.*)

The rule against perpetuities requires that gifts and limitations of property must necessarily vest in the beneficiaries during a life or any number of lives, in being at the time when the instrument become operative (*e.g.* in the case of a Will, the death of testator), or within 21 years afterwards

Perquisite "Profits arising to the lord from his court Baron above the yearly revenue, such as fines in respect of copyholds", (*Perkins*, 20, 21) Perquisitum is also used in the sense of purchase.

In Bouvier's Law Dictionary after giving the meaning of "perquisites" in its most extended sense, it is defined. "In a more limited sense it means something gained by a place or office beyond the regular salary or fee.

The idea of a "perquisite of office," in the sense of a fee or allowance for service beyond the ordinary salary or settled wages, has no place in our legislation, but seems to be repudiated by the most necessary implication. Once to admit it is to open a wide door for imposition and corruption."

Persecution mania. Insane delusion that one is constantly persecuted.

Persistent cruelty A number of acts of cruelty committed even in one day may amount to "*Persistent Cruelty*" (*Broad* v. *Broad*, 78 L.T. 687.)

"**Person**" defined 48-9 V. c. 25, s. 2; 48-9 V c. 49, s 12, 49-50 V. c 48, s 27, 50-I V. c. 11, s. 9; 52-3 V c 63, s. 19, Act 13, 1855, s. 4, Act 5, 1857, s. 27, Act 1, 1859, s 118; Act 24, 1859, s. 1; Act 45, 1860, s 11, Act 5, 1861, s. 1, Act 8, 1864, s 1; Act 17, 1864, s. 1, Act 3, 1865, s 2; Act 10, 1865, s. 3; Act 27, 1866, s 2, Act 6, 1882, s. 6, *expln*; Act 2,1886, s. 3 (7), Act 10, 1897, s. 3 (39); Ben Act 5, 1864, s. 1; Ben Act 2, 1866, s 51; Ben. Act 3, 1876 s. 46, Ben. Act 1, 1893, s 3 (5), Ben Act 1, 1899, s 3 (32); Ben. Act 3, 1899, s 51; Bom Act 3, 1875, s 3 (2) Bom. Act 1, 1904, s 3 (35), Bur Act 1, 1898, s 2 (44); E B & A Act 1, 1909. s 5 (45), Mad Act 4, 1884, s. 3 (*axii*), Mad Act 5, 1884, s 3 (*xxii*); Mad Act 1, 1891, s. 3 (22), P Act 1, 1898, s 2 (40), U P Act 1, 1904, s 4 (33), Reg 8, 1874, s 1.

PERSON A man or woman; also the state or condition whereby one man differs from another. (*Tomlins Law Dic.*)

PERSONS, are divided by law into either natural persons, or artificial Natural persons are such as the God of Nature formed us, artificial are such as are created and divided by human laws for the purposes of society and government, which are called Corporations, or bodies Politic. (1 Comm 123, 467. *Tomlins Law Dic*)

Prima facie the word "person," includes a Corporation as well as a natural person (*per* Selborne, C, *Pharmaceutical Socy* v *London & Provincial Supply Assn.*, 49 L J Q B. 736, 5 App. Ca. 857)

By express statutory provisions, the word "person" is declared to include, firm, company, partnership, society, joint stock company, or association.

"Person" shall include any company or association or body of individuals, whether incorporated or not. Act X of 1897 (General Clauses), S 3 (39).

"Person" includes any association or body of persons, whether incorporated or not Act III of 1865 (Carriers), S. 2.

Person includes firm. 49 M.L.J 124=48 Mad. 602 =22 L.W. 206=A.I.R. 1925 Mad. 1048.

"The word '*Person*' may very well include both a natural person (a human being) and an artificial person (a corporation). I think that in an Act of Parliament, unless there be something to the contrary it ought to be held to include both. I have no doubt that in common talk in the language of men (not speaking technically) a 'person' does not include a corporation Nobody in common talk, if he were asked who is the richest person in London, would answer, The London and North Western Ry Co It is plain that in common speech 'person' would mean a natural person. In technical language it may mean the other, but which meaning it has in any

Person.

particular Act, must depend on the context and the subject-matter. I do not think that the presumption that it includes an artificial person, a corporation,—(if the presumption does arise)—is at all strong Circumstances, and indeed very slight circumstances in the context might show which way the word is to be construed in an Act of Parliament And I am quite clear about this, that whenever you can see the object of the Act requires that 'person' shall have the more extended sense or the less extended sense, then you should apply the word in that sense and construe the Act accordingly" (*per* L.d Blackburn, *Pharmaceutical Socy* v *London &c Assn.*)

The word 'person' used in definition of agriculturist must be interpreted in the sense of juristic person, and therefore persons in the position of trustees for the management of an estate must be regarded as agriculturists within the meaning of S. 2 (2), U P Agriculturists' Relief Act, and as such are entitled to the benefit of the Act 170 I C 742=1937 O L R 485=1937 O W N 740=A I R 1937 Oudh 369 (F.B)

"Person" includes a Hindu undivided family, Act XI of 1922 (Income-tax), S 2, Cl. 9

The word "person" has not been defined in the Companies Act It may be that the word comprises a number of individuals, such as a Hindu joint family The question whether a syndicate of ten persons was really composed of more than twenty persons is a question of fact to be decided on the evidence and not on a mere allegation 54 Bom 696=126 I C 305=32 Bom L R. 389=A I R 1930 Bom. 431

The Court of Wards is not a "person" and letters of Administration under the law cannot be granted to it. 25 C 795=2 C W N 349 *See also* 14 W R. 295

"A person" includes the Secretary of State when engaged in enterprises of a commercial nature The acquisition by him of a railway in the exercise of the statutory powers vested in him under the Railways Act would nevertheless make him the successor of the company in respect of such railway (English case-law discussed) 27 S L R 47=138 I C 673=A I.R. 1932 Sind 189

"Persons" as used in the Bankruptcy Act shall include women

"PERSON" is applicable to man and woman or either

"PERSON" as used in an Act providing that no state shall deprive any "person" of life, liberty or property without due process of law, should be construed to include women

The word "person" or "persons" when used in the revenue act, shall be construed to include, male, female, corporation, company, firm, society, singular or plural number.

The term "persons" in section 115, I E A 1872, applies to one who is of full age and competent to enter into a contract It does not apply to minors. 26 C. 381=3 C W N 468.

"PERSONS" in Civil Procedure Code should not be restricted to persons *sui juris* and includes an infant represented. 6 Ind. Cas. 119.

Person interested.

"PERSON" in C P. Code, O. 33, Rr. 1 and 3 does not include a juridical person, such as a receiver. 126 I. C. 650=1930 Rang. 259

"Person" in S 87 of Karachi Port Trust Act (VI of 1886) includes the Board It is wide enough to include any officer or servant of the Board as well, and any person acting under the orders of the Board. 10 Ind Cas. 972 (974)=4 S L R 236.

The term "person" used in Ss. 61 and 64 of the Stamp Act includes the members of a trading partnership 27 C 324

PERSON AND PARTY The terms "person" and "party," in section 64, I C A, are interchangeable terms They have reference to such a person as is mentioned in S. 11 of the Act, *i.e.*, a "person competent to contract" 26 C 381=3 C W.N. 468

Person aggrieved A proprietor of the copyright of books is a "person aggrieved," within the meaning of S 6, Act XX of 1847, when he finds that another person has got his name registered in the catalogue of Books in fraud of his rights. 33 C 571=10 C W N 134=2 C L J. 511. *See also* 26 Cal 336

"Person carrying on business". *See* U B R. 1909 2nd Qr, W B of C Act, 1

Persons claiming an interest in the estate of the deceased' *See* 34 Mad 405=8 I C. 351

"Person dealing with the firm" The expression 'persons dealing with a firm' equally applies to old and new customers of the firm but only to such of them as have dealt with the firm on the assumption that the person whom they wish to hold liable was a partner in that firm. 100 I.C. 389=A I R. 1927 Sind 155

"Person entitled". 167 I C 428=9 R.S 190=38 Cr.L J 382=A I.R. 1937 Sind 33.

"PERSON ENTITLED" (*to land*) defined. Act 30, 1859, S 1

Person entitled to make an application. The words "person entitled to make an application," in S 7 of the Limitation Act, mean a person who is entitled to make an application on his own behalf. 25 M 431 (F B)=12 M L J 166.

'Person filling a public office" defined. Act 7, 1880, S 64.

"Person having interest." A person claiming a mortgage which is found against is not a person having any interest voidable upon the sale to avoid which the deposit is made (under Ben. Ten. Act 1885, S 171) (9 Ind. Cas. 615) *See also* 2 I C. 402 (Person disputing right of deceased testator to deal with certain property as his own).

Person in authority *See* 50 C 127=24 Cr.L J 760=A I.R. 1923 Cal. 458; 57 Cal. 488=126 I C. 547=1930 Cal 633.

"Person in receipt of a pension" means "a person who receives a pension." 21 I.C. 847=(1913) M. W.N. 935.

"Person interested" defined. Act 7, 1878, S. 10 (*b*); Act 1, 1894, S. 3 (*b*); Act 7, 1903, S. 2 (*b*); P. Act 2, 1900, S. 2 (*d*); 29 M.L.J. 639=31 I.C. 255=38 Cal. 230=8 I.C. 107; 41 C.W.N. 464

Person interested.

The expression *"person interested"* includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land, Act I of 1894 (Land Acquisition), S 3 (*b*).

The expression *"person interested"* includes all persons claiming any interest in compensation to be made on account of any measures taken under the Land Preservation Act Pun. Act II of 1900 (Land Preservation (Khos), S. 2 (*d*)

"PERSON INTERESTED" in S 41 of the Transfer of Property Act, means a person personally interested in the property. The guardian of a minor is not such a person 29 A 292=4 A.L J 181=(1907) A W N 72

The expression *"person interested"* includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land, Act VII of 1903 (Works of Defence), S. 2 (*b*)

"Person interested in award" Arbitrator is not a person interested in the award 1935 Lah 134

"Person interested in the payment of money" The expression *"person interested in the payment of money which another is bound by law to pay"* in S 69 I C.A., contemplates a case where the person who makes the payment is under no legal liability to make it and pays the money for another person who is bound by law to pay 32 C 643=9 C W N 670. *See also* 11 M 452, 27 M. 338, 34 Cal 92, 19 M L J 331, 7 Cal. 648 (P C.)

"Person interested to deny" defined. Act 1, 1877 S. 42, *expln*

"Person last entitled to land". The expression "The person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof. Act XXX of 1839 (Inheritance), S. 1.

"Person liable to pay" The expression 'person liable to pay' does not mean all the persons liable to pay. 66 C L J 104=42 C.W.N 18

"Person of criminal tendencies" Whether a person possesses criminal tendencies or not is a matter of inference from the circumstances of each case The accused a boy between 16 and 18 years of age was found to commit the offence of pick-pocketting theft in an open shandy during broad daylight amidst a crowd of persons, at a place far away from his home He pleaded at the trial that the police concocted the case by placing stolen property in his hands while he was going on the way *Held*, that it was a fair inference from these facts that the accused was a person of criminal tendencies within the meaning of S. 8 of the Borstal Schools Act. 1937 M. W. N. 639.

"Person of European extraction" defined. Act 9, 1874, S. 3.

"Person of unsound mind" defined. (*See also* Lunatic) Act 27, 1866, S. 2.

Personal.

"PERSON OF UNSOUND MIND" shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs: Act XXVII of 1866 (Trustees), S. 2

"Person whose immoveable property has been sold" The words "person whose immoveable property has been sold" in O. 21, R. 89, C P Code, include cases where a person purchases immoveable property from the judgment-debtor after the auction sale, but before the expiration of 30 days and before confirmation. 30 M. 214 (215)=17 M L J. 127.

"Person who would have succeeded." The expression "a person who would have succeeded according to the provisions of the Act" in Ss. 13 and 14, Oudh Estates Act (I of 1869) is equivalent to "the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of S.22 applicable to the particular case." 11 Bom.L.R. 516 (P C.)=8 C W.N. 699=26 A 393=31 I A. 132=1 A L.J. 384=7 O C. 248=3 Ind. Cas. 359 (P C)

"Person within" *See* 9 Bom.L.R. 244=5 Cr.L J. 249.

Persona. *A person*—The word "persona" in its primitive sense, was applied to the masks worn by the actors in the dramatic performance of Rome and Greece, which masks were made to represent the character which the actor performed, and in the same sense it was subsequently employed in jurisprudence to signify the role or status which a man fills in the social organization Thus the same man may at different times and even at the same time, represent different persons or roles, as, in his youth he represents the person of a minor, and after his maturity, that of a major, each having different qualities, rights and obligations.

Persona conjuncta aequiparatur interesse proprio. A personal connection equals, in law, a man's own proper interest.

Persona designata Where a person is indicated in a statute or legal instrument not by name, but either by an official designation or as one of a class, a question sometimes arises whether he ceases to be the person so indicated on losing his official designation or his character as one of the class, or whether the intention was to single him out as a *persona designata*, that is, as an individual, the designation being merely a further description of him. *Designatio personae* then, in general, means simply the singling out by description of a party to a deed or contract. or a person taking thereunder such party or person being in turn called *persona designata*. (*Ency of the Laws of England*) When difficulty is found in ascertaining whether a person takes as *persona designata*, the maxim "Designatio unius est exclusio alterius et expressum facit cessare tecitum" is applicable, in other words, if one person is specified, another is excluded on the principle that what is expressed makes what is only understood to give way. (*Ibid*)

Persona a grata Envoy in whose favour the power to which he goes is predisposed.

Personal. The word "personal", means pertaining to the person or bodily form.

Personal action.

Personal action "'Action Personal' is such as one man brings against another on any contract for money or goods or on account of any offence or trespass, and it claims a debt, goods, chattels, &c, or damages" (Jacob, Action 3 Bl Com 117).

"PERSONAL ACTIONS" are defined by Blackstone to be such whereby a man claims a debt or personal duty or damages in lieu thereof, and likewise whereby a man claims a satisfaction in damages for some injury done to his personal property.

Personal contract A "personal contract" is a contract directly involving some personal characteristic or attribute such as contracts requiring the exercise of knowledge or skill or which involve a question of personal confidence—as, for example, a promise to marry, "the contract of a master to instruct his apprentice, of an author to compose a particular work, of a physician or lawyer to render services. Any contract from which it appears that it is the intention of the parties that the services shall be performed by the person contracting in person alone is a personal contract

Personal covenant Personal covenants are those which are binding upon the personal representatives of the covenantor, and do not run with the land or pass to the assignee

PERSONAL COVENANTS are said to be such as do not touch the interest demised but are merely collateral to it.

"Personal decree" A decree is said to be personal only as distinguished from a decree which directs that the amount decreed is to be realized by the sale of specific property, 22 A 408=20 A.W N 158

"Personal estate" defined. (*See also* Moveable property), Act 25, 1838, S. 1.

The words "personal estate" are used to embrace every description of property not coming under the denomination of real estate

The phrase "personal estate", in ordinary and constant use, whether among professional persons or laymen, means goods, chattels, securities and money, and does not mean land or tenements

The words, "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds securities for money (not being real estates), debts. Act XXV of 1838 (Wills), S. I.

PERSONAL AND REAL ESTATE. There is not in India the difference between real and personal estate which obtains in England. 5 I A 116=8 C. 806 (814) =2 C. L R. 529=3 Suth 520=3 Sar 818.

Personal expenses. "Personal expenses" of a candidate at an election "includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere, for the purposes of and in relation to such election"

Personal fitness. The personal fitness of a candidate for an office includes his moral character, intellectual ability, social standing, habits of life and sometimes, his political convictions.

Personal property

Personal goods. "The terms 'personal goods' and 'personal property' are convertible, and, in their general sense, mean the same thing".

Personal injury. "Personal injuries", in a contract of insurance mean bodily injuries.

Personal labour Personal earnings. "Personal earnings" from Personal Labour (which do not vest in a Trustee in Bankruptcy) "point to a limitation of 'Personal earnings' to something analogous, both in its character and in the nature of its remuneration, to Personal Daily Labour,—not merely of course, manual or menial service (*Per* Wright, J, *Mercer* v. *Vans Colina*, 67 L J Q B 424, 78 L.T. 1).

"Personal law" meaning of 54 Bom 288=32 Bom L R. 17=124 I C. 776=1930 Bom. 105.

Personal liberty. Personal liberty consists of the right of locomotion—to go where one pleases, and when—and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens

Personal luggage. "Personal luggage" means the same thing as "Ordinary luggage" (*Hudston* v. *Mid Ry*, 38 L J Q B 213).

PERSONAL LUGGAGE. "Whatever the passenger takes with him for his personal use or convenience, according to the habits and wants of the particular class to which he belongs, either with reference to the immediate necessities or the ultimate purpose of the journey must be considered as personal luggage". (40 L J Q B 34)

Personal notice By "personal notice" is meant the delivery of a notice in writing to another in person.

Personal ornaments In discussing what are or are not 'personal ornaments' the question seems to be whether a thing that is ornamental and capable of being applied to useful purposes, is, or is not, to be considered as an ornament. There are some things of no personal use, a common ring, for instance, which may be set round with diamonds and be of extreme value, and yet of no use, except as an ornament, but it may be said, if you convert that into a signetring and seal letters with it, in consequence of that useful purpose to which it is applied, it becomes an article of utility as well as of ornament A shirt-pin is equally useful.

A pencil-case certainly is useful as containing the pencil The inclination of my opinion is, that though those things are capable of being connected with personal use, yet they are considered as personal ornaments in the sense in which the testator intended them If you come to a minute definition they may not be so; but at the same time they may be put in such a form and appearance that the ornamental part is paramount to the useful part, and consequently they might pass as 'Ornaments' (*Willis* v. *Curtois*, 1 Bea. 196.) (*Cited in Stroud*).

Personal property. "Personal property" as defined by Blackstone, is composed of property in possession and property in action.

In its general or ordinary signification the term "personal property" embraces all objects and rights which are capable of ownership, except estates in

Personal property.

land and incorporeal hereditaments issuing thereout or exercisable within the same.

"The words 'personal property' embrace not only goods, chattels, coin, bills and evidences of debt, but, in their strict and more appropriate legal definition signify the right and interest of the owner or owners in these articles".

PERSONAL PROPERTY. Personal property presumably means movable property as defined by the Transfer of Property Act. 24 L.W. 611=(1926) M.W.N. 953=51 M.L.J. 561.

The term "personal property" in its general sense is synonymous with the term "personal goods"

"Personal property" not only includes property which is movable, but more It is a more comprehensive term than "movable property". Thus crops growing on land are held to be personal property, so far as not to be considered an interest in land Annual crops, if fit for harvest, may acquire the character and incidents of personal property. But crops do not become personal property, as a general rule until they are ready to be harvested until that time they are regarded as partaking of the realty

The words "personal property" in S. 6, Act XI of 1865, are used in the sense of moveable property, for, as regards Hindus and Mahomedans, there is no distinction between real and personal property, but between moveable and immoveable. 2 B.L R.A C. 77=10 W.R. 416.

"Personal representative" defined (*See also* Legal personal representative) 5-6 V c. 45, S 2.

PERSONAL REPRESENTATIVE. The terms "legal representative" and "personal representative" in their commonly accepted sense mean administrator or executor, but this is not the only definition, they may mean heirs, next of kin or descendants and sometimes assignor or grantee. The sense in which the term is to be understood depends somewhat on the intention of the party using it and is to be gathered not always from the instrument itself, but from the surrounding circumstances.

Personal right. Personal right in section 45, Specific Relief Act (I of 1877) means those rights *in rem* which every member of a society has independently of any act of his own. 3 Bom.L.R. 653=26 B. 396.

Personal security. "Personal security" means a bill of exchange, promissory note, draft, and any other kind and description of personal paper which is used in the transaction of the business of the country,

The words "loans on personal security" are used in contradistinction to real estate security.

"PERSONAL SECURITY" means a security not on property.

Personal security, right of. At common law the right of "personal security" consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

Personal service. The term "personal service" has a fixed and definite meaning in law. It is service by delivery of the process or notice to the defendant personally.

Personation at election.

It seems that "personal service" ordinarily means service upon the defendant personally and does not include service by leaving a notice at his last and usual place of abode.

SUBSTITUTED SERVICE of a summons is not a sufficient compliance with an Act requiring personal service of the summons made upon a defendant against whose property an order of attachment has been granted.

Personal servitude "Personal servitude" are those attached to the person for whose benefit they are established, and terminate with his life.

Personal tort. Torts may be divided into two general classes, the first designated as "property torts," embracing all injuries and damages to property, real and personal, the second known as "personal torts", including all injuries to the person whether to reputation, feelings or to the body.

"Personal use" means "private use". Person includes a corporation (*See* General Clauses Act). So, goods purchased for private use of the corporation would be goods purchased for the "personal use" of the corporation. 158 I C. 703=1935 Bom 415=37 Bom L R. 703.

"Personally appeared". "Personally appeared" as used in an affidavit means that the signer appeared before the notary administering the oath.

"Personally interested" *See* 27 A. 25=(1904) A. W N. 154, 27 A. 33=(1904) A.W.N. 157.

Where a Magistrate, acting in the capacity of the president of Octroi Sub-Committee, orders prosecution of a person, he is deemed to be personally interested in the case and has no jurisdiction to try the case even with the consent of the accused 32 All. 635=7 A.L J. 749=7 I C 290=11 Cr.L.J. 447.

"Personally work for gain" Where the defendant while in Bombay, at the invitation of his devotees and pupils, went to their houses, was treated as an incarnation of the deity, went through certain forms and ceremonies appropriate to the occasion and received presents from his disciples in return for the blessing which he gave them, *held* that this would not amount to "personally working for gain," so as to give jurisdiction to the High Court over the defendant under Cl. 12 of the Letters Patent, 1865 In fact, there was no "work" in the matter at all. 18 B. 290, 1 Hyde 37, 14 Cal. 256 (273).

Personate, to represent by fictitious or assumed character, so as to pass for the person represented. (*Tomlins Law Dic*).

"Personation" defined *See* Cheating by personation. *See* False personation

Personation at election. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name: and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election. Election Offences and Inquiries Act, S. 2.

Personnel.

Personnel. Staff or hands of an institution or service or business as opposed to its equipment or plant

Persuade, Entice, Prevail upon Persuade are employed to express different means to the same end, namely, that of drawing any one to a thing one persuades a person by means of words, one entices him either by words or actions, one may persuade either to a good or bad thing but one entices commonly to that which is bad, one uses arguments to persuade, and arts to entice Persuade and entice comprehend either the means or the end or both Prevail upon comprehends no more than the end We may persuade without prevailing upon, and we may prevail upon without persuading Many will turn a deaf ear to all our persuasions, and will not be prevailed upon, although persuaded.

Pertinent hypothesis "Pertinent hypothesis" as used in the law, is an hypothesis which, if sustained, would logically influence the issue

Peru (*Tam.*) A fee paid to a person who is authorised to distribute the water of irrigation

Perumbattu (*Tam.*) Land, the proprietary right to which is in the hands of the Government.

Perunir (*Tam*) Water allowed to flow from reservoirs without limitation during the rainy months, and for sometime afterwards.

Perunkal-tarisu (*Tam.*) Land left waste more than fifteen years

Peruvartham (*Mal*) (*Peru*, to obtain, *artham*, gain) A kind of conditional sale in which the transferor reserves the right of re-purchase. If he exercises this right, he must pay the full market value at the time of re-purchase. (*Moore's Malabar Law.*)

Pervi and jawabdehi The words "pervi" or prosecution, and "jawabdehi," or reply, do not cover and include the presentation of an appeal. 108 I C. 513=A I R 1928 Lah 733.

Perwaneh. (*P*) A royal patent A pass, a permit (*Macnaughten's Mohommadan Law*)

Peshcar Chief agent or manager, chief assistant. (*Fifth Report*)

Peshcush A present or tax particularly to government, in consideration of an appointment, or as an acknowledgment for any tenure, tribute, fine, quit-rent, advance on the stipulated revenues The tribute formerly paid by the poligars to government. The first fruits of an appointment, or grant of land. (*Fifth Report.*)

Peshengary. The same as Palabhogam

Peshkar (*Hindustani.*) An agent, a deputy.

Peshkash (*Per*) (*See* Peshcush) First fruits, fine, tax, but especially the quit-rent taken for lands which for any reason are exempt from full assessment.

Pessimism. The opposite of optimism

Pet name Abbreviation or other substitute for real name—often dictated by affection.

Petit. "Petit" means small, minor, inconsiderable, used in several compounds and sometimes written "petty."

Pettifogging.

Petit Jury. A petit jury is ordinarily one selected to try issues, under the direction of the ordinary process of the Courts

Petit larceny. Larceny in the second degree is petit larceny.

Petitio Principii (*Lat*) "Petitio principii" is a supposition of what is not granted.

Petition. A petition, in common phraseology, is a request in writing, and in legal language describes an application to a court in writing in contradistinction to a motion which may be made by a word of mouth.

A petition is an application made in a summary way to the Court, based upon a written statement of the facts leading up to the relief sought, and differing in that respect from a motion.

PETITION is a supplication made by an inferior to a superior, and especially to one having jurisdiction It is also used for that remedy, which the subject hath to help a wrong done by the King, who hath a prerogative not to be sued by writ. (*Tomlins Law Dic.*)

Petition in error. A "petition in error" is a new action to reverse the action below, while an appeal is the same action as in the lower Court

"Petition in insolvency" and "Adjudication of insolvency." A "petition in insolvency" and an "adjudication of insolvency" are two entirely and essentially different things. There can be no adjudication of insolvency without a petition, either voluntary or involuntary, but there may be a petition without an adjudication. While it is true that the adjudication relates back, for certain purposes, to the date of the petition, yet the two things are distinct events that may happen after a considerable interval of time.

Petition of right This is an ancient common law remedy against the Crown, for obtaining possession or restitution of either real or personal property, and is said to owe its origin to Edward I, (Chitty's Prerogatives of the Crown, 348, Bacon's Abr, "Prerogative before whose reign, according to some authorities, an action was maintainable by a subject against the Crown (Fitzherbert's Abr, "Error," pl 22) On this subject *see also* Clode's Petition of Right, Exchequer Practice, Daniell's Chancery Practice

Petitioning creditor. One who files an insolvency petition against a debtor.

Petitioning debtor A debtor who files a petition for adjudication in insolvency.

"Petroleum" defined. Act 20, 1891, S. 3 (6); Act 8, 1899, S 2 (*a*).

PETROLEUM Petroleum oil is a fluid found in the porus sand rock of the earth.

Petroleum or mineral oil in the earth is as much a part of the realty as timber, coal, or iron.

Pettah. A suburb, a village near a town.

"Pettifogging." To write of a lawyer that he is a 'Pettifogging Shyster" is Libel, and needs no innuendo. (Odgers, 112, Citing *Bailey* v. *Kalamazoo Co.*, 4 Chaney, 251.)

Petty officer.

"Petty officer" defined. Act 14, 1887, S. 2 (1) (*d*).

"Petty proprietor." *See* 1935 A.L.J 973=A I R. 1935 P.C. 169 (P.C).

Pews. The word pew is now generally used to mean an enclosed seat in a church. Properly however, it only means a church seat or stall. Various etymological derivations have been suggested, but none can be considered satisfactory. (One this subject, *see* Heales, History and Law of Church Seats and Pews, 1, pp. 23 29, Heales's History and Law of Church Seats and Pews; Cox and Harvey, English Church Furniture, Phillimore, Ecclesiastical Law, Steer, Parish Law, Prideaux Churchwardens' Guide, Shaw Paris Law)

PEWS "are included seats in churches, and it is said that according to modern use and idea they were not known until long after the Reformation.

Property in a pew in a church, although real estate, is not subject to the same rules and principles as farm property.

PEWS, ESTATE, INTEREST, OR RIGHTS OF PEWHOLDER. A pew is not absolute but qualified and conditional property, the pew holder having no title to the soil on which the edifice stands, nor to the edifice itself, these being the property of the society, and the seizin and possession in the trustees, but merely a right to use the pew, subject to and limited by the rights and powers of the corporation or trustees and all the conditions and limitations incident to such property.

Pewter. "Pewter" is an alloy of lead and tin

Pharmaceutical Chemist. Scientific authorities appear to agree that the term 'pharmaceutical chemist" embraces that of pharmacist. The latter is one who possesses the knowledge and skill necessary to compound and dispense medicines, while the former in addition to such knowledge and skill is also able to analyse them and detect any adulteration The knowledge of analytical chemistry is added to that necessary to a dispensing pharmacist, and, as the one necessarily includes the other the graduation of one as a pharmaceutical chemist necessarily conferred the honour of a graduate in pharmacy.

Phantasm. Illusion, vision of absent persons.

Pharmacy (*Medi*) Drugs as a branch of knowledge or trade, the preparation and dispensing of drugs

Phatakas *Phatakas* are not explosives within the meaning of Explosives Act but are toy fireworks 145 I.C. 621=34 Cr.L J. 1046=A I.R. 1933 Snd 171.

Phera (*Beng.*) A vessel of a square shape used for measuring lime, sand, salt and other dry substances. (*Wil. Gloss*)

PHERA (*Persian*). The circumambulation of the sacred fire, an essential part of most Hindu marriages.

Philanthropic. A bequest for "Philanthropic," or for "Charitable or Philanthropic," purposes, is not a good charity (Re Macduff, 1896, 2 Ch. 451) In this case *Stirling, J.*, said—" 'Philanthropic' is no doubt a word of narrower meaning than 'Benevolent'. An act may be benevolent if it indicates goodwill to a particular individual only, whereas, an act cannot be said to be philanthropic unless it indicates good will to mankind at large. Still, it seems to me that 'Philanthropic is wide enough to comprise purposes not technically charitable (*Stroud* 1479)

Philanthropic purposes "Philanthropic purposes" as used in a devise of property to trustees to be applied to the promotion of agricultural or horticultural improvements or other philanthropic purposes, is not in itself widely different from "charitable."

Philosopher's stone Henry VI granted letters patent to certain persons, who undertook to find out the Philosopher's Stone, and to change other metals into gold, etc , to be free from the penalty of the Stat. 5 Hen 4 c. 4 made against the attempts of Chemists of this nature. (*Tomlins Law Dic.*)

Philosophical apparatus Philosophical apparatus and instruments are instruments of apparatus involving the illustration of some principle of natural philosophy or natural science

Philosophical purposes " Philosophical purposes" as used in a devise of property to trustees to be applied to the promotion of agricultural or horticultural improvements of other philosophical purposes "must be understood as referring to practical and useful sciences and not to those which are abstract, speculative or metaphysical merely."

Phool Mahadom Does not signify a concubine. 141 I.C. 1=1933 P.C. 20=64 M L.J. 1 (P.C.).

Photograph Photographs are the paper copies taken from the original plate called the "negative", made sensitively by chemicals, and printed by sunlight through the camera. It is the result of art guided by certain principles of science. Photographs are not the original likenesses. Their lines are not traced by the hand of the artist A photograph like a portrait or miniature painted from life, and proved to resemble the person, is admissible in evidence to identify the person photographed

"PHOTOGRAPH" includes photo-lithograph and any work produced by any process analogous to photography, (Copyright Act, S. 35).

"Photograph" includes an undeveloped film or plate; Act XIX of 1923 (Official Secrets), S. 2, cl. 7.

ORIGINAL PHOTOGRAPH "We can understand the difference between an Original Painting or Design and a Copy of it; but it is hard to say what an Original Photograph is All photographs are copies of some object—either picture, statue, piece of architecture, or the like I think that the photograph of a picture is an 'Original Photograph (per *Blackburn, J*, Ex. p Walker, Re Graves, 10 B & S. 691, 39 L.J. Q.B. 35.)

Photographer. A "photographer" is an artist, not an artisan He is not a mechanic and his apparatus is not exempt as the tools of a mechanic from attachment.

Photography. "Photography" is defined as the science which relates to the action of the light on sensitive bodies in the production of pictures by the fixation of images and the like. (*Webs. Dic*) It is also said to be the art of producing images or

Phulera.

objects by an application of chemical change produced in certain substances by the action of light, or, more generally, by radiant energy. (*Cen. Dic.*)

"Phulera" is a portion of Upper Tanawal. Regulation II of 1900 (Hazara U Tanawal), S. 2, cl (b)

Phulkia (*Punjabi.*) The name of a family of Jat Sikhs founded by one Phul, a village chaudhri, who died in 1652.

Physic "Physic" means medicine, or to treat with medicine, or the science of nature and of natural objects, and is derived from the Greek word "phusis—nature".

Physical comfort. Meaning of *See* 7 Bom.L.R 825.

PHYSICAL COMFORT. The expression "physical comfort" in S 28 of the Indian Easements Act (V of 1882), does not admit of precise definition, but it is sufficiently exact when applied as a test to a given state of things to allow the ordinary reasonable man to arrive at a practical determination. A man's physical comfort in relation to the access of light and air to his house at any particular time depends upon the conditions then actually obtaining, regardless of how those conditions came into being or when they may cease, it is a present fact uninfluenced by past history or future fate. Therefore, for the purpose of applying the test of the plaintiff's physical comfort, the Court must look to the state of the property as it is, not as it was or as it may be (30 B. 319)

Physical incapacity. "Physical incapacity" as a ground for annulment of a marriage is such a physical defect or incurable disease existing at the time of marriage as will prevent sexual coition, and does not include pregnancy

Physical injury. The term "physical injury" is the synonym of "bodily harm" or "bodily hurt."

'Physical Possession.' In Art. 10, Sch. II of the Limitation Act, "physical possession" means "personal and immediate possession" 3 Bom.L R 707 (P C)=24 All. 17=5 C W N. 888=28 I A 248 *See also* 1 All. 311.

Physician. In its narrower sense, this means one who is proficient in the art of healing by me ins of the application of physic or medicine to the patient In its broader sense it means any one who practices the art of healing disease and preserving health, a prescriber of remedies for sickness and disease. Technically, a *'surgeon'* is a person healing by means of manual operations, a *'dentist'* one practicing surgery on the teeth; an *'obstetrician'* is one who practices midwifery, a *Christian Science healer'* treats disease by prayer, and an *'osteonath'* heals by means of a system of rubbing and kneading the body, applying hot or cold baths, and prescribing diet and exercise for the treatment, relief and cure of bodily infirmity or disease, without the use of medicine, drugs or surgery.

Physician. In England physicians are a class of persons who have a diploma from a college of physicians and are entitled to the honorary distinction of Doctor of Medicine.

"PHYSICIAN," in its technical sense, denotes a person "in the highest grade of medical practitioners" (per *Channel, J., Hunter* v, *Clare.*)

Pilgrim-ship.

The art of a Physician includes the general art of healing whether by drugs or surgery, and not confined to the healing by drugs" only.

Pickery The stealing of trifles which is liable to arbitrary punishment. (*Tomlins Law Dic*)

Picket. Small body of men on police duty where troops are quartered, Man or party stationed by trade union to deter would be workers during strike.

Picketing. The meaning applied to the picketing of liquor shops is to intercept people going to the shop to buy liquor and prevail upon them to desist from doing so. (132 I C 393=32 Cr.L.J. 878=1931 Cr C 693=A I.R. 1931 Lah. 469)

Pickings. Odds and ends of profit made by agents etc

Pickled tea. When there is a marriage between Burmans who have not been married before, it seems to be usual to give an entertainment at which "pickled tea" is the principal feature, or at least the chief delicacy 14 I C 475 (476)=11 M.L.T 169=(1912) 1 M W N 201=15 C L J 276=22 M.L.J. 360=16 C W.N. 529=39 C 492 (P C).

Pickpocket, To call a person a "Pickpocket" is Slander per se (*Baker* v. *Pierce* 2 Raym. Ld. 959 *Stebbing* v *Warner*, 11 Mod 255.)

Picota A kind of pump used for raising water for irrigation,

Pictorial publications Illustrated newspapers

Pictures *See* 31 C. 166.

Pidika (*Mal*) The house of a Mopla. (*Sun. Iyer's Malabar Law*)

Piece goods For the purpose of section 12 of this Act and clause (*f*) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor-General in Council may, by notification in the Gazette of India, declare what classes of goods are included in the expression piece-goods, such as are ordinarily sold by length or by the piece.' Act IV of 1889 (Merchandise Marks), S 19.

"Pier" defined Bom Act 6, 1879, S 3(9), Mad. Act 2, 1886, S 3 (11).

"PIER." "pier" shall include any stage, stairs, landing place, jetty, floating-barge or pontoon, and any bridges or other works connected therewith, Ben. Act III of 1890 (Port, Calcutta), S 6, cl. 7.

PIER A fortress or rampart made against the force of the sea or great rivers, for the better security of ships that lie at habour in any haven. *Pierage* is the duty for maintaining such Piers and harbours. (*Tomlins Law Dic.*)

Pig iron. Parole evidence is inadmissible to explain "Pig iron" in a written contract, but its meaning given there may be shown by a mercantile usage. (*Mackenzie* v. *Dunlop.*)

Pilfer. Steal or thieve in a petty way.

'Pilgrim" defined. Act 14. 1895, S. 5; Ben. Act 1, 1896, S. 2 (*a*). Bom. Act 2, 1887, S. 2 (1).

"Pilgrim-broker" defined. Ben. Act 1, 1896. S. 2 (*b*); Bom. Act 2, 1887, S. 2 (2).

"Pilgrim ship" defined. Act 14, 1895, S, 5 (2).

Pilgrimage.

Pilgrimage. Journey to a sacred place as an act of devotion.

Pillar-box. Hollow pillar for posting letters.

Pillory. A contrivance for exposing offenders to public scorn, usually consisting of a platform on which was set a wooden post and frame, behind which the offender stood, his head and hands being thrust through and fixed in holes in the frame. It was one of the usual common law punishments from Anglo Saxon times for misdemeanors, especially cheats and frauds on the public *e g*, the sale of unsound food and forestalling and regrating, and during the seventeenth century for political libels and sedition (*Ency. of the Laws of England.*)

Pilmukattayinam (*Tam*) Land paying a light or quit-rent to the Government.

"Pilot" defined 57-8 V c 60, S 742, Act 15, 1908, S 2 (3), Act 6, 1884, S. 68, Ben. Act 4, 1887, S. 2, Bur. Act 4, 1905, S. 4 (8).

"PILOT" means a person for the time being authorized by the Local Government to pilot vessels. Bur. Act IV of 1905 (Burma Port), S. 4, cl 8.

PILOT. A "pilot" is defined to be, first, an officer serving on board of a ship during the course of a voyage and having the charge of the helm and of the ship's route, and, secondly, an officer authorised by law who is taken on board at a particular place for the purpose of conducting a ship through a river, road or channel, or from or into a port *See* Abbott, Shipping, Marsden Collisions, Temperly, Merchant Shipping Act, Williams and Bruce, Admiralty Practice, Maude and Pollock, Shipping.

Pilotage. Fee of the pilot, function of the pilot.

Pin-Money "Pin-money" is a term often used in English marriage settlements, and has received judicial consideration in a number of cases in that country.

PIN MONEY is an allowance made to a wife, generally upon marriage, "to save the trouble of a constant recurrence by the wife to the husband" for money to defray her ordinary personal expenses, *e g*, milliner's bills, repair of jewels and trinkets, pocket money (*Howard* v *Digby*, 8 Bligh. N.S 265)

PIN-MONEY Nature and incidents of *See* 37 I.A. 152 (159)=32 A. 410 (414).

Pind. AHAR, PIND, KHATA AND PET—MEANING OF. '*Ahar*' strictly speaking is a piece of land having embankments and used for storage of water. The embankment which keeps the water confined is called '*pind*', the ditch from which earth is taken for repair of that embankment is called '*Khata*' and the land where water is stored is called '*pet*' or bed of the '*ahar*.' But sometimes the term '*ahar*' is applied to the embankment only, as the land where water is stored by means of that embankment is generally cultivated fields. 1937 P.W.N. 158=170 I.C. 389.

Pinda, (*S.*) A lump, a heap; a ball of rice or meat, especially that which is offered at obsequial ceremonies or Sraddhas to deceased parents and progenitors or to the manes in general. (*Wil. Gloss.*)

Pingala, (*S.*) The fifty-first year of the Hindu cycle. (*Wil. Gloss.*)

Piracy of copyright.

Pioneer (*Milit*) One of the advanced corps preparing road for troops; explorer; one who originates an enterprise (as) a pioneer in industry

"PIONEER" as used in connection with a patent; is commonly understood to denote one covering a function never before performed, a wholly novel devise, or one of such novelty and importance as to mark a distinct step in the progress of the art, as distinguished from mere improvement or perfection of what has gone before.

Pious. Devout, mindful of duty towards parents etc., (as) a pious son.

Pir (*Persian.*) A Muhammadan saint; a spiritual guide

Piracy. Piracy consists of those acts of robbery or depredation on the high seas which if committed on the land would have amounted to a felony, and is sometimes spoken of as a marine felony. It is therefore robbery on the high seas

PIRACY by the law of nations was defined by Sir James Fitzjames Stephen as "Taking a ship on the high seas or within the jurisdiction of the Lord High Admiral from the possession or control of those who are lawfully entitled to it, and carrying away the ship itself or any of its goods, tackle, apparel, or furniture under circumstances which would have amounted to robbery if the act had been done within the body of an English country." (*Digest of Criminal Law Act*, 108)

"That which is called robbery upon the highway, the same being done upon the water is called Piracy," said Sir Leoline Jenkins in 1688 "Robbery, as it is distinguished from thieving or larceny, implies, not only the actual taking away of my goods while I am, as we say, in peace, but also the putting me in fear by taking away by force out of my hands or in my sight and presence, when this is done upon the sea, without a lawful commission of war or reprisals, it is downright piracy" "All pirates and sea rovers," said the same authority, "are in the eye of the law *hostes humani generis*, enemies not of one nation or of one sort of people only, but of all mankind They are outlawed, as I may say, by the laws of all nations, that is, out of the protection of all princes and of all laws whatsoever. Everybody is commissioned and is to be armed against them as against rebels and traitors to subdue and root them out." (*Life of Sir Leoline Jenkins*, vol. i. p. lxxxvi)

PIRACY is an offence against international law or the law of nations

If the mariners of any ship shall violently dispossess the master, and afterwards carry away the ship itself, or any of the goods, with a felonious intention, in place where the Lord Admiral hath jurisdiction, this is a robbery and piracy (*R.* v. *Dawson*, 13 St. Tri. 654, confirmed in A G. for *Hong Kong* v. *Kwok a-sung*, (1873), L.R. 5 P.C. 179.)

Piracy of copyright To constitute piracy of a copyright it must be shown that the original has been either substantially copied or so imitated as to be a mere evasion of the copyright. In the case of works not original in the proper sense of the term, but composed of or compiled or prepared from the

Piracy of copyright.

materials open to all, the fact that one man has produced such a work does not take away from any one else the right to produce another work of the same kind and in doing so to use all the materials open to him 48 Bom 308=19 L.W 299=26 Bom L.R 292=(1924) M W N 308=83 I C 101=L R 5 P C. 57=28 C W N 613=2 Pat L R 137=22 A L J. 473=51 I.A 109=A.I R. 1924 P.C. 75=46 M L J. 637 (P.C)

Pirates, piracy common sea rovers, without any fixed place of residence, who acknowledge no sovereign and no law, and support themselves by pillage and depredations at sea but there are instances wherein the word pirate has been formerly taken for a sea captain (*Spelm. Tomlins Law Dic*)

A *pirate* is one who roves the sea in an armed vessel without any commission or passport from any government, solely on his own authority, and for the purpose of seizing by force, and appropriating to himself without discrimination every ship he may meet For this reason pirates have always been compared to robbers The only difference between them is that the sea is the theatre of action for the one and the land for the other They are in law *hostes humani generis*, enemies not of one nation, or of one sort of people only, but of all mankind They are outlawed by the laws of all nations, that is, out of protection of all states and of all laws whatsoever '*Privateering*' as distinguished from piracy, has always been claimed and defended as lawful warfare on public enemies It is the substitute for naval establishments The distinction between 'privateering' and 'piracy' is the distinction between captures *jure belle* under colour of Governmental authority, and for the benefit of a political power organized as a government *de jure* or *de facto*, and mere robbery on the highseas committed from motives of personal gain, like theft or robbery on land There is a well known distinction between 'piracy' and 'murder' Piracy is an offence against humanity, a crime against all nations, 'Murder' is an offence against the state

Pirmushid, (*P*) An aged instructor. A family priest. (*Macnaughten's Mohammadan Law.*)

'Pirottai,' means revenue free. *See* 13 M.L T 224=19 I.C. 306

Pirzadah (*Persian.*) A spiritual guide, a murshid. Pirzadah and Murid are relative terms

Piscary. A right or liberty of fishing in the waters of another person (*Tomlins Law Dic*)

Common of piscary is a right of taking fish from a stream or pond belonging to another. (*Ency of the Laws of England.*)

Pisharodi (*Mal*) A class of Ambalavasis who do temple service (*Moore's Malabar Law*)

"Pisran, Warisan, Kaymokamian" Where under a deed of endowment the trusteeship was limited to "pisran, warisan, Kaymokamian." *Held*, that the words limited the trusteeship to the male line of descent of the donor. (A.I R. 1932 Pat. 265) 140 I.C 687=A.I.R. 1932 Pat. 267.

Pistol. A pistol is a small, light firearm. The pistol earliest in use was a matchlock arm, the arm containing a match for firing it. This was succeeded by the flint and steel lock, and then by the percussion lock.

Place

"PISTOL" as used in a statute relating to the carrying of a pistol on the person, cannot be construed to include a pistol which has no cylinder, the cylinder not being attached to it nor in the person's possession

Pitarau (*S*) Means mother and father.

Pitris (*S*) A father, the designation also of forefathers deceased, the manes either of the ancestors of an individual or of mankind generally, to both classes of whom Sraddhs, or obsequial worship, is paid, and food is presented. (*Wil Gloss*)

Pitridatta In the succession to the pitridatta ayautaka stridhan (property given by the father after marriage), sons are given preference to married daughters according to the *Dayabhaga* School of Hindu Law 36 Cal. 86=12 C.W N. 924=8 C.L.J. 200=1 I C 766.

Pitru bandus *See* 42 Cal. 384=27 M L.J. 333=18 C W N. 1154

Pittance. Inadequate salary or wages or pension allowance.

Pity, Mercy. Pity is often a sentiment unaccompanied with action, mercy is often a mode of action unaccompanied with sentiment we have or take pity upon a person, but we show mercy to a person. A master has pity upon his offending servant by passing over his offences, and affording him the opportunity of amendment, the magistrate shows mercy to criminal by abridging his punishment Pity lies in the breast of an individual, mercy is restricted by the rules of civil society, it must not interfere with the administration of justice. Young offenders call for great pity, as their offences are often the fruit of inexperience and bad example, rather than of depravity mercy is an imperative duty in those who have the power of inflicting punishment, particularly in cases where life and death are concerned.

Placate. Conciliate, propitiate.

"Place" defined (*See also* Public place), Act 12, 1896, S. 3 (*f*), Act 5, 1898, S. 4 (*q*), Bom. Act 6, 1863, S. 34. Ben Act 5, 1909, S 2 (17), E B & A Act. 1, 1910, S 3 (17); Mad. Act 1, 1886, S 3 (20), Mad Act 4, 1889, S. 3 (*q*), Mad. Act 1, 1891, S. 3 (23), U P Act 4, 1910, S 3 (22) *See also* 3 Bur.L. T. 121=8 I C. 949

The meaning of the expression *"Place"*, or *"public place,"* or *"place of public resort,"* or other similar expression, when it occurs in an Act depends upon the context and upon the scope and object of the statute.

The word "Place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context (as) public place, open place, place of abode, place of public resort etc.

PLACE. The word "place" expresses simply locality, and not kind. Hence qualifying words are necessary to indicate the kind of place. Thus, a statute exempting from taxation "places" of religious worship characterises the place by religious worship and without religious worship held in it the place has no character, so that the exemption is determined entirely by the use to which the place is

Place

put and would not include buildings for such church purposes as Sunday school, lectures and personages

A place must be a definite area so marked out that it can be found and recognized 169 I C. 36=38 Cr L J. 694=A.I R 1937 Nag. 102 *See also* 15 B 530, 9 B. 272; 8 Bom L.R 22=3 Cr.L.J 216=30 B. 348

The word "place" in S 12 of the Madras Gaming Act means a place akin to a street or thoroughfare used regularly and necessarily by people going from one place to another. 1937 M.W.N. 1126=46 L.W. 641.

A small open space surrounded by houses on all sides and accessible only by narrow lane is a "place" within the meaning of section 4 (a) of the Bombay Prevention of Gambling Act (IV of 1887). 15 Bom. L R 689=20 I C 609.

"Place" includes also a house, building, tent or vessel. Cinematograph Act (11 of 1918), S 2, Cr. P. Code, (1898), S 4.

PLACE (in Ss 68 and 69, Neg Ins Act) includes places 94 I C 384=1926 Mad 792=50 M L J 242.

PLACE, SPOT, SITE The term place is employed upon every occasion, the term spot is confined to very particular cases: we may often know the place in a general way where a thing is, but it is not easy after a course of years to find out the exact spot on which it has happened The place where our Saviour was buried is to be seen and pointed out, but not the very spot where he lay.

The site is the spot on which anything stands or is situated, it is more commonly applied to a building or any place marked out for a specific purpose, as the site on which a camp had been formed

"Place belonging to Her Majesty" defined. Act 15, 1889, S. 2 (1)

Any reference to a *place belonging to His Majesty* includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty. Official Secrets Act (XIX of 1923), S 2

'Place lawfully set apart' *See* 38 Cal. 268=8 I C. 706

"Place of amusement" defined. Ben Act 2, 1866, S. 51, (ins Ben Act 3, 1910, S 4), Ben. Act, 4, 1866, S 3, (ins. Ben Act 3, 1910, S. 4.), Bom. Act, 4, 1902, S. 3 (*g*).

"Place of business" defined 8 Edw. 7, c. 69, S. 274 (6).

Where a person merely buys goods in another place through an agent and the contract for purchase of these goods is concluded elsewhere, the place where the goods are bought is not the place where the business is transacted. 108 I.C. 216=27 M L.W. 243=A.I.R. 1929 Mad. 146.

The expression *"place of business"* includes a share transfer or share registration office; Act VII of 1913 (Companies), S. 277, cl. 6 (*b*).

Place of profit.

The words "place of profit" have a definite historical association and when coupled with the word "office" are familiar. A contractor who receives remuneration for supply of articles to a municipality

Plaintiff.

cannot in accordance with the ordinary meaning of the word "place' be said to hold a place of profit. The proper meaning which should be ascribed to the words "place of profits" is one which denotes position and employment in the sense of having a title attached to such employment and a definite standing and partaking of the nature and character of that of master and servant. 45 A. 720=21 A.L J. 661=4 L. R A Civ 587=A I R. 1924 A 135.

Place of publication. The place of publication of a newspaper is where it first issues to be delivered or sent by mail or otherwise to its subscribers.

The "place of publication" of a newspaper is that indicated upon the face of the newspaper, although it is printed, and part of issue mailed, at another town or city

"Place of public entertainment" defined. Ben Act 2, 1866, S. 51, (ins Ben Act, 3, 1910, S. 4) Ben. Act 4, 1866, S. 3, (ins Ben. Act 3, 1910, S. 4); Bom. Act 4, 1902, S 3 (*h*).

"Places of public entertainment or resort." in Cl (*d*) of heading F of List I of S 298 of the U. P. Municipalities Act, refer to places of that description which have a permanent character, such as, parks, recreation grounds, etc I L R (1937) All. 602=169 I C 629=1937 A L R 564=38 Cr.L J. 797(2) =1937 A L.J 388=1937 A.W R 349=1937 All. 418.

"Place, street or thoroughfare" in S. 12, Bom. Act IV of 1887 (Gambling). *See* 7 Bom L.R. 333=29 B. 386

"Place to which the public have access" in S 10 of the Burma Gambling Act must be a place akin to or of the same nature as a street or a thoroughfare. A fenced garden which is private property cannot be held to be as such. 2 L B R 195 (Foll.) 4 Bur.L.T. 71 =10 I C 775

"Placed out" "An apprentice may be said to be 'placed out' when the master consents to the apprentice serving another individual, so as to become subject to the control of that other" (per *Bayley, J*, *R.* v *Shipton*, 8 B C. 96)

Plagiarism Publishing borrowed thoughts as original, stealing literary matter from the work of another author

Plague Pestilence, especially the Bubonic plague, prevalence of some pest.

Plague spot. Source of infection—usually used in a moral sense.

Plain words. The Code requiring that an indictment shall set forth the offence in "plain and intelligible words" is not satisfied by an indictment from which no offence against the law of the state can be deduced except by a process of inference and elimination

Plaint. A "Plaint" is the process by which proceedings in the Courts, are, generally commenced.

A plaint in a Court is in the nature of an original writ. The first process in Court is a plaint.

"Plainter" defined. Mad. Act 1, 1903, S. 3 (1) (*g*).

"Plaintiff" defined. Act 9, 1908, S. 2 (8); Bom. Act 2, 1906, S. 3 (*b*).

Plaintiff.

There is no definition given of the word 'plaintiff' anywhere in the Indian Civil Procedure Code, S 100 of the Judicature Act (1873), in England, says that the word 'plaintiff' shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise "Plaintiff should therefore be taken to signify every person asking relief against another person" 32 B. 599=10 Bom.L R 327 *See also* 32 Cal 654 Plaintiff in O. 2, R 2, includes a defendant claiming a set off 32 C. 654.

The term "*Plaintiff*" as defined in the Limitation Act (IX of 1908), S 2, includes a person from or through whom a plaintiff derives his right to sue 16 C.L.J 202=17 C W.N. 137=16 Ind. Cas 365 (367).

"PLAINTIFF" includes any person from or through whom a plaintiff derives his right to sue Act IX of 1908 (Limitation), S. 2 (8).

'Plaintiff' and 'defendant'. The words 'plaintiff' and 'defendant' in Art. 144 of the Limitation Act, 1877, have the extended meaning given to them by S 3 of the Act and include persons from or through whom the plaintiff or defendant derives his right to sue or liability to be sued. 7 Bom L.R. 135

The words "*plaintiff*" and "defendant" shall include, (i) a pleader duly appointed to act on behalf of such plaintiff or defendant, and (ii) the recognized agent of a plaintiff or defendant as defined in the Code of Civil Procedure Bom. Act II of 1906 (Mamlatdar's Courts), S. 3, Cl. (*b*).

Plan. A plan is a design, a delineation, or projection on a plane surface of a structure, which is reduced in size, the relative position of which, and the proportions, being preserved.

A plan is a draft or form of representation of a horizontal section of anything, as of a building or machinery. Its synonyms are "draft", "delineation", "sketch" and "design"

Plank road Plank roads, which are open to use by the whole public, with their own teams and vehicles, are highways in the strictest sense.

Plant. "Plant" means the fixtures, machinery, tools, apparatus, appliances etc, necessary to carry on any trade or mechanical business, or any mechanical operation or process

Webster defines the word "plant" to be "the fixtures and tools necessary to carry on any trade or mechanical business." The word is defined by Worcester to be "the machinery, apparatus or fixtures by which a business is carried on". The word is not equivalent to the word "undertaking", which is defined by Webster as "any business, work or project which a person engages in or attempts to perform, enterprise".

Plantation The ordinary signification of the term "plantation" is a farm. These terms are nearly synonymous. A plantation is a place planted; land brought under cultivation; ground occupied by trees or vegetables, which have been planted.

The devise of a "*Plantation*" will pass also the stock, implements utensils, &c, upon it (*Lushington* v. *Sewell*, 1 Sim. 435, cited Wms. Exs. 1066).

Plea in abatement.

Plantations In S. 160, Bengal Tenancy Act (VIII of 1885) does not necessarily mean permanency in the plant though it implies permanency in the nature of the work and includes betel leaf cultivation. 9 Ind Cas. 528.

Plaque Webster says a "plaque" is any flat, thin piece of metal, or ivory, or similar material, used for ornament, or for painting pictures on, and hung upon the wall, and hence flat, rectangular porcelain panels, decorated by means of mineral colors, are dutiable as plaque and not as paintings.

Plastering. Gauging plastering, *i.e.* by mixing Plaster of Paris with the plaster to make it dry more quickly, is "wholly different from ordinary plastering" (*per* Martin, B, *Wallis* v. *Robinson*, 3 F. & F. 307.)

Plate. The term "plate" is not commonly understood to embrace articles of ordinary use, whatever may be the material, but only the more portentous articles which are displayed on the tables of the wealthy or ostentatious, and are to be construed rather as articles of luxury than as household furniture Silver forks and tea and table spoons are not included in the term "plate".

The term "plate" in a devise of testator's plate, does not include jewels

"PLATE,', will not pass plated articles where the testator is possessed of solid silver ones (*Holden or Holder* v. *Ramsbottom*, 4 Giff. 205).

"PLATE" in the Copyright Act, includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made, (Copyright Act, S. 35).

"Playing" defined. *See* Gaming.

PLAY, GAME, SPORT. Play and game both include exercise, corporeal or mental, or both, but play is an unsystematic, game a systematic, exercise Play is adapted to infants, games to those who are more advanced Sport is a bodily exercise connected with the prosecution of some object; it is so far, therefore, distinct from either play or game: for play may be purely corporeal, game, principally intellectual; sport is a mixture of both.

Play wright. Dramatist.

Plea, (*Placitum.*) That which either party alleges for himself in court, in a cause there depending to be tried. (*Tomlins Law Dic.*).

"PLEA", as the term was used in Courts of common law, meant a defence of matters of fact.

The word "plea" in a recognizance providing that defendant should "prosecute his said appeal to effect" and "make his plea good", was obviously commensurate with the term "defence", in other words, that at the final determination of the controversy between the parties he should be successful in his defence.

Plea in abatement. A plea in abatement is generally defined as one which shows cause to the Court

Plea in bar.

why the defendant should not be impleaded, or, if impleaded, not in the manner and form in which he is.

Plea in bar. A plea in bar, in a legal sense, is a plea of peremptory exception of a defendant sufficient to destroy the plaintiff's action.

"A plea in bar is one that virtually admits that a cause of action once existed, but insists that the plaintiff cannot and never can maintain his action for the cause alleged"

Plea in discharge A plea in discharge is one which admits that the plaintiff had a cause of action, but that tends to show that it was discharged by some subsequent or collateral matter as that before action the defendant had satisfied and discharged plaintiff's claim by payment

'Plea of guilty,' is plea to the charge and does not necessarily amount to a confession of all the facts alleged 33 C W N 599=119 I C 301=1929 C 747

PLEA OF GUILTY. A plea of guilty amounts to nothing more than an acknowledgment of the facts charged, and whether such facts constitute an offence is left open to be decided by the Court

A plea of guilty, entered by one accused of crime, is a confession of the charge, and judgment is rendered thereon without a trial on any issue of law or of fact

Plea of justification A plea in justification or excuse admits facts alleged by the plaintiff, but in effect denies that the plaintiff had at any time a good cause of action either because the conduct of the defendant is justified under some legal right or cause, or because he is excused from liability in the particular case through some act or conduct of the plaintiff This is also called an avoidance in law.

Plea of release A plea of release admits the cause of action, but sets forth a release subsequently executed by the party authorised to release the cause of action

Plead Address Court as advocate or party, maintain a cause in Court, allege as a plea in proceedings in Court

"Pleader" defined (*See also* Government Pleader, Legal Practitioner) Act 5, 1898, s 4 (*r*), Act 5, 1908, s 2 (15), Reg 8, 1896, Sch 2

"PLEADER," used with reference to any proceeding in any Court, means a pleader or a *mukhtar* authorized under any law for the time being in force to practice in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding (Crim. Pro Code, S 4), (16 I C 255)

"PLEADER" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court Act V of 1908 (Civ Pro Code), S 2, Cl 15

Pleadings are the mutual altercations between the plaintiff and defendant in a suit, which at present are set down and delivered into the proper office in writing (*Tomlins Law Dic.*)

Pleading

PLEADINGS are the allegations of parties made by a party to a civil or criminal case, for the purpose of presenting the issue to be tried and determined whether such issue be of law or of fact Pleadings relate to the cause of action, either to support or to defeat it, being comprised in the record of the case, as distinguished from papers not pleadings, such as motions, mere statements not entitled to filing, or affidavits In a more restricted and in the commonly accepted sense the object of pleadings is to notify the opposite party of the facts which the pleader expects to prove, and so it is that the allegation of such facts must be made with that certainty which will enable the adverse party to prepare his evidence to meet the alleged facts

Pleadings are "the statements of the parties, in a legal and proper manner, of the causes of action and grounds of defence They were formerly made by the parties or their counsel orally in open Court under the control of the Court" In other words, pleadings are but the statements of the issues to be tried

Pleading is the statement in a logical and legal form of the facts which constitute the plaintiff's cause of action or the defendant's ground of defence

DEMURRER OR EXCEPTION IN PLEADING A demurrer is to rest or pause. It is an allegation that, admitting the facts of the proceeding pleading to be true as stated by the party making it, it has yet shown no cause why the party demurring should be compelled by the Court to proceed further, and the import of the demurrer is that the objecting party will not proceed but will await the judgment of the Court whether he is bound so to do Its office is to sweep away a defective pleading, by raising issues of law upon the facts stated in the pleading demurred to

DUPLICITY IN PLEADING. Duplicity consists in joining, in one and the same count, different grounds of action, of different natures, or of the same nature, to enforce only a single right of recovery This is a fault in pleading only because it tends to useless prolixity and confusion, and is therefore only a fault in form, and not in substance

REJOINDER After the reply or replication, the next pleading tendering issues of fact is the rejoinder which is defendant's answer to the reply

REPLEADER A judgment of repleader will in general be awarded by the Court in order to do justice between the parties, where there is such a defect in the form or manner of pleading that there is no issue, or that the issue joined and tried is on an immaterial point, so that it cannot be told to whom judgment should be given Awarding a repleader amounts substantially to granting a new trial, with leave to amend the pleadings.

REPLICATION OR REPLY The next fact pleading after the answer is the replication which is usually called a reply The office of a reply is to meet matter averred in the answer.

SUPPLEMENTAL PLEADINGS Supplemental pleadings belong primarily to equity practice, but in many cases it is provided by statute that supplemental pleadings may be filed, on leave of Court

Pledge-holder.

Pledge-holder. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a "pledge-holder."

PLEDGOR AND PLEDGEE. The person who delivers the property as security is called the pledgor, and the person who receives it to hold in accordance with the contract, the pledgee.

Plenary Not subject to limitation or exceptions, not incomplete (as) plenary powers.

Plenary cause Green-leaf defines "plenary causes" as those in which the order and solemnity of the law are strictly observed in the regular contest of the suit, while summary proceedings are those in which its order and solemnity are, more or less, dispensed with.

Plenary meeting. One that is fully attended.

Plene administravit This is a plea by an executor or administrator that he has fully and duly administered the deceased's estates, and has therefore nothing in his hands with which to satisfy the plaintiff's demand (*Wms. Exs*) There is plea in defence of an executor or administrator who has not assets sufficient to satisfy the debt for which he is sued

Plenipotentiary is, strictly speaking, a diplomatic agent furnished with full powers for specific negotiations In practice it has become a second title for Diplomatic agents of the second class, and in the British diplomatic service, in some cases, of the third class. It no longer implies the possession of unlimited powers (*Ency of the Laws of England.*)

Plight Legal estate, Position, Status 'Plight is an old English word, and extendeth to rent charges, and to a possibility of dower, where Plight is taken for an estate or interest of and in the land itself and extendeth not to a rent charge out of the land." (Co Litt. 221 b.)

"Plinth" defined. Ben. Act 1, 1900, S. 4.

Plot. A small piece of land, conspiracy or secret design (as, Gunpowder plot), plan or essential facts of a tale

Plottage The term "plottage" is used to designate the additional value given to city lots by the fact that they are continuous, which enables them to be utilised as large blocks of lands (*Ame Words and Phrases*).

Plow-land Ploughland. "'Plow-land' and a 'Hide of land' are synonymous. By the grant of a plow-land, or a hide of land, may pass 100 acres of land, meadow and pasture, and the houses thereupon; but it doth properly intend as much land as one plow can till a year" (Touch 93; *Stroud*)

"Plumber" defined. *See* Licensed Plumber.

PLUMBER. The business of a plumber is not ranked with the learned profession, his work being mostly mechanical, calling for the exercise of deftness of the hands, rather than the profession of scientific knowledge. A plumber is one who fits dwellings and public buildings with tanks, pipes, traps, fittings and fixtures for the conveyance of gas, water and sewage. His work is concerned with public health, and the law generally regulates it by requiring a license

Poet laureate.

Plunder. "The most common meaning of this term 'to plunder' is to take property from persons or places by open force and this may be in the course of a lawful war or by unlawful hostility, as in the case of pirates or banditti But in another and very common meaning, though perhaps in some degrees figurative, according to the general tendency of man to exaggerate and apply stronger language than the case will warrant, it is used to express the idea of taking property from a person or place without just right, but not expressing the nature or quality of the wrong done."

Plutocracy Rule of the wealthy; state in which the political power is centered in the rich.

"Ply" in Rule 1 of the Rules of the Rangoon Port does not necessarily mean to ply for hire but means to do an action repeatedly. 12 Ind Cas. 84.

"Plying for hire" Ply for hire—Meaning of *See* 51 Mad. 527=55 M L J 213.

A Hackney Carriage *"plies for hire"*, if, without word or gesture, it solicits passengers in a railway station (*Clark* v *Stanford*, 40 L.J M C 151, L.R. 6 Q B 357).

A person merely driving his vehicle cannot be said to be plying his vehicle 163 I C. 399=37 Cr.L.J. 850=17 Pat L T. 378=A I R 1936 Pat 321 (1)

It is necessary before a person can be said to be plying for hire as required by R 4 of Rules framed under Burma Ferries Act that he waits or attends at a certain place or hire by anybody who chooses to employ him or requires his services A person crossing the river with parcels once each way on the arrival and departure of the trains at and from a certain place cannot be deemed to be 'plying for hire'. 170 I C. 236=38 Cr.L J. 872=A I R. 1937 Rang. 275

The act of plying for hire can only be done at the place and time that the hiring is effected 106 I C. 446=27 M L W 66=29 Cr L.J 30=51 Mad. 527=A.I. R 1928 Mad. 166=55 M.L J 213.

The words in the rule "cargo boats which ply for the landing and shipping of merchandise within the Port" need not be restricted in meaning to both landing and shipping merchandise within the Port but means boats which ply for the landing and boats which ply for shipping or both. 12 Ind. Cas 84

Plywood. The commodity known as Plywood is not "Timber" within the meaning of S. 98 (f) of the Madras City Municipal Act (1919). 168 I C 492=44 L W. 746=A.I.R. 1937 Mad 155=(1937) 1 M.L.J. 138.

Poach. Take game or fish illegally.

Podu (*Tel.*) Land or lands recently cleared from thicket and prepared for cultivation.

Podunilam (*Tam.*) Common ground, a common.

Poduval. One of the Ambalavasi castes. The members are employed as a rule as temple watchmen. (*Moore's Malabar Law*).

Poet laureate. "The custom of crowning poets in England says the Abbe Resnal, is nearly as old as poetry itself Formerly it was the custom of our universities when conferring the degree of grammar,

Pogwand.

which included rhetoric and versification, to present the new graduate with a wreath of laurel as the ensign of the degree taken of mastership in poetry, after which he was usually styled *poeta laureatus* This custom was probably borrowed from the Empire Where as early as the days of Federick I the crowning of poets had been a custom of the emperors, and this, again, may be traced to those ancient *certamina* of poets instituted by Domitian under the old Roman Emperors (Seldon, Titles of Honour, 3rd ed, 1672, p. 339). In England, since the sixteenth century, the title has been held by the King's poet laureate only, who originally was nothing more than graduated rhetorican in the service of the King." *See* Ency. of the laws of England, Seldon, Titles of Honour, Memoires de l' Academie des Inscriptions, Warton, History of English Poetry, Disraeli, Curiosities of Literature, Encyclopaedia Metropolitana, art "Laureate".

Pogwand. Pogwand is the universal rule and is the only one recognized by the personal Law of Hindus and Muhammadans, and *Chundawand* is the exception, therefore, a person pleading exception is bound to prove it (101 P R 1879 *Foll* 46 P R. 1897, 12 P R 1899, 22 P R. 1899, 29 P R 1900, 187 P W R 1908, 151 P R 1908, 134 P R 1892, 74 P R 1898, *Ref*) 14 P R 1909=11 P.W R 1909=1 I C 395

Salahriya Rajputs of *mauza* Parel. *Tahsil* Yafarwal, District Sialkot, follow the *chundavand* rule of succession and not the *pogvand* 27 P R. 1912=139 P.L R 1912=104 P.W.R 1912=14 I C. 779.

"Poison" defined. Act 1, 1904, S 2 (3)

The term "poison" may be defined to be any substance which, when applied to the body internally or externally, or in any way introduced into the system, is capable, without acting mechanically, but by its own inherent qualities, of destroying life

In *R* v. *Cramp*, 49 L J M C 45, 5 Q B D 307, *Coleridge, C J*, said, "A 'Poison' is defined to be that which, when administered, is injurious to health or life". And surely that must be the test It is submitted that nothing is a Poison, unless regard be had to its administration, *e g* Strychnine is a deadly poison, or a valuable medicine, according to how and how much is taken "

To "ADMINISTER" POISON would not include administering an Innocent Thing and thinking it Poison but it does include administering Poison though accompanied with something which prevents its acting, *e g* administering to a child Cocculus Indicus berries entire in the pod, the pod being indissolvable in the child's stomach (*R.* v *Cluderoy*, 2 C. & K 907, 19 L J M C. 119, 1 Den. 514).

DEATH "BY POISON", in an exception in a Life or Accident Policy, is none the less so because the poison is taken accidentally (*Cole* v. *Accident Insrce*, 5 Times Rep 370, 377; 61 L T. 227)

Polamu (*Tel.*) A field, especially one in cultivation or the crop standing on it.

Pole axe (*Mihi*) Battle axe.

Poli (*Tam*) A heap of corn threshed but not winnowed.

Police Magistrate

"Police" defined. Act 24, 1859, S. 1; Act 5, 1861, S. 1, Bom. Act 7, 1867, S. 1, Bur. Act 4, 1899, S. 5 (*2*).

POLICE. This word is generally applied to the internal regulations of large cities and towns; whereby the individuals of the State, generally speaking, or of any town or city within itself, like members of a well governed family, are bound to conform their general behaviour to the rules of property, good neighbourhood, and good manners, and to decent, industrious, and in offensive in their respective situations (*See* 4 Comm 13 P. 162, *Tomlins Law Dic*) It is the department of the state charged with the preservation of public peace law and order, the safety and health of the community.

The word "police" shall include all persons who shall be enrolled under the Police Act, Police Act (V of 1861), S. 1

"Police authority" defined. 44-5 V c. 58, S. 190(39)

"Police Commissioner" defined (*See also* Commissioner of Police) Bom. Act, 3, 1888, S. 3 (*f*).

"POLICE COMMISSIONER" means the Commissioner of Police of Bombay, and the Presidency Towns. Bom Act III of 1888 (City Bombay Municipal), S. 3, Cl (*b*).

Police constable A policeman.

Police Court An inferior court exercising a limited jurisdiction over offences of a criminal nature, a court for the trial of offenders brought up on charges preferred by the police.

Police custody The expression *'Police custody'* does not necessarily mean formal arrest It also includes some form of Police surveillance and restriction on the movements of the persons concerned by the police 33 Cr L J 756=139 I.C 429=33 P.L.R. 826=A.I R 1932 Lah 609.

"Police-darogha" defined. Act 20, 1856, S. 61.

"Police district" defined. *See* General Police-district.

"Police-force" defined. 6 Edw. 7, c 58, S. 13, Act 24, 1859, S. 8.

POLICE FORCE is a term commonly understood to refer to the body of men appointed to preserve the peace and good order of a city or town.

Police Inspector A superior officer of Police, usually ranking just above a Sub-Inspector of Police and below the Superintendent.

Police Judge or Police justice. A "police justice" is a magistrate charged exclusively with the duties incident to the office of justice of the peace, and the prefix "police" serves merely to distinguish them from justices having also civil jurisdiction.

Police jurisdiction. A "police jurisdiction" means the right to regulate and govern a city or state and also to secure the public peace and order of its inhabitants.

"Police Magistrate" defined. (*See also* Magistrate of Police.) 33-4 V.c. 52, S. 26; Act 15, 1903, S. 6.

POLICE MAGISTRATE. A "police magistrate" without other legal definition, supposes some officer of

Policeman.

the state or some division thereof, invested with authority, executive or judicial, relating to the administration of police or municipal laws.

Policeman: Police constable The word "policemen" may be used as a generic term, and when so used may equally apply to any member of the police force whatever his rank or station, but this can only be true when the word is used alone as a generic term, and as descriptive of the whole police force—officers as well as men—and not when officers and men are carefully segregated from each other in meaning by apt terms of distinctive designation

"Police-officer" defined. (*See also* Military Police-officer, Officer in charge of a police-station, Officer of Police, Police-darogha, Village-policeman.) Ben Act 7, 1864, S 3, Ben Act 2, 18 6, S 51 (ins. Ben. Act 3, 1910, S. 4), Ben Act 4, 1866, S. 3, ins. Ben Act 3, 1910, S 4, Bom. Act 7, 1867, S. 1, Bom. Act, 8, 1867, S. 1. Bom. Act 4, 1890, S 3 (6), Bom Act 4, 1902, S 3 (*b*).

"POLICE OFFICER." *See* L.B.R. (1893—1900), 22 I. C. 207=25 W R. Cr. 86.

POLICE OFFICER. One of the staff of men employed in cities and towns to enforce the laws and ordinances, for preserving the peace and good order of the community.

The words '*Police officer*' and Magistrate in S. 26 of the Evidence Act include the police officers and Magistrates of Native States 49 B 642=27 B.L R. 1034=89 I.C. 1046=A.I.R. 1925 Bom 529

The term "Police-officer" in S 25 of the Evidence Act should be read not in any technical sense but according to its more comprehensive and popular meaning. But the expression can be extended beyond the definition in S 1 of the Police Act to cover only those persons who, like police-officers coming within that definition, are so much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. That class does not include a police patel in Berar 23 N L R 23=101 I C. 599=28 Cr L J. 471, A.I.R 1927 Nag. 222.

"Police officer" means an officer in charge of a police station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898, or any other police officer not below the rank of sub-inspector (Identification of Prisoners Act, (XXXII of 1920), S. 2)

"Police Port-dues" defined. Ben. Act 3, 1867, S. 10.

Police power. The inherent power of Government to regulate its police affairs,—to secure public peace, and enforce law and order.

"It is declared by Chief Justice Shaw that it is much easier to perceive and realise the existence and source of the police power than to mark its boundaries or prescribe limits to its exercise." "This power is and must be from its very nature incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of, and existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property."

Policy-holder.

Strictly speaking, this term includes the power of organization of a system of regulations tending to the health, order, convenience, and comfort of the inhabitants, and to the prevention and punishment of injuries and offences to the public.

Police purposes. Ordinarily such as arise in the administration of the affairs of cities and towns, in the exercise of their power and duty to promote the public health, convenience, and welfare.

Police Regulation or Regulations. The term which is used to define a power which resides in the state In the plural, such provisions of law as are designed to protect the lives, limbs, health, comfort, and quiet of citizens and to secure them in the enjoyment of their property

"Police report and report of Police officer." *See* 1 L B R 18.

The term '*Police report*' in S. 190, Cr.P.Code is not limited to the report mentioned in S 170. A report made by the Police in a non-cognizable case under the order of a Magistrate is a Police report. 11 A L J. 331=19 I.C 314=14 Cr.L.J. 218.

"Police-station" defined *See also* District Police-station) Act 5, 1898, S 4 (*s*), Ben Act 2, 1866, S 51 (ins Ben. Act 3, 1910, S 4), Ben Act 4, 1866, S. 3; (ins. Ben. Act 3, 1910, S. 4)

"POLICE-STATION" means any post or place declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf, Cr. P. Code, S 4

Polichelluttu (*Mal.*) *Lit* to tear up a writing: 1. A renewal of a lease, 2 The fee paid to a proprietor on the periodical renewal of a lease, (*Moore's Malabar Law*)

Polichezhuthu (*Mal*) *Lit.* Writing fee. Fee paid to the jenmi at the renewal of the kanom. (*Sundaram Iyer's Malabar Law.*)

Policy " 'Policy' or, more fully, 'policy of insurance' is the name by which the formal written instrument in which a contract of insurance is generally embodied is known "

Where a company grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy-holder" includes annuitant. Act VI of 1912 (Life Assurance Companies), S. 2 (8).

Where a Provident Insurance Society grants annuities upon human life, "*policy*" includes the instrument evidencing the contract to pay such an annuity, and "*policy-holder*" includes annuitant. Act V of 1912 (Provident Insurance Societies), S. 2, cl. 6.

Policy-holder. The holder of an insurance policy. The term also includes the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract, with the Company" (Eng. Life Assurance Companies Act, 1870, S. 2.)

"POLICY-HOLDER" means the person who for the time being is the legal holder of the policy for securing the contract with the life assurance company Act VI of 1912 (Life Assurance Companies), S. 2 (7).

Policy of Assurance.

"POLICY-HOLDER" means the person who for the time being is the legal holder of the policy for securing the contract with the Provident Insurance Society Act V of 1912 (Provident Insurance Societies), S 2, Cl. 5

Policy of Assurance, or Insurance. An instrument entered into by insurers of lives, ships and merchandise, etc, to the persons insuring obligatory for the payment of the sum insured, in case of death or loss (*Tomlins Law Dic*)

"Policy of assurance on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life Act VI of 1912 (Life Assurance Companies), S 2 (6), Act V of 1912 (Provident Insurance Socities), S 2 cl 4

"Policy of insurance" defined (*See* Policy of Assurance) Act 2, 1899, S 2 (19)

Policy of insurance (*See* Insurance) A contract between A & B, that upon A's paying a premium equivalent to the risk run, B will indemnify or insure him against a particular event

A Policy of Insurance is an Instrument of Recoupment, or Mitigation, of Loss, effected between the Insurer and the Insured, whereby the Insurer agrees to pay money, or make good the destruction or damage, or do some other thing, on the happening of some event or events

"It is not, like most contracts, signed by both parties but only by the Insurer, who on that account it is supposed, is denominated an 'Underwriter", (Park, I)

"POLICY OF INSURANCE." "Policy of Insurance" includes any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event, a life-policy and any policy insuring any person against accident or sickness, and any other personal insurance, Act II of 1899 (Stamp), S 2 (19)

"A policy of insurance is a personal contract by which the insurer undertakes to indemnify the party named in the writing against loss in a manner and subject to the conditions therein described

"POLICIES OF FIRE INSURANCE" are defined to be "contracts whereby the insurers undertake, for a stipulated sum, to indemnify the insured against loss or damage by fire in respect to the property covered by the policy during a prescribed period of time, to an amount not exceeding the sum specified in the written contract."

"POLICY OF LIFE ASSURANCE" means, "any Instrument by which the payment of moneys, by or out of the funds of an Assurance Co., on the happening of any contingency depending on the duration of human life, is assured or secured."

"Policy of sea insurance" defined. Stamp Act 2, 1899, S. 2 (20) *See also* English Stamp Act, 1891, S. 3.

There are two kinds of policies of sea or Marine Insurance (1) Valued, *i e*. when the policy, in terms, puts a value on the thing insured; (2) Open, *i e* when it does not mention the value, and therefore, in case of loss, the value has to be proved (Park, I. citing 2 Burr 1171, *Bruce* v *Jones*, 1 H. & C. 769, 32 L.J. Ex 132.)

Poligar A corruption of Palaiyakara or of Palegar, head of a village district, a kind of a feudal chief in South India, Military chieftain in the peninsula similar to hill Zemindar in the Northern Circars, the chief of a polliam. (*Fifth Report*)

Polikurippu (*Tam*) A note or memorandum of the heap of corn that has been threshed.

Polimera (*Tel*) A boundary, a limit

Political. The word "political" is defined to be pertaining to the policy or the administration of Government

The word "political" in its higher and true sense, means that which pertains to the Government of a nation In this sense it includes the entire system of its laws—constitutional and statutory In the fundamental law, the people first establish the framework of their political system. They establish the limitations and boundaries of power, and those principles which are to stand as permanent guides for the future action of the Government Within the limits thus established, the subsequent policies of the nation are regulated by its laws

Political, politic We speak of political government as opposed to that which is ecclesiastical, and of politic conduct as opposed to that which is unwise and without foresight in political questions, it is not politic for individuals to set themselves up in opposition to those who are in power, the study of politics, as a science, may make a man a clever statesman, but it may not always enable him to discern true policy in his private concerns

"Political Agent" defined Act 10, 1897, S 3 (40); Bur Act 1, 1898, s 2 (45); E B & A. Act 1, 1909, s 5 (16), P Act 1, 1898, s 2 (41).

"POLITICAL AGENT" shall include—(*a*) the principal officer representing the Government in any territory or place beyond the limits of British India, and (*b*) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition Act X of 1897 (General Clauses), S 3 (40).

Political corporation A political corporation is one which has principally for its object the administration of Government, or to which the powers of Government, or a part of such powers, have been delegated It does not depend upon the magnitude or variety of the subjects over which power is granted by the Legislature, nor does its character as a political corporation depend on how much of the authority vested in the Corporation is exercised directly by the people, and how much through a committee or commission.

A political corporation is a public corporation created by the Government for political purpose and having subordinate and local powers of legislation

Political discretion.

It is synonymous with municipal or public corporation.

Political discretion "Political discretion" embraces, combines, and considers all circumstances, events and projects, foreign or domestic, that affect the national interest.

Political division A district or sub-division of a district composed of its inhabitants, and organized for the purpose of paving and lighting its public streets, is a political division, in the exercise of such a governmental function it may be given power to raise money by a tax from the inhabitants

POLITICAL DIVISION of the State is a division formed for the more effectual or convenient exercise of political power within the political localities.

Political offences. There has been considerable controversy as to the meaning of the term "political office" from two points of view, municipal and international.

INTERNATIONAL. It is usual, if not invariable to except from treaties of extradition "offences of a political character." What should be taken as excluded in this description has been much discussed by continental jurists In England the subject seems to have been dealt with only by Sir James Stephen (*Hist Crim Law*, vol II, p 70) and by the judges on application for *habeas corpus* under the Extradition Act (See *Ency of the Laws of England*)

MUNICIPAL Where an offence has been committed, not from motives of private spite or interest, but in order to change the legislative or executive Government in the country, it is frequently contended that the offence is political, and that persons convicted of it should not be treated as ordinary offenders, and should be pardoned or amnestied on the earliest opportunity The offences to which this contention applies are those described as against public order, namely, treason, sedition, or interference with the executive or legislature by unlawful assemblies intended to defy or overawe either, or riotous protests against the law; and, in fact, all acts directed to obtain by unlawful means a change in the law or general Government of the realm There is no statutory recognition in England of any of these offences as political, unless it be sedition and seditious libel, as to which the law directs that persons convicted thereof shall be treated as first class misdemeanants (40 & 41 Vict c. 21, Ss. 40, 41) and the controversy may be described as of a parliamentary rather than of a legal character.

To constitute an offence as one of a "political character", there must be, at least, two distinct Political parties, each striving to impose its form of government on the country. "The offences of Anarchists, consist, in the main, of attacks on Private Citizens generally rather than on Governments or members of any particular government, as such In such cases they cannot be called 'political' offences" (*per* Cave, J., Re Meunier, (1894) 2 Q.B. 415; 63 L J. M.C. 198).

Political party A political party is a voluntary association of voters who are desirous of promoting a common political end, or carrying out a certain line of public policy; "A number of persons united in opinion or action, as distinguished from the rest

Politics.

of the community or association—especially one of the parts into which a people is divided on questions of public policy."

A party consisting of a substantial number of persons having an organization and committee, and continued to propagate its views which were different from and opposed to the views of its rival on the claims of both parties, comes within this definition.

Political parties are voluntary associations for political purposes. They are governed by their own usages and establish their own rules. Members of such parties may form them, organise them and dissolve them at their will The voters constituting such party are, indeed, the only body who can finally determine between contending factions or contending organizations The question is one essentially political, and not judicial in its character.

Political pension. An allowance payable by the Government of India under an arrangement effected between the Government of India and another sovereign power, is a political pension within the meaning of S 60 (g) C P Code, (Act I of 1908). The arrangement of 1842 cannot be treated as merely a provision out of the King's private estate for the maintenance of members of his family there having been, in a state like that of Oudh, no distinction observed between state property and private property vested in the Sovereign 18 C 216 (P C.)=17 I A. 181 *See also* 1 O C. 170 (171), 26 Mad 69 (71).

Political power. Political power embraces all governmental powers and functions, whether exercised by one department or another, or the officers of one or the other.

"POLITICAL POWER" as the term is used in the Bill of Rights, declaring that all political power is inherent in the people, consists of the three great attributes of sovereignty namely, legislative, executive and judicial authority This is all inherent in the people.

Political prisoner A person in custody or imprisoned for a political offence.

Political rights A "political right" is defined by Anderson to be a right exercisable in the administration of Government "Political rights" consist in the power to participate directly or indirectly in the establishment or management of government.

POLITICAL RIGHTS, are those which may be exercised in the formation or administration of the government, which consist in the power to participate, directly or indirectly, in the establishment or management of the government, those rights which belong to a nation, or to a citizen, or to an individual member of a nation, so distinguished from civil rights, namely, local rights of a citizen.

Political science. The science dealing with the organization and government of states.

"Political tenure" defined. Bom. Act 2, 1863, S. 16 (*c*), Bom. Act 7, 1863, S 32 (*c*).

Politician. Person engaged or interested in, politics.

Politics. According to its true original meaning "Politics" "comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part" (*per*

Poll.

Hardwicke, C, *Chesterfield* v *Janssen*, 2 Ves. Sen. 156).

Poll "Poll" means the number of aggregate of heads—a list or register of heads or individuals who may vote in an election—so that poll includes all who actually cast their votes at the election, those who stay away not being counted

As a noun, a number or aggregate of heads, a list or register of heads or individuals, the register of the names of electors who may vote at an election, a mode of ascertaining the sense of a meeting and whether the persons tendering their votes are qualified to vote therein As an adjective, cut or shaved smooth or even, cut in a straight line without indentation. As a verb, to single out, one by one, of a number of persons

Poll-tax A tax formerly not unfrequently assessed by the head on every subject according to their respective ranks (*Tomlins Law Dic*)

A poll tax is not a tax on property, but is a capitation tax, that is a specific sum levied upon each person

Polligar (*See* Poligar) Head of a village district Military chieftain in the Peninsula similar to hill Zemindar in the Northern Circars, the chief of a pollam.

Polling place In statutes relative to elections, the term "polling place" shall apply to a room or place provided for an election or caucus

Pollium, means a district held by a Polligar

Ancient polliems in Southern India always held to be impartible 55 I.A. 114=51 Mad. 189=27 L W. 497=5 O W N 411=108 I C 354=30 Bom L R 802=47 C L J 488=9 Pat L T 347=26 A L J 642=32 C W. N. 983=A.I R 1928 P C 68=54 M L J 504 (P C.)

Pollupavutam (*Tel*) Blighted corn

Pollute A finding by the Court, on the averment that defendants had deposited mud and dirt in a stream, that defendants had polluted the stream, is but another form of saying that they had deposited such articles in it.

In respect of the English Rivers Pollution Prevention Act, 1876, 39 & 40 V c 75, "Polluting includes innocuous discoloration"

Polygamist. Any man is a polygamist, or biganuist who, having previously married one wife, still living, maintains that relation to a plurality of wives.

Polygamy. (*Polygamia*) The having a plurality of wives or husbands at once (*Tomlins Law Dic.*); The proper name of the offence of having a plurality of husbands or wives

Polytheism. Belief in more than one god

Ponam (*Mal.*) Highland overrun with underwood, but which is capable of cultivation after long intervals with particular kinds of grain sown in holes dug with a spade.

Ponamvaram (*Mal.*) Rent or landlord's share of the produce of jangal cultivation.

Pond. "Pond" is a confined or stagnant body of fresh water and it is the body of water which comprises a pond.

Poonyum patam.

A pond is a small area of land covered with water, usually brought there artificially, and usually having no stream running out of it Many ponds have been formed for watering cattle, or storing fish with a view to consumption, or storing water for mills.

POND AND POOL "A pond is a standing Ditch cast by labour of man's hand in his private grounds for his private use to serve his house and household with necessary waters, but a Pool is a low plat of ground by nature and is not cast by man's hand." (*Callis*, 82)

POND AND STREAM A controlling distinction between a stream and a pond or lake is that in the one case the water has a natural motion—a current—while in the other the water is, in its natural state, substantially at rest.

Pongal Boiling, the boiling of rice, the name of a festival held among the agriculturists on the 1st of Thai and following days, and corresponding to Makarasankranti

Pontifical Episcopal; papal; insignia of the pope, book of episcopal rites

Pool. 'Combining of several persons of their separate resources in one large operation.

A pool is a combination of stakes, the money derived from which goes to the winner

POOL Applied to business arrangements or combinations, a combination of persons contributing money to be used for the purpose of increasing or depressing the market price of stocks, grain, or other commodities, also the aggregate of the sums so contributed, a combination having the intention and power, or tendency, to monopolize business or control production, or to interfere with trade, or to fix and regulate prices and the like, a joint adventure by several owners of a specified stock or other security, temporarily subjecting all their holdings to the same control for the purpose of a speculative operation, in which any of the shares contributed by one, and any profit of the shares contributed by another, shall be shared by all alike In the parlance of horse racing, ball-games, etc, the combination of a number of persons, each staking a sum of money to be divided among the successful betters according to the amount put in by each Geographically, a standing water without any current or issue, a fishing place

POOL (*in the Law of Waters.*) A pool, doth consist of water and land, and therefore by the name of stagnum, or a pool, the water and land shall pass also." (*Co. Litt.* 5a, b)

POOL AND DITCH. "A *Pool* is a mere standing water without any current at all, and hath seldom or never any issue to convey away the waters; but a Ditch hath no constant standing nor any apparent current' (*Callis*, 82.)

Pooliaput Head of the Palyam. Lands in the hands of Poligars or Zamindars and not under the immediate management of Government.

Poonyum patam (*Mal.*) Literally a fair or equitable pottah, or written engagement. A lease where the rent and interest of the sum advanced by the tenant to the landlord seem security for each other; and nearly the same as Kannum Patum.

Poor.

Poor. The term '.poor.' is used in two senses. We use it on one sense simply as opposed to the term "rich." Thus we speak of the ordinary labourers, mechanics and artisans as poor people, without a thought of describing persons who are other than self-supporting. We use the term also to describe that class who are entirely destitute and helpless, and therefore dependent on public charity. Dictionaries recognise this twofold sense. Thus Webster gives these definitions "First Destitute of property, wanting in material riches or goods, needy, indigent It is often synonymous with 'indigent' and with 'necessitous', denoting extreme want. It is also applied to persons who are not entirely destitute of property, but who are not rich, as a poor man or woman, poor people. It also means, "So completely destitute of property as to be entitled to maintenance from the public." When we speak of the relief of the poor as a public duty, and one which may justify taxations we use the term only in the latter sense Something more than poverty, in that sense of the term, is essential to charge the state with the duty of support.

Poor. The word is used in two senses, the one as opposed to 'rich', the other as indicating those who are entirely destitute and helpless,and therefore dependent on public charity. It is in the latter sense only that the word is used in the poor laws The term '*pauper*' is likewise used in two distinct senses, though not so divergent as in the case of the term poor. In the one case, it is synonymous with the term 'poor person,' as understood in the poor laws, meaning as one destitute and a proper subject for public aid In the other and more technical sense, it means one who is actually receiving public aid,and who is eating the public bread, for general purposes the terms 'poor person,' 'pauper,' 'indigent,' destitute may be regarded as synonymous. The words 'pauper' and'indigent' convey the meaning that the person has neither money nor estate, is without credit, and is unable to maintain himself because of inability to work or to obtain employment and a person who has property immediately available for his support is not a 'pauper' and is properly refused public aid as such But a person may be a pauper though he has property of his own, if it is not available for his immediate relief, or is manifestly disproportionate to his needs *See* Archbold's Poor Law, Burn's Justice of the Peace, vol iv., 'Poor", Macmorran and Lushington's Poor Law, Steer's Parish Law, Little's English Poor Law Statutes

Poor, Pauper Poor is a term of general use; pauper is a term of particular use; a pauper is a poor man who lives upon alms or the relief of the parish; the former is, therefore indefinite in its meaning, the latter conveys a reproachful idea

Poor house. Work house for paupers.

Poor law. Law providing for the support of paupers.

Poorest. In order that a gift "for the relief and use of the poorest of my kindred' may be good as a charitable bequest, the word "poorest" must mean "poor" or "very poor," and not "the least wealthy of a number of wealthy persons." (*A.G. v. Northumberland*, 47 L.J. Ch. 569, 7 Ch. D. 745.)

Port.

Pooroopa Enaums or grants of land paying a fixed money rent, or tribute in the Dindigul and Tinnevelly Provinces. *See* Poroopoo

Pooroopoo Nunjah or wet grain land paying a fixed money rent in Tinnevelly. (*Fifth Report*)

Pope (*in Latin Papa*) A title originally applied familiarly to all bishops of the Catholic Church, but now borne exclusively by the Bishop of Rome. The Pope is officially described as "Holy Father," "Vicar of Christ," "Sovereign Pontiff," is usually addressed as "Your Holiness,"(*Ency. of the Laws of England*;) Geffcken, Church and State, The Papacy and International Law, London, 1879.

Popular election The words "popular election" mean an election which is participated in by the people at large.

Popular Government. If the body of the nation keeps in its own hands through its representatives the Government of the country or the right of command, it is a popular Government.

Population The city's population cannot be determined, like any other fact, by evidence The word as generally used has reference to an official census.

The word "population" shall be taken to mean that as shown by the last preceding state or national census, unless otherwise specially provided.

"Populous parts of the City" defined. Mad. Act 3, 1904, S 3 (24).

Por (*Tam*) A heap, a heap of grain or straw.

Kadirpor (*Tam.*) A heap of corn not threshed.

Nerpar (*Tam*) A heap of rice-grain.

Poramboke The word '*Poramboke*' is loosely used in many senses. Whatever land does not yield revenue to Government is usually known as Poramboke though several kinds of lands may be included in it. Ordinarily unassessed waste though overgrown with grass or trees must be included in the grant of Poramboke. The grant of Poramboke does not operate to give the grantee the bed of the river. 38 Mad 108=24 M L.J. 31=(1913) M.W.N. 261=18 I.C 41.

The mere insertion in the margin of a title-deed of an Inam village of the words "besides poramboke" must not be taken to be an acknowledgment by the government of the inamdar's title to all kinds of Poramboke. The effect to be given to the insertion of the words must depend on the evidence available in each case and the circumstances attending the grant 23 M L.J. 109 =(1912) 1 M W.N 771=15 Ind Cas 594 (600); *See also* 9 L W. 381=36 M L.J. 203=50 I.C. 360.

Poramboke land is liable to revenue, only the right to levy assessment is given up by the Government for certain reasons It does not follow that if those reasons cease to exist or are held to be inadequate the Government cannot levy assessment if it chooses, (1928) M.W N. 581=1928 Mad 1176.

'Pagoda Poramboke,' 56 M.L.J. 24.

Por-kuripu (*Tam.*) Amount of the crops heaped but not threshed.

Port. "Port" means generally a harbour or shelter to vessels from a storm.

Port

"Port" means the waters within the gate or door or outlet toward the sea.

"PORT" defined. (*See also* Customs-port; Foreign port, Warehousing port). Act 7, 1880, s 2, Act 12, 1883, s. 2, Act 15, 1908, s 2 (4), Ben Act 3, 1867, s 1, Ben. Act 4 1887, s 2, Bom Act 6, 1879, s 3 (2), Bom. Act 6, 1886, s. 2 (1), Bom Act 5, 1888, s. 2 (*a*), Bom Act 4, 1905, s. 4 (*a*), Mad. Act 3. 1885, s. 3 (1), Mad. Act 2, 1905, s. 5 (10)

PORT. (*Portus*) A harbour or place of shelter, where ships arrive with their freight, and customs for goods are taken. (*Tomlins Law Dic*)

"A Port is a place, for the lading and unlading of ships or vessels, erected by Charter of the King or a lawful prescription" (*per* Ld. Chelmsford, *Foreman* v. *Free Fishers of Whitstable*, 38 L J C.P 350; L.R. 4 H L. 266.)

"A *Port* is a Haven and somewhat more,—

"1. It is a place for arriving and unlading of Ships or Vessels,

"2. It hath a superinduction of a civil signature upon it, somewhat of Franchise and Privilege,

"3 It hath Ville or City or Borough, that is the capus portus for the receipt of mariners and merchants, and the securing and vending of their goods, and victualling their ships.

A port, in the commercial sense, and by the most ancient definitions is an inclosed place where vessels load and unload goods for export or import The port is not any place within the geographical limits of the same name where ships might load and unload, but where they in fact do so, *i e*, where they are accustomed to do so. Commercially considered, a port is a place where vessels are in the habit of loading and unloading goods, and the limits of the port, as respects a delivery under a bill of lading, turn purely on the question of fact, within what limit ships and merchants have been accustomed to receive and deliver cargo, consigned to the port designated, without any necessary regard to geographical or physical divisions, or to police or statutory regulations.

"The Franchise of a *Port* may be in one person and the ownership of the Soil, within the limits of the port, in another" (*per* Ld Chelmsford, Foreman's Case. sup, citing De Portibus Maris.)

"PORT" means any port, or any part of a navigable river or channel, in which the Indian Ports Act, 1875 is for the time being in force. Bur. Act XII of 1883 (Pilots), S. 2.

PORT. A strong, sweet red wine.

Port Charges. "Port Charges," "in their ordinary sense, means, such charges as a Ship would have to pay before she leaves Port," (*per* Mathew, J., *Newman* v. *Lamport*, (1896) 1 Q B. 20).

Port charges. In a chartar party requiring the charterers to pay all port charges of the vessel imposed during the contract of carriage, the term "port charges" means dues, impositions and exactions in foreign ports, and includes tonnage dues imposed by the Government of the port of destination.

"Port-dues" defined. *See* Hospital Port-dues; Police Port-dues

"Port of Calcutta" defined. Ben. Act 5, 1880, s. 2.

Positive.

"Port of Discharge,' includes the whole Port within which any portion of the Cargo is usually, according to the Custom of such Port, taken out of the vessel" *Whitwell* v. *Harrison*, 18 L.J Ex 465, 2 Ex. 127)

"Port-officer" defined Act 15, 1908, S. 2 (5).

Portion, that part of a person's estate which is given or left to a child. (*Tomlins Law Dic*)

"PORTION" is synonymous with share.

The rule of English law as to portions was stated by Lord Eldon in the leading case of Ex parte Pye, 1811, 18 Ves 140, 11 R R. 178, that where a parent, or person in *loco parentis*, gives a legacy to a child, not stating the purpose with reference to which he gives it, equity presumes him to give a portion. (*Ency of the Laws of England.*)

"The word *'Portion'* is ambiguous It may only mean—and it frequently merely means,—a part of some larger amount, and it may also mean, the 'Portion' as used in the sense in which a person speaks of providing for his children" (per *Pollock C B*, *Butt* v. *Thomas*, 11 Ex. 243, 244, 25 L T O.S. 218)

"PORTION OF THE PRODUCE OF LAND." 23 I.C. 460 (461).

Portrait A portrait of a person is a pictorial representation of him, the chief object whereof being the preservation of a life-like resemblance of the countenance; and it is not less a "Portrait" because accompanied by subordinate accessories more or less of an ideal character (per *Leeds* v *Amherst*, 14 L.J Ch. 73)

Lord Lyndhurst said "If a picture is painted after a man's death, and meant to represent him, if there is nothing affording the materials for the portrait, it is completely an ideal picture and cannot properly be called a Portrait, but if there are reasonable materials from which a likeness may be framed, I do not consider it less a portrait, though painted after the death of the individual than if painted during his lifetime." (14 L.J Ch. 81)

Position to dominate the will. In the case of a disqualified proprietor whose estate was under the control of the Court of Wards, a lender who knew the facts was *prima facie* "in a position to dominate the will" of the borrower within the meaning of the amended S. 16, Contract Act (IX of 1872), 31 A. 386 (P.C)=6 A L J 707=10 C L J 76=13 C.W.N. 1069=11 Bom L.R. 864=3 I C. 385=19 M.L.J. 438. *See also* 5 I C. 486, 6 I C. 439.

The mere fact that the borrower is in need of money does not put a money-lender, to whom she applies for an advance, in a position to dominate her will within the meaning of S. 16 of the Indian Contract Act, 25 A L.J. 314=31 C.W N. 693=4 O. W N. 523=8 Pat L T. 480=26 L.W. 147=101 I.C. 29 =A.I.R. 1927 P.C. 84 (86).

Positive. Unqualified, admitting of no doubt; explicit, definite, decisive.

POSITIVE, ABSOLUTE, PEREMPTORY. Positive is said either of a man's convictions or temper of mind or of his proceedings, absolute is said of his mode of proceedings, or his relative circumstances; peremptory is said of his proceedings. A decision is posi-

Positive evidence.

tive, a command absolute or peremptory what is positive excludes all question, what is absolute bars all resistance, what is peremptory removes all hesitation, a positive answer can be given only by one who has positive information, a peremptory refusal can be given only by one who has the will and the power of deciding it without any controversy

'Positive evidence.' *See* 41 Cal. 173, 219=20 I C. 81

Posse. An infinitive mood, used substantively, to signify a possibility, such a thing is, *in posse*, such a thing may possibly be, but of a thing in being, we say it is *in esse*. (*Tomlins Law Dic*)

Possess. According to etymology the word "possess" means to sit upon, hence to occupy in person, to have and to hold. Thus the first lexical meaning given to the words in the Century Dictionary is to own; have as property The second definition in Webster's Dictionary is to have legal title to In popular usage the word "possess" includes real and personal property to which one has title as his landed possessions. So in scripture, "The House of Jacob shall possess their possessions." The legal idea of possession, though varying according to circumstances, still embraces the the conception of right as well as that of physical control

"Possess" is frequently used in the sense of "own" "entitled to"

"Possess" and "Possession." The words "possess" and "possession" in the claim sections of the Code of Civil Procedure include constructive possession, or possession in law, of debts and other intangible Property 27 M 67 (F B.) *See also* 25 Bom. 478, 33 Cal 487.

Possessed. "Possessed' is a variable term in the law, and has different meanings, as it is used in different circumstances It sometimes implies the temporary interest in lands, as we say, 'A man is possessed', in contradistinction to being seized It sometimes implies a corporeal having, as we say, 'A man is seized and possessed' but it sometimes implies no more than that one has a property in a thing, that he has it as owner, that it is his In this sense it may be used even though an intruder may have excluded the owner for the time being, and there is never any impropriety in making use of the term when the only possession the intruder has is apparently subordinate to that of the general owner"

An allegation in a declaration in ejectment that the plaintiff was possessed in fee of the lands claimed means that the plaintiff claims in fee

"'POSSESSED' is peculiarly applied to personalty, and a gift coupled with that word would, *prima facie*, imply personal Estate" (per *Turner, V.C*, *Stokes* v. *Salomons*, 9 Hare, 81.)

Possessio est quasi pedis positio Possession is, as it were, the position of the foot.

Possessio fratis de feodo simplici facit sororem esse haeredem. The possession of the brother of an estate in fee simple makes the sister (of the whole blood) an heiress (in preference to a brother of the half blood.)

Possession.

"Possession" defined (*See also* CONTINUOUS POSSESSION, RECORDED POSSESSION) Act 45, 1860, S. 27, Act 2, 1876, S 3, Bom. Act 2, 1890, S. 3 (*o*), Bur. Act 4, 1898, S. 4 (8).

POSSESSION is a detention or enjoyment of a thing which a man holds or exercises by himself or by another, who keeps or exercises it in his name.

"Possession is said to be in two ways—either actual possession or possession in law

"Actual Possession," is when a man entreth into lands or tenements to him descended, or otherwise

"Possession in Law, is when lands or tenements are descended to a man, and he hath not as yet really, actually, and in deed entered into them And it is called possession in law because that in the eye and consideration of the law, he is deemed to be in possession, in asmuch as he is liable to every mans action that will sue concerning the same lands or tenements" (*Termes de la ley, Possession*).

The term has been defined as follows: Simply the owning or having a thing in one's power; the present right and power to control a thing, the detention and control of the manual or ideal custody of anything which may be the subject of property, for one's use of enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name, the detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name, the act of possessing a having and holding or retaining of property in one's power or control, the sole control of the property or of some physical attachment to it; that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all other persons 171 I C 159=1937 A.L.J 951=1937 A. L R 913=1937 A W.R. 823=A I R 1937 All 735; 12 Bom L R. 316=5 I C 457, 6 Bom L R 887; 16 C. P L R 13, 4 N L R 78=8 Cr L J. 18.

"Where an estate or interest in realty is spoken of as being "in possession", that does not, primarily, mean the actual occupation of the property, but means, the present right thereto or to the enjoyment thereof (*Ren* v *Bulkeley*, I Doug 202), as distinguished from Reversion, Remainder, or Expectancy" (*Re Morgan*, 53 L.J Ch 85, 24 Ch. D 114)

The word "possession" in S. 28 of the Limitation Act XV of 1877, embraces both actual possession and possession in law, 6 C W.N 601. *See also* 33 Cal. 821=10 C.W N. 1081.

The word "possession" in C. P. Code, includes constructive possession, such as possession by a tenant. 25 B. 478 (491).

Possession in Specific Relief Act (I of 1877), S. 9 does not include joint possession, but refers to exclusive possession. 23 I.C. 618 (619).

Possession in S. 55, Land Registration Act, does not mean mere lawful possession but actual possession which includes possession by receipt of rent, the possession of the tenant being possession of the landlord. 35 C 120=12 C W.N. 16=8 C.L J 245. *See also* 29 Cal. 518 (P.C)

POSSESSION AND CUSTODY. "A thing is in the *possession* of the husband of any woman.

Possession.

of any servant, who has the custody of it for him, and from whom he can take it at pleasure. "The word 'Custody', means such a relation towards the thing as would constitute possession if the person having oustody had it on his own account.

POSSESSION AND SEISIN According to the modern authorities there seems to be no legal difference between the words "seisin" and 'possession," although there is a difference between the words disseisin and dispossession.

POSSESSION AND TITLE. Possession is good evidence of title against all persons except the owner.

Possession of personal property is *prima facie* evidence of title, good against everybody but the rightful owner.

POSSESSION AND PRESCRIPTIVE TITLE The possession which is necessary as an element in the acquisition of title by prescription must have three qualities; it must be long (*i e.*) for the period prescribed by law, continual and peaceable and as of right (*see* Easements Act, S. 15,)

KINDS OF POSSESSION, ACTUAL That possession which exists where the thing is in the immediate occupancy of the party Applied to land, the actual exercise by the owner of the present power to deal with the estate and exclude other persons from meddling with it.

CONSTRUCTIVE. That possession which exists in contemplation of law without actual personal occupation, that which the law annexes to the title, the possession of one claiming to hold by virtue of some title, without having the actual occupancy.

ACTUAL AND CONSTRUCTIVE POSSESSION. The word "actual possession" in a dispute between rival landlords need not be taken to exclude possession by receipt of rent and can be taken to include the possession of a landlord by his immediate tenant (12 M. 88; 11 C. 413; 15 C 527; 16 C 513, 13 B L R 229 foll. 11 Weir 105, Ref 7 C. 259, 23 C 80, 7 C.W N 462 dist. 17 M.L T 225=(1915) M W N. 267=28 I C. 332=16 Cr.L.J. 284

Its ordinary and natural meaning is actual possession, and it has also a technical and artificial meaning in law 56 C 367=119 I.C 23=1929 C 497; 1 Rang. 199=2 Bur L.J 241=24 Cr.L.J. 858=74 I.C. 1050=A.I,R. 1923 Rang. 227.

Possession as including constructive possession. *See* 110 I.C. 70=1928 Oudh 251 (F B.).

The possession of a house by a wife on account of her husband is the possession of the husband. 22 Cr.L.J. 118=59 I.C. 550=8 P W.R 1921 (Cr.).

Where there is nothing to show that a pistol is a sort of article that one can reasonably expect to be for sale in the shop of the accused, possession by servant of the accused of the pistol is not possession on account of master. 23 Cr L J 729=69 I.C. 457=20 A.L J. 855=A.I.R. 1928 All. 33 (2).

ADVERSE POSSESSION. Possession to be adverse, must be actual, visible, exclusive, hostile and continuous for the time necessary to create the bar. 67 I.C. 170=34 C L.J. 133.

POSSESSION FOLLOWS TITLE. Where evidence of possession on either side is not satisfactory or not quite satisfactory, the party who has succeeded in

Possibility.

proving his title is entitled to rely upon the presumption that he was in possession does not apply in a case where actual and not mere constructive possession is the case put forward. 48 C.L J. 364=A.I.R. 1928 Cal 765, *see also* 6 App. Cas 164.

POSSESSION IN FACT. Possession in fact is nothing more than a simple holding or detention of a thing which is under our power and control.

POSSESSION OF EXPLOSIVES. Possession must be conscious and intelligent possession and not merely the physical presence of the accused in proximity or even in close proximity of the offending object. These are the important elements which go to make up an offence under S 4 (*b*) of the Explosive Substances Act. A I R. 1928 Lah. 272 Rel. on 153 I C 139=7 R L 392(2)=36 Cr L.J. 300 (2)=37 P L R 132 =A I R. 1934 Lah 718.

POSSESSION OF LAND Possession of land has been defined as the holding of it and exclusive of dominion over it (*See also* Bur Land Rev. Act II of 1876, S. 3 (a.))

Possessor. One who holds possession of property

POSSESSOR, PROPRIETOR, OWNER, MASTER. The possessor has the full power, if not the right of the present disposal over the object of possession; the Proprietor and owner has the unlimited right of transfer, but not always the power of immediate disposal. The proprietor and the owner are the same in signification, though not in application: the first term being used principally in regard to matters of importance, the latter on familiar occasions· the proprietor of an estate. the owner of a book is more becoming than the proprietor.

Possessory action An action which has for its immediate object to obtain or recover the actual possession of the subject-matter, as distinguished from an action which merely seeks to vindicate the plaintiff's title, or which involves the bare right only.

Possessory lien. A *possessory lien* is a right of a person who has possession of goods or chattels belonging to another person, to retain the possession thereof until the payment of discharge of some debt or obligation by the owner of the goods or chattels. A *general lien* is a right to retain the goods or chattels in respect of a general balance of account, or until the payment or discharge of a debt or obligation not necessarily incurred in respect of such goods or chattels. A *particular lien* is confined to debts and obligations incurred in respect of the goods or chattels subject to lien. A possessory lien is a mere personal right to retain possession, and there is no right of sale incident thereto even if the retention of the chattel is attended with expense *Mulliner* v *Florence*, (1878) 3 Q.B.D. 484; *Thames Iron Works* v. *Patent Derrick Co.*, (1860) 29 L.J. Ch. 714, (*Ency. of the Laws of England.*)

Possessory title A title gained by possession.

Possibility, A legal "possibility" as such term is used in connection with real estate, is an estate founded on a contingency which may or may not happen.

POSSIBILITY, is defined to be an uncertain thing, which may or may not happen. (2 Lil. Abr. 336.) And it is either near or remote; as for instance:

Possibility.

Where an estate is limited to one, after the death of another, this is a near possibility, but that one man shall be married to a woman, and then that she shall die, and he be married to another; this is a remote or extraordinary possibility. And the Law doth not regard a remote possibility, that is never like to be. (*Tomlins Law Dic.*)

"A 'possibility' is defined to be an uncertain thing which may happen, or a contingent interest in real or personal estate. Possibilities are divided into, first, a possibility coupled with the interest. This may, of course be sold, assigned, transmitted or devised. Such a possibility occurs in executory devises and in contingent springing or executory uses. Secondly a bare possibility of hope of succession This is a case of an heir apparent during the life of his ancestors, and it is evident he has no right which he can assign, devise or release."

Possible. The word "possible" as defined by Webster, means liable to happen, or to come to pass, capable of existing or of being conceived capable of being done, not contrary to the nature of things, In a descriptive phrase denoting relative degrees, such as "all possible skill." "as nearly as possible," "as rapidly as possible" or "as soon as possible," the meaning of the word is often modified to suit the particular case. Similarly with respect to the phrase "as speedily as possible"

"AS SOON AS POSSIBLE," means with all reasonable promptitude and in the shortest practicable time regard being had to the ordinary course of business, (*Attwood* v. *Emery*, 26 L.J. C.P. 73.)

In commercial transactions "IF POSSIBLE" means, generally, if reasonably possible in a business sense (*per* Esher, M R., *Assicurazione Generali* v. *Bessie Morris Co.*, (1892) 2 Q.B. 652)

POSSIBLE, PRACTICABLE, PRACTICAL. The possible depends solely on the power of the agent; the practi cable depends on circumstances. The practicable is that which may or can be peactised, the practical is that which is intended for practise, the former, therefore, applies to that which men devise to carry into practise · the latter to that which they have to practise. projectors ought to consider what is practi cable divines and moralists have to consider what is practical The practicable is opposed to the imprac ticable, the practical to the theoretical or speculative.

"Post" defined. Act 13, 1885, S. 3 (5).

POST. The verb "post" is defined in Webster's Dictionary as follows "To attach to a sign-post or other usual place of affixing public notices; to advertise; as to post a notice", to put a letter or parcel in the post-Box or post pillar for transmission through the post office.

Post card. Card conveyed by post at a lower rate than a closed cover.

Post chaise. Travelling carriage hired from stage to stage.

Post date. To date after the real date of document. Assign or affix a later date than the actual date (as) post dated cheque.

Post free. Without fee for postage.

Post obid bond.

Post-graduate (study). Study carried on after getting the graduate degree.

Posthorse. Formerly kept at intervals on the main roads for relays by the post or travellers.

Post letter. A letter with a fictitious address, dropped into the letter box of a post office receiving house, in order to test the honesty of an employee in the post office, is a "post letter."

Post man. The man who collects and delivers postal letters and articles.

Post mark Official stamp on letters etc. with the name of the office, date and other details.

The use of a post mark in evidence involves at least three distinct principles. In the first place, the question arises, it may be inferred from the presence of what purports to be the official mark, that the mark was genuinely affixed by an officer of the Post office concerned. This is a question of an authentication and may be answered in the affirmative In the second place the question arises, whether if the post mark be taken as genuine it is evidence that the cover bearing it was stamped on the date the impression bears The answer is in the affirmative. Thirdly the post mark, is evidence that the place or office mentioned therein was actually the place where it was affixed. The mere fact of a notice bearing a certain date is no proof that it was posted on that date. 19 C W.N. 489=20 C.L.J. 455=26 I.C. 962.

Post-master. Officer in charge of post office.

Post-master—General. The highest officer in the state responsible for postal service.

The expression "Postmaster-General" includes a Deputy Postmaster-General or other officer exercising the powers of a Postmaster General. Act VI of 1898 (Post Office), S. 2, cl (*j*).

Post mistress. Female post master.

Post-mortem. A post-mortem examination is an examination of a body after death, and does not necessarily imply an autopsy, which is an examination of a dead body, by dissection to ascertain the cause of death.

A "post mortem examination" is generally understood, means the dissection of the body, made within a few hours or at the furthest a few days after the death.

Post note. A bank note, intended to be transmitted to a distant place by the public mail and made payable to order.

In mercantile law, a note payable at a future day, as distinguished from a note payable on demand; a species of bank-notes payable at a distant period and not on demand, which differ from other promissory notes only as to the time of payment

Post-nuptial. After marriage.

Post obit bond. Bond given for a loan, undertaking to pay the lender the sum borrowed, with interest, after the decease of another person from whom he expects to receive money.

A "post obit bond" is an agreement on the receipt of a sum of money by the obligor to pay a larger sum exceeding the legal rate of interest, on the death of the person from whom he has some expectations if the obligor be then living.

Post Office.

These words and agreements are not always void. They are so when it is shown to the courts that the contracts are inequitable or unconscientious. When advantage is taken of the weakness, necessity, or ignorance of the other, or such extraordinary disparity exists between the sum advanced and the sum to be received as clearly appears to be contrary to good conscience the courts will declare the agreement fraudulent and void as being against the policy of the law. They partake generally of the nature of a wager, and contain no principle by which the value of the chance may be calculated so as to enable the Court to ascertain whether they are reasonable or unconscionable.

"Post office" defined Act 6, 1898, S. 2 (*h*).

POST-OFFICE Department in charge of postal service, building in which the postal business is carried on

POST OFFICE is the office for the conveyance of letters through the Kingdom, as well from foreign parts, as from place to place within the Kingdom (*Tomlins Law Dic*)

Post office is a place established to receive and deliver to their addresses letters and packages duly arriving from, and to despatch those duly there deposited to be sent to other such places at a distance, through the mail

The Post Office is not necessarily the building in which the business of the department of Government is carried on, but agency through which this is done, and it is in part located in the post office building. *See* Lewins, Her Majesty's Mails, H Joyce, History of the Post office, Postmaster General's Annual Reports (*Ency. of the Laws of England.*)

The expression "the *Post-Office*", means the department established for the purpose of carrying the provisions of this Act into effect and presided over by the Director-General. Act VI of 1898 (Post Office) S. 2, cl (*k*).

The expression "*Post-Office*" includes every house, building, room, carriage or place used for the purposes of the Post Office, and every letter-box provided by the Post Office for the reception of postal articles Act VI of 1898 (Post Office), S 7, cl. (*h*).

GENERAL POST OFFICE. The central office for transaction of postal business, of which there may be many branch offices.

Post-paid (*Letter*). Letter with postal stamp already affixed.

Poste restante. Department of town post office for letters that are to be kept till applied for.

Post road. A "post road" is a highway by land or water, made by statute an avenue over which mails may be lawfully transmitted.

Post routes. A "post route" is a post road, or definite portion thereof, over which mails are usually transported by contract,

"A post route in the general sense of the term, is the appointed course or prescribed line of transportation of the mail."

Post routes. A "post route" is a post road, or definite portion thereof, over which mails are usually transported by contract.

Post-natal. After birth.

Postscript

"Postage" defined. Act VI, 1898, S. 2 (*f*).

The expression "*postage*" means the duty chargeable for the transmission by post of postal articles. Act VI of 1898 (Post Office), S. 2, cl (*f*).

"Postage-stamp" defined. Act 6, 1898, S. 2 (*g*).

POSTAGE STAMP Adhesive stamp or label with which postage charges have to be paid.

The expression "*postage stamp*" means any stamp provided by the Governor-General in Council for denoting postage or other fees or sums payable in respect of postal articles and includes adhesive postage stamps and stamp printed, embossed, impressed or otherwise indicated on any envelope, wrapper, post-card or other article, Act VI of 1898 (Post Office), S. 2, cl. (*g*)

'Postal article' defined. Act VI, 1898, S 2 (*i*).

The expression "*postal article*" includes a letter, post card, newspaper, book, pattern or sample packet, parcel and every article or thing transmissible by post, Act VI of 1898 (Post Office), S 2, cl (*i*).

"Postal officer" defined. 54—5 V.C. 31, S. 9.

Posterity. Person's descendants, later generations, those that come after.

Posthumous child A child born after his father's death, &c (*Tomlins Law Dic.*)

Postliminy. "Postliminy" is defined to be the principle of the law of nations under which property, if taken by the enemy in time of war is restored to its former state upon coming again under the power of the nation to which it formerly belonged.

"The right of 'postliminy,' says Vattel, is that in virtue of which persons and things taken by the enemy are restored to their former state on coming actually into the power of the nation to which they belong"

"A posthumous child inherits from his deceased father just as if he had been born in the lifetime of such father and had survived him. For all the beneficial purposes of heirship a child *enventre sa mere* is considered as absolutely born.

The presumption in favour of the legitimacy of a child born within a competent time after a marriage has been determined by the husband's death is as strong as that in favour of offspring born during wedlock. Upon its birth it will, as a rule, be placed at once, as to rights and advantages, where it would have stood at its father's death, if at the time of that event it had been already born. It will not lose its heirship of lands in fee, though meantime the person who, failing the posthumous child, would be heir takes "quasi by descent" (Shelly's Case, 1579-1581), 1 Co. Rep. 93, 76 E R. 206), and enjoys the mesne profits. And, generally, in all other matters of property the posthumous child is treated as a child living at its father's death (*Trower* v. *Butts*, 1823, 1 Sijm. & St 181: 57 E.R. 72; 24 R.R. 165), that is to say, if it is to its interest, and not to its detriment, so to be treated (see *Blasson* v. *Blasson*, (1864) 33 L.J. Ch. 403, (*Ency. of the Laws of England.*)

Postpone. Defer, put off, keep for a later time adjourn.

Postscript. Addition made as an after-thought at the end of a letter, article, book etc.

Postponement

Postponement The word "postponement" as used in speaking of the postponement of legal proceedings is synonymous with the word "continuance."

The word "postponement" is usually preferred to the word 'continuance' when the purpose is to obtain a continuance to another day during the term at which the case is fixed, rather than to a future term.

Potail. Head man of a village who collects the rents from the other ryots therein, and has the general superintendance of its concerns. The same person who in Bengal is called Moccuddim and Mundul. (*Fifth Report*)

Potent Powerful, strong, influential (as) potent monarch, Potent argument.

Potential "Potential" means having latent power; endowed with energy adequate to a result efficacious, existing in possibility, not in act.

The word "potential" means in possibility, not in act, not positively, in efficacy, not in actuality

"**Potential existence**" means merely that the thing may be at some time.

The rule of law is well established that things having no potential existence cannot be the subject of mortgage and sale. There are, however, exceptions to this rule; as where a merchant mortgages his stock of goods and all future additions thereto The difficulty seems to arise in determining what comes within the definition of the term "potential existence" The definition of the word "potential" is "having latent power, endowed with energy adequate to a result efficacious, existing in possibility, not in act."

Potentially. "Potentially" means in possibility, and not in act, not positively, in efficiency, not in actuality, and hence mere ownership or possession of the soil does not carry with it the production of crops, potentially.

Potestas suprema seipsam dissolvere potest, ligare non potest (*Bac Max. Reg. 19*) The supreme power may loose, but cannot bind, itself.

Poti (*Mal.*) A bundle, a pack, a load, a sack for loading bullocks, a measure of grain.

Potikallalu (*Tel.*) Land recovered from Jangul

Potior est conditio defendentis The condition of the defendant is stronger.

Potior est condito possedentis. The condition of the actual possessor is stronger.

Potivita (*Mal*) Sowing on dry land.

Pottah (*See* Patta.) A lease granted to the cultivators on the part of government, either written on paper, or engraved with a style on the leaf of the fan palmyra tree, by Europeans called cadjan. (*Fifth Report.*)

Pottahs Tucka Pottahs granted to small farmers. (*Fifth Report*)

Pottal (*Tam.*) Barren land.

Potto potti. Meaning. *See* 55 I.A. 32=54 M.L. J. 130 (P.C.)

Poultry. The word 'poultry' includes pigeons.

Power.

Pound "Pound" in currency is a definite quantity of gold with a mark on it to determine its weight and fineness

A 'pound' is defined to be a place where beasts subject to be impounded are to be confined, kept and fed.

A town pound for impounding of stray animals etc, is an inclosed piece of land, secured by a firm structure of stone or of posts and timber placed the ground.

POUND, (*Parcus*). Generally any place inclosed, to keep in beasts, but especially a place of strength to keep cattle which are distrained, or put in for any trespass done by them, until they are replevied or redeemed. (*Tomlins Law Dic.*)

Poundage "Poundage" in practice is the amount allowed to the Sheriff or other officer for commissions on the money made by virtue of an execution.

Pound breach Pound breach is an offence in direct contempt of the authority of the law; and is an injury and insult to public justice The breaking of the pound alone is not sufficient, but the driving and conveying away the impounded cattle is an essential part of the offence of pound breach. Pound breach cannot be justified on the ground that the distress was without cause for, when impounded, the distress is in the custody of the law

Poutra Putradi Santati. In a will convey an estate of inheritance. A I R. 1922 Bom 45=24 Bom.L.R. 300=46 Bom 816=67 I.C. 230.

Poverty "Poverty" cannot be construed as synonymous with "insolvency" so as to render a person incompetent to act as administratrix. Thus a young man starting out in life with good health, mind, and strength may be in poverty, but not be insolvent in any sense.

POVERTY, INDIGENCE, WANT, NLED Poverty and indigence are permanent states, want and need are temporary. poverty and indigence are the order of Providence, they do not depend upon the individual, and are, therefore, not reckoned as his fault; want and need arise more commonly from circumstances of one's own creation and tend frequently to one's discredit Poverty is that which one should learn to bear, so as to lessen its pains, indigence is a calamity which the compassion of others may in some measure alleviate, if they cannot entirely obviate, want, when it results from intemperance or extravagance, is not altogether entitled to any relief, but need, when it arises from casualties that are independent of our demerits, will always find friends.

Povindah. The name of the travelling soldier-merchants of Afghanistan who, since the time of Barbar have carried on trade with India, fighting their way, when necessary, through the passes; Povindahs are great camel owners and traders.

Power. An authority which one man gives another to act for him, a term commonly applied to reservation made in a conveyance for persons to do certain acts; as to make leases, raise portions, or the like. (*Tomlins Law Dic.*)

"A *Power* is an authority reserved by, or limited to, a person to dispose, either wholly or partially, of real or personal property either for his own benefit

or for that of others. The word is used as a technical term, and is distinct from the dominion which a man has over his own estate by virtue of ownership" (*Farwell on 'Powers'*.)

"POWER,' does not apply to the sort of interest which the ownership gives" (*Per* Ellenborough, C. J., Ro ed *Berkeley* v *York*, 6 East, 107.)

Power is a liberty or authority reserved by, or limited to, a person to dispose of real or personal property for his own benefit, or for the benefit of others, and operating on an estate or interest, vested either in himself or in some other person, the liberty or authority, however, not being derived out of such estate or interest, but overreaching or superseding it, either wholly or partially It is an authority enabling one person to dispose of the interest which is vested in another The DISTINCTION BETWEEN A 'POWER' AND A 'TRUST' is marked and obvious Powers are never imperative, they leave the act to be done at the will of the party to whom they are given *'Trusts'* are always imperative, and are obligatory on the conscience of the person entrusted A 'POWER OF APPOINTMENT' is not an absolute right of property nor is it an estate, for it has none of the elements of an estate. A 'GENERAL POWER OF DISPOSITION' existing as a power does not imply ownership, in fact, the existence of such a power, as a technical power excludes the idea of an absolute fee simple in the person who possesses the power, though where the power is for his own benefit, he has the means of acquiring such interest, right or title, and in all cases by the execution of the power, the possession, right, title or interest is altered or divested (*Rul. Case Law*)

OTHER DEFINITIONS. The word "power" is sometimes used in the same sense as "right."

"The capacity to be acted upon in some particular manner" is also one of the definitions of power.

"A power is an ability to do"

A power is an authority whether evidenced by letter of attorney or otherwise. It is defined as "technically an authority by which one person enables another to do something for him."

The term "power" is defined to be an authority to do some act in relation to real property, or to the creation or revocation of an estate therein or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose on this subject *see* Sug Pow.; Chance, Pow Farwell Pow. Vaizey, Settlements. (*Ency. of the Laws of England*)

POWER, STRENGTH, AUTHORITY, DOMINION Power is either physical or mental, public or private; in the former case it is synonymous with strength, in the latter with authority. Civil power includes in it all that which enables us to have any influence or control over the actions, persons, property, etc., of others authority is confined to that species of power which is derived from some legitimate source. Power exists independently of all right, authority is founded only on right. A king has often the power to be cruel, but he has never the authority to be so. Subjects have sometimes the power of overturning the government, but they can in no case have the authority. Power may be abused; authority may be exceeded. A minister abuses his power if he

only exerts it to benefit his favourites and oppress the subject, an ambassador exceeds his authority who goes beyond the letter of his instructions. (*Crabb.*)

POWER AND AUTHORITY. "When a statute confers upon a corporation a power to be exercised for the public good, the exercise of the power is not discretionary, but imperative, and the words "power" and "authority" in such case may be construed "duty" and "obligation."

A provision in the charter of a town that the Mayor and Council should have "power and authority" to pass ordinances for the comfort, good order, health, and safety of the inhabitants, is held not merely to confer power to pass such ordinances but to make it imperative to do so, the words "power and authority" being construed as equivalent to "duty and obligation"

Power and Trust. "The distinction between a 'power' and a 'trust' has been clearly defined by the courts. A mere power is not imperative, but leaves the action of the party receiving it to be exercised at his discretion, that is, the donor or grantor, having full confidence in the judgment, disposition and integrity of the party, empowers him to act according to the dictates of that judgment and the promptings of his own heart. A trust is imperative and is made with strict reference to its faithful execution The trustee is not empowered, but is required to act in accordance with the will or of the one creating the trust."

THE GREAT POWERS. States with international reputation and influence.

THE MERCIFUL POWERS Appeal to Providence.

A POWER IN GROSS is where the person to whom it is given has an estate in the land, but the estate to be created under or by virtue of the power is not to take effect until after the determination of the estate to which it relates.

A "POWER IN TRUST" is a power to be exercised by the grantee, not for his own benefit at all, but entirely for the benefit of some other person or persons.

A "power in trust" is mere authority or right to limit and use, while an "estate in trust" is an estate or interest in the subject.

GENERAL POWER OF DISPOSITION existing as a power does not imply ownership.

A "POWER COUPLED WITH AN INTEREST" is a power which accompanies, or is connected with an interest. The power and interest are united in the same person.

A "power coupled with interest" is a right or authority to do some act, together with an interest in the subject on which the power is to be exercised.

'ABUSE OF POWER' An abuse of power means that, when a person has power to do a certain thing, he exercises that power in a manner in which authority is not given to him to exercise it. 160 I.C. 477=37 Cr.L.J. 295=A.I.R. 1936 Rang. 11.

DELEGATION OF POWERS. The powers given to any person to take measures under S. 3, Act (III of 1897) does not include power to delegate the power to another person unless such delegation ought to be necessarily implied from the nature of the measures

Power of attorney.

to be taken under the granted powers. 21 I. C. 68 (69).

FRAUD ON A POWER, is where a power of appointment exercised according to the letter of the power, is exercised pursuant to an antecedent bargain that the property shall be held for persons not objects of the power (*Pryor* v. *Pryor*, 33 L J. Ch. R., *Farwell* on Powers: *Watson* on Powers)

PARTY IN POWER The ministry of the day.

"Power of appointment" defined. Act 10, 1865, S. 56, expl. *See* Sug Pow., Chance, Pow., Farwell, Pow., Vaizey, Settlements.

"Power of attorney" defined Act 2, 1899, S. 2 (21).

"POWER OF ATTORNEY" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it. Act II of 1899 (Stamp), S. 2, cl. (21).

A power of attorney is an authority given by a formal instrument whereby one person, who is called the donor or principal, authorises another person, who is called the donee, attorney, or agent, to act on his behalf.

A GENERAI POWER OF ATTORNEY is one by which authority is given to act for the principal in all matters, or in all matters of a particular nature, or concerning a particular business.

A SPECIAL POWER OF ATTORNEY is one by which authority is given to do some particular specified act. The law relating to powers of attorney is a branch of the law of agency.

Power of attorney includes vakalatnama. I L.R. (1937) Nag. 494=169 I.C. 117=9 R.N. 305=A I.R. 1937 Nag. 65

Power of sale. A power of sale is not an ordinary accompaniment of a mortgage, but is a power coupled with an interest, in its nature irrevocable.

This word in the proviso to S. 17, Presidency Towns Insolvency Act (III of 1909), refers to such powers as mortgagees and pledgees may have of selling the property mortgaged to or hypothecated with them without recourse to a suit, and the words "deal with his security" in same proviso refer to the rights they may have of transferring or assigning the debt due to, and the security in the possession or at the disposal of, the said creditors (21 I. C. 689.)

POWER TO PLEDGE AND POWER TO SELL. The essential difference between a power to sell and a power to pledge is stated as follows· "It is manifest that when a man is dealing with other people's goods, the difference between an authority to sell and an authority to mortgage or pledge is one which may go to the root of all motives and purposes of transaction. The object of a person who has goods to sell is to turn them into money, but when those goods are deposited by way of security for money borrowed, it is a transaction of a totally different character. If the owner of the goods does not get the money, his object and purpose are simply defeated; and if on the other hand, he does get the money, a different object and different purpose are substituted for the first, namely that of borrowing money and contracting the relation of debtor, with a creditor, while retaining a redeemable title to the goods instead of exchanging the title to the goods for ready money.

Powers that be. The constituted authorities.

Power station. Place for generating mechanical energy applicable to work.

Powerful. Having great power (as) a powerful government, a powerful press.

POWER, POTENT, MIGHTY. A potent monarch is much more than a powerful prince, mighty expresses a still higher degree of power, might is power unlimited by any consideration or circumstance, a giant is called mighty in the physical sense

Pozhakadai, (*Tam*) A back yard, small portion of ground, at the back of a house a yard adjoining the dwelling of the Mirasidar, held rent free, used as a kitchen garden, or one for vegetable requiring a richer soil (*Wil Gloss*)

Practicable. Webster defines "practicable" as admitting of use, passable, and gives as an illustration, a practicable road, that is, a passable road.

Where something is required to be done at the earliest "practicable" moment, the doing of the act is not required to be done at the very earliest moment, the adjective "practicable" importing a difference according to circumstances and meaning, ordinarily, that the thing must be done as soon as reasonably can be expected

"Practice" The word "practice" in section 4 of the Legal Practitioners Act includes the right to appear, plead and act. 4 Pat. 766.

To "practice" is to exercise a calling or profession. It is the application of science or knowledge to the wants of man in the recording incidents of life, as the practice of law or medicine.

A contract by a physician for the sale of his "PRACTICE AND GOOD WILL" in a particular town means that the physician will not resume practice in that town.

Practice of the Courts. By this is understood the form and manner of conducting and carrying on suits or prosecutions at Law, civil or criminal, through their various stages, from the commencement of the process to final judgment and execution, according to the principles of Law and the rule laid down by the several Courts. (*Tomlins Law Dic.*)

OTHER DEFINITIONS "Practice," like "Procedure," "denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right." (per *Lush, L.J., Poyser* v. *Minors*, 7 Q B D. 333, 50 L.J. Ex 557.)

Bouvier defines the word "practice" as "the form, manner and order of conducting and carrying on suits or prosecutions in the Courts, through their various stages, according to the principles of law and the rules laid down by the respective Courts."

"Practice" is the course of procedure in the Courts, which, in a general sense, includes pleadings. Rapalje and Lawrence define practice as "the law which regulates the formal steps in an action or other proceeding, which therefore deals with writs, summons, pleadings, affidavits, notices, motions, petitions, orders, trials, judgments, appeals, costs, and executions."

Practice of law

All that relates to the manner and time in which a case shall be conducted and tried from its inception to final judgment and execution, is generally embraced under the title of "practice"

The *"Practice"* of a Court denotes the Rules that make or guide the Courts and regulate procedure within the walls or limits of the Court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction (*A G* v *Sillem*, 33 L J Ex 209)

Practice of law "Practice of law," as the term is generally understood, is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure But in a larger sense it includes legal advice and counsel as the preparation of legal instruments and contracts by which legal rights are secured, although such matters may not be depending in a Court

Practice of medicine. "The practice of medicine may be said to consist in three things First, in judging the nature, character and symptoms of the disease, second, in determining the proper remedy for the disease, and third, in giving or prescribing the application of the remedy to the disease"

The PRACTICE OF MEDICINE includes the application of knowledge of medicine, of disease, and of the loss of health. Thus the act entitled "To regulate the practice of medicine" is sufficiently broad and comprehensive to include within its scope the entire range of practice of the medical profession

"The "practice of medicine", as ordinarily or popularly understood, has relation to the art of preventing, curing, or alleviating disease or pain. It rests largely in the sciences of anatomy, physiology and hygiene. It requires a knowledge of disease, its origin, its anatomical and physiological features, and its causative relations, and, further, it requires a knowledge of drugs, their preparation and action Popularly, it consists in the discovery of the cause and nature of disease and the administration of remedies or the prescribing of treatment therefor Prayer for those suffering from disease, or words of encouragement or the teaching that disease will disappear and physical perfections be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and the fixed determination to look on the bright side of life, does not constitute the practice of medicine in the popular sense The term "practice of medicine", as used in the Laws, making it unlawful for any person to engage in the practice of medicine without registering his authority, should be construed in its popular sense" *State* v *Mylod*, 41 L.R A 428 (*Ame*)

Practice of pharmacy. The phrase "practice of pharmacy" means the compounding of prescriptions or of medicinal preparation or of any drug or poison to be used as medicines, or the retailing of any drug or poison.

Practice of surgery. "The practice of medicine is a pursuit very generally known and understood and so also that of surgery. The former includes the application and use of medicine and drugs for the purpose of curing, mitigating, or alleviating bodily diseases, while the functions of the latter are limited to manual operations usually performed by surgical instruments or appliances."

Practice of osteopathy is neither the practice of medicine nor the practice of surgery.

Practicing Dentistry. A dental student who performed dental work without a certificate from the board of dental examiners and received pay therefor, is practicing dentistry."

Every person shall be understood as "practicing dentistry" within the meaning of the act regulating the practice of dentistry, who shall, for fee, salary, or other reward, either to himself or another person, operate upon human teeth, furnish artificial substitutes, or perform those acts, as assistant or principal, usually understood as and called "dental operations."

Practising Barrister. One in actual practice of the law in Courts

Practitioner One who practices any art or procession (as) practising doctor, or practising lawyer

Pradakshanam Arasa pradhakshanam is the ceremony of going round the sacred tree, a custom which is neither unreasonable nor invalid. 143 I.C 880=37 L W 272=1933 Mad 390.

Pradhani tenure A Pradhani tenure is not a statutory tenure, the incidents of any particular tenure must, therefore, be largely the creature of custom or of contract. 62 C L.J. 123

Pradhani village Pradhani rights. *See* 17 Pat. L T 467=163 I C 24=1936 Pat. 508, 15 Pat 644=165 I.C. 378=1936 Pat. 563.

"Praedial conditions" defined. Ben. Act VI, 1908, S. 3 (XIX).

Praedium dominans. The term "praedium dominans" was used in the civil law in reference to services which correspond to our easements, to designate the dominant or ruling estate, or the estate entitled to servitude over another estate.

Praedium serviens The words "praedium serviens" in the civil law, in reference to services which correspond to our easements, were used to designate what was known in our law as the servient estate.

Praescriptio est titulus ex usus et tempore substantiam capiens ab auctoritate legis Prescription is a title derived from use and time, taking substance from the authority of the law.

Praesentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis. The presence of the body cures error in the name the truth of the name cures error of description.

Praesumptio violenta valet in lege (*Jenk. Cent.* 56.) Strong presumption avails in law.

Prairie The word "prairie," as defined by Webster, means an extensive tract of land destitute of trees, covered with coarse grass and usually characterised by a deep fertile soil, a meadow or tract of grass land, especially a so called "natural meadow."

Praja. In Cuttack and Cooch Behar *praja* may mean a cultivator. Elsewhere it means a tenant. A lease created by a *Prajagiri Patta* does not mean that the interest granted by the lease is that of a cultivator. 39 I.C. 934=21 C.W.N. 505.

Prajapala.

Prajapala (*S*) A king, a ruler: a name of the deity Brahma. (*Wil. Gloss*)

Prajapati A great Hindu sage and writer of an important Smriti that bears his name, another name for the deity, Brahma

Prakasa-vibhaga (*S.*) A public partition made in the presence of witnesses. (*Wil Gloss.*)

Pramanika (*S.*) Authoritative, of weight or authority established by proof, true, just, right a person whose opinion is to be respected. a president, a principal, the chief or head of a caste or trade

Pramanikam. (*Tam.*) Truth, faithfulness honesty. (*Wil Gloss*)

Pramanom (*Mal*) *See* Karanom (*Sun Iyer's Malabar Law*)

"Prathigrahithriyamatha." The phrase "*prathigrahithriyamatha*" in Dattaka Mimamsa, S 6, verse 50, is used in the sense of an adoptive mother and not in its etymological sense Simply because the verse uses the word "*Prathigrahithri*" in attempting to exclude the natural ancestors, it cannot be inferred that the receiving mother only can be the adoptive mother and no other. 56 Mad. 759=145 I C 534= 1933 M W N. 1061=38 L.W. 45=A I.R 1933 Mad. 550=65 M L J. 58 (F B),

Pratibhugrahanam (*S*) Acceptance of security by the court. (*Wil. Gloss*)

Pratiloma (*S.*) Against the hair · contrary to the regular course or order, inverse, reverse. (*Wil. Gloss*)

Pratilomaja, (*S.*) Born or begotten in the inverse order of the tribes, as the offspring of a kshatrya male and the brahmin woman or a vaisya female and a sudra father (*Wil. Gloss*)

Pratinidhi (*S.*) A deputy, a representative, a vice-gerent.

Pratishtha (*S.*) Consecration or setting up of an image, or a temple a ceremony performed on the completion of a house before it is inhabited. also purification of reconsecration of an idol, house or temple that has been polluted. (*Wil. Gloss*)

Prayaschitham The word prayaschitham by itself, may not indicate any kind of ex-communication But prayaschitham, for a caste offence as a condition precedent for re-admission into religious or social communion implies provisional ex-communication which is removed when prayaschitham is performed. 33 Mad 67=19 M.L J. 714=6 M L T. 290=3 I.C 955

Pratyavaskanda (*S*) Special plea at law, admission of a fact, but qualifying or explaining it so as to make it no ground of accusation (*Wil Gloss*)

Prayer is "not only supplication but, adoration." (per *Byles, J, Baxter* v. *Langley*, 38. L.J.M.C. 5.)

PRAYER, PETITION, REQUEST, ENTREATY, SUIT. The prayer is made more commonly to the Supreme Being; the petition is made more generally to one's fellow-creatures, we may, however, pray our fellow-creatures, and petition our Creator · the prayer is made for everything which is of the first importance to us as living beings; the petition is made for that which may satisfy our desires.

Precarious.

Petitions and requests are alike made to our fellow-creatures but the former are a public act, the latter are an individual act between men in their private relations the people petition the king or the parliament, the suitor petitions to the Court; a school of boys petition their master. The request may be made in trivial matters; the entreaty is made in matters that deeply interest the feelings. we request a friend to lend us a book, we use every entreaty in order to divert a person from those purpose which we think detrimental. one complies with a request, one yields to entreaties.

Prayer book. A book containing devotional prayers, specifically, the Book of Common Prayer *See* Stephen, Book of Common Prayer, Blunt, Annotated Book of Common Prayer; Phillimore, Eccl. Law, Frere, Principles of Religious Ceremonial, Gee, Elizabethan Settlement of Religion, Report of the Royal Commission on Ecclesiastical Discipline.

Preamble The beginning of a statute is called the preamble, which is a key to the intent of the makers of the Act, and the mischiefs which they would remedy by the same (*Tomlins Law Dic*)

The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in an Act of Parliament can be understood. A preamble may also be used for other reasons to limit the scope of certain expressions, or to explain facts or introduce definitions (*see* Thring, Practical Legislation, Craies on Statute Law, Maxwell, Interpretation of Statutes; Beale, Cardinal Rules of Legal Interpretation. (*Ency. of the Laws of England.*)

OTHER DEFINITIONS A preamble of a statute is a clause introductory to and explanatory of the reasons for the passing of the Act.

A preamble is said to be the key of the statute, to open the minds of makers as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute

Where the enacting part of the statute is clear and unambiguous its scope cannot be controlled by the preamble (31 Punj.L.R. 125=122 I C 226)

The recitals in the preamble to a resolution are no part of the resolution. A preamble may be looked to for aid in interpreting an ambiguity in the resolution, but, if the terms of the resolution are clear, a preamble cannot be allowed to cast a doubt upon the meaning.

Pre-audience. The precedence of being heard, which prevails at the bar according to the rank which counsel respectively hold (3 Black Com., 28).

The King's Premier Serjeant, had pre-audience in all the Courts over all other barristers, including the Attorney General (3 Bl. Com. 28, n)

Precarious. The circumstances of an executor are "precarious" only when his conduct and character present such evidence of improvidence or recklessness in the management of the trust estate, or of his own, as, in the opinion of the prudent and discreet men, endangers its security. Webster illustrates the meaning of "precarious" by a quotation from Rogers, who says, "Temporal prosperity is precarious."

Precarious possession.

Precarious possession. That possession is called "precarious" which one enjoys by the leave of another and during his pleasure. The title which excludes the ownership, such as a lease, is also called "precarious."

Precatory. The term "*precatory*" only has reference to forms of expression (*Lindley, L. J.*, in Re *Williams, William* v *Williams*, (1897) 2 Ch., at p 19) and a precatory trust is one expressed by words of entreaty, recommendation, hope, or desire that the legatee or devisee under a will, or the grantee under a deed, will treat the gift as being for the benefit of other persons, exclusive of or including himself (*Godefroi's Trusts and Trustees*).

Precatory trust The meaning of the word "precatory" according to its ordinary use, does not embrace a command. It means beseeching, suppliant prayerful

"It has long been settled that words of Recommendation, Request, Entreaty, Wish, or Expectation, addressed to a devisee or legatee, will make him a trustee for the person or persons in whose favour such expressions are used" (1 Jarm. 385)

"The words '*Precatory Trust*' are an abominable phrase. They are used as roundabout way of saying that the Court finds that there is a trust although the trust is not expressed as such, but by words of prayer or suggestion, or the like" (per *Chitty, J.*, Re Sanson, 12 Times Rep 142).

"The doctrine of construing expressions of Recommendation, Confidence, Hope, Wish, and Desire, into positive and peremptory commands, is not a little difficult to be maintained upon sound principles of interpretation of the actual intention of the testator."

"That 'recommend' may amount to a command and create a binding trust is certain. It is equally certain that the word if susceptible of a different interpretation. It must depend upon the language of the particular instrument in which this word is found, in which of the two senses it is to be taken" (per *Knight Bruce, V.C.*, *Johnson* v. *Rowlands*, 17 L. J. Ch. 438.)

In *Hill* v. *Hill* (1897) I Q.B 483 Esher, M.R., said, "a Request in its ordinary meaning, is nothing but a request; it does not impose an obligation, although there may be cases in which, under special circumstances, an obligation must be implied from a request."

Precatory words. "Precatory words", as defined by Bouvier, are expressions in a will praying or requesting that a thing shall be done.

Words of recommendation and other words precatory in their nature in a will imply a discretion, as contradistinguished from peremptory orders, and therefore ought to be so construed, unless a different sense is irresistibly forced upon them by the context.

Precedence Priority; Higher or more honourable place.

Precedents. "Authorities to follow in determinations in Courts of Justice. Precedents have always been greatly regarded by the Sages of the Law. The Precedents of the Courts are said to be the laws of the Courts; and the Court will not reverse a judgment, contrary to many Precedents. (4 Rep. 93: Cro Eliz. 65. 2 Lil Abr. 344.) But new Precedents are not considerable; Precedents without judicial decision on argument are of no moment; and an extrajudicial opinion given in or out of our Court, is no good precedent." (*Tomlins Law Dic.*)

Precedent.

Where a certain point of law is not brought to the view of the Court in determining a cause, the decision is not a precedent calling for the same decision in a similar case in which the point is brought before the Court.

PRECEDENT is an adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterward arising or a similar question of law, also a draft or form of a conveyance, settlement, will, pleading, bill, or other legal instrument, which is considered worthy to serve as a pattern for future instruments of the same nature.

Precedent sub silentio. "It is not only from decided cases where the point has been raised upon argument, but also from the long-continued practice of the Courts, without objection made, that we collect rules of laws"

Though the practice of the Courts or forms of pleadings which pass *sub silentio*, do not make a law, yet a constant practice of permitting certain acts to be done in Courts without opposition, is a great evidence of law."

Precept. Rule of conduct or action; Maxims (as) Precepts of law.

Precinct The term "precinct", in its general sense, indicates any district marked out and defined.

The term "precinct", as used in the Election Act, is construed to mean and include any precinct, ward or other division of territory in any city governed by the Act, created, designed, and made by ordinances for election purposes.

The words "precinct", "township" and "school district", in an act relative to taxation are held not to include municipal corporations.

Precincts of prison. The "precincts of the prison" within the meaning of a statutory provision that the warden and deputy warden of the state prison may serve legal processes within the precincts of the prison, embraces not only the prison building, but the grounds connected therewith.

"Precious stone" defined. Reg, 12, 1887, S. 2 (1).

"Precious stone" or "stone" means ruby, spinel or sapphire, and includes any other stone which the Local Government may, by notification in the official Gazette, declare to be a precious stone for the purpose of the Burma Ruby Regulation. Bur. Regn. XII of 1887 (U. B. Rubies), S. 2, cl. 1.

Precious stone.

Articles such as paper cutters, paper weights, knife handles and pen or pencil holders, made wholly or chiefly of agate or onyx are dutiable by similitude to precious stones. (121 Fed. 152 Ame.)

Precise.

"PRECIOUS STONES OF ALL KINDS, CUT BUT NOT SET" as used in Tariff Act, includes diamonds cut but not set.

Precise. "CLEAR PRECISE, AND INDUBITABLE EVIDENCE" within the meaning of the rule that a parol exchange of land must be established by clear proof and indubitable evidence, means no more than that there must be precision in the terms of the agreement set up, and that the evidence to support it must be of a high order, carrying conviction, to a moral certainty, of its truth.

"Precluded." The word 'precluded', in cl (3) of S. 18 of Bengal Regn II of 1803 must necessarily be understood as referring to some time or period It does not mean 'precluded" during the whole of the term of 12 years, or at its commencement, but means in effect, "precluded" during any part of it. 7 M I A 104=4 W.R. 111=1 Suth. 287=1 Sar 600.

Pre-condemn Decide before hearing the evidence.

Predecessor One who has preceded another The term "predecessor" is defined in the English Succ. Act as denoting the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived. See *A G* v *Floyer*, (1862) 31 L J Ex. 404, *A G* v *Braybrooke*, 1860, 31 L J Ex 177, *Charlton* v *A G*, (1879) 42 L J Ex 86

In the common acceptation 'predecessor" means one who goes before or precedes another in a given state, position or office, and does not necessarily express any relation of legal privity.

Predecessor-in-interest. 31 L.W 210=1930 M W N. 106.

Predestination. Gods appointment beforehand—of those who shall be saved.

Predominant. The term "predominant" in its natural and ordinary signification, is understood to be something greater or superior in power and influence to others with which it is connected or compared.

"Pre-emption" defined *See* Right of pre-emption.

PRE EMPTION The right of first buying of a thing (*Tomlins Law Dic*)

The word "pre-emption is derived from "prae emptio" and is defined as the act of buying before another. (*Imperial Dictionary.*); the act or right of purchasing before others

The right of pre-emption is the right of purchasing property before or in preference to other persons (*Sweet, Law Dict.*) An option to purchase within a given time, or at any time, without reference to any intended sale to a third party, is included under the same name. (See *Dickinson* v. *Dodes*, (1876) 2 Ch D. 463.)

OTHER DEFINITIONS. The right of pre-emption is the right to enter lands at the minimum price, in preference to any other person, if all the requirements of law are complied with.

The act or right of purchasing in preference to others. In *international law* the term pre-emption is applied to the purchasing of neutral contraband goods in lieu of confiscation. (*Ency. of Laws of England.*)

Preference voluntary.

UNDER MAHOMEDAN LAW a person's heir have as such no vested interest or share in his property during his lifetime, and cannot be regarded as his co sharers or co-parceners in respect of his property, so as to be entitled to claim pre-emption in case of a sale by him They must be regarded as "strangers" and a sale to any one of them would infringe the right of pre-emption *Fida Ali* v. *Musaffar Ali*, 5 A. 65, 2 A.W.N 175.

Pre-emptor A pre-emptor is one who acquires a right to purchase land

Pre-existing debt The words "pre-existing debt' in their natural meaning, include all debts previously contracted, whether they have become payable or not

Prefect. The chief administrative officer of a State Department in France.

Prefects were functionaries well known in the Roman Law, and under the Empire were clothed with extensive powers, both judicial and administrative With the decline of the Empire they seem to have lost their importance and to have finally disappeared, but after remaining in abeyance for some hundreds of years after its fall the office was revived in the eighth year of the French Republic (1800) and bestowed upon the heads of the departments into which the country had been divided by the National Assembly in 1790. In the performance of their duties they were aided by a Council of prefecture. The prefect was charged with the administration of local affairs, and was practically the representative of the Central Government in public matters The title was carried into several states, whose legislation was framed upon the model of the Code Napoleon.

Preference "Preference" means the act of prefering one thing above another, estimation of one thing more than another; choice of one thing rather than another.

"PREFERENCE" is the expression of a motive or desire on the part of the directors of a Corporation to favor some creditors over others, to put them, as the word implies, a head in the race for assets.

The preference of a creditor is not the payment of one in the ordinary course of business, or under threats or suits but selecting one as a relation or friend, or settling with him before due, or on the eve of bankruptcy, when not pushed by him.

The commen definition of "preference" as found in law dictionaries, is the paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claims, to the exclusion of the rest.

Preference bonds. Bonds issued at a fixed rate of interest, and payable before dividends are declared on ordinary shares.

Preference shares and preference stock, are shares of stock entitled to their fixed dividends before any division of profits can be made amongst the holders of ordinary shares or stock

"Preference voluntary preference by debtor." A mere payment of a debt by a debtor in imminent expectation of bankruptcy is not by itself sufficient to prove the intention to give preference. The word "preference" involves and imports a free choice and it is necessary to prove that the debtor's act was "voluntary" and not due to extraneous influence

Preference voluntary

such as pressure or threats from creditors. (130 P. R. 1919, *Foll*) 110 I C 824=A.I R. 1928 Lah. 744, 19 C.W.N. 157=29 I.C. 128.

"PREFERENCE STOCK" is understood to designate such stock as is entitled to dividends from the income or earnings of the corporation before any other dividends can be paid Preferred stock takes a multiplicity of forms, according to the desire and ingenuity of the shareholders and the necessity of the corporation It represents *pro tanto* the capital of the company, and has about it no elements or rights other than those that are conferred on it by the statute or contract, to the authority of which it owes its existence In all other respects the preferred stockholder is upon the same footing as the common stockholder He is not a creditor of the company.

Preferential payments (*In Insolvency*) Payments made before the claims of ordinary creditors are considered.

Preferred It means that the thing to which it is attached, whatever that may be, has some advantage over another thing of the same character, which, but for this advantage, would be like the other.

Preferred dividend A preferred dividend is the fund paid to one class of shareholders in priority to that to be paid to another class.

The term "preferred dividend" when used in reference to a corporation, means a dividend "which is paid to one class of shareholders in priority to that paid to another"

Preferred stock "Preferred stock" is stock having a preference.

Pregnant "Pregnant" is defined by Webster as "being with young", preparing to bringforth a child

Pregnant with quick child A woman is "pregnant with a quick child" when it has been "quickened" or in other words so moved in the mother's womb that she has felt the movement

Pre-judge. Pass judgment before hearing evidence.

Prejudice. Prejudice is prepossession, judgment formed beforehand without examination *See* 4 L B R. 247=8 Cr L J 65.

Webster defines "prejudice" as "An opinion or decision of mind formed without due examination, prejudgment, a bias or leaning toward one side or another of a question, from other considerations than those belonging to it; an unreasonable predilection or prepossession for or against anything, especially an opinion or leaning adverse to anything, formed without proper grounds or before sufficient knowledge."

"PREJUDICE" signifies a prejudgment, strictly speaking, but as generally understood imports some ill will, as well as preconceived opinion.

Prejudice means a prejudging of a case from any cause. It means settled and fixed opinion, either as to the guilt or innocence of an accused, no matter from what cause that opinion is derived or upon what it is based, whether from rumour, hearsay, newspaper report, or evidence upon a former trial, or from anything else, if it is fixed and settled.

Prejudice, without. When statements are made or letters written with the words "without prejudice" affixed, they cannot be afterwards used as evidence, should litigation follow.

"Prejudicially affected." The words "prejudicially affected the disposal of the suit on the merits" in Suits Valution Act, S. 11, should be read with S 578, C P Code, 1882, and must be construed in the same way as they would be construed with reference to any error, defect, or irregularity contemplated by that section 20 M.L J 726=8 M L T. 404=8 I.C. 545

Prelector. A reader or lecturer; a lecturer, as in a university In the cathedral of Hereford, one of the prebendaries is elected to the office of prelector, to hold it till he succeeds to a residentiary canonry His duty is to preach on Tuesdays, or else on any holy day which may occur during the week for a considerable portion of the year (*Hook's Ch. Dict.*)

Preliminary. Introductory, initiatory; preceding, temporary, provisional—as preliminary examination, injunction, articles of peace, etc.

Preliminary examination (*in criminal cases*). The object of a preliminary examination is twofold. (1) To inquire touching the commission of crime and the accused's connection with it, (2) to perpetuate testimony. The state has an interest in both.

A preliminary hearing is in no sense a trial in which accused's right in respect to his guilt or innocence are adjudged, determined, or prejudiced, whether the hearing results in a discharge of the accused person or in holding him for appearance at the proper Court to answer the accusations made against him The examination is to ascertain *prima facie*, whether the crime charged has been committed, and, if such is found to be the case, to enforce his presence at the proper Court to answer the charge.

Preliminary injunction A "preliminary injunction" or, as it is sometimes called "injunction pendente lite", is a provisional remedy, granted before the hearing on the merits for the purpose of preventing the perpetration of wrong or the doing of any act whereby the rights in controversy may be materially injured or endangered before the final adjudication; and its purpose is to preserve the subject of controversy until an opportunity is afforded for a full and deliberate investigation.

The sole object of a preliminary injunction is to preserve the subject of the controversy in a condition in which it is when the order is made It cannot be used to take property from the possession of one and put it in the possession of another.

A preliminary injunction is commonly spoken of as a *temporary injunction* and is granted pending a hearing on the merits, generally upon the plaintiff's entering into bond, with surety, conditional and payable as required by law.

Preliminary objection. A preliminary objection is one that challenges the competence of a Court to hear and decide a particular cause before it. 156 I.

Preliminary point.

C. 1088=1935 A.W.R. 559=1935 A.L.J. 527=A.I.R. 1935 All. 310.

Preliminary point. The expression "preliminary point" in O.41, R 23, C P. Code (1908) is not confined to such legal points only as may be pleaded in bar of suit, but comprehends all such points as may have prevented the Court from disposing of the case on the merits, whether such points are pure questions of law or pure questions of fact (9 A 30 N and 16 M 207 *F.*) 27 All 691=(1905) A.W N 159=2 A L J 685.

The expression "*prelimmary point*" is not confined to such legal points only as may be pleaded in bar of suit but comprehended all such points as may have prevented the Court disposing of the case on the merits, whether such points are pure questions of law or pure questions of fact. There are many instances of such point such as, that a suit is barred by limitation, that the Court has no jurisdiction under the Act, that evidence tendered was not admissible that on the plaintiff's evidence there is no evidence for the defendant to answer, in a libel suit that there is no proof of publication 31 M L T 208 (H C)=45 M 900=16 L W. 425=(1922) M W N 589=69 I C 828=A I R. 1922 Mad. 505=43 M L J 354 (F B)

Where the Court of first hearing appears to have decided every issue, the fact that its decision on a preliminary point covered the decision on the remaining points does not justify its being held that the decision was only on a preliminary point 74 I C. 582 =A I R. 1924 Oudh 97.

Prelude. An introductory performance, action or event

PRELUDE, PREFACE. The idea of a preparatory introduction is included in both these terms, but the former consists of actions, the latter of words, the throwing of stones and breaking of windows is the prelude on the part of a mob to a general riot, an apology for one's ill-behaviour is sometimes the preface to soliciting a remission of punishment.

Premature Happening, or being performed before proper or usual or appointed time

Premature labor. Premature labor is, technically speaking, the delivery of the ovum or embryo by a female within a short time after six months has elapsed from the date of conception.

Premeditate "Premeditated, wilful, malicious and deliberate" denote the intent with which killing must be done to make it murder in the first degree Moreover they denote, not only the moral impulse, but peculiarly the mental process through which the crime is conceived and the act resolved upon.

Premeditated design "A premeditated design to effect the death" of a person means that there was a design to kill deceased fully formed in the mind of the slayer before the killing was done, and that such design had been thought over and meditated on, before the fatal act was committed, any length of time, no matter how short

"PREMEDITATED DESIGN" as used in a statutory definition of murder, means the same as "malice aforethought" in the common law definition.

"Premeditated design" as used in an Act defining murder as killing, perpetrated on a person with a

Premises

premeditated design to effect his death, is not an intention formed on the instant. The words "premeditated" and "design" both import forethought, careful reflection, and deliberately arranged purpose; ideas all involving in their structure essential elements of time—that is, a reasonable time, time for reflection, time to survey the contemplated deed in all its bearings and probable results, and to contrive and arrange, if so decided, the means and method and occasion of its deadly accomplishment.

An intention to kill, formed on the instant of striking the fatal blow, is not a "premeditated design" to commit murder.

"Premeditated design" as used in the statute defining murder in the first degree, means a previously formed intention to kill.

Premeditated killing A premeditated killing is murder in the first degree, and can be nothing else because it implies the lying in wait and malice aforethought and settled design

Premeditated malice The words "premeditated malice" in an information for assault and battery, as descriptive of the manner in which the alleged assault and battery was perpetrated, carry with them an import that it was done in either a rude manner, or in an insolent manner, or in an angry manner, and, if not, that it was done in all of them. If it was done with premeditated malice, it was done in angry manner, and more because malice is defined to mean enmity of heart, malevolence, ill-will, a spirit desiring harm, or misfortune to another, a disposition to injure others, unprovoked malignity of spirit

PREMEDITATED MALICE is found where the intention to unlawfully take life is deliberately formed in the mind, and there is determination meditated upon before the fatal stroke is given

Premeditatedly. Premeditatedly means thought of beforehand, for any length of time, however short

"PREMEDITATEDLY" means planned, contrived or schemed beforehand.

The terms "malice aforethought" and "premeditation" as used in an indictment for murder in the first degree, are synonymous.

Premeditation. "Premeditation" intent before the act, but not necessarily existing any extended time before the act.

By the term "premeditation," or "premeditated" is meant thought of beforehand for any length of time, however short

"Premises" defined. Ben Act 1, 1887, S. 2.

PREMISES. "Premises" in an instrument of writing, implies a reference to previous matter contained therein and concerning which something is proposed.

The strict legal sense of the word 'premises' is that which is "coming before" *i.e., praemissa* of the document or deed including the word. 34 Bom. 593 =12 Bom L.R. 669=11 Cr.L J. 544=7 I C. 935.

Premises

"The technical meaning of the word 'premises' in a deed is all that precedes the habendum."

The premises of a deed are all the foreparts of the deed before the Habendum. (*Touch.* 75 2 Bl. Com. 298)

The word "*premises*" in fact signifies what has gone before (*Beacon Assrce.* v. *Gibb*, 1 Moore P.C.N.S. 73)

"Premises" means that which is before introduction, statements previously made As used in a bond providing that "in consideration of the premises and of the issuing of said restraining order," etc, it will be held to mean that the issuing of the restraining order was not the only consideration for the bond.

The word "premises' is more comprehensive in its meaning than the words "house," "outhouse", or 'other building," and includes such latter words

Premises includes land and everything appurtenant thereto.

OTHFR DEFINITIONS "Premises" is commonly used as comprising land, houses and other matter Either "tenements" or "premises" will be sufficient to include lands.

The words "land", "real estate" and "premises," when used in matters relating to conveyances of real estate, or in any instrument relating to real property, are synonyms, and shall be deemed to mean the same thing, and, unless otherwise qualified, to include lands, tenements and hereditaments.

"Premises" does not include, and is never used to designate, personal property It is used both in law and in common speech to indicate lands and tenements.

"PREMISES" includes a Pleasure Garden occupied with a dwelling house (*Bristol W.W. Co.* v. *Uren*, 54 L.J.M C 97)

"PREMISES" in popular language, frequently means, Buildings. (*Beacon Assrce.* v *Gibb*, 1 Moore P.C N. S. 97) *See also* 4 Bom 168 (F B)

The popular acceptation of the word "premises," according to Sweet's Law Dict, and Wharton's Law Lex,, is that it includes land The same definition is given in Johnson's Dictionary. 7 I C 935= 12 Bom L R. 669.

A WORKSHOP is not within the meaning of the word "premises" as used in the Calcutta Rent Act The mere fact that the Engineer of the Company had a retiring room, or that a room was used for the purpose of an office connected with the workshop does not bring the case within the word "premises" as used in the Rent Act. 68 I C 907=26 C.W.N. 102= A I.R. 1921 Cal. 470.

"PREMISES" INTENDED FOR HUMAN HABITATION in S. 271 of the Calcutta Municipal Act mean structures or buildings on the land and not the land itself The requisition under S. 271 is therefore to be made on the owner of the structures erected upon the land and not on the owner of the land itself, where the land and the structures belong to different persons 165 I C. 130=37 Cr L J. 1087=40 C W.N. 797, *See also* 3 Bom.L.R. 436.

Preponderance

PREMISES OF A DEED is that part of a deed that sets forth the numbers and names of the parties, recitals necessary to explain, the transaction, the consideration, and the certainty of the grantor and the grantee in the grant.

"Premium" defined. Act 4, 1882, S. 105.

PREMIUM. A consideration; something given to invite a loan or bargain, as the annual payment upon insurances, a fee paid for the privilege of being taught a trade or profession, the consideration paid to the assignor by the assignee of a lease or to the transferor by the transferee of shares or stock, etc. A prescribed periodical (usually annual) payment on a policy of insurance; the advance in price of stock or shares above par value.

PREMIUM. A reward Among merchants it is used for the money the insured gives the insurer for insuring the safe return of any ship or merchandise, (*Tomlins Law Dic*)

"Premium", ordinarily means, increased value; it is also used to describe a Bonus on a Life Policy. (*See Barrow* v. *Methold*, 3 W.R. Eng. 629.)

The definition of "premium" as used in law and the business of insurance is "the consideration for a contract of insurance."

Premium (in stock exchange.) In stock broking, premium is the value above the original cost or price, as of shares or stock, as opposed to discount, which is the value below the original cost.

AT A PREMIUM Above par, at more than the face value or nominal value.

Prentice. (*Arch.*) Apprentice.

Pre-occupation Occupation of a place beforehand—especially as a bar to another's occupying it.

Prepay station The expression "prepay station" as used with respect to common carriers, is one at which the carrier delivers freight to the consignees directly and without the intervention of a local agent, and to which consignments are accepted alone upon the condition that all charges for transportation be prepaid by the shippers.

Preponderance. The term "PREPONDERANCE OF EVIDENCE" generally signifies that which satisfies the conscience and carries conviction to an intelligent mind

PREPONDERANCE of evidence means to outweigh; to weigh more. A clear preponderance may mean that which may be seen, is discernible, and may be appreciated and understood, but it may also convey the idea of certainty beyond doubt.

By preponderance of evidence is not meant a preponderance in point of numbers of witnesses, but a preponderance of facts and circumstances that are convincing to the jury.

By "PREPONDERANCE OF PROOF" is meant such proof as satisfies the jury that a certain fact is true, rather than the reverse.

In civil cases it is necessary that plaintiff's case be established by a "preponderance of proof" a term

Prerogative.

which means that plaintiff must produce evidence which carries conviction to the human mind; a process which in its own peculiar manner dispels doubt.

Prerogative The word "prerogative" properly implies sovereign right Jacob defines it as that power, pre-eminence, or privilege which the king hath and claimeth over and beyond other persons and above the ordinary course of the common law in right of his crown.

PREROGATIVE is derived from two words which mean "to ask or demand beforehand," is denominated as the most excellent part of the crown, "because though an Act hath passed both the houses of the lords and commons in parliament yet before it be a law, the royal assent must be asked or demanded and obtained, and this is the proper sense of the word But legally, it extends to all powers, pre-eminences, and privileges, which the law giveth to the Crown." (Co. Litt. 90b)

PREROGATIVE is a word of large extent including all the rights which, by Law, the king hath as Chief of the Kingdom; and as intrusted, with the execution of the Laws. (*Tomlins Law Dic*)

Prerogative Courts Distinct tribunals for the establishment of wills and administration of the assets of men dying either with or without wills are variously called "prerogative courts," "probate Courts", "surrogate Courts" and "Orphan's Courts."

Prerogative legislation is a term applied to that legislative power which is in the Crown alone. (*Ency. of the Laws of England.*)

At present this power is in practice almost exclusively confined to the regulation of the services of the Crown and of certain ceremonial matters. But there is apart from, though in many cases superseded by, and in nearly all controlled by, statute, an inherent jurisdiction in a Court to regulate its procedure, and such regulation is a form of delegated prerogative legislation. (*Chitty Prerogative*)

Prerogative of mercy. *See* 39 P.L.R. 394=171 I.C. 954=A.I.R. 1937 Lah. 689.

Prerogative writs. Prerogative writs are privileges of an extraordinary kind granted by the Court in certain cases, but never as a matter of right; they being a direct intervention of the Government with the liberty or property of the subject.

By the phrase "*prerogative writ*" is meant a writ issued not as an ordinary writ of strict right, but at the discretion of the sovereign acting through that Court in which the sovereign is supposed to be personally present. 10 Pat. 218=129 I.C. 5 9=11 P.L.T. 839=1930 Pat. 538 (F.B.).

Presbyterian. A dissenter from the church. (*Tomlins Law Dic.*)

"Prescribed" defined. (*See also* Manner prescribed) 44-5 V. c. 58, S. 190 (32); 52 V. c. 10, S. 4 (add. 7 Edw 7, c. 25, S. 1) 56 V. c. 5, S. 29; Act 5, 1869, Pt I, cl. (*e*) (2); Act 6, 1884, S. 5 (8); Act 7, 1884, S. 3 (5); Act 8, 1885, S. 3 (15); Act 2, 1886, S. 3 (3); Act 6, 1886, S. 3; Act 11, 1886, S. 3 (15); Act 13, 1886, S. 3 (2); Act 22, 1886, S. 3 (13); Act 14, 1887, S. 2 (1) (j): Act 8, 1890, S. 4 (8); Act 14, 1895, S. 5 (5); Act 16, 1903, S. 2 (*e*); Act 2, 1907, S. 2 (*d*); Bom Act 1, 1889, S. 4 (*b*), Reg, 1, 1886, S. 3 (*l*), Reg 5, 1886, S. 2 (9); Reg. 2, 1907, S. 2 (*e*); Reg. 5, 1910, S, 2 (*ix*).

Prescribe. "To prescribe is to lay down authoritatively for direction, to give as a guide, direction, or rule of action, to impose as peremptory order; to direct."

"Prescribed", as used in an Act, means prescribed by regulations or rules made by competent authorities under that Act.

"PRESCRIBED" in any Act means prescribed by rules made under that particular Act.

"PRESCRIBED" means prescribed from time to time by the Local Government by notification in the official Gazette. Ben. Act VIII of 1885 (Tenancy), S. 3 (15).

"All laws should be made to commence *in futuro*, and be notified before their commencement; which is implied in the term' 'prescribed.'" (1 Bl. Com. 46.)

"PRESCRIBE" AND "ESTABLISH" are often used to express the same thing.

The distinction between the words "DETERMINE" AND "PRESCRIBE" is far from clear. Mr Webster defines "prescribe" thus: "To set down authoritatively; to order, to direct, to dictate; to appoint." He defines "determine" thus "to fix permanently; to settle, to adjust" "To set down authoritatively" and "to fix permanently", or "to settle," do not admit of a wide distinction (*Ame. Words and Phrases.*)

"Prescribed area" defined. Bom Act 5, 1878, S. 18-A (2)

"Prescribed day" defined. Act 1, 1883, S. 24 (9); Act 20, 1883, S 3 (6).

"Prescribed limit" defined. Bom. Act 5, 1878, S. 18-A (2).

Prescription. A title acquired by use and time, and allowed by Law; as when a man claims any thing, because he, his ancestors, or they whose estate he hath, have had possession for the period prescribed by law (*Tomlins Law Dic.*); Lim. Act S. 26; Easements Act, S. 15.

Prescription is a manner of acquiring the ownership of property, or discharging debts by the effect of time, and under the conditions regulated by law

At common law, *prescription* is the mode of acquiring title by immemorial or long continued enjoyment; a mode of acquiring real property, when a man could show no other title to what he claimed than that he and those under whom he claimed has immediately used to enjoy it, the manner of acquiring property by a long, honest, and uninterrupted possession or the use during the time required by law; a title acquired by possession had during the time and in the manner fixed by law; a title acquired by use and time, and allowed by law; a title, the validity of which depends upon continual and peaceable usage from time whereof memory of man is not to the contrary, the prescribing for title. *See* Gale on Easements; Goddard on Easements; Herbert's History of the Law of Prescription in England; Carson's Real Property Statutes; Carson's Prescription and Custom.)

Prescription

PRESCRIPTION AND GRANT. The definition of "prescription" is "a title acquired by use and time and allowed by law." Three things are necessary to establish a right by prescription (1) Use and occupation or enjoyment, (2) the identity of the thing enjoyed, and (3) that it should be adverse to the rights of some other person. A title by prescription differs from a title by grant in this That use and occupation substituted in the place of a grant, for prescription always supposes a grant to have existed, and to be lost or destroyed by time or accident.

Prescription. (*in Medicine*) A prescription is a written medical recipe.

The word "prescription" means, in medicine, a statement usually written of the medicines or remedies to be used by a patient and the manner of using them.

Prescriptions are medical directions for animals as well as human beings, and includes a recipe or formulae for the treatment of horses, whether it proceeds from a professional source, or only from a common person.

"Prescriptive right" defined Act 5, 1882, S. 1.

CUSTOMARY AND PRESCRIPTIVE RIGHTS—DISTINCTION BETWEEN. *See* 20 I C. 467.

Presence. The phrase "in his *presence*" in the statute providing that a peace officer may make an arrest without a warrant when a public offence is committed in his presence, means in the sight of, or that the act is done in such a manner that the officer can detect it by sight or hearing, as the act of the accused. It does not apply to a case when he cannot detect the act, but has merely a suspicion

A statute requiring wills to be signed in the presence of the witnesses is satisfied if the subscribing witnesses were so situated that they could and would naturally see the signing

One may be present in the eye of the law, though not actually present, as if several confederate to do a deed of death and one keeps guard at the door while the other inflicts the wound, the one on guard is present, in legal contemplation, participating in the act done, and is equally responsible with those actually present, doing the act. (*See* Penal Code, S. 114.)

Present indictment To "*present an indictment*" means to lay before a Court, to indict, to give notice officially of a crime or offence.

"Present right of appeal" The "Present right of appeal" under Punjab Courts (Amendment) Act (I of 1912), S 6—which has accrued to any party entails the existence of a decree *See* 256 P.W.R. 1912=122 P R. 1912=16 I C. 983 (984)

Present time "Present time" usually means a period of time of some appreciable duration, and generally of some considerable duration. It may mean a day, a year, or a century. It generally means some period of time within which certain transactions are to take place.

Present value A term used in discounting, and referring to a simple deduction of interest from the face value of a bill.

Preserve

The terms 'Present value' and "original cost" are not equivalent.

Presents A word in a deed signifying the deed itself, which is expressed by the phrase "these presents." It is especially used in a deed-poll, which cannot be described as "this indenture." (*Ency. of the Laws of England*)

Presentation. "The word 'Presentation' may have many meanings according to the context or as circumstances require, and it may mean either 'showing' or 'delivering over'" (per *Jervis, C.J., Bartlett* v. *Holmes*, 22 L.J C.P. 185; 13 C B 630)

"PRESENTATION" as used in a delivery order stating that certain goods were held, which would be delivered on the presentation of the order duly indorsed, meant delivering up the order, and not merely showing the same

In ecclesiastical law, "*Presentation* is the act of the patron offering his clock to the bishop of that diocese, to be instituted in such a church (*Co Litt.* 120a, *Phil Ecc. Law*, 277.)

"Presentment" defined. *See* After sight, At sight, On presentment.

PRESENTMENT. "'Presentment' is of two significations, one is presentment to a Church, which when any man which hath right to give any Benefice Spiritual and nameth the person to the Bishop to whom he will give it and maketh a writing to the Bishop for him, that is a Presentation, or Presentment The other is a Presentment or Information by a Jury in a Court, before any officer which hath authority to punish any offence done contrary to the law" (*Termes de la Ley*)

The word "presentment" as employed in the statutes providing for the presentment of claims against an estate to the executor or administrator, has a technical signification, and necessarily includes every ingredient which the law has fixed to it in the particular connection in which it stands. An executor or administrator is the representative of an interest which the legislature has guarded with solicitude, and one seeking to bind the estate must show a substantial compliance with each requirement of the statute on the subject of the presentment of claims.

PRESENTMENT DIFFERS FROM AN INDICTMENT in that it wants technical form, and is usually found by the grand jurors on their own knowledge or on evidence before them, without having any bill from the public prosecutor. It is an informal accusation, to be regarded in the light of instructions on which the indictment may be framed. This form of accusation has, however, fallen into disuse

Presentment for payment (*of bill of exchange.*) to be sufficient, must be made (1) by the holder, or by some person authorised to receive payment on his behalf, (2) at a reasonable hour on a business day; (3) at a proper place; (4) to the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made;

Presentment of bill. Presenting a bill of exchange for acceptance or payment.

Preserve. The word "preserve" means to keep; to secure; to uphold; and when used in a statute

Preserve order.

intended to preserve the public peace it means to secure that quiet order and freedom from agitation or disturbance which is guaranteed by the laws.

"**Preserve order**" To "preserve order" means to keep or secure the "proper state or condition" or established mode of proceeding."

Preside (*in Court.*) When a judge "holds" court he directs, controls, and governs it as the chief officer, and this is the extent of the meaning of the word "preside."

"**Presidency**" defined. Act 45, 1860, s 48, Act 17, 1864, s. 34 (*v*) (ad.; Act 2, 1890, s 7), Act 2, 1874 s. 68 (*v*) (ad. Act 8, 1888, s 2 (2).

The word "Presidency" denotes the territories subject to the Government of a Presidency. Penal Code, S. 18.

Presidency Banks "*Presidency Banks*" means the Bank of Bengal, the Bank of Madras, and the Bank of Bombay as constituted by the Presidency Banks Act, 1876, and a "Presidency Bank" means any one of these Banks; Act XLVII of 1920 (Imperial Bank of India) s 2, cl. (*i*).

"**Presidency magistrate**" defined. Act 5, 1898, s. 18.

"**Presidency of Bengal**" defined. Act 2, 1874, s. 3, Act 2, 1913, s 2 (5).

"**Presidency of Bombay**" defined Act 2, 1874, s. 3; Act 11, 1876, s 3, Bom. Act 1, 1904, s. 3 (7)

"PRESIDENCY OF BOMBAY" includes the territories for the time being under the government of the Governor of Bombay in Council, the Province of British Baluchistan, and such of the territories of any Native State as the Governor-General in Council may by notification in the Gazette of India direct. Act II of 1913 (Official Trustees) s. 2, cl 5 (*b*).

"**Presidency of Fort William**" defined Act 11 1876, s. 3.

"**Presidency of Fort St. George**" defined. Act 11, 1876, s. 3.

"**Presidency of Madras**" defined Act 2, 1874, s. 3, Mad. Act 1, 1891, s. 3 (24).

"PRESIDENCY OF MADRAS" includes the territories for the time being under the government of the Governor of Fort St George in Council, the Province of Coorg, and such of the territories of any Native State as the Governor-General in Council may by notification in the Gazette of India direct. Act II of 1913 (Official Trustees) s. 2, cl. 5 (*c*).

"**Presidency-town**" defined. (*See also* Calcutta, City of Bombay, City of Madras.) Act 2, 1874, Ss. 3, 68 (*v*), Act 10, 1897, s. 3 (41), Mad. Act 1, 1891, s. 3 (25).

"PRESIDENCY-TOWN" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William Madras or Bombay, as the case may be. Act X of 1897 (General Clauses), s. 3 (41).

"**President**" defined. Mad. Act 3, 1904, s. 3 (25).

PRESIDENT. The president of a business corporation is its chief executive officer. He may, without express authority from the board of directors, perform all acts of an ordinary nature which by usage or necessity are incident to his office, and may generally bind the corporation by contracts in matters arising in the usual course of business.

Presiding judge. The term "presiding judge" is equivalent to that of "presiding Magistrate" or "judge" conducing proceedings in court

Press Printing press, News papers, the power exerted by newspapers on the public mind

FREEDOM OF THE PRESS, Freedom to print anything without censorship

HAVE A GOOD PRESS. Favourably spoken of in the newspapers (as) the government of the day had a good press

PRESS-CAMPAIGN News paper propaganda.

PRESS GALARY. Place for newspaper reporters in a meeting or Legislative Assembly etc.

PRESS GANG Body of men employed to press men for the navy

PRESS-REPORTER Reporter of current news to the press and newspapers.

Pressing. Exerting pressure, being insistent (as) pressing for debt.

PRESSING, URGENT, IMPORTUNATE. In regard to pressing it is said either of one's demands, one's requests, or one's exhortations, uegent is said of one's solicitations or entreaties, importunate is said of one's begging or applying for a thing. The pressing has more of violence in it, it is supported by force and authority, it is employed in matters of right, the urgent makes an appeal to one's feelings; it is more persuasive, and is employed in matters of favour, the importunate has some of the force, but none of the authority or obligation of the pressing it is employed in matters of personal gratification. We speak of a pressing necessity, an urgent case. A creditor will be pressing for his money when he fears to lose it.

"**Presume**" defined, *See* May presume, Shall presume, Presumption.

Presumption (*Presumptio.*) A supposition, opinion, or belief previously formed. (*Tomlins Law Dic.*)

"'PRESUMPTION' is the evidence of things not seen, where, from an apparent effect, you may infer a probable cause" (*per* Counsel, arg, *Fanshaw* v. *Rotherham*, 1 Ellen, 284)

"Though Presumption is what may be doubted of, yet it shall be accounted truth, if the contrary be not proved." (*Tomlins Law Dic.*)

OTHER DEFINITIONS. A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances, and stands as establishing facts until overcome by contrary proof.

"A *Presumption* is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore, that a

Presumption.

presumption of any fact is an inference of that fact from others that are known (*per* Abbott, C J, *R* v *Burdett*, 4 B. & Ald, 161)

The word 'Presumption,' inherently imports an act of reasoning—a conclusion of the judgment, and it is applied to denote such facts or moral phenomena, as from experience we know to be invariably, or commonly, connected with some other related facts" (*Wills on Circumstantial Evidence.*)

A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases The slightest presumption is of the nature of probability, and there are almost infinite shades from slight probability to the highest moral certainty A presumption, strictly speaking, results from a previously known and ascertained connection between the presumed fact and the fact from which the inference is made.

Presumption of fact. "A presumption of fact is an inference of the existence of a certain fact arising from its necessary and usual connection with other facts which are known."

A presumption of fact is an inference which a reasonable man would draw from certain facts which have been proved. Its basis is in logic, and its source is probability

A presumption of fact is a logical argument from a fact to a fact; or, as the distinction is sometimes put, it is an argument which infers a fact otherwise doubtful from a fact which is proved. Hence a presumption of fact, to be valid, must rest on a fact in proof.

Presumption of innocence. Every accused is to be presumed innocent until proved to be guilty.

The legal presumption of innocence which arises in favour of the accused on the trial of every criminal case is to be regarded by the jury as a matter of evidence in favour of the accused, introduced by the law in his behalf.

Presumption of law. A presumption of law "is a presumption artificially made by annexing a rule at law or legal incident to a particular fact proved"

A presumption of law is a judicial postulate that a particular incident is universally assignable to a particular subject.

A presumption of law is conclusive, and is an inference which the Court will draw from the proof, which no evidence, however strong, will be permitted to overturn.

Legal presumptions are artificial rules established by law on consideration of public policy or public convenience, against which no evidence is received.

Presumptions of law are usually founded upon reasons of public policy and social convenience and safety, which are warranted by the legal experience of Courts in administering justice Some of these presumptions have become established and conclusive rules of law, while others are only *prima facie* evidence, and may be rebutted.

Presumption of legal knowledge. It is often said that the "presumption of legal knowledge" or knowledge of the laws of the state in every citizen is a positive rule of law, and applies to all cases where

Presumptive heir.

acts are knowingly done which are expressly forbidden by law, and gives rise to a conclusive presumption or criminal intent. If the word "conclusive", in this connection, means "irrebuttable" then such presumption is very unreasonable when applied to all criminal charges, and is not justified to that extent. "No man knows all the law Judges differ in their legal decisions, and lawyers are continually discussing in the Courts doubtful and controverted questions of law The presumption of legal knowledge is a general rule, and not accurately defined as to the extent of its application. I do not regard it as a positive rule of law, but as a very strong presumption, subject to some reasonable qualifications, in criminal trials where the life and liberty of the citizen are involved. In such cases the law should be literally construed, so as to give effect to all of its beneficient provisions, to avoid conflict of rules of law and secure the citizen against anything that would be unjust or oppressive The beneficient presumption of innocence, and the doctrine of a reasonable doubt, so important in a trial by jury would be of little benefit to a person on trial for crime, if the mere proof of an unlawful act, knowingly committed by him, was received in a Court of justice as conclusive evidence of guilt."

Presumption of payment There is a presumption of law that a judgment on which no execution has been issued or attempt made to enforce the same for over 20 years has been paid.

Mere lapse of time less than the period prescribed by the statute of limitation creates no "presumption of payment."

Presumptive. That which may be assumed to be valid or true until the contrary is established.

PRESUMPTIVE, PRESUMPTUOUS, PRESUMING. A presumptive heir is one presumed or expected to be heir, presumptive evidence founded on some presumption or supposition, so likewise presumptive reasoning, but a presumptuous man, a presumptuous thought, a presumptuous behaviour all indicate an unauthorized presumption in one's own favour. Presumptuous is a stronger term than presuming, because it has a more definite use, the former designates the express quality of presumption, the latter the inclination.

Presumptive damages The term "presumptive damages" is used to designate damages in excess of compensatory damages, which are allowed as a punishment of the wrong-doer. It is synonymous with the terms "exemplary", "vindictive", and "punitive" damages

Presumptive evidence. The term "presumptive evidence" consists in the proof of minor or other facts incidental to or usually connected with the fact sought to be proved, which, when taken together, inferentially establish or prove the fact in question to a reasonable degree of certainty.

The term "presumptive evidence" is sometimes used to designate what is ordinarily known as circumstantial evidence.

PRESUMPTIVE EVIDENCE consists of evidence drawn by human experience from the connection of cause and effect and observation of human conduct.

Presumptive heir. Heir pending the birth of heir apparent.

Presumptive Notice.

Presumptive Notice. Presumptive notice is where the law imputes to a purchaser the knowledge of a fact of which the exercise of common prudence and ordinary diligence must have appraised him.

The difference between "PRESUMPTIVE NOTICE" AND "CONSTRUCTIVE NOTICE" is that the former is an inference of fact which is capable of being explained or contradicted, while the latter is a conclusion of law which cannot be contradicted.

Presumptive Proof Not positive proof, but sufficient to raise a presumption in favour of the fact alleged.

Presumptive successor *See* A I R 1928 Lah 337

Pretence. "Pretence," and "practices," are used as implying something of an improper description (*Barber* v *Gamson*, 4 B. and Ald 281)

PRETENCE is the Act of laying claim, act of holding out to others something false or feigned.

PRETENCE, PRETENSION, PRETEXT, EXCUSE. The pretence is commonly a misrepresentation the pretension is frequently a miscalculation, the pretence is set forth to conceal what is bad in one's self, the pretension is set forth to display what is good. the former can never be employed in a good sense, the latter may sometimes be employed in an indifferent sense a man of bad character may make a pretence of religion by adopting an outward profession, men of the least merit often make the highest pretensions

The pretence and pretext alike consist of what is unreal, but the former is not so great a violation of truth as the latter the pretence may consist of truth and falsehood blended, the pretext consists altogether of falsehood. the pretence may sometimes serve only to conceal or palliate a fault, the pretext serves to hide something seriously culpable or wicked a child may make indisposition a pretence for idleness, a thief makes his acquaintance with the servants a pretext for getting admittance into a house.

Pretend The common and generally accepted meaning of the verb "pretend" is to hold out as true that which is false, to feign, to simulate.

In the phrase a "pretended sale", the word "pretended" signifies something falsely assumed, something claimed contrary to the truth of the matter.

To "pretend", or "profess," to tell Fortunes, usually connotes that what is done is with the intention to deceive (*R* v *Entwistle*, (1899) 1 Q B. 846)

"Pretended right or title" is where one is in possession of lands or tenements, and another who is out of possession, claimeth it, and sueth for it." (*Termes de la Ley.*)

Pretending to claim. "A covenant that the lessee shall quietly enjoy against all claiming 'or pretending to claim' a right in the premises, extends to all interruptions, be the claim legal or not, provided it appear that the disturber do not claim under the lessee himself." (*Woodf.* 723, *citing Chaplin* v. *Southgate*, 10 Mod. 384.)

Pretense. (*See Pretence.*) Pretense is holding out or offering to others of something false or feigned. This may be done either by words or action which amount to false representations. In fact, false representations are inseparable from the idea of a pretense

Pretension. A claim made, a right alleged or assumed

PRETENSION, CLAIM We say a person rests his *pretension* to the crown upon the ground of being descended from the former king, in hereditary monarchies there is no one who has any *claim* to the crown except the next heir in succession A *pretension* is commonly built upon one's personal merits, a *claim* rests upon the laws of civil society a person makes high *pretensions* who estimates his merits and consequent deserts at a high rate; he judges of his *claims* according as they are supported by the laws of his country or the circumstances of the case.

Pretext "Pretext" as is an ostensible reason or motive assigned as a colour or cover for the real reason or motive, false appearance, pretense."

Pretium affectionis The words "pretium affectionis" are defined in Bouvier's Law Dictionary as "an imaginary value put upon a thing by the fancy of the owner in his affection for it or for the person from whom he obtained it."

Prevailing. Having superior force, predominant; efficacious

PREVAILING, PREVALENT, RULING, OVERRULING; PREDOMINANT *Prevailing* expresses the actual state or quality of a particular object *prevalent* marks the quality of prevailing, as it affects objects in general. The same distinction exists between *overruling* and *predominant* A person has a *prevailing* sense of religion, religious feeling is *prevalent* in a country or in a community. The *prevailing* idea at present is in favour of the legitimate rights of the sovereign · A contrary principle has been very *prevalent* for many years An opinion is said to be *prevailing* as respects the number of persons by whom it is maintained. a principle is said to be *ruling* as respects the superior influence which it has over the conduct of men more than any other Particular disorders are *prevalent* at certain seasons of the year, when they affect the generality of persons a particular taste or fashion is *predominant* which supersedes all other tastes or fashions.

Prevailing rate.

"Prevailing rate" The "prevailing rate" must be understood to mean the actual prevailing rate of rent at which all the villagers or the great majority of them hold their land, and the term does not mean the average rate or even the rate at which more than half the land of the village is held If in a village for example, ninety per cent. of the raiyats hold their land at a certain definite rate that would properly be regarded and taken as the prevailing rate unless some special circumstances such as, a recent commutation of rent on a large scale, makes it impossible to so treat that rate 170 I C 593=3 B.R. 744=10 R P 137=18 Pat.L.T. 197=1937 P.W.N. 238=A.I R. 1937 Pat. 430.

The words "prevailing rate" of rent in S. 30 (*a*), Act VIII of 1885, mean, not the "average rate" of rent, but the rate paid in the village for land of a similar description and with similar advantages. 21 C. 986.

Prevent

Prevent "Prevent" means to intercept; to hinder, to frustrate, to stop, to thwart, to hinder from happening by means of previous measures, ward off, to stop in advance from some act or operation, intercept or bar, check, restrain

To "prevent" does not mean only an obstruction by physical force, *e.g*, in the phrase that one party to a bargain "prevented" the other from fulfilling his part thereof. If the purchaser were to write in a letter to the person who ought to supply them, 'Should you come to my house to deliver them, I will blow your brains out', may I not reasonably say that I was '*prevented*' from completing a contract by being desired not to complete it?, and that the act of the other side was the cause of the contract not being executed or performed' (per *Campbell, C J*, *Cort* v *Ambergate Ry*, 17 Q B 145, 146, 20 L J Q B 465, *Stroud* 1545)

PREVENTION AND DELAY Representations of inability to pay a debt, though false, promises to pay, if broken, appeals to the sympathies of the creditor for indulgence, or statements which are untrue—are not such improper acts on the part of the debtor as to prevent the commencement of an action, within the meaning of the statute of limitations, as the creditor might, notwithstanding such acts, have commenced his suit at any time By such representations, promises, and appeals the creditor might have been induced to delay such suit, but he was clearly not prevented from suing

"Preventive relief" defined. Act 1, 1877, S 6

Previous Going before in time, antecedent, prior.

PREVIOUS, PRELIMINARY, PREPARATORY, INTRODUCTORY Prudent people are careful to make every *previous* inquiry before they seriously enter into engagements with strangers: it is impolitic to enter into details until all *preliminary* matters are fully adjusted, one ought never to undertake any important matter without first adopting every *preparatory* measure that can facilitate its prosecution in complicated matters it is necessary to have something *introductory* by way of explanation

Previous conviction It has been the policy of the legislature since the mitigation of the severe punishments at one time imposed on criminals, to provide for a gradual increase of severity of punishment in the case of habitual offenders *See Ency of the Laws of England*, *See* 3 U B R (1907), 3rd Qr, Whipping, 3=7 Cr L J. 212=14 Bur.L R 186, L B R (1893—1900), 315

Previous demand 'Previous demand' means a demand made on a substantially different occasion

Previous holder. *See* 1 A.L.J. 420=8 C W N 721 =6 Bom.L.R. 741=31 C. 901=31 I.A. 195 (P C.)

Previous year *See* Income-tax Act XI of 1922, S 2(11).

Pre-war period. Period before the great war especially that of 1914

Price The price is the value which a seller places upon his goods for sale It is not a fixed and unchangeable thing It may be one thing to-day, and another to morrow, and one valuation to one customer, and a different one to another, on the same

Prima facie case.

day or hour Whatever a seller asks any one to give is the price, until he changes it for another The price asked is the existing fact until it is changed When the price asked is changed to another price, the former price is no longer an existing fact *See also* Indian Sale of Goods Act

The price of an article which has its value in the market rises or falls accordingly as the relation between supply and demand changes.

"PRICE" is defined as the sum or amount of money, or its equivalent, which a seller asks or obtains for goods in market—the exchangeable value of a commodity—and hence, as used in a contract providing for the sale of articles at a fixed price, and that, if the price falls below such fixed price a rebate will be given, the word 'price' means market price.

Under the Oudh Laws Act relating to Contracts, the term "price" means money value of the article [1 O C. 75.(77)].

Though the word "price" is capable of being understood either as money or any other recompense in value, it is clear from the illustrations to S 78 of the Contract Act, that it is used there in the former sense 25 B 696=3 Bom L.R 384, 11 M 459

Sale as defined in S 54 of the T P Act, 1882, is a "transfer of ownership in exchange for a price paid or promised or part paid and part promised" The word "price" is used in the section in the sense of money It does not include services present or future 34 B 287=12 Bom L R 9, But *see* 15 I C 343, 23 M L J 339

"FAIR PRICE," "MARKET PRICE" An agreement to sell at a "fair price," the "fair market price," or a "fair valuation," etc, is not uncertain, within the meaning of the rule, since the intention of the parties is held to be that on their failure to agree upon the price it shall be determined by the court.

Price current Price current is a statement or list of current prices, which are the market value of the merchandise stated in the list.

PRICE CURRENT is a list of goods and merchandise with prices and statements, duties, drawbacks, etc, if any.

"Priest" defined. Act 15, 1865, s 2.

PRIEST is one "by his Ordination, receives authority to preach the Word of God, and to consecrate and administer the Holly Communion in the Congregation where he shall be lawfully appointed thereunto" (*Phil. Ecc Law, III*)

Prima facie case. A *prima facie* case is a case made out by proper and sufficient testimony.

PRIMA FACIE CASE is a case made out by sufficient testimony, one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side.

A *prima facie* case is that state of facts which entitles the party to have the case go to the jury.

A *prima facie* case is that amount of evidence which would be sufficient to counterbalance the original or general presumption of innocence, and warrant a conviction if not then encountered and controlled by evidence tending to contradict it and

Prima facie evidence.

render it improbable, or to prove other facts inconsistent with it.

"Prima facie," in criminal cases, means proof beyond all reasonable doubt

Prima facie evidence *Prima facie* evidence of a fact, says Mr Justice Story, is such evidence as, in the judgment of the law, is sufficient to establish the fact, and, if not rebutted, remains sufficient for that purpose.

OTHER DEFINITIONS. *Prima facie* evidence is evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced

Prima facie evidence is that which suffices for the proof of a particular fact until contradicted and overcome by other evidence For example, the certificate of a recording officer is *prima facie* evidence of a record, but it may afterwards be rejected upon proof that there is no such record

The term "prima facie evidence of title" means "evidence sufficient to establish title, unless some person shows a perfect title."

PRIMA FACIE EVIDENCE is generally synonymous with sufficient Evidence

Primage Percentage added to the freight and paid to the shipowner to cover commission for chartering, etc

PRIMAGE is a small payment made by the owner or consignee of the goods to the Master for his care and trouble, which varies in amount according to the particular trade in which the Ship is engaged" (1 Maude & P 121, *Cowel*)

Primage, which is an allowance by the shippers to the master for his care and trouble relative to the cargo, formerly belonged, by custom or usage, to the master for his own use, unless he otherwise agreed with the owners The later rule, however, seems to be that primage belongs to the owners or freighters and is but an increase of the freight rate, and is no longer a gratuity to the master unless so expressly stipulated

Primarily liable The person "primarily" liable on an instrument is the person who, by the terms of the instrument,is absolutely required to pay the same.

Primary election Rapalje & Lawrence's Law Dictionary defines a primary election as a popular election held by members of a particular political party for the purpose of choosing delegates to a convention empowered to nominate candidates for that party, to be voted for at an approaching election

"Primary evidence" defined. Act 1, 1872, s 62.

PRIMARY EVIDENCE Primary evidence is that kind of evidence which under every possible circumstance affords the greatest certainty of the fact in question Thus a written instrument is itself the best possible evidence of its existence and contents.

Primary evidence is such as in itself does not indicate the existence of other and better proof.

Primary evidence means the document itself produced for the inspection of the Court. *Explanation* (1) —Where a document is executed in several parts, each part is primary evidence of the document.

Primogeniture

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it *Explanation* (2)— Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest, but, where they are all copies of a common original, they are not primary evidence of the contents of the original Act I of 1872 (Evidence), S 62

"Primary meeting." A convention or "primary meeting," within the meaning of the election laws, is an organized assemblage of electors or delegates representing a political party

Primate, an Archbishop who has a distinguishing rank from all other Archbishops and Bishops. (*Tomlins Law Dic*)

Prime entry First entry of the estimated value of a ship's cargo, on which duty has to be levied.

Prime minister The responsible head of a ministry or executive government especially in a monarchical form of government

PRIME MINISTER, ORIGIN AND HISTORY OF THE OFFICE. 'This, the chief of all Government offices, is of comparatively recent growth in our constitution. The main factor which made possible the existence of a Minister of the Crown of more importance and greater influence than the rest of the King's servants" was the disappearance of the Sovereign from the meetings of the Cabinet When George I ascended the throne, disinclination for business and ignorance of the English language kept him away from the meetings of his Ministers With the Sovereign absent that inevitable tendency was for one of the Ministers, either by reason of his personal force of character or his influence with the King, to take the lead of his colleagues, and such a Minister, though his powers in that day were vague, shadowy, and transient, may be regarded as the historical ancestor of the Prime Minister of our times Today the Prime Minister is the pivot of our existing governmental system, and may be described as the party leader who has been invited by the King to form a ministry, in the assurance either that he and his ministry will receive the confidence and support of a majority of an existing House of Commons in the task of carrying on the government of the country, or that, if the majority of the House is hostile, he will appeal to the country to return a House of Commons who will support his policy." (*Ency of the Laws of England.*)

"Prime-mover" defined Act 2, 1907, s 2 (*b*), Ben Act 3, 1879, s. 3, Bom. Act 2, 1891, s 3 (*b*), Bur. Act 2, 1910, s. 3, Mad. Act 3, 1893, s. 2, P. Act 2, 1902 s. 2, U.P Act 1, 1899, s. 2

"PRIME-MOVER" includes any engine which derives its power from steam, a fly-wheel, first driving shaft or pulley attached to such engine, and every appurtenance necessary for the safe and efficient working thereof. Bur. Act II of 1910 (Steam-boilers and Prime-movers), S. 3

Primogeniture. Primogeniture is "the right of the eldest among the males to inherit."

Primogeniture.

PRIMOGENITURE, is the title of an elder son or brother in right of his birth, the reason of which Coke says, is, by the division of such fees between males, the defence of the realm might be weakened And Dodderidge, in his treatise of Nobility, saith, it was anciently ordained, that all knights' fees should come unto the eldest son by succession of heritage, whereby he, succeeding his ancestors in the whole inheritance, might be the better enabled to maintain the wars against the King's enemies, or his Lord's and that the socage should be partible among the male children to enable to increase into many families, for the better furtherance in, any increase of husbandry." (*Cowell, Tomlins Law Dic*)

The word "primogeniture" occurring in the sanad emanating from the British authority, conveys the ordinary meaning of the word in the Law of England and means lineal primogeniture 20 M L J 917 (P C)=32 A 599=7 A L J 1122=14 C W N 1010=12 C.L J. 305=8 M L.T. 273=12 Bom L.R 1015=7 I C 724.

Prince Sometimes, taken at large for the King himself, but more properly for the King's eldest son who, in England, is called Prince of Wales. (*Tomlins Law Dic.*)

PRINCE, MONARCH, SOVEREIGN, POTENTATE *Prince* is the generic term, the rest are specific terms, every monarch, sovereign, and potentate is a prince, but not *vice versa*. The term *prince* is indefinite as to the degree of power. The term *monarch* does not define the extent of the power, but simply that it is undivided as opposed to that species of power which is lodged in the hands of many *sovereign* and *potentate* indicate the highest degree of power but the former is employed only as respects the nation that is governed, the latter respects other nations a *sovereign* is supreme over his subjects, a *potentate* is powerful by means of his subjects Every man having independent power is a *prince*, let his territory be ever so inconsiderable Every one reigning by himself in a state of some considerable magnitude and having an independent authority over his subjects is a *monarch*, *kings* and *emperors* therefore are all *monarchs*. Every *monarch* is a *sovereign* whose extent of dominion and number of subjects rises above the ordinary level, he is a *potentate* if his influence extends very considerably over the affairs of other nations.

"Principal" defined. Act 9, 1872, S. 182.

PRINCIPAL. "Principal" means highest in rank, authority, character, importance, or degree, most considerable or important, chief, main (as) the principal officers of a government, the principal men of a state, the principal productions of a country, the principal arguments in a case.

PRINCIPAL (*in criminal law*) By the ancient common law those persons only were deemed principals who committed the overt act, while those who were present, aiding and abetting, were deemed accessories after the fact, and those who, not being present, had advised the felony were deemed accessories before the fact Later, the Courts in England came to hold as principals all persons present, aiding and abetting, and these were called principals of the second degree.

Principal

A person concerned in the commitment of a crime whether he directly commits the act constituting the offence, or aids or abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal

PRINCIPAL (*in money lending*) The terms "principal" and 'interest" are correlative. Each implies and excludes the other

PRINCIPAL AND AGENT Agency in its broadest sense include every relation in which one person acts for or represents another by his authority In the more restricted sense, in which the term is used in the law of principal and agent, agency may be defined as the relation which results where one party, called the principal, authorises another, called the agent, to act for him in business dealing with third persons.

The agent is the substitute or representative of his principal and derives his authority from him. The relationship contemplates dealings by the agent with third persons, without this element there can be no agency, properly speaking Apprentices, attorneys, auctioneers, bailees, executors and administrators, factors, independent contractors, guardians, partners, public officers and trustees, are all agents, being distinguishable from agents generally by reason of the fact that their authority is of a special and limited character in most respects A guardian represents one who has no legal capacity to act for himself, while an agent represents one who can act for himself. Further, a guardian may be substituted by law while the agent is the appointee of his principal, and the principal may at any moment modify or abrogate his power A *broker* is a special agent, and derives his power and authority to bind his principal from the instructions given to him by his principal (*Rul case law*) *See also* Bowstead on Agency, Story on Agency, Evans on Principal and Agent, Campbell on Commercial Agency, Indian Contract Act, chap on 'Agency."

'PRINCIPAL AND SURETY.' A person who undertakes to pay money, or to do any other act, in the event that his principal fails therein is a *surety* Or, he is a person, who, being liable to pay a debt or perform an obligation is entitled, if it is enforced against him, to be indemnified by some other person, who ought himself to have made the payment or performed before the surety was compelled to do so Strictly speaking, under such a broad definition, guarantors, indorsers, and co-obligors and co-promisors are all sureties for others, who are liable in the first instance as principals, but in common parlance the word 'surety' is used, in a more limited sense, to mean a co-obligor or co-promisor, entering into a contract with the principal jointly, or jointly and severally; and at the same time; and who in all cases may be sued jointly with the principal without demand or notice. *'Contract of suretyship'* is an accessory agreement by which one person binds himself to pay the debt of another already bound. It has been defined as a contract whereby one obligates himself to pay the debt of another, in consideration of credit or indulgence or other benefit to his principal, the principal remaining bound therefor. It is in the nature of a collateral engagement to pay the debt of another or to see that another pays or per-

Principal.

forms as distinguished from an original and direct agreement for the party's own act, and is accessory to a principal obligation contracted by another person, either contemporaneously, or previously, or subsequently. It is of the essence of the contract that there be a subsisting valid obligation of a principal debtor Without a principal, there can be no surety The distinction between 'a *contract of suretyship*' and a '*contract of guaranty*,' is often shadowy, and often not observed by judges But, there is a substantive distinction, involving not infrequently important consequences. It lies in the fact that when the sponsors for another assume a primary and direct liability, whether conditional or not in the sense of being immediate or postponed till some subsequent occurrence to the creditor, they are sureties, whereas when this responsibility is secondary and collateral to that of the principal, they are guarantors The distinction between a '*contract of suretyship*' and a '*contract of indemnity*' is while the former type of contract is an accessory undertaking presupposing some contract or transaction to which it is collateral the latter is essentially an original contract

The distinction between the 'principal' and the surety is to be ascertained by inquiring whether he who claims to stand in the relation of surety did or did not derive a benefit from the contract. Whether one's name is signed to an instrument as a principal or a surety, he is, of course, equally bound by the obligation. The fact that a person is surety, however, if known to the creditor is potent, not in varying the contract, but in imposing certain duties and obligations on the creditor in his subsequent dealings with the principal debtor in respect to the contract (*Rul Case Law*)

PRINCIPAL, SURETY AND GUARANTOR "The liability, of a surety in the narrow sense and of a guarantor is very similar and the distinctions between the two are technical rather than real. While each is, as to the principal, collaterally liable, the surety is, as to the creditor or obligee, primarily liable, the guarantor being recognised by the creditor as collaterally liable

"Principal amount found or declared due" 1937 A L J 324=1937 A W R 305=169 I C 795= I L R (1937) All 584=1937 A L R 606=A I R 1937 All 442

Principal challenge (*in criminal case*) A challenge for principal cause admits of no answer, counterplea, or qualification.

A principal challenge is a challenge to a juror which is sufficient, if established, to authorise the rejection of the juror as a matter of right. It is the common law term expressing the same meaning as the term "challenge for cause "Lord Coke says that a principal cause or challenge is so-called because, if it be found true, it standeth sufficient itself, without leaving anything to the conscience or discretion of the trial judge. (Co. Litt 155-b.) Or as stated in Bacon's Abridgment, it is grounded on such a manifest presumption of partiality, that, if found to be true, it unquestionably sets aside the juror.

Principal Court of original jurisdiction The principal court of original jurisdiction under the Tenancy Act, is not the Court of the Dt Judge. 34 All. 197=9 A.L.J. 124=13 Cr.L.J. 44=13 I.C. 284.

Principal officer.

"Principal debtor" defined. Act 9, 1872, S. 126.

The principal debtor in respect of a guaranteed debt, is the person for whom a guarantee is given.

Principal in first degree. (*in criminal law.*) 'Whoever actually commits, or takes part in the actual commission of, a crime, is a principal in the first degree, whether he is on the spot when the crime is committed or not, and if a crime is committed partly in one place and partly in another, every one who commits any part of it at any place is a principal in the first degree" (*Steph. Cr* 29.)

"The general definition of a *Principal in the first degree* is, one who is the actor or actual perpetrator of the fact" (*Arch Cr Pr*)

Principal in second degree "Whoever aids or abets the actual commission of a crime, either, at the place where it is committed or elsewhere, is a principal in the second degree in that crime. (*Steph Cr.* 30)

"Principal money expressed to be secured." The expression "principal money expressed to be secured" with reference to a suit for a partial redemption for the purposes of cl ix of S 7 of the Court Fees Act, must be taken to be the proportionate amount of the debt for which portion of the property is liable 6 B 324

Principal office, The "Principal Office" of a Co —is the place at which the business of the Co is managed and controlled as a whole. (*Garton* v. *G. W. Ry*, 27 L J Q B 375)

The principal office of a corporation as fixed by itself includes only such offices as are created by the charter, or by the directors in pursuance of the charter, for the administration of the corporate affairs proper, but such term does not necessarily include merely the administrative offices of the Company, and as so used is synonymous with the word 'headquarters"

A corporation's principal office is the place where the principal affairs, business and otherwise of the company are transacted

"Principal officer," defined. Act 2, 1886, S. 3 (10)

A 'principal officer' of a corporation is one whose oversight or agency exists either over the whole or some particular department of the general business of the corporation, as a president, who has ordinarily a general oversight over its entire business, a secretary over its records or a treasurer over its moneys

The agent of the local branch of a foreign company, is a "principal officer" of the Company, within the meaning of Order XXIX, rule 1 of the C. P Code, and competent, as such to sign and verify the plaint. 10 I C 141 (142).

"Principal officer," (*in the Income-tax Act*) used with reference to a local authority or a company or any other public body or any association, means (*a*) the secretary, treasurer, manager or agent of the authority, company, body or association, or (*b*) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him

Principal officer of the corporation.

as the principal officer thereof. Act XI of 1922 (Income-tax) S. 2, cl. 12

"Principal officer of the corporation" The words "principal officer of the corporation" in order 29, rule 1, C P. Code include an acting manager 21 C. 60=20 I.A. 139 (P.C).

'Principal place of business' is where the governing power of the corporation is exercised, where those meet in council who have a right to control its affairs and prescribe what policy of the corporation shall be pursued, and not where the labour is performed in executing the requirements of the corporation in transacting its business

"PRINCIPAL PLACE OF BUSINESS," means the place designated as the principal place of business of the corporation in its certificate of incorporation

Principal value · In the Englise Finance Act, 1894, S. 7(5) "the 'Principal value' of any property is estimated to be, the price which in the opinion of Comissioners, such property would fetch if sold in the open Market

Principalis debet semper excuti antequam perveniatur ad fidei jussores The principal should always be exhausted before coming upon the sureties.

Principality. Rule by, or state ruled by, one Prince.

Principle "Principle" in Science, "is equivocal, it may denote (1) Either the radical, elementary, truths of a science, or (2) Those consequential axioms which are founded on radical truths, but which are used as fundamental truths by those who do not find it expedient to have recourse to first principles" (per *Rooke, J., Boulton* v *Bull*, 2 Bl H. 478, *Stroud* p. 1551.)

PRINCIPLE, MOTIVE The principle lies in conscious and unconscious agents the motive only in conscious agents all nature is guided by certain principles, its movements go forward upon certain principles man is put into action by certain motives the principle is the prime moving cause of everything that is set in motion, the motive is the prime moving cause that sets the human machine into action (*Crabb*)

"PRINCIPLES AND RULES" as used in the Divorce Act (IV of 1869), Ss 8, 45, are not mere rules of procedure but are the rules and principles which determine the cases in which the court will grant relief to the petitioner appearing before it or refuse that relief. 23 Ind Cas 242 (243)

'PRINCIPLE OF A MACHINE' is properly defined to be its 'mode of operation,' or that peculiar combination of devices which distinguishes it from other machines

By the principle of a machine or improvement of a machine, as used in the patent laws, is to be understood the peculiar mode, manner, or device by which the proposed result or effect is produced

"Print "printing" defined 7 V. c. 12, s 20.

As defined in Bouvier's Law Dictionary, printing "is the art of impressing letters, the art of making books or papers by impressing legal characters"

Printing is a process of multiplying the copies of a composition by sheets.

Priority

In the Metropolis Management Acts, *"Print,'* has been defined to apply to and include every mode of taking impressions, whether by letter-press, stereotype, typewriting, lithography or otherwise."

Prints are impressions on paper or some substance or engravings on copper, steel, wood, or stone, etc, representing some particular subject or composition Prints, like paintings, embrace every variety of subjects, but differ very widely in the manner in which they are engraved (*Ame Words and Phrases*)

Typewriting is given the same legal force, meaning, or effect as writing

For some purposes, Type-writing may be regarded as Printing, but it is not the same as writing by hand (Re *Morse*, Ex p Latimer, 7 Times Rep. 591, 60 L J Q B 624)

The use of the words "print or cause to be printed" only, and the omission of the word "translate" in S 7 of Copyright Act XX of 1847 are significant, and under the English Law, a translation has been always considered to be an original composition, the above expression does not include translations 14 B 586

The extravagance of *printing unnecessary record* (in cases of appeals to the Privy Council) was deplored, such unnecessary expenditure in litigation being enough to bring the administration of law into deserved disrepute 127 I C 739=52 C L J 435=32 Bom. L R 1553=A I R 1930 P C 217 (P.C)

Printer (*of a paper*) The term 'printer' means not one who merely performs the mechanical process of printing, but one having an interest as owner of the paper

The word "printer," as used in a statute requiring proof of a publication in a newspaper to be made by the affidavit of the printer, etc, does not mean the person who sets up the type It is rather used as synonymous with "publisher," and such provision is satisfied when the affidavit is made by the editor of the paper

"Printing press" defined Act 1, 1900, s 2, Act 7 1908, s 2.

Prior (*Eccl*) Superior of a christian religious house, abbot's deputy

Prior liens As between two liens, or in a class of liens, the one superior to the others can be said to be 'prior" lien.

Prior tempore potior jure He who is prior in point of time is stronger in law.

Priority A legal preference or precedence (as) priority of claims

"PRIORITY" is a relative or comparative term An 'adjudication of priorities" within the meaning of the irrigation acts, is the judicial determination of the claims of different parties to the use of water for irrigation within the same irrigation district and from the same irrigation channel

PRIORITY, PRECEDENCE, PRE-EMINENCE, PREFERENCE *Priority* respects simply the order of succession, *precedence* signifies priority in going, and depends upon a right or privilege, *pre-eminence* signifies priority in being, and depends upon merit; *preference*

Priotar

signifies priority in placing, and depends upon favour (*Crabb*)

Priotar, (*H*) Allowance to Mahomedan sages A particular description of lands held rent-free, or assignments of the Government dues from particular lands engaged by such persons (*Mac Moh Law*)

Prise *See* Prize.

"Prison" defined, (*See also* Civil jail, Jail) 47-8 V. c. 31, s 18, Act 9, 1894, s 3 (1) Act 3, 1900, s 2 (*b.*)

Prison "A prison" says Jacob in his Law Dictionary, 'is a place of confinement for the safe custody of persons in order to their answering in any action, civil or criminal" (*Tomlins Law Dic*)

In its general sense a prison may be said to include the various buildings, whether designated as prisons, jails, penitentiaries, houses of correction, or otherwise, which are used for the confinement of persons in judicial custody, in civil or criminal proceedings, either as punishment by imprisonment or to insure their production in further proceedings

"Prison" includes any place which has been declared by the Local Government by general or special order, to be a subsidary jail Prisoners Act (III of 1900) S. 2

"Prison', means any jail or place used permanently or temporarily under the general or special orders of a Local Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include (*a*) any place for the confinement of prisoners who are exclusively in the custody of the Police, (*b*) any place specially appointed by the Local Government under S 541 of the Code of Criminal Procedure, 1882, or (*c*) any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail Prisons Act (IX of 1894), S 3.

The terms 'PRISON AND JAIL' do not include any place for the confinement of prisoners who are exclusively in the custody of the police 7 L.B R 62=22 I.C. 154=15 Cr L J. 10

BREAK-PRISON "Every place where any person is restrained of his liberty is a Prison as, if one take Sanctuary and depart thence, he shall be said to 'break prison'" (*Hobert and Stroud's Case*, Cro. Car 210)

STATE PRISON Prison established under the authority of the state. In a general sense the term means a place of confinement for state prisoners, that is, for persons charged with political offences, and confined for reasons of state

Prison Bounds Prison bounds are the limits of the territory surrounding a prison, within which an imprisoned debtor, who is out of bonds, may go at will

Prison Breach (*See* Break-prison) Prison breach is the forcible breaking out of the place

"Prisoner" defined. *See* Civil prisoner.

Prisoner. Person kept in prison.

Private.

A prisoner is a person deprived of his liberty by virtue of a judicial or other lawful process; a person committed to prison, a captive detained in some place of confinement.

Prisoner at the Bar. One produced in Court for trial

Prisoner of state Prisoner confined for political reasons

Prisoner taken in war Captive taken in war. Take prisoner To capture one and make him prisoner

Priti-datta (*S*) Property or valuables presented to a female by her relations and friends at the time of her marriage, constituting part of her peculiar property or Stridhanam (*Wil. Gloss*)

Priti-pradanam means what is given by the father to the daughter out of affection

Privacy '*Right of privacy*' is the right to be let alone, the right of a person to be free from unwarranted publicity Some courts have declined to recognize the interference with a person's privacy as an injury in a legal sense, the reason being in their view that the law has not provided for a right to possess or maintain without disturbance any particular condition of feeling and that to enforce such a right at this time would do violence to settled principles by which the public have long been guided The law cannot undertake to remedy sentimental injury and it is not concerned with the feelings of a person except as the discomfort and suffering are connected with the possession or enjoyment of property In other Courts, the rights of privacy has been fully recognized and enforced The novelty of the complaint and the inability to measure the damages by a pecuniary standard have not been an insuperable objection The right is incident to person and not to property Its foundation is in the conception of an inviolate personality and personal immunity It is considered as a natural and an absolute or pure right springing from the instincts of nature The right to enjoy life is a right to enjoy it in the way most agreeable and pleasant, and the right of privacy is nothing more than a right to live in a particular way Similarly, personal liberty has been seemed to be more than freedom of locomotion It means as well freedom of choice and freedom from interference with the pursuit of one's choice The right of privacy is merely the right to live as one chooses

PRIVACY, RETIREMENT, SECLUSION. Privacy is opposed to publicity, he who lives in privacy, therefore, is one who follows no public line, who lives so as to be little known: retirement is opposed to openness or freedom of access, he, therefore, who lives in retirement withdraws from the society of others, he lives by himself, seclusion is the excess of retirement. he who lives in seclusion bars all access to himself, he shuts himself from the world Privacy is most suitable for such as are in circumstances of humiliation, whether from their misfortune or their fault retirement is peculiarly agreeable to those who are of a reflective turn; but seclusion is chosen only by those who labour under some strong affection of the mind, whether of a religious or a physical nature.

Private. Not public, not official, belonging or concerning one or more individuals.

Private Act

Mr. Webster says that, in general, "public" expresses something common to mankind at large, to a nation, state, city or town, and is opposed to "private" which denotes that which belongs to an individual, to a family, to a company or a corporation (*Milit*) A soldier.

Private Act. A "private act" is defined in Burrill's Law Dictionary as one which relates to particular classes or particular persons or places.

A private bill, act, or law relates only to particular classes of men and their private concerns.

Private bills. A private bill is a bill for the particular interest or benefit of any person or persons, as distinguished from a measure of general public policy intended for the benefit of the community at large

In dealing with private bills Parliament exercises judicial as well as legislative functions. The proceedings at certain stages closely follow those of a Court of law, the promoters and opponents of the measure being permitted to appear by counsel and to adduce evidence in support of their respective contentions, and being required to pay fees as in the case of ordinary litigation. *See* May's Parliamentary Practice, Clifford's History of Private Bill Legislation; Dodd and Wilberforce on Private Bill Procedure. (*Ency. of the Laws of England.*)

"Private bridge" defined. Ben. Act 1, 1900, S. 4.

"A distinction between a public and a Private Bridge is made to consist principally in the former being built for the common good of all the subjects as opposed to a bridge made for private purposes" (per *Ellenborough, C J R.* v. *Bucks*, 12 East, 202)

Private company Company privately formed by members who subscribe the whole of the capital among themselves.

"PRIVATE COMPANY" means a company which (*i*) by its articles, (*a*) restricts the right to transfer its shares, and (*b*) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty, and (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company, and (*ii*) continues to observe such restrictions, limitations and prohibitions

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member. Act VII of 1913 (Companies), S. 2, cl 13.

"Private debt" defined. U P. Act 1, 1903, S. 2 (*a*).

"PRIVATE DEBT" means any debt or liability other than a public debt U P. Act I of 1903 (Encumbered Estates), S. 2, cl. (*a*).

Private detective. A "private detective" is a detective "engaged by individuals for private protection", or for serving their individual interests, (as) a detective engaged by a private banker to detect a bank fraud and trace the culprit, or a detective to find out the thief who stole valuables from a rich man's house.

Private nuisance.

"Private document" defined. Act 1, 1872, S 75. All documents which are not public documents are private documents

"Private drain" defined, Ben. Act 4, 1900, S. 4.

Private easement. A "private easement" is defined to be a privileged service or convenience which one neighbour has of another by prescription, grant, or necessary implication, without profit

"Private estate under Government management" defined Act 10, 1892, S 2 (*3*).

"Private estates under Government" include—(*a*) estates under the Court of Wards, (*b*) encumbered estates under Government management, (*c*) estates attached for default of payment of Government revenue, (*d*) minors' estates placed under the guardianship of a revenue officer of the Government by a Civil Court, (*e*) estates managed by a Collector in pursuance of any order made under the Code of Civil Procedure, and (*f*) all other estates made over to or taken under the management of a revenue-officer of the Government as such under any law for the time being in force or in virtue of any agreement Act X of 1892 (Government Management of Private Estates) s 2, cl. 3

"Private ferry" defined Ben Act 1, 1885, s. 5

A private ferry is one mainly for the use of the owner His ferry is not open to the public at its demand, and he may or may not keep it going.

Private hotel. A private Hotel, is "a dwelling-place for persons who wish to live there" (*per* Stirling, J, *Devonshire* v *Simmons*, 39 S J 60) it differs in many respects from a public hotel or inn

Private injury The term "private injury" is synonymous with "private wrong"

Private international law That branch of the law of a country which relates to cases more or less subject to the law of other countries

"PRIVATE INTERNATIONAL LAW," says Prof Westlake, "is that department of national law which arises from the fact that there are in the world different territorial jurisdictions possessing different laws" (*Westlake, Private International Law*)

"Private land" defined Mad Act 1, 1908, s. 3 (10), 27 M L J 718=27 I C. 77.

Private leak Private leak is a slight defect in one of the outer planks of a ship which causes a leak

"Private market" defined. Bom Act 3, 1888, s 398; Mad. Act 4, 1884, s 3 (*xiii.*)

Private member Member of the Legislature holding no Government office

Private note The term "private note" is used to designate notes of individuals or companies, whether incorporated or not.

Private nuisance. A "private nuisance" is anything done to the hurt of annoyance of the lands tenements, or hereditaments of another.

Nuisances are private when the injury resulting from them violates only private rights, and produces danger to a few persons only.

Private path.

A private nuisance affects only one person or determinate number of persons

A private nuisance affects one or more as private citizens, and not as a part of the public, and is ground for a civil suit only.

PRIVATE AND PUBLIC NUISANCE. A public nuisance becomes also a private nuisance as to the person who is specially injured thereby in the enjoyment of his property.

Private path A "private path" is a neighbourhood road running from one public road to another, from a public place to another public place.

Private property Private property is that which is one's own, something that belongs or inheres exclusively in an individual person

The property of a private charitable corporation, though charged with the maintenance of a college, hospital, or other public charity is "private property"

Private prosecutor. A party who voluntarily makes an affidavit to procure the issuance of a warrant to arrest a party whom he accuses of crime is properly a prosecutor

A private prosecutor is one who prefers an accusation against a party whom he suspects to be guilty of an offence against the law

Private residence A camp occupied by a man and his son, which was the only home they had, and which constituted their home for the time being, would be a 'private residence'

Private right of way A private right of way serves as a means of accommodation to a limited neighbourhood for local convenience It has been defined to be that right which one man has of going over another's land, and is confined either to the inhabitants of a particular district, or to those occupying or owning certain estates, or it generally extends to one or more individuals

"Private road" defined Ben. Act I,1900, s 4

PRIVATE ROAD A private road is one the soil of which belongs to the owner of the field, and is burdened with a right of way

A private road may be defined as a road established by a private individual, or by public authority chiefly for the accommodation of an individual or individuals, and at his or their instance and expense

Private roads are neighbourhood ways not commonly used by others than the people of the neighbourhood where they are, though they may be used by any one who may have occasion to do so

PRIVATE ROADS are those which are only open for the benefit of certain individuals to go from and to their homes for the service of their lands and for the use of some estates exclusively *Glen* on Highways, *Pratt* on Highways

Private sale A private sale is a sale without advertisement and public outcry.

"Private salt-work,' defined. Bom. Act 2, 1890, s. 3 (*k.*)

Private school (*i.e.*) kept and carried on for the owner's profit

Private way.

Private seal "A private seal may be made in the same manner as a public seal for any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer."

"Private slaughter-house" defined Bom. Act 3, 1888, s 398.

Private soldier (*Milit*) (*i e*) below non-commissioned officers

Private statutes are such as relate to, concern, and affect particular persons, or something in which individuals or classes of persons are interested in a way and degree peculiar to them, and not common to the whole community (*See* Private Acts)

"Private street" defined Ben Act 3, 1899, s 3 (35), Bom. Act 3, 1888, Ss. 3 (y) Mad. Act 3, 1904, s 3 (26)

"PRIVATE STREET" means a street which is not a public street, Bom Act III of 1888 (City Bom Municipal) s 3, cl. (y.)

Private transfer 13 Lah 702=35 Bom L R. 1= 1932 P C 235=63 M L J 644 (P C.)

"Private vaccinator" defined Mad. Act 4, 1884, s 3 (*xxxii*), Mad. Act 5, 1884, s 3 (*xxx.*)

'Private water" defined Act 4, 1897, s 3 (3), Ben Act 2, 1889, s. 2

The term 'prive waters' is sometimes used in contradistinction to 'public waters," to designate non navigable waters, the term 'public waters' being used to designate navigable waters.

"PRIVATE WATERS" means waters—(*a*) which are the exclusive property of any person, or (*b*) in which any person has an exclusive right of fishery, and in which fish are not confined but have means of ingress or egress. Ben. Act II of 1889 (Private Fisheries Protection), s 2.

Private way A 'private way' relates to that class of easements in which a particular person, or particular description or class of persons, have an interest or right of way, as distinguished from the general public

PRIVATE WAY AND PRIVATE ROAD A private way is the right of one man to pass over the land of another in some particular line, *i e*, it is a right of way *ex vi termini* The words 'road' and 'way' are frequently used interchangeably, but properly 'way' is more generic, including many things besides roads. A *road* is properly any piece of land used or appropriated for travel. A private way is utmost an easement and does not conflict with the absolute proprietorships of the owner, but is nevertheless property and protected as such It is an interest in land but it cannot be taken on execution Private ways do not all involve the same rights There may be footway, a horse way, a carriage way, or any one of the innumerable other varieties of ways, and the right of the owner are limited accordingly, but the existence of the greater always includes the less A private way is generally a way for travel over the surface of the land, but there may be a right of way over passages or stair ways as well. The word 'alley' when used in a deed between individuals may and frequently does mean private way. (*Rul. Case Law.*)

Private wharf

Private wharf A private wharf is one where the owner has the right to the exclusive use and enjoyment, or permit such individuals to enjoy it as he sees proper Whether a wharf or landing is public or private depends upon the ownership of the soil, the purpose for which it was erected, the uses to which it has been applied, and the nature and character of the structure

Private writing This is opposed to public writings. Public writings are the written acts, or records of the acts, of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, of a state

LETTER MARKED "PRIVATE," is to be opened or read by none but the addressee

Privateer Privateering Armed cruising of private ships commissioned by a belligerent State to carry on operations of war against the enemy The vessel so armed and commissioned is called a privateer, and the commission is granted by *letters of marque* (*Ency of the Laws of England*)

PRIVATEERING AND PIRACY DISTINGUISHED The distinction between privateering and piracy is the distinction between captures *jure belli*, under color of Governmental authority and for the benefit of a political power organised as a Government *de jure* or *de facto* and mere robbery on the high seas, committed from motives of personal gain, like theft or robbery on land In the one instance the acts committed inure to the benefit of the commissioning power, and in the other to the benefit of the perpetrators merely

PRIVATEERS ARE TO BE DISTINGUISHED FROM PRIVATE VESSELS converted into ships of war by the belligerent, and manned by their proper naval officers The former are fitted out by the owners at their own expense, and it was usual to allow them to keep, by way of remuneration, what they could take from the enemy, after giving the admiral his share They had further to find security for good behaviour, and other means, such as liability to search by public vessels of the country whose flag they carried, were taken, to secure that they did not violate the laws of war (*Lawrence, Principles of International Law*, 1895, p 417)

Privatis pactionibus non debium est non laedi jus caeterorum There is no doubt that the rights of others are not prejudiced by private agreements

Privatorum conventio juri publico non derogat. A private agreement does not derogate from the public right.

Privatum incommodum publico bono pensatur Private individuals should suffer public welfare

Privies, (*from the Fr Prive, i e Familiaries*) Those who are partakers, or have an interest in any action or thing, or any relation to another (*Tomlins Law Dic*)

PRIVIES are those whose relationship to the same right of property is mutual and successive

PRIVIES. All who have mutual or successive relationship to the same rights; persons connected together, or having a mutual interest in the same action or thing, by some relation other than that of actual contract between them, persons who are parties to, or have an interest in, any action or thing, or any relation to another, persons whose interest in an estate is derived from the contract or conveyance of others, those who are partakers or have an interest in any action or thing, or any relation to another.

The books mention five kinds of privies Privies of blood, such as the heir to the ancestor, privies in representation, such as executors or administrators to the deceased, privies in estate, between donor and donee, lessor and lessee privies in respect of contract, and privies on account of estate and contract together.

Privilege is an exemption from some duty, burden, or attendance, to which certain persons are entitled, from a supposition of Law, that the stations they fill, or the offices they are engaged in, are such as require all their care, that therefore, without this indulgence, it would be impracticable to execute such offices, to that advantage which the Public good requires (*Tomlins Law Dic*)

"'PRIVILEGES', are liberties and franchises granted to an office, place, town, or manor, by the King's great charter, letters patent, or Act of Parliament. (*Termes de la Ley*)

PRIVILEGE As used in its broad and commonly accepted sense is a peculiar advantage, a personal benefit or favour, a private or personal favour enjoyed It means also, in connection with the context, a particular and peculiar benefit or advantage, enjoyed by a person, company, or class, beyond the common advantage of other citizens, some peculiar right or favour granted by law contrary to the general rule, the enjoyment of some desirable right, special enjoyment of a good, an exemption from some general burden, obligation

OTHER DEFINITIONS. A privilege is a peculiar advantage—an immunity.

A privilege is a peculiar benefit or advantage, a right or immunity not enjoyed by others or by all, special enjoyment of a good or exemption from an evil

A privilege is a particular and peculiar benefit or advantage enjoyed by a person, company, or class beyond the common advantage of other citizens.

The word 'privilege' according to one definition given by standard lexicographers, means that which one has a legal claim to do, legal power, authority, immunity granted by authority, the investure with special or peculiar rights

PRIVILEGE, PREROGATIVE, EXEMPTION, IMMUNITY. Privile ge, in its most extended sense, comprehends all the rest for every prerogative, exemption and immunity are privileges, inasmuch as they rest upon certain laws or customs, which are made for the benefit of certain individuals, but in the restricted sense privilege is used only for the subordinate parts of society and prerogative for the superior orders as they respect the public, privileges belong to or are granted to the subject, prerogatives belong to the crown It is the privilege of a member of parliament to escape arrest for debt, it is the prerogative of the crown to be irresponsible for the conduct of its ministers.

Privilege.

Privileges are applied to every object which it is desirable to have prerogative is confined to the case of making one's election, or exercising any special power; exemption is applicable to cases in which one is exempted from any tribute, or payment, immunity is peculiarly applicable to cases in which one is freed from a service all chartered towns or corporations have privileges, exemptions, and immunities

PRIVILEGES AND IMMUNITIES OF CITIZENS include all those fundamental privileges and immunities which belong essentially to the citizens of every free government among which are the right of protection, the right to pursue and obtain happiness and safety, the right to pass through and reside in any place within state for purposes of trade, agriculture, professional pursuit, or otherwise, to claim the benefit of the right of *habeas corpus*, to institute and maintain actions of any kind in the courts of the state, and to take, hold and dispose of property, either real or personal

"PRIVILEGE" AND "PLEDGE" are totally different things, privilege being a right which the nature of a debt gives to a creditor which enables him to be preferred before other creditors But a pledge is a contract by which a debtor gives something to his creditor as a security for his debts

Privilege of pre-emption. A right of pre-emption is only a prior right to purchase land pre-empted It is not a claim of title, in any sense, but a naked right to effect a purchase and acquire a title.

Privilege tax Privilege taxes are taxes on certain kinds of business, for the carrying on of which licenses are required.

BILL OF PRIVILEGE Peer's petition to be tried by his peers.

BREACH OF PRIVILEGE. Offence against the privileges of Parliaments

WRIT OF PRIVILEGE. For release of privileged person arrested in civil suit.

Privileged communication With reference to privileged communications being inadmissible in evidence, it is a settled rule of common law that if the communication be to one who is at the time professionally employed, and occupies the attitude of a *legal adviser*, it is privileged, and the seal of silence is on it, subject to be broken by consent of the client only

A communication cannot be considered as privileged because made in professional confidence, unless the person to whom it is made is acting for the time being in the character of a legal adviser of the person who makes it. The communication must also be made for the purpose of obtaining professional advice or aid in the matter to which the communication relates.

A *husband or wife* cannot be examined as to any communications made by one to the other during marriage, nor shall they be permitted, after the marriage relation ceases, to reveal any such communication. Such communications are also privileged.

Letters from a husband, found by the wife's administrator among her papers, which may be used against him in a suit in which he was then interested, would be privileged communications.

Privileged communications.

In order to make a *communication to a minister of the Gospel or priest* privileged it must be received in confidence By this is not meant that it must be made under the express promise of secrecy, but, rather, that the communication was in confidence, and with the understanding, express or implied, that it should not be revealed to any one. The mere fact that a communication is made to a person who is a priest does not of itself make such communication privileged. To have that effect, it must have been made in confidence of the relation, and under such circumstances as to imply that it should for ever remain secret in the breast of the confidential adviser

Criminal prosecution by Crown—*Witnesses* for the Crown, *privileged* from disclosing channels of information—Detective not privileged from answering questions as to where he was secreted *See* 19 C.W.N. 676

Privileged communications (*in the law of libel and slander*) Privileged communications are exceptions to the general rule which implies malice in a libellous publication, and infers some damages It rests with the party claiming the privilege to show that the cause is brought within the exception The exception covers cases where a communication is made *bona fide* upon any subject matter in which the party making it has an interest, or in reference to which he has a duty, legal, moral, or social, which he may fairly be presumed to have led to the communication, when made to a person having a corresponding interest or duty

"A communication made *bona fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is *privileged*, if made to a person having a corresponding interest or duty, although it contains criminatory matter which, without this privilege, would be slanderous and actionable" (per *Campbell, C.J.*, delivering the judgment *Harrison* v *Bush*, 25 L.J.Q.B. 29)

The rule is that a communication made in good faith upon a subject-matter in which the communicating party has an interest, or in reference to which he has a duty, public or private, legal, moral, or social, if made to a person having a corresponding interest, is privileged.

'PRIVILEGED COMMUNICATIONS' are of two kinds: (1) *Absolutely privileged*, which are restricted to cases in which it is so much to the public interest that the defendant should speak out his mind fully and freely that all actions in respect to the words used are absolutely forbidden, even though it be alleged that they were used falsely, knowingly, and with express malice This complete immunity obtains only where the public service or the due administration of justice requires it, *e.g.*, words used in debate in the state Legislatures, reports of military or other officers to their superiors in the line of their duty, everything said by a judge on the bench, by a witness in the box, and the like. In these cases the action is absolutely barred. (2) *Qualified privilege* In less important matters, where the public interest does not require such absolute immunity, the plaintiff will recover in spite of the privilege, if he can prove that the words were not used *bona fide*, but that the defendant used the privileged occasion artfully and knowingly to falsely defame the plaintiff (*Odgers*,

Privileged occasion.

Sland, & L. 184.) In this class of cases an action will lie only where the party is guilty of falsehood and express malice

Privileged occasion The term 'privileged occasion' is used in the law of libel and slander to designate occasions where, for the sake of common convenience, and in the interest of society, certain publications which would otherwise be libels do not have such effect. These occasions are usually divided into two classes—those absolutely privileged, and those conditionally privileged. In the former case the freedom from liability is said to be absolute or without condition, as contrasted with such freedom in the latter case, where it is said to be conditioned upon the want or absence of expression malice The first class is an apparently narrow one, and is, speaking generally, strictly confined to legislative proceedings, judicial proceedings in the established courts of justice, acts of state, and acts done in the exercise of military and naval authority

"Privileged occupant" defined Bom Act 1, 1880, S. 3 (5).

"PRIVILEGED OCCUPANT" means, (*a*) a dharekari, or (*b*) a quasi dharekari, or (*c*) a permanent tenant Bom. Act I of 1880 (Khoti Settlement), S 3, cl. 5]

Privileged publication A privileged publication is one made (1) in the proper discharge of an official duty, (2) in any legislative or judicial proceeding, or in any other official proceeding authorised by law, (3) any communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or who is requested by the person interested to give information, (4) by a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or anything said in the course thereof

"Privileged will" defined, Act 10, 1865, S 52

Privilegium non valet contra rem publicam A privilege avails not against public good or against the interest of the public

Privity. A derivative kind of interest, founded upon or growing out of the contract of another, as that which subsists between an heir and his ancestor, between executor and testator, and between lessor and lessee and his assignee, a relation which creates an obligation

Person who has a *privity* of contract is hardly distinguishable from one who is party to the contract, (*Walker's Case*, 3 Rep 23) Other privities are,—privities of estate in tenure, in blood, in representation etc

The term "privity" denotes mutual or successive relationship to the same right of property.

The doctrine of estoppel, as applicable to the different classes of person in privity, applies to them under one and the same principle, *i e*, that a party claiming through another is estopped by that which estopped that other respecting the same subject-matter

Privy. (*See privies*) One definition of 'privy' as an adjective, is 'admitted to the participation of knowledge with another of a secret transaction, secretly cognizant, privately knowing' As a noun, 'a partaker,' etc

PRIVY As an adjective, admitted to the participation of knowledge with another of a secret transaction As a noun, one who is a partner, or has any part of interest, in any action, matter or thing. In law, one whose right to the thing in question may be benefited or injured, according as the matter in controversy may happen to be determined.

A privy as distinguished from a party "signifies him that is partaker, or hath an interest, in any Action or Thing" (*Cowel.*)

Privy is also used to denote a place for easing nature A 'privy' is neither 'land' nor 'water,' nor is the use of it an easement over the same 15 Bom.L. R 329=20 I C 224=14 Cr.L J. 400

"Privy council" defined 52-3, V c 63, s 12 (5), Act 10, 1897, s 3 (42), Bur Act 1, 1898, s 2 (46), E B and A Act 1, 1909, s 5 (47), P. Act 1, 1898, s. 2 (42).

PRIVY COUNCIL. A most Honourable Assembly of the King himself and his Privy Counsellors in the King's Court or Palace, for matters of State (4 Inst 53) This is the principal Council belonging to the King, and is generally called by way of eminence, the Council According to Coke's description of it at length, it is a Noble, Honourable, and Reverend Assembly, of the King, and such as he wills to be of his Privy Council, in the King's Court or Palace. The King's will is the sole constituent of a Privy Counsellor, and this also regulates their number which, of ancient time, was twelve or thereabouts Afterwards it increased to so large a number that it was found inconvenient for secrecy and dispatch But more recently the number has been much augmented and now continues indefinite. (*Tomlins Law Dic*)

"Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council. Act X of 1897 (General Clauses) s 3 (42).

Privy councillor Member of the Privy Council.

Privy purse Allowance from public revenue for the sovereign's private expenses.

Privy seal State seal affixed to documents awaiting the great seal and to documents of less importance

Privy verdict A privy verdict occurs when the judge hath left or adjourned the court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to deliver their verdict privily to the judge out of court, wherein the jury may vary from the privy verdict

Prize The term 'prize' is used to designate the reward in a lottery, which the lucky person or persons will receive.

A prize is ordinarily something offered by a person for the doing of something by others in a contest in which he himself does not enter. He has not a chance of gaining the thing offered, and, if he abides by his offer, he must lose it, and give it to some one of those who contest for it. It is a reward or recompense for some act which is done, and the distinction between it and a bet or wager is clear, as with them there must be two parties, and it is known before the happening of the event that one of them must win or

Prize.

lose, and it is also a stake on a certain event, not merely a reward or recompense for some act which is done

A 'prize, or premium' is ordinarily some valuable thing offered by a person for the doing of something by others

PRIZE (*in Admiralty Law*) In admiralty law, the term Prize is used to signify any goods, the subject of marine capture, property taken at sea from an enemy, *jure belli*, maritime captures only—ships and cargoes taken by ships.

As soon as a war is declared, all the property of the enemy or his subjects, wherever found, whether on land or water, is lawful prize 13 Fed Cas. 855, 861.

A *Prize of war*, as distinguished from *booty*, is a belligerent capture of an Enemy's Ship or other property at Sea (*Beak* v *Tyrrell*, Carth 32, *Hall* on International Law)

PRIZE AND SALVAGE. Salvage should be regarded in the light of compensation, and not in the light of prize. The latter is more like a gift of fortune, conferred without regard to the loss or sufferings of the owner, who is a public enemy, while salvage is the reward granted for saving the property of the unfortunate

ON PRIZE AND PRIZE OF WAR *See* Ency of the Laws of England, Holland, Manual of Naval Prize Law, The Queen's Regulations and Admiralty Instructions, Capt Johnstone, "Naval Prize in War", Wildman, The Law of Search, Capture, and Prize, Hazlitt and Roche, Manual of the Law of Maritime Warfare, Lushington, Manual of Naval Prize Law, De Burgh, The Elements of Maritime International Law, and other books on International Law generally

Prize chit and lottery *See* 57 M. 923=67 M L.J 163

Prize Court The Prize Court is the division of the admiralty court which has jurisdiction over prizes taken from a foreign power in time of war.

A Prize Court is in fact a court of all the nations in the world, because all persons in every part of the world are concluded by its sentence in cases clearly coming within its jurisdiction.

A Prize Court is a Court having jurisdiction to adjudicate upon captures made at sea in time of war, and to condemn the property captured, if such a decree be proper. 'Prize Courts are not instituted to determine civil and private rights, but for the purpose of trying judicially the lawfulness of captures at sea according to the principles of public international law, with the double object of preventing and redressing wrongful captures, and of justifying the rightful acts of the captors in the eyes of other nations. The ordinary course of proceeding in prize causes is wholly different from those which prevail in municipal Courts of common law or equity in the determination of questions of property between man and man.

Prize fight. A prize fight is a contest in which the combatants fight for a reward or wager.

Probable cause.

Prize fighting simply means fighting for a prize or reward, and any contest in which the fighters are offered or promised a prize or reward to be paid to the victor or either of them is a prize fight

The term "prize fight" has no technical legal meaning, but as commonly understood it is a pugilistic encounter or boxing match for a prize or wager The term is used in statutes against prize fighting in its ordinary signification, and includes all fights for a prize or reward in which the contestants intend to inflict some degree of bodily harm on each other

Prize goods Prize goods are defined to be goods taken on the high seas, *jure belli*, taken out of the hands of the enemy

Prize law The law of prize is a law of war, which is to be exercised at the order of the executive, and not upon principles of policy or equity; and while prize courts, where questions of doubt arise, yield as far as possible, to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations By the prize law, as accepted at the present time, war vessels of a belligerent has the right, in the absence of any declaration of exemption by the political power, to capture wherever and whenever found afloat anything which belongs to or is the property of the enemy.

Probability. A probability of the existence of a thing or condition is created when there is more evidence in favour of its existence than against it

"PROBABILITY" as used in a requested instruction in a criminal prosecution that the jury should acquit if there is a probability of defendant's innocence, is at least equivalent to a reasonable doubt of his guilt

Probability means likelihood, appearance or resemblance of truth, and, in ordinary language, implies doubt, so that to instruct a jury that they may act on probabilities means that they may act on less than convincing evidence, or without the moral certainty required by law, and is erroneous

Probable "Probable' means having more evidence for than against, supported by evidence which inclines the mind to believe, but leaves some room for doubt

"PROBABLE"—"LIKELY" The use of the word "probable", instead of the word "likely", in a hypothetical question is immaterial; the two words meaning precisely the same.

"PROBABLE AND NATURAL"—"POSSIBLE" Things or results which are only possible cannot be spoken of as either "probable or natural", for the latter are those things or events which are likely to happen, and which for that reason should be foreseen. Things which are possible may never happen, but those which are natural or probable are those which do happen, and happen with such frequency or regularity as to become a matter of definite inference.

Probable cause. Belief founded upon reasonable grounds; that apparent state of facts found to exist upon reasonable inquiry; that is, such inquiry as the

Probandi necessitas incumbit illi qui agit.

given case rendered convenient and proper, which would induce a reasonably intelligent and prudent man to believe that the accused person had committed, in a criminal case, the crime charged, and in a civil case that a cause of action existed

PROBABLE CAUSE (*in Malicious prosecution*) The term "probable cause" as used with reference to an action for malicious prosecution, means a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged

Probandi necessitas incumbit illi qui agit The necessity of proving lies upon him who brings the charge.

"**Probate**" defined 55 V c 6, S 6, Act 10, 1865, S. 3, Act 5, 1881, S 3

"PROBATE", means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator. [Act XXXIX of 1925 (Succession), S 2 (*f*)]

PROBATE. The term "Probate" in its strictest sense signifies the copy of the will which is given to the executor, together with a certificate granted under seal of the Court, and signed by one of the registrars, certifying that the will has been proved This probate or copy of the will constitutes the executor's title to act, the original document being left in the registry. When the two documents differ, and questions of interpretation arise, the Court may look at the original will [See *Havergal* v. *Harrison*, (1843) 7 Beav 49, 49 E.R 980, Williams on Executors, Tristram and Coote, Probate Practice, Powles and Oakley, Probate Practice, Jarman on Wills, *Ency of the Laws of England*].

OTHER DEFINITIONS The probate of a will is a proceeding to establish its validity

The probate of a will is a civil proceeding. In contemplation of law it is solely an inquiry as to the validity of a certain paper writing whether it is or is not the last will and testament of the decedent and the judgment or decree in such case is either that it is or is not such a will

PROBATE. As applied to a will, is a proceeding to establish its validity, the proof before an officer authorised by law that an instrument offered to be proved or recorded is the last will and testament of the deceased person whose testamentary act it is alleged to be

Probate bond. A "probate bond" is a bond which must by law be given to the Judge of probate, such as bonds given by executors or administrators, and some others which are provided for by statute.

Probate Code The body or system of law relating to all matters of which probate Courts have jurisdiction, law administered by Probate Courts.

Probate Court Tribunals for the establishment of wills and administration of the assets of men dying either with or without wills are variously called "prerogative courts", "orphans' courts" or 'Probate Courts.'

Proceedings.

"**Probate-duty**" defined. 55 V, c 6, S 6

Probation Testing of a person's capacity, conduct or character—especially before he is admitted to regular employment or full membership of some society

Probative force. "Probative force means a force serving for proof"

Probator (*in old English law*)—an approver Where a culprit indicated for treason or felony confessed the truth of the charge, and upon being sworn revealed all the treasons and felonies within his knowledge, and entered before a coroner his appeal against all his partners in crime who were within the realm, the criminal thus confessing was called the "approver," or in Latin "probator."

Procedendo The function of a "procedendo" is to remit a cause to an inferior from a superior Court to which it has been removed A form of writ issuing out of a superior Court to an inferior Court

Procedure. Mode of conducting business (as) Parliamentary procedure, legal procedure, etc.

Proceed. "Proceed" as used in a notice by a surety on a note after it became due, directing that the payee should at once proceed and collect the note, means to commence and carry on a legal process.

A stipulation not to proceed against a party is an agreement not to sue him

Proceedings. The word "proceedings" ordinarily relates to forms of law, to the modes in which judicial transactions are conducted

A "proceeding" is defined as the instrument whereby the party injured obtains redress for wrongs committed against him, either in respect to his personal contracts, his person, or his property

A proceeding in a civil action is an act necessary to be done in order to attain a given end It is a prescribed mode of action for carrying into effect a legal right.

"In its general acceptation, "proceeding" means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing Ordinary proceedings intend the regular and usual mode of carrying on a suit by due course of common law."

In its general acceptation, a proceeding is an act which is done by the authority or direction of the Court, express or implied, an act necessary to be done in order to attain a given end, a prescribed mode of action for carrying into effect a legal right; performance of an act, wholly distinct from any consideration of an abstract right, the form and manner of conducting judicial business before a Court or judicial officer, regular and orderly progress in form of law, including all possible steps in an action, from its commencement to the execution of judgment. [*See* 26 M 589 (F.B); 11 W.R. 209, 146 I.C. 653=1933 Rang 292; 1 A.L J. 428, 13 I.C.175.

The word "*proceedings*" is a very general one; it is not limited to proceedings other than the civil proceedings, and civil proceedings other than suits. When applied to suits, it may be used to mean the

Proceedings.

suit as a whole or it may be used, and often is used, to express the separate steps taken in the course of a suit the aggregate of which makes up the suit [16 C. 267 (F B)]

The word "proceedings" in S 6 of Act I of 1868 (General Clauses) as applied to a suit, means the suit as an entirety, down to the final decree. (15 C. 107, *see also* 22 I C 39)

The word "Proceedings" in S 29, Arms Act, means legal proceedings in Court and not searches or arrests or investigation made by the police in exercise of the powers conferred upon them by law The mere submission of a charge sheet by the police does not amount to institution of proceedings (107 I C 835=29 Cr L J. 301=6 Pat 768=A I R 1928 Pat 146)

"PROCEEDING" includes any suit, appeal or application [Act IV of 1925 (Soldiers Litigation), S 2, cl. (*d*).]

"ACTION OR PROCEEDING," would mean "a proceeding in the nature of an action" [per *Davey, L J Hood-Barrs* v *Catheart*, (1894) 3 Ch 376]

"ANY OTHER PROCEEDING IN THE ACTION," means, any proceeding with a view to continuing the action, *i e*, step forward, not one backward (*Spincer* v *Watts*, 58 L J Q B 383, 23 Q B D 350)

"CRIMINAL PROCEEDING" is a far larger term than "Criminal Prosecution" (*Yates* v *The Queen*, 54 L J.Q.B. 258, 14 Q.B D. 648)

PROCEEDING, TRANSACTION The term proceeding marks the manner of proceeding, as when we speak of the proceedings in a Court of law transaction marks the business transacted, as the transactions on the exchange

"Proceedings closed" The order "proceedings closed" does not necessarily amount to dismissal. (6 M.L.T 333=3 I C 940.

Proceeds The word "proceeds" is one of equivocal import, and of great generality It does not necessarily mean money, its meaning in each case depending very much upon the connection in which it is employed and the subject-matter to which it is applied.

Strictly speaking it implies something that arises or leads out of or from another thing, and in its ordinary acceptation, when applied to the income to be derived from real estate, it embraces the idea of issues, rents, profits, or produce. In a commercial sense it means the sum, amount or value of goods, or things sold and converted into money.

"PROCEEDS" mean produce, outcome, profit An amount never received cannot be part of the proceeds. So where the commission of certain receivers was fixed at certain percentage of the "gross sale proceeds," the term does not include the trade discount which is invariably deducted before the sale price is arrived at (131 I C 655=A I R 1931 Mad 500=60 M.L.J 332)

Process. A word which may be applied either to methods of action such as legal proceedings, or to the treatment of substance in transforming and reducing it to a different state and the means of such treatment.

Process

PROCESS (*in Judicial procedure*) The common law definition of "process" is a writ issued by some Court or officer exercing Judicial powers

The term "process" as a legal term has a very comprehensive signification One of its definitions is that it is a writ, warrant, subpoena, or other formal writing issued by authority of law

OTHER DEFINITIONS "The word process has in law a well established legal meaning in its application to the commencement of the proceedings It is used to designate the writ or other judicial means by which a defendant is brought into Court to answer a charge, though there may afterwards be issued, in the progress of the case, interlocutory and final processes"

The term "process" includes any and every writ, rule, order, notice or decree including any process of execution that may issue in or upon any action, suit or legal proceedings.

Judicial 'process,' in its largest sense, comprehends all the acts of the Court, from the beginning of the proceeding to its end In a narrower sense, it is the means of compelling a defendant to appear in Court, after suing out the original, writ, in Civil, and, after indictment, in Criminal Cases In every sense, it is the act of the Court Any means of acquiring jurisdiction is properly denominated process The term is sufficiently comprehensive to include an attachment, garnishment, or execution A *writ* is a *process* and a process is a *writ* interchangeably (*Rul Case Law*)

Process means the writ, notice, or other formal writing, issued by authority of law, for the purpose of bringing defendant, into a Court of law to answer plaintiff's demands in a civil action, although in a more technical and limited sense the term is frequently applied only to these writs or writings which issue out of a Court

"All the steps taken in an execution the seizure and the sale—are, in the natural meaning of the word comprehended in the term process'" (per *Lynch, J.*, Re *Delahoyd*, 11 Ir Ch Rep 407)

The term 'process" in S 3, Chota Nagpur Encumbered Estates Act (VI of 1876) includes summons. 20 C 609

A commission, issued to an Ameen to make a local investigation, is not a "process" within the meaning of S 20 of the Court Fees Act Process has a well understood meaning within which such a commission cannot be included. 17 C. 281

The phrase "AN ABUSE OF THE PROCESS OF THE COURTS' includes "the idle multiplicity or proceedings" (A I R 1924 All 818, *Rel on*) 48 All 356=24 A L J 375=93 I C 285=A I R 1926 All. 212.

Their Lordships cannot pass from this case with out the expression of their surprise and deep regret, that such a case should have been possible under the system of jurisprudence prevailing in any country under the British dominion The subject-matter of the original suit a debt, it should seem undisputed, or at least as to which, in substance, no serious dispute was possible, where the plaintiff's difficulty had not been to establish his right to the judgment of the Court in which he sued, but to make that judg-

Process.

ment available when obtained, though the funds were ample for the purpose By fraud and chicanery, by every possible ABUSE OF THE FORMS AND PROCEDURE OF LAW, by force and violence even, it is to be greatly feared, to the shedding of blood, justice was evaded and defied for fifteen years, from 1830, when the decree was pronounced, to 1845, when the final sale took place The original plaintiff, wearied out with the long delay and expense, fain to sell the benefit of his decree, the unhappy man who had been substituted for him losing his life, while vainly striving to realize its fruits And now, in 1862, their Lordships have been called upon to dispose of a suit, in which it is sought to invalidate the whole proceeding as against a purchaser for value, the second in succession from the execution creditor against whom, or the party from whom he immediately purchased, no fraud, no collusion, no knowledge of the supposed defects in the title has been alleged A system under which all this is possible loudly called for amendment, and, administered as it here has been, defeated the very object for which it was instituted (Per *Sir John Coleridge*) 9 M I A. 324=5 W.R 7=Marsh 592=2 I J 51=1 Suth 488=1 Sar. 862

Process (*in Patent Law*) "Process" is a mode of treatment of certain materials to produce a given result, it is an act or a species of acts performed upon the subject matter to be transformed and reduced to a definite state of thing If new and useful, it is just as patentable as is a piece of machinery In the language of the patent law, it is an art"

The term "process", in the patent laws is an act or a mode of acting The mixing of certain substances together When the term "process" is used to represent the means of producing a result, it is patentable and includes all methods or means not effected by mechanism.

Process-Server. Sheriff's officer, one appointed to serve court processes

Procession Procession is the action of a body of persons going or marching along in orderly succession in a formal or ceremonial way, especially as a religious ceremony or on a festive occasion Where an image was merely carried down the ghat by four or five carriers and immersed in the river and there was nothing to be described as a body of persons going or marching along in orderly succession in a formal or ceremonial way, it is not correct to say that it was carried in a procession. 130 I C. 239=32 Cr.L.J. 482=A I R. 1931 Cal. 128

PROCESSION, TRAIN, RETINUE. Procession may consist of persons of all ranks and stations, but train and retinue apply only to such as follow some person or thing in a subordinate capacity. the former in regard to such as make up the concluding part of some procession, the latter only in regard to the servants or attendants on the great. Princes and nobles never go out on state or public occasions without a numerous retinue the beauty of every procession consists in the order with which every one keeps his place, and the regularity with which the whole goes forward, the length of a train is what renders it most worthy of notice

Prochein Ami. Next friend, the latter term being defined as one who, without being appointed guardian, acts for the benefit of an infant, lunatic, married woman, or other person incapacitated person (*non sui juris*)

"Proclaimed offender" defined Act 5, 1898, S 45 (*e*) (*ii*) 1901 A W,N 10

Proclamation A proclamation, in the Law of England, is a document passed under the Great Seal whereby the Sovereign or his Viceroy or governor or other person acting in a delegated authority either—(*a*) Formally announces an executive Act, or (*b*) Legislates, within the limits of the legislative power of the Crown acting without Parliament or in pursuance of express statutory powers of legislating by proclamation or (*c*) Gives notice of, and enforces, laws already in force.

Like an order in council a Proclamation is an Act of the Sovereign in Council and the responsibility therefor rests with the Government for the time being (*Ency. of the Laws of England*)

To make poclamation is, says Lord Coke, a grand prerogative of the King (12 Rep. 75) and no subject can issue a public proclamation even though it concern a wholly private matter On this subject *see* Broom, Constitutional Law, Chitty, Prerogative,, The Book of Proclamations, (*in England*) Printed by order of James I.

OTHER DEFINITIONS "In English law the instrument is thus defined 'Proclamation is a notice publicly given of anything whereof the King thinks fit to advise his subjects'"

A PROCLAMATION is "the act of proclaiming, a declaration or notice by public outcry such as is given by criers at the opening or adjourning of courts", or "a public notice in writing given by a state or departmental official of some act done by the Government or to be done by the people".

Pro-consul. Ancient Roman Provincial Governor, sometimes used to denote a colonial Governor.

Pro-create Produce offspring

Proctor is one who manages the business of another, on the mandate or commission of his principal, an attorney An officer in a university with disciplinary powers In practice, an officer in the admiralty and ecclesiastical courts, corresponding with attorney, at common law he who undertakes to manage another man's case in any court of the civil or ecclesiastical, jurisdiction for a fee "An Attorney at Law answers to the Procurator, or proctor, of the civilians and canonists" (3 Bl Com. 25).

An attorney in the admiralty and ecclesiastical courts is a Proctor. (*Anderson L. Dict*).

KING'S OR QUEEN'S PROCTOR. Official entitled to intervene in Divorce and Nullity suits when exclusion is suspected.

Procuration. Agency, the administration of the business of another.

A MANDATE, PROCURATION, OR LETTER OF ATTORNEY is an act by which one person gives power to another to transact for him, and in his name, one or several affairs.

Procuration fee.

Procuration fee A sum of money or commission taken by scriveners on effecting loans of money. (*Ency of the Laws of England*).

"**Procurations**", are certain sums of money which Parish Priests pay yearly to the Bishop or Archdeacon (*Cowel Stroud*)

Procure The word "procure" means to acquire for one's self, to cause to come, to obtain by any means, to contrive, to bring about, and as used in an allegation in an answer that plaintiff 'procured' to be issued to her a policy of insurance, will be construed as equivalent to an allegation to deliver to and acceptance of such policy by, plaintiff.

An obligation to "procure" something to be done by another person, connotes, at any rate that the obligor is to take steps to procure its being done (*per* Fry, L J, *Lowther* v *Caledonian Ry*, 1892, 1 Ch 73, 61 L J Ch 108).

"PROCURE, ADVISE, ASSIST There are no words in the law that have acquired a more definite and specific meaning than "*procure, advise, and assist*" as contradistinguished from the actual commission of the crime The latter is the principal offence, but the former only accessory If a person does no more than, *procure, advise or assist* he is only an accessory, but if he is present, consenting, aiding, procuring advising, and assisting, he is a principal and must be indicted as such

"PROCURE" AND "SUFFER" The word "procure" and the word "suffer", have different meanings "Procure" is active, while "suffer" is passive.

"PROCURE, ENTICE AND PERSUADE." In the phrase as "*procuring, enticing and persuading*," *e g*, a wife to absent herself from her husband, "procuring and is certainly persuading with effect" (*per* Willes, C.J., *Winsmore* v *Greenbank, Willes*, 582, 583)

Prodhan uttaradhikari The expression "prodhan uttaradhikari" in the Pachis Sawal includes a brother, and is not confined to a son. 32 C 158=9 C W N 330

"**Produce**' defined *See* Actual produce, Forest-produce.

PRODUCE As a noun the word has no definite, exact, and particular meaning, it may be used in a larger or more restricted sense As a verb: To bring forward; to show or exhibit: to bring into view or notice, as, to produce books or writings at a trial in obedience to a subpoena to bring forward, to offer to view or notice, to show; to manufacture, make.

'Produce' The word "produce" is not necessarily confined to what is grown from the ground. It refers also to a finished article or a semi-finished article made from raw material. Thus mollases can fairly be called the produce of a sugar mill 6 O.W.N. 1070.

"The 'PRODUCE' OF CAPITAL employed in trade is, all that the Capital produces; *i e* whether in the shape of interest or profits" (*per* Wood, V.C., *Johnston* v *Moore*, 27 L.J Ch. 455, 456.)

When the PRODUCE OF A FUND is bequeathed to a legatee, or in trust for him, without any limitation as to continuance, it amounts to a bequest of the principal also.

Production

"The expression 'PRODUCE' OF MINES OR MINERALS, does not, necessarily, mean produce in its native state Coke may be such produce although by combustion its chemical nature is changed" Mac S. 6, citing *Bowes* v. *Ravensworth*, 15 C B 518, 523.)

"TO PRODUCE" a thing or document to a person, means, to show it to him personally, and does not involve the idea that the possession of it is to be parted with (as) a Railway passenger's duty to *produce* the ticket for inspection by the ticket examiner.

"**Produce of a holding**" defined C P. Tenancy Act XI of 1898, S. 23.

"**Produced**" defined 49-50 V. c 33, s. 11.

PRODUCED. "Produced" is a word "which has not got any exact legal meaning but which requires to have an interpretation placed upon it in the statute in which it is used." (*per* Rigby, L J, *Hanfstaengl* v *American Tobacco Co*, 1895, 1 Q B 347.)

'Produced or given in evidence' meaning. *See* 113 I.C. 712=1929 Pat 60

Producer. One who manufactures or produces goods

Product The word "product" imports an article which is made of something, and which, when made, has characteristics which are apparent to the senses. In judging as to the similarity of products (in Patent law), the material of which a product is made and its appearance when made, may be taken into consideration

Production The word "production" may designate as well a thing produced as the operation of producing, (as) Production of commodities or the production of a witness

PRODUCTION, (*in Political Economy*) Creation of bringing into existence of objects which constitute wealth Thing produced *In commerce* it means the bringing forward and offering of an article for sale.

PRODUCTION (*in Copyright Law,*) The term "production" has been used to describe the legal source of the proprietary rights of authorship, (as the literary production of an author) "It is a species of occupancy, and is called "production" as distinguished from "invention."

The term "PRODUCTION OF HIS LABOR," as used in an Act giving a laborer a lien on the production of his labor, does not entitle a laborer to a lien upon land for work done upon it; for the land, however much improved by his toil, can in no proper sense of the word be considered the production of his work or labor

PRODUCTION, PERFORMANCE, WORK. The production results from a complicated operation, the performance consists of simple action, the work springs from active exertion. Shakespeare's plays are termed productions, as they respect the source from which they came, namely, his genius; they might be called his performances, as far as respected the performance or completion of some task or specific undertaking; they would be called his works, as far as respectedt he labour which he bestowed upon them. The composition of a book is properly a production, when it is original matter; the sketching of a

Productive labour.

landscape, or drawing a plan, is a performance; the compilation of a digest of case law is a work.

PRODUCTION, PRODUCE, PRODUCT. Corn, hay, vegetables, and fruits in general are termed *products* of the earth, the naturalist examines all the *production* of nature, the husbandman looks to the *produce* of his land, the traveller inquires about the *products* of different countries

Productive labour Services which contribute to the production of material objects of value.

Profane. Outside the sacred or secular sphire (as) Profane history, profane literature, profane swearing

PROFANE—PROFANITY. Any words importing an imprecation of divine vengeance, or implying divine condemnation, so used as to become a public nuisance, is profanity. Imprecations of future divine vengeance constitute profane cursing. It refers to cursing or swearing by the name of God, or any word importing an imprecation of divine vengeance or implying divine condemnation, although the name of God is not used.

Profanity. Blasphemy.

Profert Profert is an allegation formally made in a pleading where a party alleges a deed that he shows in court, it being in fact retained in his own custody.

Profess To make open declaration of, as of one's knowledge or belief, to confess publicity.

To PROFESS, DECLARE A Christian *professes* to follow the doctrine and precepts of Christianity; a person *declares* that a thing is true or false, or he *declares* his firm belief in a thing.

Professed gambler To speak of a man as a 'Professed Gambler' is not, *per se*, actionable" (*per* Watson, B, *Barnett* v *Allen*, 27 L.J Ex. 412.)

Profession—Professional One definition of a profession is an employment, especially an employment requiring a learned education, as those of law and physic (*Worcest Dict*) In the Century Dictionary the definition of profession is given, among others, as a vocation in which a professional knowledge of some department of science or learning is used by its practical application to the affairs of others, either in advising, guiding, or teaching them, or in serving, their interest or welfare in the practice of an art founded on it.

The word implies professional attainment in special knowledge as distinguished from mere skill, a practical dealing with affairs as distinguished from mere study or investigation, and an application of such knowledge to uses for others as a vocation as distinguished from its pursuits for its own purposes

The term is applied to an occupation or calling which requires learned and special preparation in the acquirement of scientific knowledge and skill.

Professional capacity. An application to an attorney to draw a deed is an application in a "professional capacity," making the same a privileged communication, which the attorney cannot divulge

"Professional income." Meaning of. *See* 54 M. L.J. 625.

Profits of a corporation.

"Profits" defined. *See* Mesne profits; Net annual profits.

PROFITS Advantages which land yields in the shape of rents, etc., also gains from whatever source derived.

Profit is the gain made on any business or investment when both the receipts and payments are taken into consideration *See* 4 Bom L R. 384

Profit is the acquisition beyond expenditure, excess of value received for producing, keeping or selling over cost, hence pecuniary gain in any transaction or occupation, emolument.

'Profits' are an excrescence upon the value of the Goods beyond the prime cost" (*per* Ellenborough, C J *Eyre* v. *Glover*, 16 East 220)

PROFITS AND GAINS OF BUSINESS. 26 N.L.R. 75=122 I C 689=1930 Nag 183

PROFITS AND INCOME Profits distinguished from 'income' *See* 52 M. 640=118 I.C. 107=1929 M. 387=56 M L J. 481 (F.B)

PROFITS AND LOSS. Gain or loss arising from goods bought and sold (Profit and loss account in book-keeping)

"PROFITS" AND "RECEIPTS" In their ordinary and popular sense the two words "receipts" and "profits" are very different expressions. Profits is the surplus by which the receipts exceed the expenditure. (*Russell* v *Town and County Bank*, (1889) 13 A C 418 and *Gresham Life Assurance Society* v *Styles*, (1892) A C 309, Ref) 38 L W 714=1933 M W N. 1182=A I R. 1933 Mad 825.

PROFITS AND WAGES AND EARNINGS The word "profits" signifies an excess of the value of returns over the value of advances, the excess of receipts over expenditure, that is, net earnings In commerce it means the advance in the price of goods sold beyond the cost of purchase. As distinguished from the wages of labor, it is well understood to imply the net return to the capital or stock employed after deducting all the expenses, including the wages of those employed by the capitalist, and perhaps also the wages of the capitalist himself for superintending the employment. Profits are divided by writers on political economy into gross and net, the former being the entire difference between the value of advances and the value of returns, and the latter so much of this difference as arises exclusively from the capital employed. Profits cannot consist of earnings never yet received.

NET PROFITS AND GROSS PROFITS. "Profits" is a word susceptible of various meanings, particularised as either "gross" or "net", the former being the entire difference between the value of advances and the value of returns, and the latter so much of this difference as arises exclusively from the capital employed.

Profits of business is the gains upon the capital invested in the business; the advance in price of goods sold beyond the cost of purchase, in the popular sense, the receipts over and above current expenses, net receipts.

Profits of a corporation. Profits of a corporation are gains made upon an investment when both receipts and payments are taken into account.

Profits of an estate.

Profits of an estate Profits of an estate, is the balance of the income after paying expenses

Profits of Real estate, the produce of lands; although it has been held to include a building or addition.

Profits of patent infringed, the gains or savings made by the wrongdoer by an invasion of another's property right in his patent, the gain, or saving, or both, which the defendant has made by employing the infringing invention

Profits of solicitor. A *Solicitor's profit* is "what he receives on his Bill of Costs beyond his Disbursements out of pocket" (per *Esher, M R, Re Gallard* 65 L J Q B 199)

Profits of trade. A *trader's profit* consists of the surplus remaining after all expenses attending production and sale have been deducted.

Profit a prendre :—"A profit a prendre, is a right vested in one man of entering upon the land of another and taking therefrom a profit of the soil" (*Add.* T. 284)

Profit a prendre A "profit a prendre" consists of a right to take a part of the soil or produce of the land in which there is a supposable value

"PROFIT A PRENDRE" is defined to be the right of taking soil, gravel, minerals, and the like from the land of another (*Hall* on Profits a prendre)

A customary right of tenants in the locality, to cut wood for fuel, plough-handles, door-posts etc, is a right of customary easement attaching to the locality and not to any collection of individuals, such a right is known in this country, in this case of free pasturage or a fishery as what in English law is called a profit a prendre. 6 C.L.J 218 (222).

Profit a prendre in gross. The right to hunt in a jungle and to appropriate the game is a right to a *profit a prendre* in gross. 2 Pat L.J. 323=2 Pat L.W 282=39 I C 868.

A right *in gross* or profit *a prendre* may be established by the same sort of evidence as is used to establish either a profit *a prendre* appurtenant or an easement in the ordinary sense of the word (5 Cal. 945, 19 Cal. 544 and 14 C.L.J 572, Ref) 61 Cal. 45=151 I C 813=A I R. 1934 Cal. 461.

PROFITS A PRENDRE AND EASEMENT. A profit a prendre is a right similar to an easement, but distinguished from it by the special feature entitling the dominant owner to take something from the land of the servient owner for his own use or benefit. An easement entitles the dominant owner to enter his neighbour's land and make some use of it, but without taking any tangible profit from the soil, or to prevent his neighbour doing something on his own land, as for instance, building, for the benefit of the dominant owner; while a profit a prendre entitles him not only to enter the land, but to take something from it for his own use (*Baily* v. *Appleyard,* 1838, 8 A. & E. 161, 47 R.R. 537).

One of the features of an easement is the absence of all right to participate in the profits of the soil charged with it, and it must therefore be distinguished from profits a prendre. The right to profits denominated profit a prendre consists of a right to take a part of the soil or produce of the land, in which there is a supposable value. It is in its nature corporeal, while easements are not, and it may exist independently without connection with or being appendant to other property

Prohibited article.

Profiteer Make profit out of the state's or consumer's straits,—especially used of contractors and traders in war time

Profligate. Broken down in virtue rectitude or decency, shamlessly immoral. A corrupt man depraved in morals

PROFLIGATE, ABANDONED, REPROBATE. A *profligate* man has lost all by his vices, and he has nothing to lose, and everything to gain in his own estimation. By pursuing the career of his vices, he surpasses all others in his unprincipled conduct an *abandoned* man is altogether abandoned to his passions, which having the entire sway over him, naturally impel him to every excess the *reprobate* man is one who has been reproved until he becomes insensible to reproof, and is given up to the malignity of his own passions The *profligate* man is the greatest enemy to society, the *abandoned* man is a still greater enemy to himself Unprincipled debtors, gamesters sharpers, swindlers, and the like, are *profligate* characters, whore-masters, drunkards, spendthrifts, seducers, and debauchees of all descriptions are *abandoned* characters although the *profligate and abandoned* are commonly the same persons, yet the young hackneyed in vice are *profligates* none can be *reprobate* but those who have been long tried. (*Crabb*).

Progenitor Person or animal in relation to his descendants

Progeny means descendants or offspring

Progress Certificates are certificates by an Architect during the progress of works and mean, "that the sums advanced shall be accounted for by the contractor on the final settlement between him and the employer they are to be treated as sums paid on account of whatever the contractor may eventually be entitled to recover, whether for original or additional works" (*per* Pollock, C.B., *Lamprell* v. *Billericay,* 18 L J Ex. 286, 3 Ex 305).

"The Certificates are to be looked upon as simply a statement of a matter of fact, *viz.*, what was the weight, and what was the contract price, of the materials actually delivered from time to time upon the ground, and the payments made under those certificates were altogether provisional, and subject to adjustment, or re-adjustment. at the end of the contract" (*per* Cairne, C. *Tharsis Co.* v. *M'Elroy,* 3 App. Ca. 1045).

Prohibit The word "prohibit" when used in a grant of power to a city corporation, giving it a right to prohibit certain occupations, etc, is not materially different from the word "prevent". In fact, "prevent" is the stronger word, conveying the idea of prohibition and use of means necessary to give it effect.

"Prohibited article" defined. Act IX, 1894, s 3 (9).

" PROHIBITED ARTICLE " (*in the Indian Prisons Act*) means an article the introduction or removal of

Prohibited degrees.

which into or out of prison is prohibited by any rule under that Act. Prisons Act (IX of 1874), S 3,

Prohibited degrees, is the Table of Kindred and Affinity, which sets out that persons related as therein stated "are forbidden to marry together" (See *Ency of the Laws of England.*)

"The expression" the prohibited degrees in Indian Divorce Act (IV of 1869) S 19 do not necessarily mean the degrees prohibited by the laws of England, it includes those prohibited by the customary law for the class to which the parties belong. 12 C 706

PROHIBITED DEGREES OF CONSANGUINITY Under the Mahomedan law, the words "within the prohibited degrees of consanguinity" cover the case of a father and a son. *See* 13 Bom. L R 717=12 Ind. Cas 225.

"Prohibited place" in the Official Secrets Act. *See* Official Secrets Act XIX of 1923, S 2 (8).

Prohibition. The writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal, or to an inferior ministerial tribunal possessing incidentally judicial powers and known as a quasi-judicial tribunal or even in extreme cases to a purely ministerial body, commanding it to cease abusing or usurping judicial functions.

When a person, or body of persons, is clothed with power to determine questions and decide issues, affecting the rights of private citizens or of the public, the King's Bench Division in England, and likewise the High Court in India, will interfere by the issue of writs of prohibition or *certiorari* to prevent the illegal exercise of such power 61 Cal. 450=38 C W N. 729=152 I C. 914=A.I R. 1934 Cal 725.

A writ of prohibition is to prevent the exercise of jurisdiction by a tribunal possessing judicial powers over matters not within its cognizance, or exceeding its jurisdiction in matters of which it has cognizance, and is a proper remedy in a case where the court having jurisdiction assumes to exercise an unauthorized power.

The writ of prohibition does not ordinarily lie to restrain a ministerial act.

The office of a writ of prohibition at common law was to prevent courts from going beyond their jurisdiction, and it is seldom, if ever, granted to restrain the proceedings of other bodies or officers.

"PROHIBITION OF A BUSINESS" AND "REGULATING A BUSINESS". The *"prohibition" of a business* is to prevent the business being engaged in or carried on, entirely or partially, and is incongruous with "regulate", which implies that the business regulated may be engaged in and carried on subject to established rules or methods.

Prohibitions and restrictions (*In commercial law*) The term applies to articles which are either wholly or partially prohibited from being exported or imported.

"Projection". The expression "projection" encroachment or obstruction erected or placed against or in front of a house or building in S. 42, Bombay

Promissory note.

District Municipal Act of 1878 evidently refers to something distinct from the house or building itself. It cannot refer to the wall of the house itself 1 Bom L R. 44. *See also* 25 Cal. 160=1 C W N. 660

Proletariat The lowest class of a community, the common people.

"Promise" defined *See also* Express Promise; Implied promise, Reciprocal promise, Act IX of 1872, S 2 (*b*)

PROMISE Engagement for the performance or non performance of some particular thing

" 'Promise' is when, upon a valuable consideration, we bind ourselves by our words or deed to do or perform such an act as in agreed upon and concluded, upon which an action may be grounded, whereas, if it be without consideration it is called *Nudum Pactum, ex quo non oritur action*". (*Cowel.*)

To creat a promise within the meaning of S 25 of the Indian Contract Act, it is not necessary that there should be an accepted proposal reduced to writing. It is enough that the writing expresses an intention to pay wholly or in part the debt referred to therein, and the document refers to the debt in such a way as to identify it. 23 M. 94

The 'promise' referred to in S. 20, Limitation Act (IX of 1908), is a promise introduced, by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action, 1 Bom 590=P.J (1877) 74

PROMISE, ENGAGEMENT, WORD The *promise* is specific, and consequently more binding than the *engagement*; we *promise* a thing in a set form of words, that are clearly and strictly understood, we *engage* in general terms, that may admit of alteration, a *promise* is mostly unconditional; an *engagement* is frequently conditional.

PROMISE TO PAY AND ACKNOWLEDGMENT OF DEBT. A promise to pay is an acknowledgment of an indebtedness by necessary implication, and is an admission that a debt is due and unpaid.

An acknowledgment of debt implies a promise to pay and though an acknowledgment is required by S. 19 of the Limitation Act to be made before the expiry of the period of limitation a promise under S. 25, Contract Act, may be made after the period. 106 I.C. 661 (2)=A.I.R. 1928 Nag. 124.

The words "balance due Rs. 80," written by the debtor in the creditor's accounts do not form a promise to pay required by S 25 (3) of the Contract Act. The promise, to which S. 25 (3) refers, is a promise to pay despite the consciousness that the debt is barred. (30 A. 268, foll.) 20 M L J 656= 8 M L.T. 282=(1910) M.W.N. 547=7 I.C. 901.

"Promisee" defined. Act 9, 1872, S. 2 (*c*). Person to whom or in whose favour a promise is made.

"Promisor" defined. Act 9, 1872, S. 2 (*c*)

PROMISOR. One who makes a promise.

"Promissory note", defined. Act 26, 1881, S. 4; Act 2, 1899, S. 2 (22); Act 9, 1908, S. 2 (9).

Promissory note.

PROMISSORY NOTE. A negotiable instrument promising to pay a specified sum on a specified date, to, or to the order of, a specified person

A "promissory note" is defined to be a plain and direct acknowledgment, in writing, to pay a sum specified, at the time therein limited, to the person therein named or sufficiently indicated, or to his order or to bearer.

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument Act XXVI of 1881 (Negotiable Instruments), S 4.

"Promissory note" in the Stamp Act also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen Act II of 1899 (Stamp), S. 2 (22).

"Promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight Act IX of 1908 (Limitation), S 2 (9)

S 82, Negotiable Instruments Act, refers to payments of the *promissory note* according to its tenour and does not contemplate the payment by one of the executants of a promissory note of part of the principal sum A I R 1937 Rang 521

Promissory oath A "promissory oath" is one where the affiant swears that he will perform some duty to be performed subsequent to the taking of the oath, as where an officer, on taking an official oath, swears that he will well and faithfully discharge the duties of his office.

"**Promoter**", defined Act 11, 1886, S. 3 (7), Ben Act 3, 1883, S 3.

PROMOTER (*of a company*). A person who employs himself in the preliminary work necessary to the flotation of a company.

Cockburn, C J., in *Twycross* v *Grant*, (46 L.J C P. 636, 2 C P D 439), defined a Promoter to be 'one who undertakes to form a Company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose'. Bowen, L J in *Whaley Bridge Printing Co.* v. *Green* (49 L J. Q. B. 326; 5 Q.B D. 109), says, & 'The term, Promoter, is a term not of law but of business, usually summing up in a single word a number of business operations, familiar to the commercial world, by which a Company is generally brought into existence.' Then Lindley, L J., in *Emma Silver Mining Co.* v. *Lewis*, (48 L.J.C P 504, 4 C P.D. 396), says, 'With respect to the word Promoter, we are of opinion that it has no very definite meaning As used in connection with Companies, the term, Promoter, involves the idea of exertion for the purpose of getting up and starting a Company, or what is called floating it, and also the idea of some duty towards the Company imposed by or arising from the position which the so-called promoter assumes towards it' (per *Bacon*, V. *C. Re Great Wheal Polgooth Co*, 53 L.J Ch. 46, varying definitions have *In re* Great Wheal, 53 L J. Ch. 46.)

Proof.

"**Promoters**', (*in criminal law*) are those who, in Penal actions, prosecute offenders in their own name and the kings, having part of the fines or penalties for their reward" (*Cowel.*)

PROMOTING AND CONDUCTING. The word "promotion" implies some action anterior to the existence or occurrence of the thing promoted and, therefore, when the thing is actually taking place, it cannot be said to have been promoted. There is a distinction between the promotion and conduct of a public meeting 25 Cr L.J. 225=76 I.C. 689=A I R. 1928 Lah. 342

Prompt "Prompt", is convertible with "at once" and in its ordinary acceptation means at the same point of time, immediately, without delay, at one and the same time, simultaneously, directly.

PROMPT AND READY. "Prompt" is synonymous with "quick," "sudden," precipitant", indeed, one who is ready, is said to be prepared at the moment, one who is prompt is said to be prepared beforehand

"Prompt payment" Where under the terms of the licence of an Electric Supply Company, a certain discount was to be allowed to the consumer by the company in case a prompt payment of the price of the energy consumed was made on the submission of the bill and the company fixed a date in the bill for payment to entitle the consumer to get discount. *Held*, that the discount was allowed only for immediate or quick payment of the bill from the date when amount of the bill became due and the consumer who did not receive the bill for a long time being out of station could not claim a fresh date to be fixed for payment to entile him to the discount. 15 Lah. 729 =150 I C. 972=36 P L R. 486=A.I R. 1934 Lah 292.

Promptly. 'Promptly" is defined as "quickly" or "expeditiously"

Promulgation Promulgation is a word used to express the act of a state by which the existence of new laws is brought to the knowledge of a nation. In most countries laws are promulgated by publication in the official gazette of the State.

In regard to the necessity of a railway company formulating and promulgating rules, "promulgate" means to make known, that the rules shall be brought to the attention of the service affected thereby, or that it be given such publicity as that the servant, in the proper discharge of his duties, is bound to take notice of it

Pronounce "Pronounce" means to utter formally, officially or solemnly, to declare or affirm, as, pronounce a judgment or order.

PRONOUNCING A JUDGMENT within the meaning of O. 20, C. P Code, does not require a reading out of the whole judgment by the Court. 94 I C. 121.

"**Proof**" defined. *See* Burden of proof; Conclusive proof, Disproved, Not proved, Proved.

PROOF. "Proof" is merely that quantity of evidence which produces a reasonable assurance of the existence of the ultimate fact.

"The word 'Proof' seems properly to mean anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition; and as truths differ, the proofs

adapted to them differ also 'Proof' is also applied to the conviction generated in the mind by proof properly so called." (*Best on Evidence*, S. 10.)

OTHER DEFINITIONS. Proof is that quantity of appropriate evidence which produces assurance and certainty.

An affidavit of belief is not "proof."

Proof is defined as a sufficient reason for assenting to a proposition.

PROOF (*in Excise law*) The word "proof", as defined by Webster, means the act of testing the strength of alcoholic spirits. The word "proof" in such phrases as "proof gallon" or "proof spirits"—is used in the sense of "degree of strength"

PROOF AND EVIDENCE Evidence is the medium of proof. Proof is the effect of evidence.

Proof of debt. A creditor's affidavit in insolvency setting forth particulars of debt owing to him by the insolvent debtor.

Proper authority "Proper authority" (*in the Maintenance Order Enforcement Act*) means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which that Act applies, Act XVIII of 1921 (Maintenance Orders Enforcement), S 2

Proper clauses and powers. In an agreement for a lease the use of the words "Proper Clauses" are not quite synonymous with "Usual Clauses" Thus in *Eadie* v. *Addison* (52 L.J. Ch. 82, 83), Pearson, J, said.—"Then it is said that the word is 'proper,' not 'usual.' But argument seems to me to have great weight on behalf of the plaintiff, because a clause against underletting which might have been proper with regard to the publican to whom the house was to be let, would be manifestly improper with regard to Mr. Eadie, who was known to be a brewer and to have no intention whatever of going into the trade of a publican."

Proper Court The term "proper Court" means not merely a duly constituted tribunal, but one having authority over the subject-matter of the particular case in question.

The expression "proper Court" in Art. 182, Limitation Act (IX of 1908) means the Court whose duty it is to execute the decree. 20 A 304=18 A W N. 43. *See also* 13 C.W N. 533, 12 M L.T. 119=23 M L.J. 236=15 I.C. 738.

Proper custody. Infants are said to be in the "proper custody" if they are in the place in which, and under the care of the person with whom, they should naturally be.

Proper expenses The expressions "proper expenses" does not cover extravagance 11 C 260 (262).

Proper indorsement. "Proper indorsement", as used with reference to an indorsement on a negotiable instrument, means such an indorsement as the law requires in order to authorise payment to the holder.

Proper influence. "Proper influence is the influence which one person gains over another by acts of kindness and attention and by correct conduct" It is opposed to improper or undue influence.

Proper lodging. "Proper lodging or Accommodation," for a patient means, "proper" in the sense of protecting others from infection, as well as being proper for the patient himself. *Warwick* v *Graham*, (1899) 2 Q.B. 191.

Proper mode of construing words. The popular and not the scientific or the historical meaning of the words is to be considered. 31 C 542=8 C.W.N. 458.

Proper party. Proper parties are those without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy, and conclude the rights of all the persons who have any interest in the subject-matter of the litigation.

PROPER PARTY AND NECESSARY PARTY A "proper party," as distinguished from one whose presence is necessary to the determination of the controversy, is one who has an interest in the subject-matter of the litigation, which may be conveniently settled therein

Proper sale price The words "proper sale price" used in covenants mean the market price. 10 C L. J. 626=14 C.W N 295.

"Properly incurred" The words "*properly incurred*" in S. 90 of the Indian Trusts Act mean reasonably and suitably incurred. 22 N L R 86=94 I C. 941=9 N L.J. 93=A.I.R. 1926 Nag. 345.

"Property" defined [*N B.* This word is also used in combination with other words. *See* Ancestral property, Immovable property, Movable property, Personal estate, Real estate; Revenue-free Property, Separate property, Stolen property, Transfer of property, Trust-property, Wattan property] Act 24, 1859, S 1, Act 5, 1861, S 1; Act 4, 1869, S 3 (10), Act 1, 1877, S 54, *Expln.*; Act 5, 1898, S 517, *Expln*, Act 3, 1907, S 2 (*b*), Act 3, 1909, S 2 (*e*); Ben Act 2, 1866, S 51; Ben Act 4, 1866, S 3, Bom. Act 7, 1867, S. 1

PROPERTY. Property has been defined as the right and interest which a man has in lands and chattels to the exclusion of others. The term "property" is a generic term of extensive application, and while strictly speaking it means only the right which a person has in relation to something, or that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or objects, it is frequently used to denote the subject of the property, or thing itself which is owned or in relation to which the right of property exists. In the former sense it extends to every species of valuable right or interest, in either real or personal property, or in easements, franchises, and incorporeal hereditaments, and in the latter to everything which is the subject of ownership, or to which the right of property may legally attach, or in other words every class of acquisitions which a man can own or have an interest in.

Property is *nomen generalissimum*, and extends to every species of valuable right and interest including real and personal property easements, franchises, and other incorporeal hereditaments.

Property signifies every species of property. Comprehends all a man's worldly possessions.

MONEY is also property. (1918) 3 U.B.R 69=46 I.C. 342; 32 C. 22=8 C.W.N. 784. *See also* 33 C. 425=3 C.L.J. 205; 26 Cal. 194=3 C.W.N. 108.

Property

A *trade mark* is a species of property, which may be sold or transmitted by death, with the business in which it has been used.

Where a servant cannot sue his master for salary before it is earned, such *salary* is not "property" nor even a "debt" payable in future and as such is not liable to attachment under S. 60, C. P. Code 1908 31 A 304=6 A L J. 227=1 Ind. Cas. 186

PROPERTY in cls. 11 and 12, Sch I, Court Fees Act includes not only property to which the deceased was beneficially entitled during his lifetime, but also all property which stood in his name as trustee, of which he was possessed benami for others. 7 B L.R. 57=15 W R. 456

OTHER DEFINITIONS The word "property" includes any movable property, money or valuable security, Police Act (V of 1861), S. 1.

"Property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have" (1835, 5 L J Ch 90)

"Property,' is the generic term for all that a person has dominion over Its two leading divisions are Real and Personal.

The term "property" has a most extensive signification, and, according to its legal definition, consists in the free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land.

Property is defined to be "the unrestricted and exclusive right to a thing, the right to dispose of a substance of a thing in every legal way, to use and exclude every one else from interfering with it."

The term 'property' includes any property over which any person has disposing power which he may exercise for his own benefit. 79 I C. 384=A I R. 1925 Sind 72

"Property" is defined as being the right to possess, use, enjoy, and dispose of a thing The thing mentioned does not always have a tangible or physical existence. It may be an easement, or anything else that can become the subject of private ownership.

The term "property" in Ch IV of the Transfer of Property Act, IV of 1882 includes the equity of redemption 1 O.C 105 It includes not only "actual physical objects" but also mere rights relating to physical objects. 20 Mad 35=6 M L J. 235, *See also* 13 All 432; 18 All. 113.

"PROPERTY" includes any property over which or the profits of which any person has disposing power which he may exercise for his own benefit; Act V of 1920 (Provincial Insolvency), S. 2 (*d*). Act III of 1909 (Pre. T. Ins), S. 2 (*e*).

"Property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix. Act IV of 1869 (Divorce) s 3, cl. 10

PROPERTY AND EFFECTS, "Property and Effects" of a business include its Goodwill, (*Chapman* v *Hayman*, 1 Times Rep 397).

"PROPERTY AND POWER "Property" must be distinguished from "Power." "The Power of a person to

Property,

appoint an estate to himself, is no more his 'Property' than the power to write a book or to sing a song". (*per* Fry, L J , Re Armstrong, 55 L.J Q.B 579.)

PROPERTY AND TITLE TO PROPERTY The term "title" has been defined as the right whereby we hold our own, the just or lawful cause or ground of possessing that which is ours, that which is the foundation of ownership, of either real or personal property, that which constitutes a just cause of exclusive possession The term "title" is used in different senses, sometimes in the sense of ownership, or of right, interest, or estate, and in this connection sometimes broadly as signifying any estate or interest, but usually in the sense of absolute ownership, or estate in fee simple, although title does not necessarily mean absolute ownership

The word 'property' as used in S. 30 of the Bombay Tramways Act, 1874, has not the meaning of the right, title and interest of the Bombay Tramway Company in the subject-matter to which the section refers, and which it in part specifies, but means the subject-matter itself. (4 Bom L R. 856.)

PROPERTY CORPOREAL AND INCORPOREAL Property may be classified as being either corporeal or incorporeal, corporeal property being that which affects the senses and may be seen or handled, and incorporeal that which cannot be seen or handled, but which consists merely in legal right. The terms are used most frequently in connection with the term "hereditaments"

PROPERTY—MOVABLE AND IMMOVABLE. The word "property" is wide enough to include property of every description movable or immovable, whether in the actual possession of the owner or in the possession of some other person on his behalf. 17 A. 82=15 A W N 14.

The word "property" in the Criminal Procedure Code (V of 1898), S. 517, does not mean 'immovable property' but only movable property. 22 Ind. Cas. 751

PROPERTY—REAL AND PERSONAL The word 'property" includes both real and personal property.

The terms "real" and "personal" property do not entirely correspond with the terms "movables" and immovables"

"PROPERTY COMPRISED IN THE MORTGAGE." The term "property" used in S 85, Transfer of Property Act, in the phrase "property comprised in the mortgage" indicates not the actual physical object, but denotes merely the rights in such object which form the subject-matter of the transaction 33 C 425=3 C.L. J 205. (1 C.L J. 337, F., 13 A. 432, Diss)

"PROPERTY IN CHATTELS PERSONAL" 'Property in chattels personal,' says Blackstone, may be either in possession, which is when a man hath not only the right to enjoy, but hath the actual enjoyment of the thing; or else it is in action, where a man hath only a bare right without any occupation or enjoyment.' (2 Com. 396.)

"PROPERTY IN LAND", in the second portion of S 20, Oudh Laws Act (XVIII of 1876) means the land itself as distinct from interests acquired in land by mortgage or otherwise 14 Ind. Cas. 351 (352).

Property of deceased

"PROPERTY IN POSSESSION" When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of the Indian Penal Code (*Penal Code*, S. 27.)

'**Property of deceased**" in S. 179, Suc. Act X of 1865, does not include property held by the deceased as executor or administrator. 12 B L.R. 423.

"PROPERTY QUALIFICATION" (*See* 43 Vict c 17.)

'PROPERTY—RESTRICTION ON THE USE OF PROPERTY 'The right of property' generally includes the right freely to possess, use, enjoy and dispose of the thing which are subject to ownership by man, and yet this sacred right of property is hedged about with restrictions and limitations not always appreciated by the average citizen. The sovereign state has the unquestioned right to enforce proportionate contributions of property from private individuals for the support of the government, and does so in the universal system of levying and collecting taxes. Even while not exacting any proportionate part of property owned by private individuals, the sovereign state may cause its restraining hand to be felt in limiting in many ways the uses to which the owner of property may apply it. The state is largely engaged in enforcing limitations on the right of property in accordance with the principle *sic utere tuo ut alienum non laedas* Less obstrusively but with equal effectiveness the sovereign state enforces varied restrictions on the right of those seeking to alienate their real or personal property. The owner seeking to dispose of it either *inter vivos* or after his death is hampered by statutory or common law restrictions on alienation by deed, sale, or gift, or by last will and testament And the ownership of property does not carry with it an unqualified right of disposal Although all the established forms have been complied with governing the alienation of property, the law, for reasons of public policy, still imposes some restraints on the right to dispose of property One of the most important of these restraints is the rule against perpetuities This rule operates to prevent the undue postponement of vesting of future interests, while certain subsidiary rules are recognized by the Courts and enforced as a means of preventing the unreasonable accumulation of property, the imposition of unreasonable restraints on alienation, and to prevent undue restrictions on the enjoyment of property. (*Rul Case Law*)

"PROPERTY THE SUBJECT OF A SUIT". *See* 17 Cal 614.

"Property mark" defined. (*See also* using a false property-mark). Act 45, 1860, s. 479, Bur. Act 4, 1902, S. 3 (9).

PROPERTY MARK. A mark used for denoting that movable property belongs to a particular person is called a property mark Act IV of 1889 (Merchandise Marks), s. 3, Penal Code, S 479.

"Property-mark" (*in the Burma Forest Act*) means a mark placed on timber to denote that after all purchase-money or royalties due to the Government shall have been paid, the owner of the mark has or will have a right of property in the timber. Bur Act IV of 1902 (Forests), s. 3, cl. 9.

"Property tax" defined. Bom. Act 3, 1888, s 140.

Proposal.

PROPERTY TAX. "In one sense all taxes may be said to be taxes upon property, since they are to be collected in money, and money is property. Indirectly it is property that is reached by every species of taxation. Hence, it has been maintained that the merchants' license tax is a tax upon property seeing that the Legislature, in fixing the amount of the taxes, have thought proper to regulate it by the amount and value of merchandise purchased or disposed of between certain intervals, And in this sense a poll tax may be also called a tax upon property, for the man's property, not his head, can only be taken to pay it But this is not the sense in which a property tax is generally understood when it is referred to in legislative enactments"

Prophecy. "'Prophecies', are, by our statutes, reputed for wizardly foretelling of things to come in dark and ambiguous speeches, whereby great commotions have been often caused in this Kingdom, and great attempts made by those to whom those speeches promised good success" (*Cowel. Jacob*).

Prophylactic. (*Medi*) Done or used as preventive against disease.

Proportion The term "proportion" is synonymous with "pro rata".

PROPORTIONATE, COMMENSURATE, ADEQUATE. Proportionate is here a term of general use, the others are particular terms, employed in a similar sense, in regard to particular objects, that is proportionate which rises as a thing rises, and falls as a thing falls, that is commensurate which is made to rise to the same measure or degree, that is adequate which is made to come up to the height of another thing. In all recipes and prescriptions of every kind proportionate quantities must always be taken A person's recompense should in some measure be commensurate with his labour and deserts. a person's resources should be adequate to the work he is engaged in.

Proportionate Costs The costs of an action in India, particularly the stamp duties payable on the proceedings, depend a good deal on the value of the thing claimed. It is accordingly the practice of the Courts in India, when a plaintiff has recovered less than he has claimed, to apportion the costs in the proportion which the amount recovered bears to that which was claimed 10 M I A. 563=5 W R. (P C) 91=1 I J N.S 269=1 Suth. 644=2 Sar. 202.

"PROPORTIONATE TO HIS OWN INTEREST" *See* 20 I C 153 (154).

"Proposal" defined. Act 9, 1872, s. 2 (a).

"PROPOSAL" may mean an offer, as of marriage, an introduction; and it may also mean an expression of intention or design, and a statement in a letter that "I propose to settle" is the same as "I intend or mean to settle."

PROPOSAL, PROPOSITION. We make a *proposal* to a person to enter into partnership with him, we make a *proposition* to one who is at variance with us to settle the difference by arbitration. *Proposals* are made for the sale or purchase of particular articles, for the establishment of any mercantile concern, for the erection of any place or institution, and the like, *propositions* are advanced either for or against

Propose.

certain matters of opinion the *propesal* is to be accepted, the *proposition* is to be admitted

Propose To "propose" is defined to be "to offer, as a plan or scheme, to put or hold before one's mind, as a design or determination, to form, as a purpose".

Proposition. A proposition does not become a contract until the maker or his agent is notified of its acceptance.

Proprietary. 'Proprietary,' means belonging to, ownership; as proprietary rights, belonging or pertaining to a proprietor 'proprietor' is defined as one who has the legal right or exclusive title to any thing, whether in possession or not, an owner.

"A PROPRIETARY CHAPEL is perfectly anomalous, it is a thing unknown to the constitution of our Church and in our Ecclesiastical Establishment It can possess no parochial rights; and the exercise of any such rights would be a mere usurpation in the view of the law" (*per* Nicholl, D A, *Moysey* v *Hillcoat*, 2 Hagg Ecc. 46)

Proprietary company. Parent company holding lands or mining rights parts of which it sells or leases to others.

"Proprietary estate" defined. Mad Act 3, 1895, s. 4.

Proprietary possession in Mad Reg XXV of 1802. *See* 1 I.A. 268, 282=14 B L.R 115=21 W R. 38 (P.C.)

"Proprietary right" defined Act 22, 1886, s. 3 (7).

PROPRIETARY RIGHT, (*in Hindu Law*). There are seven lawful modes of acquiring Property, or proprietary rights--(*viz*) inheritance, finding or friendly donation, purchase, conquest, lending at interest, the performance of work and the acceptance of gifts from virtuous men. (*Manu cited in Ghose Hindu Law* 1034)

A man becomes owner by inheritance, purchase partition or finding.

Acceptance is for Brahmans an additional (mode of acquisition), conquest for a Kshatriya, gain (by labour) for a Vaisya or Sudra (*Gautama*, Ch XV 39-42)

By birth alone one acquires ownership of property, this the sages declare (*Gautama cited in the Mitakshara*)

"Proprietor" defined. *See also* Actual proprietor of land, Disqualified proprietor, owner, recorded proprietor; under proprietor. Act 11, 1876, S 3, Act 17, 1876, S 108 Act 18, 1881, S 4 (6), *Expln* 2, S. 8 (*a*) Act 8 1885, S. 3 (2), Act 5, 1886, S 3 (7), Act 22, 1886, S 3 (6), Act 5, 1888, S 50 (3), Ben. Act 7; 1868 S. T; Ben Act 6, 1873, S 3; Ben Act 7, 1876, S. 3 (8), Ben. Act 6, 1880. S. 3, Ben Act 5, 1897, S. 3 (v), Ben. Act 6, 1908, S 3 (*xxi*), Mad. Act 2, 1894, S 4, Mad Act 4, 1897 S 3, Mad Act 1, 1902, S 4, U P Act 3, 1899, S. 3 (4), U P. Act 1, 1903, S 2 (*d*), Reg. 1, 1886, S 3 (f), Mad. Act 2, 1904, S. 2 (3).

PROPRIETOR. An owner, the person who has the legal right or exclusive title to anything, whether in possession or not, one who has the legal right or exclusive title to anything, whether in possession or

Proprietors of land.

not. *See* 35 All. 187=19 Ind. Cas. 79=11 A L.J. 217, 32 Cal. 27=31 I.A. 176 (P.C.).

The term 'proprietor' has a well-defined meaning, and, according to lexicographers, means 'one who has the legal right or exclusive title to anything, whether in possession or not, an owner, as the proprietor of a farm or mill'.

"PROPRIETOR" in the U. P. Court of Wards Act means a person entitled as proprietor to any beneficial interest in a mahal or taluqa. U. P. Act III of 1899 (Court of Wards), S. 3, Cl 4.

"Proprietor" means every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof, and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector, Ben Act III of 1876 (Land Registration) S 3, cl. 8 *See also* 6 I C. 121.

A person, who is an administrator, and as such the representative of a deceased proprietor and legal owner of his property, is a proprietor and is bound to be registered under S 42 of the Bengal Land Registration Act (VII of 1876). 22 C. 454.

The word "proprietor" includes any tenant by whom any estate or tenure is held directly under Government Ben Act VII of 1868 (Land-Revenue Sales), S 1

The lakhirajdar is a proprietor within the meaning of S 25 of Reg III of 1872 (Sonthal Pergunnahs Settlement) 22 C. 473 (475).

A putnidar is not a "proprietor" within the meaning of the term as used in Ss 38, 78, Land Registration Act, Bengal (1876). 24 C. 404.

The word "proprietor" in section 1, Act VII of 1868 (B C), includes any tenant by whom any estate or tenure is held directly under the Government. 7 C.L J 460. *See also* 39 Cal. 981 P.C., 31 Cal 256 P.C.

"Proprietor of a new and original design".—(*a*) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed, and (*b*) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired, and (*c*) in any other case, means the author of the design, and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person. Act II of 1911 (Patents and Designs) S 2, cl 14.

"Proprietor of an impartible estate" defined. Mad. Act 2, 1904 S 2 (3).

"Proprietor of East India stock" defined, 36 V, c. 17, S. 2.

"Proprietor of land" defined. Ben. Reg. 27, 1795, S. 10.

Proprietors of land. In the Madras Reg. XXV of 1802 and Ben Rev. Sett. Reg. 1793 refers to Zamindars, independent taluqdars and others who pay the revenue assessed upon their estates immedia-

Proprietors of Village-lands.

tely to government" *Oolagappa Chetty* v. *Arbothnut*, 14 B L R. 115 (P.C.)=1 I A 268, 282=21 W R 38.

Proprietors of village-lands" defined. U. P. Act 2, 1892, S 2(7).

Pro rata According to a measure which fixes proportions, according to a certain part, in proportion, according to the rate, in proportion, implying the disposition of a fund or sum indicated in proportion to some fixed rate or standard.

Pro rata-prorate The verb "prorate" is derived from the words "pro rata" and has become a part of the common English tongue,and is thus defined "To divide or distribute proportionally, to assess pro rata."

The term "proportion" is synonymous with "pro rate"

Prorogation. The act of bringing a session of Parliament or other legislative assembly to an end

To Prorogue, adjourn Prorogue, from the latin prorogo, signifies to put off, and is used in the general sense of deferring for an indefinite period.

Adjourn, from journey the day, signifies only to put off for a day, or some short period, the former is applied to national assemblies ouly, the latter is applicable to any meeting or sitting of court

Proscribe Ostracize, publish the name of a person as outlawed or condemned

Prosecute "A man prosecutes a charge who lays an information before a magistrate accusing one of an offence (*Davis* v. *Noak*, I Starkie, 377), or in making an oral accusation before a magistrate (*Dawson* v *Van Sandeau*, 11 W R 316), or in taking any active part in a prosecution at any state (*Fitzjohn* v *Mackinder*, 9 C B.N S 505 *Stroud* 1591)

"It has never been decided, as I believe, that the condition 'to prosecute the suit' means to prosecute it successfully 'to prosecute with effect' has been held to have that meaning" (per *Jackson J*, *Bently* v *Hastings*, 8 Ir L R 177)

The expression "prosecuting" is generally applicable to proceedings by a person as a plaintiff or an applicant, and not to proceedings in which such person is merely resisting, as a defendant or respondent, the claim of another (1 W R 29 and A I R 1924 Bom. 39, Ref, (1864) 1 W R. 310, Dist) 27 S.L.R. 422=147 I.C 94=A.I R. 1933 Sind 379.

"Prosecuting a proceeding" defined. Act 9, 1908, S 14, *expln.* 2.

Prosecuting attorney A prosecuting attorney is a public officer acting in a quasi judicial capacity It is his duty to use all fair, honourable, reasonable and lawful means to secure the conviction of the guilty who are or may be indicted in the Courts of his judicial circuit. He should see that they have a fair and impartial, trial and avoid convictions contrary to law.

Prosecuting attorneys are judicial officers of the state, within their respective districts A prosecuting attorney is a public officer because he represents the state by whose authority and in whose name all prosecutions must be conducted, and not because of his relation to the Court.

Prostitute

Prosecution. Prosecution is the institution or commencement of a criminal proceeding the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the state or government or by indictment or information. A prosecution exists until terminated in the final judgment of the Court, to wit, the sentence, discharge or acquittal. *See* 7 C W N 883

The definition of prosecution is not confined to prosecution before a Magistrate or a Criminal Court If a Judicial Tribunal is moved which has the power to take criminal action against the person charged the requirement of law is satisfied and a claim for damages for malicious prosecution will arise. The word "prosecution" includes such civil actions as may be the subject of a suit for malicious prosecution. (Case-law discussed) An application was made to a Munsiff for sanction under S. 195. The Court was moved to grant sanction to prosecute a plaintiff. The application was rejected. Thereupon plaintiff sued defendant for malicious prosecution. The defendant contended that there was no prosecution within the meaning of the law such as to give rise to the plaintiff's claim for damages for malicious prosecution and that a mere application for sanction to prosecute is not a prosecution *Held*, that the defendant was liable as proceedings for sanction to prosecute before a Munsiff even if regarded as civil proceedings sustain an action for malicious prosecution (27 C W N 387, Rel on) 33 C W N. 79=48 C.L.J. 339=A I R. 1928 Cal 691

In its wider sense *prosecution* means a proceeding by way of indictment or information, and is not necessarily confined to *prosecution for an offence.* 49 C L J 502=1929 C. 283

"PROSECUTION" AND "ACTION." The term *"prosecution"* is now used as signifying the procedure for obtaining the adjudication of a Court of justice with respect to acts and omissions punishable by criminal or penal sanction; as *"action"* or suit describes the procedure for obtaining civil remedies for the alleged infraction of civil rights.

"Laying a prosecution, does not, in ordinary parlance, mean bringing an action." (per *Patteson, J.*, *Rawlins* v *Jenkins*, 12 L.J.Q.B 151.)

'Prosecutor" defined *See* Public Prosecutor. *See* 9 O.C. 357

'Prospectus" defined. 8 Edw. 7, c. 69, S. 274 (6).

PROSPECTUS. A document containing a statement of the property, business, undertaking, enterprise or project for the formation and development of a company for which an appeal is made to the public to subscribe for shares.

"PROSPECTUS" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company, Act VII of 1913 (Companies), S. 2, cl 14.

Prostitute; Prostitution. Our law does not treat prostitution as a crime *per se.* Prostitution is, however criminal when conducted so as to cause a public annoyance or where persons endeavour to debauch or corrupt chaste women or girls. (*Ency of the Laws of England.*)

Prostitute,

In its most general sense prostitution is the setting one's self to sale or devoting to infamous purposes what is in one's power. In its more restricted and legal sense, it is the practice of a female offering her body to an indiscriminate intercourse with men, as distinguished from sexual intercourse confined to one man, or as sometimes stated, common lewdness of a woman for gain, the act of permitting a common and indiscriminate sexual intercourse for hire.

OTHER DEFINITIONS A prostitute is a female given to indiscriminate lewdness, a strumpet As a verb, its definition is to offer freely to a lewd use, or to indiscriminate lewdness As an adjective, it means openly devoted to lewdness; sold to wickedness or infamous practices A female may live in a state of illicit carnal intercourse with a man for years without becoming a prostitute.

A woman is not a prostitute who indulges in illicit sexual intercourse with only one man; hence a man cannot be guilty of enticing a female away from her home for the purpose of prostitution, where the proof shows that he enticed her away for the purpose of having intercourse with her himself and not to induce her to have intercourse indiscriminately with other men. The most usual motive for indiscriminate sexual intercourse being the money paid therefor, prostitution is sometimes defined to be indiscriminate sexual commerce for gain. If, however, a woman submits to indiscriminate sexual intercourse, which she invites or solicits by word or act or any device, and without profit, she is as much a prostitute as one who does so solely for hire Her vocation may be known from the manner in which she plies, it, and not from the pecuniary charges and compensation gained.

NIGHT-WALKERS A woman who is a common night-walker is indictable at common law for night-walking for the purpose of picking up men for lewd practices.

PUBLIC PROSTITUTE. A *public prostitute* is a woman who is a prostitute by profession and whose trade is to let out her body on hire to all visitors or to all visitors of a specified class When a woman rests content with one lover for years though she may have changed her lovers at intervals of some years, she is not a public prostitute. 93 I C. 827=A I R. 1926 Lah. 461.

Protect The word 'protect' means to cover, shield, or defend from injury, harm, or danger of any kind.

"Protected forest" defined. Act 7, 1878, s. 28.

"Protected interest" defined Act 8, 1885, s. 160.

A mortgage by a darpatnidar of his interest in the taluq, amounts not to a "protected interest," within the meaning of S 160, Cl. (g) of the Bengal Tenancy Act. 29 C. 813.

"Protected waste-land" defined. Reg. 6, 1893, S. 2 (7).

A *protection order*, is an Order granted by Justices to a Married Woman who has been deserted by her husband "without Reasanable Cause," and who "is maintaining herself by her own industry of property"; its effect is that her earnings and property become her own "as if she were a Feme sole," and her status is the same as if she had obtained a Judicial Separation (s. 21, Matrimonial Causes Act, 1857, 20 & 21, V c. 85)

Protectionist. Advocate of the economic theory of protection.

Protectorate. The term "protectorate" has widely different meanings in the varying circumstances in which it is now employed. In former days it denoted the protection which was given by a more powerful State to a weaker one, which in return performed various services without divesting itself of its national individuality

"PROTECTORATE" AND "SUZERAINTY." These terms are now used for two main classes of relationship between the protecting and the protected country. (1) The relationship called "a protectorate" between a suzerain and a vassal State; (2) The relationship ealled a "a suzerainty" between a European Power and a territory inhabited by native tribes, and not ranking as a State amongst the nations. (See *Ency. of the Laws of England.*)

The British protectorates, which, though not formally annexed to the British dominions, form part of the empire On this subject *see* Encyclopaedia Britannica, Hall, Foreign Powers and Jurisdiction of the British Crown (Oxford), Jenkyns. British Rule and Jurisdiction Beyond the Seas (Oxford), Lord Cromer, Modern Egypt

"Protest" defined Act 26, 1881, s 100.

PROTEST A notification by a notary public of an unaccepted or unpaid bill of exchange.

"When a Foreign Bill is refused Acceptance or Payment, it was, and still is, necessary by the custom of Merchants, in order to charge the Drawer, that the Dishonour should be attested by a Protest" (*Byles*, ch. 19), and it is usually done by a Notary Public (*Re* English Bank of the River Plate, 1893, 2 Ch. 438.)

Protest is a solemn declaration of the holder against any loss to be sustained by the non-acceptance or non-payment of a bill.

Protest is solemn declaration against an act about to be done, or already done, expressive of disapprobation or dissent, or made with a view of preserving some right, which but for such declaration, might be taken to be relinquished, in admiralty law, a declaration on oath by the master, of the circumstances attending the loss of his vessel,intended to show that the loss occurred by the perils of the sea, and concluding with a protestation against any liability of the owner to the freighters."

"Protest for better security" defined. Act 26, 1881, s. 100.

Protest and noting. The protest of a bill of exchange is a notarial certificate attesting the presentment of the bill and its dishonour. The bill is presented by the notary's clerk, and after dishonour, at the earliest convenient opportunity, it is noted by the notary himself. Noting is effected by marking on the bill the notary's initials, date, noting charges and a reference to the book in which the notary enters up a record of the matter (Chalmers on the Bills of Exchange Act, note to S. 51; Prooke's Office

of a Notary. The protest is a formal instrument under the notary's seal. It must contain a copy of the bill, and specify the person at whose request the bill is protested, the place and date of protest, the demand made, and the answer given, if any or the fact that the drawee or acceptor could not be found. It must be signed by the notary. (English Bills of Exchange Act, s 51 (7)

Protestant A Protestant is a Christian who protests against the doctrines and practices of the Roman Catholic Church, one who adheres to the doctrines of the Reformation 'Protestant' is usually employed as a general term comprehending all those who profess Christianity, yet are not in the communion of the Church of Rome.

Protestant religion 'Protestant religion' is used in its ordinary meaning to include all Christians who deny the authority of the Pope of Rome, but excluding Mohammedans, Jews, pagans, infidels, etc.

Prothonotaries were officers in the Courts of Common Pleas and Exchequer, who were superseded by the Master (7 Will iv and 1 Vict c 30) In the ecclesiastical law, the name of prothonotary is given to an officer of the Court of Rome He is so called because he is the first notary—the Greek word from which it is signifying primus or first These notaries have pre-eminence over the other notaries, and are placed in the rank of prelates (*Ency of the Laws of England*)

"**Prothonotary**" is a name given to the chief clerk or registrar of a court in some of the United States

Protocol The minute of a meeting of representatives of States assembled to confer or deliberate upon any given subject This term has been in use in this sense since the Congress of Vienna (Calvo, Dict de Droit International) It is also used for the rules of ceremonial followed in all writings which pass in the official relations between States and their representatives.

Protomartyr First person martyred for a cause (the martyr St Stephen)

Provable claim A provable claim, as against estate of a deceased person, is not barred by the statute of limitations, and to establish which there is competent evidence.

Provable debt In bankruptcy proceedings any debt which a person can recover either in his own name or in the name of any other person, is a provable debt.

"**Proved**" defined Act 1, 1872, S. 3

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. (Evidence Act, 1872, S. 3.)

To PROVE, DEMONSTRATE, EVINCE, MANIFEST. *Prove* is here the general and indefinite term, the rest imply different modes of proving to *demonstrate* is to prove specifically we may *prove* anything by simple assertion but we must *demonstrate* by intellectual efforts. To *prove*, *evince*, and *manifest* are the acts

either of persons or things; to *demonstrate*, that of persons only. The beauty and order in the Creation *prove* the wisdom of the Creator; a persistence in a particular course of conduct may either *evince* great virtue or great folly, the miracles wrought in Egypt *manifested* the Divine power. (*Crabb.*)

Provide—Provide for. 'To make ready for future use; to furnish; to supply.'

"PROVIDE"—"REGULATE" To regulate is to adjust by rule, method, or established mode; govern by or subject to certain rules or restrictions. To provide is to procure beforehand, get, collect or make ready for future use. There is a marked difference between the power to regulate the weighing of an article and the power to provide for the weighing of the same.

TO PROVIDE, PROCURE, FURNISH, SUPPLY. Provide and procure are both actions that have a special reference to the future, furnish and supply are employed for that which is of immediate concern, one provides a dinner in the contemplation that some persons are coming to partake of it, one procures help in the contemplation that it may be wanted, we furnish a room, as we find it necessary for the present purpose, one supplies a family with articles of domestic use. (*Crabb*)

Provide suitably. A trust to 'provide suitably for the settlor's younger children is not too vague to be executed, but the Court will direct an equiry what the provision should be." (*Lewin on Trusts*, *Brenan* v. *Brenan*, Ir Rep. 2 Eq 266)

Provided A clause beginning with this word is usually termed a proviso. It may have various effects Sometimes it is to be taken for a condition, sometimes for an explanation, sometimes for a covenant, sometimes for an exception, sometimes for a reservation (See *Ency. of the Laws of England.*)

"It is taken for a condition as if a man lease land, provided that the lessee shall not alien without the assent of the lessor—here it is a condition. If I have two manors, both of them called Dale, and I lease to you my manor of Dale, provided that you shall have my manor of Dale in the occupation of J S, here the proviso is an explanation of what manor you shall have If a man lease a house, and the lessee covenant that he will maintain it, in good repair,—here it is a covenant If I lease to you my messuage in Dale, provided that I will have a chamber myself, here it is an exception of the Chamber. And if I make a lease rendering rent at such feasts as J.S. shall name, provided that the Feast of St. Michael shall be one; here this proviso is taken for a reservation. (Bac. Abr, "Covenant" cf *Coke*, Litt. 146-b, 203-b)

In testamentary gifts the word "provided" is often used as synonymous with "if," "when," "in case," "so soon as," etc, giving a contingent interest dependent upon the fulfilment of some event. In such cases, then, the clause introduced by the word will usually create a qualification or limitation on what goes before. "If" and "provided" seem to be more strongly contingent than "when." (*Ency. of the Laws of England.*)

Providence. Timely care; thrift; benevolent care of God or nature; Power that controls the world.

Provident fund

PROVIDENCE, PRUDENCE. Providence and Prudence are both derived from the verb to provide; but the former expresses the particular act of providing; the latter the habit of providing. It is provident in a person to adopt measures of escape for himself in certain situations of peculiar danger, it is prudent to be always prepared for all contingencies.

"Provident fund" defined (*See also* Railway Provident Fund) Act 9, 1897, S. 2.

"PROVIDENT FUND" means a fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions credited in respect of subscriptions or deposits and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the Fund. Act XIX of 1925 (Provident Funds), S 2, cl (*e*).

"Provident Insurance Society," means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed· Act V of 1912 (Provident Insurance Societies), S 2, cl. 8.

"Province" defined. 55-6 V, c. 14, S. 6; Act 10, 1865, S. 3; Act 5, 1881, S. 3; Act 10, 1897, S 3 (43), Bur. Act 1, 1898, S 2 (47), E B & A Act 1, 1909, S 5 (48), P Act 1, 1898, S. 2 (43); 1937 A.W.R 767=1937 A.L.J. 589=A.I R. 1937 All 670

"PROVINCE" "shall mean the territories for the time being administered by any Local Government Act X of 1897 (General Clauses), S. 3 (43).

"PROVINCE" includes a presidency, and Government of India Act (9 & IV Geo. Ch. 101), S. 134, cl 6.

"Province" includes any division of British India having a Court of the last resort, Act XXXIX of 1925 (Succession), S. 2 (*g*).

In the Indian Councils Act, (1893), 55 & 56 V c. 14, " 'Province', has been defined to mean any presidency, division, province, or territory, over which the powers of any local legislature for the time being extended."

"Province of Orissa" defined. Act 9, 1847, S. 2.

Provincial Criminal Investigation Department, is a department created "to assist in the investigation of crimes which are of such a special character that local officers are unable to deal with them adequately without help "(G O No. 913, Judicial, dated, July 2nd, 1908); 14 I C 849 (860)=(1912) 1 M W N. 207= 13 Cr.L.J. 305=22 M.L.J. 490=11 M.L T. 1=35 M. 247.

Provision words. If you obtain from Government any remission in revenue on account of lands acquired by it "for construction of culverts, embankments" and roads. The words "culverts, embankments or roads," are merely illustrative and not exhaustive. *Hirendra Nath Dutt* v. *Hari Mohan Ghose,* 22 I C 966 (970 & 971) per *Mr. Fletcher and N.R. Chatterjea, JJ.*)

Provisional appointment. An officer provisionally appointed is one appointed to fill an office until the vacancy can be regularly filled.

Provocation

Provisional committee. A provisional committee is an association formed for carrying into effect the preliminary arrangements necessary to promote a scheme (*Reynell* v. *Lewis,* 15 M & W. 526.)

Provisional Government. A provisional government is one temporarily established in anticipation of and to exist and continue until another shall be instituted and organised in its stead.

Provisions 'Provisions' refer to articles of food for human consumption, and does not embrace chop feed for animals.

Proviso The word "proviso" is used frequently to denote the clause, the first words of which are "Provided that" inserted in deeds and instruments generally, and containing a condition or stipulation on the performance or non-performance of which, as the case may be, the effect of a proceeding clause or of the deed depends.

A proviso is generally intended to restrain the enacting clause, and to except something which would have otherwise been within it, or in some measure to modify the enacting clause

"This word (Proviso) hath divers operations. Sometime it worketh a Qualification or Limitation; sometime a Condition; and sometime a Covenant." (Co. Litt 146-b, Vf, 1b 203-b.)

" 'PROVISO' is a condition inserted into any deed, upon the performance whereof the validity of the deed consisteth Sometimes it is only a covenant. (*Termes de la Ley.*)

OTHER DEFINITIONS The office of a 'proviso' is to limit or restrict the general language preceding it, and not to enlarge the enacting clause.

A proviso is something ingrafted upon a preceding enactment, generally introduced by the word 'provided.'

A clause which generally contains a condition that a certain thing shall or shall not be done in order that something in another clause shall take effect, something engrafted upon a preceding enactment, generally introduced by the word "provided."

A statutory "*proviso*" is something engrafted on a preceding enactment." (*R.* v. *Taunton,* St James, 9, B & C 836)

Provisos are frequently inserted in statutes, *e.g.,* for saving existing rights, or rights of the Crown, or generally for exemptions from the operation of the particular Act

"PROVISO" AND "CONDITION." The term "proviso" and "condition" are synonymous, and signify some quality annexed to a real estate, by virtue of which it may be enlarged, defeated, or created upon an uncertain event (Bacon's Abr, sub tit. "Condition.")

It is said that "the terms '*Proviso*' and 'Condition' are synonymous, and signify some quality annexed to a real estate, by virtue, of which it may be defeated, enlarged, or created, upon an uncertain event." (*Woodr,* 192.)

Provocation. Provocation means, in law, that treatment by another which arouses anger or passion.

It is a defence to a charge of murder that the fatal act was committed in the heat of passion caused by

Provoke

sudden provocation, and before there was time for the passion to cool. But the defence does not amount to excuse or justification, and operates only to reduce the quantity of the offence and fails wholly if the accused acted after he had time to reflect and cool.

Provoke 'To provoke is to excite, to stimulate, to arouse.' So that, where violent language aroused the bad passions of another, so that he replied in kind, strife and contention were *provoked.*

Prowl. The word 'prowl' means to rove or wander over in a stealthy manner, to go about or wander stealthily, as one in search of plunder.

Proximate. Proximate means direct or immediate.

Proximate cause An act which directly produced or concurred directly in producing an effect or injury, an immediate, direct, or efficient cause of injury

Proximate damage. Proximate damages are the immediate and direct damages and natural results of the wrongful act or negligence, such as are usual and might have been expected.

PROXIMATE DAMAGE is the natural sequence of a wrongful act or omission flowing directly from it in obedience to some well-understood and recognised force.

Proximity. Closeness; nearness (as) Proximity of blood; proximity of war.

"**Proxy**" defined. Act 11, 1876, s 55

PROXY. One who acts for another, written authorisation for such action.

A proxy is an authority or power to do a certain thing.

A Proxy is a "lawfully constituted Agent" (*per* Smith, L.J, Re English Scottish & Australian Bank, 1893, 3 Ch 385.)

Prudence. Prudence means that degree of care required by the exigencies or circumstances under which it is to be exercised.

PRUDENT, PRUDENTIAL. *Prudent* signifies having prudence, *prudential*, according to rules of prudence, or as respects prudence. The *prudent* is opposed to the imprudent and inconsiderate, the *prudential* is opposed to the voluntary.

Every one is called upon at certain times to adopt *prudent* measures; those who are obliged to consult their means in the management of their expenses must act upon *prudential* motives

Prudent person. The expression 'prudent person' as used in a definition of ordinary care as that which a prudent person would exercise under similar circumstances, means the average prudent person or the ordinarily prudent person.

Prudential affairs. 'Prudential affairs,' as used in a section of an Act authorising municipalities to adopt ordinances for managing their 'prudential affairs,' are very indefinite and unsatisfactory words, making it a very difficult matter in many cases to determine just what is or is not included within the meaning of the expression; but it does not cover matters enumerated in the other paragraphs of the

Public

section of the statute authorising the passage of ordinances for certain specified purposes. (*Ame. Words & Phrases*)

Prune. A lease of an orchard, in which the lessees agreed to properly 'prune and cultivate the orchard according to good horticultural methods,' requires the doing of those things which are essential to keep the trees in good condition and preserve their fruit bearing qualities, which would include the cutting of suckers and water sprouts, when necessary to the health of trees, as well as the taking of proper steps to remove insect pests, which sap their lives when the trees are so infested.

Pry. Make furtive search or enquires into a persons affairs, etc

TO PRY, SCRUTINIZE, DIVE INTO *Pry* is taken in the bad sense of looking more narrowly into things than one ought, *scrutinize* and *dive into* are employed in the good sense of searching things to the bottom

A person who *prys* looks into that which does not belong to him, and too narrowly also that which may belong to him, it is the consequence of a too eager curiosity of a busy meddling temper a person who *scrutinizes* looks into that which is intentionally concealed from him, it is an act of duty flowing out of his officer a person who *dives* penetrates into that which lies hidden very deep, he is impelled to this action by the thirst of knowledge and a laudable curiosity.

Pseudo. Sham (as) in Pseudo—christian, Pseudo prophet

Ptomaine A poisonous product of putrefaction.

Puberty Sexual Maturity. By the English common law, for matrimonial purposes, puberty is fixed at 12 years in females This rule was derived from the civil and common law, though the latter did not regard the age as conclusive, but permitted the fact of puberty to be proved by actual inspection

"**Public**" defined. Act 45, 1860, s 12, Mad. Act 1, 1891, s 3 (26).

PUBLIC The body of the people at large, the people of the neighbourhood, the community at large; the people, the whole body politic, or all the citizens of the state; the inhabitants of a particular place

The word "public" includes any class of the public or any community. (Penal Code, S. 12)

As an adjective, pertaining to, or belonging to, the people, relating to a nation, state, or community; open to all the people, shared in or to be shared or participated in or enjoyed by people at large; not limited or restricted to any particular class of the community; of or pertaining to the people, belonging to the people.

We call that 'public' which is open for general or common use for entertainment, as a public highway or road, or a public house, and yet the term is more comprehensive than this definition.

The word 'public' has two proper meanings. A thing may be said to be public when owned by the public, also when its uses are public.

Public account

The terms 'PUBLIC AND GENERAL' are sometimes used as synonymous, meaning merely that which concerns a multitude of persons

"THE PUBLIC" *See* 3 P.R 1908 Cr.=5 P.W.R 1908 Cr.=7 Cr.L.J. 278=139 P L.R. 1908

Public account. The accounts of the expenditure of a nation

PUBLIC ACCOUNTS. *Public accounts* are the accounts of the expenditure of the nation

"Public accountant" defined. Act 12, 1850, s. 3.

Public act. Public acts are those which relate to the public at large. A public act is a statute affecting the public at large.

The charter of a bank is a public act, and courts will take judicial notice thereof.

Public act of parliament. "Public Act of parliament," means an Act which affects the public at large, as distinguished from one which only or chiefly affects private, personal, or local, interests, (15 L J. Ex. 163).

Public address As used in an ordinance prohibiting the making of a public address in a public park, the term 'public address' includes a sermon or religious discourse.

Public agent. The rules of law governing the rights, duties and liabilities of public agents (*i e.* agents of the Crown or Government), and the responsibility of the Crown for their acts and defaults, differ in many respects from those which apply in the case of private agencies *See* Bowstead on Agency, Story on Agency, Evans on Principal and Agent, (*Ency. of the Laws of England*)

"Public authority" defined. Act 2, 1901, s 2 (9).

Public Bar. The term 'public bar,' includes a bar kept open to the public in a hotel, so that all customers of the hotel are supplied with intoxicating liquors which are drunk on the premises, if at the same time the customers do not order or eat food of any kind. If, however, the counter over which the liquor is furnished is customarily kept as a lunch counter, and is designed and used for furnishing lunches, it is not a public bar merely because sales of liquors are sometimes made over it. (*Ame. Words and Phrases*).

Public benefit A railroad is a public benefit' within the meaning of the rule that taking the property by eminent domain can only be exercised for the public benefit.

Public blockade. A public blockade is one which is not only established in fact, but of which notice is given, by the government directing it, to other governments.

Public body. A county, Municipality or City corporation is a public body.

"Public bridge" defined. Ben. Act 1, 1900, s. 4.

A bridge of public utility, even though built by an individual, if dedicated to and accepted by the community, is a *Public Bridge* (*R.* v. *Yorkshire*, 2 East, 342),

Public company.

A Bridge in a Highway is a *Public Bridge* and "Public Bridges" "may safely be defined to be, such Bridges as all His Majesty's subjects have used freely and without interruption, as of right, for a period of time competent to protect them from being considered as wrong-doers in respect of such use" (*per* Ellenborough, C. J., *R.* v. *Bucks*, 12 East, 204).

Public bridges are such as form part of the highway common, according to their character as foot, horse, or carriage bridges, to the public generally, with or without toll, though their use may be limited to particular occasions or the seasons of flood or frost.

"Public building" defined 44-5 V. c. 48, s. 108 A (5) (ins 9 Edw. 7, c. 3, s. 7). Ben. Act, 3, 1899, s. 3 (36).

PUBLIC BUILDING In the construction of statutes the term 'public buildings' includes a stalehouse, courthouse, county house, town house, arsenal, magazine, prison, jail, workhouse, poorhouse, market, or other buildings belonging to the state, or to any county, town, city, or borough in the state,any church, chapel, meetinghouse, or other building generally used for religious worship,and any college, academy, schoolhouse, or other building generally used for literary instruction.

The term 'public building,' as used in all laws relative to the employment of labour, shall mean all buildings or premises used as a place of public entertainment, instruction, resort or assemblage.

Public business. Absence from the state as a volunteer soldier or officer in the federal army constitutes 'absence on public business,' within a statute providing that the statute of limitation shall not run, etc., during the time in which defendant is absent from the state on public business.

Public Charity A public charity is whatever is given for the love of God, or for the love of one's neighbour and given free from the stain or taint of every consideration that is personal, private, or selfish

Whatever is gratuitously done or given in relief of the public burdens or for the advancement of the public good is a purely public charity.

A public charity is a gift to a general public use; a gift for an object which the state itself ought to or lawfully might undertake and accomplish with public resources.

An institution for the charitable benefit of a large and important body of poor persons is a "Public Charity", (*A. G.* v. *Pearce*, 2 Atk 87).

"I am of opinion," said Lord Hardwicke in *A.G.* v. *Pearce*, 1740, 2 Atk. 87, 26 E.R. 454, "that the word public was meant only by way of description of the nature of them, and not by way of distinguishing one charity from another, for it would be almost impossible to say which are public and which are private in their nature It is the extensiveness which will constitute the Charity a public one." See also *St. Thomas's Hospital* v. *Lambeth*, 1875, 45 L.J.M.C. 23; *R.* v. *Stapleton*, 1863, 33 L.J, M.C. 17.

Public Company. A company whose capital consists of shares publicly subscribed.

Public conveyance.

"What a 'Public company' is has not been defined but one test is, whether the members have a right to transfer their shares" (Buckl. 3, citing Re Griffith, *Carr* v. *Griffith*, 12 Ch D. 655)

"The words '*Public Company*' import, no doubt, some relation to the public, but the decisions leave it doubtful what that relation should be It may mean, a Company the shares in which are open to all the public" (*per* Byles, J, *Nicholls* v *Rosewarne*, 6 C.B.N S. 493)

Public conveyance. 'Public conveyances', as used in an ordinance prohibiting all public conveyances from standing on certain streets, means conveyances which the public are entitled to use for a compensation A hotel omnibus only used to carry the guests of the hotel is not a 'public conveyance.'

Public corporation. A public corporation is a 'corporation created by the government for political purposes, and having subordinate and local powers of legislation'.

A corporation formed or organised for the government of a portion of the state, any corporation intended as an agency in the administration of civil government, one that is created for political purposes, with political powers to be exercised for purposes connected with the public good in the administration of civil government, an instrument of the government subject to the control of the legislature, one which is founded for public, although not political or municipal purposes, the embodiment of political power for the purposes of public government. Such corporations are towns, cities, counties, parishes, and the like

'**Public debt**" defined, U P. Act 1, 1903, s. 2 (b).

"PUBLIC DEBT" means a debt due or liability incurred by Government U P. Act I of 1903 (Encumbered Estates), s. 2, Cl b.

Public detective A public detective is a detective "engaged by the public or Government for the protection of society."

"**Public document**" defined. Act 1, 1872, s. 74, Act 18, 1881, s. 146, Act 5, 1888, s. 14 (1).

The following documents are public documents:—(1) documents forming the acts or records of the acts—(*i*) of the sovereign authority, (*ii*) of official bodies and tribunals, and, (*iii*) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country, (2) public records kept in British India of private documents (Evidence Act, 1872, S. 74).

PUBLIC DOCUMENT. With reference to the question of the admissibility of a public document in evidence the following observations were made by Lord Blackburn: There "should be a Public Inquiry, a Public Document, and made by a Public Officer. I do not think that, 'Public' there, is to be taken in the sense of meaning of the whole world I think an entry in the books of a Manor is 'public' in the sense that it concerns all the people interested in the Manor and an entry, probably, in a Corporation book concerning a corporate matter or something in which all the corporation is concerned, would be 'public' within that sense. But it must be a 'Public Document,' and it must be made by a Public Officer I understand a 'public document', there, to mean, a document that is made for the purpose of the public making use of it, and being able to refer to it It is meant to be where there is a judicial, or quasi judicial, duty to enquire. It should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards" (*per* Blackburn, J. *Sturla* v *Freccia*, 50 L J Ch 96, 5 App. Ca. 643, 644)

Public domain 'Public domain' is synonymous with 'public lands,' and is used to describe such as are subject to sale or other disposal under general laws

"**Public drain**" defined Ben. Act 1, 1900, s 4.

Public easement The easement of the public over the highways of a city includes the right to use the street for purposes of passage by the public.

Public election A 'public election' within the meaning of the article punishing betting upon the result of a public election, is any election for a public officer or member of any deliberative body, under the authority of the laws of the State

'**Public embankment**" defined Act 32, 1855, s. 2, Ben Act 6, 1873, s 3, Ben. Act 2, 1882, s 3.

"PUBLIC EMBANKMENT" means an embankment maintained by the officers of Government. Ben. Act 2 of 1882, (Embankment), s 3.

Public enemy. 'Public enemy' does not mean thieves and robbers, but open and armed enemies, those in hostility to the government.

Public entertainments In the interests of public order and morality, legislative control has been established over certain classes of entertainments provided for the public for money (as) places for serving intoxicating liquors, lodging houses, music and dancing halls, theatres etc *See* "Geary on Theatres and Music Halls, Williams on Licensing, Strong, Dramatic and Musical Law, Archibald, Met. Police Guide.

"**Public ferry**" defined Mad. Act 2, 1890, S 3.

PUBLIC FERRY A public ferry is one open to all, for which a regular fare is established, and the ferryman is a common carrier, bound to take over all who come, and he is bound to keep up and in good order his ferry, and is held strictly liable

Public-forest land" defined. Bur. Act 4, 1902, S 3 (10)

"PUBLIC FOREST-LAND" means land at the disposal of the Government and not included in a reserved forest Bur. Act IV of 1902 (Forests), S. 3, Cl. 10.

Public funds The term 'public funds' means and includes 'taxes, customs, etc., appropriated by the government to the discharge of its obligations.'

Public Gambling House. A 'public gambling house,' is construed to mean those houses which are rendered public by their use as places of public resort. A house may be said to be a public house either in respect to its proprietorship or its occupancy and uses, and hence a room kept as a common

resort for persons desiring to play cards for money is a 'public gambling house.'

Public good. "Whilst it may, undoubtedly, be a most difficult enquiry whether this or that be for the *public good*, I would point out that the question is not altogether foreign to many which have from time to time been freely entertained by the courts. Many a contract has been held invalid as contrary to public policy, and although warned perhaps by the economic errors of their predecessors, judges have grown more cautious in laying down what is and what is not contrary to public policy, yet the jurisdiction remains and is constantly exercised" (*per* Wills, J, *Liverpool Corn Trade Assn.* v. *Lond, & N. W Ry* 1891, 1 Q.B. 120.)

Public Grounds. A dedication of land as 'public ground' should be construed to authorise its use as sites for the erection of buildings for the use of the public, such as courthouses, market houses, school houses, and churches; commons for pastures, public pounds for stray animals.

Public Harbour 'Public Harbour' may be a natural harbour on which public money was not spent—Potentiality is not enough—Public must be actually using it as harbour. A.I R 1919 P. C. 138.

"Public highway" defined. Ben. Act 4, 1868, s. 8.

"Public holiday" defined. Act 26,1881, s. 25, *expln* ; Bom. Act 3, 1888, s. 3 (*cc*).

Public house. "Public house", has been defined in an English statute to include "a Common Inn, Alehouse, Victualling House, or other premises in which any exciseable liquors are sold by retail, to be drunk or consumed in the premises in which the same are sold".

Primarily, "Victualler" simply means, "he who sells Victuals" the restriction of the word to one who keeps a Public House is modern (*Tyson* v. *Smith*, 9 A. & E. 410).

PUBLIC HOUSE. 'Public house,' as used in an Act prohibiting gambling at a public house, should be construed to include a lawyer's officer; and where it consists of two rooms, front and back, in each of which professional business is transacted, the two rooms are equally within the statute.

Public Ignominy. Public ignominy means "public disgrace".

Public Improvement. 'Public improvement' when applied to a municipal government, must be taken in a limited sense, as applying to those improvements which are the proper subject of municipal regulation, such as gas, almshouses, hospitals, etc, and cannot be extended to subjects foreign to the object of the corporation, and beyond its territorial limits.'

Public Indecency. 'Public indecency' has no fixed legal meaning. It is vague and indefinite, and cannot in itself imply a definite offence. The courts have, by a kind of judicial legislation usually limited the operation of the term to public exhibitions of the person, the publication, sale or exhibition of acts which have a direct bearing on public morals and affect the body of society. The term is different from, and more limited in its meaning than, the word 'indecency', as commonly understood.

Public Inspection. By 'public inspection,' as used in an Act in reference to the right of the public to inspect public records, is meant not an inspection of the idle, the impertinent, or the curious, but the inspection by those with a laudable object to accomplish, or a real and actual interest.

Public interest means, those interests which concern the public at large.

Matter of public interest "does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected" (*per* Campbell, C. J, *R* v *Bedfordshire*, 4 E and B. 541, 542)

Public Inventory. Public inventories are those which are accompanied by the solemnities or formalities of the law, and which are made by a public officer under authority of law.

Publici Juris Of public right. All property held for the benefit of the people generally, and of which they are entitled to the common enjoyment, is said to be of public right Such are navigable rivers, the seashore, etc, held by the Crown for the public benefit. All other rights of a similar kind are *publici juris*.

"Public knowledge" defined. Act 5, 1888, S 22.

"Public lamp" defined. Act 9, 1910, S. 2 (*k*).

Public land. The words 'public lands' are habitually used to describe such as are vested in the Government and which are subject to sale or other disposal under the general laws.

Public lands. The term "public lands" or "public domain" are habitually used to designate such lands of the States as are subject to sale or other disposal under general laws. There is no statutory definition of the words "public lands", their meaning may vary for different purposes, and they should be given such meaning in each case as comforts with the intention of the parties using the lands.

"Public land-conveyance" defined. Bom. Act 6, 1863, S. 1.

Public landing A public landing is a piece of ground on the bank or margin of a river, provided for the convenience and common use of all persons in the landing of themselves or their goods.

"Public market" defined. Mad. Act 4, 1884, S. 3.

"Public meeting" defined. Act 10, 1911, S. 3.

Public Minister The term 'public minister,' includes an attache to a foreign legation.

Public moneys. In an extradition treaty wherein embezzlement of public moneys is one of the crimes for which reciprocal extradition is stipulated, 'public moneys' do not include the funds of a private corporation.

"Public muhammadan burial ground" defined. Ben. Act 4, 1889, S. 2.

Public necessity. With reference to public matters and legislative usage, 'necessity' means great or urgent public convenience.

Public notice.

We often speak of public necessity merely as a conducive motive of legislative action, and, so used, it simply indicates that the Legislature thought the action, on the whole, to be wise, but, when the contemplated action depends for its validity upon a legislative finding of public necessity, the phrase has an important meaning Public necessity, in this sense, is that urgent, immediate public need arising from existing conditions, which, in the judgment of the Legislature, justifies a disturbance of private rights that otherwise might be legally exempted from such interference

Public notice In laws relating to probate courts and proceedings, the words 'public notice' denote notices published successively in a newspaper published in the district or, if none, in the local official Gazette.

"PUBLIC NOTICE" in the Contract Act means notice to the public concerned, *Mc'Iver* v *Humble* (16 East 169), *Barfoot* v. *Goodall* (3 Campbell 149), 3 I C 445 (448)=3 S L.R. 140

"Public nuisance" defined Act 45, 1860, S. 268, Act 10, 1897, S 3 (44), Ben. Act 1, 1899, S. 3 (33), Bom. Act 1, 1904, S. 3 (36), Bur. Act 1, 1898, S. 2 (48), E B. & A. Act 1, 1909, S. 5 (49), Mad Act 1, 1891, S. 3 (27), P. Act 1, 1898, S 2 (44), U P. Act 1, 1904, S 4 (34).

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. (Penal Code, S. 268).

"The expression public nuisance" in S 91 (1), C P. Code, (1908) does not include public nuisances in law or constructive public nuisances, *i e.*, acts which are nuisances merely because they contravene the provisions of an Act, and which, but for the Act, would not be nuisances at all. 12 Bom.L.R. 274=5 I C. 213

"Public office" defined. 55-6 V. c. 40, S. 4.

In *Re Mirams* (1891) I.Q B 594 *Cave, J*, said,—"to make the Office a *Public Office* the pay must come out of national, and not out of local funds,—the Office must be public in the strict sense of that term. It is not enough that the due discharge of the duties should be for the public benefit in a secondary and remote sense."

"Public officer" defined (*See also* Public Servant). Act 5, 1908, S. 2 (17), Ben. Act 1, 1876, S. 25

"Every one who is appointed to discharge a Public Duty, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a Public Officer", (*Henly* v. *Lyme*, 5 Bing. 107, 108).

"PUBLIC OFFICER" (*b*) means a person falling under any of the following descriptions, namely (*a*) every Judge, (*b*) every member of the Indian Civil Service; (*c*) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while

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serving under the Government; (*d*) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties, (*e*) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement; (*f*) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience, (*g*) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government, and (*h*) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty, Act V of 1908 (Civ Pro Code), S. 2, cl 17 A. I.R 1928 Sind 76

A Surveyor employed by the Collector in the khas mehal department is a public officer. 26 C 15*=3 C.W N 115

Public peace. 'Public peace' as used in a statute pointing out the penalties to be imposed for breaches of the public peace, means 'that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted.'

"Public place" defined. Act 5, 1898, S 133, *Expln*, Ben Act 2, 1866, S 51 (*ins.* Ben Act 3, 1910, S. 4), Ben Act 4, 1866, S. 3 (*ins.* Ben. Act 3, 1910, S. 4), Bom. Act 4, 1902, S. 3 (*j*).

A place is public, within the Criminal law against Indecency, "if it is so situated that what passes there can be seen by any considerable number of persons if they happen to look" (*Steph Cr.* 115).

Where the public have access to a place without their access being refused or interfered with that place is a public place. 44 A. 265=20 A.L.J. 80=A. I.R. 1922 All. 542.

PUBLIC PLACE means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass. Act VIII of 1914, (Motor Vehicles) S 2.

A public place is one which is in full view of the public and one to which the public have access 126 I C. 702=31 Cr.L.J. 1118=7 O.W.N. 621=1930 Cr.C. 905=A I.R. 1930 Oudh 394.

A public place is one to which the public go whether they have a right to do so or not. A legal right of access is not essential to constitute a public place. (14 Q.B.D. 63; (1890) 1 Q.B. 425, *Foll.*) The grounds of the Madras Harbour are a place of resort

Public Place.

within S 75 of the Madras Crty Police Act, even though admission thereto, is restricted under Bye-law framed under the Port Trust Act (1915) M.W. N 841=30 I C 752=39 Mad. 886=16 Cr.L J. 704=2 L.W. 937.

An open field with no compound walls, whereto the public go, no matter whether they have a right to go or not, is a public place 1937 M.W.N. 23= 168 I C 729=9 R M. 632=38 Cr L J. 588 (2)=46 L W. 251=A I.R. 1937 Mad. 286.

A verandah of a private house accessible to a public street is not a public place within the meaning of S 118 of the Cantonments Act and the mere fact that it is open to the road, and can be entered by the public is not sufficient for holding it to be anything but a private place. (11 P.R. 1890, Cr.; (1881) A W N. 17, (1881) A W N. 8 and (1887) A W.N. 75, *Ref*) 1931 Cr C. 864=A.I R. 1931 Lah. 576

A serai taken on rent by a Municipal Committee and used as a stand for hackney carriages is a public place within the Public Gambling Act A place dedicated to the public is a public place, but where it is owned privately the question whether it is a public place depends on the character of the place and the use actually made of it 26 Cr.L.J. 1455=89 I.C. 975

It is not necessary that a public place for gambling should be public property, but if it is private property, the public must have access to it; nor is it sufficient that a place should be accessible to the public; it must be a place to which the public do in fact resort. Where the public has no access a place cannot be called a public place, 18 Pat L.T 352= 1937 P W N. 388=168 I.C. 840=33 Cr.L J 608=A I R. 1937 Pat 276

Gaming is prohibited in "any public street, place or thoroughfare" by S 13 of the Public Gambling Act The word 'place' is used in conjunction with street and thoroughfare and could not have been intended to apply to a private place which might be open to a public view. A particular place though private may become a public place on a particular occasion, for instance, when the members of the public are really present there. But unless such is the case, a private place cannot be called a public place merely because if some member of the public were to pass close by, he might have an opportunity of seeing what was going on there It must be a place either open to the public, or actually used by the public, the mere publicity of the situation not being sufficient 25 A L.J. 578=103 I C. 202=28 Cr. L J 666=A I R 1927 All 560 *See also* 31 C 542= 8 C.W.N. 458=1901 A W.N. 56.

There is no warrant for the view that Railway land is necessarily a public place especially railway land which is outside the railway fencing at a railway station 4 P.L.T. 402=74 I.C. 1047=24 Cr.L.J. 855=1 Pat.L.R. 154 (Cr.)=A.I.R. 1923 Pat. 540.

Public policy does not admit of definition, and is not easily explained; it is a variable quantity, which must vary and does vary, with the habits, capacities, and opportunities of the public (*per* Kekewich, J, *Davies* v. *Davies*, 1887, 36 Ch D., at p. 364); but there are certain classes of contracts which have been dealt with by the Courts as opposed to Public Policy. Sir William Anson enumerates these classes as follows:—(1) Agreements tending to injure the

Public purpose.

public service; (2) agreements which injure the State in its relation with other States, (3) agreements which tend to prevent the course of justice, (4) agreements which tend to abuse of legal process; (5) agreements, which affect the freedom or security of marriage; (6) agreement in restraint of trade; and (7) agreements which in restraint of marriage etc. (*Ency of the Laws of England*).

The expression public policy is a very uncertain one, and it should not be carelessly extended to any case, for what is the policy of the public at one time may not be sound public policy at another time. 6 Bom.L.R 23.

"Is a very unruly horse, and when once you get astride of it you never know where it will carry you" (*per* Burrough, J, *Richardson* v *Mellish*, 2 Bing. 252)

The term "public policy' is equivalent to the "policy of the law". It is applicable to the spirit as well as the letter Whatever tends to injustice of operation, restraint of liberty, commerce, and natural or legal right, whatever tends to the obstruction of justice or to the violation of a statute and whatever is against good morals,—when made the object of a contract, is against public policy, and therefore void and not susceptible of enforcement.

"Public prosecutor" defined. Act 5, 1898, S. 4 (*t*).

"PUBLIC PROSECUTOR" means any person appointed under S. 492, Cr P. Code, and includes any person acting under the directions of a public prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction; (Criminal Procedure Code, S 4.)

"Public prostitute." *See* U. P. Municipalities Act, S. 298.

"Public purpose" defined. Act 1, 1894, S 3 (*f*).

Even if only a section of the public is benefited by a land acquisition, the purpose would still be a public purpose and hence the acquisition of house sites for Panchamas is a public purpose. (49 Mad 237 and 59 M L J 274, *Rel. on*) 131 I C 647=1931 M.W N. 126=33 L W 572=A I.R. 1931 Mad. 361.

Provision of house-sites for Panchamas is a "public purpose" within the Land Acquisition Act. Even if only a section of the public is benefited, still the purpose is a public one 127 I C. 609=1930 M. W.N 1063=32 L.W. 179=A.I R. 1930 Mad. 798=59 M L J 274.

The expression "*public purpose*" includes the provision of village sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision Act I of 1894, (Land Acquisition), S 3 (*b*).

The definition of "public purpose" in S. 6 of the Land Acquisition Act, 1894, is a partially inclusive, not exhaustive definition. 13 Bom.L R. 1097=12 I.C. 871.

'PUBLIC PURPOSE' includes building residences for Government servants. *See* 13 A.L.J. 117=27 I.C. 26.

"Public purpose" includes any object which secures the good of the public, by securing the

Public purpose.

efficiency of those servants of the Crown on whose service the public good materially depends. 13 Bom. L.R 1097=12 I.C. 871. *See also* 19 C.W.N. 305=I. L.R 30 Cal. 36=32 Cal 605 (P.C.)

The mere fact that the Government will charge a moderate rent such rent as the letting value of the property will yield in the market cannot alter the essential character of a building as one used for a public purpose. 13 Bom.L R. 1097=12 I.C 871

Their Lordships fundamentally disagree with the proposition that the dharmasala is excluded from the term "public purpose" because the persons mainly interested would have been the worshippers and dignitaries of the temple Kali. What the municipality had to consider was not the religious beliefs and purposes of those assembling in such numbers, but what was the situation of the city in respect to this assemblage and to the citizens at large in view of the general questions of public convenience, proper sanitation, and the prevention of danger and disease. Any enlightened municipality would carefully attend to these questions and endeavour to avoid the evils referred to. This is not to be ruled out by a consideration as to the particular form of belief or practice of those who would primarily benefit by the improvements made. 49 I A. 255 (259) =49 C 838 (842)=31 M.L.T. 155=16 L.W 673=27 C.W N 125=37 C L.J 67=21 A L.J. 27=A I R. 1922 P.C 333=69 I.C. 114=43 M.L.J. 634.

Public Records and Documents.—The term "public records and documents" is issued in two senses. In the first sense it has reference to the mode of proving the document; in the second, to what the document proves In the first sense it includes all documents which are of such a public nature that production of the original is excused, and proof by copies is admitted. In this sense, wills deposited in the Probate Court, and Pleadings and affidavits filed in the superior Courts are public documents.

In the second sense, public documents aro those documents which are evidence generally, and not merely as against the parties thereto, of the facts stated therein. Thus a register of marriages is good evidence of the fact and date of marriages registered therein. Most documents which are public in this sense are public in the first sense also. But the converse is by no means true. (*Ency. of the Laws of England*).

The principle of public documents being admissible generally is "that it should be public inquiry, a public document, and made by a public officer". It must be made "for the purpose of the public making use of it, and being able to refer to it" (Per *Lord Blackburn* in *Sturla* v. *Freecia*, 1880, 5 A C. 643).

Public resort. A private house and garden where a sale by public-auction takes place is for the time a 'place of public resort'. The place need not be a place of resort all the year round.

"Public revenues" defined. (*See also* Revenue Act 15, 1910, S. 22; Mad. Act 2, 1864, S. 1.)

Public right. A right of way common to several persons is not necessarily a public right. 57 I.C. 151 (Pat.)

"Public road" defined. (*See also* Public street). Act 9, 1890, S. 125 (4); Ben. Act 1, 1900, S. 4; Mad. Act 5, 1884, S. 3 (xxiii).

Public Servant.

"A Road becomes public by reason of a dedication of the right of passage to the public by the owner of the soil, and of an acceptance of the right by the public or the parish" (per *Littledale, J*, *R.* v. *Mellor*, 1.B & Ad 37).

Any land over which the public from time immemorial had been accustomed to travel is a public road whether metalled or unmetalled. 37 All 9=12 A.L J. 1137=26 I C. 206.

PUBLIC ROAD. The distinction between a road and a 'public' road is that the latter alone is vested in the District Board 5 M.L.T. 225=4 I C 1132

Public road—What is *See* 33 C W.N. 915, 169 I C. 36=9 R N. 294=38 Cr L.J. 694=A I.R. 1937 Nag. 102.

A public right of way is unconnected with any dominant tenement. Such right may be acquired by user of or dedication to the public in general. There can be no such thing in law as a public right of way constituted by dedication to only a section of the public The fact that there are no thoroughfares at the termini is consequently of not much importance on the point of dedication Where however the privilege to use a road is enjoyed by only one particular section of the community or the inhabitants of two or three villages and not by others, the road is not a public road. 33 C.W.N. 915.

"Public securities" defined. (*See also* Government Security) Bom. Act 6, 1879, S. 3 (12), Bom. Act 6, 1886, S. 69, Bom. Act 3, 1888, S. 3 (*o*), Bom. Act 5, 1888, S. 66 (3), Bom. Act 3, 1901, S. 3 (18).

"PUBLIC SECURITIES" shall mean—(*a*) securities of the Government of India, (*b*) stocks, debentures or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council, (*c*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in British India, or; (*d*) a security expressly authorized by any order which the Governor in Council makes in this behalf. Bom. Act 3 of 1901 (Dist. Mun.) S. 3, Cl. 18.

"Public servant" defined. (*See also* Public Officer). Act 45, 1860, S. 21.

The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely —*First*—Every Covenanted servant of the Queen; *Second.*—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government; *Third.*—Every Judge, *Fourth.*—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties; *Fifth.*—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant; *Sixth.*—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Public Servant.

Seventh.—Every Person who holds any office by virtue of which he is empowered to place or keep any person in confinement; *Eighth.*—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience; *Ninth.*—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty, *Tenth*—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district *Eleventh.*—Every person who holds any office in virtue of which he is empowered to prepare, maintain, or revise, an electoral roll, or to conduct an election or part of an election (Penal Code), S. 21, 16 Pat. 571=1937 P.W.N. 937

An inspector in the finger print bureau being in the service and pay of Government is a public servant, even if he is not performing the ordinary duties of a police officer. 69 I.C. 445=23 Cr.L.J. 717=A I.R. 1924 Lah. 355

"PUBLIC SERVANT, ACTING AS SUCH" Where the initial jurisdiction is wanting and a jurisdiction is assumed by an official who, in such assumed capacity acts to the prejudice of a person, he is not acting 'as such public servant'. Where, however, the official has jurisdiction to take cognizance of a matter, and in professedly exercising that jurisdiction commits an offence or acts *ultra vires* of his powers, he is acting 'as such public servant'. If he simply uses his position as a public servant to commit an illegal act, he is not within the protection afforded by law The test is, not whether the particular act is within his powers, but whether he acted in the capacity with which he is clothed. 35 I C 826=17 Cr.L.J. 394.

'Public service', meaning of. *See* 17 C W N. 735=19 I.C. 765 (P.C.)

"Public spring." *See* 4 M. 229=1 Weir 230.

'Public statute' is defined by Blackstone to be 'a universal rule that regards the whole community. A public law may however, be general, local, or special. It can never, however, be a private law. A general law is essentially a public law, but the converse of the proposition is not true. A public statute affects the public at large, either throughout the entire state, or within the limits of a particular locality where the act operates

Public stocks. "Public stocks", means and includes "any stock forming part of the National Debt, and transferable in the books of the Bank."

Public Trial.

In *Wells* v *Porter*, 2 B N.C 722, 5 L.J.C P. 250) *Bosanquent, J.* said, "When we find the expression *'Public stocks'* we must intend the public stocks of this country."

"Public street" defined. (*See also* Public Road). Ben. Act 3, 1899, S 3 (37); Bom. Act 3, 1888, S. 3 (*x*), Bom. Act 3, 1901, S. 3 (13); Mad. Act 4, 1884, S 3 (*viii*), Mad Act 5, 1884, S 3 (*x*), Mad. Act 3, 1904, S 3 (27); 31 M 181; 8 Cr L J. 72.

"PUBLIC STREET" means any street heretofore levelled, paved, metalled, channelled, sewered or repaired by the corporation, and any street which becomes a public street under any of the provisions of the Municipal Act. Bom Act 3 of 1888 (City Bombay Municipal), S. 3, Cl. (x).

"Public street" shall mean any street—(i) Over which the public have a right of way, or, (ii) heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds; or (iii) which, is declared by the municipality to be, or under any other provisions of the Municipal Act becomes a public street. Pun. Act 3 of 1911, (Municipal), S 3, Cl. (b).

Where it was proved that a *cul de sac* had been lighted, drained and swept by the Municipality, and upon sale of the property of the former owner, the portion forming this lane had not been sold and the public had been using it freely for thirty years, *held* that it was a public street within the meaning of the Municipalities Act. 30 A. 70=5 A L.J. 45= (1908) A.W N 15 *See also* 20 Bom. 146: 30 Bom. 558 (568), 8 Bom.L.R 457.

Public swearing Public swearing is a nuisance at common law, but, to be indictable, it must be in a public place, and an annoyance to the public. It is the publicity of the offence, and the place in which it is committed, that make it punishable as a common nuisance.

Public trade. *Patteson, J*, said, "I do not know what is meant by the phrase *"Public Trade"* (*Gibson v. Ireson*, 3 Q.B. 44), but we can enumerate some of the public trades and each of the following is a *"Public Trade"* carrier, auctioneer, factor, warehouseman, Wharfinger etc. (*Adams* v. *Grane*, I.Cr. & M. 380).

Public Trial The meaning of the term, 'public trial,' as used in an Act providing that a person accused of crime shall be entitled to a speedy and a public trial, depends upon the circumstances of each particular case. 'In a time of political or local excitement, if the trial judge permitted the courtroom to be packed exclusively with men opposed to the defendant on trial, the trial would not be public in fairness to the defendant. Every seat and all the standing room might be occupied, but the characters of the spectators present, and the friendliness to the accused of those who failed to gain admittance, perhaps through the connivance of the court, are to be considered in deciding whether the rights of the defendant have been trampled upon. The exclusion of a dozen school girls or boys of no particular predelection for the defendant on trial can work no harm to him. The statute is for his benefit, and such an expulsion does not harm or

Public turnpike.

aid him. It is apparent, therefore that while the defendant is entitled to a public trial, good morals or the exigencies of the situation may make that a relative term, without injury to the defendant, and without infringement upon the sanctity of the rights granted to him ; that such discretion is vested in the presiding judge, and the test is whether or not it has been abused.' (*Ame. Words & Phrases*).

Public turnpike A 'public turnpike' is a way which the public has a right to use.

Public use. A 'public use' must be for the general public, or some portion of it, and not a use by or for particular individuals or for the benefit of certain estates.

A public use, whether for all men or a class, is not one confined to privileged persons. The smallest street is public, for all men have an equal right to travel on it, but a way used by thousands, which may be shut against a stranger, is private

"Public use or knowledge" defined Act 5, 1888, S 22.

"Public vaccinator" defined Act 5, 1888, S 22; Ben. Act 5, 1880, S 2, Bom Act 1, 1877, S. 2 (3), Bom Act 4, 1879, S 2 (3), Bom Act 1, 1892, S 4 (c) Mad. Act 4, 1884, S. 3 (*xix*) (1), Mad. Act 5, 1884, S. 3 (xvii) (1).

"Public vaccine-station" defined. Ben Act 5, 1880, S. 14; Bom. Act 1, 1877, S. 3, Bom Act 4, 1879, S. 3.

"Public water-conveyance" defined. Bom. Act 6, 1863, S 1.

"Public water-course" defined. Ben. Act 6, 1873 S. 3; Ben. Act 2 1882, S 3, Mad. Act 4, 1884, S 3 (xxxiv.)

"PUBLIC WATER-COURSE means a water-course under the charge of the officers of Government Ben. Act II of 1882 (Embankment), S. 3

Public water main. The words "500 feet from the public water-main" used in the notification of the Punjab Government under Punjab Municipal Act (XX of 1891) mean "the public water-main from which water can be drawn" and not "public water main absolutely closed and from which no one can benefit as it stands" 266 P.W.R. 1912=15 P L R. 1913=17 Ind. Cas. 149 (152).

Public way. Public way means, not merely a Mail-Coach Road, but every way which is common to the Queen's subjects" (*per* Pennefather, B., Devoy's Case, Ir. Circuit Rep 74, 75.)

Public well A well, though situate in private ground, which is used gratuitously, and as of right by the inhabitants in the vicinity for the purpose of drawing water, is a "Public Well" (*Smith* v. *Archibald*, 5 App. Cas. 489.)

Public wharf A Public Wharf or Quay is one which is common to all the King's subjects (*Bolt* v. *Stennott*, 8 T R 606)

Public worship 'Public worship' may mean the worship of God, conducted and observed under public authority, or it may mean worship in an open or public place, without privacy or concealment, or it may mean the performance of religious exercises

Publication.

under the provision for an equal right in the whole public to participate in its benefits, or it may be used in contradistinction to worship in the family or the closet.

Public writing. A public writing would include writing made by a notary public in the presence of the parties who execute it, with the assistance of witnesses; the parties in the interest signing it, or, at their request, either of the witnesses with the said notary.

Public wrong Public wrongs are breaches and violations of public rights and duties which affect the community, considered as a whole.

Wrongs are divided into two sorts of wrongs-private wrongs and public wrongs. The former are infringement or privation of the private or civil rights belonging to the individuals, considered as indiv iduals, and are thereupon frequently termed 'civil injuries' The latter are a breach and violation of public rights and duties which affect the whole community, considered as a community, and are distinguished by the harsher appellation of 'crimes and misdemeanors'

Publican is one who keeps a public home

Publication. The act by which a thing is made public, the act of publishing or making known, notification to the people at large, either by words, writing or printing; that which is published or made known; an act done in public; notifying or printing proclamation, issuing sending out; placing on sale. "Publication" is accomplished in a variety of ways according to the subject-matter A book or other literary matter is published by being surrendered by its author and printer for public use. (*White* v. *Geroch*, 1 Chitty, 26)

A NEWSPAPER, OR PERIODICAL, is published whenever and wherever it is offered to the public by the proprietor for sale, (*Mc Farlane* v. *Hulton*, 1899, 1 Ch 884).

For purposes of the Copyright Acts the first public representation of a DRAMA OR MUSICAL COMPOSITION is equivalent to the first publication of a book (*per* James, L.J., *Boucicault* v. *Chatterton.*)

A SCULPTURE, OR BUST, is published by being publicly exhibited. (*Turner* v. *Robinson*, 10 Ir Ch Rep 516).

PUBLICATION OF A BYE LAW is when it is first printed and issued to the public in the Official Gazette or other state document. See *Motteram* v. *Eastern Counties Ry*, 29 L.J M C 57.)

A LIBEL IS PUBLISHED when it is communicated to any one, even the libelled's wife, (*Wenman* v *Ash*, 13 C. B 836) other than the person libelled.

LOTTERY IS PUBLISHED by a Newspaper containing an advertisement of it. (*King* v. *Smith*, 4 T.R. 414.)

PUBLICATION OF a WILL IS effected by execution and delivery of the same as provided by law. (*Viscent* v *Sodor and Man, Bp.*, 8 C.B. 905).

The "PRIOR PUBLICATION" of an Invention which will invalidate a patent, means the prior existence in this country of some document to which the public have access, containing such a description of the invention as will enable a practical man to carry it out from the description given. (*Terrell on Patents*,)

Publish.

Publish. "Publish" primarily means to make known, so that, where a notice is required to be published in a newspaper, printed in German, the notice must also be in German. When printed in English, it would be merely printed, not published (14 L R A. 62)

"An Act providing that every citizen may speak, write, and publish his sentiments upon all subjects, does not give to the citizen the right to advise the commission of a crime by others. What it does permit is liberty of action only to the extent that such liberty does not interfere with or deprive others of the equal right. In the eye of the law, each citizen has an equal right to live and to act, and to enjoy the benefits of the laws of the state under which he lives: but no one has the right to use the privileges thus conferred in such a way as to injure his fellow citizens, and one who imagines he has labors under a serious misconception, not only of the true meaning of the provision referred to, but of his duties and obligations to his fellow citizens and the state itself Thus the publication of an article in a paper inciting a murder is not within the protection conferred by such provision" (*Ame. Words and Phrases.*)

TO PUBLISH, PROMULGATE, DIVULGE, REVEAL, DISCLOSE To publish is the most general of these terms, conveying in its extended sense the idea of making known, but it is in many respects indefinite. we may make known to many or few, but to promulgate is always to make known to many We may publish that which is a domestic or a national concern, we promulgate properly only that which is of general interest, the affairs of a family or of a nation are published in the newspapers, doctrines, principles, precepts, and the like are promulgated To publish is said of that which was never before known, or never before existed, to reveal and disclose are said of that which has been only concealed or lay hidden we publish the events of the day, we reveal the secret or the mystery or a transaction; we disclose the whole affair from beginning to end which has never been properly known or accounted for

"PUBLISHED AND PERFORMED" meaning in the Copyright Act *See* Copyright Act, S. 35.

Publisher. "Publisher" is one who, by himself or his agent, makes a thing publicly known; one engaged in the circulation of books, pamphlets. news or other papers."

In the Copyright Law "Publisher", means the first Publisher. (*Weldon* v. *Dicks*, 10 Ch. D 247.)

A publisher is one who makes anything publicly known, such is its meaning in reference to publication of a libel,

He is the PUBLISHER OF A LIBEL who, either of his own will,or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel.

The publisher of a paper is ordinarily a printer, in the sense of being the person for whom, as principal, and by whose servants, the paper is printed.

"Publisher" of a paper is the man who publishes it in the ordinary tense of the term, that is to say, arranges with the proprietor for its distribution, and

Pugil vivaram.

a mere seller or distributor of the paper is not a publisher. 166 I C. 263=9 R.B. 230=38 Bom.L.R. 1115=A.I.R. 1937 Bom. 28.

Pucca khaekari. Although usually there is a ghar-padhan in pucca khaekari villages, it does not necessarily follow that because there is no ghar-padhan in a village, that village is a kachcha khaekari village. Nor does the fact that a village is a hamlet of a kachcha khaekari village conclusive that the former is also a khachcha khaekari When the two are separate entities, and have continued to be separately assessed, the incidents of the one should not be made necessarily to apply to the other 1938 A L.J 4 A principle well-settled in the case of pucca khaekari villages is that on the death of a khaekar without direct heirs, the lapsed holding reverts to the whole community of khaekars and not to the hissedars. The mere fact that a hissedar has effected an entry into the village and got some khudkasht possession should not on principle affect the status of the village or of the remaining khaekars so far as the remaining lands are concerned. There is no equity in holding that the whole body of under-proprietary cultivators should be reduced to an inferior position merely by a hissedar getting possession of one holding, and if a zamindar has bought out one of his under-proprietors, there is no justification for the conclusion that all the other under-proprietors should be reduced to the status of occupancy tenants The status of the village cannot thereby be reduced to that of a kachcha khaekari village. 1938 A.L.J. 4

Pudamuri (Pudava · woman's cloth, and muri: cutting) A so-called "marriage" ceremony performed among the Nayars in North Nalabar. The signification of the term "cloth-cutting" is obscure and disputable (*Moore'e Malabar Law*) Marriage in North Malabar by giving of cloth by the bridegroom to the bride. (*Sundaram Iyer's Mal. Law*)

Puffer. In the language of auctioneers a "Puffer" is "a person appointed to bid on the part of the owner" (*Shimmin* v *Bellow*, Ir Rep 1 Eq 289)

A puffer is a person who attends an auction and bids for the purpose of inflating the value of the property, in behalf of those interested in the sale, with no desire to purchase the property Such person is sometimes referred to as a "by-bidder,' "capper,' 'decoy duck," 'white bonnet," "sham bidder." (78 Am St Rep 93)

A 'puffer,' in the strict meaning of the word, is a person who, without having any intention to purchase, is employed by the vendor at an auction to raise the price by fictitious bids, thereby increasing the competition among the bidders, while he himself is secured from risk by a secret understanding by the vendor that he shall not be bound by his bids. The employment of a puffer is a fraud on the real bidders which will relieve the highest bidder from any obligation to complete his contract.

Puffing and Real bidding. Distinction. *See* 5 M I.A. 109 (133-4)

Pugdi: An extra assessment formerly imposed in Canara. (*Fifth Report*)

Pugil vivaram · Clemenston's Paimash 1833—1843. (*Sund. Iyer's Malabar Law.*)

[*See also* Pukil Vivaram]

Puisne.

Puisne (*from Fr. puisne*) Junior or inferior in rank. The several judges and barons of the former common Law Courts at Westminster, other than the chiefs, were called puisne.

Puisne judge. A puisne judge is one of the Justices of the High Court other than the Chief Justice (3 Bl Com. 41, 45.)

A *puisne mortgagee* or incumbrancer, is a mortgage other than and subordinate to the First mortgage, from whom accordingly he may purchase the mortgaged property when the first mortgagee is selling under a power of sale. (*Shaw* v. *Bunny*, 34 L.J. Ch. 257.)

Pujari. (*H*) A priest in a temple, one who conducts public worship and receives the offerings either of his own account or that of the proprietors of the temple: he is sometimes a man of low caste.

Pujaris (*of temples*). There is no rule that unless a person belongs to a particular class (caste) he should not perform worship in a temple. Even Sudras may be Pujaries 33 M L T 466=(1924) M.W.N. 278=22 A.L.J. 169=81 I.C. 185=29 C W.N. 112=19 L.W. 258=A.I R. 1924 P.C 44 (P.C.).

Pujari and shebait. A *pujari* of a Thakur cannot claim the right of a shebait He is only a servant appointed by a shebait for the performance of the ceremonies. 41 C.L.J. 22=82 I.C. 840=A.I R. 1925 Cal. 442.

The pujari or archaka is not the *shebait* of the temple, he is appointed by the *shebait* as the purohit to conduct the worship, but that does not transfer the rights and obligations of the *shebait* to the purohit and he is not entitled to be continued as a matter of right in his office as pujari 16 W R 99, 25 C.W N. 201, 15 M 183, 42 M. 618=35 M 631, *Rel.*) 36 C L J. 356=50 C. 292=74 I C. 793=A.I.R. 1923 Cal. 142.

Pukhta. The word "*pukhta*" in a *wajib-ul-arz* only means a building of substantial character and not necessarily built of kiln—dried bricks Owners of such buildings have a right of transfer without being questioned by the landlord. 48 A 233=24 A.L J 176=7 L.R. 311 (Rev.)=91 I C. 934=A.I R 1926 All 127.

Pukil vivaram A name given to the accounts prepared in Mr Clemenston's Paimash, (1833—43) (*Moore's Malabar Law.*)

Pukka adatia. Pukka adatia probably corresponding to what is known in England as *del credere* agent, that is to say, an agent or factor, who being entrusted with the goods of his principal to dispose of the best advantage, is in lawful possession of them with a general power to deal with them without reference to his principal but guaranteeing the solvency of the sub-purchasers, and while entitled to charge against his principal his expenses and entitled also to an indemnity from his principal against all losses resulting from carrying out his duty, is under an obligation to pay to his principal the amount due after the accounts have been properly settled. 46 All. 465=22 A.L.J. 591=80 I.C. 661=A.I R. 1924 All. 530.

Pulam (*Tam.*) A field of corn.

Punishable.

Pulasambandham: Pollution connection. (*Sundaram Iyer's Malabar Law.*) Relationship such as to entail pollution on the occurrence of a birth or death. (*Moore's Malabar Law.*)

Pulayan, (*Mal*) The name of a low and servile caste, or of an individual of such caste, in Malabar.

Puliaput · Literally belonging to a pollum, Lands of poligars, or Zamindars, and not under the immediate management of Government. (*Fifth Report*)

Pulichi, (*Mal.*) The name of an outcaste tribe in Malabar residing in the woods, and not allowed to approach a respectable individual, or enter a village, they announce their wants by cries at a distance, when charitably disposed persons place food for them at the foot of a tree and withdraw they then advance and receive the donation. (*Wil. Gloss.* 427.)

Pullican. A pullican is an instrument formerly used for extracting teeth by main force.

Pulpit. An elevated place or enclosed stage in the church in which the clergyman stands while preaching sermons

Sermons were in the Primitive Church usually preached from the steps of the altar, and pulpits were only used on special occasions. (Ayliffe, Par 121.)

Puludi. (*Tam*) Dry earth turned up by the plough. land prepared for dry planting.

Puludikadu (*Tam.*) A ploughed field.

Puludinatu (*Tam.*) Plants growing on dry ground.

Puludi-nela (*Tel*) Land fit only for occasional or dry cultivation.

Puludiviraippu (*Tam*) Sowing seed on dry ground previously prepared.

Pulvari (*Tam.*) A tax on pasturage (*Wil Gloss.*)

Punam (*Tam.*) High ground not fit for rice cultivation.

Puncha (*Mal*) A crop sown in Nov.-Dec, and reaped in April-May.

Punchakrishi (*Mal*) Cultivation of wet land.

Punctual Where a thing has to be done "punctually" on a day named, that means, on the very day; any day after the day named is too late. (*Leeds Theatre Co.* v. *Broadbent*, (1898) 1 Ch. 343)

Pundit A learned Brahman (*Fifth Report.*)

Punish. "To punish" means to impose a penalty upon, to afflict with pain or loss or suffering for a crime or fault; to inflict a penalty for an offence upon the offender; to impose a penalty for the commission of crime.

Punishable,

The word "punishable," as used in statutes which declare that certain offences are punishable in a certain way, means liable to be punished in the way designated.

"PUNISHABLE WITH IMPRISONMENT AS WELL AS FINE." *See* 1 Weir 31.

Punishment. Punishment is the penalty for the transgression of the law.

The punishments to which offenders are liable under the provisions of the Indian Penal Code are,—*First*,—Death; *Secondly*,—Transportation, *Thirdly*,—Penal servitude; *Fourthly*,—Imprisonment, which is of two descriptions, namely.—(1) Rigorous, that is, with hard labour. (2) Simple. *Fifthly*,—Forfeiture of property; *Sixthly*,—Fine. (Penal Code, S. 53.)

PUNISHMENT: PENALTY. "Punishment" is synonymous with "penalty". And 'liability' and 'forfeiture, are synonymous with "punishment," in connection with crimes of the highest grade. The punishment or penalty is fixed by the law defining the criminal act.

The terms "penalty" and "punishment" are frequently used as synonymous of each other.

The terms "CONVICTION" AND "PUNISHMENT" each have a well settled legal meaning, and are used in the law to designate certain stages and incidents of a criminal prosecution.

Punishments not corporeal. Punishments not corporeal are fines, forfeitures, suspensions, or deprivations of some political or civil rights; deprivation of office, and being rendered incapable to hold office. 49 Am Rep. 218 quoting *2 Bouv. Law. Dict*), 41 Am. St. Rep. 663

Punitive costs. (*See* costs) *See* Civil Procedure Code, S. 35-A, 17 R D. 227; 14 L.R. 145 (Rev.)

Punitive damages. "Punitive" damages are the same as "vindictive" and "exemplary" damages.

PUNITIVE DAMAGES ARE DAMAGES over and above such sums as will compensate a person for his actual loss,

"PUNITIVE," "VINDICTIVE," AND "EXEMPLARY' DAMAGES are all synonymous terms

Exemplary, punitive, and vindictive damages are allowed in theory when a tort is aggravated by evil motive, actual malice, deliberative violence, or oppression or fraud.

Punitive damages are sometimes spoken of as "vindictive damages" and "exemplary damages." They are sometimes referred to as "smart money" and "blood money". They are called "punitive damages" because of the theory that such damages will act as a sort of punishment of the defendant for such wrongdoing; not only as a punishment for past wrongdoing, but to deter the defendant and others in similar business from repeating such wrongdoing in the future.

Punitive damages are only permissible when "the illegal act for which redress is sought is not only tortious, but is dictated by malice or evil intent, or is attended with circumstances of intentional oppression, insult, or outrage."

Punitive damages are those damages which may be awarded in actions of tort founded on the malicious or wanton misconduct of the defendant, or upon such neglect as is equivalent to malicious or wanton misconduct.

Exemplary or punitive damages, being awarded not by way of compensation to the sufferer, but by way of punishment to the offender and as a warning to others, can be awarded only against one who has participated in the offence.

Punitory damages. (*See* Punitive damages) "punitory damages," as distinguished from "actual damages," are given by way of punishment or example, when it is found that the acts of the defendant tending to the injury of the plaintiff are wilful, wanton, or malicious.

The term "punitory damages" is used to designate damages in excess of compensatory damages, which are allowed as a punishment of the wrongdoer. It is synonymous with the terms "exemplary," "vindictive, and "punitive" damages.

PUNITORY DAMAGES are such as may be awarded only when the wrong is shown to be malicious, and are to be assessed by the judge or the jury in their sound discretion, without bias or feeling, according to the malignity shown, and in such reasonable sum as will tend to prevent future evils of like kind and degree. (16 Am. St. Rep. 422.)

"Punjab" defined P. Act 1, 1898, S. 2 (45).

PUNJAB (*Persian*). The country of the five rivers, the Jhelum, Chenab, Ravi, Bias and Sutlej. It is now one of the Major Provinces of British India.

Punjab Act defined. P. Act 1, 1898, S. 2 (46).

"PUNJAB ACT" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, Act X of 1897 (General Clauses) S. 3, Cl. (44-a).

Punjah Land that cannot be easily watered by artificial means, depending chiefly on the falling rains for irrigation, and therefore unfit for the cultivation of rice. *See* Nunjah. (*Fifth Report*).

Punjey. (*Same as Punjah*). Land which cannot be irrigated and is therefore unfit for the growth of rice.

Punsavana. A ceremony observed when the first signs of conception are manifested; the first of the Sanskaras, or essential Hindu rites (*Wil Gloss.*)

Punshey, or Punja (*Tam.*) (Same as Punjah) Dry land, or cultivation, land not admitting of complete irrigation and therefore unfit for the growth of rice, bearing dry grains of inferior value: the converse of Nanjai. it is sometimes applied to a sterile soil.

Punshey kadu. Cultivable dry ground.

Punsheythottam (*Tam.*) Gardens or garden land on which any dry crop is sown.

Punsheyvari (*Tam.*) Tax on cultivable dry ground.

Punyakarya. The word 'punyakarya' includes a variety of things *viz*, religious duty, acts of charity and moral duty or obligation. 58 C. 1025=134 I.C. 1065.

Pupil. Person who is under another's tuition; child under guardianship.

Puppet. Person whose acts are controlled by another (as) Puppet-Prince.

Pur Autre Vie

Pur Autre Vie. "By common speech, he which holdeth for the term of his own life, is called tenant for term of his life", *i e*, Tenant for Life, " and he which holdeth for term of another's life, is called tenant for term of a nother man's life", *i e*, Tenant Pur Autre Vie (Litt S 56 Vth. Co. Litt 41*b*)

Pura, (*S*) A town, a city, it is used most frequently in composition as Sri-Ram-pur, vulgarly, Serampore, Pundra-pur, S A city, a small city (*Wil. Gloss*)

PURA (*Mal*) House of a Tiyan (*Sund. Iyer's Malabar Law*)

Purachamayom (*Mal*) *See* Chamayom, (*Sund Iyer s Malabar Law*)

Purakalam (*Tam*) An allowance of grain to the agricultural labourer after the crop has been measured.

Purakudis Means "tenants who provide themselves with seeds and ploughing cattle, cultivate the land by personal or hired labour, receiving a share of the produce in return" The word does not signify any permanent tenancy (6 M H C R 164, 11 M 77 *approved* 5 M 345 *ref. to*) 8 C.W N. 545 =14 M L J. 200=27 M 291=31 I A 87, (P.C)

Purakudi 1 L W. 41=23 I C 113

PURAKUDI —ULAVADAI MIRAS The word "purakudis" has a definite meaning, whilst the expression "ulavadai mirasdars" is of doubtful signification 27 M 291 (P C)=8 C W.N 545=31 I A. 83 =14 M. L.J. 200 *See also* 6 M.H C.R. 164=11 Mad 77 and 5 Mad 345.

Puramboke (*Tam*) Barren land wholly uncultivated and uncultivable Such portion of an estate or village lands liable to revenue as do not admit of cultivation, and are therefore exempted from assessment, as sterile or waste land, rock, water, wilderness, site of dwellings, and the like also common land near a town any place situated out of or beyond certain limits

Puranas (*S*) (Hindu Law) "The Vedas have been undoubtedly established by the Puranas The Veda is afraid of a man of little learning that he will destroy it It is made immovable by Ithihasas and Puranas What was not revealed in the Vedas is revealed in the Smritis That revealed truth which is not to be found in both, is sung in the Puranas (*Naradiya Purana*)

Eighteen (Hindu) Puranas are mentioned by the Sages. They are the following, Brahma, Padma, Vishnu, Shiva, Bhagabata, Naradiya, Markandeya, Agni, Bhavisya, Brahmabaibarta, Linga, Baraha, Skanda, Bamana, Matsya, Garuda and Brahmanda.

The Veda should be supplemented by tradition and the Puranas The Veda is afraid of a man of little information lest he should injure it (*Mahabaratha, Adi Parva*, Chap. I, 265)

Purankadon (*Mal*) Further charge payable with the kanom amount. (*Sund Iyer's Mal Law*)

Purappad (*Mal*) Rent. (*Sund. Iyer's Mal. Law.*) The net produce or net rent payable to the Janmi after deducting interest on advances made by the tenant and the Government tax, (Niguti). (*Moore's Mal. Law*)

Purchase by proprietor.

Purchase. "Purchase" means the acquisition of property by a party's own act, as distinguished from acquisition by act of law.

PURCHASE is a word with two significations—a popular but restricted one, and a legal but enlarged one *As a noun*, in its popular and more limited sense acquisition by way of bargain and sale or other valuable consideration, the transmission of property from one person to another by their voluntary act and agreement, founded upon a valuable consideration, the buying of real estate and of goods and chattels, that which is obtained for a price in money or its equivalent, acquisition for a valuable consideration, bargain. In its technical and larger sense, in case of land, the act of obtaining or acquiring title to lands and tenements by money, deed, gift or any means, except by descent, the acquisition of land by any lawful act of the party, in contradistinction to acquisition by operation at law, including title by deed, by matter of record, and by devise. *As a verb*, to buy, to obtain property by paying an equivalent in money, to obtain or secure as one's own by paying or promising to pay price The verb in its technical, broader sense, refers to all titles including those by devise acquired otherwise than by descent

The term "purchase," as used in speaking of an estate acquired by purchase, means an acquisition either from an ancestor or any other person, by deed will, or gift, and not as heir at law

There are two modes only of acquiring a title to land, namely, descent and purchase, purchase including every mode of acquisition known to the law, except that by which an heir, on the death of an ancestor, becomes substituted in his place as owner by the act of law.

The word "purchase," when applied to a dramatic production, means that a party has acquired from the author or owner a right to use it on payment of a stipulated royalty

The word "purchase" in 114 of the Bombay Municipal Boroughs Act includes compulsory acquisition, if necessary not merely acquisition by private negotiations 39 Bom.L R 1257.

PURCHASE AND BARTER Purchase differs from barter only in the circumstance that, in purchasing, the price or equivalent given or secured is money.

PURCHASE, SALE, EXCHANGE The term 'purchase' when applied to real estate, means the acquisition of lands by other means than descent or inheritance. As applied to personalty, it is the acquisition of anything for a price bythe payment of money or its equivalent. "Sale" and "exchange" are used interchangeably in the law, and as a transmutation of property from one party to another in consideration of some price or recompense in value By the settled rule of interpretation, in the absence of any expression to narrow its significance, the word "purchase" must be given its ordinary, well understood meaning as accepted in the daily transactions of the business world, and that carries the right to buy for cash, for any equivalent agreed upon, or on the credit of the buyer.

"Purchase by proprietor." The purchase of an estate purchased at a revenue sale by a person who had purchased the same at an execution sale before the revenue sale took place, but after default occur-

Purchase money.

red in the payment of revenue, was a purchase by a "proprietor" within the meaning of S. 53, Revenue Sale Law, Act (X of 1859), and the purchaser took subject of the debt. 32 C 27 (P C)=31 I.A. 176=8 C.W.N. 786=6 Bom L.R. 754.

Purchase money. "Purchase money" means money paid for the land, or the debt created by the purchase.

Money loaned to be used in purchasing property, and to enable borrower to purchase, and actually used in making the purchase, and paid to the seller as part of the consideration of it, may be said to represent purchase money (*Ame Words and Phrases.*)

The term "purchase money" is one used to designate the money stipulated to be paid by the purchaser to the vendor It may not relate, as between the borrower and lender, to money borrowed with which to purchase real estate.

PURCHASE MONEY The words "purchase money" used in the C. P Code, import only the sum offered by the highest bidder and accepted by the Courts conducting the sale and do not include the amount of any incumbrance existing on the property put up for sale 27 A 97=24 A W.N 174=1 A.L J 435 (F B.) But *See also* 13 C W.N 1143

'Purchased' *See* 9 M.L.T. 87=8 I C. 745.

"PURCHASED FOR A VALUABLE CONSIDERATION" 8 I.C. 745 (746)

"Purchaser" defined Act 30, 1839, S 1, *See* 23 B 246 (247); 15 M 331, 8 C.W N 476 (479), 28 Cal. 12= 4 C.W.N. 735, 23 I C. 917.

As the term is used in the law of sales "purchaser" means the person buying the goods sold

The term 'purchaser,' as used in the chapter relating to real property, is to be construed to embrace every person to whom any real estate or interest therein shall be conveyed for a valuable consideration.

A mortgagee is not a purchaser of an estate, though for certain purposes he is sometimes treated as one. He is simply a lien creditor, a holder of security for due payment of money.

The term "purchaser," in the law of fraudulent conveyances, relative to the right of *bona fide* purchasers, includes a mortgagee

A purchaser, *ex vi termini*, is one who has acquired the title, and the term cannot in legal propriety be applied to one who claims under an unexecuted contract to convey. (5 Am Dec. 632.)

The words 'purchase' and 'purchaser' can be used with reference to intending purchasers even though the purchase may not be complete 4 Bom.L.R. 384.

Purchaser for valuable consideration. The term "purchaser" for a valuable consideration "is defined as one who purchases for" a fair and reasonable price according to the common mode of dealings between buyers and sellers', "The party assuming to be a purchaser for valuable consideration must prove a fair consideration not up to the full price, but a price paid which would not cause surprise, or cause any one to exclaim, "He got the land for nothing. There must have been some fraud about it'"

"PURCHASER FOR VALUABLE CONSIDERATION." The term "purchaser for valuable consideration" which is used in the LimitationAct,is to be read in its technical sense, *viz*, as including a mortgagee as well as a purchaser properly so called. (14 M.I A 1 at p 15, *R.*) 15 B. 583 *See also* 6 M L J 260; 22 B 225 (228); 23 B. 614 (618) 8 O. C. 233 (238), 29 All 471=4 A L.J. 375=1907 A W N. 133, 24 Mad 471 (F B.).

Purchaser for value. An indorsee of a negotiable instrument, who takes it before maturity in part payment of a pre existing debt and credits it thereon, is a purchaser for value in the due course of business.

"Purchaser for value without notice," means a purchaser of a propertyfrom its legal owner to whom he has *bona fide* paid the consideration and from whom he has taken a legal conveyance, without having any notice of any trust affecting the property. (*Godefroi*, Ch 37 *Lewin*, Ch. 31)

Purchaser without notice. The words "without notice," as used in an Act which provides that the receiver's title to personal property extends back by relation in certain cases, but not so as to "affect the title of a purchaser in good faith without notice and for a reasonable consideration," mean without actual notice, or without a knowledge of such circumstances as may be deemed equivalent to notice. (8 App Div. 556)

A *bona fide* purchaser and a purchaser without notice stand on the same footing of equal protection.

Purchaser's rights The words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners" in section 54, Revenue Sale Law (Act XI of 1859), mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at sometime or another, and shall acquire no more than what was the property of the previous owner or owners. 29 C. 223=6 C W N 375, 22 Cal. 641

Purdah Curtain with which Indian woman of rank are screened from strangers.

Purdanashin. (*See* Pardanashin) A lady who had no objection to communicate, when necessary, in matters of business, with men other than members of her own family, who was able to go to Court to give evidence and to attend at the Registrar's office in person to acknowledge her deeds for the purpose of Registration is not a purdanashin lady 33 C. 773 (P C) =10 C W.N. 570=3 C L.J. 484=8 Bom.L.R. 379=16 M L.I. 166=1 M L.T. 137=3 A L.J. 353. *See also* 17 I.C. 243.

Pure. The word 'pure' means wholesome, or ordinarily pure, as used in Act requiring water companies to furnish pure water

Pure butter. Butter is "pure" though it has the addition of a little salt, or boracic acid added for the same reason as salt, and in a warranty between two tradesmen that the butter sold by the one to the other is "pure" the question is,—Was it "pure" in the sense in which that word is used in the trade. (*Roose v. Perry*, 44 S.J. 503.)

Pure Charity.

Pure Charity. An act exempting institutions organized for pure charity from taxation applies to any association to improve the condition of the poor, which dispenses its benefits without any charge whatever, and keeps a place where money is disbursed to the needy It is not necessary that it should have a house if it has a place or office where it transacts its business, consisting of the dispensation of alms without discrimination.

Pure wine. As used in an act relating to the adulteration of wines, the words "pure wine" mean the fermented juice of the undried grapes, without the addition thereto of water, sugar, or any foreign substance whatever

Purely. In connection with the phrase 'purely public charity," and in its ordinary sense, the word "purely" means completely, entirely, unqualifiedly.

In the statute exempting from taxation institutions devoted to purely public charity, it is held that the word "purely" is equivalent to the word "wholly."

Purely charitable institution. A "purely charitable institution," within an Act exempting certain classes of property from taxation, may be said to be an institution organized for the purpose of rendering aid, comfort, and assistance to the indigent and defective, open to the public generally, conducted without a view to profit, and supported and maintained by benevolent contributions.

Purely charitable purpose "No corporation or institution is a purely public charitywhich is not under the control or supervision of the public authorities, or at least subject to public supervision, or is founded and endowed so as to give the general public under reasonable restriction an absolute right to receive its benefits, and, in case of failure of managers, to follow it and compel compliance therewith by application to the court. In the case of the dissolution of such a charity, its property must vest in the public authorities for charitable uses" An institution may be used for purposes purely charitable by distributing alms to the poor, needy, and afflicted of certain sects or nationalities, or the members of certain organizations, and their widows and children.

Purely public charity A public charity is defined as whatever is done or given gratuitously in relief of the poor in general or for the advancement of the public good. When the public is the beneficiary, the charity is public, and when no private or pecuniary return is reserved to the giver, or to any particular person, but all the benefit resulting from the gift or act goes to the public it is a purely public charity.

A Young Men's Christian Association, organized to endeavour to bring young men under moral and religious influences, to aid them in selecting suitable boarding places and securing employment, and by other means to surround them with Christian influences, and actually engaging in such work, and also furnishing instruction, keeping open libraries, gymnasiums, lists of boarding houses, etc., giving no property right, the membership fee being merely nominal is an institution of "purely public charity," within the Act exempting property of such institutions from taxation.

"A charitable or benevolent association, which extends relief only to its own sick and needy members, and to the widows and orphans of deceased members, is not 'an institution of purely public charity."

Purlieu-man.

In *City of Philadelphia* v. *Masonic Home of Pennsylvania*, 40 Am St. Rep 736, the question was whether property of the Masonic Home, open only to those who were Masons, was exempt; and the court said "When the eligibility of those admitted is thus determined, it seems to us that the institution is withdrawn from public, and put in the class of private, charities A charity may restrict its admissions to a class of humanity, and still be public. It may be for the blind, the mute, those suffering under special diseases, for the aged, for infants, for women for men or for different callings or trades by which humanity earns its bread; and as long as the classification is determined by some distinction which involuntarily affects any of the whole people, although only a small number may be directly benefited, it is public But when the right to admission depends upon the fact of voluntary association with some particular society, then a distinction is made which concerns not the public at large The public is interested in the relief of its members, because they are men, women, and children, not because they are Masons. A home without charge, exclusively for Presbyterians, Episcopalians, Catholics, or Methodists, would not be a public charity, but then, to exclude every other idea of 'public' as distinguished from 'private,' the word 'purely' is profixed by the Act This is to intensify the word 'public,' not 'charity' It must be purely public, that is, there must be no admixture of any qualification for admission, heterogeneous and not solely relating to the public"

Purgatory Purgatory is defined by an authoritative expositor of the church's creed to be 'a state of suffering after this life, in which those souls are for a time detained who depart this life after their deadly sins have been remitted as to the stain and guilt and as to the everlasting pain that was due to them, but who have, on account of those sins, still some debt of temporal punishment to pay, as also those souls which leave this world guilty only of venial sins In purgatory these souls are purified and rendered fit to enter into Heaven, where nothing defiled enters" *Harrison* v *Brophy*, 40 L R A 721 [quoting Catholic Belief (*Lambert's Am. Ed*) 196]

Purge oneself of suspicion. Prove oneself innocent.

Purge one's contempt. Atone for disobedience or other act of contempt of court.

Purlieu Purlieu is defined by Manwood as "a certain territory of ground adjoining the forest, bounded with immovable marks, meers, and boundaries known by matter of record only; which territory of ground was once forest-land, and afterwards disafforested by the perambulations made for the severing of the new forests from the old. (Manwood Forest Laws; Coke. 4 Inst. *Ency. of the Laws of England.*)

Purlieu-man A purlieu-man is he that hath free lands within the purlieu to the yearly value of forty shillings per annum (Com Dig.; Manwood, Forest Laws, tit. "Purlieu;' Comyns. Digest, tit. 'Chase," I; 3 Cruise, Digest XXVII 6; Co. 4 Inst. 303.)

Purloin.

Purloin. Purloin means to commit larceny; to practice theft, to steal, "The words 'purloin, embezzle,' seem to point to absolute criminality" (*per* Coleridge, J., *Carpenter* v. *Mason.*)

Puroline. Puroline and gasoline as sold and used for illuminating purposes, are both petroleum products, and both are gas generating fluids.

Purpart. A purpart is that part of an estate which, having been held in common, is by partition allotted to any one of the parties to it The use of the word implies a common concurrent holding, whether in possession or remainder.

Purport The word "purport," as used in speaking of the purport of an instrument, means the substance thereof as it appears on the face thereof to every eye that reads it

PURPORT imports what appears on the face of the instrument. It is usually intended to express the substance and effect as appears from the face of the instrument, in distinction from 'tenor,' which means a copy or exactness.

Purport means the design or tendency, the meaning or import when used in the expression, "An instrument purports."

An instrument purports to be a particular instrument which it more or less resembles and this definition applies to a part, as well as the whole, of an instrument.

The purport of an instrument means the substance of it, as it appears on the face of it, in the eyes of all who read it.

In the Calcutta judgment. 14 C.W N. 1114—the words "by whom it purports to have been written or made" in S. 73, Evidence Act (I of 1872) have been construed to mean that the writing which is in dispute must itself in terms express or indicate that it was written by the person to whom the writing is attributed. One meaning of the word "purports," as given by Murray in his Dictionary, is "alleged" and, therefore, it is reasonable to construe these words to mean "by whom it is alleged to have been written or made." 14 Bom.L R. 310=13 Cr.L.J. 505=15 Ind. Cas. 649 (650),

"Purporting." When power is given to do something "purporting" to have a certain effect, it will seem to prevent objections being urged against the validity of the act which might otherwise be raised. (*Ency. of the Laws of England.*) Thus, when validity is given to anything "purporting" to be done in pursuance of a Power, a thing done under it may have validity though done at a time when the power would not be really exercisable. (*Dicker* v. *Angerstein*, 3 Ch. D. 600).

"An instrument purports to be that which, on the face of the instrument, it more or less accurately resembles. The definition of *purporting* is the same whether applicable to the whole or to a part of an instrument There must be a resemblance more or less accurate" (*per* Coleridge, J, *R.* v. *Keith*, 24 L.J. M.C. 110).

"PURPORTING," in a statute making it a felony for any person to counterfeit the lawful issue of any bank or corporation, or notes or bills *purporting* to be

Purpresture.

of any bank or corporation, means appearing on the face of the instrument.

Purporting—Meaning. *See* 31 L.W. 339=A.I.R. 1930 Mad. 458.

"Purpose" defined (*See also* Public purpose) Act 13, 1887, S. 2 (3).

"PURPOSES" defined *See* Supply of water for domestic purposes

PURPOSE. The word 'purpose,' means 'that which a person sets before himself as an object to be reached or accomplished, the end or aim to which the view is directed in any plan, manner, or execution, end, or the view itself; design, intention"

The purpose of legislation is to be determined by its natural and reasonable effect, and not by what may be supposed to have been the motives upon which the legislators acted.

Purposely. "Purposely" is defined by Webster to mean, "by purpose or design, intentionally; with premeditation"

Purpresture. A purpresture is an invasion of the right of property in the soil, while the same remains in the king or in the people.

PURPRESTURE is a clandestine encroachment and appropriation on land or waters that should be common or public.

OTHER DEFINITIONS. An intrusion on the right of property in tide water and in the soil thereof is designated at common law a "purpresture", but the word in its ordinary acceptation at the present day means any encroachment on the sovereign right within a highway, river, street, harbour, or wharf.

A purpresture is an inclosure or appropriation for private use of that which belongs to the public.

"A purpresture is an encroachment by any person, by building or otherwise, on a street or some part of it, or such an inclosure, impediment, or obstruction of it thereby as to amount to the exclusion and hindrance of the citizens and the public from the full and beneficial use and enjoyment of it as a public street."

A purpresture is any permanent or habitual obstruction of a public street, although room enough be left to pass.

"An encroachment upon lands, or rights and easements incident thereto, belonging to the public, and to which the public have a right of access or of enjoyment, and encroachment upon navigable streams, a close or inclosure—that is, where one encroaches and makes that safe to himself which ought to be common to many; inclosure by a private party of a part of that which belongs to and ought to be open and free to the enjoyment of the public at large.

PURPRESTURE AND NUISANCE. "By 'Purpresture' is meant, in its present acceptation, an encroachment upon the Crown, either upon part of the demesne lands, or upon the high roads, rivers, forts, or streets; and the difference between purprestures and nuisances consists in this,—that where the *jus privatum* of the Crown is invaded, it is a Purpresture; but where the *jus publicum* is violated, it is Nuisance" (Dan. Ch. Pr. 1338, citing 2 Inst. 38, 272; Harg. Law.

Purpresture.

Tracts, 84, 87. Vf, Co. Litt 277b: *Termes de la Ley*).

A purpresture is an invasion of the right of property in the soil, while the same remains in the king or the people A nuisance is an injury to the common right of the public to navigate the waters There is, therefore, a wide difference between the two, and, though they may co exist, yet either may exist alone without the other.

Purrampoke Land utterly unproductive, such as sites of towns and villages, beds of rivers, and, in some cases, of tanks roads and extensive tracts of stony and rocky ground where no plough can go. (*Fifth Report*) *See* Poramboke

Purse the public purse The state treasury

Purser. A purser of a ship is the fiscal agent of the owners, a paymaster or cashier.

Pursuance; pursuant "It is obvious that the provisions in numerous statutes which limit the time and regulate the procedure for legal proceedings for compensation, for acts done in the execution of his office by a justice or other person, or 'under' or 'by virtue' or 'in pursuance of his authority', do not mean what the words, in their plain and unequivocal sense, convey; since an act done in accordance with law is not actionable, and therefore needs no special statutory exception Such provisions are obviously intended to protect, under certain circumstances, acts which are not legal or justifiable, and the meaning given to them by a great number of decisions seems, in the result, to be that they give protection in all cases where the defendant did, or neglected what is complained of, under colour of the statute, that is, being within the general purview of it, and with the honest intention of acting as it authorised, though he might be ignorant of the existence of the Act, and actually, whether reasonably or not, believing in the existence of such facts or state of things as would, if really existing, have justified his conduct". (Maxwell, 350, *Ency of the Laws of England*)

Notice of Action is in many instances required to be given prior to commencing proceedings for things done "In Pursuance", or "Under or By Virtue," or "In Execution" of a statute In strictness, anything not authorized by a statute cannot be "in pursuance" or "under or by virtue" of it, whilst if authorized it would need no other protection, (*Stroud* 1628; L.R 3 Ex. 114).

Pursuit. "Pursuit" as used in a statute authorising the formation of corporations for the purpose of engaging in any lawful enterprise, business, pursuit, or occupation, is not restricted in meaning to a scheme for making money, but includes any object consistent with the interest of society.

"Pursuit of happiness" The term "pursuit of happiness," as used in the statute declaring that all men have certain inalienable rights, and providing that among them are life, liberty, and the pursuit of happiness, includes the right of a citizen to follow his individual preference in the choice of an occupation. "The right of every man to choose his own occupation, profession, or employment is included in the right to the pursuit of happiness."

Put and call.

The clause of the American Declaration of Independence affirming the right of men to pursue happiness means "the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them the highest enjoyment.

Purushantarom. (*Mal*) (Purusha. person, antaram change) Fee due to jenmi on death of kanomdar or the jenmi. (*Sund. Iyer's Malabar Law*)

Purveyance. The prerogative of 'purveyance,' in England, was that "whereby the crown enjoyed the right of buying up provisions and other necessaries for the use of the royal household at an appraised valuation, and in preference to all others, even without the consent of the owner" At one time it prevailed pretty generally throughout Europe, and was regulated in England by Magna Charta, but is now abolished there.

Purview The meaning usually attached to the term "purview" by writers on law seems to be "the enacting part of a statute, in contradistinction to the preamble.

Where a statute repeals a prior statute so far as the prior statute comes within the purview of the later one, the word "purview" applies to the enacting part, the body or subject of the act, in contradistinction from the other parts thereof, such as the preamble, the saving, and the proviso, and hence the repeal is not confined merely to such parts of the former act as are inconsistent with the provisions of the repealing act

The word "purview" as used in the repealing clause of an act stating that all laws within the purview of this act are repealed, etc, means within the limit or scope of the act

"PURVIEW." is a French word signifying a Gift or Grant, Sir Edward Coke often uses it for that part of an Act of Parliament which begins with 'Be it enacted". (*Cowel*).

Purview of the rule By purview of the rule is meant the spirit of the rule (187 U.S 315)

Purwa, (*H*) Subdivision, or a dependency of a village: a detached cluster of houses from the principal village, for the convenience of agricultural operations. North-west Provinces. (*Wil. Gloss*).

Pushpottu or Pisharom or Varyam (*Mal.*) House of an Ambalavasi. (*Sund. Iyer's Malabar Law*).

Put To create a thing, or to "put" a thing into a certain state or condition, is a very different thing from to "keep" it up, or to "keep" it in that state or condition, an agreement to "do" or to "put", can only be broken once, but an agreement to "keep" is a continuing one *e.g*, an agreement to "forthwith repair", or "forthwith put in repair," is broken once for all. (*Coward* v *Gregory*, 36 L J.C.P. 1.).

Put and call. [*See* Puts] Double option.

The words "PUT AND KEEP", in a lease in which the landlord agrees to put and keep a roof in repair, do not imply a confession that it is out of repair, in the absence of any circumstances to indicate a probability of its being out of repair.

Put in circulation.

'Put' is distinguished from 'call' which is the privilege of calling for or not calling for the thing bought. 31 L R.A 529.

Put in circulation. The term 'issued or put in circulation', in a statute providing that no banking association shall issue or put in circulation any bill or note, have a restricted, special, and almost technical meaning, relating exclusively to the moneyed currency of the country, and, in the language of the general banking law, to circulating notes in the similitude of banking notes.

"Put in course of transmission." A communication to proposer contained in a letter not proved to have been correctly addressed to him, could not although posted, be said to have been "put in a course of transmission" to him within the meaning of the said S. 4 of the Indian Contract Act. 9 A 366=7 A. W N. 34 *See also* 7 C L J 251 (259).

Put off. To "put off" a bargain for the sale of goods, means, to postpone its completion. (*Thornton* v. *Charles*, II L.J. Ex. 302).

Put off more A "put option," with the additional privilege of selling double the quantity specified.

Put or "Put option." Right to sell certain stock at a price named on a specified day, in consideration of a premium paid.

Putative Reputed, supposed, commonly esteemed.

Putative father In bastardy proceeding the sworn father is called the "putative father" because he is supposed to be the father of the child

Putative marriage. Mourlon defines a putative marriage as "a marriage which is in reality null, but which has been contracted in good faith by the two parties, or by one of them" Such marriages are so far valid as to impose a civil liability upon either party to the other party, if innocent.

Putative matrimony is defined to be a marriage which, being null on account of some dissolving cause, is held notwithstanding for a true marriage, because of its having been contracted in good faith by both or one of the spouses in ignorance of the dissolving cause

Putni grant [*See* Patni] Use of 'words chhayahrad, malsayers, darabast hak and brahmattars" in kabuliat—Effect. *See* 32 C.W N. 16.

Putni talukdari patta. The words "putni taluk dari patta" import a permanent estate subject to a fixed rent. 58 I A 270=134 I.C 648=54 C.L.J. 393=1931 M W.N. 989=33 Bom L.R. 1257=34 L W. 51=1931 A.L.J. 555=35 C.W.N. 903=A.I.R. 1931 P. C. 179=61 M.L J. 501 (P.C)

Putra (*S.*) (*Son*). The hell called Put where the childless go, he who delivers from that is called Putra.

'PUTRA.' (*S*) includes grandson, great-grandson. *See* 29 M.L.J. 434=30 I C. 529 (P C)

"Putradikrama." (*S.*) 152 I.C. 540=1934 Cal. 782.

The words AURAS-PUTRA-PAUTRADI should be regarded as words of limitation consistent with the custom and as words of general inheritance. (8 I.A. 46, *dist.*) 42 Cal. 582=18 C.W.N. 1249.

Putra Pautradi krame.

"Putra pautra paramparyam." These words in a will confer an absolute estate on the donor. 23 L. W. 81=91 I C 973=1926 Mad 436.

Putra Pautradi. *See* 5 W R. 118

'PUTRA PAUTRADI,' indicates heritability *See* 19 C. W N 466=28 I.C. 610, 18 C.W.N 1249=25 I C. 417; 29 Cal 699=6 C W N 721, 7 C.L J. 291.

In spite of the words "putrapoutradi" in the grant of a jagir, the estate reverts to the donor on failure of lineal male heirs under the custom of Chota Nagpur 46 Cal 683=29 C L J 332=17 A.L J 398=21 Bom.L R 597=23 C W N. 866=50 I.C. 1=(1919) M W.N. 518=36 M L.J. 344 (P.C.)

AURASA PUTRA POUTRADHIK These words as used in grants or sanads are not words of general inheritance but are words of limitation consistent with custom 42 Cal 582=41 I A 275=18 C W N. 1249=16 M.L T. 382=1 L W. 863=(1914) M.W N 867=12 A.L J. 1217=21 C.L.J. 9=17 Bom.L.R. 18=24 I.C. 957 (P C)

"Putra Pautradi krame" Although the words putrapoutradi krame literally signify descendants of the male sex they ordinarily mean and include female heirs where, by law, the estate would descend to such heirs and are apt for conferring an estate of inheritance to either male or female heirs. 53 Cal. 816=98 I.C 173=30 C.W N. 821=43 C L J 567=A. I.R 1926 Cal 993.

The words "putra poutradi krame" in a Hindu will, which have been recognized as apt for conferring an estate of inheritance, do not necessarily limit the succession to male descendants, and would include a female's female heirs, where, by law, the estate is so descendible 7 C. 304=8 I A 46=10 C. L R. 349

The words "Putra poutradi krame" ordinarily mean and include female heirs and are apt for conferring an estate of inheritance to either male or female heirs A.I R. 1926 Cal 993.

The expression '*Putrapautradi krame*" denotes perpetual and heritable estate. 64 I.C. 518 Cal

The words imply perpetuity and transferability. 27 C.W.N. 964=1924 Cal. 236.

When a grant of a Jagir is made accompanied by words *putrapoutradi krame* the grantee takes an absolute and heritable estate and as passing in estate of inheritance 28 I.C. 610=19 C W.N 466 'Putra Poutradi Krame.' In a lease connote a perpetual lease 110 I.C. 130=75 I C. 586.

The words 'Putra Poutradi Krame' in a Hindu will, are words of general inheritance, and, in the absence of a contrary intention being shown, would convey an absolute estate. 23 C. 906, *see also* I L.R. 7 Cal. 304=10 C L.R. 349=8 I.A. 46 (P.C) But *see* I.L.R. 31 Cal. 561 (569).

"NASLAN BAD NASLAN" A gift to a man and his sons and grandsons, or to a man and his son's sons, would, in the absence of anything showing contrary intention, pass a general estate of inheritance according to Hindu Law The words usually used in Bengal are Putra Poutradi Krame and in the Upper

Putra Pautradi santan.

Province Naslan Bad Naslan, the literal meaning of the former being to sons, grandsons, &c, in due succession, and of the latter in regular descent or succession These words though undoubtedly importing the male sex in their primary signification, would, in the sense of a gift to a male, be read as words of general inheritance, and would include female as well as male heirs, where, by the law, his estate would descend to females and would confer upon the granter a full and absolute estate. 14 Ind Cas. 73 (76)=107 P.W R. 1912.

Putra pautradi santan. (*S.*) The words "putra pautradi santan '(sons, grandsons and the like issue) have a definite and well ascertained meaning, and mean all the heirs male and female, though the two heirs expressly mentioned are the first two of the male heirs. The word "santan" means issue both male and female. 7 C L.J. 291.

Putra poutradi santati. The above words when found in a will convey an estate of inheritance. 67 I.C. 230=24 Bom.L.R. 300=46 Bom. 816=A I.R. 1922 Bom. 45.

Putra poutra paryantam. A grant with the words Putra Poutra Paryantam (which are what are known to the English Law as words of purchase and not words of limitation), confer an absolute estate, and not a mere life estate with a limitation over. 7 M. 387.

Putravakasam (*Mal.*) (Putra: son, and avakasam: right.) A term applied in North Malabar to that portion of a Man's self acquisitions which his tarwad on his death sometimes allows to his children. (*Moore's Mal. Law*) Gift by father to wife and children (*Sund. Iyer's Mal Law*) 47 M.L J 679=20 L.W. 41= (1924) M W.N. 480=34 M.L T 238=79 I.C. 886=A.I.R. 1924 Mad. 787

Putravakasam property. Where a property is purchased by a father in the name of his sons, there is no presumption that the father gifted the property to his sons. Where it is found that the property was so purchased by the father in the name of his sons for the benefit of the family and that the mother and the daughters as well as the sons lived together as one family cannot be said to be "Putravakasam Property." 109 I.C. 245=A I.R. 1928 Mad. 962.

Putrika-putra. (*S*) The term signifies son of a daughter.

Puts. A speculative option, where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences, is commonly called a "put".

The true idea of an option is what are called in the peculiar language of the dealers, "puts" and "calls." A "put" is defined to be the privilege of delivering or not delivering the thing sold, and a "call" is defined to be the privilege of calling for or not calling for the thing bought.

"Puts himself upon the country". The form, "And of this he puts himself on the country," used as the concluding part of an answer under the old English system of pleading, means that the pleader desired to have the truth of the alleged facts tried by a jury.

Pyaungchi.

Puttakdar (*Tam.*) A kind of collector or zamindar, in Tanjore in charge of a district, lit. a book keeper (*Wil. Gloss.* 430.)

Puttee. The share of a village Zemindar in the district of Benares. (*Fifth Report*). A grain measure.

Putteedar. The holder of a share in the property of a village in the district of Benares. (*Fifth Report*)

Putti. An extra assessment made in addition to the standard rent in Bednore in the years 1718 and 1758. (*Fifth Report.*)

Puttidosillu (*Tel*) A fee of two handfuls from each putti of grain paid to the village servants, prohibited at present, but frequently levied in former times.

Putting character in issue. "Putting character in issue" is a technical expression, which does not mean simply that the character may be affected, but that it is of particular importance in the suit itself, as the character of the plaintiff in an action of slander, or that of a woman in a suit for seduction. In those excepted cases character affects the amount of the recovery. The jury was by law bound to consider it in assessing damages, and it is in that sense that it is said that "the nature of the action puts the character in issue".

Putting in fear. The words "Putting in fear," as used in the definition of robbery as the felonious and forcible taking of the property of another from his person against his will by violence or by putting in fear, is equivalent to constructive violence, and the demands of the law are met by proof of fear excited with respect to apprehended injuries to the person, property, or character. Though there need be no great degree of terror or fright for personal safety excited in the person robbed, the fact must be attended with such circumstances of terror or intimidation, such threatening by word, gesture, or manner, as in common experience is likely to create an apprehension of danger, and induce one to part with his property for the safety of his person.

Puttuval (*Mal*) Newly inclosed or cultivated land.

Putuval-patam (*Mal.*) Rent of newly cultivated land.

"Pwe". *See* 1 L.B.R. 110, F.B. U.B R. (1897—1901), Vol. I, 370.

"Pwe" in the Burma Village Act ordinarily includes a theatrical or dramatic performance held for public entertainment whether on public or private property. The gist of the definition is the holding for public entertainment. Consequently an Ayat-zat performance by amateurs for public entertainment at a Shinbyu Ahlu without payment is a "Pwe". 3 Rang. 514=92 I.C. 854=7 Cr. L.J. 342=A.I.R. 1925 Rang. 375.

'Pyatbaings', meaning of. *See* 27 I.C. 777.

Pyaungchi and opium refuse are not "opium" within the meaning of S. 3, Opium Act. 171 I.C. 619 =38 Cr. L.J. 1092=A.I.R. 1937 Rang. 346.

Pykaust

Pykaust. An inferior or under tenant The term, "Pykaust" applied to lands, means cultivated by an under tenant or peasant belonging to another village. (*Fifth Report*).

Pykaust ryots Under tenants or cultivators. Those who cultivate lands in a village to which they do not belong and hold their lands upon a more indefinite tenure than the *khode khost* ryots, the pottahs or leases under which they hold being generally granted with a limitation in point of time (*Fifth Report*)

Q

Q A letter used as an abbreviation of "queen," —also of "quaere"

Q.B Queen's Bench

Q B.D Queen's Bench Division

Q C Queen's Counsel

Q V (*Quod vide*), which see,—a reference to another passage or title of a book

Q and I detector (*In Telegraphy*) A detector used by telegraphic linemen in tracing faults in the line.

"Qabiz" The word "qabiz" does not necessarily mean something less than "malik" 139 I C 560=13 L R 324 (Rev)=9 O W N 725=16 R D 494

Qabiz darmiani The words qabiz darmiani means an under-proprietor in the sense in which it is used in the Oudh Rent Acts (XIX of 1868 and XXII of 1886) 170 I C 595=1937 O W N. 959=A.I R 1937 Oudh 473

Qabiz Warsa The words '*Qabiz Warsa*' is a wajib-ul-arz which describe the position of the widow are used equally to describe the male inheritor of the estate 132 I C 779=14 O L J 263=8 O W N 83= A I R 1931 Oudh 301

Qabr (*A*) A grave, a tomb

'Qabristan' *See* 40 C W N 449=A I R 1936 P C 83=70 M L J. 455 (P C).

Qabuliyat *See* Kabuliyat.

"Qabzadari" [*See* Quabzadari] The word "qabzadari" may in some cases mean under-proprietary rights 100 I C 450=4 O.W N 143=A.I R. 1927 Oudh 106 *See also* 29 I C 653, 1936 O W.N. 562= A I R 1936 Oudh 816

Qabzedaran *Qabzedaran* means tenants with a right of occupancy. 1936 R D. 357 (2).

Qabzedari rights are under-proprietary rights. 118 I C 759=1929 Oudh 523.

Qaimi "Qaimi" means settled raiyat, A I R 1925 Pat 241=4 Pat 89=6 P.L T. 240=1924 P.H C C 337 =84 I C. 305.

Qaim-moqaimian The word qaim-moqaimian in a deed of gift is not a term of art and even if it includes "assigns" it does not indicate an absolute power of alienation. 87 I C 849=88 I C. 141=4 Pat. 510=6 P L.T 634=A.I.R. 1925 Pat. 625.

Qualification.

Qarib. In the absence of any words recording a custom to the contrary, the word '*qarib*' should be interpreted in its widest sense as 'nearest in degree' 67 I.C. 803=9 O L J 127=A.I R. 1922 Oudh 96.

Qua (*Lat*) Considered as, in so far as; in the character or capacity of For example, "the trustee *qua* trustee (that is, in his character as trustee) is not liable," etc

Quabiz. The use of the word 'quabiz' does not necessarily mean that a limited estate is conveyed 65 I C. 462 (Lah)=19 P.W R 1922

Quabzadari "Qabzadari" may mean under-proprietary rights A I R. 1927 Oudh 106=4 O W.N 143=100 I C. 459

Quack A "Quack" is one who pretends to a skill or knowledge which he does not possess, an imposter, a boastful pretender to medical skill, an ignorant medical practitioner

QUACK. To speak of a physician in his professional capacity as a "quack" is to call him a mere pretender, a person boasting of attainments which he does not possess, and is libellous *per se*

To say of a person that he is a "Quack", or a "Quack-salver," or a 'Mountebank,' is Slander *per se*. (Odgers, 84, citing *Allen* v *Eaton*, *Rol Ab.* 54)

Quack salver One who boasts of his skill in medicines and salves or of the efficacy of his prescription, charlatan

Quackery. The acts or art or pertensions of a quack

Quadrant. An angular measure of ninety degrees

Quadruped Four footed animal,—(usually of mammals.)

Quae ab initio inutilis fuit institutio ex post facto convalescere non potest (D 50, 17, 210.) A maxim meaning, "That which was useless institution at the commencement cannot grow strong by an after fact."

Quae accessionum locum obtinent extinguuntur cum principales res peremptae fuerint A maxim meaning "Things which are incidents are extinguished when the principals are extinguished."

Quae mala sunt inchoata in principio vix bona peraguntur exitu (4 Coke. 2) Things bad in principle at the commencement seldom achieve a good end

Quaer, or Querie, is a note for the reader to make further inquiry, where any point of Law, or matter of debate, is doubted, as not having sufficient authority to maintain it (*Tomlins Law Dic*) This word, occurring in the syllabus of a reported case or elsewhere, shows that a question is prepounded as to what follows, or that the particular rule, decision or statement is considered as open to question.

Quaker. Member of a religious society bearing that name.

Qualification. That which makes a man fit to hold an office (as that of a director of a company), that which makes any person fit to do a certain act, also abatement, diminution. The circumstance or

Qualification

group of circumstances whereby an individual is rendered eligible for a post is called his qualification *e g* in a case of the directors of public and joint-stock companies, with whom the possession of a prescribed number of shares is usually made the qualification Any incident annexed to a right, *e g* an inherent reciprocal obligation, is also called a qualification of the right.

Qualification relates to the fitness or capacity of the party for a particular pursuit or profession Webster defines the term 'qualifications" to mean "any natural endowment or any acquirement which fits a person for a place, office, or employment, or enables him to sustain any character with success"

QUALIFICATION, ACCOMPLISHMENT The qualification serves the purpose of utility, the accomplishment serves to adorn by the first we are enabled to make ourselves useful, by the second we are enabled to make ourselves agreeable

"Qualification for office", as defined by the most approved lexicographers,is the endowment or accomplishment that fits one for an office, having the legal requisites, endowed with qualities fit or suitable for the purpose

'Qualification," with reference to an office, has a double meaning, one of which is the endowment or acquirement which renders one eligible to place or position, and the other relates to the act whereby he is installed in his office.

Qualified "Qualified" has a double sense, and mean a condition or status of an officer, and is also often used to describe his act of taking an oath

The word "qualified," when applied to any person elected or appointed to office, shall be construed to mean the performance by such person of those things which are required by law to be performed by him previous to his entering upon the duties of his office

"Qualified acceptance" defined Act 26, 1881, S 86, *Expln.*

QUALIFIED ACCEPTANCE An acceptance is general when it imports an absolute acceptance precisely in conformity to the tenure of the bill itself It is unqualified when it contains no qualification, limitation, or condition different from what is expressed on the face of the bill or from what the law implies upon a general acceptance It is qualified when the drawee absolutely accepts the bill, but makes it payable at a different time or place, or to a different firm, or in a different mode from that which is the tenure of the bill (*Story on Bills*)

"Qualified elector", as used in Election law means, a person who is legally qualified to vote

Qualified endorsement Endorsement without recourse to the endorser for payment.

"Qualified officer" defined 44-5 V c. 58, S. 122 (*b*)

Qualified ownership The ownership of property is qualified (1) When it is shared with one or more persons, (2) when the time of enjoyment is deferred or limited, (3) when the use is restricted

Qualified privilege "Qualified privilege" in the law of libel extends to all communications made

Quando abest

bona fide upon any subject matter in which the party communicating has any interest, or in reference to which he has a duty to a person having a corresponding interest or duty And the privilege embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation

QUALIFIED PRIVILEGE exists in cases where some communication is necessary and proper in the protection of a person's interest, but this privilege may be lost if the extent of its publication be excessive

Qualify As the word "qualify" is used in an Act requiring state officers to "qualify," etc., it means the taking of the oath or affirmation constitutionally provided for

"QUALIFY", in its legal use, means to take an oath to discharge the duties of an office properly, and when an executor named in a will alleges that he desires to qualify as such, and the Court orders that letters testamentary issue to him upon his complying with the requisites of the law, they are to be issued to him when he shall have taken oath well and faithfully to discharge the duties of his trust

"The term 'qualify', as used in the statute, does not mean possessed of the necessary political, mental and moral endowments,but means the acts performed after election, as taking the official oath and executing an official bond 'Eligible' means capable of being chosen, while 'qualified' refers to the performance of the acts which the person chosen is required to perform before he can enter into office

Abbott, in defining the word 'qualified', says it means to take the oath and give the bond required by law from an administrator, executor, public officer, or the like, before he may enter into the discharge of his duties"

An Expert Witness "qualifies" when he has read up, or otherwise masters, the details of the particular case on which he is to give evidence

"Qualifying tax" defined Bom Act 3, 1888, S 11 (3)

Quality, Property, Attribute The quality is that which is inherent in the thing and co-existent, the property is that which belongs to it for the time being, the attribute is the quality which is assigned to any object

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum A maxim meaning "How long "reasonable time" ought to be is not defined by law, but depends on the discretion of the judge"

Quamvis aliquid per se non sit malum, tamen, si sit mali exempli, non est faciendum Although a thing may not be bad in itself, yet if it is of bad example it is not to be done. (2 Inst. 564)

Quamvis lex generaliter loquitur, restringenda tamen est, ut, cessante ratione, ipsa cessat. Although a law speaks generally, yet it is to be restrained, so that when its reason ceases, it should cease also, (4 Inst 330.)

Quando abest provisio partis, adest provisio legis. A maxim meaning: "When the provision of

Quando aliquid

the party is wanting, the provision of the law is at hand" (6 Vin Abr 49, 13 C B 960)

Quando aliquid conceditur, idtiam conceditur sine quo res ipsa non esse potest The general principle of all grants *quando aliquid conceditur idtiam conceditur sine quo res ipsa non esse potest* is always true as between grantor and grantee, but it does not necessarily apply as against third parties 48 M L J 328=4 Pat 244=52 I A 109=29 C W N 725=27 B L R 753=23 A L J 712=6 P L T 42=21 L W 289=A I R 1925 P C 42 (P C)

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud A maxim meaning "When anything is commanded, everything by which it can be accomplished is also commanded"

Quando aliquid prohibetur ex directo, prohibitur et per obliquum (*Co Litt* 223) When anything is prohibited directly, it is prohibited also indirectly

Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud A maxim meaning "When anything is prohibited, everything by which it is reached is prohibited also (2 Inst 48) That which cannot be done directly shall not be done indirectly (*Broom Max* 489)

Quando aliquis aliquid concedit, concedere videtur et sine quod res uti non potest When a person grants anything, he is supposed to grant that also without which the thing cannot be used (3 Kent, Comm 421) When the use of a thing is granted, everything is granted by which the grantee may have and enjoy such use

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quae clausulae generali sunt consentanea, interpretanda est charta secundum verba specialia A maxim meaning "When a deed contains a general clause, and afterwards descends to special words which are agreeable to the general clause, the deed is to be interpreted according to the special words" (8 Coke, 154-b)

Quando de una et eadem re duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur When there are two persons liable for one and the same thing, one of them, in case of default of the other, shall be charged with the whole (2 Inst 277)

Quando dispositio referri potest ad duas res ita quod secundum relationem unam vitietur, et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio (Coke 76) When a disposition may refer to two things so that by the latter it would be preserved, then the relation is to be made to the latter, so that the disposition may be valid

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit les actum originalem When different acts are required to the formation of any estate, the law chiefly regards the original act (10 Coke, 49a)

Quando duo jura in una persona concurrunt aequum est ac si essent in diversis. A maxim meaning "When two rights concur in one and the

Quantity surveyor

same person, it is the same as if they were in separate persons"

Quando jus domini regis et subditi concurrunt jus regis praeferri debet (9 Coke, 129) "When the right of king and of subject concur, the king's right should be preferred"

Quando lex aliquid alicui concedit, concedit et id sine quo res ipsa esse non potest. When the law gives a man anything, it gives him that also without which the thing itself cannot exist

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur (2 Inst 326) When the law gives anything to any one, all incidents are tacitly given

Quando lex est specialis ratio autem generalis generaliter lex est intelligenda (2 Inst 83) A maxim meaning "When a law is special, but its reason (or object) general, the law is to be understood generally"

Quando licet id quod majus, videtur et licere id quod minus (*Shep Touch* 429) When the greater is allowed, the less is to be understood as allowed also

Quando mulier nobilis nupserit ignobili desinit esse nobili nissi nobilitas nativa fuerit (4 Coke, 118) When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est A maxim meaning "When more is done than ought to be done that at least shall be considered as performed which should have been performed, (as, if a man, having a power to make a lease for ten years, make one for twenty years, it shall be void only for the surplus) *Broom Max* 177, 5 Coke, 115, 8 Coke 85-a

Quando quod ago non valent ut ago, valeat quantum valere potest A maxim meaning "When that which I do does not have effect as I do it, let it have as much effect as it can"

Quando res non valet ut ago, valeat quantum valere potest "When a thing is of no effect as I do it, it shall have effect as far as (or in whatever way) it can. (*Cowp* 600)

Quando verba et mens congrunt, non est interpretationi locus When the words and the mind agree, there is place for interpretation.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum When the words of a statute are special, but the reason or object of it general, the statute is to be construed generally. (10 Coke 101b)

Quandry. Perplexed state, practical dilemma.

Quantity Applied to an estate, denotes the duration and extent of the holder's interest,—as for years, or for life or in fee.

"Quantity surveyor" One "whose business consists in taking out in detail the measurements and quantities, from plans prepared by an architect, for the purpose of enabling Builders to calculate the amount for which they could execute the plans" (per *Morris, J., Taylor* v. *Hall*, 4 Ir. Rep C.L. 476)

Quantum As much as, so much "Quantum," according to Webster, means quantity, amount, the sum total of two or more particular sums or quantities, the aggregate, the whole quantity, a totality (as) *quantum* of damages

Quantum meruit So much as is deserved or merited Reasonable amount to be paid for services rendered or work done, when the price therefor is not fixed by contract (3 Bl Com 161) *Cutter* v. *Powell*, 6 T R 320)

A "quantum meruit" is in the nature of an action for the value of services rendered It is the common phrase used in an action for compensation for work and labor, founded on an implied promise on the part of the defendant to pay the plaintiff as much as he reasonably deserved to have for his labor

Where work has been done by the plaintiff for the defendant under a contract, express or implied, that it shall be paid for (see *Harrison* v. *James*, 1862, 7 H & N 804), or upon the defendant's request, from which such a contract would be implied by law, but the price of the work has not been agreed upon, the plaintiff can recover its reasonable value (quantum meruit) from the defendant "If a man retains any person to do work, or other thing for him, as a tailor to make a garment, a carrier to carry goods, etc Without any certain agreement, in such case, the law implies that he shall pay for the same, as much as they are worth and shall be reasonably demanded, for which *quantum meruit* may be brought (*Tomlins Law Dic*)

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet praeter solam reverentiam, mutua debet esse domnii et homagii fidelitatis connexio (Co Litt 64) As much as the tenant by his homage owes to his lord, so much is the lord, by his lordship, indebted to the tenant except reverence alone, the tie of dominion and of homage ought to be mutual

Quantum valebat. (So much as it was worth) where goods and wares sold are delivered by a trades man at no certain price, or to be paid for them as much as they are worth in general then *quantum valebut* lies, and the plaintiff is to aver them to be worth so much so where the law obliges one to furnish another with goods or provisions, as an innkeeper to his guests, etc. (*Tomlins Law Dic.*)

Quarantine is a period of (time theoretically forty days) during which a vessel, coming from a place where a contagious or infectious disease is prevalent, is detained by authority in the harbour of her port of destination, or at a station near it, without being permitted to land or discharge her crew or passengers Quarantine is said to have been first established at Venice in 1484 (*Baker. Quar.* 3.) It is an isolation imposed on ship or person to prevent infection

QUARANTINE, is the term of a fixed number of days, during which the persons coming from foreign parts, infected with the plague, and such infectious diseases are not permitted to land or come on shore. (*Tomlins Law Dic*)

To "quarantine" persons means to keep them, when suspected of having contracted or been exposed to an infectious disease, out of the community, or to confine them to a given place therein, and to prevent intercourse between them and the people generally of such community

A widow's "quarantine", at common law, was a right to remain in and to hold and enjoy the mansion house of her husband after his death, without being liable to pay any rent for the same, until dower should be assigned to her

Quare (*Lat*) Wherefore, for what reason, on what account Used in the Latin form of several common-law writs

Quarrel This word is said to extend not only to real and personal actions, but also to the causes of actions and suits, so that by the release of all "Quarrels" not only actions pending, but also causes of action and suit, are released, and "quarrels", "controversies," and "debates" are in law considered as having the same meaning. (*Co Litt* 8, 153, *Termes de la Ley*)

Quarrelling is the exchange of angry utterances between two or more persons, and not the mere use, in an ordinary tone, of vituperative and threatening words by one to another, who remains silent It takes two to make a quarrel

The term "quarrel", within the meaning of an accident policy which provides that if death occurs from assault provoked by quarrelling no recovery can be had, cannot be construed to include every frivolous controversy which might in some sense be termed a "quarrel", although not a dispute or quarrel from which the insured might reasonably expect anger to be provoked or injury to result

QUARREL, AFFRAY A quarrel is indefinite, both as to the cause and the manner in which it is conducted, an affray is a particular kind of quarrel a quarrel may subsist between two persons from a private difference, an affray always takes place between many upon some public occasion. a quarrel may be carried on merely by words. an affray is commonly conducted by acts of violence many angry words pass in a quarrel between two hasty people, many are wounded, if not killed in affrays, when opposite parties meet

QUARREL, BROIL, FFUD The quarrel is not always openly conducted between the parties, it may sometimes be secret, and sometimes manifest itself only in a coolness of behaviour, the broil is a noisy kind of quarrel, it always breaks out in loud, and mostly reproachful, language feud is a deadly kind of quarrel which is heightened by mutual aggravations and insults Quarrels are very lamentable when they take place between members of the same family, broils are very frequent among profligate and restless people who live together, feuds were very general in former times between different families of the nobility.

"Quarry" defined. Act 5, 1886, S. 3 (5).

Quarry (*In mining law.*) An open excavation where the works are visible at the surface; a place where stone, slate, marble, etc., is dug out or separated from a mass of rock.

"QUARRY" means to take from the surface as well as to extract from a quarry U. P. Act V of 1886, S. 3, cl. 5.

Quart.

QUARRIES AND MINES. "Quarries" are pits or excavations in the earth from which stones only are taken, as distinguished from "mines", from which metallic ores or other mineral substances are taken.

To "quarry" means to cut, dig, or take out, as from a quarry A "quarry" is defined to be an excavation or other place from which stone is taken by cutting, blasting, or the like, and usually distinguished from a mine by being open widely at the top and front

Quart A measure, Quarter of a gallon, two pints.

Quarter A fourth part, one of four equal or corresponding parts In England, a measure of corn, generally reckoned at eight bushels, though subject to local variations

"QUARTER", as used in descriptions of land, according to the government subdivisions, calling them the southeast 'quarter,' or the northeast 'quarter' etc, designates a square piece of land

The word "quarter," as used in an ordinance providing that a license for running a bar room, drinking shop, etc, shall be paid each quarter, means a quarter of a year, and is not indefinite or uncertain

Quarter-day The four days in the year upon which, by law or custom, moneys payable in quarterly instalments are collectible, are called "quarter days"

In England Quarter days are Lady Day (25th March), Midsummer Day (24th June), Michaelmas Day (29th Sept), and Christmas Day (25th Dec)

Quarter deck Part of the upper deck between stern and aftermast, used by superior officers and cabin passengers

Quarter master (*Milit*) In England, a commissioned officer, whose duties include the providing of quarters, storage, clothing provisions etc, for a body of troops (*Naut*) An officer who attends to the helm signals, etc, under the direction of the Master or navigator.

QUARTER MASTER. (*Naut*) Petty officer in charge of steering, etc

Quarter sessions. A general Court held by two Justices of the Peace, once every quarter of a year, originally erected only for matters touching the breach of the peace but subsequently, its power was greatly increased and extended much farther by many statutes (*Tomlins Law Dic*) *See also* Archbold, Quarter Sessions, Pritchard, Quarter Sessions, Simey on Quarter Sessions, Saunders, Practice of Magistrates' Courts

Quarter staff Long straight staff wielded with both hands in an old kind of fencing

Quartering. (*In old English Criminal Law.*) The dividing a criminal's body into quarters, after execution. A part of the punishment of high treason (4 Bl Comm. 93)

Quartering soldiers The act of a government in billeting or assigning soldiers to private houses, without the consent of the owners of such houses, and requiring such owners to supply them with board or lodging or both.

Quasi contracts.

Quarterly Occurring or due in each quarter of the year

Quartz. Silica in various forms, often containing gold

Quash To overthrow or annul, to make void, to abate. (*Tomlins Law Dic*) (as) Quashing a conviction.

Mr Abbott, in his Law Dictionary, defines "quash" to mean to annul, overthrow, or vacate by judicial acts.

Where proceedings are irregular, void, or defective, the courts, will quash them both in civil and criminal cases An indictment which is so defective that no judgment can be given on it, or where there is no jurisdiction will be quashed The remedy is applicable only to irregular, defective, or improper proceedings

Quasi (*Lat*) As if, as it were, analogous to, seemingly not really This term is used in legal phraseology to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are also intrinsic differences between them

The word "quasi" marks the resemblance, and supposes a little difference, between two objects.

Quasi contracts The term "quasi-contract," is sometimes applied both to cases of a true contract, where an actual agreement is inferred from the conduct of the parties, although no agreement is expressed, and sometimes to cases where, there being in fact no agreement at all, the plaintiff is permitted to use the form of an action of contract in order to recover against the defendant It is properly applicable to the latter class of cases only.

In contracts it is the consent of the contracting parties which produces the obligation In quasi contracts there is not any consent The law alone, or natural equity, produces the obligation by rendering obligatory the fact from which it results Therefore these facts are called "quasi contracts," because, without being contracts, they produce obligations in the same manner as actual contracts.

"A quasi contract is not contract at all The commonest sample of the class is the relation subsisting between two persons, one of whom has paid money to the other through mistake The word *quasi* prefixed to a term in Roman Law, implies that the conception to which it serves as an index is connected with the conception with which the comparison is instituted by a strong superficial analogy or resemblance" (*Maine's Ancient Law*, 1936 ed, p 354.)

QUASI CONTRACTS are classified by some English writers as "contracts implied by law," that is to say, fictitious contracts (*Leake on Contracts*)

QUASI CONTRACTS AND IMPLIED CONTRACTS. The term "quasi contract," which term is borrowed from the civil law, is correctly applied to cases where no true contract in fact exists, but where the law creates an obligation Thus, in a large class of cases, where suit is brought to recover money which is paid by mistake or which has been obtained by fraud, it is said the law implies a promise to repay the money, when it is well understood that the promise is a mere

Quasi corporation

fiction, in most cases without any foundation whatever in fact The same practice has been adopted where necessaries had been furnished to an insane person or to a neglected wife or child The term "implied contract" cannot be correctly applied to such obligations, but it has been frequently so applied, arising from the fact that obligations generically different have been classed as such, not because of any real analogy, but, where the procedure of common law prevails, by the adoption of fiction in pleadings—that of a promise where none in fact exists, or can reasonably be supposed to exist—Quasi contracts are to be distinguished from implied contracts in that the latter arise from facts and circumstances in which a court or jury may fairly infer as a matter of fact that a fact that a contract exists between the parties

Quasi corporation *Quasi corporations* are associations having the attributes of corporations, though not being such in the strict sense of the term

The term "quasi corporations' is generally used to designate counties and other political divisions of a state possessing only a low order of corporate existence

School districts are quasi corporations of the most limited powers known to the law

QUASI-CORPORATION is a body which exercises functions of a corporate character, but which has not been incorporated

Quasi delict Refers to an unlawful act, done through negligence, without malice

Quasi deposit A kind of voluntary deposit,—(as) when a person comes lawfully to the possession of property by finding. (*Kinney*)

Quasi criminal A law requiring that the criminal court of a county shall have jurisdiction in cases of a quasi criminal nature is intended to embrace and include all offences not crimes or demeanours, but offences in the nature of crimes which are punishable.

Quasi derelict A quasi derelict is a vessel which, though not abandoned, is unable to continue on its voyage by reason of the disability of its crew to navigate it, one whose crew is disabled by sickness, etc

"Quasi-dharekari" defined. Bom Act 1, 1880, s. 3 (7)

Quasi dwelling house The term "quasi dwelling house" is sometimes used to designate barns and other out-houses which are in proximity to the mansion house.

Quasi judicial When the law commits to an officer the duty of looking into certain facts not in a way which it specially directs, but after a discretion in its nature judicial, the function is quasi judicial.

Quasi municipal corporation Quasi municipal corporations are corporations commonly known, as counties, townships, and school districts

Quay Landing place "A convenient place fitted on the Shore for the loading and unloading of Vessels, we commonly call it a Wharf" (*Cowel*). In *Belfast* v *Tomb*, *Smythe*, 437, Justice Crampton said" 'Quay' is a wider term than 'Wharf', it is almost tantamount to 'Street.' (*Stroude*)

Queen's enemies.

"Queen" defined (*See also* Her Majesty) Act 45, 1860, s. 13, Act 10, 1897, s 3 (23), Ben Act 1, 1899, s 3 (20), Bur Act 1, 1898, s. 2 (28), P. Act 1, 1898, s. 2 (25)

The Queen is a woman who possesses the sovereignty and royal power in a country under a monarchical form of government, the wife of a king.

"The *Queen*" is constantly used in the sense of Queen Victoria as typifying the Monarch of the British Empire

The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland. (Penal Code, S 13)

QUEEN OF ENGLAND IS EITHER QUEEN REGENT QUEEN CONSORT, OR QUEEN DOWAGER The *Queen Regent*, *Regnant*, or Sovereign, is she who holds the Crown in her own right, as Queen Mary, Queen Elizabeth, and Queen Anne, Queen Victoria and such one has the same powers, prerogatives, rights, dignities, and duties, as if she had been a King But the *Queen Consort* is the wife of the reigning King and she, by virtue of her marriage, is participant of divers prerogatives above other women A *Queen Dowager* is the widow of the King, and as such enjoys most of the privileges belonging to her as Queen consort (*Tomlins Law Dic*)

Queen consort In English law, the wife of a reigning king (1 Bl Comm 218)

Queen dowager The widow of a king (1 Bl Comm 223)

Queen gold (*in old English Law*) A royal revenue formerly belonging to every queen consort during her marriage with the king It is now quite obsolete (1 Bl Comm 220, 222)

Queen mother Queen dowager who is mother of king or queen, present queen who has children

Queen of Grace Virgin Mary

Queen of Scots Mary Stuart

Queen Regent (*in English law*) A queen who holds the crown in her own right, as the first Queen Mary, Queen Elizabeth, Queen Anne, and the late Queen Victoria. (1 Bl Comm 218, 2 *Steph. Comm* 45)

Queen's Bench The English court of King's Bench was so called during the reign of a queen (3 *Steph. Comm* 403)

"Queen's coin" defined (*See also* Coin) Act 45, 1860, S 230.

"QUEEN'S COIN Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money. (Penal Code, S 230)

Queen's enemies "These words relate, not to Robbers,—for the consequences of whose attacks carriers are liable unless their liability has been varied by statute or express contract but in the case of an English ship, and, in other cases, to the enemies of the Sovereign of the Ship owner" (1 *Maude & P* 351, citing *Russell* v. *Niemann*, 17 *C.B.N.S.*.. 163)

Queen's head.

Queen's head. Figure on the postage stamp or coin in queen's reign.

Queen's prison A jail which used to be appropriated to the debtors and criminals confined under process or by authority of the courts and also to persons imprisoned under the Insolvency law

Quell. To overpower, to sub-due; put down, supress. "The nation obeyed the call, rallied round the sovereign, and enabled him to *quell* the disaffected minority" (*Macaulay*)

Quemadmodum ad quaestionem facti non respondent judices, ita ad quaestionem juris non respondent juratores In the same manner that judges do not answer the questions of fact, so jurors do not answer to questions of law (*Co Litt* 295)

Querulous Apt to find fault, habitually complaining

Question (*In evidence.*) An interrogation put to a witness, for the purpose of having him declare the truth of certain facts as far as he knows them (*In practice*) A point on which the parties are not agreed and which is submitted to the decision of a judge and jury

A question to be decided by a judge implies something in controversy, or which may be the subject of controversy *See also* 3 M 48=2 Weir 756

QUESTION, QUERY Questions and queries are both put for the sake of obtaining an answer, but the former may be for a reasonable or unreasonable cause, a query is mostly a rational question idlers may put questions from mere curiosity, learned men put queries for the sake of information

CATEGORICAL QUESTION One inviting a distinct and positive statement of fact, one which can be answered by "yes" or "no" In the plural, a series of questions covering a particular subject-matter, arranged in a systematic and consecutive order

"Question involved in the suit" In C P Code O 1, R 10 *See* 158 I C 814=1935 Sind 194.

Question mark Note of interrogation.

Question of constitutional law "Question of constitutional law," as used in an Act providing that the Legislature may require the Supreme Court to give an opinion on "important questions of constitutional law on solemn occasions", means questions of law only, arising on the constitution alone It can scarcely be any other than some question of the proper construction or true meaning of some provision, clause, or words contained in the constitution and it must be, in its own nature, a judicial question, the final determination of which by the organic frame of our government properly belongs to the judiciary In calling for such opinions to be given in a manner somewhat novel and extra judicial, and in matters not in litigation between contending parties, it must have been understood that such question should be important in reference to the public interest, and the necessary and immediate action of the executive or legislative branch of the government on some matter of unusual magnitude and solemn concern for the public good, and on a pure question of law, which could only be finally determined by the Supreme Court as a judicial question.

Qui contemnit

"Question of fact" defined Act 9, 1872, Ss 46, 48, *expln*

Question of law The proper effect of a proved fact is a question of law 54 I A 178=8 Lah 573=52 M L J 663=101 I C 355=A I R 1927 P C. 102.

"Question of title" *See* 9 A W N 4

"Question relating to execution discharge or satisfaction of the decree" A question between the auction-purchaser or his representative and the judgment-debtor or his representative, relating to the delivery of possession, is not a question relating to the execution, discharge or satisfaction of the decree *See* 31 A 82=6 A L J 71=5 M.L T 185=1 I C 416 (F B).

"Questions too intricate and difficult for decision in summary trial" *See* 24 M L J, 198=1913 M W N 175=18 I C 733

Qui abjurat regnum amittit regnum, sed non regem, amittit patriam, sed non patrem patriae (7 *Coke* 9) He who abjures the realm leaves the realm, but not the king, the country, but not the father of the country

Qui accusat integrae famae sit et non criminosus "Let him who accuses be of clear fame, and not criminal." (3 Inst. 26)

Qui acquirit sibi acquirit haeredibus He who acquires for himself acquires for his heirs (*Tray Lat Max* 496)

Qui adimit medium, dirimit finem. He who takes away the mean destroys the end (Co Litt. 161*a*)

Qui aliquid statuerit, parte inaudita altera, aequum licet dexerit, haud aequum facerit "He who determines any matter without hearing both sides, though he may have decided right, has not done justice" (6 Coke, 52*a*, 4 Bl Comm. 283)

Qui alterius jure utitur, eodem jure uti debet. "He who uses the right of another ought to use the same right (*Broom, Max* 473)

Qui approbat non reprobat He who approbates does not reprobate, (*i e*, he cannot both accept and reject the same thing)

Qui bene distinguit bene docet (2 Inst 470) He who distinguishes well teaches (learns) well

Qui bene interrogat bene docet He who questions well teaches well 3 Bulst 227 (*i e*) Information or express averment may be effectually conveyed in the way of interrogation

Qui cadit a syllaba cadit a tota causa He who fails in a syllable fails in his whole cause (*Bract. fok* 211)

Qui concedit aliquid omne id sine qup concessio est irrita He who grants anything grants everything without which the grant is fruitless

Qui confirmat nihil dat He who confirms does not give. (2 Bouv Inst No 2069)

Qui contemnit praeceptum, contemnit praecipientem He who contemns (contemptuously treats) a command contemns the party who gives it (12 *Coke*, 97)

Qui cum.

Qui cum alio contrahit, vel est, vel esse debet non ignarus conditionis ejus He who contracts with another either is or ought to be not ignorant of his condition (*Dig* 50, 17, 19, *Story Confl Laws* 76)

Qui dat fine dat media ad finem necessaria, He who gives an end gives the means to that end, (*Commonwealth* v *Andrews*, 3 Mass. 129)

Qui destruit medium destruti finem He who destroys the means destroys the end (10 Coke, 51*b*, Co Litt. 161*a* Shep Touch 342)

Qui doit inheriter al pere doit inheriter al fitz He who would have been heir to the father shall be heir to the son (2 Bl Comm 223, Broom Max 517)

Qui evertit causam, evertit causatum futurum He who overthrows the cause overthrows its future effects (10 Coke 51)

Qui ex damnato coitu nascuntur inter liberos non computentur Those who are born of an unlawful intercourse are not reckoned among the children (Co Litt 8a, Broom Max 519)

Qui facit per alium facit per se He who acts through another acts himself. (*i.e.*) the acts of an agent are the acts of the principal) Broom Max 818, *et seq*, 1 Bl Comm 429 Story, Ag 440)

Where a notice was issued in pursuance of the resolution of the Standing Committee and it appeared that the notice was to all intents and purposes issued by that body though it was signed by the Chief Officer, *held*, by *Broomfield, J*, that the notice can be taken to be that of the Standing Committee by applying the maxim *qui facit per alium facit per se* [32 Bom.L R 757=A I.R 1930 Bom 352 *See also* 30 Bom L R 364, 12 M I A 157 (195-197)=11 W R (P C) 19]

Applicability of the maxim to the civil law and not criminal law *See* A I R 1937 Rang 117

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. He who has jurisdiction to loosen, has jurisdiction to bind (12 Coke 60)

Qui haeret in litera haeret in cortice He who considers merely the letter of an instrument goes but skin deep into its meaning (Co Litt 289, Broom Max 685) Equity regards the spirit and not the letter

Qui-hye (*A*) This is a corruption of the Hindustani Koi-hai? literally 'Is there any one'? the common exclamation to call a servant

Qui ignorat quantum solvere debeat non potest improbus videre He who does not know what he ought to pay, does not want probity in not paying. (Dig 50, 17, 99)

Qui in jus dominiumve alterius succedit jure ejus uti debet He who succeeds to the right of property of another ought to use his right (*i e*) hold it subject to the same rights and liabilities as attached to it in the hands of the assignor) (Dig. 50, 17, 177, Broom Max 473, 478.)

Qui in suo utitur, nemini facit injuriam. He who uses his legal rights harms no one. (Broom Max. 379,)

Qui non-prohibet.

Qui in utero est, pro jam nato habetur, quoties de ejus commodo quaeritur He who is in the womb is considered as born whenever his benefit is concerned.

Qui jure suo utitur, nemini facit facit injuriam. He who uses his legal rights harms no one.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est Where a person does an act by command of one exercising judicial authority, the law will not suppose that he acted from any wrongful or improper motive, because it was his bounden duty to obey (10 Coke 76, Broom Max 93.)

Qui ligatur, eo dissolvitur (2 Rolle 21). By the same mode by which a thing is bound, by that is it released,

Qui male agit odit lucem He who acts badly hates the light (7 Coke 66)

Qui mandat ipse fecisse videtur He who commands (a thing to be done) is held to have done it himself most (9 Vin Abr 235, *Story Bail*)

Qui molitur insidias in parriam id facit quod inasanus nauta perforans navem in qua vehitur. He who betrays his country is like the insane sailor who bores a hole in the ship which carries him (3 Inst. 36)

Qui nascitur sine legitimo matrimonio matrem sequitur He who is born out of lawful matrimony follows the condition of the mother

Qui non cadunt in constantem virum vani timores sunt aestimandi (7 *Coke* 27) Those fears are to be esteemed vain which do not affect a firm man.

Qui non habet, ille non dat He who has not, gives not He who has nothing to give, gives nothing A person cannot convey a right that is not in him (Shep Touch 243, Watk Conv 191.)

Qui non habet in aere, luat in corpore ne quid peccetur impune He who cannot pay with his purse must suffer in his person lest he who offends should go unpunished (2 Inst 173, 4 Bl Comm. 20)

Qui non habet potestatem alienandi habet necessitatem retinendi (Hob 336) He who has not the power of alienating is obliged to retain

Qui non improbat, approbat. (3 Inst. 27) He who does not blame, approves.

Qui non libere veritatem pronounciat proditor est veritatis He who does not freely speak the truth is a betrayer of the truth

Qui non negat fatetur. He who does not deny, admits. This is a well-known rule of pleading (*Tray. Lat Max.* 503)

Qui non obstat quod obstare potest, facere videtur He who does not prevent (a thing) which he can prevent is considered to do (as doing) it. (2 Inst. 146)

Qui non prohibet id quod prohibere potest, assentire videtur (2 Inst. 308). He who does not forbid what he is able to prevent, is considered to assent.

Qui non propulsat.

Qui non propulsat injuriam quando potest, infert. (*Jenk Cent.* 271.) He who does not repel an injury when he can, induces it

Qui obstruit aditum, destruit commodum He who obstructs a way, passage, or entrance destroys a benefit or convenience (Co. Litt 161a)

Qui omne dicit, nihil excludit (4 Inst. 81.) He who says all excludes nothing

Qui parcit nocentibus innocentibus punit (*Jenk. Cent* 133.) He who spares the guilty punishes the innocent.

Qui peccat ebrius lua sobrius He who sins when drunk shall be punished when sober (Cary, 133, Broom Max. 171)

Qui per alium facit per seipsum facere videur He who does a thing by an agent is considered as doing it himself. (Co Litt 258, Broom Max 817)

Qui per fraudem agit frustra agit (2 Rolle 17) What a man does fraudulently he does in vain

Qui potest et debet vetare, jubet He who can and ought to forbid a thing, and does not, commands it

Qui primum peccat ille facit rixam He who sins first makes the strife

Qui prior est tempore, potior est jure He who is before in time is the better in right Priority in time gives preference in law (Co Litt. 14a, 4 Coke 90a, Broom Max, *Story Eq. Jur*)

Qui pro me aliquid facit, mihi fecisse videtur (2 Inst 501). He who does anything for me appears to do it to me.

Qui providebt sibi providet haeredibus He who provides for himself provides for his heirs.

Qui rationem in omnibus quaerunt rationem subvertunt. They who seek a reason for everything subvert reason. (2 Coke 75, Broom Max 157)

Qui sciens solvit indebitum donandi consilio id videtur fescisse One who knowingly pays what is not due is supposed to have done it with the intention of making a gift (*Walker* v *Hill*, 17 Mass 388)

Qui semel actionem renunciaverit amplius repetere non potest He who has once relinquished his action cannot bring it again (8 *Coke* 59a.) A rule descriptive of the effect of a *nolle prosequi*.

Qui semel est malus, semper praesumitur esse malus in eodem genere He who is once criminal is presumed to be always criminal in the same kind or way (Cro Car. 317, Best, Ev. 345.)

Qui sentit commodum sentire debet et onus, et e contra. He who receives the advantage ought also to suffer the burden. (1 Coke, 99; Broom Max. 706-713.)

Qui sentit onus sentire debet et commodum (1 Coke 99a.) He who bears the burden of a thing ought also to experience the advantage arising from it.

Qui tacet consentire videtur. He who is silent is supposed to consent. The silence of a party implies his consent (Jenk Cent; Broom Max. 138, 787.)

Qui tacet consentire videtur, ubi tractatur de ejus commodo. (9 Mod 38) He who is silent is considered as assenting, when his interest is at stake.

Qui tacet non utique fatetur, sed tamen verum est eum non negare He who is silent does not indeed confess, but yet it is true that he does not deny (Dig. 40,17,142)

Qui tam action Literally "Who as well" An action brought by an informer, under a statute which establishes a penalty for the commission or omission of a certain act, and provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will bring such action and the remainder to the state or some other institution

Qui tardius solvit, minus solvit. He who pays more tardily (than he ought) pays less (than he ought) (Jenk. Cent 58)

Qui timent, cavent et vitant They who fear, take care and avoid

Qui timet. (*Lat*) Because he fears or apprehends The technical name of an action instituted by a party who seeks the aid of a Court because he fears some future probable injury to his rights or interests. (2 Story Eq Jur 826) A *quia timet* action is an action brought to prevent a wrong that is apprehended [*A.-G* v. *Manchester*, (1893) 2 Ch 87, 62 L.J. Ch. 459]

Qui totum dicit nihil excipit He who says all excepts nothing.

Qui vult decipi, decipiatur Let him who wishes to be deceived, be deceived (Broom Max 782, note, Shep Touch 56.)

Quia emptores. The title of the English statute of West (18 Edw 1, c 1) The effect of this statute was twofold (1) To facilitate the alienation of fee-simple estates, and (2) to put an end to the creation of any new manors, *i e*, tenancies in fee simple of a subject (*Brown*)

Quia timit (*See* Qui timet) "A Court of equity will prevent injury in some cases by interposing before any injury has been suffered, by a bill which has sometimes been called a bill *quia timet* in analogy to proceedings at the common law, where in some cases a writ may be maintained before any molestation, distress, or impleading," (*Mitford's Pleadings in Chancery*)

Quibble A cavilling or verbal objection, a play on words; evasion, a slight difficulty raised without necessity or propriety

Quick time An army rate of marching.

Quick with child "Quick with child" means having conceived

The common understanding of the words is that a woman is not quick with child until she has felt the child alive and quick within her.

Quickening (*In medical jurisprudence*) The first motion of the foetus in the womb felt by the mother, occurring usually about the middle of the term of pregnancy. (*See* 43 Am. Dec, 396; 1 Am. Dec. 248.)

Quickening

A woman is quick with child from the period of conception and the commencement of gestation

"Quick with child" expresses the time subsequent to the mother feeling the child quicken Quickening is the incident, not the inception, of vitality It was formerly held that quickening was the commencement of vitality, before which it could not be considered as existing—This view is no longer held by our most eminent writers The ancient opinion, and on which, indeed, the laws of our country have been founded, was that the foetus became animated at this period, that it acquired a new mode of existence This is altogether abandoned The foetus is certainly if we speak physiologically as much a living being immediately after conception as at any other time before delivery, and its future progress is but the development and increase of those constituent principles which it then receives

Quicquid acquiritur servo, acquiritur domino Whatever is acquired by the servant is acquired by the master

Quicquid demonstratae rei additur satis demonstratae frustra est. Whatever is added to demonstrate anything already sufficiently demonstrated, is surplusage (Dig 33, 4, 1, 8, Broom Max 630)

Quicquid est contra normam recti est injuria (3 Bulst 313) Whatever is against the rule of right is a wrong

Quicquid in excessu actum est, lege prohibetur (2 Inst 107) Whatever is done in excess is prohibited by law

Quicquid judicis auctioritato subjicitur novitati non subjicitur Whatever is subject to the authority of a judge is not subject to innovation (4 Inst 66)

Quicquid plantatur (or fixatur) solo, solo cedit Fixture to the soil, goes with or belongs to the soil, whatever is planted on the soil goes with the soil

The maxim which is found in English law, *viz*, *quicquid plantatur solo cedit*, has at the most only a limited application in India There is nothing in the laws or customs of India to show any traces of the existence of any absolute rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself 54 I A 218=54 Cal 669=1927 M W N 461 =102 I.C 198 (2)=29 Bom L R 1143=46 C L J 1=31 C W N 965=8 Pat L T, 663=26 L W 848=A I R 1927 P C 135=53 M L J 158 (P C)

There is no custom of Hindu (or other) law by which the maxim *quicquid plantatur (or aedificatur) solo, solo cedit* does not apply in India. The English law would apply unless it is clear that by local, customary, or other law applicable in this country, it does not. The Courts of India have not excluded the application of the maxim altogether, though they have held and the legislature has said in effect that there are substantial exceptions to the application of the maxim 6 R 87=110 I.C 133=A I R 1928 Rang 145.)

Quicquid solvitur, solvitur secundum modum solventis quicquid recipitur, recipitur secundum modum recipientis. Whatever money is paid, is paid according to the direction of the payer, whatever money is received, is received according to that of recipient (2 Vern 606, Broom. Max 810)

Quicunque habet jurisdictionem ordinariam est illius loci ordinaries (Co. Litt 344) Whoever has an ordinary jurisdiction is the ordinary of that place

Quicunque jussu judicis aliquid fecerit non vidtur dolo malo fecisse, quia parere necesse est (10 Coke, 71) Whoever does anything by the command of a judge is not reckoned to have done it with an evil intent, because it is necessary to obey.

Quid nunc (*Lat*) Newsmonger, gossip

Quid pro quo (*Lat*) The giving of one thing of value for another thing of value (*Cowel*) Something for something, thing given as compensation.

Quid quid eim sive dolo et culpa venditories accidit in eo venditor securus est For concerning anything which occurs without deceit and wrong on the part of the vendor, the vendor is secure

Quid sit jus, et in quo consistit injuria, legis est definire What constitutes right, and what injury, it is the business of the law to declare (Co. Litt 158b)

Quiet Unmolested, tranquil, free from interference or disturbance

Quiet enjoyment A covenant, usually inserted in leases and conveyances on the part of the grantor, promising that the tenant of grantee shall enjoy the possession of the premises in peace and without disturbance, is called a covenant "for quiet enjoyment" "In every case it is a question of fact whether the quiet enjoyment of the land has or has not been interrupted, and where the ordinary and lawful enjoyment of the land is substantially interfered with, the covenant appears to us to be broken, although neither the title to the land nor the possession of the land may be otherwise affected" (*per* Willes, J, *Dennett* v *Atherton*, 41 L J Q B 165, L.R 7 Q B 316)

The coverants for possessions title quiet enjoyment, and freedom from incumbrances constitute as between vendor and purchaser, the important covenants formerly inserted and now usually implied in a conveyance The covenant for quiet enjoyment is to the effect that the premises conveyed shall and may from time to time, and at all times thereafter, be held and enjoyed, and the rents, issues, and profits thereof received and taken by the grantee, his appointees, heirs and assigns to and for his and their own absolute use and benefit without any lawful "let, suit trouble, denial, hindrance, eviction,ejection, molestation, disturbance or interruption" "whatsoever, of, from, or by the grantor or any person or persons lawfully or equitably claiming or to claim by, through, from, under or in trust for him" (*Ency of the Laws of England*)

Quiet in harness. A Warranty clause in respect of the sale of a horse that he 'Quiet in Harness" refers rather to the behaviour than to the health of the horse (per *Pollock B*, *Bush* v *Freeman*, 3 *Times*, *Rep* 449) The buyer of a horse who desires a warranty in this respect, (*i e*, that the horse is quiet in harness, should be careful to see that it is explicit, or is sufficiently general in its terms to include this

Quieta non movere.

qualification. A warranty that a horse is "sound and quiet in all respects," has been held to include the being quiet in harness (*Smith* v *Parsons*,(1837) 8 Car & P 199 per *Lord Abinger*, *C B*)

Quieta non movere Not to unsettle or disturb things which are established

Quietus. " 'Quietus' means acquitted (*Cowel*)

Quilibet ignem suum salve Let each one guard his own fire.

Quilibet potest renunciare juri pro se introducto Every one may renounce or relinquish a right introduced for his own benefit (*2* Inst 183 *Wing Max.* p 483 *4 Bl Comm* 317)

"Quimat" In the law of pre-emption, the term "qimat" includes not only money, but other kinds of property capable of being valued at a definite sum of money, and in this sense, it may be taken to cover the consideration of sale as well, as of exchange (2 A W N. 192, *R* , 4 A W N 103, *Diss*) 7 A 626 (F B)=5 A.W N. 183

Quinine. A bitter medicinal drug got from chinchona park

Quisquis eri qui vult juris-consultus haberi continuet studium velit a quocunque doceri (*Jenk Cent.*) Whoever wishes to be a juris consult, let him continually study, and desire to be taught by every one

Quisquis praesumitur bonus, et semper in dubiis pro reo respondendum Every one is presumed good, and in doubtful cases the resolution should be ever for the accused

Quit To leave, remove from surrender possession of, as when a tenant "quits" the premises or receives a "notice to quit".

To quit, as used in an Act requiring a landlord to give a tenant notice to quit, is synonymous with the word "to leave"

Quit, (*adj*) Clear, discharged, free, also spoken of persons absolved or acquitted of a charge

NOTICE TO QUIT A written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised premises and asking the tenant to remove himself from the same at a time designated, either at the expiration of the term, if the tenant is in under a lease, or immediately, if the tenancy is at will or by sufferance (*See* T P Act, S 106)

Quit-claim A release or acquitting of a man, from any action which the releaser hath, might, or may have against him Also, a quitting of one's claim or title. (*Tomlins Law Dic*)

Under a power given to the select men of a town to execute a release of title to lands, a deed purporting to grant, sell, and quit claim is a substantial execution of the authority, the word "quit claim" being of equivalent meaning with the term "release"

QUIT-CLAIM, REMISE, AND RELEASE As used in a deed, the words "forever quit claim, remise, and release" are not words of release only, but are operative words of conveyance.

Quod ab initio.

QUIT CLAIM OR QUIT CLAIM DEED As a noun, a release or acquittance given to one man by another, in respect of any action that he has or might have against him, also acquitting or giving up one's claim of title As a verb, to release a claim to by deed without covenants of warranty against adverse and paramount titles.

Quit-Rent A certain small rent, payable by the tenant in token of subjection, by which the tenant goes quiet and free (*Tomlins Law Dic*), Chief rent. This is a small yearly payment made by owners of land to a more or less nominal landlord (*2 Blackstone*, 42)

Quittance Abbreviation of "acquittance," a release, discharge

Quo concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit (*11 Coke* 52) He who concedes anything is considered as conceding that without which his concession would be void, without which the thing itself could not exist

Quo cumque modo velit, quocumque modo possit (*Lat*) In any way he wishes, in any way he can

Quo modo quid constituitur eodem modo dissolvitur (*Jenk Cent* 74) In the same manner by which anything is constituted by that it is dissolved.

Quo praegnantis mulieris damnatae poena differatur, quod ad pariat quo warranto. (*In old English practice*) A writ, in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise or liberty, to inquire by what authority he supported his claim, in order to determine the right Quo warranto is a writ which lies against person, or Corporation, that usurps any franchise or liberty against the king without good title, and is brought against the usurpers, to shew by what right or title they hold or claim such franchise or liberty It also lies for misuser or nonuser of privileges granted, and according to Bracton, it may be brought against one who intrudes himself as heir into land, '&c (Old Nat Br. 149) A writ of *quo warranto* is in the nature of a writ of right for the king, against him who claims or usurps any office, franchise, or liberty, to inquire by what warrant or authority he supports his claim, in order to determine the right. (*Finch L* 322, 2 Inst 282, *Tomlins Law Dic.*)

Quoad hoc (*Lat*) As to this, with respect to this, so far as this in particular is concerned A prohibition *quoad hoc* is a prohibition as to certain things among other Thus, where a party was complained against in the ecclesiastical court for matters cognizable in the temporal courts, a prohibition quoad these matters issued, *i e*, as to such matters the party was prohibited from prosecuting his suit in the ecclesiastical court (*Brown*)

Quoad sacra. (*Lat*) As to sacred things; for religious purposes

Quod a quoque paenae nomine exactum est id eidem restituere nemo cogitur. That which has been exacted as a penalty no one is obliged to restore (Dig. 50, 17, 46)

Quod ab initio non valet in tractu temporis non convalescit. That which is bad in its commence-

Quod ad jus.

ment improves not by lapse of time. (*Broom. Max* 178, 4 *Coke*, 2)

Quod ad jus naturale attinet omnes homines aequales sunt. All men are equal as far as the natural law is concerned (*Dig.* 50, 17, 32)

Quod aedificatur in area legata cedit legato Whatever is built on ground given by will goes to the legatee (*Broom Max* 424)

Quod alias bonum et justum est, si per vim, vel fraudum petatur, malum et injustum efficitur (3 *Coke* 78) What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust

Quod alias non fuit licitum, necessita licitum facit. What otherwise was not lawful, necessarily makes lawful (*Fleta, lib* 5 c. 23, 14)

Quod approbo non reprobo What I approve I do not reject I cannot approve and reject at the same time I cannot take the benefit of an instrument, and at the same time repudicate it. (*Broom Max* 712)

Quod attinet ad jus civile, servi pro nullis habentur, non tamen et jure naturali, quia, quod ad jus naturale attinet, omnes homines aequali sunt So far as the civil law is concerned, slaves are not reckoned as persons, but not so by natural law, for so far as regards natural law, all men are equal (*Dig* 50, 17, *32*)

Quod constat clare non debet verificari What is clearly apparent need not be proved (10 *Mod* 150)

Quod constat curiae opere testium non indiget That which appears to the court needs not the aid of witnesses. (2 *Inst* 662)

Quod contra legem fit, pro infecto habetur, That which is done against law is regarded as not done at all. (4 *Coke* 31a)

Quod contra rationem juris receptum est, non est producendum ad consequentias That which has been received against the reason of the law is not to be drawn into a precedent (*Dig* 1 3, 14)

Quod cunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur (2 *Inst.* 590) Whatever any one does in defence of his person, that he is considered to have done legally.

Quod datum est ecclesiae datum est Deo (2 *Inst* 2) What is given to the church is given to God

Quod demonstrandi causa additur rei satis demonstratae, frustra fit (10 *Coke* 113) What is added to a thing sufficiently palpable, for the purpose of demonstration, is vain

Quod dubitas, ne feceris What you doubt of, do not do In a case of moment, especially in case of life, it is safest to hold that in practice which hath least doubt and danger (1 *Hale P. C* 300)

Quod est ex necessitate nunquam introducitur nisi quando necessarium (2 *Rolle* 502.) That which is of necessity is never introduced, unless when necessary.

Quod est inconveniens aut contra rationem non permissum est in lege. (*Co. Litt.* 178a). That which is inconvenient or against reason is not permissible in law.

Quod est necessarium est licitum. What is necessary is lawful (*Jenk. Cent* p. 76)

Quod factum est, cum in obscuro sit ex affectione cujusque capit interpretationem When there is doubt about the (known) feelings of the actor (*Dig* 50, 17, 68 1)

Quod fieri debet facile praesumitur (*Halk* 153) That which ought to be done is easily presumed

Quod fieri non debet factum valet That which ought not to be done, when done, is valid (*Broom Max* 182)

Quod inconsulto fecimus consultius revocemius. (*Jenk Cent* 116) What we have done without due consideration upon better consideration we may revoke.

Quod in minori valet valebit in majori et quod in majori non valet nec valebit in minori (*Co, Litt* 260*a*) That which is valid in the less shall be valid in the greater, and that which is not valid in the greater, shall neither be valid in the less

Quod initio vitiosum est non potest tractu temporis convalescere That which is void from the beginning cannot become valid by lapes of time (*Dig* 50, 17, 29,)

Quod in uno similium valet valebit in altero. That which is effectual in one of two like things shall be effectual in the other (*Co. Litt* 191*a*)

Quod ipsis qui contraxerunt obstat et successoribus eorum obstabit, That which bars those who have made a contract will bar their successor also (*Dig* 50, 17, 143)

Quod jussu alterius solvitur pro eo est quasi ipsi solutum esset That which is paid by the order of another is the same as though it were paid to himself (*Dig* 50 17, 180)

Quod meum est sine facto meo vel defectu meo amitti vel in alium transferri non potest That which is mine cannot be lost or transferred to another without any alienation or forfeiture (*Broom Max* 465)

Quod meum est sine me auferri non potest, That which is mine cannot be taken away without me, (without my assent) (*Jenk Cent.* p 251)

Quod minus est in obligationem videtur deductum That which is the less is held to be imported into the contract (1 *Story Cont.* 481)

Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium. That which natural reason has established among all men is called the "law of nations." (1 Bl. Comm, 43, Dig 1, 1, 9, Inst 1, 2, 1.)

Quod necessario intelligitur non deest (1 Bulst, 71.) That which is necessarily understood is not wanting.

Quod necessitas cogit defendit. (*Hale,* 54.) That which necessity compels, it justifies. *P.C.*

Quod non apparet

Quod non apparet non est, et non apparet judicialiter ante judicium (2 Inst 479.) That which appears not is not, and nothing appears judicially before judgment

Quod non capit Christus, capit fiscus What Christ (the church) does not take the treasury takes Goods of a *felo de se* go to the king,

Quod non fuit negatum Which was not denied. A phrase found in the old reports, signifying that an argument or proposition was not denied or contoverted by the Court (*Latch*, 213.)

Quod non habet principium non habet finem (*Wing Max.* 79, Co, Citt 345*a*) That which has not beginning has not end

Quod non legitur, non creditur What is not read is not believed. (4 *Coke*, 304)

Quod non valet in principali, in accessorio seu consequenti non valebit, et quod non valet in magis propinquo non valebit in magis remoto (8 *Coke*, 78) That which is not good against the principal will not be good as to accessories or consequences, and that which is not of force in regard to things near it will not be of force in regard to things remote from it

Quod nota, Which note which mark, A reporter's note in the old books, directing attention to a point or rule (*Dyer*, 23)

Quod nullius esse potest id ut alicujus fieret nulla obligatio valet efficere No agreement can avail to make that the property of any one which cannot be acquired as property (*Dig* 50, 17, 182)

Quod nullius est est domini regis That which is the property of nobody belongs to our lord the king (*Fleta*, lib 1, c 3, *Broom Max* 354)

Quod nullius est, id ratione naturali occupanti conceditur That which is the property of no one is, by natural reason, given to the (first) occupant. (*Dig* 41, 1, 3, *Inst.* 2, 1, 12; 2 Bl. Comm. 258)

Quod nullum est nullum producit effectum. That which is null produces no effect (*Tray Leg Max* 519.)

Quod omnes tangit ab omnibus debet supportari That which touches or concerns all ought to be supported by all. (3 How State Tr 878, 1087)

Quod pendet non est pro eo quasi sit What is in suspense is considered as not existing during such suspense (*Dig* 50, 17, 169, 1.)

Quod per alluvionem agro tuo flumen adjecit, jure gentium tibi adquiritur. That which a river adds on your land by process of alluvion becomes yours by the law of nations.

Quod per me non possum nec per alium. What I cannot do by myself, I cannot by another (4 *Coke*, 24*b*, 11 *Coke*, 87*a*.)

Quod per recordum probatum non debet esse negatum What is proved by record ought not to be denied.

Quod populus postremum jussit, id jus ratum esto What the people have last enacted, let that be the established law. (1 Bl. Comm. 89.)

Quodque dissolvitur.

Quod primum est intentione ultimum est in operatione That which is first in intention is last in operation (*Bac Max.*)

Quod principi habit legis habet vigorem That which has pleased the prince has the force of law The emperors pleasure has the force of law (*Dig* 1, 4, 1, , Inst 1, 2, 6.)

Quod pro minore licitum est, et pro majore licitum est, (8 *Coke*, 43) That which is lawful as the minor is lawful as to the major.

Quod protravit. That he do abate The name of a judgment upon an indictment for nuisance, that the defendant abate such nuisance

Quod pure debetur praesenti die debetur That which is due unconditionally is due now, (*i.e.*) at once (*Tray, Leg Max.* 519.)

Quodque dissolvitur eodem ligamine quo ligatur quorum (*Lat*) Certain individuals, among persons invested with any power, or with the exercise of any jurisdiction, without whom any number of the others cannot proceed to execute the power given by the commission. (*Tomlins Law Dic*) A quorum is such a number of members of a body as is competent to transact business in the absence of other members

The word "quorum," now in common use, is from the Latin. It was anciently used in the commissions by which the King of Great Britain designated certain justices "jointly and severally to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors, in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence," The persons so designated as essential to the transaction of business were called *justices of the quorum*" Hence the term "quorum" has come to signify "such a number of the officers or members of any body as is competent by law or constitution to transact business"

The quorum of a body may be defined to be that number of the body which, when assembled in their proper places, will enable them to transact their proper business, or, in other words, that number that makes the lawful body,and gives them power to pass a law or ordinance But when, in the case of a municipal corporation the statute law creating it is silent as to what shall constitute a legal assembly, the common law, (both in England and in this country) is well settled that a majority of the members shall constitute a legal body.

When a committee board of directors, meeting of shareholders, legislative or other body of persons cannot act unless a certain number at least of them are present, that number is called a "quorum." (*Sweet.*) In the absence of any law or rule fixing the quorum,it consists of a majority of those entitled to act (*See* 17 Am Dec 525.)

Where a Quorum of members is prescribed, that means, imperatively, that no business shall be transacted unless the prescribed number, at least, be present. (50 L.J. Ch. 171)

In order to constitute at law a duly Quorum of Directors "it is necessary that they should act conjointly, and as a Board of Directors. I do not say that they are bound to meet at any particular place or any, particular time, but they are bound to be

Quod quis.

together, as a Board, at the time the thing is ordered to be done" (*per* Bramwell, B, *D'Arcy* v *Tamar, &c Ry*, 36 L J Ex 37, L R 2 Ex 158)

A majority of a board of school directors constitutes a quorum.

The general rule is that to make a quorum of a select and definite body of men, possessing the power to elect, a majority, at least must be present, and then a majority of the quorum may decide

Quod quis ex culpa sua damnum sentit non intelligitur damnum sentire The damage which one experiences from his own fault is not considered as his damage (*Dig* 50, 17, 203)

Quod quis quis norit in hoc se exerceat. Let every one employ himself in what he knows (11 *Coke*, 10)

Quod quis sciens indebitem debit has mante, ut postea repeteret, repetere non potest. That which one has given, knowing it not to be due, with the intention of redemanding it, he cannot recover back (*Dig* 12, 6, 50)

Quod recuperet That he recover The ordinary form of judgments for the plaintiff in actions at law (1 Archb Pr K. B 225, 1 *Burrill* Pr 246)

Quod remedio destituitur ipsa re valet si culpa absit. That which is without remedy avails of itself, if there be no fault in the party seeking to enforce it (*Broom, Max* 212)

Quod semel aut bis existit praetereunt legislatores The legislature takes no notice of that which is only of occasional occurrence

Quod semel meum est amplius meum esse non potest That which is once mine, cannot be more fully mine.

Quod semel placuit in electionibus amplius displicere non potest (*Co Litt* 146) what a party has once determined, in a case where he has an election cannot afterwards be disavowed

Quod si contingat That if it happen Words by which a condition might formerly be created in a deed (Litt 330)

Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem That which is granted or reserved under a certain form is not (permited to be) drawn into valuation or compensation (*Bac Max* 26, reg 4)

Quod subintelligitur non deest What is understood is not wanting. (2 Ld Raym 832)

Quod tacite intelligitur deesse non videtur What is tacitly understood is not considered to be wanting (4 Coke 22a.)

Quod vanum et inutile est, lex non requirit (*Co Litt.* 319) The law requires not what is vain and useless

Quod vero contra rationem juris receptum est, non est producendum ad consequentias quod vide Which see A direction to the reader to look to another part of the book, or to another book, there named, for further information.

Quum in testamento

It is now well settled that in all cases the majority of a legislative body is a quorum entitled to act for the whole body, unless the power that creates it has otherwise directed.

Quota. A certain proportional part or share, the share or proportion assigned to each on division (as) "Quoto of troops and money."

Quotation (*In legal Practice*) The production to a court or judge of the exact language of a statute precedent, or other authority, in support of an argument or proposition advanced, (*in leterary usage*) the transcription of part of a literary composition into another book or writing, (*in commerce*) a statement of the market price of one or more commodities, or the price specified to a correspondent

Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum est (D 50 17 20) As often as the interpretation of liberty is doubtful the answer should be on the side of liberty

Quotiens idem sermo duas sententias exprimit ea potissimum accipiatur, quae rei generendae aptior est (D 50 17 67) Whenever the same language expresses two meanings, that should be adopted which is the better fitted for carrying out the subject matter (*Dig* 50 17 67)

Quotient verdict A quotient verdict is where each juror marks down an amount, and then the total amount thus marked down is added together, and that sum divided by the number of jurors in order to reach the amount of the verdict

QUOTIENT VERDICT. A money verdict amount of which is fixed by the following process, Each juror writes down the sum he wishes to award by the verdict these amounts are all added together, and the total is divided by twelve, (the Number of the jurors) and the quotient stands as the verdict of the jury by their agreement (See *Hamilton* v *Owego Water Works*, 22 App Div 573)

Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi quo res de qua agitur in tuto sit (D 41 1 80, and 50 16 219) Whenever the language of stipulations is ambiguous, it is most fitting that that (sense) should be taken by which the subject matter may be protected (*Dig* 45 1 80)

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est (*Co Litt* 147) When in the words there is no ambiguity, then no exposition contrary to the words is to be made

Quoties dubia interpretatio libertatis est, secundum libertatem respondendum erit Whenever the interpretation of liberty is doubtful, the answer should be on the side of liberty (*Dig* 50 17 20)

Qureshi The name of the family to which Muhammad the founder of Islam belonged

Quum de lucro duorum quaeratur, melior est causa possidentis When the question is as to the gain of two persons, the title of the party in possession is the better one (*Dig.* 50, 17, 126, 2)

Quum in testamento ambigue aut etiam perperam scriptum est, benigne interpretari est secundum id quod credible et cogitatum, creden-

Quum principalis

dum est When in a will an ambiguous or even an erroneous expression occurs, it should be construed liberally and in accordance with what is thought the probable meaning of the testator (*Dig* 34, 5, 24, *Broom, Max* 437)

Quum principalis causa non consistit ne ea quidem quae sequuntur locum habent When the principal does not hold, the incidents thereof ought not to obtain (*Broom Max* 496)

Quum quod ago non valet ut ago, valeat quantum valere potest (1 *Vent* 216,) When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can

R

R An abbreviation of regina, rex.

R G Regulae generales general orders or rules

R L Revised laws

R S Revised statutes.

Rababi (*Punjabi*). The name of a class of hereditary musicians among the Sikhs, they regard as their founder Mardana, a companion of the first Guru

Rabbi Jewish doctor of the law

Rabbit A beast of warren (*Whart*)

Rabble Disorderly crowd

Rabi or rabbi crop Spring harvest Crops sown in the autumn and reaped at the end of the cold weather.

Rabia (*Hindi Mar*) The spring, the months of March and April: the spring harvest a name common to the third and fourth months of the Mohammedan year (*Wil Gloss* 431.)

Rabta (*Mar*) The practice of exacting labour on public service, or for public functionaries, from the Mhars of a village. a tax in commutation of such labour. it also occurs as Rabta-mhar. (*Wil. Gloss* 431)

Race. Group of persons having or supposed to have a common ancestor or posterity (as) the human race, Anglo saxon race, the race of Adam etc

Race distinction. It is settled that as regards the racial claim maternity is of no importance A I R 1925 P C. 298 (P.C.)

Race, generation, breed These terms are employed in regard to a number of animate objects which have the same origin, the former is said only of human beings, the latter only of brutes the term is employed in regard to the dead as well as the living, generation is employed only in regard to the living, hence we speak of the race of Heraclidae the race of the Bourbons, the race of the Stuarts and the like, but the present generation, the whole generation a worthless generation, and the like, breed is said of those animals who are brought forth, and brought up in the same manner Hence, we denominate some domestic animals as of a good breed, where particular care is taken not only as to the animals from which they come but also of those which are brought forth

Rafa nameh

Race-card Programme of races. A card containing information about races

Race-course Race ground Race-track. The course, ground or track over which races are run

Race-horse. Horse kept or bred for racing

Race meeting. A meeting for racing purposes

Racer Race horse or yacht or vehicle kept for racing

Racing calendar A full list of races to be run

Rack An engine of torture (used in ancient times)

Racking. A term used in the wine and spirit trade when liquors or wine are transferred from certain casks to other casks, or when drawn off from the lees

Rack-rent "Rack Rent,' is only a rent of the full value of the tenement, or near it" (2 Bl Com. 43) It is rent of, or approaching to, the full annual value of the property out of which it issues" (*Elph* 618.) Rent raised to the uttermost, the full annual value of the property A term generally used to denote excessive rent

Rack-renter One who pays the uttermost rent

Radd (*A*) The return, in the Mahomedan law, of inheritance The residue (*Mac. Moh Law*)

Radd-ul-mukhtar This is a commentary on the Durrul-Mukhtar The Radd-ul-Mukhta is composed by Muhammad Amin, known by the name of Ibnu Abidin This great work is occasionally referred to in this country (*Tagore Law Lectures*, 1873, p 46)

Radical politician One desiring radical reforms, member of advanced section of liberal party

Radio Wireless telegraphy

Radius The term "radius" means a "Right line drawn or extended from the centre of a circle to its periphery," so that an agreement not to practice dentistry within a radius of ten miles of the town means from the center of the town the town as a whole not being suitable as the centre implied by the term "radius"

"RADIUS", as used in an Act prohibiting the keeping of a private market within a "radius of six squares" of a public market signifies the length of the distance within which the prohibition was to be enforced A radius is a straight line drawn from the center of a circle to any point of the circumference. Its length is half the diameter of that circle, or is the space between the center and the circumference The center for measurement from which the radius would shoot was not required to be located in the middle of the space occupied by a public market, which is usually not a square but some other geometrical figure, as a parallelogram or triangle, for the space between the center and the external boundaries would have to be included in the length of the distance, and this would shorten that length. (*Words and Phrases*)

Rafa nameh (*P*) A deed of relinquishment. (*Mac. Moh. Law*)

Raffle.

Raffle A "raffle" is a game of perfect chance, in which every participant is equal with every other in proportion to his risk and prospect of gain The prize is a common fund, or that which is purchased by a common fund. Each is an equal actor in developing the chances in proportion to his risk The successful party takes the whole prize, and all the rest lose. The element of one against the many, the keeper against the betters, either directly or indirectly, is not to be found in it It has no keeper, dealer, or exhibitor

Webster defines "raffle", when used as a verb, to mean to cast dice for a prize, for which each person concerned in the game lays down a stake, or at least a part of the value, as to raffle for a watch Used as a noun it means a game of chance or lottery in which several persons deposit a part of the value of the thing in consideration of the chance of getting it

Raft. "A 'raft' may be made by lashing together two pieces of plank, and the word comprehends not only this, but a floating structure of timber of great value and extent"

Ragada (*Tel*) Black clay soil.

"Ragged school" is defined to mean any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object and without any pecuniary benefit being derived therefrom, except to the teacher or teachers employed" (*Ency. of the Laws of England.*)

Raghwamshis Persons belonging to a certain sect in Oudh, and they are governed by Benares school of Hindu Law 53 B 242=114 I.C. 379=1929 B 57

Rahasya-vibhaga (*S*) Partition made privately in the presence of a few friends only (*Wil Gloss* 547)

Rahdari-pullari (*Tel.*) A tax or fine levied formerly on cattle passing over fields

Rahim (*A*) Merciful, an attribute of God in the Bismillah, and thence used by the Sikhs as the name of the Musalman God

Rahiras (*Punjabi*) The evening prayer of the Sikhs, it was composed by Nanak, but additions were made by succeeding Gurus and it was left in its present form by Govind Singh

Rahitnama (*Punjabi*) A code of rules, particularly that said to have been delivered by Govind Singh, the last Sikh Guru

Rai. (*Hindi*) Ray, (Beng) During the time of the Mohammedan governments it was a title given to Hindu civil officers of high rank, whence it became a family designation, as, Rammohan Roy (*Wil. Gloss.* 432)

RAI, (*H*) Rate, the local rate of assessment, the standard rate at which the lands of a village or district are assessed, according to their several qualities. (Reg. II, 1795. *Wil Gloss* 433.)

"RAI" does not necessarily imply impartibility of estate. 55 I A. 45=55 Cal. 403=107 I C. 7=27 L.W. 350

Rai-bandi (*H*) A statement or table of rates, a document showing the rates at which different descriptions of land or usually assessed in any particular district (*Wil Gloss* 433)

Raibandi record. A *raibandi* record differs from, and is simpler than, a settlement record, its objects being merely to record the annual rental value of every portion of the estate, so that each proprietor may be assigned his proportionate share of the total expressed in rupees, annas and pies. This valuation is an *ad hoc* valuation, *i.e.*, it has no binding authority outside the partition proceeding itself. In this respect it differs essentially from either a regular settlement record or a "fair rent" record prepared under the "fair rent" sections of the Bengal Tenancy Act 3 Pat L.R 186 (Rev)

Rai-rayan (*H*) A prince lit prince of princes, but applied as a title to Hindu civil functionaries of high rank it was the title borne by the financial minister and treasurer of the Nawab of Bengal, and was assigned by the British government to the chief native revenue officer whom they appointed in 1772, on abolishing the office of Naib Diwan. (*Wil Gloss* 432.)

Raid. Sudden incursion made by military party, police, or robbers

Raidasi (*Punjabi.*) Sikh converts from the Chamar caste.

Railing A statute requiring towns to maintain a "fence or railing" on certain roads implies a barrier of sufficent strength to prevent travellers under ordinary circumstances from going off the bridge or embankment.

Railroad.

Railroad. A railroad has been defined as a road specially laid out and graded, having parallel rails of iron or steel for the wheels of carriages or cars, drawn by steam or other motive power, to run upon

The legal signification of the term "railroad" is not only a road or way on which iron rails are laid, but a road or way on which iron rails are laid, but a road as incident to the possession or ownership of which important franchises and rights affecting the public are attached

The word "railroad" may sometimes mean the track or ground upon which the rails constituting the track are laid, or it may mean the right of way, including the track and the land on either side of the track, according to the contest in which the word is used

The term "railroad" includes all the side tracks and turnouts necessary for the transaction of the company's business.

An authority to construct a railroad is sufficient authority to also construct a telegraph line to be used in connection with the railroad

RAILROAD—RAILWAY "Railroad" and "railway" are used interchangeably. They are as nearly exact synonyms as any two words in the English language. In common speech the word 'railroad" is the more frequent designation.

The words "railroad" and "railway" are synonymous and under all ordinary circumstances they are to be treated as without difference in meaning.

Railroad.

Strictly speaking a "Railroad" should be confined to the highway on which the railway is laid, and the word "railway" to the rails of the road

Railroad and railroad company distinguished The word "railroad" is defined to be the roadbed, right of way, track, rolling stock, and appurtenances actually constructed and in operation as a public highway. The words "railroad company" do not mean the same thing as the word 'railroad". The former may exist without the latter, and the latter without the former The one applies to the agency which may construct or own, the other to the thing constructed or owned. (*Words and Phrases*).

Railroad bridge. A viaduct constructed for the exclusive use of railroad transportation is a railroad bridge

Railroad yard. The word "yard", as employed in connection with and as descriptive of railway service, consists of side tracks upon either side of the main track, and adjacent to some principal station or depot grounds where cars are placed for deposit, and where arriving trains are separated and departing trains made up. It is the place where such switching is done as is essential to the proper placing of cars either for deposit or for departure.

The "yard" of a railroad company is a place for the deposit of cars and the making up of its freight trains.

"Railway" defined 42-3V. c 41, s 1, 57-8V c. 12, s. 2; Act 11, 1887, s 2, Act 9, 1890, ss 3 (4), 148 (1), Act 10, 1895, s 2 (1), (2); Ben Act 3, 1899, s 3 (38), Mad. Act 4, 1886, s 2, Mad Act 3, 1904, s 3 (28).

"RAILWAY" means a railway or any portion of a railway for the public carriage of passengers, animals or goods and includes—(*a*) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway, (*b*) all lines of rails, sidings or branches worked over for purposes of, or in connection with, a railway, (*c*) all stations, offices, warehouses, wharves, work-shops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway, and (*d*) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway Act IX of 1890 (Railways), s. 3 (4).

An electric supply and traction company administering a tramway in British India under a license granted under the Tramways Act is not a 'Railway administration. 1937 Lah. 915. As to the law relating to railways *see* Preston, Manual of Railway Law, Hodges on Railways, Balfour Browne and Theobald, Law of Railways; Darlington on Railway Rates and Charges; Butterworth's Railway Rates and Traffic, Robertson's Tramways and Light Railways, Oxley's Light Railways.

ELEVATED-RAILWAY. An elevated bridge-like structure used for purposes of railway—intended to avoid obstruction to traffic on surface roadways.

MILITARY RAILWAY. A railway equipped for military service.

Railway provident fund

PORTABLE RAILWAY A light railway made in detachable sections, and suited for being carried easily from place to place

Railway accident. "Railway accident", as used in a policy of insurance against death or injury in a railway accident, means an accident occurring in the course of travelling and arising out of the fact of the journey It does not necessarily depend on any accident to the railway or machinery connected with it

Railway advice Document sent by a railway company to a consignee of goods intimating that goods are awaiting his orders at a specified station and that demurrage will be chargeable after a date named.

"Railway-administration" defined. Act 9, 1890, S 3 (6).

"RAILWAY-ADMINISTRATION" or "administration," in the case of a railway administered by the Government or a Native Sate, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company means the railway company: Act IX of 1890 (Railways), S. 3 (6). *See also* 1937 Lah. 915.

"Railway administration" means—(*i*) any company administering a railway or tramway in British India either under a special Act of Parliament or of the Indian or a local legislature, or under contract with the Secretary of State for India in Council, the Governor-General in Council or a Local Government or, (*ii*) the manager of any railway or tramway administered by the Governor-General in Council or a Local Government. Act XIX of 1925 (Provident Funds), s 2, cl. (*f*)

Railway car. Vehicle for the transportation of passengers or goods

Railway-carriage Carriage for the conveyance of passengers.

"Railway company" defined. (*See also* Indian Railway Company), 42-3 V c. 41, s 1, Act 9, 1890, s. 3 (5), Act 10, 1895, s 2 (3).

"RAILWAY COMPANY" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway · Act IX of 1890 (Railways), S 3 (5)

"Railway Company" means a Company registered under the Indian Companies Act, 1882, and formed for the purpose of making and working, or making or working, a railway in India, whether alone or in conjunction with other purposes. Act X of 1895 (Railway Companies), S. 2, Cl. 3.

Railway-crossing An intersection of railway lines, an intersection of an ordinary road with a railroad.

"Railway provident fund" defined. Act 9, 1897, S. 2 (3)

"RAILWAY PROVIDENT FUND" means a Provident Fund constituted by the authority of a railway administration for any class or classes of its employees, Act XIX of 1925 (Provident Funds), s. 2, cl. (*g*).

Railway servant

"Railway servant" defined, Act 9, 1890, ss 3 (7), 148 (2)

"RAILWAY SERVANT" means any persons employed by a railway administration in connection with the service of a railway Act IX of 1890 (Railways) s. 3 (7)

Railway Station. "This term is not in ordinary sense used as a description merely of the actual existing structures at a station, but as the description of a space actually set apart for, and generally used as, a resting-place for passengers and place used for traffic, or a place for dealing with traffic in a particular way, although every part of the space is not covered with structures or used for passing along or for deposit" (*per* Brett, L J, *S E Ry* v *Ry. Commrs*, 50 L J Q B 211)

'"LAND USED ONLY AS A RAILWAY' is a very different expression from 'Line of Railway'" (*Lond & N W Ry*, v *Edinburgh etc*, 1897, I Q B 287 per *Wills, J*).

"Land used only as a Railway" includes the platforms, and so much of the station roof as covers a portion of the line of rail, sidings, or platforms, it does not include the station generally, nor the cab drive, nor a cattle landing nor pens beyond the limits of the station, nor a crane in the goods yard (*Adamson* v *Edinburgh*, &c, *Ry*, 2 Macq 331, *Stroude* 1646)

Rais (*A*) A prince or chief; often used in relation to raiyat or subject

'Raisat' is a word which is commonly used to represent "estate" and in Oudh is almost invariably used to describe a taluqdari estate A.I R 1926 Oudh 431.

Raise money To "raise" money, in its ordinary import, is simply to procure it When applied to an individual or a business corporation, it means the procuring of money in any of the usual methods—by note, mortgage, or obligation As applied to municipal corporations, its ordinary import is the procuring of money by taxation or by the obligations of the corporation, and, where a statute authorizes the borrowing of money, the words "to raise money" are equally apt to signify raising by taxation or by issue of municipal bonds

"Raised", as used in a municipal ordinance providing that a certain amount of money shall be raised by the pledge or hypothecation of the stock held by the city, means "borrowed".

Under the provisions of a municipal charter that the amount that may be voted or "raised" within a year shall not exceed a certain per cent. of the valuation, the word "raised" means raised by taxation

Raison d'etre. What accounts for or justifies or has caused a thing's existence

"Raiyasat"—Meaning of *See* 3 O W N (Sup) 56=A I R 1926 Oudh 431, 1 Ind. Cas 395.

"Raiyat" defined [*N. B.* This word is also used in connection with other words (as) Non-occupancy-raiyat, Occupancy-raiyat, Settled raiyat· Under-raiyat. *See also* Ryot] Act, VIII, 1885, S. 5 (2).

Raja.

RAIYAT A subject, but especially applied to the agricultural population, a cultivator, a farmer, a peasant

The word 'Raiyat' is often used in judgments in the sense of tenants of various classes 39 I C 409 =21 C W N 452.

A lessee who takes land for grazing cattle on it, without any connection with cultivation, is not a raiyat within the meaning of sub s. 2 of s. 5 of the Bengal Tenancy Act VIII of 1885. 17 C.L.J. 411 20 Ind. Cas 332 (334).

"Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners. Ben. Act VI of 1908 (Chota Nagpur Tenancy), s. 6.

Raiyat distinguished from 'tenure holder. 33 C W.N 564

"RAIYAT HAVING KHUNT-KATTI RIGHTS" means a raiyat in occupation of, or having any subsisting title to, land claimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family *See* Ben Act VI of 1908 (Chota Nagpur Tenancy), s. 7

"Raiyat holding at fixed rate", defined, Act VIII, 1885, S 4 (*a*)

Raiyati (*H*) A lease given to a peasant or cultivator (*Wil Gloss.* 433)

Raiyati jote *'Raiyati jote'* use of these words in a tenancy—No inference that the right is heritable. *See* A.I R. 1934 Cal 398.

Raiyatwar (*H*) According to or with Raiyats, familiarly applied to the revenue settlement which is made by the government officers with each actual cultivator of the soil for a given term, at a stipulated money rent, without the intervention of a third party: it is the mode of assessment which prevails chiefly, although not exclusively, in the provinces of the Madras Presidency. (*Wil Gloss.* 433)

Raiyatwar-jama-bandi (*H*) Statement of the revenue settlement made with each cultivator.

Raj (*H*) Government, sovereignty. A kingdom. (*Macnaughten's Mohammadan Law*)

The word "raj" by itself does not necessarily imply impartibility 55 I A. 45=55 Cal 403=107 I C 7= 30 Bom. L R 251=A.I.R. 1928 P.C. 10=54 M.L.J. 397 (P C.).

Raja. A king, prince, a title given by the native governments, and in later times by the British governments, to Hindus of rank it is also assumed by petty chiefs in various parts of Hindustan, and is not uncommonly borne by Zamindars. (In sanskrit compounds Raja makes the final short, as *Raja dharma*, the duty of a king· and in the spoken language this is vaguely abridged to Raj, as *Rajdharma*, *Rajdanda* It is of course more correct in all cases to retain the short final vowel, but in compliance with current use some of the compound terms are also given without it. (*Wil. Gloss.* 433.)

Rajab

Rajab (*H.*) The seventh month of the Mohammedan year.

Rajabhagam (*Tel.*) The government share of the revenue or of the crop.

Rajah (Same as Raja) King, prince, chieftain nobleman A title in ancient times given to chiefs of the second or military Hindu tribe only. (*Fifth Report*)

Rajakumar (*Hindi.*) The son of a Raja or prince the name of a numerous and opulent caste in the north-west provinces, following agriculture though claiming to be of the military or regal tribe

Rajapalu (*Karn.*) The Government share of the crop.

Rajaput (*H*) (Rajepoot) A prince, the son of a Raja, the general designation of the races in the north-west of India, who pretend to spring from the ancient dynasties of the sun and moon, forming the Surya-vamsi, and Chandra-vamsi tribes, or from a sacred fire kindled on Mount Abu by the saint Agastya, and who are thence termed Agni-kula of the family of fire from these sources thirty-six primary royal races are supposed to originate. (*Wil. Gloss* 434)

"Rajaswa". A Kabuliat contained a statement as follows "If there be any demand on the Zamindari for any new amount on account of Rajaswa or if any order is passed then I shall without any objection abide by it and pay my rent along with it" *Held*, that the word "Rajaswa' was wide enough to include cess payable under the Bengal Cess Act 57 C L.J. 120.

Rajba Minor or Distributary – Is a Government channel (maintained by and at the cost of Government) which supplies water to watercourses through outlets

Rajgi, (*P*) Sovereignty (*Macnaughten's Mohammadan Law.*)

Rakh. A forest preserve.

Rakhi (*Punjabi*). Protection money levied by the Sikhs from tracts of country which they subdued but did not occupy. It varied from perhaps a fifth to a half of the rental or Government share of the produce.

Raktakodige (*Karn.*) Grant of land rent-free to the family of a servant killed in battle.

Ram. A ram is an uncastrated male sheep.

Rama (*S*) A name given to three of the ten avatars, or Parusurama, or Sri Ramachandra, and Balarama, the name by itself is, in current use, applied especially to the second, the prince of Ayodhya.

Ramanavami, (*H.*) The ninth day of the light half of Chitrai, the birth day of Rama. (*Wil. Gloss.* 436.)

Ramdasi. Sikh followers of Ramdas, the companion of Nana, the first Guru.

Ramgarhia (*Punjabi.*) The name of a Sikh misl called after the fort of Ramgarh at Amritsar.

Ransom debt

Ramjani (*Hindustani,*) A Hindi dancing girl; a courtesan

Rampart. Defensive mound of earth

RAMPART (Milit) That which defends from assault or danger, fort

Ramzan (*A*) The ninth month of the Musalman year, Ramzan is observed as a fast because the revelation of the Koran began in it. Eating and drinking were absolutely forbidden from the earliest dawn till the stars are distinctly visible.

Ran. Uninhabited

Random The word "random", in its popular sense, means done at hazard, or without any settled aim, purpose, or direction, left to chance, or casual or haphazard, and, when the phrase "at random" is used, it is applied to anything done at haphazard or chance.

Ranger. (*In old English law*) An officer of the forest whose office chiefly consisted in preventing and prosecuting trespasses in forests

"Rangoon town", defined. Act 6, 1900, S 2 (*d*); Bur Act 1, 1898, S 2 (49)

Rank Row or line—especially of soldiers standing side by side

THE RANKS Order of common soldiers

RANK AND FILE. Common soldiers; common people. The whole body of common soldiers.

"RISE FROM THE RANKS", (*Milit*) Sand of private or Non-commissioned officer who is given a commission.

Ranker Soldier risen from the ranks.

Ranking (*In Scots law*) Arrangement of the claims of creditors in an order showing their legal priorities

Ranking of creditors. Arrangement of the property of a debtor, according to the claims of the creditors, and the nature of their respective securities.

Ransom. Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize. It is also used to signify a sum of money paid for the pardoning of some great offence, and for setting the offender who was imprisoned.

Fine and ransom go together and some writers tell us that they are the same, but others say, that the offender ought to be first imprisoned, and then redelivered or ransomed in consideration of a fine. (Co. Litt. 127, *Tomlins Law Dic*)

RANSOM. Differs from amercement, being a redemption of a corporal punishment due to any crime. (*Tomlins Law Dic.*)

Ransom bill. An instrument witnessing a ransom contract

Ransom contract. A contract to pay a sum for such a purpose.

Ransom debt The sum agreed to be paid for the redemption of captured property, particularly property captured at sea. (*Kinney.*)

Rao.

Rao (*H*) A Hindu title for a chief or prince amongst the Marathas it is given as a title to distinguished persons, whether military or civil, and is assumed by a caste of Sudras pretending to be descended from the primitive Kshatriya, or military caste (*Wil Gloss* 438)

Rap. (*Lat*) Rape

Rap de femme (*Lat*) Rape of a woman.

"Rape", defined, Act 45, 1860, s 375

RAPE is the carnal knowledge of woman without her consent It must not only be obtained by force and threats, but without the consent and against the will It must be forcible and against the will of the prosecutrix.

The fact that the complainant was not a virgin does not lessen the crime of rape in the slightest degree

"'Rape'. Raptus is, when a man hath carnal knowledge of a woman by force and against her will" (Co Litt 123b).

"Rape is the carnal knowledge of any woman, above the age of 12 years, against her will, or of a woman child, under that age, with or against her will" (*Hale P. C* 628)

"Rape is the act of having carnal knowledge of a woman without her being conscious, of it" (*V R* v *Caplin*, 1 Den. 89)

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions *First*—Against her will *Secondly*—Without her consent. *Thirdly*—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt *Fourthly*—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. *Fifthly*—With or without her consent, when she is under twelve years of age *Exception*—Sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape (Penal Code, S. 375.)

SEDUCTION DISTINGUISHED In rape, force, actual or constructive, is necessary, and the character of the female for virtue and chastity, except as it bears on the question of consent, is utterly immaterial, as is also whether she be a married or an unmarried woman. In seduction, on the other hand, the female must be an unmarried woman, and her consent to the act of sexual intercourse and the surrender of her chastity must have been obtained by means of temptation, deception, arts, flattery, or a promise of marriage.

Rape of the forest. (*In old English law*) Trespass committed in a forest by violence.

Rapine The taking of a thing in private, against the owner's will, is properly theft; but if the taking is openly, or by violence, it is rapine. (*Tomlins Law Dic.*)

Rapprochement. Recommencement of harmonious relations especially between states.

Rate.

Raptor (*Lat.*) (*In old English law.*) Ravished, —a technical word in old indictments

Rasadi assessment. *Rasadi Assessments are progressive assessments* In some cases, it is found desirable not to take a full increased revenue all at once, but to allow the revenue to rise by stages from its old amount to the new one. (*Baden Powell's Land Systems in British India*, Vol. II, p 593)

Rascal A statement that a physician is a "damned rascal" conveys the idea of moral turpitude. (*Words and Phrases.*)

"Rashly" meaning of. *See* L.B R (1893—1900), 426.

"Rashness" meaning of *See* 1 Weir 324=7 M.H. C. 119, *See* 1 Weir 337.

Rasi (*S*) A heap of grain or salt, a heap, pile. *Melurasi* (Tel) A heap of winnowed grain.

Ubhayarasi (Tel) A heap of grain comprising the shares of Government and the cultivator

Rasidbahi Account Book Generally used with reference to tenants' account book regarding payment of rent to landlord.

Rasm (*H*) Custom, usage, law. (*Wil Gloss.* 439)

Rasmi (*H.*) Usual, customary

RASMI (*P*) A sect of fire-worshippers. (*Macnaughten's Mohammadan Law*)

Rasnashin Successor 141 I.C 199=9 O.W.N. 600=A I.R. 1932 Oudh 327.

Rasulshahi (*Hindustani*) Followers of the prophet, the name of a community of Beshara Sunni fakirs.

Rasum (*H*) Fees, perquisites, customary payments and gratuities commission or allowances upon articles bought and sold made to the purchaser or the servant or agent of the buyer or seller: in Kanara, also the allowance in a crop of grain falling to the share of the village corporation. (*Wil. Gloss.* 439)

Rasumdar (*H.*) The holder of certain fees or perquisites

Rasure. A scrapting off; the removal of words from an instrument by scraping off

Ratably. "Ratably", as used in a will making provision for testator's children, and providing that, in case any child should die without issue, then his or her share should be paid ratably to testator's surviving children, is equivalent to the words "pro-rata."

"Rate" defined. [*N.B.* This word is also used in combination with other words (as) occupier's rate; Owner's rate, Rural police-rate.] Act 9, 1890, S. 3 (13), Ben. Act 3, 1884, S. 15, prov.; Bom. Act, 6 1879, S. 3 (1), Mad. Act 2, 1905, S. 5 (11.)

RATE A valuation of every man's estate, or the appointing or setting down how every one shall pay, or be charged with, to any tax. (*Tomlins Law Dic.*)

A "Rate" generally is an impost, usually for current or recurrent expenditure, spread over a district or other local area; and is distinct from an

Rate.

amount payable for work done upon or in respect of particular premises. (per *Brett, L J., Budd* v *Marshall,* 50 L J.Q B 24, 5 C P.D. 481.)

"Rate" is defined by Webster to be the price or amount stated or fixed for anything.

'Rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods; as Railway rate. Act IX of 1890 (Railways), S 3 (13).

Rates Assessment levied by local authorities for local purposes (as) Rates and Taxes.

The word *"rates"* includes any toll, due, rent, rate, or charge leviable under the Port Trust Act Bom Act VI of 1879(Port Trust Act (Bom), S. 3, cl. 1.

A railroad organized under a state charter fixing two rates for the transportation of property, and one for the transportation of passengers, leased its road, to another company, "subject to the rates above mentioned." It was held that the word 'rates" clearly related to the charges fixed for the transportation of property and the conveyance of persons, for there was only one rate as to passengers.

The word "rate" is used with reference both to a percentage or proportion of taxes, and to a valuation of property

"Rate" as used in an Act declaring that the Legislative Assembly shall provide by law for a uniform and equal rate of taxation and assessment, applies to the percentage of taxation, as used in connection with "taxation," and to the valuation of the property, as used in connection with 'assessment."

RATE, PROPORTION, RATIO. Rate and ratio are in sense species of proportion that is, they are supposed or estimated proportions, in distinction from proportions that lie in the nature of things The first term, rate, is employed in ordinary concerns, a person receives a certain sum weekly at the rate of a certain sum yearly ratio is applied only to numbers and calculations, as two is to four. Proportion is employed in matters of science. In the disposing of soldiers a certain regard must be had to proportion in the height and size of the men.

Rate of exchange. The price at which a bill drawn in one country upon another may be sold in the former

Rate of interest In common acceptation, the expression "rate of interest" refers to the percentage or amount of interest, and not to the manner of computing, and the phrase "rate of interest," in a statute providing that parties might agree on any rate of interest, meant the amount of interest, and did not refer to means of computation

"Rateable owner or occupier" defined. Reg. 1' 1883, S. 2.

Rateable payment. *See* 25 Cal 54.

' **"Rateable property'** *prima facie* means, property, in its nature capable of being rated." (per *Lush, J., R* v. *Malden, L R*, 4 Q B. 326)

Rateable value The value of property as the same is assessed in the rate books of the local authorities.

Rated or assessed: The English Metrop. Man. Act, 1855, S. 6, stated that a vestry consisted of

Ratification.

persons "rated or assessed" As to the legal significance of their words *Esher, M R* said "An Assessment seems to me to speak of two operations. The overseers first assess the rate for the whole parish—that is, they consider and determine the amount which is to be raised for the whole parish That having been done the rate is assessed, but has not been made. The next operation is to calculate the amount for which each person is to be liable. But the mere calculation and fixing of the amount which each person is to pay does not impose any liability for the rate has not been made, but when the amount has been assessed, the person is rated by putting the amount of the assessment into the rate book. A person cannot really be assessed, so as in any way to be liable, until he has been rated, nor can he be rated until he has been assessed' The two words 'rated' and 'assessed', therefore, describe the operation which makes a person liable to the rate. That seems to me to show that although the words in S. 6 are 'rated or assessed', yet the proper way to read them is 'rated and assessed', as having reference to one operation (per *Esher, M R*, *Mogg* v. *Clark*, 55 L J Q B. 71, 16 Q B D 79)

Rates, Taxes and duties. "Rates, taxes, and duties" in a lease of city property, obligating the lessee to pay the rates, taxes, and duties, include an assessment under the betterment acts, though it is local and special

"Rates and cesses" defined. Act 16, 1887, S. 4 (11), Act 17, 1887, S. 3 (9).

Ratification Confirmation, Ratification is the adoption of a contract made on behalf of some one whom he did not authorize, which relates back to the execution of the contract, and renders it obligatory from the outset.

A ratification, when fairly made, will have the same effect as an original authority has, to bind the principal, not only in regard to the agent himself but in regard to third persons, and the ratification relates back to the inception of the transaction, and has a complete retroactive efficacy.

RATIFICATION is equivalent to antecedent authority.

Ratification of a contract "must be by an existing person on whose behalf a contract might have been made at the time" (per *Charles, J., Nichols* v. *Regents Canal Co.*, 63 L J Q B 645.)

"Ratification" means the adoption by a person, as binding on himself, of an act done in such relations that he may claim it as done for his benefit, although done under such circumstances as would not bind him, except for his subsequent assent, as where an act was done by a stranger having at the time no authority to act as his agent, or by an agent not having adequate authority To accept the results of the act with an intent to ratify, and with full knowledge of all the material circumstances is a ratification. Ratification makes the contract in all respects what it would have been if the requisite power had existed when it was entered into It relates back to the execution of the contract, and render it obligatory from the outset The party ratifying becomes a party to the contract, and is, on the one hand' entitled to all its benefits. and, on the other, is bound by all its terms.

Latify.

Long acquiescence, with a full knowledge of the situation, amounts to a ratification, and bars the right to recover.

ADOPTION DISTINGUISHED In reference to the adoption and ratification of a contract, there is, in their primary significance, a manifest distinction between the two. The one signifies to take and receive as one's own that with reference to which there existed no prior relation, either colorable or otherwise, while the other is a confirmation, approval, or sanctioning of a previous act or an act done in the name or on behalf of the person ratifying, without sufficient or legal authority, that is to say, the confirmation of a voidable act

Ratify To make valid, to confirm, to sanction an act already done, to give sanction and validity to something done without authority, to give validity to the act of another, usually to approve or confirm by a principal what has been done by an agent or one assuming to act for another

Ratihabitio (*Lat*) A holding as approved, approval or ratification.

Ratihabitio mandato aequiparatur Ratification is equivalent to a command

"Ratihabitio priori mandato aequiparatur" is translated as follows "A subsequent ratification of an act is equivalent to a prior authority to perform such act." It is a maxim borrowed from the Roman law, and now an element in the jurisprudence of every civilized nation.

Rating. The law and practice of *rating* constitutes a system of obtaining money for the relief of the poor or other local purposes. From very early times there seems to have existed an idea in England that every born Englishman was entitled to look to his parish for the means of existence when he was unable to provide it for himself If worn out he was entitled to be supported, and if capable of work he was entitled to have work given to him This relation between a pauper and his parish may have had its origin in the feudal doctrine that the serf belonged to the soil, and therefore it was the land that had to supply him in his want.

In the early times the efforts of the legislature seem to have been directed towards forcing the sturdy vagrant back to his parish and down to quite modern times the object of the Overseers of the Poor used to be to get a pauper back to his parish as soon as possible It was however, found that it was no use sending paupers back to their parish unless there was some means of providing for them when they arrived. And various attempts were made to get together, by way of charity, special funds, etc, but the difficulty seems to have arisen that where some would give, others would not The legislature then called upon the Church to interfere, those who held back were to be exhorted by the bishops and if they still refused, to be put in prison Finally there was an Act passed in the 39 Eliz c 3, which gave power to tax the inhabitants and occupiers of the parish. *See* Ryde's Rating, Castle's Rating, Boyle and Humphreys—Davies' Principles of Rating, Clode's Rating of Railways, Ryde and Konstam's Rating Appeals and Bell's Forms of Appeal in Rating; (*Ency. of the Laws of England.*)

Ravage.

The expression "RATE" OR RATING, OF VESSELS, as used in policies of assurance, means relative state in regard to insurable qualities.

Ratio "Ratio" is variously defined to be the relation between two magnitudes of the same kind; the relation between two similar magnitudes in respect to quantity; the relation between two similar quantities in respect to how many times one makes so many times the other; especially the relation expressed by the division of one quantity by the other, by the factor that, multiplied into one, will produce the other, relative amount, proportion

Where a payment is to be made according to a certain ratio, the word "ratio" imports a payment in certain proportions.

Ratio decidendi (*Lat*) Reason for deciding, the grounds of decision.

Ratio est legis anima, mutata legis ratione, mutatur et lex Reason is the soul of law, the reason of the law being changed, the law is also changed.

Ratio legis (*Lat*) The reason or occasion of a law

Ratio legis est anima legis. The reason of the law is the soul of the law

Ratio legis est anima mutata legis ratione mutatur et lex The reason of a law is the soul of the law, when the reason of a law is changed, the law also is changed.

Ratio Impertinents (*Lat*) Ratio impertinens is an impertinent reason, that is, an argument not pertaining to the question.

Ratio pertinens (*Lat*) Ratio pertinens is a pertinent reason, that is, a reason pertaining to the question

Rational Endowed with reason Webster gives "rational" as a synonym for "sane"

Rational doubt A "rational doubt" is equivalent in an instruction, to "reasonable doubt"

Rational intent A rational intent is one founded on reason, as a faculty of the mind, and opposed to an irrational purpose

Ratione (*Lat*) By reason, on account.

Ratione impotentiae (*Lat*) On account of inability.

Ratione loci (*Lat*) By reason of place.

Ratione materiae From the nature of the subject.

Ratione privilegii (*Lat*) By reason of privilege.

Ratione soli On account of, or with reference to, the soil.

Ratione tenurae (*Lat.*) By reason of tenure.

Raulia A village headman in Kumaun.

Ravage. Lay waste, plunder; make havoc.

RAVAGE, DESOLATION, DEVASTATION. Torrents, flames, and tempests ravage war, plague, and famine desolute; armies of barbarians, who inundate a country, carry devastation with them wherever

they go. Nothing resists ravages, they are rapid and terrible, nothing arrests desolation, it is cruel and unpitying, devastation spares nothing, it is ferocious and indefatigable. Ravages spread alarm and terror, desolation, grief and despair; devastation, dread and horror.

Ravine A ravine is a long, deep, and narrow hollow worn by a stream or torrent of water, a long, deep, and narrow hollow or pass through mountains, hence the presence of water at least occasionally, is almost inseparable from the idea of a ravine.

Ravish "Ravish", from the Latin word "rapuit", imports the use of force,and an indictment for rape, charging that the defendant ravished a certain female against her consent, sufficiently alleges the crime, without an express allegation of the use of force

The term "ravish' imports both force and resistance and includes the meaning of the phrase "carnally know by force and against her will"

Ravishment. (*In old English law*) A forcible taking away, as of a ward

Raw Unmanufactured, crude, un-wrought Hay is a raw or unmanufactured article

Raw materials Products before they have come into the process of manufacture. such as cotton, hemp, etc

"Rawana" defined Ben Act 7, 1864, S 3.

Rawanah (*Persian*) A pass, passport, a port clearance, passport or certificate from a Collector of Customs authorising goods to pass without payment or further duty. (*Wil Gloss.* 441.)

Rawanagi-chithi (*Mar*) A pass, a passport, a port clearance. (*Wil. Gloss* 441)

Rayani muchchilika (*Tel*) An engagement entered into by the villagers for the cultivation of the lands

Rayatawa (*Mar.*) Subjects or peasants collectively, people, peasantry. (*Wil Gloss* 433)

Rayati (*H*) Relating or belonging to a raiyat applied also in Bengal to lands of which the revenue is paid in money in opposition to the khamar lands of which the revenue is paid in kind, also to a settlement direct with the cultivators, also subjection, tenancy. (*Wil. Gloss.* 433)

Razaa (*H*) Fosterage which in Mohammeddan law, constitutes bond of affinity between persons nursed by the same female, analogous to consanguinity so that whatever be illegal by virtue of consanguinity is equally so by that of fosterage (*Wil Gloss* 442)

Razeenamah (*See* Razinamah) A written testimonial given by a plaintiff, upon a cause being finally settled, that he is satisfied (*Fifth Report.*)

Razi (*H*) Consenting, agreeing to, contended or satisfied with · also Raji (*Tel.*) Consent, agreement. (*Wil. Gloss* 442)

Razinamah (*Hindustani*) A deed of agreement or compromise, a written petition withdrawing a charge or plaint, a deed of relinquishment of land.

Re. In old English law. King.

Reactionary. Retrogade, recoiling from progress; a retrogade person.

Read "Read and write," as used in an Act providing that it shall be a cause of challenge if a juror cannot read and write, means read and write the language in which the business of the courts is conducted

A statement in a certificate of the acknowledgment of a deed stating that, "the deed being read to her," the wife had joined in the acknowledgment, was not equivalent to the statutory requirement that the "deed should be fully explained to her." The words "read to her" might import a reading without an understanding

A constitutional requirement which simply declares in general terms, that a bill should be read twice or three times in each house before it can be enacted into a law, cannot be said to carry with it the necessity each reading, though the word "bill," in its meaning, covers the proposed legislation in its entirety.

Where a provision in an Act is amended by the form "*to read as follows*", the intention is manifest to make the provision following a substitute for the old provision, and to operate exclusively in its place. It is intended to prescribe the only rule to govern

"Read Law," as used in a will bequeathing a law library to testator's nephews who may "read law," while not strictly a technical legal term, to which a certain meaning must attach, to the exclusion of all others, is yet an expression which should find its interpretation in the common understanding of lawyers Among lawyers, "to read law" means to take up the study of the law with the purpose of being admitted to the bar and practicing the profession. Its meaning is not confined merely to a preparatory course It may properly be said to include that reading of cases and text-books of which every lawyer does more or less after his admission. It certainly does not mean to read law books casually for amusement or general instruction, nor in a desultory manner As used by the testator it means "become lawyer."

Reader. "The Reader, is he who reads in the Church of God, being also ordained to this that he may preach the Word of God to the people," (Phil Fcc Law. 90)

University lecturer (as) Reader in Roman Law, book of *extracts* for learning a language from

Readings Three presentations of Bill in Parliament—1st for leave to introduce, 2nd for approval of principle and 3rd for acceptance with details settled

Readily. The word 'readily", means quickly, speedily, easily at hand, immediately available, convenient, handy (*Stand Dict.*)

Readiness and willingness. To come within the expression "readiness and willingness" in S 51 of the Contract Act, it is not necessary for a person to prove that on the due date he had the goods actually in his possession It is quite sufficient if he is able to prove that he had control of the requisite goods or that he had the capacity to deliver them to the purchaser when called upon to do so, in other words,

Ready and willing.

that he was in a position to fulfil his part of the contract on the due date on a demand being made by the purchaser. 7 Lah. 318=94 I.C. 304=A.I R. 1926 Lah 318.

"**Ready and willing** imply not only the disposition but the capacity, to do the act" (*per* Abinger, C.B *De Medina* v. *Norman*, 11 L J Ex 322)

"I cannot conceive any circumstance more indicative of want of *readiness* than incapacity" (*per* Bosanquet, J., *Lawrence* v. *Knowles*, 5 Bing N.C 399, 8 L J. C.P. 210)

"In common sense, the averment of Readiness and Willingness (by *e g*, plaintiffs) must be that the non-completion of the contract was not the fault of the plaintiffs and that they were disposed and able to complete it if it had not been renounced or rendered impossible by the defendants" (*per* Campbell, C J. *Cort* v. *Ambergate Ry.*, 17 Q B 144)

Ready money A deed of assignment, directing that the assigned property be disposed of for ready money, means for cash

A bequest of "Ready Money" includes cash at the Bankers whether balance on current account or on a deposit (*Parker* v *Marchant*, 12 L J Ch 385)

Real, reale royal, regal, belonging to the king

Real action, an action for the recovery of real property.

"Action Real,' is that action whereby a man claims title to lands tenements or hereditaments in fee or for life; and these actions are possessory, or ancestral, possessory, of a man's own possession and seizin; or ancestral, of the possession or seizin or his ancestor." (Jacob, *Termes de la Ley*)

"Real actions are those brought for the specific recovery of lands, tenements, and hereditaments The essential and distinguishing fact that gives the action the character of a real action is that it seeks to recover specifically the land and its possession"

A real action is one in which the title to real estate is actually brought in question

Real contract, a contract respecting real property.

Real and personal effects, is "synonymous to substance" (*per* Mansfield, C J., *Hogan* v. *Jackson*, 1 Cowp 307.)

Real covenant. Covenants real are of two kinds First, where a man binds himself to pass a real thing, and, second, where the covenant runs with the land.

Real danger. Real danger is a danger such as is manifest to the physical senses.

Real effects. "Do the words "Real Effects," in law, mean Real Chattels only? No authority has been produced to show that they do. The natural and true meaning of 'Real Effects' in common language and speech is, Real property" (*per* Mansfield, C.J., *Hogan* v *Jackson*, 1 Cowp. 307)

"**Real estate**" defined (*See also* Immovable property.) Act XXV of 1838, S 1.

Real security.

REAL ESTATE. "Real Estate" is a Term of Art to be construed, as a general rule, technically (*per* Chitty, J., *Butler*, v. *Butler*, 54 L.J. Ch 197, 28 Ch D, 66) It comprises all a person's lands, tenements and hereditaments including therein titles of honour and dignity, and also Incorporeal Hereditaments. (*Wms R P Introd*)

The phrase "real estate" in legal signification includes all interests in land, whether in possession, reversion, or remainder.

"The term 'real estate' embraces not only lands, but all improvements of a permanent character placed on real estate, that are regarded as a part of the land"

The words "real estate" shall extend to messuages lands, rents and hereditaments, whether corporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein Act XXV of 1838 (Will), S 1.

Real estate agent or broker One employed to negotiate the purchase or sale of real property, one who buys and sells lands, and obtains loans, etc., upon mortgages, one who negotiates the sale or purchase of real property, one who negotiates the sales of real property

Real estate broker A real estate broker is a person who, for commission or other compensation, is engaged in the selling of, or negotiating sales of, real estate belonging to others

REAL ESTATE BROKERS are brokers who negotiate the sale or purchase of real property In addition to the above duty, they sometimes procure loans on mortgaged security, collect rents, and attend to the letting and sale of houses and lands

Real injury, an injury arising from an unlawful act, as distinguished from a verbal injury

Real party in interest. In statutes requiring suits to be brought in the name of such party, the person who is actually and substantially interested in the subject-matter, as distinguished from one who has only a formal or technical interest in it, or connection with it, the party who is to be benefited or injured by the judgment in the case

Real property [*See* Real estate] The term "real property" at common law was deemed co-extensive with "lands, tenements, and hereditaments"

The word "land" and the phrases "real estate' and "*real property*" include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable, as well as legal.

REAL OR IMMOVABLE PROPERTY consists of (1) lands, (2) that which is affixed to land; (3) that which is incidental or appurtenant to land; and (4) that which is immovable by law.

Real representative He who represents or stands in the place of another, with respect to his real property, the heir or devisee of real property of a deceased person.

Real right, a right of property. (*Kinney.*)

Real security. Security on property, as distinguished from personal security; the security of mortgages or other lines or encumbrances upon land.

Real statutes

REAL SECURITY is a phrase meaning a mortgage of the legal and equitable estate and interest in Real Estate.

A power to invest on *"Real Security"* will not authorize trustees to invest on an equitable, or Second, mortgage. (*Swaffie'd* v. *Nelson*, (76) W N. 255)

Real statutes; statutes which in the main have property for their subject (*Kinney.*)

Real things, (*or things real*) things permanent, fixed and immovable, as lands and tenements, and the rights and profits and annexed to or issuing out of them.

"Real value" defined Act 8, 1878, S 30; Act 2, 1896, S 7 (2), (3).

Real wrong an injury to the freehold (*Kinney.*)

Realisation. Conversion into actual cash of what was previously contingent or doubtful

"COST OF REALIZATION" of an insolvent's effects etc. means, the costs of actual sale, including an abortive sale, when it is a step to realization (*Batten* v. *Wedgwood Co*, 28 Ch D 317).

Realize To convert into cash or into any form whereby it becomes available for immediate distribution. 28 Bom. 264=6 Bom L R 11.

When used in connection with the conversion of claims or demands into money, "realize" is a very broad term, and may reasonably be said to include a realization of money by "compromise".

"REALIZED" IN Provincial Insolvency Act (III of 1907), S 34 does not apply to money which had been attached but had not reached the court which laid the attachment 16 I C 84=9 A L J. 707. *See also* 20 I C 919=1913 M.W N 649

Real Servitude "Real servitudes", which are also called "predial or landed servitudes", are those which the owner of an estate enjoys on a neighbouring estate for the benefit of his own estates They are also called "predial or landed servitudes" because, being established for the benefit of an estate, they are rather due to the estate than to the owner personally

Realm. Kingdom, Sphere, domain.

Realty. A brief term for real property, also for anything which partakes of the nature of real property

The term "realty" in the rule that a tenant at the end of his term cannot take away anything belonging to the realty, includes manure on a rented farm.

REALTY which passes to the heirs, includes manure made in the course of husbandry on a farm, though in piles, and not in a fit condition for incorporation with the soil. (*Ame. Words and Phrases*)

Rear. Back part or space; position at the back of anything especially, an army, camp, or fleet.

Rear-admiral. A navy officer.

Rear-guard. Troops detached to protect the rear.

Rear most. Furthest back.

Reasonable

"Reason to believe" defined (*See also* GOOD FAITH) Act 45, 1860, S. 26, Act 15, 1887, S 3 (6); Act 5, 1892, S 2 (6), Reg. 3, 1881, S 2; Reg. 2, 1888, S. 2 (4); Reg. 4, 1890, S. 3 (5).

"Reason to believe", A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing

Where defendant in slander said his watch had been stolen, and that he had reason to believe plaintiff took it, the words "had reason to believe" amounted to an averment that plaintiff took the watch

"Reason to know". In regard to the liability of warehousemen for a defect existing in their warehouse, of which they knew or had "reason to know," means such a defect as could have been discovered by the use of ordinary care

Reasons of state Political justification.

Reasonable It would be hard to give an exact definition of the word "Reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks The reasoning which built up the old scholastic logic, sounds now like the jingling of a child's toy But mankind must be satisfied with the reasonableness within reach, and in cases not covered by authority, the verdict of a jury (or the decision of a judge) usually determines what is "reasonable" in each particular case, but frequently reasonableness "belong to the knowledge of the law, and therefore to be decided by the Courts". (*Co Litt* 56 *b*, *Stroud*)

There is no point on which a greater amount of decision is to be found in Courts of law and equity than as to what is reasonable It is impossible *a priori* to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is meant by reasonable under the circumstances,—Lord Romilly, M R, *Labouchere* v *Dawson* (1872), L R 13 Eq Ca. 325.

"An attempt to give a specific meaning to the word "reasonable" is trying to count what is not number, and measure what is not space". (*Ame. Words and Phrases*)

By the term "reasonable" is not meant expedient, nor that the conditions must be such as the court would impose if it were called on to prescribe what should be the conditions. They are to be deemed reasonable where, although perhaps not the wisest and best that might be adopted, they are fit and appropriate to the end in view, and are manifestly adopted in good faith for that purpose.

"REASONABLE" is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes a reasonable delay can be determined.

Where an agreement between parties is silent on the point, the law imports a term that the duties are to be performed within a reasonable time, having regard to the subject matter.

The words "ORDINARY" AND "REASONABLE" used in defining the nature of the care and skill expected of a physician or surgeon in his employment, have been interchangeably used.

Reasonable belief.

REASONABLE, RATIONAL Reasonable signifies in accordant with reason, Rational signifies having reason, the former is more commonly applied in the sense of right reason, propriety, or fairness, the latter is employed in the original sense of the word reason hence we term a man reasonable who acts according to the principles of right reason; and a being rational who is possessed of the rational or reasoning faculty, in distinction from the brutes.

"Reasonable belief" 'Reasonable belief" of impending danger, sufficient to justify homicide in self-defence, must be a belief begotten by attendant circumstances fairly creating it, and must be honestly entertained

"Reasonable care'. The expression "reasonable care" means such care as an ordinary man of business or a person of ordinary prudence would take 43 C L J 452=96 I C 199 (2)=A I R 1926 Cal 916, 12 Bom L R 1044=8 I C 752

The expression 'reasonable care' means such care as an ordinary man of business or a person of ordinary prudence would take and it is not enough to assert generally that enquiries should be made or that a prudent man should have made further enquiries but some specific circumstances should be pointed out as the starting point of an enquiry which might be expected to lead to some result Rule as to constructive notice discussed 48 C L J. 374.

REASONABLE CARE is that care and foresight which men of ordinary prudence are accustomed to employ and which they probably would have employed under the exact circumstances of the particular case

Reasonable care and prudence implies the converse of negligence.

"Reasonable care" is construed according to the usages, habits and ordinary risks of the business.

What is to be deemed "reasonable care" within S 41 of the Transfer of Property Act so as to entitle the transferee from an ostensible owner to the benefit of that section, depends on the circumstances of each case 23 A 442=21 A.W N 137. *See also* 1 L. B R. 196

THE REASONABLE AND ORDINARY CARE, SKILL, AND DILIGENCE which the law requires of physicians and surgeons are such as those in the same general line of practice in the same general locality ordinarily have and exercise in like cases. Surgeons should, however, keep up with the latest advance in medical science and use the latest and most improved methods and appliances, having regard to the general practice of the profession in the locality where they practice

The term *"reasonable care"* is synonymous with the term *"ordinary care"* The terms may be used interchangeably

REASONABLE AND PROBABLE CAUSE in a suit for malicious prosecution means "an honest belief, in the guilt of the accused, based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed" The term "malice" in an action for malicious prosecution

Reasonable doubt.

is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives" 6 Bom L.T. 59=20 I C 180 (181). *See also*, 1 C W N 537

REASONABLE AND PROPER CARE AND CAUTION is that degree of care and caution that reasonably prudent persons exercise

Reasonable cause as applied to human action, that which would constrain a person of average intelligence and ordinary prudence, probable cause, legal cause.

"Reasonable cause for remand" defined Act 5, 1898, S. 344, *expln*

Reasonable certainty Reasonable certainty means that which on a fair and reasonable construction may be called certain, without restoring to possible facts which do not appear

"REASONABLE CERTAINTY" is the being free from reasonable doubt"

Reasonable compensation. What is a reasonable compensation for physical and mental suffering is a question of fact depending on circumstances. Such compensation cannot be measured by any unvarying mathematical rule or standard

Reasonable conduct I take it that reasonable human conduct is part of the ordinary course of things *Lindley, L.J* "The City of Lincoln" (1889) L R 15 P D 18

Reasonable custom The period for ascertaining whether a particular custom is reasonable or not is the time of its possible inception and consequently the reasonableness or otherwise must be determined with reference to the period of its commencement and not of its present working. A custom which may be prejudicial to a class but beneficial only to a particular individual, is, no doubt, repugnant to the law of reason But it is not logical to say that what may now appear to be unreasonable must have been so from its inception Every judicial case where a custom has been upheld is evidence of its reasonableness 98 I C 759=A I.R 1927 Nag 89

Reasonable danger "Reasonable danger" is defined, as a danger to be judged of by an exercise of reason and judgment

Reasonable diligence. This phrase has only a relative signification. "It means reasonable attention to business, such diligence as a prudent man would exercise or employ as to his own affairs, such diligence as an ordinarily prudent and diligent person would exercise under similar circumstances"

Reasonable doubt "A reasonable doubt is an honest misgiving generated by the insufficiency of the proof, which reason sanctions as a substantial doubt".

"A reasonable doubt is the doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourselves, '1 doubt if he is guilty', then it is reasonable doubt. It is doubt which settles in your judgment and finds a resting place there".

Reasonable doubt.

REASONBLE DOUBT IS such a doubt as honest, conscientious, painstaking men may entertain upon a state of facts presented to them.

By reasonable doubt is ordinarily meant such a one as would govern or control in business transactions or the usual pursuits of life.

By "reasonable doubt" is not meant certainty beyond all doubt whatever,but that defendant should be acquitted if there is some substantial doubt arising from the evidence or the want of it, which is not a mere possibility of innocence.

"Absolute, mathematical, or metaphysical certainty is not essential, and, besides, in judicial investigation it is wholly unattainable Moral certainty is all that can be required. The truth should be such as to control and decide the conduct of men in the highest and most important affairs of life, and not a mere vague conjecture, a fancy, a trivial supposition a bare possibility of innocence To acquit upon such doubts is a virtual violation of the juror's oath, and an offence of great magnitude against the interests of the society, tending directly to the disregard of the obligation of a judicial oath, the hindrance and disparagement of justice, and the encouragement of malefactors" (*Ame Words and Phrases*)

"Reasonable doubt is NOT A MERE IMAGINARY, CAPTIOUS, OR POSSIBLE DOUBT, but a fair doubt, based on reason and common sense, and growing out of the testimony in the case".

It is impossible to frame a complete satisfactory definition of the expression "reasonable doubt".

In most cases it is better to leave the phrase "reasonable doubt" undefined, save as the words carry their own definition

Evidence is sufficient to remove a "reasonable doubt" when it convinces the judgment of an ordinarily prudent man of the truth of a proposition with such force that he would voluntarily act upon that conviction, without hesitation, in his own most important affairs.

"REASONABLE DOUBT" AND "PRESUMPTION OF INNOCENCE" DISTINGUISHED The "presumption of innocence" is a conclusion drawn by law in favour of the citizen by virtue whereof, when brought to trial on a criminal charge, he must be acquitted unless proven guilty In other words, this presumption is an instrument of proof created by law in favour of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created Reasonable doubt is of necessity, the condition of mind produced by the proof resulting from evidence in the cause it is the result of the proof, not the proof itself, whereas the presumption of innocence is one of the instruments of proof going to bring about the proof from which reasonable doubt arises Thus, one is a cause, the other, an effect." (*Ame. Words and Phrases*).

The reasonable doubt that will justify and require an acquittal must be as to the guilt of the accused when the whole of the evidence is considered, and not as to any particular fact in the case.

The words "reasonable doubt" in cl. (*b*) of S. 25 of the Specific Relief Act, mean a reasonable decent probability of litigation. 2 Bom.L R. 59.

Reasonable mind

Reasonable Efforts. "Reasonable Efforts" to effect Personal Service of Summons "do not simply mean 'reasonable' in the mind of the man who makes them according to his belief of the facts, but they mean 'reasonable' according the actual facts" (*per* Pollock, C B, *Flower* v. *Allan*, 33 L.J Ex. 83, 2 H. & C. 688).

Reasonable enquiry. The question as to what is reasonable inquiry, under a known state of facts, is one of law for the court.

Reasonable expenses Reasonable expenses which are allowable to a wife for the purpose of prosecuting an action for divorce should be construed to include her attorney's fees.

The phrase "REASONABLE AND NECESSARY EXPENSES ACTUALLY PAID IN THE DISCHARGE OF HIS OFFICIAL DUTIES," in an Act authorizing the allowance of such expenses to a county commissioner, means official expenses only, as distinguished from those which pertain to the commissioner's personal comfort and necessities The statute contemplates that emergencies may arise when it will become reasonable and necessary to pay out money in the performance of some of official duty by the commissioner, in order to properly protect the interests of the country, without awaiting a meeting of the board, and the purpose of the provision was to reimburse himwhen, in the language of the statute, the money had been actually paid in the discharge of his official duty. For his personal expenses of any kind he can claim nothing beyond his *per diem* and mileage.

Reasonable fine. "A reasonable *fine* is such as the law will judge to be so but what is reasonable fine is, and who shall be the judge of it, the law has established no fixed rule."—Lord Hardwicke, *Moore's Case* (1736), 17 How St. Tr. 914.

Reasonable ground of suspicion. The reasonable ground of suspicion which will justify an officer arresting a person without a warrant is a deceptive appearance of guilt, arising from facts and circumstances misapprehended or misunderstood so far as to produce belief.

Reasonable hours A term often used in commercial documents in regard to applications, presentments, etc., and mainly to be decided by commercial custom

Reasonable inspection. A rule that a railroad company is bound to make a reasonable and ordinary inspection of foreign cars received for transportation means such an inspection as the time, place, means, and opportunity and the requirements and exigencies of commerce, will permit.

Reasonable men Reasonable men are those who think and reason intelligently.

Reasonable mind. To make a valid will, testator must have a "reasonable mind" that is, he must be capable of reasoning upon and comparing, by means of his own recollection (conception and reflection), the facts perceived and remembered, so as to come to the rational conclusion which constitutes the mental and moral will of every dispassionate and unbigoted man, as drawn by his own induction from known facts.

Reasonable notice.

Reasonable notice. Such notice or information of a fact as may be expected or required in the particular circumstances.

The phrase "reasonable notice," as used in the doctrine that an indorsee of a promissory note, in order to hold the indorser liable, must give a reasonable notice of the maker's failure to pay, is, under the circumstances of the particular case, a question of law for the determination of the court. If the parties live in the same town notice can be given on the same day, if at a distance, by the next post It will not do to say that among agricultural districts this mercantile strictness need not be observed If we adopt mercantile law, we must abide by it (*Ame. Words and Phrases*)

"REASONABLE NOTICE" of a defect in a highway means notice presumed from its open exposure and its long existence.

Reasonable opportunity of being heard in appeal. 101 I C 595=29 Bom L R. 488=1927 Bom. 361

Reasonable possibility is no more than a possibility

Reasonable precautions In an instruction requiring defendant in an action for negligence to have used all *reasonable precautions*, no higher degree of care is required than reasonable care and caution

"Reasonable provocation" is synonymous with "legal, lawful, or adequate provocation," and to constitute such provocation there must be an assault, personal violence, or other good cause for provocation.

Reasonable safety "Reasonable safety" means safe according to the usages, habits, and ordinary risks of the business No man is held to a higher degree of care than the fair average of men in the same line of business, conducted under substantially similar circumstances

Reasonable speed The term 'reasonable speed", as applied to horse cars, means the average rate of carriages used to convey passengers by horse power, and that is a lawful speed in the absence of statute or ordinance on the subject

Reasonable support. "Reasonable support," as used in a will providing that the testator's wife, together with his daughter, should have a "reasonable and competent support" out of the proceeds of the estate, does not mean merely food and clothing necessary to sustain life, nor any other fixed quantity or allowance, but must depend upon circumstances and exigencies.

Reasonable time "That is a reasonable time that preserves to each party the rights and advantages he possesses, and protects each party from losses that he ought not to suffer."

"REASONABLE TIME" is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

If it is proper to attempt any definition of the words "reasonable time," as applied to completion of a contract, the distinction given by Chief Baron Pollock may be suggested, namely, that a "reasonable time" means as soon as circumstances will permit.

Reasonable use

In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the fact of the particular case.

The reasonable time which a passenger is entitled to alighting from a train is such time as is usually required by passengers in getting off and on the train in safety at the particular station in question.

A reasonable time, looking at all the circumstances of the case, a reasonable time under ordinary circumstances, as soon as circumstances will permit, so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done, some more protracted space than "directly", such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances, all these convey more or less the same idea

REASONABLE TIME always depends on the circumstances of the case (*Kinney*)

It is unreasonable for a person who has borrowed ornaments for use in a ceremony to detain them after the ceremony has been completed and the owner has demanded their return 7 O W.N. 769= 126 I.C 682=A I R 1930 Oudh 395.

The "reasonable time" within which a Municipal Committee has to give the notice requiring alteration or demolition under S 66, C P. Municipal Act means such time as appears reasonable after taking into account all the actual circumstances of the case. (*Brightey* v. *Norton*, 32 L J Q B 38, 129 R R. 337, *Gowdwyn* v *Chevely*, 28 L J. Ex. 298, 118 R.R. 658, *Postlethwhite* v *Freeland*, 5 App Case 599, *Hick* v. *Raymond*, 1893 A C *22, ref*) The starting point of this "reasonable time" depends upon when the unsanctioned work came to the notice of the Municipal Committee and in this connection it may be necessary to decide whether with due diligence discovery might not have been made sooner. 11 N L.R. 87= 29 I C 660.

Reasonable use Reasonable use is that which does not unreasonably prejudice the rights of others.

What constitutes a reasonable use of water by a riparian proprietor depends upon a number of circumstances as the subject matter of the use itself, the size of the stream, the velocity of the current, the nature of the banks, the character of the soil, a variety of other facts.

A reasonable use of a stream for mill purpose is one adapted to the character and capacity of the stream In determining this sagacity its condition throughout the year is to be considered. A reasonable use must permit the water to flow in its accustomed way as far as this can be done, and a beneficial use, though a limited one, to be made of the reduced stream each riparian mill owner having his fair proportion.

"Natural and reasonable wear and tear" as used in an article of agreement for the sale of real estate, by which the vendor stipulated to deliver

Reasonable wear and tear.

possession of the premises at a future day in as good repair as they were at the time of the execution of the contract, natural and reasonable wear and tear excepted, means such decay or deprecation in value of the property as may arise from ordinary and reasonable use, and does not include an injury to the property by a freshet.

Reasonable wear and tear. "A phrase which in covenants to return property in as good condition as received has been held not to apply to total loss, either to exonerate the covenantor or, when made the only exception, to render him liable for such loss occurring without his fault."

Reasonably. Webster defines "reasonably as meaning in a reasonable manner in a moderate degree, moderately."

"**Reasonably certain**" as used with regard to degree of proof, is equivalent to "beyond reasonable doubt."

Reasonably convinced. Where a Court instructed that, the moment the jury were reasonably convinced that the evidence was sufficient to overcome the presumption of innocence, the same should thereafter cease to influence their minds, the phrase "reasonably convinced" conveyed the same meaning as "moderately convinced", or "convinced in a moderate degree," and hence the instruction was erroneous.

Reasonably foreseen A consequence which cannot have been reasonably foreseen by a man of ordinary prudence.

"**Reasonably safe and convenient for travellers**" This phrase as used in an Act providing that no city shall be liable for any injury or damage to person or property suffered in a highway, by reason of snow or ice thereon, if the place at which the injury was received was, at the time of the accident, reasonably safe and convenient for travellers, means that a way shall not be deemed unsafe by reason of snow or ice thereon, if it would be reasonably safe andconvenient for travellers but for the presence of snow and ice thereon.

The phrase "reasonably safe," as used in enunciating the principle of law that a master is obliged to furnish 'reasonably safe" appliances for his servants, means safe according to the usages, habits, and ordinary risks of the business. Absolute safety is unattainable, and employers are not insurers They are only liable for the consequences of negligence, and the unbending test of negligence in methods, machinery, and appliances is the ordinary usage of the business.

The elements that enter into the question of the reasonably safe condition of a highway or bridge are numerous and difficult to be described, and whether or not a highway or bridge is in a reasonably safe condition is usually determined by the opinions of those who are not experts, but who have personal knowledge of the places in question in connection with the facts stated by them.

Reasonably satisfied. "Reasonably satisfied," as used in an instruction requiring the jury to be reasonably satisfied of the prisoner's guilt before a conviction could be had, means satisfied beyond a reasonable doubt.

Re-build.

Reassessment. The term "re-assessment" as used in S 557, cl (*d*) of Calcutta Municipal Act (III of 1899) is equivalent to re-valuation, and not the re-imposition of "rate" or 'tax." 33 C 396=3 C.L J. 169=10 C W N 289.

Re-assurance A contract that a first insurer enters into to release himself from a risk which he has incautiously undertaken by throwing it upon some other insurer

Re-assurance or Re-insurance. is a contract, whereby an insurer procures the whole or a part of the same which he has insured (*i.e.*, contracted to pay in case of loss, death, etc.) to be insured again to him by another person

Rebate Discount, reducing the interest of money in consideration of prompt payment, the abating what the interest of money comes to, in consideration of prompt payment. (*Tomlins Law Dic.*)

"REBATE," says Webster, "is to abate or deduct from to make a discount from the amount due for prompt payment."

In insurance, rebates are deductions from stipulated premiums allowed in pursuance of an antecedent contract.

REBATE OF INTEREST is defined to be a discount or abatement of interest on sums of money not yet due and payable It is not a payment back of interest due and which has been paid.

Rebellion "means such an insurrection against lawful authority as is void of all appearance of justice."

Among the Romans, where those who had been formerly overcome in battle, and yielded to their subjection, made a second resistance it was rebellion: but with us it is generally used for the taking up of arms traitorously against theKing whether by natural subjects, or others when once subdued. (*Tomlins Law Dic.*)

"A "Rebellion" involves the idea of an attempt to set up an Usurped Power" (per *Mansfield, C.J.*, *Langdale* v. *Mason*, cited Civil Commotion.)

Rebellious mob The difference between a rebellious mob and a common mob is that the first is in treason and the latter a riot

"**Re-build**" does not include repair. U.B.R. 1904, 3rd Qr., Municipal, 3.

An agreement to "re-build" a building on the same site as the existing one, does not, by the word "re-build," involve the obligation to re-build the new in the same manner, style and shape, and with the same elevation, as the old building. (*Low* v. *Innes*, 4 D. G. & J. & S 289.)

In dealing with the word, "re-building" *North, J.* said, "I think it is a question of fact in each particular case. Supposing most of the house front were pulled down and a small part left and the rest of the house were re built, it could not be said that there was not a *'re building'* Again, if the house were burnt and the walls were left standing and made use of in erecting the new house, there would none the less be a 're-building' Nor would the introduction of alterations and enlargements make any difference if the site were slightly shifted. If the house were built at a distance that would be another matter. I do not think, however, it

Rebuttable presumption.

follows that every re-building would be a re-building authorized by the section For example supposing a tenant for life of a large estate or his predecessor had been content to live in some mere farmhouse or a small villa residence, if he were to erect a large mansion with all the requirements suited to his position as the owner of such an estate, I do not think that that ought to be considered a 're-building' within the enactment I think there must be really a substantial re-building and not merely alterations and enlargements."

Rebuttable presumption A presumption which may be rebutted by evidence.

Rebuttal The introduction of rebutting evidence, the stage of the trial at which such evidence may be introduced, also the rebutting evidence itself.

Rebuttal evidence Rebuttal evidence is that which is given to explain, repel, counteract, or disprove facts given in evidence by the adverse party. Anything may be given as rebuttal evidence which is a direct reply to that produced by the other side.

Rebutter A defendant's answer of fact to a plaintiff's sur-rejoinder, the third pleading in the series on the part of the defendant (3 Bl. Com 310.)

Rebutting evidence is "a term particularly applied to that evidence given by plaintiff to explain or repel the evidence given by defendant, evidence adduced to rebut a presumption of fact or of law. that is, to avoid its effect, and evidence adduced to destroy the effect of prior evidence, whether by explanation or direct denial."

Rebutting testimony is addressed to evidence produced by the opposite party, and not to his pleading.

Recall. The word 're-call' in S. 256, Crim. Pro Code does not mean re-summon. After the examination and cross-examination of the prosecution witnesses, a charge was framed and the Magistrate for reason recorded in writing required the accused to state forthwith whether they would cross-examine any and what witnesses for prosecution. He further said that the counsel would have opportunity of cross-examining then or never *Held*, that the procedure adopted by the Magistrate was correct (8 A L.J. 707, *Rel on*) 31 Cr.L J. 764=125 I C. 32=A.I.R. 1930 All 495

Recaption. The right which a person has to retake goodsor chattels or which he has been wrongfully deprived by another. "If a man takes my goods and carried them into his own land, I may justify my entry into the said land to take my goods again, for they came there by his own act." (Vin, Abr, "Trespass," I. a.)

RECAPTION is a species of remedy by the mere act of the party injured. This happens when any one hath deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child, or servant in which case the owner of the goods, and the husband, parent, or master may lawfully claim and retake them wherever he may find them, so it be not in a riotous manner or attended with a breach of the peace.

Recede. Withdraw: go back; decline in value.

TO RECEDE, RETREAT, RETIRE, WITHDRAW, SECEDE. Withdraw is the more familiar term: retire may

Receipt.

likewise be used for an army; but it denotes a much more leisurely action than retreat: a general retreats by compulsion, from any enemy, but he may retire from an enemy's country when there is no enemy present Secede is used only in this sense: a person recedes from his engagement, which is seldom justifiable, he retires from business, or withdraws from a society To secede is a public act. men secede from a religious or political body, withdraw is a private act; they withdraw themselves as individual members from any society

Receditur a placitis juris potius quam injuriae et delicta maneant impunita. A maxim meaning, "Positive rulesof law (as distinguished from maxims or conclusions of reason) will be receded from[(*i e*) given up] rather than crimes and wrongs should remain unpunished

Recedunt sine die (*Lat.*) Go without a day.

"Receipt" defined Act 2, 1899, s. 2 (23).

"RECEIPT" includes any note, memorandum or writing—(*a*) whereby any money, or any bill of exchange cheque or promissory note is acknowledged to have been received, or (*b*) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or (*c*) whereby any debt or demand or any part of a debt or demand,is acknowledged to have been satisfied or discharged, or (*d*) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person, Act II of 1899 (Stamp) S. 2, cl 23, *see also* 1 Weir 901.

RECEIPT is an acknowledgment of payment or delivery, an acknowledgment of the fact of payment or other settlement between debtor and creditor, a written acknowledgment of something received as of right by the party writing a written admission made by the party signing it, of the fact which it recites.

RECEIPT is an Acknowledgment in writing of having received a sum of money, or other valuable consideration, it is a voucher either of an obligation or debt discharged, or of one incurred.

A receipt is a written admission of the fact of payment and receipt of money

"No particular form of words is necessary to constitute a Receipt. The word 'settled' or 'paid,' or any other word purporting to give a discharge, together with the signature of the creditor, or his mere signature on a document specifying the amount due without any other words indicating payment, is sufficient (*R. v. Martin*, 7 C. & P. 549).

A receipt is merely evidence of a fact. It is not an agreement requiring consideration to make it a valid contract. A.I.R. 1924 Nag. 156.

RECEIPT AND CONTRACT Receipts are the acknowledgments of one party only, and differ from contracts, in that receipts may be varied by parol evidence, which is not permitted in respect to contracts.

A receipt is not usually conclusive as between the immediate parties, and is not within the rule which excludes parol evidence to vary the terms of a written instrument.

Receipt

A receipt is the written acknowledgment of the receipt of money or a thing of value, without containing any affirmative obligation upon either party to it—a mere admission of a fact in writing, but, when a receipt contains stipulations which amount to a contract, it becomes a contract, and must be governed by the law of contracts, and can be avoided only by fraud, mistake, failure of consideration, rescission, or some way known to the law.

RECEIPT AND RECEPTION Receipt comes from receive, in its application to inanimate objects, which are taken into possession Reception comes from the same verb, in the sense of treating persons at their first arrival in the commercial intercourse of men, the receipt of goods or money must be acknowledged in writing, in the friendly intercourse of men, their reception of each other will be polite or cold, according to the sentiments entertained towards the individual.

RECEIPT AND RELEASE A receipt is mere evidence of a fact, and differs from a release

"Receipts arising from business" The expression "receipts arising from business" in Cl. (*vii*), S 4 (Income-tax Act) means 'receipts arising from the carrying on of business" (56 C 211, *Disappr*) 59 I A 206=59 Cal 1343=136 I C 742=A.I R. 1932 P.C 138=63 M L J 124 (P C).

Receipt in full. A receipt in full contains a declaration that a certain sum has been paid in full of all claims of a certain kind or of all demands,

Adding the words "in full" to the receipt does not necessarily make it conclusive.

"Receipt of assets". *See* 35 I C 850

Receiptor. A name given in some of the American states to a person who receives from the sheriff goods which the latter has seized under process of garnishment, on giving to the sheriff a bond conditioned to have the property forthcoming when demanded or when execution issues.

Receivable Malins ,V.C. said,—"I myself should have held that the words 'receivable' and 'payable' were the same thing, and that both were equivalent to 'vested", but I am happy to find that the judgment of the M R, in *Hayward* v *James*, (29) L.J Ch 822, 28 Beav 523), expresses exactly the same conclusion" *West* v. *Miller*, 37 L.J. Ch 426, L.R 6 Eq. 59).

Receive. To receive means to get by a transfer, as, to receive a gift, to receive a letter, or to receive money and involves an actual receipt

"Received" (in O 21, r. 89, C P C) An amount which has been deposited cannot be said to have been received within the meaning of O 21, R. 89 (1) received means received free from qualifying adverbs and cannot mean "virtuallyor constructively received" 141 I C. 167=36 L.W. 917=1933 Mad 263 *See also* 55 All. 123=143 I.C. 127=1933 All. 155.

"Receive and retained". The words "receive" and "retained" in S. 56, Act II of 1874 Administrator-General's Act, bear a restricted meaning, and refer rather to the receipts or retention by an executor or administrator of commission or agency charges from the assets of the estate than from any third person, 22 C. 14.

Receiving order.

Receiver A receiver is one who receives the money of another to render an account

A Receiver is an indifferent person, standing between the parties to a case, appointed by the Court to receive and preserve the property or funds in litigation *pendente lite*, when it does not seem reasonable to the Court that either party shall hold it A receiver is not the agent of either party.

Generally speaking, a Receiver "is an indifferent person between the parties appointed by the Court to receive the rents and profits of real estate, or to act in and collect personal estate or other things in question, pending the suit, where it does not seem reasonable to the Court that either party should do so, or where a party is incompetent to do so, as in the case of an Infant". (Dan Ch Pr. 1409). He is said to be the arm and the hand of the Court, a part of the machinery of the Court, by which the rights of parties are protected.

A Receiver is an officer of the Court, appointed for the benefit of all parties who may establish rights in the property, the funds in his hands being *custodia legis* for all who can make out title to it

The office of receiver is "purely ministerial and temporary in its nature" The receiver appointed is the officer and representative of the Court, subject to its orders, accountable in such manner and to such persons as the Court may direct, and, having in his character of receiver no personal interest but that arising out of his responsibility for the correct and faithful discharge of his duties is of no consequence to him how, when, or to whom the Court may dispose of the funds in his hands, provided the order or decree of the Court furnishes to him a sufficient protection

RECEIVER AND INTERIM RECEIVER. *See* 95 I C. 705= 1926 Sind 199.

RECEIVER AND MANAGER "A receiver means, a person who receives rents or other income of property but he does not manage the property in the sense of buying and selling or anything of that kind. The Receiver merely takes the income and pays necessary outgoings, the manager carries on the trade or business" (per *Jessel, M R, Re Manchester and Milford Ry.* 49 L J Ch 369)

Receiver of stolen property. A receiver of stolen property is one whoreceives into his possession or under his control, with felonious intent, any stolen goods or chattels, with knowledge that they have been stolen.

Receiver pendente lite. A receiver *pendente lite* is a person appointed to take charge of the fund or property to which the receivership extends while the case remains undecided.

Receiving notes. Documents signed by shippers requesting the chief officer of a ship to receive on board specified goods.

Receiving order. (*In insolvency*) means, an order whether interim or not, "which takes the receipts out of the hands of the debtor, and leaves him no longer the power of satisfying claims for wages and salaries" (per *Cave, J, Re Smith*, 55 L.J Q B. 291)

RECEIVING ORDER. Is an order of a court of bankruptcy, on a petition presented by a debtor or cre-

Receiving stolen goods.

ditor placing the debtor's estate in the hands of the official receiver.

Receiving stolen goods The crime of receiving stolen goods includes generally the receiving, buying, concealing or aiding in concealing goods stolen or embezzled, with knowledge that they were so stolen or embezzled, and with fraudulent intent to deprive the true owner thereof

As regards receiving of stolen goods, "a person is said to receive goods improperly obtained as soon as he obtains control over them from the person from whom he receives them. (*Steph. Cr* 282)

The offence of "receiving stolen property" under section 411, Indian Penal Code, is constituted only on proof of the accused's knowledge or belief that the property was stolen and of his having received the goods in that state of mind, it is not enough to prove that the accused must have suspected that the property was stolen. 35 Ind. Cas. 488, per Justice Seshagiri Aiyar

Recent. In reference to the presumption arising from *recent possession of stolen goods* after a larceny has been committed, "recent" is a relative term, and a time which might be construed recent under one state of facts would not be so under another and different state of facts

Receptator. (*Lat*) A receiver or harborer of a robber or other felon.

"Reception order" Means an order made under the provisions of the Lunacy Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition; Lunacy Act (IV of 1912), S. 3

Receptor. (*In old English law*). Receiver, a receiver.

Receptor denariorum. (*Lat.*) Receiver of moneys.

Receptrix. A female receiver.

Recess. The word "recess", when applied to a legislative body, means a temporary dismissal, and not an adjournment *sine die*, and means only the intermission between sittings of the same body at its regular or adjourned session, and not to the interval between the final adjournment of one body and the convening of another at the next regular session.

Recessus maris · (*Lat.*) A going back, relicton or retreat of the sea.

Recidivism. Habitual relapse into crime.

"Reciprocal promise" defined Act 9, 1872, S. 2 (*f*).

Reciprocal will. The term "reciprocal will" is used to designate wills made by two or more persons in which they make reciprocal testamentary provisions in favour of each other, whether they unite in one will or each executes a separate one.

Reciprocity.—A term used in various connections by writers on legal and diplomatic subjects; the word in each case being employed in its ordinary signification.

Reckless.

To constitute a binding contract between parties, it is said there must be *"reciprocity of assent"* between them that is, there must be an assent on the part of each to the contract; there need not necessarily be "reciprocity of obligation" (*Broom, Common Law*, 9th ed, pp. 300, 301)

The expression "RULE OF RECIPROCITY" is employed by writers on international law, to denote that in war one belligerent in its treatment of the person and property of the enemy is guided by the conduct in the like circumstances of the other belligerent, thus if the one belligerent releases, on parole, prisoners of war, the other does the same. *See* Halleck, International Law, 3rd ed., vol. II, pp 34, 35.)

In political science, the term is applied to the securing in commercial treaties between nations equal rights to be mutually enjoyed *e.g.* the admission mutually of goods on equal terms

"Reciprocating territory" means any part of His Majesty's Dominions outside British India in respect of which the Maintenance Order Enforcement Act for the time being applies. Act XVIII of 1921 (Maintenance Order Enforcement), S. 2

Recital A recital is the setting down or report of something done before.

Recital is the rehearsal or making mention in a deed or writing of something which has been done before.

Recitals in a deed, agreement, or other formal instrument are statements introduced to explain or lead up to the operative part of it. They are generally divided into narrative recitals setting forth the facts on which the instrument is based, and introductory recitals explaining the motive of the operative part (*Sweet, Law Dict*)

"A Recital is not conclusive, because it is no direct affirmation, otherwise, by feigned Recitals in a true deed, men might make what title they pleased, since false Recitals are not punishable" (*Co. Litt. 532 Tomlins, Law Dic*)

A recital in a deed is a notice to a purchaser of the fact recited.

The term "recital", as used in the law of estoppel, applies to all material statements of fact contained in the instrument A particular recital states some fact definitely Particular and definite recitals are conclusive evidence of the material facts stated.

Recite. Reciting a statute, in pleadings, "is quoting or stating its contents."

Reckless, Recklessly, Recklessness. "Recklessness" is synonymous with "heedlessness" and "indifference", as, for example, an engineer who drives his locomotive across the streets of a large city, with indifference as to whether a party may be injured or not, is acting recklessly.

"RECKLESSNESS", in a moral sense, means a certain state of consciousness with reference to the consequences of one's acts. No matter whether defined as indifference to what those consequences may be, or as a failure to consider their nature or probability

Recklessness.

as fully as the party might and ought to have done; it is understood to depend on the actual condition of the individual's mind with regard to consequences, as distinguished from mere knowledge of present or past facts or circumstances from which some one, or everybody else, might be led to anticipate or apprehend them if the supposed act were done.

RECKLESSNESS HEFDLESSNFSS NFGLIGENCE The use of the word "reckless", in connection with averments of facts to which it refers and explains, may imply more than mere heedlessness or negligence.

"Recklessness" is an indifference whether wrong done or not, an indifference to the rights of others. In popular use "recklessness" is a stronger term than mere or ordinary negligence.

"RECKLESS CARELESSNESS," as used in connection with an action for negligence, means reckless indifference, not mere negligence or inadvertence

Re-claim The term "re-claim" means only the recovering of the land from the inroads of the sea, and does not include the further obligation of rendering the land fit for cultivation 25 B. 32=2 Bom L R. 499. *See also* 1 B. 513.

TO RECLAIM, REFORM A man is reclaimed from his vicious course by the force of advice or exhortation; he may be reformed by various means, external or internal. A parent endeavours to reclaim a child, but too often in vain, the offender is in general not reformed by punishment.

"Reclaimed land" defined Ben Act, 6, 1880, S. 3

Reclamation. Act of reclaiming (as, of waste land.)

Reclamation. The word 'reclamation' means the bringing into cultivation of land not previously cultivated. 15 R. D. 582=12 L R. 320 (Rev.)

Recluse "Recluse', so called by the order of his religion, he is mostly shut up in his cottage, and never comes out of his place" (*Co. Litt.* 258b, *Termes de la Ley*)

Reclusion. Reclusion means incarceration under a sentence to undergo an infamous punishment, including civil degradation.

The words "RECLUSION" AND "SECLUSION" have quite different meaning The former signifies an involuntary, the latter a voluntary, confinement "Reclusion" is a legal word, a technical expression, to which a legal signification or meaning attaches. Legislation, jurisprudence, and commentators accord in expounding it as being a temporary afflictive, and infamous punishment, consisting in being confined in a hard labor institution, and carrying civil degradation. (*Ame, Words and Phrases.*)

Recognizance. An obligation of record, entered into before a Court or officer duly authorized for that purpose, with condition to do some act required by law, is a recognizance.

"A Recognizance, is the Acknowledgment of a Debt due to the King, defeasible upon the happening of a certain event, *viz.* the appearance of the party in Court pursuant to the terms of the condition. In this respect, a Recognizance resembles a Bond in its nature" (per *Wightman, arg. R* v. *Dover.* I Cr. M. & R. 733).

RECOGNIZANCE AND BOND. Recognizance is an obligation of Record, which a man enters into before some Court or Magistrate duly authorised, with condition to do some particular act, as to appear at the court to keep the peace, to pay a debt or the like It is, in most respects, like a bond, the difference being chiefly this, that the bond is the creation of a fresh debt, or obligation *de novo*, the Recognizance is an acknowledgment of a former debt or obligation. (*Tomlins Law Dic*)

A recognizance differs from a bond in this: that while the latter, which may be attested by the signature and seal of the obligor, creates a fresh or new obligation, the former is an acknowledgment or record of an already existing debt. But the principal difference lies in the fact that a recognizance is a matter of record in the nature of a conditional judgment, and is proceeded upon by court process or summons.

A recognizance is more than an ordinary bond. It can be treated and enforced as a judgment, and its name, "recognizance," that is to say, acknowledgment, shows the importance of the acknowledgment before a proper officer

Recognize The word "recognize," according to the best lexicographers, signifies to admit, to acknowledge something existing before.

RECOGNIZE, ACKNOWLEDGE. To recognize is to take cognizance of that which comes again before our notice, to acknowledge is to admit to one's knowledge whatever comes fresh under our notice

RECOGNITION OF BELLIGERENCY is an accordance by a foreign government of belligerent rights to another mass or body of people engaged in civil war, by which such people are granted the rights of civilized warfare and assume the burdens thereof.

"Recognized agent" defined. Act 18, 1881, s. 4 (4); Reg. 1, 1877, S. 28.

'Recognized agent of landlord" defined Act 8, 1885, S. 145.

"Recognized agent of prince or chief" defined. Act 5, 1908, S. 85.

"Recognized share of survey number" defined, Bom Act 5, 1879, s. 3 (7).

Recollect An affirmation in an answer that the defendant does not *recollect* having done an act means that he does not remember having done it, and is not that amount to a direct and unequivocal denial, nor to a declaration that he does not believe he did it

Recommendation. An expression of opinion by a Court perfectly competent to deal with the matter in issue between the parties is binding on and conclusive between them in regard to that matter, notwithstanding the fact that the opinion was expressed in the form of a recommendation, and not in the form of a decision. This is especially so when the parties have for a period of nearly 50 years treated that expression of opinion as binding 21 I.A. 131=22 C. 214=6 Sar. 473 (P.C.)

Reconsider. "Reconsider," as used in an Act, providing that, upon the return by the mayor of a

Reconsideration

vetoed ordinance with his objections, the aldermen shall at their regular meeting order the objection entered on the journal, after which they shall proceed to *re-consider* the same, means the taking up of the matter and discussing it The word "reconsider" is not given the artificial meaning which it may have acquired in strict parliamentary proceedings, but only the ordinary meaning, which is to think or consider the matter over again, for the purpose of passing upon the matter on such second consideration.

A resolution adopted by the city council that a certain ordinance theretofore enacted "be reconsidered" does not amount to a repeal of such ordinance

Reconsideration Reconsideration, in parliamentary law, is defined to be taking up for renewed consideration that which has been passed or acted on previously.

"Reconstruction" defined. Mad. Act 3, 1904, S. 3 (29), Mad Act 2, 1907, S 4

Reconstruct- reconstruction. "Reconstruct" means to construct again, to rebuild, to form again or renew.

A building is properly said to be reconstructed when it is rebuilt or restored to its original condition after having been wholly or partially demolished.

It is a question of fact whether the reconstruction of any particular wall or portions of a building is substantially a re-construction of the building.

RECONSTRUCTION AND REPAIR. "Reconstruct" is not equivalent to "repair." *See* 6 Bom L R 1028

To reconstruct is to construct or build again, so that under an obligation to repair one cannot be compelled to reconstruct.

The word "re-construction" as used in City of Bombay Municipal Act, 1888, has a meaning different from the words "addition," "alteration," and "repairs" Therefore, the word "re-construction" must be taken to denote certain other elements than addition alteration or repair 6 Bom L R. 1028.

"RECONSTRUCTION OF A Co, "is really a sale out and out,—a voluntary winding-up followed by an actual, complete, legal, sale of all the rights of the Co It is a sale to a stranger,—a Co. called into existence for the express purpose The sale is a complete a legal sale as if the assets of the Co were sold to any person or corporation utterly unconnected with the Co" (*per* Kekewich, J, *Simpson* v *Palace Theatre*, 69 L. T. 70)

Reconveyance. A Reconveyance in English law is the document which a mortgagor takes from his mortgagee when he pays off mortgage

Record A memorial or remembrance, an authentic testimony in writing. A memorial of a thing done, a writing preserved as evidence, a transcription into something permanent for preservation as a memorial.

"A record is a memorial of what has been done, authentic written evidence, considered as either public or private but usually public.

The record of an Action is a memorial of the pleadings and acts in an action brought in a Court of Record. (Co. Litt. 260 a, 117. Jacob).

Record, matter of.

A *record of a court* has a fixed judicial meaning, and certain requisites are essential to give to it a character which the term implies.

The record of a court contains only those things which are essential to a valid proceeding, such as the nature of the issue, the presence of a judge, and, in respect to a jury, that it was of the proper number of proper men, properly qualified and returned by the proper officer.

A record is a memorial of a court of justice, which the law deems authentic above all contradiction.

In the language of Lord Coke, "records" are memorials or remembrances in rolls or parchments of the proceedings and acts of a court of justice, which hath power to hold plea according to the course of the common law, and are of such incontrollable credit and verity that they admit no averment, plea or proof to the contrary.

The term "record" is ordinarily applied to public records only, in which sense a record is a written memorial made by a public officer authorized by law to perform that function, and intended to serve as evidence of something written, said or done To constitute a public record there must be at least these elements, namely, that it must be a written memorial, must be made by a public officer, and that officer must be authorised by law to make it; but the authority of the officer need not be derived from express statutory enactment. Records may be either of legislative or judicial acts

"To record" means to recite, to repeat, to transcribe *See* 28 C 348=5 C W N 65=8 Bom.L.R 950 =5 Cr L J 4

RECORD, REGISTER, ARCHIVE. Records are either historical details, or short notices; registers are but short notices of particular and local circumstances, archives are always connected with the state, every place of antiquity has its records of the different circumstances which have been connected with its rise and progress. In public registers we find accounts of families, and of their various connections and fluctuations, in archives we find all legal deeds and instruments which involve the interests of the nation, both in its internal and external economy

Record book. A miscellaneous book, devoted to the record of exceptional, instruments, and properly indexed, constitutes a proper record book.

Record, debt of. Debt which appears to be due by the evidence of a court of record, such as a judgment-debt.

Record office. Office in which state papers and records are kept, stored and calendered.

Record, matter of, matter evidenced by record and provable only by the record or an authenticated copy.

FILING PAPER OR RECORD. A paper or record is deemed to be filed, when it is delivered for that purpose to the proper officer and received by him, and it is not necessary to the filing of a paper that it shall be endorsed as having been so filed. The file-mark of the officer is evidence of filing, but is not the essential element of the act.

Record-of-rights.

"Record-of-rights" defined, Act 18, 1881, S, 4 (17), Act 11, 1898, S 2 (1), Ben Act 3 1895, S. 2 (2), P. Act 1, 1902, S. 2 (g), P Act 3, 1905, S 3.

"RECORD OF-RIGHTS" includes the supplementary administration paper prepared at or after the time of making a settlement. C. P. Act XVIII of 1881. (Land Revenue), S 4, Cl. 17.

"Recorded co-sharer" defined Act 17, 1876, S. 69.

RECORDED CO-SHARER A co-sharer in a mahal whose share is recorded in "shamilat" with all the other pattidars, is a "recorded co-sharer" within the meaning of S 93 N W P. Rent Act. 7 A. 891=5 A W N. 287

"Recorded landholder' defined Reg 1, 1886, S 3, (i).

"Recorded possession" defined Reg 1, 1886, S 3 (i).

"Recorded proprietor" defined Ben Act 7, 1876, S 3 (9). Ben. Act 5, 1897, S 3 (vi), Reg. 1, 1886, S. 3 (i).

RECORDED PROPRIETOR.—Means any proprietor whose name, and the character and extent of whose interest in an estate or revenue-free property, stand registered in any general Land Revenue register [*See* Ben Act III of 1876 (Land Registration), S 3, Cl. 9]

"Recorded sharer" defined. Reg 1, 1886, S 3 (i)

"Recorder" (*of Rangoon*) defined, Act 11, 1889, S 3 (6)

"Recording officer" means any officer duly empowered to make or amend entries in the settlement-register or other settlement records. Bom Act I of 1880 (Khoti Settlement), S 3, Cl. (11)

"Recording reasons in writing" The natural meaning of S 90 of the Criminal Procedure Code is that the Court should record its reasons in writing The adoption of a stereotyped printed form is not a sufficient compliance with the imperative language of the section. 38 Cal 789=15 C W.N 1001=15 C.L.J. 186=11 I C. 593=12 Cr. L.J 409

Recordasunt vestigia vetustatis et veritatis Records are the traces of antiquity and of truth.

Recordum (*Lat*) A record

Recoup To make good; to indemnify.

Recoupment Act of compensating for work done or money expended, recovering what one has done for the benefit of another "If the defendant is made liable for the conversion or the price of a chattel which he has himself repaired or essentially enhanced the value of, at his own expense, under the belief that the title was in himself, he is not to be made liable for that portion of the value which he has himself contributed. This is called 'recoupment'.

"RECOUPMENT is the act of rebating or recouping a part of a claim upon which one is sued by means of a legal or equitable right resulting from a counter-claim arising out of the same transaction. It is the right of defendant, in the same action, to claim damages from plaintiff, either because he has not complied with some cross obligation of the contract upon which he sues, or because he has violated some duty which the law imposed upon him in the making or performance of that contract. In its original strict sense it was a mere reduction of the damages claimed by the plaintiff, by proof, of mitigating circumstances connected with or growing out of the transaction upon which plaintiff's claim was based showing that it would be contrary to equity and good conscience to suffer plaintiff to recover the full amount of his claim, being considered in the nature of a doctrine of mere mitigation of damages, and was of very limited application But in more recent practice the doctrine has been greatly extended in its application and is now generally regarded as in the nature of a cross action, the right of plaintiff to sue being admitted, but defendant alleging that he has been injured by a breach of another branch of the same contract on which the action is founded and claiming to stop, cut off, or keep back so much of plaintiff's damages as will satisfy the damages which have been sustained by defendant" (*Ame. Rul. Case Law*)

Recourse.

COUNTER-CLAIM AND RECOUPMENT. Counter-claim is distinguishable from recoupment in that it is a purely statutory remedy, and recoupment is a development of the common law, and while in the case of a counter-claim defendant can recover an excess of his claim over plaintiff's recoupment is limited to the amount of plaintiff's demand and will not authorise a judgment in defendant's favour for an excess: but with these qualifications recoupment and counter-claim operate somewhat similarly, when the matter to be recouped arose out of the contract set forth in the plaint as the foundation of plaintiff's action.

RECONVENTION AND RECOUPMENT Reconvention is a civil law term signifying an action by a defendant against a plaintiff in a former action, based upon cross demands of either a liquidated or unliquidated nature growing out of or connected with a principal cause of action, and although it has been said that the reconvention of the civil law corresponds to modern recoupment as a remedy, the term is more extensive than either recoupment or set-off, and is in the nature of a cross action seeking equitable relief. (*Ame Rul. Case Law*)

RECOUPMENT AND SET-OFF Recoupment and set-off are distinguished from each other in several essential particulars Recoupment is a remedy of common-law origin, and set-off is wholly a creation of statute; recoupment is allowed for torts, and in actions for torts while as a general rule, set-off is allowed neither for torts, nor in actions for torts, in recoupment the damages claimed by defendant must flow from the same contract as that relied on by plaintiff, or must grow out of the same transaction as that on which plaintiff's cause of action is founded, while in set-off defendant may base his claim on matters extrinsic to plaintiff's cause of action, in recoupment the damages may be unliquidated while only liquidated damages or those capable of being ascertained by mere calculation may be set-off. (*Ame. Rul. Case Law.*)

Recourse. The word "recourse", in an act of sale excluding recourse as well as warranty, "carries but one idea, and that is that there shall be no reversion or coming back upon the seller in consequence of anything which might happen to the buyer because of

Recourse.

his purchase of the property "No recourse" means no access to, no return; no coming back upon, no assumption of any liability whatsoever, no looking to the party using the term for any reimbursement in case of loss or damage or failure of consideration in that which was the cause, the motive, the object, of the undertaking or contract" To be successful in a suit, to obtain a favourable judgment, to obtain by means of an action; to succeed in an action, to get or obtain again; to get renewed possession of, to win back, to regain

TO RECOVER, RETRIEVE, REPAIR, RECRUIT. Recover is the most general term, and applies to objects in general, retrieve, repair, and the others, are only partial applications, we recover things either by our own means or by casualties, we retrieve and repair by our own efforts only we recover that which has been taken, or that which has been any way lost, we retrieve that which we have lost; we repair that which has been injured; we recruit that which has been diminished We give that up which is irretrievable, we lament over that which is irreparable, our power of recruiting depends upon circumstances, he who makes a moderate use of his resources, may in general easily recruit himself when they are gone.

Recover. The word "Recover" has a technical meaning in law whereby it signifies, to recover by action and by the judgment of the Court. (*Wigens* v. *Cook*, 28 L J C P 312).

Recoverable. The plain, ordinary and natural meaning of the word "recoverable" is that which is able to be, or is capable to be, or is capable of being recovered, obtaining "obtainable from a debtor or possessor, as by legal process". It means that which can be recovered as a matter of legal right.

Recovery. The actual possession of anything, or its value, by judgment of a legal tribunal, the obtaining of anything by judgment or trial at law, the obtaining of a thing as the result of an action brought for the purpose, the obtaining of right to something by a verdict and judgment of a Court from an opposing party in a suit

RECOVERY, RESTORATION. We recover the thing we have lost when it comes again into our possession; but it is restored to us by another; a king recovers his crown by force of arms from the hands of an usurper, his crown is restored to him by the aid of his people; the recovery of property is good fortune; the restoration of property an act of justice.

REWARD ON RECOVERY OF LOST ARTICLE A Reward "on Recovery" of property (lost or stolen) and conviction of offender, without more, is payable only to the person "who is the original and meritorious cause of the recovery" and conviction (*per* Tindal, C. J., *Thatcher* v. *England*, 3 C. B 262, 15 L. J C. P. 243).

Recovery by suit in S. 16, Bengal Tenancy Act, 1885, cannot be construed to mean "realize by suit" 24 C. 241=1 C. W. N. 98.

Recovery of land. Suit for "Recovery of Land", is equivalent to an action of ejectment to obtain possession; and does not include an action for Declaration of Title. (*Gledhill* v. *Hunter*, 49 L J. Ch. 333).

Rectory.

Recreant (*Fr*) Cowardly, faint-hearted; craven apostate. (*Tomlins Law Dic.*)

Recrimination. A counter-accusation; an accusation made by an accused party against the accuser.

RECRIMINATION Indulging in mutual charges or counter-charges, retort, accusation.

The general doctrine of the law, that *recrimination* is a defence to a suit for divorce, has always been recognised and upheld by the Courts, and, as has often been said, rests upon the soundest reason and the clearest principles of morality and justice.

"Recruit" defined. Act, 5, 1869, Pt 1, Cl. (*e*) (9).

RECRUIT is a newly enlisted and not yet trained soldier, a person who newly joins a society or organization

"Recruiter" defined Act 6, 1901, S. 2 (2) (1) (*o*) Act 17, 1908, S 2 (1) (*viii*), Eng Army Act, 1881, S 80 (1).

RECRUITER. In the English Army Act, 1881, a "Recruiter" is defined as a person "authorized to enlist recruits in the Regular Forces".

"Recruiting district". Act, 6, 1901, S. 2 (1) (*p*).

Recruiting expenses. "Recruiting expenses", as used in a statute ratifying, confirming, and making valid the acts and doings of cities and towns in paying or agreeing to pay bounties and recruiting expenses for soldiers furnished by them, should be construed to mean only the costs and charges which had accrued in procuring or enlisting troops for future service, and could have no reference to expenditures for or on account of those who had previously enlisted and were already in the army.

"Rectification" defined. Mad Act 1, 1886, S. 3 (19).

Rectifier (*in liquor trade*). A rectifier is one who changes liquors by adding to them, or compounding them, or rectifying them.

Rectify. "Rectifying," means correcting; amending, refining by distillation, purifying; adjusting, Rectifying is not a process of manufacture.

"Altering the Register of a Company so as to make it conformable with a lawful transfer is not to "rectify' the Register. (per *Lindley, L.J.*)

Rectitude. Moral uprightness; righteousness.

RECTITUDE, UPRIGHTNESS. Rectitude is properly rightness, which is expressed in a stronger manner by uprightness: we speak of the rectitude of the judgment; but of the uprightness of the mind, or of the moral character, which must be something more than straight, for it must be elevated above everything mean or devious.

Rector. "'Rector' signifies a governor; a rector is one that hath the charge or cure of a Parish Church" (*Cowel*: *Tomlins Law Dic*)

Rectory. A rectory or parsonage, as known in the Church of England, "consists of a glebe, tithes, and oblations established for the maintenance of a person or rector, to have the cure of souls within the parish".

Rectory,

"RECTORY' *per se*, will generally carry the tithes and glebe," but it may be restricted by the context so as not to include either. (*Wilson* v. *Loveland*, 7 Ir L.R 237, 239,)

Rectory. In ecclesiastical law, the office of a rector; an entire parish church, with all his rights

RECTORY, PARSONAGE, VICARAGE "By the grant of a Rectory, or Parsonage, will pass the house, the glebe, the tithes, and offerings, belonging to it And by the grant of a Vicarage will pass as much as doth belong unto it, as the Vicarage house, &c." (*Touch*, 93.)

Rectum. (*Lat*) In old English law, Right law, a right claimed by a party.

Recurrent insanity. "Recurrent insanity" is insanity which returns from time to time, and there is no presumption that such fitful and exceptional attacks of insanity are continuous

"Recurring" means a happening again and again not that which occurs only once 58 Mad 8=7 R M. 293=152 I C 927=40 L W. 763=1934 M.W N 808= A.I.R. 1934 Mad 653 (2)=67 M.L J. 532 (F B.)

Recusant Person who refuses submission or compliance, Recusant, is one who obstinately refuses to frequent Divine Service in the Church of England (65th Canons Ecc. 1604),

Recusatio Judicias (*Lat*) Exception to a Judge upon any suspicion of partiality.

Red. A term sometimes applied to a revolutionary politician

RED Revolutionary politician,

Red-cross. St George s cross or emblem of England, emblem of ambulance service in war.

Red-handed In the act of crime (as) a thief caught red-handed.

Red Tape "Red tape" is order carried to fastidious excess, system run out to trivial extremes.

Red-tapism. The system of formal routine in Government and other public Offices.

Reddendo (*Lat*) Rendering, the formal word by which in old conveyancing a rent was reserved to a grantor.

Reddendum. In conveyancing, rendering, yielding. The technical name of that clause in a conveyance by which the grantor creates or reserves some new thing to himself, out of what he had before granted; that clause in a lease in which a rent is reserved to the lessor, and which generally commences with the word "yielding".

Reddi, (*Tel*) The name of the principal caste of Telinga cultivator· a chief farmer or cultivator, especially the headman of a village in the Telinga country, who is more properly designated as the Pedda-reddi, the senior or great reddi or villager (*Wil. Gloss.* 442)

Redeem. The word "redeem" means to purchase back.

"To redeem is to purchase back; to regain, as mortgaged property, by paying what is due; to receive back by paying the obligation".

Redress.

The word "redeem" means repurchase. The words are synonyms. The old practice, prevailed in England, of making absolute conveyances of land by way of mortgage, with a covenant to reconvey upon the payment of the debt, an actual real conveyance being made. The mortgagor in getting such reconveyance is said to *redeem* the mortgage

The provision in S. 1 of the *Bengal Regulation* (XV of 1793) that a mortgage shall be deemed to be cancelled and redeemed does not mean redeemed in the full sense of the word. 34 All. 261=9 A.L J, 131 =13 I C. 963

To REDEEM, RANSOM Redeem is a term of general application, ransom is employed only on particular occasions we redeem persons as well as things, we ransom persons only, we may redeem by labour, or anything which supplies an equivalent to money we ransom with money only we redeem a watch, or whatever has been given in pawn, we ransom a captive.

"REDEEM UP AND FORECLOSE DOWN." When there is more than one mortgage upon a property, then the rule is, redeem up, and foreclose down, which in fact means that the first mortgagee suing for foreclosure must make all subsequent mortgagees parties to the suit and so afford each in turn the chance of redeeming before being foreclosed 13 Bom L.R. 162=10 I C 749

Redeemable "Redeemable", as applied to Debentures, imports, *prima facie*, an option to the Co., not an obligation to redeem. (1898, 1 Ch. 263).

Redeemable rights Rights which return to the conveyor or disposer of land &c, upon payment of the sum for which such rights are granted

Redeemed The word "redeemed" as used in Regulation XV of 1793, S 10, does not mean that the mortgage has been redeemed in the full sense of that word, that is, satisfied and possession given to the mortgagor. 7 A L.J 963=7 I C 385.

Redelivery, A yielding and delivering back of a thing

Redemption (*See* Redeem). A repurchase, a buying or getting back. By a mortgagor, a buying back of the legal estate after it has passed to the mortgagee.

Redemption of mortgage Paying off the principal sum, and interest due on a mortgage, and thereby redeeming the charge

Redistribute To apportion a new

Redistribution. A second or renewed distribution.

Reditus (*Lat*) A rent; a payment. a thing rendered, paid or yielded.

Reditus nigri, black rents or black mail.

Reditus quieti: quit rents.

Reditus siccus· rent sock, dry or barren rent.

Re-draft New bill of exchange in place of one that has been protested

Redress. To set right, to compensate; to make amend to; relief, reparation.

REDRESS, RELIEF Redress is said only with regard to matters of right and justice, relief to those of

Reduce to possession

kindness and humanity. an injured person looks for redress to the government an unfortunate person looks for relief to people with compassion what we suffer through the oppression or wickedness of others can be redressed only by those who have the power of dispensing justice, whenever we suffer, in the order of Providence, we may meet with some relief from those who are more favoured. Redress applies to public as well as private grievances, relief applies only to private distresses

To REDUCE, LOWER A man is said to be reduced to an abject condition but to be lowered in the estimation of others, to be reduced to a state of slavery, to be lowered in his own eyes

Reduce to possession. To "reduce to possession" is to change a right existing as an actionable claim into actual custody and enjoyment.

'Reduced to writing" meaning of. 14 Pat.L T 543=1933 Pat 589=147 I.C 142.

Reducing into possession is the conversion of a thing in which one has the right of action into actual possession.

Reductio ad absurdum. (*Lat.*) Proof of the falsity of a principle etc given by producing a logical consequence of it that is absurd

"Re-engagement" has no definite legal meaning it can only be explained by illustrations, and its meaning must be determined on the fact of each case as a question of fact. (*Arnold* v *Stratton*, 14 Times Rep. 537, *Robey* v. *Arnold*, Ib 220, *Stroud* 1690).

Re-entry A clause usually inserted in leases, that upon non-payment of rent, &c. the term shall cease.

The resuming or retaking of a possession of land or other immovable property that one has lately foregone.

"Re-erect" defined Ben. Act 3, 1899, S 3 (39), Ben. Act 1, 1900, S 4

RE-ERECT. "The expression *'re-erect,'* when used with reference to a building, includes—*(a)* the reconstruction of a building after more than one-half its cubical extent has been taken down or burnt down or has fallen down, *(b)* the conversion of one or more huts or temporary structures into a masonry or framed building, and *(c)* the conversion into a place for human habitation of any building not originally constructed for human habitation Ben. Act I of 1900 (Municipal), S. 41, cl 35.

"RE-ERECT" does not include repair **U B.R. 1904, 3rd Qr., Municipal, 3.**

"RE-ERECT". *See* 9 Bom L.R 932=6 Cr L.J. 236.

"Re-examination", defined Act 1, 1872, S. 137.

RE-EXAMINATION The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination (Evidence Act, S 137)

Re-exchange Loss incurred on a dishonoured foreign bill.

RE-EXCHANGE. The amount which the holder of a bill of exchange protested for non-payment is entitled to receive, with his expenses and interest, from the drawer or indorser, to indemnify him for its non payment

RE-EXCHANGE "Re-exchange" is the measure of damage sustained by the holder of a dishonoured Bill of Exchange drawn in one country on a person in another country, and is payable in addition to the amount of the Bill (*Williams* v. *Ayers*, 47 L.J.P C. 1; 3 App. Cas. 133 Chalmers, 193.)

Re-exportation. The exportation of imported goods

Re-eve. A Magistrate of town, or district.

Reeve, reve (*In old English law.*) A ministerial officer appointed to execute process, a chief officer or governor, a superintendent

Refectio (*Lat.*) Repair; reparation, as of a way etc

Referantus ad justiciarios n'ros de banco, et ibi termi nentur. (*Lat*) They shall be referred to our justices of the bench, and shall be there determined.

Referee Arbitrator Umpire; person chosen to decide between opposing parties.

REFEREE A person to whom a cause pending is referred by the court, to take testimony, and report to the court, and upon whose report judgment may be entered

REFEREE. A referee is an officer of the court, for a specific purpose, exercising judicial powers and authority He may be a person chosen by the parties or by the court, or one appointed as official or standing referee

References A Reference is sending of a pending cause or some question therein by the court in which it is pending to a private person to hear and determine the cause or some question therein or to take evidence and report the same, with or without his opinion thereon, to the court. The person to whom the reference is made is usually termed a referee.

KINDS OF REFERENCES. References are divisible into references by consent of the parties, and compulsory references They are further divisible into (1) references to hear and determine all the issues, (2) references to hear and determine part of the issues, (3) references merely to take and state an account, (4) references to report on a particular question of fact involved; and (5) references merely to take testimony.

Reference. (*Among Merchants.*) A person or firm to whom inquiries may be addressed regarding the character, stability, or position of the one giving the reference.

CROSS-REFERENCE. Reference to another passage in the same book.

Referendo singula singulis. (*Lat.*) Referring separate words to separate subjects; making a distributive reference of words in an instrument; construing distributively.

Referendum. A method of submitting an important legislative measure to the direct vote of the whole people, system by which a question is submitted to the direct note of the whole electorate taking of plebiscite.

Reforest. To plant again with trees.

Reform. To create; to make anew; to rectify.

REFORM, REFORMATION. The concerns of a state require occasional reform, those of an individual require reformation,—the term reform conveying the idea of a complete amendment, reformation implying only the process of amending or improving.

Reformation The act of reforming what is defective or evil, or the state of being reformed; correction or amendment, as of life or manner, or of a government

Reformation or rectification of instruments Reformation is that remedy by means of which a written instrument is made or altered so as to express or conform to the real intention of the parties when some error or mistake has been committed. This rule is usually limited to mistakes of fact, although relief has sometimes been granted because of a mistake of law. The power of equity to reform or rectify written instruments is an extraordinary one, and its exercise must be carefully guarded and granted only in a clear case. Reformation is not a primary right, but operates indirectly, that primary right may be conserved and protected To enforce agreements, fairly and legally made, is one of the peculiar branches of equity jurisprudence Now then, if an instrument, intended as the execution of an agreement, from some cause is insufficient for that purpose the agreement remains as much unexecuted as if the parties thereto had refused to comply with it, and equity will carry out the intention of the parties when clearly shown Equity looks to the substance not to the form of the transaction, and gives effect, not to the mere words which the parties may have used, but to their actual intention, and enforces the agreement which the parties really made, not that which they had not made, but seemed to have made It is wholly immaterial from what cause the defective execution of the intent originated. The correction of an instrument does not affect the agreement itself. It merely makes the written evidence of the agreement correspond to the understanding of the parties. And it must always be borne in mind that, although equity may grant relief from a mistake in a contract where there is fraud, or the mistake is mutual, a contract which the parties intended to make, but did not make, cannot be set up in place of one which they did make but did not intend to make. (*Ame. Rul. Case Law*)

Reformatories The term "reformatory" includes all institutions and places in which efforts are made either to cultivate the intellect, instruct the conscience, or improve the conduct; places in which young persons and delinquents are detained for either of these purposes by force

The right of a state to establish reformatories and to provide for the commitment therein of minors rests upon the principle that it has a parental authority to what is for the benefit of the child

A law authorizing the commitment to a reformatory of a juvenile delinquent is quasi-criminal, to say the least of it, and must be strictly construed; and hence those who execute the law must find their powers in the law or they do not exist. An Act authorizing punishment by imprisonment in a reformatory, and expressly requiring that its provisions shall apply to a given district, does not authorize imprisonment of persons convicted in any other district (*Ame Rul case Law*).

Reformatory Any place in which persons voluntarily assemble or are forcibly detained for purposes of instruction and discipline.

Refractory metal. Refractory earth or metal is one that requires extraordinary heat to refuse it

Refresher. Extra fees paid to counsel in a prolonged case.

Refuge. Shelter from pursuit or danger or trouble (as) city of Refuge

Refuge. That which affords shelter or protection; an asylum or retreat

Refugee one who flees for refuge to another country—especially from religious prosecution or political commotion

HOUSE OF REFUGE An institution for the shelter of the destitute

Refund To repay, to give back, to restore; reimburse

Refunding bond A bond for the refunding of money paid, if it appears to have been not payable—paid prematurely or exacted without right.

Refuse (*noun*)·—"Refuse of any Trade, Manufacture, or Business," means, the livings (comparatively worthless) of materials used for the peculiar purpose of any trade, manufacture, or business (*St. Martin's* v. *Gordon*, 60 L.J.M C. 37).

"REFUSE MATTER", as used in an ordinance empowering the board of health of the city to contract for the removal of such refuse matter as accumulates in the preparation of food for the table, embraces nothing which has not been refused or rejected as unsuitable for table use It may be thus rejected, because it has little or no value for human food, or because it is decayed or unwholesome. It must in its nature be perishable, and can include little which is not liable to become decomposed or offensive if left where it falls. The term "refuse matter" can only extend to matter which is, in fact, noxious, or which has been refused or rejected by the owner as worthless. (*Ame. Words and Phrases*)

'HOUSE REFUSE", includes, ashes, cinders, rubbish, nightsoil, and filth, but does not include Trade Refuse.

'STREET REFUSE', means, dust, dirt, rubbish, mud, road-scrapings, also, ice, snow, and filth" (*Saunders* v. *Holborn*, (1895), I Q B. 64, 64 L.J Q B. 101).

'TRADE REFUSE', means, the refuse of any trade, manufacture, or business, or of any building materials (*Stroud*)

Refuse (*verb*) "The word 'refuse', as defined by the Century Dictionary, means to deny, as a request, demand, or invitation; to decline to accept; to reject, as to refuse an offer".

REFUSAL TO ACCEPT AND REFUSAL TO REGISTER — S. 76 (*a*) of the Registration Act III of 1877 shows that the case of "refusal to accept" was within the meaning of the words "refusal to register". S. 77, of

the Act applies to the refusal to register a document as well as to refusal to accept the same for registration 10 M.L.J. 104; but *see also* 21 B. 699.

REFUSAL TO CARRY OUT A CONTRACT, as, for instance refusal to pay and take delivery of goods amounts to "a dispute between the parties' and justifies a general reference to arbitrators under the Arbitration Act. 12 I.C. 187

"Refused"—on a postal cover. The Court must be guided in each case by its special circumstances as to how far it will give effect to the return of a cover endorsed "refused" or the words to the like effect No hard and fast rule can be laid down for guidance of courts. 35 Bom 213=13 Bom.L.R. 323=11 I C. 351.

TO REFUSE, DECLINE, REJECT, REPEL, REBUFF. To refuse is said only of that which passes between individuals, to reject is said of that which comes from any quarter requests and petitions are refused by those who are solicited · opinions, propositions, and counsels are rejected by particular communities: the king refuses to give his assent to a bill, the parliament rejects a bill To repel is to reject with violence to rebuff is to refuse with contempt We repel the attack of an enemy, we rebuff those who put that in our way that is offensive

"REFUSING TO COMPLY" ordinarily means the same as "failing to comply".

"REFUSING TO GIVE THEIR EVIDENCE," The words "refusing to give their evidence" in Sch II, Para, 7 cl. (2) of the C P. Code, 1908, refer to the case of a person who refuses to give evidence when placed on oath and is required to answer questions put to him, and not to a case where a person elects not to produce any evidence in his case. 8 A.L J. 929=11 I. C. 259.

Regain. To gain back; to recover possession.

Regal, belonging to a King, kingly, royal.

Regalia. The rights and prerogatives of a king, emblems, and symbols of royalty, decorations and insignia of an office or order (*Webster*).

Regalia. The Royal Rights of a King, which the Civilians reckon to be six, *viz* Power of judicature, of life and death, of war and peace; masterless goods, as waifs, estrays, &c, assessments; and minting of money. (*Tomlins L. Dict*)

Regalia majora: (*Lat*) rights or prerogatives that are a part of the king's sovereignty

Regalia minora (*Lat*) rights of prerogatives that are conferred upon the king

Regency. Body of men entrusted with vicarious government (as) a regency constituted during a king's minority; territory governed by a regent or regency, period during which a state is governed by a regent.

Regia via (*Lat*) The royal way, the king's highway.

"Regimental" defined. 44-5 Vc. 58, s. 190 (17).

Regimental. In the Army Act, 1881, 'Regimental' means, connected with a Corps, or with any Battalion or other subdivision of a Corps" (Sub-s 17, s. 190).

Region. A large tract of land; a country, a district; a realm or kingdom, an administrative area. "A strictly correct definition of the word "region" is neighbourhood, vicinity, district, quarter, or ward." (*Ame. Words and Phrases*).

"Register" defined Bom Act, 1, 1892, s. 4 (*k*).

Register. As a noun, an official record, in reference to the records of the clerk of a court, a book in which the clerk is to enter the title of the action. with brief notes under it from time to time, of all papers filed and proceedings had therein As a verb, to enter in a register, to record formally and distinctly, to enrol, to enter in a list.

REGISTER is a book in which items are recorded for reference official list (*e.g*) of births, deaths, marriages, voters etc,

Register Case In Criminal Procedure Code (Act V of 1898), S. 350, Proviso (*a*) is a preliminary enquiry into an accusation of an offence triable exclusively by a Court of Session 1 I.C 54=5 M L.T. 218=9 Cr.L.J. 146=32 M 218.

Register of Mutations (*Dakhil kharij*.) This is the important register of changes, by aid of which the jamabandi is kept correct There is an abstract statement made out from it, giving the year's total of transactions—both as regards owners and hereditary (or occupancy) tenants. It will be observed that there are details in the Rules as to what transactions are entered, and no mutation is incorporated in the jamabandi till a revenue officer has passed orders on the register, allowing the fact. A copy of all entries attested in this way is attached to each yearly jamabandi as a voucher for the charges noted in it. (*Bad. Pow* II, 562 567)

"Registered" defined Act, 1,1869, s 2, Act 11,1876 s. 3, Act 2, 1882, s 3, Act 4, 1882, s 3, Act 8, 1885, s 3 (18), Act 10, 1885, s. 1, Act 22, 1886, s 3 (14), Act 10, 1897, s 3 (45), Ben Act 6, 1908, s 3 (xxii), Bom Act 1, 1904, s 3 (37); Bur Act 1 1898, s 2 (50), E B & A Act I, 1909, s 5 (50), Mad Act I, 1891, s 3 (28); Mad Act III, 1896, s 2, P Act I, 1898, s 2 (47), U P Act II, 1901, s 4 (11), U. P. Act I, 1904, s 4 (35).

"Registered" Means registered according to the provisions of the rules relating to the registration of assurances for the time being in force. U P Act I of 1869 (Estates), S 2.

"REGISTERED'. Means registered in British India under the law for the time being in force regulating the registration of documents, Act IV of 1882 (Transfer of Property), S. 3.

Unless there be something repugnant in the subject or context "registered" means registered under the law for the registration of documents for the time being in force. Act II of 1882, Trusts, S. 3.

"REGISTERED". Used with references to a document, shall mean registered in British India under the law for the time being in force for the registration of documents. Act X of 1897 (General Clauses), S. 3 (45).

The word "registered" in S. 49 of the Registration Act III of 1877, has reference only to the act of registration by the registration officer. 18 M. 364; *See also* 24 M.L.J. 664.

Registered and notified incumbrance.

The word "registered" in Arts 115 and 116 of the Limitation Act includes articles of association registered under the Indian Companies Act and is not confined to registration under the Indian Registration Act. (42 M 33, *Foll*) 54 Bom 226=32 Bom. L R. 232=A.I R. 1930 Bom. 572.

"Registered and notified incumbrance" defined Act 8, 1885, S. 161 (*b*).

Registered bonds. Bonds for security against robbery or loss, registered in the holders' names in the books of the company or state issuing the bonds.

"Registered firm". *See* 137 I C 903=34 Bom. L R. 110=A I.R. 1932 Bom, 116.

"REGISTERED FIRM" Means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Income-tax officer in the prescribed manner, Act XI of 1922 (Income-tax), S. 2, cl 14.

"Registered holder" defined. Mad Act 4, 1897, S 3 (*iv*) (*b*).

Registered letter, parcel, mail etc Letter, parcel or mail, the addresses of the sender and consignee of which are, on payment of a special fee, registered in the post office and the transmission and delivery of which are specially attended to with certain formalities prescribed by rules.

"Registered medical practitioner", defined. 49-50 V. c. 48, S 29

"Registered occupant", defined Bom Act 5, 1879 S 3 (17)

"Registered occupant of survey number" defined. Bom. Act 1, 1880, S. 26

"Registered office of company" defined Act 6, 1882, S 243.

"Registered society" In the Co-operative Societes Act means a society registered or deemed to be registered under that Act Act II of 1912 (Co-operative Societies), S 2, cl (e)

Registered stock Stock registered in the same manner as mentioned in regard to registered bonds above

"Registered talukdar" defined. Bom Act 6, 1888, S. 2 (1) (b).

"REGISTERED TALUQDAR" means a sole taluqdar, or the eldest or principal of several co-sharers of a taluqdari estate, whose name is authorizedly entered in the Government records as holding such estates, or as the representative of the several co-sharers holding the same, Bom. Act VI of 1888 (Guzarat Taluqdars), S 2, cl (b).

"Registering officer" defined. Act 6, 1901, S. 2 (1) (*g*), Act 17, 1908, S. 2 (1) (*ix*).

"Registrar" defined. Act 2, 1912, S. 2 (*f*) Act, 5 1912, S 2 (9); Act 6, 1912, S. 2 (9), Act 7, 1913, S. 2 (15). Ben Act 1, 1876, S. 2.

REGISTRAR. A registrar of deeds is a public officer authorised and required by law to keep records of instruments in writing, especially instruments affecting the title to real property. Notwithstanding the performance of his duties requires, to some extent, the exercise of judgment and discretion, the office of register of deeds is essentially a ministerial one

'Registrar General of births, deaths and marriages" defined Act 15, 1872, S 3.

"REGISTRAR-GENERAL OF BIRTHS, DEATHS AND MARRIAGES',' means a Registrar-General of Births, Deaths and Marriages, appointed under the Births. Deaths and Marriages. Registration Act, XV of 1872, (Christian Marriage), S 3.

"Registrar of births" defined. Bom. Act 1, 1892, S 4 (*j*).

"Registrar of births and deaths" defined. Act 6, 1886, S. 3

'REGISTRAR OF BIRTHS AND DEATHS", means a Registrar of Births and Deaths appointed under this Act Act VI of 1886 (Births, Deaths and Marriages Registration), S 3.

"Registrar of joint stock companies" defined, Act 6, 1882, S 255

"Registration" defined. Bom. Act 1, 1892, S 4 (*k*).

The term "registration" includes the getting made and the making of certain endorsements, making the certificate of registration and the copying of the documents in the register book and the filing of the map or plan, if any, in the Registrar's office books. The substantial portion is apparently complete with the making of the certificate of registration. (1913) M W N 525=24 M L J. 664=14 M L T. 237=20 Ind. Cas. 385 (386).

Registration amounts to notice 1 Bur. L.J 204= A I R. 1923 Rang. 41 *See also* 89 I C 625=1925 Nag 398.

Registry. Act of registering, enrolment, registration, Place where public registers are kept, an official record book or entry in the same.

Regular. Webster defines "regular" to mean conformable to a rule, methodical, periodical

"REGULAR" is derived from "regula", meaning "rule," and its first and legitimate signification, according to Webster, is "conformable to a rule, agreeable to an established rule, law, or principle, to a prescribed mode, or according to established, customary forms".

"Regular appeal". The term "regular appeal", means nothing more than a general ordinary appeal, an appeal lying on every ground of error, whether of fact or of law, and should not be confined to appeals from a decree. 6 B H.C.R (A.C.) 205.

Regular army. Army composed of regular soldiers.

Regular clergy. Among Roman Catholics, monks as opposed to parish priests.

Regular clergyman. Cotton, L.J said, " '*Regular clergyman*' at least requires that he shall be regular in performing Divine service, not only with reference to the doctrine he preaches, but as regards performing, in the proper way, the church services".

Regular course of business

"**Regular course of business**". A note is said to be transferred in the regular course of business when it is used in such a way that a business man of ordinary intelligence and capacity would receive it, when offered for the purpose in which it is transferred, as money, and would give credit therefor without any suspicion of the integrity thereof.

"**Regular forces**" defined. 44-5 V. c 58, S. 190 (8).

"**Regular line of street**". defined. Ben. Act 3, 1899, S. 350. Bom. Act 3, 1888, S 297 (2)

Regular market price "Regular market price" is the same as "current market price" (*Ame. Words and Phrases*)

Regular meeting A regular meeting of a board of trustees is such a meeting as the law requires to be held at a stated time and place.

Regular panel The expression 'regular panel", in reference to juries, means the number of persons who are to constitute the regular attendance of the Court during the term as regular jurors that is, as the standing jury (*Ame. Words and Phrases.*)

Regular soldiers. Opposed to volunteers

Regular suit Probate proceedings, both original and appellate, do not fall within the meaning of a "regular suit". 33 B 256=11 Bom. L.R 1197

Regular term "A regular term of Court is a term begun at the time appointed by law, and continued at the discretion of the Court to such time as it may appoint, consistent with the law"

Regularly "Regularly" implies a uniform order, at certain intervals or periods, as by day and night.

"REGULARLY" means constituted, appointed, or conducted in a proper manner, or conformable to law or custom, so that the use of the term in a stipulation that a certain person had been regularly licensed is equivalent to "lawfully licensed"

The word "regularly" is defined as meaning in a regular manner, in a way or method accordant to rule or established mode; in uniform order, methodically, in due order

"Regularly kept in the course of business" Books are regularly kept in the course of business within the meaning of the provisions of section 34, Evidence Act if they are kept in pursuance of some continuous and uniform practice in the current routine of the business of the particular person to whom they belong 6 S L R 195=14 Cr. L J. 262=19 I. C. 534

A book of account may be said to be regularly kept although the book is not entered up from day to day or from hour to hour, as the transactions take place. 38 C.W.N. 861.

The words "regularly kept" are not synonymous with "correctly kept". They only mean that the account books should be kept in accordance with a certain fixed method or in some customary form The term "regularly kept" has reference to the system of book-keeping, rather than to the truth or correctness of the entries in the account books. 138 I.C 716=9 O.W.N. 532=A I R 1932 Oudh 225.

Rehabilitation.

"Books of account regularly kept in the course of business" in S. 34 of the Evidence Act are not confined to books entered up from day to day, or from hour to hour, as transactions take place. The time of making the entries may affect the value of them, but should not, if not made from day to day or from hour to hour, make them entirely irrelevant. If the view that the words in S 34, "books of account regularly kept in the course of business" are confined to books entered up from day to day, or from hour to hour, as transactions take place, were correct, merchants' and bankers' books regularly kept would in many cases be excluded from being used as corroborative evidence 26 I A 25=27 C 118 (125)=4 C. W.N. 147=7 Sar 586.

Regulate To regulate means to adjust by rule, method, or established mode, to direct by rule or restriction, to subject to governing principles or laws.

To "regulate" a supply of water, does not mean to shut it off altogether. (*Stroud*)

A power to make a bye-law to "*regulate and govern*" a trade, does not authorize the prohibition of such trade, "there is a marked distinction between the prohibition or prevention of a trade and the regulation or governance of it, and, indeed, a power to 'regulate and govern' seems to imply the continued existence of that which is to be regulated or governed" [*Toronto* v. *Virgo*, (1896) A.C 88.]

"**Regulation**" defined Act 10, 1897, S 3 (46); Ben-Act 1, 1899, S 3 (35), Bom Act 1, 1904, S 3 (38), Bur Act 1, 1898, S 2 (51), E B & A Act 1, 1905, S 5 (51); U P Act 1, 1904, S 4 (36); Ben Reg. 7, 1828, S 25.

A regulation is a rule or order prescribed by a superior for the management of some business or for the government of a company or society or the public generally

"REGULATION" shall mean a Regulation made under the Goverment of India Act, 1870 [Act X of 1897 (General Clauses), S 3 (46]

The term "regulations" implies a rule for a general course of action, but does not apply to a case in which specific instructions are to be given applicable to that case alone

The terms "ORDINANCES, RULES, REGULATION AND BY LAWS" as used in a city charter empowering the council to make "ordinances, rules, regulations, and by-laws" for certain purposes, are all equivalent to each other.

A "REGULATION OF AN EXECUTIVE DEPARTMENT" is a rule made by the head of the department for its action under an Act conferring power to do so

The definition of the word "REGULATION" IN AN ORDINANCE RELATING TO RESTAURANTS AND SALOONS, is that it is a partial restriction, which does not wholly prohibit.

"**Regulations of company**" defined. Act 6, 1882, S 76.

Rehabilitate. Restore to rights, privileges, etc.

Rehabilitation A resorting to former ability. (*Tomlins Law Dic.*)

Rehan.

'Rehan', meaning of—Simple mortgage, not included *See* 29 I C. 554.

"'Rehan' anti and murta ghanaq" These words in a mortgage deed are sufficient to convey power of sale. *See* 20 I C 870

Rehearing. A "rehearing," strictly speaking, is simply a new hearing and a new consideration of the case by the Court in which the suit was originally heard, and upon the pleadings and depositions already in the case.

Reign Sovereignty, rule, sway, one's sovereign period of rule (as) Reign of Queen Victoria.

Re-imburse To reimburse is to pay back, and this primary meaning of the word is to be imputed to it, where the meaning is not controlled by context or contract stipulations.

The primary meaning of the word "reimburse" is to pay back, to make return or restoration of an equivalent for something paid, expended, or lost, to indemnify; to make whole. And hence, where the trustees of an insolvent bank advanced a certain percentage of its debts to the receiver and received certain real estate, under an agreement that they were eventually to sell it and reimburse themselves for the sums advanced, etc, the term "reimburse" will be construed to include interest on the advancement. (*Ame Words and Phrases*)

Reinstate and replace. "When a Fire Policy gives the insurers an option to 'reinstate or replace' the insured property instead of making payment for damage, the word 'reinstate' applies to property which is damaged, and the word 'replace' to that which is destroyed" (per *Cotton, L J*, *Anderson* v. *Commercial Union Assrce*, 55 L J Q B 149)

Reinstatement. Establishing in former condition, post or authority (as) reinstatement of a deposed prince.

Re-insurance. Is to take out on additional insurance on the same risk, and occurs when insurer considers that he has incurred too great a hazard and re-insures with others, so as, in case of loss the liability will be more widely distributed

REINSURANCE is a contract whereby one party, called the "reinsurer," in consideration of a premium paid to him, agrees to indemnify the other against the risk assumed by the latter by a policy in favour of a third party.

Reinsurance is insurance by the first insurer of the whole or some part of his interest in the risk created by his contract of insurance; or, as it is otherwise defined, it is the contract that one insurer makes with another to protect the first from a risk he has already assumed.

"Rejected" In connection with execution petitions, the legal result of orders, such as *"rejected," "struck off," "closed," "recorded"* and *"dismissed"* is a matter to be ascertained with reference to the attendant circumstances and not merely from the form of the order (1937 M W N. 480)

Under O 21, R. 57, C. P. Code, the Court, where it is unable to proceed further with an execution application, even when it is by reason of the decree-holder's default, can either adjourn the matter or

Relates to the suit.

dismiss the petition. Where the order is *"Adjourn Rejected,"* the order does not amount to a dismissal, but is clearly one of adjournment only The petition does not cease to be pending and the attachment does not terminate (1937 M W.N. 480)

"Rejection" referred to in the definition of a decree in S. 2 (2), C. P Code, is such rejection as is permissible under the Code. Before an order can amount to a "rejection" it must be a rejection authorised by some provision of the Code. If a plaint or a memorandum of appeal is rejected for a cause for which the Code does not empower the Court to do so, it will not be a decree as defined by the Code, though the Court may use the word "reject" in disposing of the suit or appeal (168 I.C. 676=9 R A 666=I.L R 1937 All 484=1937 A.L R. 389=1937 All. 280)

Rekha or Shist (*Kan*) Standard Revenue imposed by ancient Hindu rulers (*Sundaram Iyer's Malabar Law*)

Relate. To exist metaphysically at a time different from the actual time (A compulsory registerable document when registered relates back to the date of execution)

The phrase "RELATED TO," whether used in a statute, will, or contract, has, by a perfectly uniform course of decisions, been held to include only relations by blood, and not connections by marriage, not even a husband or a wife.

TO RELATE, RECOUNT, DESCRIBE **Relate is** said geneally of all events, both of those which concern others as well as ourselves, recount is said only of those which concern ourselves: those who relate all they hear often relate that which never happened; it is a gratification to an old soldier to recount all the transactions in which he bore a part during the military career of his early youth. Of a meeting we describe the dress of the parties or the ceremonies which are usual on particular occasions

"Relates to the existence of any relationship." The wording of S. 32 (5) of the Evidence Act, "relates to the existence of any relationship," is wide enough to include statements about the birth and death of relatives which events either commence or terminate the relationship. (7 I C. 218.)

Relates to the suit The words "relates to the suit" in S. 375, C P Code (1882) mean 'relates to the matter of the claim in the case" and there is nothing in the section to restrict the relief granted in the compromise to what is prayed in the plaint more or less 6 M L T. 313 (314)=3 I C 701 *See also* 5 C W N 485=13 C W N 217=36 Cal. 193; 22 Mad 508; 2 I.C 430

Merely because what is agreed to be done is consideration for a compromise, it cannot be said that what is to be done is a matter that "relates to the suit" within the meaning of O 23, R. 3, C. P. Code The expression "so far as it relates to the suit" is somewhat wider than the words "so far as it relates to so much of the subject matter of the suit as is dealt with by the compromise". There are matters which may not, strictly speaking, be the subject-matter of the suit itself as brought, and yet they may relate to the suit (31 S.L R. 153=171 I C. 210=1937 Sind 190.)

Relating to.

"**Relating to.**" The phrase "relating to" as it occurs in an enactment restrictive of the right to sue, must be construed strictly, *i e*, in favour of the right to proceed. (29 B 480=7 Bom.L.R. 497.)

"**Relating to execution**" The words "relating to execution" in S. 47, C P Code, Act V of 1908, are doubtless very general, but they must be restricted to "the contents of the order made or to how far it has been carried out" and do not therefore include an agreement not to execute the decree (17 B 23)

The words *"Relating to execution"* are wide enough to include an order relating to stay of execution. (14 C L.J. 489 *See also* 17 B 23)

"**Relating to suit**" *See* 33 Bom L.R 1457=135 I.C 479=1932 Bom 47; 55 All 775=146 I C 145=1933 A.L.J. 728=1933 All 649 (F B)

Relatio. (*Lat*) In old English law, relation, reference, a carrying back

Relatio est flictio juris, et intenta ad unum. Relation is a fiction of law, and intended for or directed to one thing.

Relatio semper flat ut valeat dispositio. Reference (of a disposition made by will) should always be made so that the disposition may have effect.

Relation "Relation" is a very indefinite word, which has often perplexed courts. In a broad sense there are relations by affinity as well as by consanguinity, though as used in statutes "a relative" has been held to be one related by blood. The word "family" as used in a statute of descents has been construed to mean those who have the blood relationship, such as "kindred", "children," and parent and may also include relations growing out of the adoption of a child.

RELATION, RELATIVE, KINSMAN, KINDRED In abstract propositions we speak of relations, a man who is without relations feels himself an outcast in society; in designating one's close and intimate connection with persons we use the term relative our near and dear relatives are the first objects of our regard. in designating one's relationship and connection with persons, kinsman is preferable; when a man has not any children he frequently adopts one of his kinsmen as his heir: when the ties of relationship are to be specified in the persons of any particular family, they are denominated kindred; a man cannot abstract himself from his kindred while he retains any spark of human feeling

RELATION, RECITAL, NARRATION Relation and recital are seldom, employed but in connection with the object related or recited, narrative is mostly used by itself: hence we say the relation of any particular circumstance; the recital of any one's calamities; but an affecting narrative or a simple narrative of events.

"**Relation back**" is where a thing or act constructively relates back to an antecedent thing or act

It is said that relation is a fiction of law, resorted to for the promotion of justice and for promoting the lawful intention of parties, by giving effect to acts or instruments which without it would be invalid. It has its most frequent application to contracts of sale where the deed is not made for some

Relative.

time after the sale, but, when it is made, relates back to the sale

"RELATION BACK", doctrine of. *See* 97 I.C. 321.

Relations "Relations", generally means, "Relatives", that is "Legitimate Relatives" (*Seale-Hayne v. Jodrell*, 1891 A C. 304, 61 L J. Ch. 70).

The word "relation" is a very general and comprehensive term, and may include any and every relation that arises in social life Literally it takes in every kind of connection, and would have so wide a range as to be liable to objection as indefinite and vague. The term is defined by lexicographers signifying a person connected by consanguinity or affinity. "The most common use of the term is to express some kind of kindred, either of blood or affinity, though properly," says Lord Hardwicke "by blood".

The word "relations", whether used in a statute, will, or contract, has by a perfectly uniform course of decisions been held to include only relations by blood, and not connections by marriage, not even a husband or a wife.

QUALIFYING ADJECTIVES. "Poor", "Poorest," "Deserving", "Necessitous" added to the word *"relation"* are, generally inoperative because too uncertain (2 Jarm. 126, Sug. Pow. 654, 655), but the contrary doctrine is strenuously argued for in a note to Lewin on Trusts. (*Stroud.*)

In one case "Poor" *relation* has been held to have been used as a term of endearment and compassion, and to include a Countess who had not sufficient estate to support her dignity (Anon, 1 P. Wms. 327; Sug Pow 654, 655)

"The objects of a gift to '*Relations*' are not varied by its being associated with the word 'near'. But where the gift is to the 'Nearest Relations', the next of kin will take, to the exclusion of those who, under the statute, would have been entitled by representation Thus surviving brothers and sisters would exclude the children of deceased brothers and sisters or a living child or grandchild, the issue of a deceased child or grandchild" (2 Jarm. 124).

'**Relationship**" defined. *See* KINDRED, NEXT-OF-KIN.

"RELATIONSHIP" is described by lexicographers as kindred, affinity, or other allegiance.

"Relationship", as used in the by-laws of a beneficial association, providing that the applicant for membership shall enter upon his application the relationship or dependence of the members of his family or those depending upon him to whom he desires the benefit to be paid, refers to the connection between him and the member or members of his family upon whom the benefit is to be conferred.

All words expressive of relationship apply to a child in the womb who is afterwards born alive. [Act XXXIX of 1925 (Succession), S. 99 (1)]

Relative Having relation; conditional, opposed to absolute.

"RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act (IV of 1912), S. 3.]

Relative fact.

The words in the Indian Succession Act expressing relationship denote only legitimate relationship, such relationship as originate from lawful wedlock. (30 B. 500=8 Bom L.R. 322)

Relative fact A fact having relation to another fact; a minor fact, a circumstance.

Relative rights. The rights of persons which arise from the civil and domestic relations

Relator (*in English Law*). The relator in an action is a person who is aggrieved in a matter of Public Interest, and who (1) satisfies the Attorney General or Advocate General that the subject-matter of the action is such as to justify the use of that officer's name, or who (2) satisfies the court that the name of the Queen's Coroner and Attorney should be used in the Information (Ann. Pr. notes to R 1, O. 1, R.S C.)

Relax, remit. We may speak of relaxing in discipline, relaxing in the severity or strictness of our conduct, or remitting a punishment or remitting a sentence. The discretionary power of showing mercy when placed in the hands of the sovereign serves to relax the rigour of the law, when the punishment seems to be disproportioned to the magnitude of the offence, it is but equitable to remit it.

Release. The gift or discharge of a right of action, which any one hath or claimeth against another, or his land (*Termes de la ley*, *Tomlins Law Dic*)

A release is a discharge of an existing obligation or right of action by the person in whom the obligation or right is vested to the person against whom it exists.

A release is the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised.

"A 'release' has been defined to be the act or writing by which some claim or interest is surrendered to another, the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be exercised or enforced. No set form of words is necessary to constitute a release, but such words should be used as would express the intention, and such intention would be recognized in law and equity".

RELEASE AND COVENANT NOT TO SUE. A covenant not to sue is a covenant by one who has right of action at the time of making it against another person or persons whereby he agrees not to sue one or more of such persons to enforce the right of action. To avoid circuity of action, a covenant, unlimited in time and scope, not to sue the party liable to the covenantor on a specified right of action operates as a release; but the rule is otherwise in respect of a covenant not to sue less than all the parties liable, or not to sue for a limited time, or of limited scope.

RELEASE AND EXTINGUISHMENT OF DEBT. A release is a discharge of a debt by act of the party, in distinction from an extinguishment, which is a discharge by operation of law.

RELEASE AND RECEIPT. "The distinction between a *Receipt and a Release* is,—that the release extinguishes the claim, and, when given, in itself annihilates the debt, but a receipt is only evidence of payment, and if the proof be that no payment was made, it cannot operate as evidence of payment against such proof" (per *Martin, B., Bowes* v *Foster*, 27 L.J Ex 266, 2 H. & N 788).

A "release" extinguishes a pre-existing right, while a "receipt" is mere evidence of a fact.

AGREEMENT TO RELEASE. Releases are to be distinguished from agreements to release. An agreement to release is a contract to give a release *in futuro*, and differs from a release, which operates *in praesenti*. The one is a contract to give the other.

RELEASE AND SATISFACTION OF DEBT. The word "release", when applied to the release of a cause of action for tort, differs from the word "satisfaction", in that the former may be given, although no part of the damage has been paid, and a technical release to one joint tortfeasor does not release other joint tortfeasors, while a satisfaction, by whomsoever made, if accepted as such, is a bar to future proceedings on the same cause of action.

Release deed "In law, a release or deed of release is, in effect, a conveyance of a man's right in the lands or tenants to another who has some estate in possession" This, however, is a strictly technical definition, but by long established practice it makes no difference whether the releasee has an existing estate in possession or not A quit claim or release deed is one of the regular modes of conveying property known to law, and it is almost the only mode in practice where a party sells property and does not wish to warrant the title."

Released In a finding that property was released by an officer upon giving a bond, "released" meant "delivered" or "surrendered"

Released on Bail. "Released on bail", as used in criminal practice relating to the accused who had been "released on bail", implies that the person so released is not in prison after such release

Releasee The person to whom a release is made.

Releaser, or releasor. The maker of a release.

Relegate Banish to place of exile, consign or dismiss to inferior position or sphere.

Relegation (*Relegatio*) A banishing, or sending away, abjuration is forswearing the realm for ever, relegation is banishment for a time only. (Co. Litt 133, *Tomlins Law Dic*)

Relevancy. "Relevancy", as that term is used by writers on the law of evidence, omitting metaphysical distinctions, is that which "conduces to prove a pertinent theory in a case", or one which influences or controls the case.

RELEVANCY is that which conduces to the proof of a pertinent hypothesis. Hence it is relevant to put in evidence any circumstances which tend to make the proposition at issue more or less improbable.

"Relevant" defined. Act 1, 1872, s. 3.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this (Evidence) Act relating to the relevancy of facts. Act I of 1872 (Evidence), s. 3.

Relevant

The meaning of the word "relevant", as applied to testimony, is that it directly touches upon the issue which the parties have made by their pleadings, so as to assist in getting at the truth of it.

"By the term 'relevant' we do not mean that the evidence shall be addressed with positive directness to the disputed point, but we mean evidence which according to the common course of events, either taken by itself or in connection with other facts, proves or renders probable the past, present, or future existence of the other".

The word "relevant" means that any two facts to which it is applied are so related to each other that according to the ordinary course of events one, either taken by itself or in connection with other facts, proves or renders possible the past, present, or future existence or non-existence of the other.

Reliable evidence S.139-A, Cr P Code, lays down that a Magistrate in an enquiry under S 133 has to find is there is any reliable evidence in support of the denial of the party alleged to cause the obstruction Reliable evidence is evidence of reliable persons. What is really meant is that the Magistrate should weigh the evidence produced by both sides and then come to the conclusion which he believes or which he prefers, but the Magistrate should take the evidence as it stands and see whether on the face of it if there was no evidence to the contrary, he could come to the conclusion that the evidence was false and therefore unreliable (107 I.C 485=29 Cr L J 254=1928 Lah. 664)

Reliction "Reliction" is the term applied to land made by the rescission of the water by which it was previously covered.

"DERELICTION" OR "RELICTION" is land added to a front tract by the permanent uncovering of the waters the laying bare of the bottom by the retirement of the waters, as contra-distinguished from a filling up of the bottom by deposits, causing the water to recede "Dereliction", as used in the English law, meant when the sea shrank back below the usual water mark and remained there. In those cases the law is held to be that, if this be by little and little, it should go to the owner of the land adjoining.

"Relief" defined. *See* Preventive relief.

RELIEF. Legal remedy for wrongs, money or food given under the Poor Laws or to victims of a disaster etc

"RELIEF" means the remedy which a Court of Justice may afford in relation to some actual or apprehended wrong or injury [5 A. 345 (F B.)]

The word 'Relief' necessarily implies the pre-existence of a wrong An action is not given to one who is not injured, *'actio non datur non damni ficato.* [33 Bom 509=11 Bom L.R. 85=5 M L T. 301=2 I C. 701.]

It is a maxim in our law that a plaintiff must shew that he stands on a fair ground when he calls on a Court of justice to administer relief to him. [*Lord Kenyon, C.J., Booth* v. *Hodgson,* (1795) 6 T.R. 409]

The word "relief", in resolutions by a town making provision for the *"aid and relief"* of families

Religion.

of volunteer soldier, implied want, need or necessity on the part of the applicants, and indicated that the provision there made was charitable, and did not tend to give the applicant any vested right as under a contract.

"RELIEF", as used in the Poor Law or in orders thereunder, includes, among other things, the ministrations by ministers of religion (*R.* v. *Haslehurst,* 53 L.J M C 127, 13 Q.B D. 253)

'RELIEF' AND 'RELIEVE', are appropriate terms to describe the "remedial action of the Court in cases where a Penalty or Forfeiture has been incurred, and which the Court thinks it equitable that the complainant should not lie under or suffer" [per *Davey, L J., Nind* v *Nineteenth Century Bg. Socy.* (1894) 2 Q B 226]

RELIEF AND CAUSE OF ACTION "Relief," is not synonymous with "cause of action" which includes all the reliefs covered by the facts, on the strength of which a plaintiff comes into court [5 A. 345 (F B.)]

"Relief claimed." The words "relief claimed" (in S 11, Expl V, C P C, 1908), apply only to something which forms part of the "claim" strictly so called, *i.e*, something which the plaintiff may claim as of right, something included in his cause of action 'and which if he established his cause of action' the Court has no discretion to refuse. [21 A 425 =19 A.W N 153 (F B)] [The words do not therefore include something which the plaintiff cannot in the suit claim as of right, but can only claim by appeal to the discretion of the Court, and which the Court may grant or refuse in the exercise of its discretion on grounds of general expediency or otherwise [21 A 425=19 A W N. 153 (F B)]

RELIEF CLAIMED IN THE PLAINT The words in Expl III to S. 11, C P C, "relief claimed in the plaint," mean relief which, assuming the defence fails, the plaintiff is entitled, to as of right [15 M.L J. 462 (F B)]

Relief works. Public buildings or other works started to give work to the unemployed in period of agricultural famine or trade depression.

Relieving officer In English law, parish or other local official charged with the care of the poor.

Religion (*Religio*) Virtue, as founded on reverence of God, and Expectation of future rewards and punishments, a system of Divine Faith and Worship as opposed to others. (*Johns.*) That habit of reverence towards the Divine Nature, whereby we are enabled and inclined to serve and worship him, after such a manner as we conceive most acceptable to him, is called Religion. (*Tomlins Law Dic.*)

"What is Religion? Is it not what a man honestly believes in and approves of and thinks it his duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an overruling power It must, I think include the principle of gratitude to an active power who can confer blessings" (*per* Willes, J., *Baxter* v. *Langley,* 38 L J.M.C. 5).

In all countries the word "religion" is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of one God,

the creator and ruler, to whom his creatures owe obedience and love.

RELIGION is morality, with a sanction drawn from a future state of rewards and punishments

The word "religion," in its primary sense imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion

By the generic word "religion" is not meant the Christian religion or Bible religion, but it means the religion of man, and not the religion of any class of men.

"I for one would never be a party, unless the law were clear, to saying to any man who put forward his views on those most sacred things, that he should be branded as apparently criminal because he differed from the majority of mankind in his religious views or convictions on the subject of religion If that were so, we should get into ages and times which, thank God, we do not live in, when people were put to death for opinions and beliefs which now almost all of us believe to be true"—[Lord Coleridge, C J, *Reg* v *Bradlaugh and others*, (1883) 15 Cox C C 230]

"All persecution and oppression of weak consciences on the score of religious persuasions, are highly unjustifiable upon every principle of natural reason, civil liberty, or sound religion" Sir Wm Blackstone, (1765), Com. Bk. IV, ch 4, p. 40

Religious assembly means nothing more than an assembly of religious persons.

A religious assembly, within the meaning of the law in reference to a disturbance thereof, includes a religious congregation when assembling in their house of worship and about to begin their religious exercises, as well as the assemblage when actually engaged in religious worship.

Religious books A will, wherein a Christian testator devises a certain sum in trust for the purchase and distribution of religious books, means those books which tends to promote religion taught by the Christian dispensation

Religious corporation. A religious corporation is one whose purposes are directly and manifestly ancillary to divine worship or religious teaching. It is not necessarily a church, in the common acceptation of the term, or even a religious society.

Religious houses (*Religiosae domus*) Houses set apart for pious uses, such as Monasteries, Mutts, Churches, Hospitals, and all other places where charity was extended to the relief of the Poor and Orphans, or for the use or exercise of Religion. (See *Tomlins Law Dic.*)

Religious liberty. Religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system. No one can stretch his own liberty so as to interfere with that of his neighbours and violate the peace.

Bill of rights, guaranteeing to every person religious liberty and freedom, etc., does not mean a licence to engage in acts having a tendency to disturb public peace under the form of religious worship, not does it include the right to disregard those regulations which the Legislature has deemed reasonably necessary for the security of public order.

Religious men (*In old English law*) Persons who entered into a monastery or convent.

Religious principles. Religious principles are those sentiments concerning the relations between God and man which may influence human conduct.

Religious processions The public have a right to conduct religious processions with music through a public street 104 I.C 213=1927 N 339. But *see also* 47 All 151 (P C), 42 Bom 458.

Religious purposes. A corporation organized to provide, by building, purchase, hiring, or otherwise, churches for seamen and to provide clergymen to act as missionaries in the said churches, is a corporation organized for *religious purposes* (*Ame. Words and Phrases*)

Gift for *"Religious purposes"* or for *"Religious Societies,"* without naming them, is *prima facie* for a charitable purpose, and creates a good charity. (*Baker* v *Sutton*, 1 Keen 224, 5 L J Ch 264)

Religious sect "People believing in the same religious doctrines, who are more or less closely associated or organised to advance such doctrines and increase the number of believers therein," constitute a religious sect.

A religious sect is a body or number of persons united in tenets, but constituting a distinct organization or party, by holding sentiments or doctrines different from those of other sects or people.

Religious society. A religious society is an assembly met, or a body of persons who usually meet, in some stated place for the worship of God and religious instruction The term includes all religious societies or congregations met for public worship, without regard to their being incorporated, and may or may not include a church or spiritual body

The term "religious society" has in the English ecclesiastical law a well-defined meaning, and as commonly used in that law it is synonymous with "parish" or "precinct," and designates and incorporated society created and maintained for the support of public worship.

A religious society is a body of persons associated together for the purpose of maintaining religious worship only, omitting the sacraments

Religious teacher. "Religious teacher" is sometimes used for "minister" of religion

"Religious uses", as used in an Act 1855 prohibiting devises or legacies for religious uses, unless by will executed at least one month before the death of the testator, includes a bequest to a church to be expended in masses for the repose of his soul.

Religious worship. In the trial of a person for disturbing a congregation assembled for religious worship, the court defined "religious worship" as where the congregation has assembled for the purpose of performing acts of adoration to the Supreme Being, or to perform religious service in the recog-

Religious worship.

nition of God as an object of worship, love, and obedience.

A Young Men's Christian Association, organized to endeavour to bring young men under moral and religious influences, and holding meetings every Sunday after noon in a build ng owned by the association, where a service was had, hymns were sung, and the Scriptures were read and expounded, actually used its building for religious worship

Whether a temperance camp meeting is a public assembly convened for the purpose of religious worship, is a question of fact; the term "religious worship" having no technical meaning in a legal sense.

MINISTERS OF RELIGION A minister of religion is one who, having been ordained to the ministry, undertakes to perform certain services. The term includes every person duly appointed in his respective church to officiate and minister in its interest and is not limited to Christianity.

Relinquishment A forsaking, abandoning, or giving over. (*Tomlins Law Dic.*)

"Relinquish" is not a word of Art, and an abandonment, or non claim would amount to relinquishment (*Home* v *Booth*, 3 M & G 742).

Reliques (*Reliquioe.*) Remains, such as the bones etc, of Saints who are dead, preserved by persons living, with great veneration, as sacred memorials of them. (*Tomlins Law Dic*)

Reluctant. Reluctant means striving against, opposed in desire, unwilling, disinclined, or disinclined to yield; and as used by the trial court in passing on a motion for a new trial, that "the motion for a new trial in the within case is hereby reluctantly" overruled, meant that as the jury, who were charged with the determination of the facts, settled them by their verdict, the court, while he could not approve the findings, allowed them to stand because the jury had so found.

Remain. "Remain" means to continue, to stay; to be left, to be left after another or others have gone.

A municipal ordinance, making it a misdemeanor for any person to *remain* upon any sidewalk to the annoyance of any person, will be construed not to prohibit the lawful use by remaining on a sidewalk, though it annoys other persons. "The object of the ordinance, we think was to prevent the encumbering of sidewalks by the illegal use of them by the occupation of them by one or more persons, not for the purpose of passage in a reasonable manner, or for taking across them into dwelling houses, stores, or fuel or merchandise, with a due regard to the conveyance of others, or for other lawful purposes, but occupying it in an unreasonable manner, either as to the mode or duration of time, so that other passengers would be unlawfully delayed or annoyed".

Remainder. An Estate in *Remainder* may be defined to be an estate limited to take effect and he enjoyed after another estate is determined. (*Tomlins Law Dic.*)

A remainder is a remnant of an estate in lands or tenements expectant on a particular estate created together with the same at one time.

Remainder.

'REMAINDER", as a technical term applicable to Realty, "is the residue of an estate at the same time appointed over, and must be grounded upon some Particular Estate given before, granted for years, or life, and so forth, and ought to begin in possession when the Particular Estate endeth". (*Doug*, 753.)

OTHER DEFINITIONS. "Blackstone defines an estate in remainder to be an estate limited to take effect and be enjoyed after another estate is determined.

A remainder is what is left of an entire estate in lands after a preceding part of the same estate has been disposed of, whose regular termination the remainder must await

Technically, a remainder is an estate in land limited to take effect and be enjoyed after another estate is determined, and such an estate vests immediately on the death of the grantor, to be enjoyed in possession after the determination of the particular estate; but, as used in a will giving certain property to a wife for life, with the use of the remainder of testator's estate, such remainder after her death to descend to certain parties, the word is used in the sense of "balance of" or "what may remain".

"Remainder", as used in a will, giving descendant's wife an estate and providing, "but on her decease the remainder thereof, if any, I give and devise to my children", is equivalent to whatever may be left.

A remainder is a present right, although the enjoyment is in the future

A remainder is the remnant of an estate, limited to rise immediately on the determination of a precedent particular estate, and it always creates a new estate in the remainderman.

CONTINGENT OR EXECUTORY REMAINDERS (whereby no present interest passes) are where the estate in Remainder is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the Remainder never take effect (*Tomlins Law Dic.*)

REMAINDER, REMNANT, RESIDUE. Remnant is a species of remainder, applicable only to cloth or whatever remains unsold out of whole pieces, as a remnant of cotton, linen, and the like. Remainder is applied to that which remains after a consumption or removal has taken place; the term residue is applied to that which remains after a division has taken place; hence we speak of the remainder of the corn, the remainder of the books, and the like; but the residue of the property, the residue of the effects, and the like.

REMAINDER AND RESIDUE. 'All the Remainder and Residues of all my estate and effects, both real and personal', includes all the testator's undisposed of property. All the terms he makes use of, except the word 'effects', are technical terms; for 'Remainder' is applicable to Real Estate, and 'Residue' to Personal Estate (*per* Mansfield, C J. *Hogan* v. *Jackson*, 1 Cowp. 308.)

As distinguished from an EXECUTORY DEVISE, A REMAINDER "may be described to be an estate which is so limited as to be immediately expectant on the natural determination of a Particular Estate of Freehold limited by the same instrument" (1 Jarm; *Blackman* v. *Fysh*, 60 L.J. Ch. 666).

Remainder.

Remainder (*estate in*). Residual interest in estate, right of succession to an estate or title on holder's decease

Remainder-man the owner of an estate in remainder, Person entitled to an expectant estate.

Remaindership Possession of a legal remainder.

"**Remaining Legatee**" means surviving Legatee. (*Sheridan* v *O'Reilly*, (1900) 11 R 386)

Remaining unpaid The words "remaining unpaid" are often used in business transactions as synonymous with "due" or 'owing"

Remains, Relics Remains signifies literally what remains, Relics signifies what is left The former is a term of general and familiar application, the latter is specific What remains after the use of consumption of anything is termed the remains, what is left of anything after a lapse of years is the relic or relics There are remains of buildings mostly after a conflagration, there are relics of antiquity in most monasteries and old churches.

The remains of a person, that is, what corporeally remains of a person, after the extinction of life, will be respected by his friends, a bit of a garment that belonged, or was supposed to belong, to some saint will be a precious relic in the eyes of a superstitious Roman Catholic All nations have agreed to respect the remains of the dead, religion under most forms, has given a sacredness to relics in the eyes of its most zealous votaries

Remand After a preliminary or partial hearing before a court or Magistrate, to send a prisoner back to the custody, to be kept until the hearing is resumed or the trial comes on, to remit or send back a cause to the court from which it was removed, appealed, or transferred into another court, in order that some further action may be taken upon it in the original Court *See also* 21 I.C 842

Remand order. *See* 21 I C 842.

In the Coinage Act means variation from the standard weight and fineness Act III of 1906 (*Coinage*), S 2, Cl (d).

Re medial. Affording a remedy

Remedial Act. A remedial Act is one made from time to time to supply defects in the existing law, arising from the inevitable imperfection of legislation, mistake, or other cause, and the words of a remedial statute are to be construed largely and beneficially, so as to suppress the mischief sought to be remedied

Remedial action "An action is remedial when brought by the party injured, and penal when brought by a common informer".

Remedial statute: a statute providing a remedy for an injury,

A remedial statute has for its object either to redress some existing grievance or to introduce some new regulation or proceeding conducive to the public good

Remedial statutes are made to supply defects or abridge superfluities in the law, and the rule is that they are to be construed liberally for the suppression of the mischief and the advancement of the remedy.

Remit

The courts follow the reason and spirit of such statute still they overtake and destroy the mischief which the Legislature intended to suppress

Blackstone says remedial statutes are those which are made to supply such defects and abridge such superfluities in the common law as arise either from the general imperfections in human laws, from change of time and circumstances, or from the mistakes and unadvised determination of unlearned judges, or from other causes whatsoever

A remedial statute is one which is required in consequence of error in human judgments or which is rendered necessary by the various changes which are constantly taking place as the community enlarges and its concerns increase

"**Remedy**" defined. Act 3, 1906, S. 2 (*d*).

REMEDY As a legal term means to recover a debt or enforce a right, a mode prescribed by law to enforce a duty or redress a wrong, that which gives relief to the party aggrieved, the means by which the obligation is effectuated, the means employed to enforce a right or redress an injury, the mode of procedure by which the liability of property to the satisfaction of a debt is enforced, the particular result to obtain which an action is brought, the action or means given by law for the recovery of a right

Remedy, (*Remedium*) The action or means given by Law for the recovery of a right, and it is a maxim of Law, that whenever the Law giveth any thing, it gives a Remedy for the same. (*Tomlins Law Dic.*)

A remedy is a means employed to enforce a right or redress an injury

A remedy is simply the means by which the obligation or the corresponding action is effectuated.

Remedy. (*In Coinage*) The technical term for the extreme limit of allowance the Mint will allow from the fixed coinage standard.

Remise When used in a deed to imply that there is an interest or claim which has been surrendered, the words "remise, release, and quit claim" are sufficient to pass the estate In a primary conveyance the words import much more than a mere disclaimer of interest.

Remission. A pardon from the crown, a release.

A remission is an act of justice, and cannot be obtained until the entire innocence of the petitioner be established, not by his testimony taken *ex parte*, but after full notice to the proper officer of government A pardon, on the other hand, imports an act of mercy and favor, and generally supposes its object guilty.

"**Remission**" 11 B. 541; 11 B. 550.

'**Remission system**" defined. Act 9, 1894, s. 3 (5).

"REMISSION SYSTEM" means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail, Prisons Act (IX of 1894), S. 3

Remit To "Remit", money means, to send the money in the ordinary manner, a person whose duty

Remit a cause.

is to "remit" money or documents discharges that duty as soon as he has, in the ordinary course and manner of business, sent it or them off, he is not responsible for accidents in the transit (*Comber* v *Leyland*, 1898 A.C 524, 67 I J Q B 884)

Remit a cause "To REMIT A CAUSE is to send it back to the same court from which it has been removed by appeal or otherwise, for the purpose of retrying the cause when judgment has been reversed, or of issuing execution when it has been affirmed"

Remittance Money sent by one person to another, either *in specie*, bill of exchange cheque, or otherwise

"Remitted", as used in an indictment which stated the former conviction of defendant and then alleged that he had been discharged and remitted of such judgment and conviction, meant pardoned

Remitter A person procuring a foreign bill of exchange is known technically as the "remitter" of it

REMITTER, (*Lat*) The sending back of a person to a title he had before

"Remitter is an ancient term in law, and is where a man hath two titles to lands or tenements, *viz*, one a more ancient title, and another a more later title, and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthy title And then when a man is adjudged in by force of his elder title this is said a Remitter in him" (*Litt* s 659 *Co Litt Termes de la Ley*).

Remittee. The person to whom a remittance is sent

Remittor. The person who makes a remittance.

Remittitur (*Lat*) Is sent back or remitted, a sending back of a record, as from a superior to an inferior court for entry to judgment, a new trial or further proceedings, a relinquishment of damages

"Remodelled basti" defined Ben Act 3, 1899, s. 418

Remote opposite of proximate A Remote Cause is the antithesis of Proximate Cause Remote Damages are those "remotely resulting from the act complained of" (Sedgwick on Damages, Ch 3).

Remote cause It has been found impracticable to prescribe by abstract definition, applicable to all possible states of fact, what is a proximate and what a remote cause.

"REMOTE CAUSE", in the law of negligence, does not mean remote in point of time, but merely in connection with the primary cause To illustrate —A former along a line of railroad may open the fence maintained by the company for temporary purposes, and while so left open his cattle may stray on the company's track and receive injury by coming in contact with the company's trains without any fault of the company's servants The direct cause of such injury would be the collision, and the remote cause in point of time would be the act of the farmer, but the remote cause in point of time becomes the proximate cause in producing the injury.

Renables estovers

A remote cause is one which is in conclusive in reasoning, because from it no certain conclusion can be legitimately drawn In other words, a remote cause is a cause the connection between which and the effect is uncertain, vague, or indeterminate. Although the existence of the remote cause is necessary for the effect (for, unless there be a remote cause there may be no effect), still the existence of the remote cause does not necessarily imply the existence of the effect The remote cause being given, the effect may or may not follow It differs from a proximate cause, which is one in which is involved the idea of necessity It is one the connection between which and the effect is plain and intelligible It is one that can be used as a term by which a proposition can be demonstrated, that is, one that can be reasoned from conclusively A proximate cause being given, the effect must follow

Remote damages Alike in actions on contract and tort the damages, which the plaintiff is entitled to, must result directly from the wrongful act of the defendant and not to be remote That is the basis of the principle of the rule that plaintiff should avoid or diminish the damages as far as he can 36 Mad 580= 25 M L J. 3=1912 M W N 1056=16 I C. 14.

Remote kinsman Distant kinsman—as opposed to a near kinsman

Remoto impedimento emergit actio, (*Lat*) The impediment being removed, the action arises.

Remount (*Noun*) Horse to replace one killed or worn out, supply of such horses to the regiment

"Removal" defined Bom Act 2, 1890, s 3 (*o*).

The term "removal" means a discharge, the act of removing from office, or putting an end to an employment.

The "removal" of a priest of a Church means the relieving of such priest from the charge of the church

Removal of Causes (*See* Transfer of Suits. The purpose of the creation of the right to remove) case from one court to another of the same grade or to a superior court is to enable a party to have claims against him adjudicated in the first instance by a better or superior tribunal, and to enable him to obtain freedom from local prejudice or influence on the ground that the judge before whom the claim is laid is for some reason or other not likely to view the facts or weigh the evidence impartially and arrive at a just decision

"Remuneration" defined *See* Legal remuneration.

REMUNERATION "Remuneration" is a wider term than 'Salary" 'Remuneration', means, a *quid pro quo*. Whatever consideration a person gets for giving his services seems to me a 'Remuneration' for them. Consequently, if a person was in receipt of a payment or of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be 'Remuneration'" (per *Blackburn, J., R.* v. *Postmaster General*, 1 Q B.D. 663, 664)

Renable (*Lat*). Reasonable.

Renables estovers, reasonable estovers.

Renaissance,

Renaissance Revival of art and letters

Render To yield, or return, to give up, to surrender, to make up and exhibit, as an account, to determine upon and announce, as a verdict or judgment.

The word "render" sometimes means "bestow or provide, furnish, give in answer to requirement of duty or demand"

The word "render" means to furnish, to state, to deliver, as to render an account, etc

A judgment is said to be "rendered" at the time the judgment was in fact pronounced

'**Rendition of judgment**" is the judicial act of the court in pronouncing the sentence of the law upon the facts in controversy as ascertained by the pleadings and the verdict.

The "rendition" of a judgment is a purely judicial act of the court alone, and must be made before the entry thereof

"RENDITION" AND "ENTRY" in reference to judgments, are used in different senses, and express the idea that there is a rendition of the judgment before it is actually entered in the judgment book.

The rendition of the judgment is a judicial act, and differs from the entry thereof, which is the ministerial act of making a record of the judgment.

Renew "To renew", in its popular sense, is to refresh, revive, or rehabilitate an expiring or declining subject

Generally a Bill or Note "*is renewed* by another being taken in its place, the parties and the amount being the same, though perhaps in some cases the interest due on the first is added" (*per* Lindley, L J, *Barber* v *Mackrell*, 68 L T. 29, 41 W.R 341).

To "renew" a Bill or Note, does not, always and necessarily, import that a new or additional Bill or Notice is to be given, such an instrument is "renewed' merely by the time for its payment being extended (*Russell* v *Philips*, 19 L J Q B. 297, 14 Q B. 892.)

The word "renewed", or "renewal," as applied to promissory notes in commercial and legal parlance, means something more than the substitution of another obligation for the old one. It means to re-establish a particular contract for another period of time, to restore to its former conditions an obligation on which the time of payment has been extended.

"RENEWED." Meaning of. *See* 19 M. 241=1 Weir 732.

Renewal A change of something old for something new.

"The Renewal of a 'license', means, a new License granted by way of renewal." (Paterson's Licensing Acts. 7 Encyc. 400, 401).

The renewal of a negotiable bill or note is regarded simply as a prolongation of the original contract.

The office of a "renewal", as it is termed, of a life, policy, is to prevent discontinuance or forfeiture

Rennell's survey map Though Rennell's survey Map made in 1764 before the Permanent Settlement is valuable evidence on the topography, the absence

Rent.

of a certain rivulet in it is not conclusive of its non-existence. (34 C W N. 1113=A.I,R 1931 Cal. 239)

Renounce To give up a right, surrender, abandon, refuse to recognise any longer (as) to renounce treaty principles, authority, heirship, etc

"**Rent**" defined (*See also* Arrear of rent, Water-rent) Act 18, 1881, S 4 (15), Act 4, 1882, S 105, Act 8, 1885, S 3 (5)(am. Ben. Act 1, 1907, S 4), Act 22, 1886, S 3 (5), Act 16, 1887, S. 4 (3), Act 17, 1887, S. 3 (4), Act 11, 1898, S. 2 (8); Ben. Act 5, 1897, S 3 (*xiv*), Ben Act 6, 1908, S 3 (*xxiii*), Mad Act 1, 1908, S. 3 (11), (pt rep Mad Act 4, 1909, S 2), U. P Act 2, 1901, S 4 (3), U P. Act 3, 1904, S. 2 (4)

RENT a sum of money, or other consideration, issuing out of lands or tenements. (Plowd, 132, 138, 141.) Generally taken as the consideration payable by a tenant for lands or tenements held under a lease or demise (*Tomlins Law Dic*)

It is defined to be a certain profit issuing yearly out of lands and tenements corporeal It must be a profit, yet there is no occasion for it to be, as it usually is, a sum of money, for spurs, capons horses, corn, and other matters may be rendered, and frequently are rendered by way of Rent (*Co Lit.* 142, *Tomlins Law Dic*)

Rent is a right to profit, usually, though not necessarily, money, for it frequently consists of a part of the products of the land, labor, etc. It is the compensation, either in money, provisions, chattels, or labor, which is received by the owner of the soil, or the person entitled to the possession of the premises leased, for the use and occupation thereof

RENT is whatever is lawfully payable by a tenant. (142 I C 43=13 Pat L T 648=1933 Pat 36) The expression "rent" must be regarded as having reference only to something that is payable not as compensation or damages but under or by virtue of a contract. (111 I C 743=1928 Mad 340.) A return in money or kind for the enjoyment of specific property held by one person from or under another. (22 Mad. 149, *Foll*, 158 P.R 1884, *Dist*) 78 I C. 383=A.I.R. 1925 Lah 196 Profit issuing yearly out of lands and tenements

Rent is a profit in money, goods, or labor, issuing out of lands and tenements, as compensation for their use.

A rent is a compensation paid for the use of land. It need not be money Any chattels or products of the soil would serve the purpose equally as well.

"The word rent, in powers of leasing, is construed to mean not money merely, but any return or equivalent adapted to the nature of the subject demised; therefore, upon a Lease of Mines, a due proportion of the produce may be reserved in lieu of money, although the power requires a 'Rent' generally to be reserved" (Sug Pow 791, citing *Campbell* v. *Leach*, 2 Amb. 740).

"RENT" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him. [C P Act XVIII of 1881(Land Revenue), S 4,cl 15]

The expression "*rent*" means whatever is, in cash or kind, to be paid or delivered by a tenant for land

held by him [U P Act III of 1904 (Benares Family Domains), S 2, cl 4. *See also* 27 Mad 417.]

The term 'rent" as defined in the Bengal Tenancy Act(VIII of 1885), does not include"interest"payable on the arrears of rent (25 C 571 (N)=1 C W N 63. *See also* 9 C W N 656, 2 C W N 455)

S. 3 of the Bengal Tenancy Act (VIII of 1885), defines the word "Rent" in the sense in which it would be understood without any statutory definition. [33 C 140=3 C L J 7=10 C W.N 201=1 M L T 8 (P C.)]

"Rent, means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." The liability of a person, between whom and the proprietor of the land he holds, there exists no relationship of landlord and tenant, to pay for the "use and occupation," is a liability to pay "rent," according to S 13, Cl (5) of the Bengal Tenancy Act (17 C 45, 2 C W N. 455)

Rent is whatever is payable for the use of land for the purposes of agriculture (with its appurtenances like cesses, water rates etc ,) and sums payable by a ryot as such on account of pasturage fees and fishery rent. [21 Ind Cas 532 (535))

'Rent' in N W P Rent Act is whatever is to be paid,delivered, or rendered by a tenant on account of his holding, use or occupation of land It covers the share of the produce of trees held by a person with status of a tenant payable or deliverable by him to the landholder. (13 A W N 1)

The word "rent" in section 189 (N W P) Rent Act (XII of 1881), has not been used in a general sense so as to include revenue also (18 A 302=16 A. W N. 17)

RENT includes money recoverable under any enctment for the time being in force as if it were rent [8 C W N 640 (as) Drainage Charges *See* 11 C W N 57 (59—60)=5 C L J. 19.]

A suit for Chowkidari tax is one for "rent" under Bengal Tenancy Act (VIII of 1885) when such tax is legally recoverable (22 C. 680 *See also* 4 C 576, 17 C 131, 726, 15 C 828)

The word 'rent" includes, road-cess, payable to the landlord by the tenant 21 C 722

"Rent" is to be regarded not as accruing from day to day but as falling due only at stated times according to the contract of tenancy, or the general law, in the absence of such contract (21 C 383)

ACTUAL RENT. The words "actual rent" cannot be taken to mean either a fair and equitable rent or rent at customary or pergana rates (54 I A 432, A I R 1927 P C. 250.)

'EXISTING RENT' is what *is due* and not what *is paid* (115 I C. 525=1929 C. 47.)

RENT AND ANNUITY DISTINGUISHED A covenant in a deed to pay the grantor a certain sum on each and every year during the lifetime of the grantor, such payment to be made a lien on the land, is a covenant to pay an annuity, and not rent.

"Rents and profits," in a contract for sale "mean, ordinary rents and profits, and not merely nominal

rents and profits reserved upon leases for lives" (*per* Turner, L J,, *Hughes* v. *Jon s*, 31 L J Ch 88)

A bequest of the "INTEREST, DIVIDENDS, RENTS AND PROFITS," of personalty will sometimes be construed as an absolute gift of the corpus (*Jennings* v *Baily*, 22 L J Ch 977)

Rent charge A rent charge, is a rent issuing out of land, not by virtue of any tenure or ownership but, by force of some reservation by which also a power of distress is reserved if the Rent get into arrear, if no such power be reserved it was formerly a rent (Seck Litt Ss 217, 221 Co Litt, 143b, 147a· *Termes de la Ley*)

A rent charge is a burden imposed on and issuing out of lands.

"RENT CHARGE" is any rent granted out of lands by deed with a clause of distress whence it derives its name, because the land is charged with distress by the express provision of the parties, which it would not otherwise be

RENT CHARGE, ANNUITY DISTINGUISHED An annuity is a yearly sum of money granted by one party to another in fee, for life, or for years charging the person of the grantor only, while a rent charge is a burden imposed on and issuing out of lands

"Rent decree" Meaning of *See* 6 C W N 124. (3 C W N. 604, R)

Rent due The expression *"rent due,"* (in Bengal Tenancy Act (VIII of 1885), S 148 A), is not equivalent to "rent payable under the contract of Tenancy" but the rent actually in arrears, *i e*, the rent payable under the contract not after the deduction of any amount that might have been actually paid to the landlord 23 I C 981 (983)

Rent free grant. The term *"rent free grant"* covers grants where under an agreement even the land revenue payable on the area is to be paid by the landlord 1936 R D. 406

"Rent-free grantee" defined U P Act 2, 1901 S 4 (8)

Rent payable. The words "the rent payable" as used in the first para, of S 56, N. W P. Rent Act XII of 1881, do not mean the same thing as "arrear of rent due" in the second para 15 A. 375=13 A. W N 122

RENT PAYABLE BY THE TENANT. The words "the rent payable by the tenant" in S 189 of the N W P Rent Act, (XII of 1881) mean the rate of rent, and not merely the actual amount of money which may be due at any given time by the tenant to the landlord 21 A 217=19 A W.N. 47 *See also* 14 A. 50 =11 A W N 219, 13 A. 193=11 A.W N. 83.

Rent roll. Schedule or account of rents.

Rent seck. "Rent seck" is a rent reserved by deed, but without any clause of distress.

Rent service Rent service arose where the tenant held his land by fealty and certain rent, or by a certain rent, together with homage, fealty, or other services It was called "rent service," because it had some corporal service, as fealty, at least, belonging to it

Rent suit.

Rent suit A suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment, is one for rent and not for damages 10 I.C 382 (383)

Rental. A roll on which the rents of a manor or estate are registered or set down, and by which the bailiff collects the same

The term "rental," as defined by Webster, is "a sum total of rents, as an estate that yields a rental of Rs. 10,000 a year"

Rental agent A mere rental agent is ordinarily one who rents premises and collects rents thereon, and in the absence of definite proof it cannot be said that such agent is in all respects, so far as the control of the property is concerned, the representative of the owner

Rental value The term "rental value," as applied to realty is but another form of saying the value of the use, and means simply the value of the use of the land for any purpose for which it is adapted in the hands of a prudent and discreet occupant upon a judicious system of husbandry

The terms 'rental value" and "value of the use" of the premises, means substantially the same thing

RENTAL VALUE or hire of a saw mill with a known capacity is the value of the use of the same

Rented "The word 'rented' may be used in two senses It is said that a landlord rented his lands to his tenant, and with almost equal propriety it may be said that the tenant rented an estate from his landlord"

The word "rented," apart from the qualification of it by words with which it stands connected, naturally means that the tenant to whom the property is rented has the exclusive possession for the time

"Renunciation" is simply the giving up of a right

RENUNCIATION is the act of renouncing a right as executors may renounce or refuse to take probate of a will. (*Tomlins Law Dic*)

Renunciation, as executor, is an act whereby a person named in a will is executor declines to take on himself the burden of that office

Reorganizatiou "The term "reorganization" is commonly applied to the formation of a new company by the creditors and share-holders of a corporation which is in financial difficulties, for the purpose of purchasing the company's works and other property The result of a transaction of this kind is to form a new corporation to carry on the business of the old company upon a new basis, free from its debts and obligations, except to the extent that they have been expressly assumed"

The Re-organization of a Co means the same as, and not more than, its Reconstruction (per *Chitty, J., Hooper* v *Western Counties Telephone Co*, 41 W R 84, 68 L.T. 78)

"Repairs" defined Act 2, 1902, S 2 (1) (*g*).

"Repair" means to mend, add to, or make over, restoration in a sound or good state after decay, waste, injury, or partial destruction *See* 38 Bom. L.R. 280.

Repair a building

Repair generally means, to make good defects, it would include renewal where that is necessary. (*Inglis* v *Buttery*, 3 App. Ca. 552)

A covenant to repair would be satisfied by "patching, where patching is reasonably practicable, and, where it is not, you must put in a new piece." (per *Lord Blackburn cited in Stroud*)

As between landlord and tenant the general rule as to the liability to keep the premises in proper repair is that, 'diminution in value, resulting from the natural operation of time and the elements falls on the landlord, but the tenant must take care that the premises do not suffer more damage than the operation of those causes would effect, and he is bound, by reasonable applications of labour, to keep the house as nearly as possible in the same condition as when it was demised" (per *Tindal, C J, Gutteridge* v *Munyard*, 1 Moo & R 336; 7 C & P 129)

An obligation to "REPAIR" AND KEEP IN REPAIR does not impose a liability to substitute new buildings for old (*Gutteridge* v *Munyard, sup*)

"Repair a building" means to replace it as it was, or to restore it after dilapidation; not to enlarge or elevate it, by raising it from one to two or more storeys, not to extend its sides

"HABITABLE REPAIR" in respect of premises means to improve the state of repair, and render the premises reasonably fit for an ordinary occupier of such premises (*Belcher* v *McIntosh, sup.*)

"MAINTENANCE" AND "REPAIR," when applied to a street practically mean one and the same thing To repair means to restore to a sound or good state after decay, injury, dilapidation, or partial destruction. The word "maintain" does not mean to provide or construct, but means to keep up, to keep from change to preserve To hold or keep in any particular state or condition, to keep up "The verb 'to maintain' signifies to support what has already been brought into existence"

"The PAINTING OF A HOUSE is usually provided for by the express terms of a lease, but it would seem that some degree of painting is implied in the mere term 'Repair' It has been ruled for instance, that under a covenant to 'substantially repair, uphold, and maintain,' a house, the covenantor is bound to keep up the inside painting (*Monk* v *Noyes*, 1 C. & P 265), but it has been also ruled, on a covenant,—as often as necessary well and sufficiently to repair, uphold, sustain, paint, glaze, cleanse, and scour, and keep and leave the premises in such repair, reasonable wear and tear excepted,—that the tenant, if he has repaired within a reasonable time before leaving, is only bound, in addition to the repair of actual dilapidations, to clean the old paint, &c, and not to repaint. (*Scales* v. *Lawrence*, 2 F & F 289.) Questions of this kind will often be more questions of fact than of law, but if the painting be left to be included in the general term 'Repair' the only legal obligation would seem to be to paint just as much as is necessary to keep the premises from actual deterioration" (*Woodf* 630; *Stroud*)

"'IMPROVE' AND 'REPAIR' are not equivalent words" (per *Brett, L.J Truscott* v *Diamond Rock-Boaring Co.*)

Repairing lease.

Repairing lease. "The term 'Repairing Lease' has no very precise signification." (per *Erle, C.J.*, *Easton* v *Pratt*, 33 L.J. Ex 234, 2 H. & C 687)

REPAIRING AND REPAVING Repairs to pavement, which has become dilapidated that a reconstruction with new materials is essential amount to a repaving.

Repave, repavement Repaving occurs when a pavement is replaced by another one.

"Repay" "Repay", as used in an order reading, "let plaintiff and family have whatever they want for their support, and I will repay you for the same", does not necessarily mean to pay money It has also the meaning of return, restore, etc, and to hold that the party making the order had the right to repay any kind of articles furnished for the support of plaintiff and family would not be at variance with the language of the order

Repayment "'May secure the Repayment of' (Borrowed money)—a form of expression occurring in Railway Acts, which has been held to preclude the issue of securities at a discount" (per Jessel, M R, *Anglo Danubian Steam Nav Co*, 44 L J Ch 503).

Repeal A revocation, as, the repealing of a statute is the revoking or disannulling it (*Tomlins Law Dic.*)

A repeal signifies the abrogation of one statute by another

The primary meaning of the word "repealed", as used in speaking of the repeal of a statute, is, as its etymology imports, that the statute has been recalled or revoked

The general rule is when an Act of Parliament is *'repealed'* it must be considered (except as to transactions past and closed) as if it had never existed" (per *Tenterden, C.J.*, *Surtees* v *Ellison*, 9 B & C 752)

"'Repealed' is not to be taken in an absolute, if it appear upon the whole Act to be used in a limited, sense" (per *Ellenborough, C J*, *R* v *Rogers*, 10 East 573).

REPEAL AND SUSPENSION DISTINGUISHED There is a material difference between the repeal and the suspension of a statute A repeal removes the law entirely; but, when suspended, it still exists, and has operation in every respect, except wherein it has been suspended

The difference between a repealed and a suspended law is this A repeal puts an end to the law. A suspension holds it in abeyance.

REPEAL BY IMPLICATION To constitute a repeal by implication there must be such repugnance or conflict between the positive and material provisions of the different acts that they cannot stand together

A repeal by implication must be by necessary implication. It is not sufficient to establish that the subsequent law or laws cover some, or even all, of the cases provided for by it; for they may be merely affirmative, or cumulative, or auxiliary "But there must be a positive repugnance between the provisions of the new law and those of the old, and even then the old law is repealed by implication only *pro tanto*, to the extent of the repugnance

Repel. Repulse, ward off, refuse acceptance.

Repellitur a sacramento infamis An infamous person is repelled from an oath, is thrust back from taking an oath, or not allowed to be sworn as a witness

Repentance State of being penitent, sorrow for what one has done or omitted to do

REPENTANCE, PENITENCE, CONTRITION, COMPUNCTION, REMORSE, Repentance may be felt for errors which concern only ourselves, or at most offences against our fellow creatures, penitence, and the other terms, are applicable only to offences against the moral and divine law, that law which is engraven on the heart of every man. We may repent of not having made a bargain that we afterwards find would have been advantageous or we may repent of having done any injury to our neighbour, but our penitence is awakened when we reflect on our unworthiness or sinfulness in the sight of our Maker This penitence is a general sentiment, which belongs to all men as offending creatures, but contrition compunction, and remorse are awakened by reflecting, on particular offences; contrition is a continued and severe sorrow, appropriate to one who has been in a continued state of peculiar sinfulness, compunction is rather an occasional but sharp sorrow, provoked by a single offence, or a moment's reflection, remorse may be temporary, but it is a still sharper pain awakened by some particular offence of peculiar magnitude and atrocity. The prodigal son was a contrite sinner; the brethren of Joseph felt great compunction when they were carried back with their sacks to Egypt, David was struck with remorse for the murder of Uriah

Repenter (*Lat*) To change one's mind, to repent

Repleader To plead again, to plead over again,—sometimes allowed, upon motion, where a satisfactory issue has not been reached

Replevin "'Replevin' is derived of replegiare, to redeliver to the owner upon pledges or surety". [*Co Litt* 161 (*a*)]

REPLEVIN IS, a remedy grounded and granted on a Distress, being a re-deliverance of the thing distrained, to remain with the first possessor, on security (or pledge) given by him to try the right with the distrainer, and to answer him in course of law (*Tomlins Law Dic*)

An action of *Replevin* is founded upon, and is the regular way of contesting the, validity of a distress, being a redelivery of the pledge, or thing taken in distress, to the owner by the sheriff, or his deputy upon the owner's giving security to try the right of the distress, and to restore it, if the right be adjudged against him, after which, the distrainer may keep it, till tender made of sufficient amends, but must then re-deliver it to the owner (*Tomlins Law Dic*)

Replevin is a form of action which lies to regain possession of personal chattels which have been unlawfully taken or detained, and also for damages for taking and detention.

Replevin bond

Replevin is an action to recover the possession of personal property The right to recover possession in an action of replevin depends upon the question who has the right of possession

Replevin bond A bond given by the plaintiff in replevin conditioned for a return of the property in case the rights is determined against him.

Replica Duplicate of work of art made by an artist (loosely) a copy or facsimile

Replication. (*In pleadings*) A replication which corresponds to the modern reply was the plaintiffs answer to the defendants' original plea (3 Bl Com. 309, 310), the plaintiff's answer or reply to the defendant's plea or answer

Reply In a general sense, what the plaintiff, petitioner, or other person who has instituted a proceeding says in answer to the defendant's case It is generally the name of the pleading which corresponds to "replication" in common law or equity practice

Reply post card. "A '*Reply post card*', means, a post card of such a character that the person receiving the same through the post may, without further payment, again transmit the same or a part thereof through the post" (S 2, 45 & 46 V c. 2)

Report "Report" is one of the synonyms of "rumour", which is defined by Webster to be "flying or popular report, a current story passing from one person to another, without any known authority for the truth of it"

"Report" and "comment", are two separate and distinct things A report is the mechanical reproduction of what actually took place Comment is the judgment passed on the circumstances by one who has applied his mind to them Fair reports are privileged, while fair comments are no libel at all.

The 'report' mentioned in cl (2) of S 14, Act VIII of 1890, Guardian and Wards Act does not mean a judicial reference, it indicates a purely ministerial act (26 C 133=3 C W N 91)

"Report" *See* 2 L B.R 212

Report (*law reports*) A public relation, or bringing again to memory of cases judicially adjudged in Courts of Justice, with the reasons as delivered by the Judges (*Co Litt* 293, *Tomlins Law Dic*)

Reports (*in law*) are collections of the authoritative expositions of the law by the regularly constituted judicial tribunals supplemented and arranged by an officer called the Court reporter.

Each volume of reports usually consists of a title page, of a statement of the entry of copy right, of a list of the Judges composing the court, of a table of cases reported in the volume arranged in alphabetical order, of an index to all subjects judicially considered, arranged alphabetically, often consisting substantially of a production of the head-notes of the cases reported, and principally of the reported cases themselves In addition it may and frequently does contain appropriate cross reference and foot-notes.

Component parts of cases reported. A complete report of a decided case can usually be divided into

Repository.

six distinct parts: (1) The title of the case; (2) the head-note, (3) the statement of the case, sometimes embodied in the opinion and sometimes preceding it, (4) the argument of counsel, with the names of the respective counsel, (5) the judgment of the Court, and (6) the decision.

Right to publish or to control Publication. The right to publish or to control the publication of judicial decisions for general circulation has given rise to much contention, the doctrine of the English cases differs in some respects from the rules enunciated by the American courts

In England The English cases hold that others than the reporter may not publish or sell any part of the latter's work which is original with him or avail themselves of his arrangement of the subject-matter. It is also held "that it is piracy to collect together and reprint from the law reports all the cases upon a particular subject, although the collection and classification may be new with the addition of several previously unpublished decisions and notes" And it is believed that in England the weight of authority is that the government may prevent, the publication by private parties of the opinions written by the judges

Literary product of Courts and Judges In America neither the reporter of, nor the judge delivering, an opinion has such literary property therein as to entitle him to copyright in the same, and the better opinion is that no copyright in judicial decisions and opinions exists in favour of the state. Opinions of the courts, after their delivery are the property of and belong to the public Whenever the judges prepare, in addition to the opinions, the syllabi, head notes, statements of the cases, and the like, copyright can be had in such matter. So far therefore as the opinions delivered and the literary product of Judges performed by them as such are concerned, no one has the exclusive right to publish them or to control their publication

All but the opinions of the court, and what is contained in those opinions, is usually the work of the reporter and the result of intellectual labor on his part, hence the protection of the copyright may be extended to the supplementary matter added by the reporter to the decisions as well as to his original arrangement of the judicial expositions, so as to prevent the publication by others of volumes of reports containing copies of such matters.

Reporter A reporter of a newspaper is a person employed "in reporting proceedings of courts, public meetings, legislative assemblies, and other services of a kindred character for the newspaper"

Reporters (Law Reporters and Official Reporters) A reporter is a person who reports the decisions upon the questions of law in the case adjudged in the courts of law and equity; and an official reporter has been defined to be an official who edits and publishes decisions of the highest courts of the state

An official reporter is a public officer, and presumption of faithfulness and honesty must be indulged in his favor as in the case of other public officers.

Repository A repository is a place where things are or may be deposited for safety or preservation,

a depository, a store-house, a magazine, a "place where things are kept for sale, a shop, as a carriage repository"

"Represent" To represent a person is to stand in his place, to act his part, to exercise his right, or to take his share

To represent means to stand in the place of, and so insurance money represents the property insured, so that, where the property is exempt from execution, the insurance money is also.

The word "representing", in a petition by taxpayers which states that "the undersigned, representing a majority of the taxpayers, etc, means that the undersigned stand for or are a majority of the taxpayers of the town It cannot be construed to mean that the undersigned represent, as agent or otherwise, a majority of the taxpayers

"Representation" defined. 56 V. c 5, s 29, 57 8 V c. 60, s 742

REPRESENTATION A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented In the law of contracts in general, a statement, incidental to a contract, relative to some fact having reference thereto, and upon the faith of which the contract is entered into.

'Representation,' *meaning of* *See* 28 M 476, 6 C W.N 127

(In insurance) A "representation", as the term is used in insurance, is an affirmation or denial of some fact, or an allegation which would plainly lead the mind to the same conclusion.

In the law of insurance, a representation to the insurer, before or at the time of making a contract of insurance, is a presentation of the elements upon which to estimate the risk proposed to be assumed They are the basis of the contract, its foundation, on the faith of which it is entered into If wrongly represented in any respect material to the risk, the policy that may be issued thereupon will not take effect To enforce it would be to apply the insurance to a risk never presented.

In the law of insurance, a collateral statement, either by parol or in writing, of such facts or circumstances relative to the proposed adventure, and not inserted in the policy, as are necessary for the information of the assurer to enable him to form a just estimate of the risk, an assertion by the insured of some fact, a presentation of the elements upon which to estimate the risk proposed to be assumed, a statement by the applicant to the insurer regarding a fact material to the proposed insurance to the insurer with reference to a proposed contract of insurance, a verbal or written statement made by the assured to the underwriter, before the subscription of the policy as to the existence of some fact or state of facts tending to induce the underwriter more readily to assume the risk by diminishing the estimate he would otherwise have formed of it.

"Representations", in the law of insurance, in their usual significance precede the policy, and refer the character, ownership, use, and other particulars of the subject insured, whether material or not. If they are made part of the policy, and are false, they are treated also as warranties, and the misrepresentation avoids the policy

"REPRESENTATION" AND "HEIRSHIP", though they may produce the same result, are not the same thing, and it is not necessary that a person should be the heir of another, in order to be his representative. "Heirship" is the result, while "representation" is but a process through which that result is produced.

"Representative" defined. (*See also* Agent, Legal personal representative, Legal representative, personal representative) 56 Vc 5, s. 29, Act 16, 1908, s 2, Act 22, 1886, s. 3 (12).

REPRESENTATIVE A representative is one who stands in the place of another as heir, or in the right of succeeding to an estate of inheritance, one who takes by representation, one who occupies another's place, or succeeds to his rights and liabilities

A representative is one chosen by a principal to exercise for him a power or perform for him a trust In that sense the mayor of a city is a representative, for some purposes, of the members of the city council The idea of a representative implies a person chosen for some purpose, and confided in to represent his principal therein One person may be thought suited to one duty, and another to another, and the right to be represented implies a right, not merely to name the person, but also to designate the trust that shall be confided to him.

"Representative", is sometimes defined as one who has taken Representation to a deceased person, (28 & 29 V c. III, s 2)

"The ordinary legal sense of the term 'Representatives', without the addition of 'legal' or 'personal' is executors and Administrators" (Wms Exs 993, Re Crawford, 2 Drew 230).

A person appointed by the court as a substitute for a deceased trustee is not a representative of the deceased

Contextually "Representatives" may be taken to mean as "Next of Kin" or as "Descendants". So, in a bequest to *A* for life, and, at his death, the principal to be paid to such children or Representatives of Children as he may leave, "Representatives" was held to mean "Descendants" (*Herbert* v *Forbes*, 1 L J Ch 118)

A Solicitor is the representative of his client, but Counsel is not, for Counsel "has the whole conduct of the case, and can act even against the instructions of the client" (per *Bretts, M R., R* v. *Greenwich Co Registrar*, 54 L J Q B. 392).

"REPRESENTATIVE" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot Act XVI of 1908 (Registration), s. 2 Cl. 10

The word 'representative" in S 2 (10) of the Registration Act includes the *de facto* guardian of a minor 120 I.C 77 (2)=A I.R. 1930 Mad. 425.

The term "representative" in S. 115 of the Evidence Act is not limited to a gratuitous transferee or to a subsequent transferee for value with notice It includes a *bona fide* assignee for value without notice of the circumstances creating an estoppel. 148 I.C. 612=1934 M W N. 316=39 L.W. 431=A.I.R. 1934 Mad. 302=66 M.L.J. 563.

Representative.

The word 'representative' in the Fatal Accidents Act has not the same meaning as the expression as "legal representative" as defined in the C. P. Code. It does not mean only executor or administrator, but includes all or any of the persons for whose benefit a suit can be brought under the Act 159 I C. 363=8 R.B. 190=37 Bom.L R 410=A I R 1935 Bom 333

The word "representative" in the Act has a special meaning of its own It has not the same meaning as "legal representative" in the C P Code It means and includes all or any of the persons for whose benefit a suit under the Act could be maintained It is not a surplusage in the case of Europeans and Eurasians and where there is no executor or administrator, the wife and children are entitled to maintain the action 61 Cal 480=38 C W N 520=151 I.C 680 =59 C L J. 221=A.I R 1934 Cal 655

The word "representative" in S 47, C P Code (Act V of 1908) does not include a person who had purchased from the judgment-debtor property against which the decree was sought to be executed, but which was not affected until an order for sale in execution of the decree was made 14 I.C. 40 (43)= 113 P W R. 1912=64 P R 1912

An auction purchaser at a sale in execution of a simple money-decree is not a "representative" 3 I C. 713 (714)=5 L B R 85

The word "representative" in S 47 of the C P. Code, includes a party who by assignment or gift succeeds to the rights of the decree-holder after decree 31 A. 82 (F B)=6 A L J 71=5 M L T 185 =1 I C 416.

A person who purchases at a public sale in execution of a decree is not the representative of the judgment-debtor within the meaning of S 47 of the C P Code, but a person who claims by private purchase from the judgment-debtor is his representative 16 C 355.

The terms "REPRESENTATIVES", "LEGAL REPRESENTATIVES", AND "PERSONAL REPRESENTATIVES" of deceased persons were used interchangeably, and primarily meant those artificial representatives, the executors and administrators, who by law represented the deceased, in distinction from the heirs, who were the NATURAL REPRESENTATIVES, but as, under statutes of distribution, executors and administrators are no longer the sole representatives of the deceased as to personal property, these words have lost much of their original distinctive force, and are now used to describe either executors and administrators, children or descendants, next of kin or distributors, and, when not applied to those who represent deceased persons, they may mean trustees in insolvency and receivers

Representative capacity The term "representative capacity" is a well-understood term, and only applies to a party acting for and on behalf of some other party or estate, and not for himself personally

"Representative in interest". It may be true that the phrase "representative in interest" is not for all purposes synonymous with the expression "persons claiming under" in S 11 of the Code of Civil Procedure 55 Mad 40=139 I.C. 684=35 L W. 73=1932 M W N. 31=A.I R. 1932 Mad. 198=62 M L. J. 116.

The purchaser at a sale in execution of decree is a "representative in interest" of a judgment-debtor within the meaning of S 21 of the Evidence Act. 21 W R. 148 (*b*) *See also* 13 A 28 (51)=10 A.W.N. 216, 6 C.L J. 659 (661)=3 M L T 38

The expression "representatives in interest" includes privies in estate 8 Pat.L T 510=101 I.C 289=A I R 1927 Pat 61. *See also* 1927 Mad. 733= 102 I.C. 713.

Representative in parliament "Representative in parliament is a phrase synonymous with member of parliament".

"Representative legislature" defined. 53-4 v.c 27, S 15

"REPRESENTATIVE LEGISLATURE", is the Colonial Courts of Admiralty Act, 1890, 53 & 54 V.C 27 "means, in relation to a British Possession, a legislature comprising a Legislative Body of which at least one half are elected by inhabitants of the British Possession"

"Representative matadar" defined Bom. Act 6, 1887, S 2 (5)

Representative of a party The expression "representative of a party" in the last paragraph of S 47, C P Code, does not mean the representative of a party to the execution proceedings but it means the representative of a party to the suit 3 C W.N. 276

"Representative of the deceased": The term "representative of the deceased" in the Fatal Accidents Act XIII of 1855 applies to Europeans as well and is not limited to Hindus and Mahomedans The expression means and includes all or any one of the persons, for whose benefit a suit under the Act can be maintained, and is not confined merely to executors and administrators 28 M 479=15 M.L.J 363.

"Representative of the Government of India" defined Act 1, 1872, S 86

"Representative watandar" defined Bom Act 3 1874, S 4

"REPRESENTATIVE WATANDAR" means a watandar registered by the Collector as having a right to perform the duties of an hereditary office: Bom. Act III of 1874 (Hereditary Offices). S 4.

HOUSE OF REPRESENTATIVES Lower house of the United States Congress

"Representing or performing" "representing or performing" a dramatic piece or musical composition within the Copyright Act, implies "that there must be publicity in the audience" (*per* Brett, M R, *Wall* v *Taylor* 52 L J Q B. 562).

TO REPRESS, RESTRAIN, SUPPRESS. One cannot too quickly repress a rising spirit of resistance in any community large or small, one cannot too early restrain the irregularities of childhood To repress is simply to keep down or to keep from rising within one's-self To suppress is to keep under or to keep from appearing in public A judicious parent represses every tumultuous passion in a child, a judicious commander suppresses a rebellion by a timely and resolute exercise of authority Hence the term repress is used only for the feelings or the movements of the mind, but suppress may be employed for that which is external. We repress violence: suppress publications or information.

Reprieve.

Reprieve, (*from the Fr Repris*) The taking back or suspending a prisoner from the execution and proceedings of Law for that time (*Termes de la Ley Tomlins Law Dic*)

"A reprieve", says Mr Bishop, "signifies the suspension for a time of the execution of a sentence which has been pronounced". Blackstone says that a reprieve is the withdrawing of a sentence for an interval of time, and that the word is from 'reprendre', meaning to take back" Webster defines the word "reprieve" as "the temporary suspension of the execution of a sentence,—especially the sentence of death"

Reprieve, Respite The idea of a release from any pressure of burden is common to these terms, but the reprieve is that which is granted, the respite sometimes comes to us in the course of things we gain a reprieve from any punishment or trouble which threaten us, we gain a respite from any labour or weight that presses upon us A criminal gains a reprieve when the punishment of death is commuted for that of transportation, a debtor may be said to obtain a reprieve when, with a prison before his eyes, he gets such indulgence from his creditors as sets him free

Reprisal. The taking one thing in satisfaction for another (*Tomlins Law Dic*)

Reprises "Reprises" is not a word in common use, even in the law The dictionaries give it as a law term, with the following definition 'Deductions and duties paid yearly out of a manor and lands, as rent charge, rent seck, pensions annuities, and the like" 'Yearly deductions, duties or payments out of a manor and lands, as rent charge, rent seck, annuities, and the like". (*Termes de la ley*), "Deductions and duties which are yearly paid out of a manor and lands, as rent charge, rent seck, pensions, coodies, annuities etc, so that, when the clear yearly value of a manor is spoken of, it is said to be so much *annum ultra* reprises besides all reprises" "A resumption or taking back, used for such deductions as rent charges or annuities", and the like, are called reprises, because they are taken back When we speak of the clear yearly value of an estate, we say it is worth so much a year, ultra all reprises", "Deductions on account of payments and expenses"

Reproach The word "reproach" is synonymous with the words "censure" and "obloquy"

Reproach. Reproof, censure

REPROACH, CONTUMELY, OBLOQUY The idea of contemptuous or angry treatment of others is common to all these terms, but reproach is the general, contumely and obloquy are the particular terms Reproach is either deserved or undeserved, the name of Puritan is applied as a term of reproach to such as affect greater purity than others, the name of Christian is a name of reproach in Turkey. Contumely is always undeserved, it is the insolvent swelling of a worthless person against merit in distress, our Saviour was exposed to the contumely of the Jews obloquy is always supposed to be deserved; it is applicable to those whose conduct has rendered them objects of general censure, and whose name therefore has almost become a reproach

REPROACHFUL, ABUSIVE, SCURRILOUS. The language of a person is reproachful when it abounds in reproaches, or partakes of the nature of a reproach a person is abusive who indulges himself in abuse or abusive language and he is scurrilous who adopts scurrility or scurrilous language.

Reproachful language may be, and generally is, consistent with decency and propriety of speech, abusive and scurrilous language are outrages against the laws of good breeding, if not of morality.

Reprobata pecunia liberat solventem Money refused (the refusal of money tendered) releases him who pays or tenders it.

Reprobate Reject, disallow, set aside

TO REPROBATE, CONDEMN To Reprobate is much stronger than to condemn we always condemn when we reprobate, but not *vice versa* to reprobate is to condemn in strong and reproachful language We reprobate all measures which tend to sow discord in society and to loosen the ties by which men are bound to each other, we condemn all disrespectful language towards superiors.

Republic A republic is a government for the protection of the citizen against the exercise of all unjust power It is a government administered by a few, as the representatives of the people and for their benefit

"A republic, is an independent sovereign power—in other words, a state—just as certainly and in the same sense as a monarchy, limited or absolute, and every state is a person, an artificial person, in a more extensive and far higher sense than an ordinary corporation".

Republish To "republish" means to publish again that which has been before published

Repudiation The renunciation of a right contract, or obligation

Repudium (*Lat*) A breaking off of a contract of espousals, or a marriage intended to be solemnized.

Repugnance One definition given of "repugnance" is "inconsistency" These words, though not exactly synonymous, may be and often are used interchangeably

Repugnant, (Repugnans) What is contrary to any thing said before Repugnancy in deeds, grants, indictments, verdicts, &c under certain circumstances, make them void (*Tomlins Law Dic.*)

The rule that in case of two repugnant clauses in a deed, the first shall be received and the latter rejected is subject to the general rule that the document must be read as a whole. 14 O.C. 189=11 I.C 685.

Reputation Credit, honour, character, good name.

REPUTATION is a sort of right to enjoy the good opinion of others, and is as capable of growth, and has as real an existence, as an arm or leg It is a personal right, and an inquiry to reputation (as by a libel) is a personal injury.

The "reputation" of a witness for truth is equivalent to his character for truth. General reputation is general character, common opinion, that in which there is general concurrence; or, in other words,

Reputation

general reputation or character is presumed to be indicative of actual character

REPUTATION OR FAME Is under the protection of the law, as all persons have an interest in their good name, and scandal and defamation are injurious to it, though defamatory words are not actionable, otherwise than as they are a damage to the estate of the person injured, (*Tomlins Law Dic*)

"REPUTATION" AND "CHARACTER", are not synonymous terms Character is what a man or woman is morally, while reputation is what he or she is reputed to be Yet reputation is the estimate which the community has of the person's character, and it is the belief that moral character is wanting in the individual that renders him unworthy of belief

Webster defines "reputation" to be good name; the credit, honor, or character which is derived from a favourable public opinion or esteem, and character by report. 'It is very true that the word 'character' is often used colloquially in the same sense as 'reputation', but such is not its true signification. According to Webster "character" signifies the peculiar, qualities impressed by nature or habit on a person which distinguish him from others These constitute real character, and the qualities which he is supposed to possess constitute his estimated character or reputation"

Reputed character The reputed character of a person is said to be the slow-spreading influence of opinion arising out of the deportment of an individual in the society in which he moves, as distinguished from his real character, which is that impressed by nature, traits, or habits upon a person

Reputed house of prostitution. The term "reputed house of prostitution or assignation," as used in the Penal Law, includes all premises which by common fame or report are used for the purpose of prostitution

Reputed owner One who has, to all appearances, the right of ownership or actual possession of property

Reputed ownership A term in use regarding goods and property in the possession of a bankrupt and applies to everything under his control at the time of his bankruptcy

Reputed thief The fact of there being two previous convictions for theft suffices to make the accused a "*reputed thief*" within the meaning of S 112 of the City of Bombay Police Act 27 Bom. L.R. 1388

Request A demand or requirement.

Webster defines "request" to mean to ask, to solicit, to express desire for, "Request", is "to ask for earnestly, to entreat

COURTS OF REQUEST Tribunals of a special jurisdiction for the recovery of small demands

"Request", as used in a will, wherein testator makes a devise and thereafter expresses a wish as to the disposition of the property or fund, is a precatory word, sufficient to create a trust in the property devised.

Request-note. Application to obtain a permit for removing excisable articles. Note filled up and

Requisite.

signed by an importer when requiring the removal of dutiable goods from one warehouse to another.

"Requested" Where a donee of property is "requested" by the testator to dispose of that property in favor of others, the word is imperative, and its employment often creates a trust

Require "Require" means to make necessary, to demand, to ask as of right

Webster defines "require" to mean to demand, to ask as of right, and by authority; (2) to claim, to render necessary as a duty, (3) to ask as a favour, to request (4) to call to account for

"To 'require' is to demand, to insist upon having, to claim as of right, to exact, to claim as indispensable".

In a contractual obligation whereby one party is to do or permit such things as the other may "require" the word means "reasonably require" (*Braunstein* v *Accidental Insurance*, 31 L J. Q.B. 17 =1 B & S 782.)

The words 'PRESCRIBE", "DIRECT", AND "ORDER" are all synonyms of the word "require".

"Required" "If trustees be authorized and *required*, at the instance of the tenant for life, to invest the trust funds in the purchase of leaseholds, they have no option if the tenant for life insist upon his right", (Lewin, 370, citing *Cadogan* v. *Essex*, 2 Drew 227)

Where the phrase "is hereby required" is used it is to be taken as directory only (*R* v *Birmingham*, 8 B & C 29)

In giving judgment in that case a case where it was sought to declare the marriage of a minor on account of the want of the father's consent which the statute *required* Tenterden, C J, said—"The language of this section is merely to require consent, it does not proceed to make the marriage void if solemnized without consent" (cited by Tindal, C J., *Cole* v *Greene*, 13 L J C P. 32) But the Alehouse Act, 1828, were provided that the Court hearing the appeal therein mentioned" is hereby required" to adjudge costs gives no discretion but that the court is called upon to give the litigant Licensing Justices indemnity costs. (*R* v. *Worcestershire Jus.*, 1900, 2 Q B 576)

"REQUIRED OR AUTHORIZED TO DO" *See* 18 M L J. 43 (P C.)=3 M L T. 151=10 Bom L R 66=7 C L J. 139=12 C W N. 249=35 I A 73=35 C 331

Requisite The word 'requisite" is a strong word, it may be regarded as meaning something more than the word required It means "*properly required.*" 55 I A 161=6 R 302=5 O W.N. 479=28 L W 207=47 C L J 510=30 Bom L R 842=26 A.L J. 657=32 C W.N 845=109 I C 1=A I.R. 1928 P.C 103 =54 M.L J. 696 (P C.).

"REQUISITE TIME FOR OBTAINING A COPY OF THE JUDGMENT". Where judgment was delivered on 22nd December 1900, the last day before Christmas vacation at 4 P M., and the appellant made his application for a copy of the judgment on the 7th January 1901, the day on which the Court reopened after the

Requisition

Christmas holidays, the Court held that the words "requisite for obtaining a copy of the judgment" did not presuppose an application for the copy, and that the vacation time must be taken to be part of the "time requisite for obtaining a copy of the judgment" under the Limitation Act (XV of 1877), S 12 27 M 21=13 M L J 300

Requisition The formal demand by one government upon another of the surrender of a fugitive criminal

"REQUISITION" "Requisition as used in an Act, prohibiting the sale of liquors to minors except on the *requisition* of a physician for medicinal purposes, does not merely mean on the mere advice of the physician that liquor should be used, communicated to the vendor by the minor to whom it is given or sold, but an application or a request communicated by the physician directly to the seller, either orally or in writing

Requisitions of title. A series of inquiries and requests which arise upon a trial on behalf of a proposed purchaser, and which the vendor is called upon to satisfy and comply with

Rerum ordo confunditur si unicuique jurisdictio non servatur, 1 The order of things is confounded, if its proper jurisdiction is not preserved to each

Rerum suraum quilibet esto moderator et arbiter Every one is the regulator and disposer of his own property

Re-sale A second sale *See* 1937 A W R 426=1937 A L J 495=171 I C 75=1937 A L R 797=A I R. 1937 A 556.

Res (*Lat*) In the civil law, a term said to signify a thing an object

Res accessoria an accessory thing, that which belongs to a principal thing or is in connection with it.

Res accessoria cedit rei principalii an accessory thing belongs to the principal thing

Res accessoria Sequitur rem priucipalem an accessory thing follows the principal thing

Res adjudicata "Res adjudicata" means that if an action be brought, and the merits of the question be discussed between the parties, and a final judgment be obtained by either party, the parties are concluded, and cannot agitate the same question in another action It is founded upon two maxims of the law, one of which is that a man should not be twice vexed for the same cause, and the other that it is for the public good that there be an end of litigation

RES ADJUDICATA is a matter adjudged; a thing judicially acted on or decided "The principle is that the decision of a Court of competent jurisdiction upon a point which is or should have been construed is necessarily involved is final and conclusive" (*See* C P Code, S 11)

Matters once determined by a Court of competent jurisdiction can never be questioned It matters not under what form the question be presented When ever the same question recurs between the same parties, the plea of res adjudicata estops.

Res communes, common things; things common to all by the law of nature,

Res ipsa loquitur.

Res controversa a matter controverted, a matter in controversy.

Res coronae things of the crown, such as ancient manors, homages of the king, liberties, etc.

Res corporales corporeal things.

Res donominatur a princi paliori parte a thing is named from its more principal part.

Res fungibiles fungible things

Res furtivae: goods which have been stolen.

Res gestae Things done, or liberally speaking, the facts of the transaction, the facts of a transaction, explanatory of an act or showing a motive for acting, matters incidental to a main fact and explanatory of it, including acts and words which are so closely connected with a main fact as will constitute a part of it, and without a knowledge of which the main fact might not be properly understood, events speaking for themselves through the instinctive words and acts of participants, not the words and acts of participants when narrating the events, the circumstances, facts and declarations which grow out of the main fact, or are contemporaneous with it and serve to illustrate its character, those circumstances which are the automic and undesigned incidents of a particular litigated act, and are admissible when illustrative of such act

The test of whether or not declaration are *res-gestae* is, were they the facts talking through the party or the party's talk about the facts? Instinctiveness is the requisite, and when this exists the declarations are admissible.

Res immobiles immovable things

Res incorporales incorporeal things.

Res integra a thing not acted upon, a thing as it was, a thing entire or untouched, a thing not made the subject of action or decision

Res integra is a phrase applied to those points of law untouched by dictum or decision, and not affected by precedent, meaning "a whole thing, a new or unopened thing"

Res inter alios a matter or matters between strangers

Res inter alios acta. A thing done between others, or between third parties or strangers; the usual abbreviation of the maxim "*res inter alios acta alteri nocere non debet*"

Res inter alios acta alteri nocere non debet a thing done between others ought not to inure another

Res inter alios acta nemini nocere debent, sed prodesse possunt things done between others ought to injure no one, but may benefit

Res ipsa loquitur. A phrase meaning "The thing speaks for itself," "the affair speaks for itself," a general way of saying that the circumstances attendant upon an accident are of themselves of such a character as to justify a jury in inferring negligence as the cause of that accident.

"RES IPSA LOQUITUR" imports that the plaintiff has made out a *prima facie* case without any direct proof of actionable negligence.

Res judicata

Res judicata alius son abest a matter adjudged between strangers does not stand in the way of other persons

Res judicata and lis pendens *See* 61 Cal 494= 38 C.W N 492=150 I C 321=1934 Cal 552

The basic principle of *res judicata* is found in the necessity that a time should come when litigation shall cease, in order that the decree of the Court may be carried out *Res judicata* deals with the decree of the Court, as contradistinguished from the judgment of the Court, since it does not take place with respect to the reasons of the judgment, but only with respect to what was the object of the judgment The office and function and utility of *res judicata* is not to settle law questions, but to lend stability to a decree, in order that such decree may be effective

Res judicata nullum alius praejudicium faciant matters adjudged between strangers create no prejudice against other persons

Res judicata pro veritate accipitur a matter ad judged is taken foi truth

Res judicata, Res adjudicata A matter adjudged, a thing judically acted upon or decided, a thing or matter settled by judgment, a thing definitely settled by judicial decision, the thing adjudged.

Res loquitur The phrase "res loquitur," which literally translated, means that 'the thing speaks for itself," is merely a short way of saying that the circumstances attendant upon an accident are, of themselves, of such a character as to justify a jury in inferring negligence as the cause of that accident

Res mobiles, movable things, things which may be transported from one place to another without injury to their substance and form.

Res nova, A new matter, a new point or question.

Res nullius Things belonging no to one, the property of nobody

Res perit (suo) domino The thing perishes or is lost to its owner, the loss of the thing falls upon its owner.

Res privatae Private things, things belonging to individuals.

Res publica The common weal, the republic.

Res publicae Public things, such as rivers, harbors.

Res quotidianae Every-day matters, familiar points or questions.

Res religiosae. Religious things, places in which dead bodies were laid

Res sacra non recipit aestimationem. A sacred thing does not admit of valuation

Res sacre Sacred things, things consecrated to the service of God

Res sancta. Holy things

Res transit cum suo onere. The thing passes with its burden; where a thing has been incumbered by

Rescue.

mortgage, the incumbrance follows it, wherever it goes.

Res universitatis Things of a community

Rescind To rescind is to abrogate, annul, avoid, or cancel a contract

Rescission The undoing of a thing

Bishop defines a rescission of a contract as the avoidance of a voidable contract But even where a contract is voidable, and is sought to be rescinded by one of the parties thereto, equity and good conscience require that he shall place the other in *status quo* He will not be permitted to repudiate a contract, and retain the benefits derived therefrom

The rescission is the unmaking of a contract, requiring the same concurrence of wills as that which made it, and nothing short of this will suffice. There is a wide difference between the rescission of a contract and its mere termination or cancellation.

Rescissory action An action to rescind or avoid a title by prescription, an action to rescind a contract of sale

Rescripta, (*Lat*) Rescripts

Res criptum (*Lat*) A species of imperial constitution, in the form of an answer to some application or petition, a rescript

Rescue. The taking away and setting at liberty against the law a distrained animal constitutes a rescue.

A rescue is defined to be "when a man lawfully arrested and taken is set at large wrongfully."

Rescue is a taking away and setting at liberty against law a distress taken or a person arrested by the proces or course of law And all is one, as to the point of the disseisin, to rescue the distress after it is taken, and beforehand to resist and withstand the taking of it, but yet it is no Rescue, until it be distrained (*Co Litt* 160b *Termes de la Ley.*)

"RESCUE, is the act of forcibly freeing a person from custody against the will of those who have him in custody If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody." (*Steph Cr Law* 99, 100)

RESCUE OF PERSONS Rescue at common law is forcibly and knowingly freeing another from arrest or imprisonment Rescue consists in a high contempt of the law in preventing the operation of its process. The rescuers are, in any event, whether the party rescued be convicted or not, guilty of obstructing public justice The essential element of the offence, at common law, are (1) valid arrest, (2) actual custody, (3) the forcibly and knowingly freeing a person from arrest or custody, and (4) escape of the prisoner.

RESCUE OF PROPERTY. Rescue of property is the taking away and setting at liberty of a distrained animal against law, or the recaption of goods distrained.

RESCUF AND AIDING ESCAPE BY PRISONER. A rescue takes place where there is no effort on the part of the prisoner to escape, but his delivery is effected by the interference of others without his co-operation,

Rescussor.

whereas the offence of aiding a prisoner to escape consists inciting, supporting, and re enforcing his exertions in his own behalf tending to the accomplishment of the object

Rescussor (*Lat*) A rescuer.

Resembling 'Resembling' means, made or apparently intended, to resemble" (*R* v *Robinson*, 34 L J.M.C 176)

Reservation (*Reservatio*) A keeping aside, or providing as when a man lets or parts with his land, but reserves or provides for himself a rent out of it for his own livelihood, sometimes it has the force of a saving or exception (*Co Litt* 143 *Tomlins Law Dic. See* 45 Bom 1324=62 I C 1004=23 Bom L R 809.)

"RESERVATION" is taken in divers ways and hath divers natures, as sometimes by way of Exception, to keep that which a man had before in him Sometimes a reservation doth get and bring forth another thing which was not before (*Termes de la Ley*).

A reservation in a deed is something created out of the granted premises by force and effect of the reservation itself, as an easement out of land granted, or rent out of premises devised

A RESERVATION DIFFERS FROM AN EXCEPTION in this, that the latter is a part of the thing granted—of the thing *in esse* at the time—but the former is of a a thing newly created or reserved out of the thing demised, that was not *in esse* before The two words are, however, often used indiscriminately Whether a particular provision is an exception or a reservation does not depend on the use of the word "reservation" or "exception," but on the nature and effect of the provision itself A reservation, in a conveyance, is the withholding by the grantor of some right or privilege for his own use out of, or in connection with the estate conveyed, while an exception relates to a part of the thing granted. (*Tomlins Law Dic*)

By an exception some portion of the subject of the grant is excluded from the conveyance, and the title to the part excepted remains in the grantor by virtue of his original title A reservation creates a new right out of the subject of the grant, and is originated by the conveyance

Reserve—reserved "Reserve" means to keep, to hold, to retain

The word 'reserve" means to appropriate, to set aside.

A direction to "reserve" personalty for a Charitable Bequest, implies marshalling the assets (*Miles* v. *Harrison*, 9 Ch. 316).

Reserve (*Milit.*) Troops withheld from action to reinforce or cover retreat forces outside the regular army or navy liable to be called out in emergencies.

RESERVE, RESERVATION. Reserve is applied in a good sense, to anything natural or moral which is kept back to be employed for a better purpose on a future occasion, reservation is an artful keeping back for selfish purposes.

RESERVE, RETAIN To reserve is employed only for that which is allowable, we reserve a thing, that is, keep it back with care for some future purpose; to retain is often an unlawful act, debtor frequently retains in his hands the money which he has borrowed

Reserve capital Unpaid capital as can only be called for winding up purposes

"Reserve forces" In the Army Act, 1881, 44 & 45 V c 58, (S 190) "'Reserve Forces,' means, the Army Reserve Force and the Militia Reserve Force"

"Reserve forest." Act 7, 1878, S. 19, Bur Act 4, 1902, S 3 (11), Reg. 6, 1893, S 2 (6)

"RESERVED FOREST" means and includes a forest and every part of a forest—(*a*) declared to be a reserved forest under the provisions of this Act or the corresponding section of any enactment previously in force, or (*b*) declared to be a reserved forest under the provisions of any rules in force, *See* Bur Act IV of 1902 (Forests), S 3, cl 11

Reserve Fund A fund set apart by a company, firm or institution, over and above its capital, to provide for contingencies

Reserve Price The lowest price at auction or otherwise at which specified goods will be sold

RESERVED ACCOMMODATION For a particular class of persons is legal in Railways 47 Bom 465=25 Bom L R 26=24 Cr L J 297=A I R 1923 Bom. 1. *See also* 42 M L J 21=A I.R 1922 M 35

Reserving Reserve cometh of the Latin word reserve, that is, to provide for store, as when a man departeth with his land, he reserveth or provideth for himself a rent for his own livelihood And sometime it hath the force of saving or excepting (Co Litt 142-b, 143-a)

Reserving compartment (*in Railways*) for Europeans and Anglo-Indians—Legality 42 M L J 21=45 M 215=(1922) M W N 34=66 I C 520=23 Cr L J 296=30 M L T 134=A I R 1922 Mad 35 *See also* 47 Bom. 465=A I R. 1923 Bom 1

Reservoir In common speech, a "reservoir" often signifies the water kept, not the structure in which it is kept

Reset, resset (*In Scots law*) The receiving or harbouring of a proscribed or outlawed person.

Reset of theft the receiving of stolen goods knowing them to be stolen, to harbor and conceal the thief

"Resettle" The word "resettle," as used in a contract in which a party agrees to give another full possession of his medical practice, and promises not to resettle in the town so long as the other party is located there, means that he will not resettle in the said town to engage in the practice of medicine.

"Reside" defined Ben Act 3, 1899, s 3 (40); Bom Act 3, 1888, s 3 (*n*).

Reside Residence. "Signifies a man's abode or continuance in a place" (*Cowel*)

The word "reside" where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat drink and sleep" (per *Bayley, J.,R.* v. *North Curry*, 4 B. & C. 959).

Reside

The word "reside" is used in two senses—the one, constructive, technical, legal, the other, denoting the personal, actual habitation of individuals When a person has a fixed abode, where he dwells with his family, there can be no doubt as to the place where he resides The place of his personal and legal residence is the same, so that when a person has no permanent habitation or family, but dwells in different places, as he happens to find employment, there can be no doubt as to the place where he resides He must be considered as residing where he actually or personally resides But some individuals have permanent habitations where their families constantly dwell. yet pass a great portion of their time in other places Such persons have a legal residence with their families, and a personal residence in other places, and the word "reside" may, with respect to them, be used to denote either their personal or their legal residence.

A person who has an abode elsewhere, but who comes to a place for a short period and with a fixed purpose for being within the jurisdiction of a Court cannot be said to "reside" there A I R 1930 Lah 916 *See also* 14 M L J 223.

A person is deemed "to reside" in any dwelling which he sometimes uses, or some portion of which he sometimes uses though, perhaps, not uninterruptedly, as a sleeping apartment and a person is not deemed to cease "to reside" in any such dwelling merely because he is absent from it or has elsewhere another dwelling in which he resides, if there is the liberty of returning to it at any time and no abandonment of the intention of returning thereto Bom Act III of 1888 (City Bom Municipal) s 3, Cl. (*n*)

The word "reside", as used in S 2 of the Indian Divorce Act, implies a dwelling either of a permanent nature or for some considerable time It cannot therefore apply to the stay of a person who has a permanent abode elsewhere and who merely comes to India for the purpose of filing a suit under the Act with the intention of returning to his permanent abode on the conclusion of the litigation 1 L.B.R 222; *See also* 14 Bom 541

The word "reside" in cl (a), S 33 of Registration Act III of 1887 means "staying or living for the time being" and has nothing to do with the meaning of the words 'domicile" or domicil" 16 A.W N. 170

The word "reside" in O. 3, Civil Procedure Code is an ambiguous and elastic expression and should be interpreted with reference to the object and character of the provision in which it occurs. 14 M L J 223.

"RESIDE" IN REFERENCE TO CORPORATIONS "Probably the only sense in which a corporation may be said to reside anywhere is with reference to its legal or statutory habitat, which is the jurisdiction of its incorporation In this sense, to say that a corporation is a non-resident is to say that it is a non-domestic corporation, and all corporations which are not domestic are foreign"

The word "reside" in S. 5 of the Insolvent Act, when applicable to the insolvency of traders, includes an occupation for the purpose of trading, whether or not accompanied by sleeping or dwelling 11 B.L R. 254 *See also* 5 C 605 (610); 10 Bom L.R. 84 (85).

RESIDE AND DWELL. *See* 25 Bom. 176.

Residence

"**Residence**" defined Mad. Act 3, 1904, s 3 (30).

Every person has in law a residence or domicile. In determining the place of residence the following rules should be observed (1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose (2) There can only be one residence (3) A residence cannot be lost until another is gained (4) The residence of the father during his life and after his death the residence of the mother while she remains unmarried, is the residence of an unmarried minor child (5) The residence of the husband is the residence of the wife (6) The residence can be changed only by the union of act and intent

" '**Residence**' has a variety of meanings according to the statute (or document) in which it is used." (per *Erle, C J*, *Naef* v *Mutter*, 31 L J C P 359)

It is an "ambiguous word" and may receive a different meaning according to the position in which it is found (per *Cotton, L J*, *Re Bowie*, Ex p Breull, 50 L J Ch 386, 16 Ch D 484)

Whether the term" residence" be taken in the sense of domicile, or of abode, it implies a place where a party is situated through choice, and where in some conceivable manner his personal belongings would be the more readily found, and neither in its legal nor in its popular meaning is the word "residence"satisfied by an incarceration in any particular place It is impossible to hold, that a person resides in the prison where he was imprisoned

RESIDENCE is a word used in law to denote the fact that a person dwells in a given place or, in the case of a corporation, that the management is carried on there It is a word capable of different meanings, including temporaryresidence or permanent domicile; a word whose statutory meaning depends upon the context and the purpose of the statute, which may as used in one statute be fulfilled be mere business residence, and in another require domicile in the strictest and most technical sense The abode, or dwelling place, as distinguished from a mere locality of existence, the place of abode, a dwelling,a habitation, the act of abiding in a place for some continuance of time. A fixed and permanent abode, a dwelling house for the time being, as'contradistinguished from a mere temporary locality of existence The place where a man established his abode and makes the seat of his property and exercises his civil and political rights, the place where one habitually sleeps; where one sleeps and lives, the place where a man is chiefly to be found Of a corporation, its chief office or place of business, the place where the real trade or business is carried on, in another sense, its citizenship.

The residence and domicile of an incorporated trading company is its principal place of business, *i e*, the place where the administrative business of the company is conducted 27 M 315, (6 H & N 404, 7 Jur N S 631, 1 C B N S 325, 4 H. & N. 482, L R. 3 C P.D 18, 2 H & C. 729, L.R. 1 Ex. D. 428, R.)

Residence must be interpreted in the sense of personal residence and that one who neither himself personally resides nor maintains a residence for himself or his family within the Municipality but merely

Residence.

maintains an office for the collection of his rent cannot be said to reside within the Municipality 48 M L J 428=48 Mad. 476=21 L W 457=1925 M.W N 210=88 I.C 662=A I.R 1925 Mad 607.

A person is to be deemed to reside at the place where he actually and voluntarily resides and carries on business, and he cannot be said to reside at a place where he has the family home and which he only occasionally visits 2 Bom L R. 605

The word 'residence' may receive a larger or more restricted meaning according to what the Court believes the intention of the legislature to have been in framing the particular provision in which the word is used The word in O 25, R 1, C. P Code was intended by the legislature to mean a residence under such circumstances as would afford reasonable probability that the plaintiff would be forthcoming when the suit was decided, 3 B *227 See also* 8 Mad 205 (206), 14 B 541 (548, 550), 1 L B R 222 (224, 225), 29 Mad 239 (276)

Where an officer proceeding from Burmah to England on leave, stayed for a few days at Madras on the way, this amounted to a residence for the purposes of C P Code, so as to render him liable to arrest before judgment 8 M 205

"A man's *Residence* is where he habitually sleeps" at night (per *Blackburn, J, Oldham I O'M. & H* 158, *citing R v. Norwood*, L R 2 Q B 457)

The word "residence" in S 9 (2), proviso, of the Indian Income-tax Act, bears the ordinary meaning *i e*, the place where a human being eats, drinks and sleeps or where his family and servants eat, drink or sleep, or where there is some permanence or continuance of such eating, drinking and sleeping It does not bear the extended meaning, which it bears in the case of a company, namely, the place where the company keeps house and does business There is no justification for applying the word to a fictional person such as that of a limited liability company Consequently, a building owned by a Stock Exchange Association, which is partly occupied by its offices, and partly let out to its members for their business, but not used by them for their residence, does not constitute "residence" under the proviso to S 9 (2) 62 Cal 547=163 I.C 337=39 C W N 327

The residence contemplated by S 5 of the Indian Insolvent Act is not necessarily a permanent residence. The object of that section is to extend the benefits of the Insolvency Act to those, who are *bona fide* residents within the jurisdiction of the Court, at the time of filing of the petition 21 C 634 *also* 13 C P L R 61 (64), 10 I.C. 786=4 Bur L. T. 81.

The word "residence" as used in S 5, Bengal Minors Act (XL of 1858), is not the place where the minor may be dwelling at or about the time when the application under the Act is made, but the family dwelling place. The word refers to the paternal family house or the family residence of the minor in which every member of the family has an interest and in which they usually reside. (Per *Loch, J.*) The word ordinarily means the "family residence," but circumstances might arise in which it might be taken to mean otherwise. (Per *Amshe, J.*) 17 W.R. (C.R.) 275.

Resident

"ACTUALLY AND VOLUNTARILY RESIDES" The words "actually and voluntarily resides" in S. 20 (*a*), C P. Code, refer only to natural persons and not to legal entities such as limited companies and Governments and further "business" is commercial business and not the business of Government (A I R 1927 Mad 689, 14 Cal. 256, 40 Cal 308 and 97 I C. 246, *Foll*) 126 I C 514===A.I R 1930 Lah 118

"Residence out of British India" defined Act 5 1908, Sch I, O 25, S 1 (2)

Residency Residence of British Political Agent in the state of a native Indian Prince.

"Resident" defined. Act 2, 1864, S. 1, Bom Act 1, 1883, S 3, Reg 11, 1887, S 2 (4).

Resident As an adjective, dwelling or having abode in any place living, inhabiting, abiding, residing, also used in the sense of "pertaining to residents' As a noun, a dweller, or one who dwells or resides permanently in a place or who has a fixed residence' as distinguished from an occasional lodger or visitor, unless the statutory signification gives to the term when used in a particular connection, a meaning different from its grammatical import or that which it usually bears in common parlance, a person coming into a place with intent to establish a domicile or permanent residence, and who in consequence actually remains there, one who resides or dwells in a place for some time, inhabitant, one who has a seat or settlement in a place, one who dwells, abides or lives in a place

Worcestor defines "resident", thus "Dwelling, having abode in any place, living, inhabiting, abiding, residing" The Century Dictionary defines "resident" thus 'One who has a residence" In a legal sense a residence in law is defined as "the place where a man's habitation is fixed, without a present purpose of removing the reform"

The word "resident" has the same meaning as "inhabitant," and means one who dwells or resides permanently in a place

The words 'RESIDENT" AND 'INHABITANT" are not synonymous, the latter implying a more fixed and permanent abode than the former

RESIDENT WITHIN JURISDICTION The expression "any person within the local limits" in S 110 of the Cr P. Code, means any person who is within the local limits at the time the Magistrate takes action under the section The object of the section is to prevent crime and that object would be defeated if its scope were restricted to persons *residing* within the jurisdiction of the Magistrate. Consequently, a Magistrate has jurisdiction to take security from a person who resides outside the jurisdiction of the Magistrate but is found within the local limits of his jurisdiction 23 M L J 535=17 I C 413=13 Cr.L.J. 781.

A person residing with his wife, within the jurisdiction of a Magistrate can be tried by him under section 110, Criminal Procedure Code, though he happens to be outside the jurisdiction when arrested under section 55 (1) (c), Criminal Procedure Code. 35 Ind. Cas. 495.

"Resident"—"Ordinarily resident"—" Actually present", meaning of. *See* A.I.R. 1921 P.C. 182 (P.C).

Resident.

Resident—Political Resident The word is used to mean the Political Resident in a native state. "Resident" means the Political Resident at Aden Reg VII of 1900 (Aden Settlement), S. 2

The word "*Resident*" denotes the chief civil officer at Aden appointed by the Government, by whatever designation such officer may be called, and includes any Acting Resident or officer acting temporarily as such chief civil officer Bom Act II of 1864 (Aden Civil & Crl Justice) S 1

Residential purposes *Held* that the purchasing of a plot of ground for the purpose of having a house built upon it in which the purchaser intended to reside would undoubtedly be a purchase for "*residential purposes*"; *but semble* the purchases of plots of ground as a speculation for having dwelling houses for tenants built upon them may not be treated as "purchases" of that kind. 47 I A 275=48 C. 260=32 C.L.J 490=13 L W 455=2 U P L R. (P C) 153=28 M.L.T. 194=(1920) M W N. 738=23 Bom.L R 730=57 I.C. 834=39 M L J 296

Resides. *See* 41 C.W N. 590=A.I R 1937 P C 46 =(1937) 1 M.L J. 479 (P.C.)

"The terms "RESIDES" AND "LAST RESIDED" in S. 488 (9), Cri. P. Code, mean both permanent as well as a temporary residence 166 I C 574=9 R B 244=38 Cr.L J. 248=38 Bom L R 1107=A I.R 1937 Bom. 35,

Residuary bequest. A residuary bequest is one which, if valid, carries all the personal property not otherwise disposed of.

Residuary clause, a clause in a will by which the testator disposes of such part of his estate as remains undisposed of by previous devises or bequests

Residuary devisee, the person named in a will, who is to take all the real property remaining over and adove the other devises.

Residuary estate; that part of a testator's estate which remains after payment of debts and legacies

Residuary legacy A residuary legacy embraces only that which remains after all the bequests of the will are discharged

Residuary legatee Is he to whom the residuum of the estate is left by will (*Tomlins Law Dic*)

A person appointed "Residuary Legatee" takes all the residue of the personal estate (*Langley* v. *Thomas*, 6 D G M & G 645, 5 W R 219)

A residuary legatee is a legatee who is given all the residuum of a testator's estate after specific devises and bequests have been made therefrom.

Residue A remainder; what is left, the rest, that which remains, that which remains of something after taking away, a part of it, that which remains after a part is taken, separated, removed, or designated, what is left of a number or a quantity after something has been abstracted Of an estate, that which remains after all paramount claims are satisfied that which remains after discharging all legal and testamentary claims on the estate, all that property which remains after paying charges and debts and satisfying all legacies and devises, particular legacies; the surplus of the testator's estate remaining after all the debts and particular legacies have been discharged; what remains after the payment of debts.

Resolution

"RESIDUE," as defined by Bouvier, is that which remains of something after taking away some part of it.

"Residue", in its natural and popular force and effect, signifies what is left of a number or quantity after something has been abstracted

"A 'Residue' of personal estate, means, the personal estate which remains after payment of the testator's debts, funeral and testamentary expenses, and the costs of the administration of the estate, including the costs of an administration suit" (Dan, Ch. Pr 842, citing *Trethewy* v *Helyar*, 4 Ch D. 53, 46 L.J. Ch. 125)

In administration of estates, a residue is what is left after something has been taken out; and, as used in a will, is ordinarily what remains after the payment of debts, funeral charges, expenses of administration, and legacies

"Residue", as used in a will giving several legacies, and then, without creating an express trust to pay them, giving the "residue", can only mean what remains after satisfying the previous gifts.

"RESIDUE OF MY MONEY, would include stocks, shares, and securities for money (*Re Smith, Henderson Roe* v. *Hitchins*)

Residuum A residuum is what is left after a process of separation

No particular form of word is required to pass a "residuum". Thus the words "balance of estate", "balance of my capital", "what is left of my books and furniture and all other things", or 'the balance of my estate", are apt words for the purpose.

Resign. With regard to an office "resign" "implies that the party resigning has been elected into the office which he resigns, a man cannot '*resign*' that which he is not entitled to" (per *Cockburn, C.J., R* v *Blizard*, 36 L J Q B. 21, L.R. 2 Q B. 57)

Resignation A resignation of an office, to be complete, implies the consent of the incumbent.

"RESIGNATION" implies that the person resigning has been elected into the office he resigns. One cannot resign that which he is not entitled to, and which he has no right to occupy.

Only the acceptance of a *resignation* makes an office vacant and not the resignation This applies to the case of an Honorary Magistrate also. 45 M L.J. 798=33 M L T 215=A I R. 1924 Mad. 395.

Resist To oppose. to oppose with force; to prevent, to hinder

Resist an officer. Personally to resist, to resist directly and actively and by force not merely to hinder or interrupt an officer

Resist arrest To refuse to go with the officer who assumes to make an arrest

"Resolution" defined *See* Special resolution.

RESOLUTION. Any proposal made at a meeting and put to the vote; the judgment of a court, the form in which the legislative body expresses an opinion; a mode of municipal action different from an ordinance and less formal and less solemn than an ordinance; only a less solemn or less usual form of an ordinance;

Resolution ordinance.

according to ordinary parliamentary practice, merely a suggestion or direction in writing, concurred in by the two houses of the assembly if there be two houses, or passed by one house if there be but one, and not submitted to the executive for approval, ordinarily passed without the forms and delays which are generally required as prerequisites of the enactment of valid laws or ordinances

Resolution ordinance distinguished The distinction between a resolution and an ordinance is stated as follows "An ordinance prescribes a permanent rule of conduct or government A resolution is of a temporary character" An ordinance is the proper form for state legislation An order or resolution is the proper form for such acts of a council as are temporary or ministerial in character A resolution by the common council of a city authorized to transact business by resolution, directing its mayor to offer a reward for the apprehension of any persons setting incendiary fires, is binding on the city only during a reasonable time, because it is a resolution, and not an ordinance Seventeen years after the date of resolution, and 10 years after the last proclamation thereunder, is not such reasonable time. (*Ame Words and Phrases*)

A municipal corporation may declare its will as to matters within the scope of its corporate powers by a resolution or an ordinance, unless its charter requires it to act by ordinance If the action of a municipality amounts to prescribing a permanent rule or condition thereafter to be observed by the inhabitants of the municipality or by its officers in the transaction of the corporation business, such rule shall be expressed in the form of an ordinance, but it is proper to act by resolution, if the action taken is merely declaratory of the will of the corporation in a given matter, and is in the nature of a ministerial act

Resoluto jure concedentis, resolvitur jus concessum Where the right of the grantor is extinguished, the right granted is extinguished.

Resolve One of the definitions of the word "resolve", given by Webster, is "to express an opinion or determination by resolution or vote, as "it was resolved by the Legislature" It is of similar force to the word "enact", which is defined by Bouvier as meaning "to establish by law, to perform or effect, to decree."

Resort "Resort"is the "act of visiting, assembly, meeting concourse, frequent assembly"

'PLACE OF RESORT', meaning of 119 I C 16=1929 M. 603.

"Respectable persons in the locality.' These words in S 103, Cr. P. Code (relating of searches by Police Officers) mean persons of some standing in the locality whose word can be believed. *See* 3 Bur L T. 143=8 I C 988.

Respective Respectively.—" Respective", "respectively", are words of severance Occurring in a testamentary gift to more persons than one, their effect is "to sort out" the devisees or legatees so that they take as Tenants in Common (*Re Moore*, 31 L J. Ch. 368).

Respite (*Respectus*). A delay, forbearance, or continuation of time. (*Tomlins Law Dic.*).

Restitution

Respondeat, (*Lat*) Let him answer.

Respondeat ouster: Let him answer further, the judgment for the plaintiff on a plea of abatement.

Respondeat superior. Literally "Let the principal answer" A general rule which charges the master with liability for the servant's negligence in the master's business causing injury to third persons, founded on this principle, that he who expects to derive advantage from an act which is done by another for him must answer for any injury which a third person may sustain from it

Respondent The party who makes an answer to an appeal, application or petition or other proceeding in Court, a person upon whom an ordinary petition in a Court is served, defendant in divorce, he who contends against an appeal

Respondentia (*Latin*) Maritime contracts mortgaging ships and their cargoes for money advanced.

A *respondentia bond* is a loan of money on merchandise laden on board a ship, the repayment whereof is made to depend upon the safe arrival of the merchandise at the destined port There is a tendency in modern law to use "bottomry" for either contract for a loan of money subject to marine risk and at maritime interest, whether upon hull or cargo, and to discontinue the use of the term "respondentia", and "bottomry" is generally used to convey both meanings

Responsa prudentum, (*Lat*) In the Roman law. Answer or opinions of lawyers, jurists of jurisconsults,—one of the principal sources of Roman jurisprudence

Responsible Able to respond, able to pay a sum for which a person may become liable.

Responsio (*Lat*) An answer.

Responsio unius non omnino audiatur the answer of one witness shall not be heard at all.

DAY OF REST (*Eccles*). Sunday

Rest A balancing of an account made for the purpose of adding interest to principal for further computation, and so for the compounding of interest (as) interest at 6 per cent with half yearly rests

Restitutio (*Lat*) Restitution.

Restitutio in integrum: restitution to the original condition, applied to parties on the rescinding of a contract, and to a cause in which a second hearing is granted

RESTITUTIO IN INTEGRUM. in maritime law, the putting of a vessel into the condition she was in before a collision.

Restitution, (*Restitutio*) The resorting anything unjustly taken from another. It signifies also the putting him in possession of lands or tenements, who had been unlawfully disseised of them (*Tomlins Law Dic*)

It is open to the Court in the exercise of its inherent power to make an order for restitution for the purpose of doing justice between the parties concerned even in a case which may not come under S 144, C. P Code 34 C W N. 746=52 C.L J. 505=130 I. C. 236=A I.R. 1931 Cal 42

Restitution.

Restitution, writ of A writ which lies, after the reversal of a judgment, to restore a party to all that he has lost by the judgment

Restitution of conjugal rights The compelling of a husband or wife, who has withdrawn and lives separate without cause, to live with the other.

Restore restoration An obligation to *"restore"* a road interfered with under compulsory powers, is to make it as nearly as possible identical with the road before the interference (*R* v *Birmingham & Gloucester Ry*, 2 Q B 47, 10 L J Q B 322)

RESTORE RETURN, REPAY An honest man will be scrupulous not to take anything from another without *restoring* to him its full value Whatever we have borrowed we ought to *return* and when it is money which we have obtained, we ought to *repay* it with punctuality A king is *restored* to his crown, or one nation *restores* a territory to another We *return* a book to its owner, we *repay* a sum of money to him from whom it was borrowed

RESTORATION, RESTITUTION, REPARATION, AMENDS *Restoration* of property may be made by any one whether the person taking it or not. *restitution* is supposed to be made by him who has been guilty of the injustice. The dethronement of a king may be the work of one set of men, and his *restoration* that of another, but it is the bounden duty of every individual who has committed any sort of injustice to another to make *restitution* to the utmost of his power *Restitution* and *Reparation* are both employed in the sense of undoing that which has been done to the injury of another, but the former respects only injuries that affect the property, and *reparation* those which affect a person in various ways He who is guilty of theft, or fraud, must make *restitution* by either *restoring* the stolen article or its full value he who robs another of his good name, or does any injury to his person, has it not in his power so easily to make reparation The term *reparation* comprehends all kinds of injuries, particularly those of a serious nature the word *amends* is applied only to matters of inferior importance

Restrain, restrict To restrain is an act of power, but to restrict is an act of authority or law the will or the actions of a child are restrained by the parent, but a patient is restricted in his diet by a physician, or any body of people may be restricted by laws

Restraining order An order in the nature of an injunction

Restraining statute a statute limiting the common law, a statute limiting the powers of individuals or corporations.

'Restraint" defined *See* Wrongful restraint *See* Penal Code

"RESTRAINT" implies abridgement of the liberty of a person against his will Where he is deprived of his will power by sleep or otherwise he cannot while in that condition be subjected to any restraint 29 Punj L R 90=109 I C. 682=29 Cr L J 602=A I R 1928 Lah 445 (2)

'Restraint' in a Marine Insurance, is the preventing the goods from being got away without laying hands upon them" (*per* Brett, J, *Rodocanachi* v *Elliot*, L. R. 8 C.P. 659).

Resurrection

Restraint of princes "The detention of a neutral vessel within a blockaded port is, it seems, a 'Restraint of Princes'. (*Gestel* v *Smith*, L R. 7 Q.B. 404)

A shipowner may refuse to ship goods on a reasonable apprehension of restraint of princes inspite of there being no restraint actually in existence at the time of the refusal and events occurring after such refusal may be taken as a test to show the true state of affairs at the time of the refusal. An apprehension though unfounded may yet be reasonable 37 I C 285=10 S L R 100

Restraint of Trade Arrangement entered into when a business is sold, prohibiting the seller from carrying on a like business within a specified radius or during a given time.

S 27 of the Contract Act has abolished the distinction between partial and total restraints of trade. Whether the restraint is general or partial, unqualified, or qualified, if it is in the nature of a restraint of trade, it is void 13 C W N 388=9 C L J. 216=1 Ind Cas 94 (14 B L R 76=22 W R 370, F, 8 C. 809, R) *See also* 6 Bom L R 23

Restrictive endorsement, is one which destroys the negotiability of a bill of exchange

Restrictive provision The expression *"restrictive provision"* means any provision in the articles of association of a company which, in the opinion of the Governor-General in Council, is designed to restrict or limit or has the effect of restricting or limiting the share or shares or interests which may be held, or the rights, powers or authority which may be conferred upon or exercised by or on behalf of persons other than British subjects in the company, or in respect of the control, management or direction of the affairs thereof Act XX of 1918, Companies (Foreign Interests) Act, s 2, cl 1 (*b*).

Resulting use "Whenever the Use limited by a deed expires, or cannot vest, it returns back to him who raised it, and is styled a Resulting Use" (*Jacob*)

"Resumable Tenure" defined. Ben Act 6, 1908, S 3 (*xxiv*)

Resume Epitome, summary.

Re-summonitio, (*In old English law*) A re-summons

Re-summons A second summons; the summons of a person a second time to answer an action, where the first summons is defeated

Resumption Resumption is nothing more than an unequivocal demand for possession so as to operate as a final election by the landlord to re-enter, 3 Pat. 320=5 Pat L T 85=1924 P H C.C 60=2 Pat. L R 69=78 I C 474=A I R 1924 Pat 449

"RESUMPTION" is a word used In the statute of 31 H 6. c 7, and is there taken for the taking again into the King's hands such lands or tenements as upon false suggestion or other error he had made livery of to an heir, or granted by patent unto any man" (*Termes de la Ley*)

Resurrection Raising of Christ from the grave; the coming into life of the dead at the last day; exhumation of the corpse.

Retail.

"Retail" defined, Act 12, 1896, s 3 (*n*)

"Retail sale" defined; Act 4, 1857, s 12, Ben. Act, 5, 1909, S. 5, E B & A. Act 1, 1910, S 6

RETAIL SALE is to sell goods in small parcels and not in gross.

Retail sales. Within U P Municipalities Act (I of 1900), s. 128, cls. (*h*), & (*i*), mean any transaction in which less than a cartload is sold

RETAIL SALES If a person takes a house, or part of a house, either in his own name or in the name of any other person, and then, either personally or by his agent, makes sales of spirits by retail, he carries on business there as a retailer of spirits, notwithstanding he keeps no spirits there, and the spirits which he sells there are kept in and delivered from a store in another town where he carries on the business of a wine and spirit merchant" (*Stallard* v *Marks*, 47 L J. M C 91, 3 Q B D. 412), *See also* Excise Act, 12 of 1896, S. 3.

Retain. Secure services of barrister by engagement and preliminary fee (called retaining fee)

Retainer. Engagement of the services of a counsel to represent one of the parties to an action. The engagement may be either in respect of any particular action or in respect of all matters of litigation in which such party may at any time be involved The former is called particular retainer, aud the latter "general retainer". In testamentary law, the word refers to the right of an executor to retain what may be owing to him personally out of the testator's estate from moneys coming into his hands as executor.

RETAINER Where, in a suit for the administration of the estate of a deceased Mahomedan, it appears that one of the heirs owes a debt to the estate the court can retain funds in respect of such debt, even though it be time-barred according to the Limitation Act, when calculating the share of such heir The rule applies as much to unascertained debt as to an ascertained one Immovable property cannot be retained in respect of such debt Such right of "retainer" or set-off is available to an administrator also. 5 Bur.L.T. 5=6 L B.R 34=14 I C. 503.

"Retainer" may be defined as "the act of a client by which he engages an attorney to manage his cause," and also as "the retaining fee".

Retainer of debts. Right of executor or administrator who is sometimes allowed to pay himself first by retaining in his hands so much as his debt amounts to.

Retaining fee. A preliminary fee given to a counsel, along with the retainer, in order to ensure his advocacy.

Retaliate. Tax imports from foreign country in return for like treatment.

Retaliation, Reprisal. When neighbours fall out, the incivilities and spite of the one are too often retaliated by like acts of incivility and spite on the part of the other, when one nation commences hostilities against another by taking anything away violently, it produces reprisals on the part of the other. Goldsmith's poem, entitled Retaliation, was written for the purpose of retaliating on his friends

Return.

the humour they had practised upon him, when the quarrels of individuals break through the restraints of the law and lead to acts of violence on each other's property, reprisals are made alternately by both parties.

Retallia, (*Lat*) *In old English law* The cutting up again, or division of a commodity into smaller parts, retail

Retention The right of retaining property until a debt due from the owner is paid

Retire Withdraw, go back (as) order for troops to retire.

Retired officer One who has retired from office (as) retired general.

Retiring a bill Taking up and paying a bill of exchange when due.

Retratus acquae, (*Lat*) Retreat of the water, the ebb of the tide

Retraxit, (*Lat*) Withdrew, or has withdrawn, a voluntary renunciation by a plaintiff of his suit, made in open court, and operating as a bar to another proceeding.

Retrenchment Reduction of expenses; inner trench or parapet provided against loss of outer defences.

Retrere, (*Lat*) To draw back

Retret, (*Lat*) Retreat; the ebbing of water.

Retribution, Requital. Retribution is a particular term, requital is general, retribution comes from Providence, requital is the act of man, retribution is by way of punishment, requital is mostly by way of reward, retribution is not always dealt out to every man according to his deeds.

Retro, (*Lat*) Back, backward, behind.

Retroactive. Acting backward, affecting what is past.

Retrospective. Looking back; contemplating what is past

Retrospective law. One which is made to affect acts or facts transpiring, or rights accruing before it came into force.

RETROSPECTIVE LAW: is a law which looks back; a law which contemplates or affects an act done, or a right accrued before its passage

Retry. Try law suit or condemned or discharged person once again.

Return To come back to send back; to send back a writ to the court out of which it issued, with a memorandum indorsed, of the manner in which it has been executed.

RETURN. To state or mention officially in answer to a demand (as) jury returning a verdict of "guilty" or not guilty."

RETURN member of Parliament Elect as member of Parliament

"Return", (*in S 23, Income Tax Act*). Signing a prescribed form without date and without filling up the columns and writing the word "blank" against the item of "total", accompanied by a letter stating

Return of post.

that the assessee did not carry on any business would not constitute a 'return' for the purpose of assessment under S 23(4) of the Income-tax Act. A.I R 1928 Lah 729.

Return of post. Earliest post by which letter can be answered.

"Return of verdict". *See* 8 B 200

Return day. The day on which a writ is appointed or required to be returned

"Return from transportation". The wording of the S 226, I. P. Code is simple and clear "Whoever having been lawfully transported returns from such transportation" can only mean that the offender must have been actually transported or he could not have returned therefrom [13 I C 390 (391)]

Return ticket. (*In railway*) Ticket covering both, forward and backward journey.

Returnable. To be returned, required to be returned.

Returnabit domino averia capta He shall return to the Lord the beasts taken.

Returnare (*Lat.*) In old English law. To return, to redeliver.

Returned note Is a term used to designate a note which has been dishonoured" (per *Bolland, B, Hedger* v *Steavenson*, 2 M & W 808, 6 L.J. Ex 192)

Returning officer. One who conducts and announces result of an election

RETURNING OFFICER In respect of Municipal and other Elections, "Returning Officer", means, the Officer, who, under the law relating to such elections presides at such elections" (Sub S (1), S 20. 35 and 36 V, c 33)

Reunion. Renewal of unity or coparcenership.

REUNION (*in Hindu Law*) Reunion in Hindu Law is defined to be living together, after partition, of father and son, brother and brother, or uncle and nephew This is the opinion of the Mitakshara, the Dayabhaga and other commentaries In deed according to a text of Vishnu cited in the Saraswati Vilasha, there can be re-union of these three classes of relations only and of no others The Vira Mitrodaya, the Vivadaratnakara and the Mayukha however, in ignorance of the text of Vishnu mentioned above, say that the mention of certain relations in the rule is only illustrative and that there can be re-union among all coparceners who were at one time joint. (*Ghose, Hindu Law*, 624.)

The status of the members of a re-united Hindu family is not that of tenants-in-common. The incidents attaching to re-union are those of an ordinary undivided Hindu coparcenary with rights of survivorship *inter se*. The son of a re united member would himself have the status of a "reunited" member with the others. 19 M L J 723=4 I.C. 1077.

Reus. (*Lat.*) A person from whom some thing is demanded by suit; a person complained of by suit; a defendant; a person proceeded against criminally; a party to a suit whether plaintiff or defendant.

Revenue free.

Reus credendi. The party crediting; a creditor

Reus debendi. The party owing; a debtor.

Reus excipiendo fit actor The defendant by excepting or pleading becomes a plaintiff

Reus promittendi A party promising.

Reus stipulandi. A party stipulating.

Reve land Land over which the shire-reve or sheriff had jurisdiction

Reve mote. The court of the reeve.

Revealed religion Religion made known to man by divine inspiration or supernatural means;—opposed to natural religion.

Reveille Military waking signal.

Revels. Sports of dancing, marking etc. formerly used in Prince's courts, the Inns of Court and nobleman's house, commonly performed at night.

Revendication The right of a vendor to reclaim goods sold, where the price had not been paid.

"Revenue", defined (*See also* Land-revenue; Public revenue, Salt revenue; Water revenue), Act 23, 1850, S 12, Act 12, 1851 S 16, Act 22, 1886, S. 3, (4), Ben Act 7, 1868, S 1, Mad. Act 6, 1867, S.1; U. P Act 3, 1901, S 4 (7); Reg 1. 1889, S. 3 (1); Reg. 3, 1889, S 37 (1)

Revenue Income, annual profits received from land or other funds.

The word "revenue"' includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of takkavi, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs or water-courses, or other improvements on the land held by them, [Ben Act VII of 1868 (Land-Revenue Sales), S 1]

The word "*revenue*" in the Bengal Land Revenue Sales Act (VII of 1868), S 50 includes "every sum annually paid to Government by the proprietor of any estate or tenure in respect thereof" 16 C. W. N 842=23 M L J 206=12 M L T 385=(1912) M.W. N 1005=14 Bom. L R 1063=10 A L J 452=16 C L. J 620=39 C 981=16 Ind Cas. 821 (824) (P C.), per Lord Shaw *See also* 7 C L J 460]

Revenue account The account of a firm or, company showing the result of its operations and what profit or loss it has made.

"Revenue commissioner" means the Revenue Commissioner of a Province. *See* Punj. Regulation VII of 1901, S 2 (1), (1 (d)

"Revenue Court" defined. Act 7, 1888, S 3, Act 16 1887, S 4 (11), Act 5, 1908, S 5 (2), U.P Act 3, 1901 S 4 (8)

"Revenue defaulter" defined Reg. 1, 1889, S. 6 (2).

"Revenue field". defined, Mad. Act 1, 1908. S. 3 (12).

"Revenue-free" defined, U. P. Act 3, 1901, S. 4, (10).

REVENUE-FREE A term applied to land as to which the ruling power has assigned to any person its prerogative of receiving rent.

Revenue free property

"Revenue free property", defined, Ben. Act 7, 1876, S. 3 (10)

"REVENUE FREE PROPERTY" means any land not subject to the payment of land revenue which is included under one entry in any part of the general register of revenue-free lands Ben Act III of 1876 (Land Registration) S 3, Cl (10)]

Revenue laws Certain legislative measures imposing taxes upon the people either directly or indirectly, or laying dues, imports or excises for the use of the government and giving to the persons from whom money is exacted no equivalent in return, laws made for the direct and avowed purpose of creating and securing revenues or public funds for the services of the government, laws which provide for the assessment and collection of a tax to defray the expenses of the government

The term "revenue law", means a law imposing duties on imports or tonnage, or a law providing in terms for revenue from lands, houses, income or any other source, that is to say, a law which is directly traceable to the power granted to the Government "to lay and collect taxes, duties, imports, and excises" The words "revenue laws," used broadly and generally, include internal revenue as well as customs laws.

"No country ever takes notice of the revenue laws of another—*Lord Mansfield, Holman* v *Johnson*, (1775), 1 Cowp 343

One nation does not take notice of the revenue laws of another—*Lord Mansfield, Planche and another* v. *Fetcher* (1779) 1 Dough 253 *See also* per *Abbott, C J, James* v *Catherwood* (1823), 3 D & R 191, per *Rolfe B, Bristow* v *Sequeville*, (1850) 5 Ex 279.

"Revenue office", defined Act 18, 1879, S 3, Mad. Act 1, 1904, S 3 (31)

"REVENUE OFFICE", includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents [Act XVIII of 1879 (Legal Practitioners), S 3]

"Revenue-officer" defined (*See also* Chief Controlling Revenue-authority, Chief Revenue authority Commissioner of Revenue, Salt Revenue-officer) Act 1, 1872, S 125, *Expl*, Act 2, 1876, S 3 (b), Act 10, 1876, S 3, Act 2, 1880, S.2, Act 8, 1885, S 3 (17), Act 16, 1887, S 4 (14); Act 17, 1887, S 3 (12), Act 11, 1898, S. 2 (9); Ben Act 6, 1908, S 3 (*xxv*), Bom Act 5, 1879, S. 3 (1), Bur Act 4, 1898, S 4 (6), Mad Act 1, 1908, S 3 (13), U P Act 3, 1901, S. 4 (9), Reg 2, 1877, S 2 (c), Reg. 1, 1899, S 3 (1)

REVENUE OFFICER The words in S 40 of Act XX of 1866, "The Revenue officer in whose jurisdiction the person whose attendance is desired may be" mean the Chief Revenue Officer of the District, *viz*, the Collector or, if in any defined sub-district a Sub-Collector has all the powers of the Collector, then in that sub-district, the Sub Collector (4 M H C R 91. *See* Bom Act V of 1879) S. 3 (1), Punj)

"Revenues of the government" means, in respect of any part of India, in which the powers and duties of government under this Act are exercised and discharged by a Local Government, the revenues allocated to that Government under the Government

Revival

of India Act [Act III of 1913 (Administrator-Generals), S. 4, cl (1); Act II of 1913 (Official Trustees), S 2, cl. (7)]

'Revenue survey", defined, Bom Act 5, 1879, S. 95

Revenue year", defined, Mad Act 1, 1908, S 3 (14), Bom Act 5, 1879, S. 3 (21)

Reverend A term prefixed to clergyman's name (*Abbr Rev*)

REV is applied to a dean

RIGHT REV of Bishop, most Rev—of Archbishop

Reverse To turn back, to act in an opposite direction, to undo, annul (as) to reverse the judgment of the lower court

Reversion Right to property or benefit, the enjoyment of which does not come into operation until the happening of a certain event or the expiration of a certain period

"A 'Reversion' has two intendments,—the one is, an estate left continuing during the Particular Estate, which is the most common sense, the other is, the returning of the land after the particular estate ended which is the natural sense of the word according to the definition of the Latin-tongue, so that the Reversion of the land and the land when it reverts is all one" (*per* Staunford, J., *Throckmerton* v *Tracy*, 1 Plowd 160a)

Reversionary interest A term generally applied to a deferred interest in land, money or personal property

Reversionary right A sale of a *reversionary right* of succession, though at the time of the sale it does not affect a transfer of property, gives rise to a right which the Court will enforce when the inheritance falls into possession Such a contract is enforceable in a province where the Transfer of Property Act is not in force [(13 P R. 1899, *Foll*) A I R 1930 Lah 928]

Reverter The reverting of lands to a donor, his heirs or assigns

Revest To vest again, as a seisin acquired a second time by the person out of whom it has been devested

Review A review is a proceeding which exists by virtue of statute It is in its nature a new trial of the issue previously tried between the parties, the cause of action being brought into court again for trial by a new petition The proceeding in some respects resembles a writ of error, and also a new trial

Review of judgment The expression, "review of judgment" in Art 179, cl (3) of the Limitation Act, 1877, is not defined anywhere in that Act That expression in the Limitation Act, is used in the same sense in which it is used in C. P Code, 1882 It is used interchangeably with the expression "review of decree" so as to include an amendment of decree that does not necessitate any alteration in the judgment. (25 C 258=2 C W N 219. *See also* 27 A. 575)

Revival The revival of a suit, which is either abated or made defective by the death of a party interested, is not a new suit, but is still the same suit

Revival of judgment.

in which both parties are entitled to the benefit of all former proceedings.

An application for transmission of a decree from the High Court to the District Court is not by itself a revival of the decree within the meaning of the Act inasmuch as it is a mere ministerial act of an officer of the Court and not the judicial act of a Judge [(43 Cal. 903 (F B) Appr A I R 1925 Cal 213, Affir, 54 I.A. 129=54 Cal. 500=45 C.L J. 507]

Revival of judgment A *scire facias* 'to revive judgment' is not an original but a judicial writ founded on some matter of record, to enforce execution of it, and properly speaking is only the continuation of an action, a step leading to the execution of a judgment already obtained and enforcing the original demand for which the action was brought It creates nothing anew, but may be said to re-animate that which before had existence but whose vital powers and faculties are, as it were, suspended and without it its salutary influence would be lost [1 I. C. 168 (171)]

Revive The primary meaning of the word "revive" is to give life to again

The word "revive" means to bring again to life, to renew, to reanimate, or to bring into action after a suspension, as to revive a project or scheme that had been laid aside It is a word which has been generally employed in the judicial decisions to express the effect of an admission of the existence of indebtedness or a promise to pay a debt otherwise barred by the statute of limitations.

REVIVE An order to issue execution after notice to the judgment-debtor under S 248, C P C (1882) has the effect of reviving a judgment or decree. (4 Ind Cas. 306=7 M L.T 32 *See also* 20 Cal 551, 6 Cal 504, 36 Cal 543, 43 Cal 903=20 C W N 899, 20 C.W N 1051)

Revivor In order to constitute a revivor of a decree there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it An order of attachment of the properties of the judgment-debtors after notice to them under O 21, R 22, C P Code, amounts to a revivor of the decree although the notice to one of the judgment-debtors who is a minor is not served on the proper guardian of the minor, but on a wrong guardian 19 Pat L T 193 *See also* as to Practice of Revivor Annual Practice; Chetty's Archbold's Practice, Daniell's Chancery Practice, Daniell's Chancery Forms, Day's Common Law Procedure Act, Pemberton on Revivor and Supplement, Seton's Judgment and Orders

Revivor, bill of In equity, a bill filed to revive and continue proceedings in a suit abated by the death or marriage of one of the original parties

Revivor of judgment *See* 1 I C 168 (172)

"Revocation" defined. Act 10, 1865, S 57, *Illn*

REVOCATION The undoing of a thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void.

REVOCATION (*Revocatio*) is the calling back of a thing granted or a destroying or making void of some deed that had existence, until the act of Revocation made it void. A Revocation may be either general, of all acts and things done before; or special to revoke a particular thing And where any deed or thing is revoked, it is as if it never had been. (*Tomlins Law Dic*)

By "REVOCATION OF A WILL" is generally understood an act by which the will ceases to have any effect or efficacy

POWER OF REVOCATION A power granted or reserved to revoke an appointment is called a power of revocation

"Revoke" means to re-call, to take back, or to repeal

"To revoke" sometimes denotes the right to annul rescind, or abolish

"Revoked licence" defined Act 5, 1882, S. 62.

Revolt (*In Maritime law*) A revolt, in the contemplation of maritime law, occurs where the crew, or any part of them, throw off all obedience to the commander and forcibly take possession of the vessel, by assuming and exercising the command and navigation of her, or by transferring their obedience from the lawful commander to one who has usurped the command

Revolution. The term, 'revolution' when used to reference to govenment, has a positive and qualified meaning When employed in the first, it supposes a radical change in the whole system and structure of the government, when in the latter, it conveys the idea of modification only

Revolver *Revolver out of repair*, whether "arm" within Arms Act *See* 6 P R 1908 Cr=14 P W R. 1908 Cr=7 Cr L J 350=148 P L.R 1908

Reward The term "reward" is usually applied to a sum paid for the performance of some specific act to some person or persons

A "reward" is a recompense or a premium offered by a government or an individual in return for special or extraordinary services to be performed.

The crown is always free to give rewards for assistance in the apprehension or conviction of offenders against the law, whether the offence be an ordinary crime or a breach of the revenue laws

Rewards It is a common practice to offer rewards for evidence tending to establish a particular fact, or for the discovery of a missing document, or property The publication of the offer is a general offer to any person who can give the information asked, and acceptance by giving the information creates an enforceable contract [*Williams* v *Carwardine*, (1835) 38 R R 328, 4 B & Ad 621; *Carlill* v *Carbolic Smoke Ball Co*, (1893) 1 Q B 256]

An offer of reward is a proposal The party making it may insert his own terms

The "offer of a reward" remains conditional until it is accepted by the performance of a service, and the one offering the reward has a right to prescribe whatever terms he sees fit, and such terms must be substantially complied with before any contract arises between him and the claimant.

Mandamus may lie in a proper case to compel a public officer to pay a statutory reward which has been earned.

Rex.

Rex. (*Lat*) In old English law, King; a king

Rex debet esse sub lege, quia lex facit regem, the king ought to be under the law, because the law makes the king

Rex non debet esse sub homine, sed sub deo et lege The king ought not to be subject to men, but to God and the law.

Rex non potest peccare The king cannot do wrong; the king can do no wrong.

Rex nunquam moritur. The king never dies.

Rhadamanthus Stern Judge

Rhodian law. A code of maritime law, promulgated by the Rhodians, and the oldest collection of the kind now known.

Riasat 'Riasat' is a word which is commonly used to represent "estate" and in Oudh is almost invariably used to describe a taluqdari estate (96 I C 47=2 Luck. 507=3 O W N Sup 56=29 O C 176=13 O.L.J. 762=A.I.R. 1926 Oudh 431.)

Riayati, (*H.*) A favoured tenant or cultivator, one to whom remission or abatement of rent has been granted. (*Wil Gloss* 433)

Ribs. (*In Mining law*) In mining parlance, "ribs" are the columns or partitions left in the coal vein to support the roof.

Rice "Rice," *i.e.*, paddy without husk, and "broken rice" does not come within the meaning of the term "grain". [23 L W 31=(1925) M W N 880=A.I.R. 1926 Mad. 251]

Ride "Ride" means to be carried on a horse or other animal or in any kind of vehicle or carriage, to be carried or travel on horseback. As used in an ordinance providing that any person riding or driving shall check up or halt for pedestrians on approaching alley or street crossings, the term "riding" was probably used to signify something different from "driving", and was intended to designate one travelling on a horse or other animal, and does not apply to street cars

Rider Any separate addition to a document, or addition to a resolution attached to the original, a piece of parchment containing an added clause tacked to a bill in parliament after the bill has been read a third time

Rider or ridder roll A schedule or small piece of parchment added to some part of a roll or record, a supplementary roll.

Rien (*or Riens, ryen*) (*Lat*). Nothing.

Rien culp. Not guilty

Rien dit. Says nothing.

Rien luy doit. Owes him nothing, the plea of nil debet.

Riens lour deust. Not their debt, an old form of the plea of *nil debet.*

Riens passe per le fait. Nothing passed by the deed.

Rig Veda. One of the four vedas, the primary source of all Hindu Codes.

Right.

Rigging the Market (*Stock Exchange term*). This is sometimes resorted to whereby persons by secret purchases of a particular class of stocks or shares force an artificial public demand, and rise the price, raising or lowering the price artificially

"Right" [*N B* This word *See* Accessory Right. Contingent Right Prescriptive Right Proprietary Right Under-proprietary Right. Record of Rights.

RIGHT As an adjective, the term has been defined as meaning fit, suitable, proper, correct, opposed to left.

As a noun in the plural, the term is said to be a generic and common word embracing whatever may be lawfully claimed As a noun in the singular, a just claim that which may be lawfully claimed of any other person that which the law directs, an enforceable claim or title to any subject-matter whatever, just claim, legal title, ownership, a lawful title or claim to anything property, interest, power, prerogative, immunity, privilege; a legal consequence which attaches to certain facts; that which justly belongs to one, that which one has a claim to possess or own, a well-founded claim, the interest or share which any one has in a piece of property, title, claim, interest, ownership. *See* 6 N.L.R 171=8 I C 1146.

The term "right", in civil society, is defined to mean that which a man is entitled to have or to do, or to receive from others, within the limits prescribed by law

"'Right' is where one hath a thing that was taken from another wrongfully, and the claim that he hath who should have the thing, is called Right". (*Termes de la Ley*)

RIGHT, JUST, PROPER Right is here the general term, the others express modes of right The right and wrong are defined by the writer will of God, or are written in our hearts according to the original constitutions of our nature, the just and unjust are determined by the written laws of men, the fit and proper are determined by the established principles of civil society The right and the wrong are often beyond the reach of our faculties to discern; but the just, fit, and proper are always to be distinguished sufficiently to be observed Right is applicable to all matters, important or otherwise, just is employed only in matters of essential interest, proper is rather applicable to the minor concerns of life Everything that is done may be characterized as right or wrong, everything done to others may be measured by the rule of just or unjust in our social intercourse, as well as in our private transactions, fitness and propriety must always be consulted. As Christians, we desire to do that which is right in the sight of God and man; as members of civil society we wish to be just in our dealings, as rational and intelligent beings, we wish to do what is fit and proper in every action, however trivial.

RIGHTS AND CREDITS. If a testator gives one his "Rights and Credits"--such words will pass his personal estate also (*Hutchinson* v. *Hutchinson*, 13 Ir Eq. Rep. 322)

"RIGHT AND CUSTOM" In the absence of any qualification such as is found in S. 48, "*right and custom*" in S. 13 of Evidence Act (I of 1872), must be understood as comprehending all rights and

Right heir.

customs recognised by law, and therefore including a right of ownership [10 B. 439 *See also* 31 Bom 143 =9 Bom.L.R. 65; 6 Cal 171 (F.B.)]

RIGHT AND DUTY. A duty or a legal obligation is that which one ought or ought not to do, the terms "duty" and "right" being correlative

RIGHTS AND INTERESTS In an agreement respecting "*Rights and interests*" in respect of the copyright in a literary or artistic work "Rights" means such legal rights as those of a Translator or Adapter, but "Interests" have a much wider meaning and include, *e.g.*, the Interest of the owner of a Trade-Mark to advertise it, or of a Publisher to sell his stock of the work or to produce a second edition, or of a Bandmaster "to recoup and to obtain a return for the outlay he has been put to in purchasing a piece of music, in training his band, in its performance and (possibly) adapting it in its different parts for his men" [*Moul* v. *Groenings*, (1891)2 Q B 443, 60 L J Q B 715]

RIGHT AND TITLE "Rights", and 'titles' are, in some respects, synonymous, yet there is a distinction The possession of land, actual or constructive is a right 'Rights', in this connection originate in and are modified by the quality of the title To constitute a perfect title, there must be the union of actual possession, the right of possession, and the right of property.

Right heir The "right heir" of a person deceased is he of the blood of such deceased upon whom the law casts the inheritance

The phrase "right heirs" has a distinct meaning in English law, and there refers to the heirs at common law as opposed to the heirs by special local custom, but it has no such special significance in Bombay. [55 I.A 74=47 C L J 198=30 Bom L R 282=107 I C 119=27 L W 400=52 Bom 176=26 A L J 560=32 C W.N. 925=A I R 1928 P C 33=54 M L J 245 (P.C.).

The expression 'my own right heir', or 'right heirs,' used in a will means, according to the law of the land the heir or heirs of the testator" (per *Fry, J.*, Re *Garland*, 47 L J Ch. 714, 9 Ch. D. 213).

"Right holder" defined. P. Act 1, 1902, S 2 (*e*), Reg. 4, 1898, S. 3 (3).

Right in rem and Right in personam The security as to life and limb, and indemnity against personal injuries occasioned by the negligence, fraud, or violence of others, is a right *in rem*, as distinguished from a right which avails against a particular individual or a determinate class of persons, which is a right *in personam*, for example, the indemnity which the law affords against assaults by other is a right *in rem* while the right which one may obtain by contract to secure an indemnity from another for assault by a stranger is a right *in personam*.

Right, liability or relief The procedure, by which a right or liability may be determined or enforced, or a relief may be obtained is not a *right, liability or relief* within the meaning of S. 2 (*c*) of the Transfer of Property Act. [6 A. 262=4 A.W N 79 (F.B.)]

Right of action. Right of claiming or suing for a debt or obligation due to another.

Right of redemption.

"A 'Right of action' is not the power of bringing an action Anybody can bring an action though he has no right at all The meaning of the phrase is that, the person has a Right or Claim before the action, which is determined by the action to be a valid Right or Claim" [per *Esher, M R A G.* v. *Sudeley*, (1896) 1 Q B 354; 65 L J Q B. 285]

RIGHT OF ACTION OR RIGHT IN ACTION Is a right to commence and maintain a suit or action in a Court of law

Right of entry Right to possession, right to take possession of lands by the legal owner

Right of fishery The 'right of fishery" in the waters of the ocean, whether in the open sea or where the waters ebb and flow over tide lands, is a public right which may be exercised by any citizen.

Right of occupancy A right of occupancy means nothing but the right to live on and cultivate land as one's own. 7 A 866 (F B.)—(*per* Petheram C.J.).

"RIGHT OF OCCUPANCY" AND "RIGHT TO OCCUPY" A right of occupancy must not be confounded with a right to occupy. Those two rights may co-exist in the same person, as when an occupancy-tenant himself or by his servants, cultivates his occupancy-holding Or, those two rights may be vested in two different persons, the right of occupancy being vested in the occupancy tenant, and the right to occupy being vested in his tenant during the currency of the latter's tenancy In the latter case, the position is similar in some respects to the position of a proprietor who lets his land to a tenant, the proprietary right remaining vested in the landlord and the right to occupy the land vesting in the tenant [15 A 219=13 A W N. 125 (F B)]

Right of possession The right of a person dissei-sed or kept out of possession, to recover possession by action.

"Right of pre-emption" defined Act 18, 1876, s 6, P Act 2, 1905, s 4, Reg. 3, 1877, s 6.

Right of privacy (*See* Privacy) The so-called "right of privacy" is, as the phrase suggests founded upon the claim that a man has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written up for the benefit of others, or his eccentricities commented upon, either in hand bills, circulars, catalogues, periodicals, or newspapers, and necessarily the things which may not be written and published of him must not be spoken of him by his neighbours, whether the comment be favorable or otherwise Such right does not exist in law, and is not enforceable in equity

Right of property consists in the free use, enjoyment, and disposition of a person's acquisitions without any control or diminution, save only by the law of the land, the right to acquire power and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the state.

"Right of redemption" is an agreement by which the mortgagor or vendor reserves to himself the power of taking back the thing sold by returning the loan or price paid,

Right of search.

Right of search. (*In Military law*) The right of belligerent powers to examine private merchant vessels at sea for enemy's property and property contraband of war,—generally limited to an inspection of the ship's papers or documentary proof of property on board

Right of visit, or visitation a right in time of peace to visit a vessel at sea to ascertain her national character,—otherwise called a right of approach.

Right of way This phrase has (1) a Legal, and (2) a Popular, meaning In its legal sense, it connotes the right of easement which one man has over the land of another, and, in that sense a man cannot have a right of way over his own land but in its popular sense, "Right of Way" means, the right of passing over a particular road or place which, of course, is inherent in the ownership of such road or place The public have a general right of way over all streets and highways

RIGHT OF WAY is the privilege which an individual or a particular description of individuals, as the inhabitants of a certain village, or the owners or occupiers of a certain farm, have of going over another's ground, a right of ingress and egress to and from the grantees land, the right of passing over another man's ground, the right of travel over another's land, a right to pass for all or for certain purposes, at all or at certain times, over and upon another man's land, the right to use the passage over the lands of another

The right of travel over another's land is denominated a right of way

Right to arrest The right to arrest a debtor is a right to put the debtor in prison, where he has the means of paying and will not pay, as a means of compelling him to do that which he could and should do (16 C 85)

Right to begin The right to open a case, or the evidence in a case, at the trial

"Right to redeem" defined Act 4, 1882, s 60.

Right to redeem a mortgage The 'right to redeem a mortgage' comes within the meaning of the expression "other intangible thing" in the second clause of S 54 of the Transfer of Property Act. (11 A.L J 407=19 I C 818)

Right to sue "The right to sue" is based upon facts which go to make up what is called the "cause of action" (22 C 92)

The expression "the right to sue' means the right to bring a suit asserting a right (104 I C. 398=A I R 1927 Nag 343)

The words "right to sue" when applied to appeals mean "right to obtain relief"

'Right, title and interest,' meaning of *See* 29 C. 813

Right, title and interest of the debtors. The terms "right, title and interest of the debtors," as used in a sale certificate must be construed with reference to the circumstances under which the suit was brought, and the true meaning of the decree under which the sale took place, as well as the proceedings leading up to the sale [29 C. 813 (7 C 357, 6 C 688, F.; 9 C 641, R).]

Rights and interest

The Civil Procedure Code of 1859 required that property sold in execution should be described as the right, title, and interest of the judgment-debtor, and the presence of these words in the sale certificate is consistent with the sale of every interest which the judgment debtor might have sold (1903) 31 I A. 1=27 M 131 (141)=6 Bom L R 7=8 C W N 186=8 Sar 568, 4 I A 247 (251)=3 C 198 (204 5), 16 I A 1 (5) =12 M 142, 17 I A 11 (16)=17 C 584 (589 90); 44 I A 1=44 C. 524=34 M L J 97, 2 I A 275 (280-1), 11 I A 66 (72-4)=10 C 985]

At a sale under a decree for sale by a mortgagee, the right, title and interest of the mortgagor which is sold is that which the mortgagor has at the date of the mortgage, and the rights and interests of the mortgagee [10 A 520=8 A W N 210 (5 Bom. 8, 10 B 224, 1 All. 245 R)

Where the "right, title and interest" of the manager of a joint Hindu family in the family property are sold in execution of a decree obtained against him in determining the nature and the quantity of interest which the purchaser at the auction sale takes, the questions which the Court has to decide are, (1) whether the debt was one for which the entire estate might, by proper procedure, have been brought to sale and (2) whether, as a matter of fact, the purchaser bargained and paid for the entirety [18 B. 147 *See also* 37 All 369, P C, 20 C W N 734]

ENFORCING A RIGHT The phrase "to enforce a right" within S 141, Cl 4, Penal Code can apply only when the party claiming the right has not possession over the subject of the right and therein lies the distinction between "enforcing a right" and "maintaining a right" A party in possession is entitled to resist and repel an aggression and his action in so doing would be in the maintenance of his right [17 C W N 1132=14 Cr L J 463=20 I C 623 (624)]

"ENJOYMENT AS OF RIGHT", means, "an Enjoyment had, not secretly or by stealth or by tacit sufferance or by permission asked from time to time on each occasion or even on any occasion of using it, but an enjoyment had, openly and notoriously (without particular leave at the time) by a person claiming to use it as a matter of right, whether by user though not strictly legal, or by deed conferring the right, or by parol if claimed by user for 20 years". (*Tickle* v *Brown*, 5 L J K B 123).

ABSOLUTE RIGHTS Those which belong to human beings as such

BY RIGHT Rightfully

CLAIM OF RIGHT. As opposed to asking a favour.

CONTINGENT RIGHTS Such as are distinguished from vested rights

Rights and interest S 2 of Hindu Widows' Remarriage Act (XV of 1856) expressly covers both "rights" and "interest" and include both vested and contingent estate. [8 I.C. 1146 (1148)]

CUSTOMARY RIGHTS Certain rights could be acquired by custom which, while in the nature of easements, must yet be distinguished from strict easements A custom is defined as unwritten law, established by common consent and uniform practice from time immemorial, and it is local, having respect to the inhabitants of a particular place or

Rights and interest.

district, for what is common to all mankind can never be claimed as a custom A right of way by custom in favour of the inhabitants of a particular locality may be established by the common law and usage From proof of immemorial usage a presumption is deemed to arise that the usage was founded on a legal right. This right is not assumed to arise from a grant by an owner of land of an easement in it. It appertains to a certain district or territory, but not to any particular tenement forming part of that territory. Nor is it confined to owners of land within that territory, but belongs to the inhabitants thereof whether landowners or not The right belongs, and a servient one upon which the obligation is imposed, but in the case of a custom there is no dominant tenement It differs from an easement in gross in that the latter is a burden upon the premises during the life of the owner of the easement only, while a right acquired by custom is not subject to such limitation

NATURAL RIGHTS Those which exist by virtue of natural law (as) liberty, security of person and property.

PETITION OF RIGHT An action by which a subject vindicates his rights against the crown

PUBLIC RIGHTS The rights which the state has against the subject and the subject against the state

WRIT OF RIGHT An action to establish title to real property

Rights of any third party The expression," The rights of any third party," in sub-S (1), S 22, Bengal Tenancy Act (VIII of 1885) can only mean such rights as are valid (28 C 205=5 C W N. 310)

"Rights of parties" In regard to matters in controversy, mean general rights such as rights in relation to status, in relation to jurisdiction, in relation to limitation, in relation to the frame of the suit and in relation to the liability to account, which, if decided, must have a general effect upon the proceedings in the suit and can be decided preliminary to the investigation of the matters in dispute between the parties upon the merits [23 I C. 889 (890)]

Rights of persons Rights which concern and are annexed to the person

Rights of things Rights which may be acquired over external objects or things unconnected with the person

Rigor juris. (*Lat*) Strictness of law

"Rigorous Imprisonment", is defined to mean, Imprisonment" with Hard Labour "

Rihn, (*A*) A pledge, a pawn (*Macnaughten's Mahammadan Law.*)

Rikaz, (*A*) Treasure or precious metals or coins dug up from the ground, whether deposits found in mines, or buried treasures (*Wil Gloss* 444)

Rikba, (*A*) Expecting in mohammeddan law, expectancy, as of a gift to take effect at the death of a donor or to revert to him, or to be annulled, in fact on the death of the donee; such a gift is considered as invalid (*Wil. Gloss.* 444)

Rina, (*S.*) Debt of any description. (*Wil Gloss.*)

Riot

Rinadianam. (*S*) Recovery of debts by process of law, one of the titles of judicial procedure. (*Wil. Gloss*)

Ring. A combination formed by a group of speculators to obtain control of the market, combination of traders or politicians acting together for control of market or state policy.

In a publication charging members of city council with being members of a "ring", the word "ring" must be understood according to the most obvious and familiar sense of the term as a combination for illegal or otherwise improper purposes

Ringing the changes A trick practised by a criminal, by which on receiving a good piece of money in payment of an article he pretends it is not good, and,changing it, returns to the buyer a counterfeit one

Ringing up The term "ringing up" is used in exchanges to designate the setting off of any trade against another in making settlements

Riot The forcible doing of an unlawful thing by three, or more persons assembled together for that purpose. (*Tomlins Law Dic*)

'Riot' is where three (at the least) or more, do some unlawful act, as to beat a man, enter upon the possession of another, or such like" (*Termes de la Ley*)

Riot A riot is a tumultuous disturbance of the peace by three or more persons, assembled and acting with a common intent, either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner The modern definition of riot is in harmony with and follows the common-law definition, and the legal meaning of the word corresponds with the meaning given to it in ordinary usage It has no technical import, as distinguished from its signification when used in the every-day affairs of life However, riots present such diverse elements that neither a general definition nor the commonly accepted common-law definition could enumerate all the distinguishing characteristics of every such offence without being so lengthy as to be obscure in meaning

"A Riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public, or a lawful assembly may become a Riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the people, although they had not that purpose when they assembled" (*Steph*, Cr 49, 50.)

RIOT, ROUT, UNLAWFUL ASSEMBLY. The distinction between these offences appears to be, that a Riot is a tumultuous meeting of persons upon some purpose which they actually execute with violence, A Rout is a similar meeting upon a purpose, which, if executed, would make them Rioters, and which they actually make a motion to execute, An Unlawful Assembly is a mere assembly of persons upon a purpose, which, if executed, would make them Rioters, but which do not execute, or make any motion to execute. (*Tomlins Law Dic.*)

Riot.

Riot, rout, and unlawful assembly are kindred offenses, and the greater includes the less, yet the several offences are clearly distinguishable each from the others. It is apparent from the definition given that riot is an offence distinct from affray, insurrection treason, or trespass

"Rioting" defined. Act 45, 1860, s. 146

Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting (Penal Code, S 146) *See also* Archb Cr Pl Russell on Crimes Steph Dig Cr Manual of Military Law (cxii, by Lord Thring; Haycraft, Executive Powers of Police)

Riotous. The term "riotous", as used in an affidavit charging the offence of riot, is synonymous with "violent"

Riotous assembly The unlawful assembling of persons to the disturbance of the peace.

Ripa, (*Lat*) In the civil law The bank of a river.

Riparian A term used to describe the rights of owners of uplands along running streams or rivers, relating to the bank of a stream or other water river, lake, or sea, pertaining to or situated on the bank of a river, or pertaining to the bank of a river

"Riparian" means, in its common-law sense, the owner of the ripa or bank of streams

The Century Dictionary defines "riparian" as pertaining to or situate on the bank of a river.

The word "riparian" is defined as relating to the banks of a stream or other water, river, lake, or sea, (as) riparian properties, rights, states. Land whose watershed does not drain into a stream is not riparian to such stream.

Riparian Owner, is one whose land abuts on, and is part of the bank of, a River or Stream, whether it be tidal or non-tidal (*Lyon* v *Fishmongers Co*, 46 L.J Ch. 68, 1 App Ca 662)

Riparian Proprietor An owner of land, bounded generally upon a stream of water, and as such having a qualified property in the soil to the thread of the stream, with the privileges annexed thereto by law, one whose land is bounded by a natural stream, or through whose land it flows; one whose land is bounded by a navigable stream, one whose land bounded upon a water-course or lake, in its common law sense owner of the *ripa* or bank of streams.

A "riparian proprietor" is one whose land is bounded by a navigable stream, and among the rights he is entitled to as such are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf, or pier for his own use or for the use of the public, subject to such general rules and regulations as the Legislature may impose

Riparian Rights. A term used with regard to riparian proprietors, said to mean access to the navigable river in front of his lot, the right to make a landing wharf or pier for his own use, or the use of the public, subject to the general rules imposed by the legislature for the rights of the public

"I am of opinion that private riparian rights may add do exist in a tidal navigable river. The most material differences between the stream above and the stream below the limit of the tides are, that in an estuary or arm of the sea there exist, by the Common Law, public rights in respect of navigation and otherwise which do not generally (in this country) exist in the non-tidal parts of the stream, and that the fundus or Bed of the non-tidal parts of the stream belongs, generally to the riparian proprietors, while in the estuary it belongs, generally, to the Crown" (per *Lord Selborne*, *Lb* 1 App Ca. 682; 46 L.J Ch 78)

Riparum usus publicus est jure gentium, sicut ipsius fluminis by the law of nations, the use of a river's banks is as public as that of the river itself.

Ripe, mature A judgment is mature which requires no more time and knowledge to render it perfect or fitted for exercise. A project may be said to be ripe for execution, or a people ripe for revolt

Ripuarian law. An ancient code of laws by which the Ripuarii, a tribe of Franks were governed.

Risaldar (*Hindustani*) An officer commanding a troop of horse The native officer of highest rank in the Indian Cavalry was the risaldar major

Rishtadaran karibi The expression "rishtadaran karibi" means near relation by blood or by marriage. 5 Ind Cas 669.

Rishtahdari (*P*) Relationship (*Mac Moh. Law*)

Rising of court "Rising of court", as used in a statute requiring a party to reduce his exceptions to writing within such time as the court may direct, not exceeding forty days from the "rising of the court," is equivalent to final adjournment or "last day of the term."

Risk In Insurance Law, peril, hazard, or danger; chance of loss

Risk note 22 Ind. Cas 679 (680).

Rite "The terms '*Rite*' and '*Ceremony*,' as used in the Prayer Book, are terms, so to speak of Ecclesiastical and Ritual Art, and must be construed with reference to their use in contemporaneous and other works of writers upon Ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or Statute in which they are found" (*per* Sir R Phillimore, *Martin* v. *Macknochie*, L R 2 A & E 130)

There is a legal distinction between a '*Rite*' and a '*Ceremony*' the former consisting in services expressed in words, the latter in gestures or acts preceding, accompanying, or following, the utterance of these words" (Ib. 135, 136).

Ritual—Means a prescribed mode or order of conducting a religious service (*See* Talbot, Modern Decisions on Ritual, Phillimore, Ecclesiastical Law, The Folkestone Ritual Case. (*Clifton* v. *Ridsdale* 1878)

"River" defined Act 7, 1878, S 2; Ben. Act 4, 1887, S. 2, Bur. Act 4, 1902, S. 3 (12); Mad. Act 5, 1882, S. 2; Reg. 7, 1891, S. 3 (7).

River.

River.

The word "river' is defined to be a large stream of water flowing in a channel on land toward the ocean, lake, or other river.

Richardson, defines a river to be a flood or flowing course, a current, a stream of water, and this definition expresses what we mean ordinarily when we speak of a river.

A river is defined to be a body of flowing water of no specific dimensions, larger than a brook or rivulet, a running stream pent in on each side by walls or banks

"River" includes any stream, canal, creek or other channels, natural or artificial, Act XVI of 1927 (Forest) S 2, cl. 5

Where a stream has a perennial source, a bed and well-defined banks on either side, the flow in it of water for a part of the year, and discharges itself in a continuous flow into another river, it has all the elements which constitute a river to which riparian rights attach 22 A 96=19 A W N 194

Bed of a river is the space contained between its banks.

Lake distinguished A "river" is characterized by its being confined in channel banks, which give it a substantially single cause throughout, as distinguished from a "lake," which occupies a basin of greater or less depth, and may or may not have a single prevailing direction

Rivers conservancy "The office of conservancy", as defined by Lord Hale, relates, first to nuisances in rivers founded on the Statute 1 Hen iv c 12, and, second to fishing founded on the Statute Westminster 2, c 47, for the protection of salmon, but the term has now been extended to include the prevention of pollution and control over authorities utilising rivers for the purpose of water supply (Hale, de Jure Maris Tr, p 23, 17 Rich ii. c 9, 1 Eliz c 17, Thames Conservancy Act, 1894, Ss 90-100, 291-298, Conservancy Act, 1868, Preamble and Ss. 89-92)

Rivers international Bib. Engelhardt, Du regime conventional des fleuves internationaux, etudes et project de reglement general, Paris, 1879 (contains a list of the treaties, conventions, and regulations concerning international rivers), Holtzendorff, Rumanies Uferrechte an der Donau, Leipzig, 1883, Engelhardt, Histoire du droit fleuvial conventionnel, Paris, 1889 Caratheopory, Le droit international concernant les grands cours d'eau, Paris, 1861; Kazansky, Les fleuves conventionnels, Paris 1895; Calvo, Le droit international, vol 1 (S 337) Paris and Berlin, 1887).

Riwaj-i-am. Statements in—Admissibility and value of The riwaj i-am is a public record prepared by a public officer in discharge of his duties, and under Government rules, it is clearly admissible in evidence to prove the facts therein entered subject to rebuttal Where the custom relied upon by the defendant in the case was mentioned in express terms in the riwaj-i-am, *held*, that the statements contained therein formed a strong piece of evidence in support of the custom and that it lay upon plaintiffs to rebut the same (1916) 44 I A. 89=44 C. 749 (758-9)=45 P R. 1917=12 P W.R. 1917=21 M L. T. 310=19 Bom L R. 388=21 C.W N 842=26 C L J 175=15 A L.J. 525=38 I.C 354=32 M L.J. 615.

Rob.

Riwaj-i-am is prima facie the repository of the record of the customs of a particular locality. 1935 Lah. 296

Rixatrix (*Lat.*) In old English law. A scold; a scolding or quarrelsome woman.

"**Road**" defined *See also* Public road, Public street, Street). Act 11, 1886, 3 (2), Ben Act 5, 1876 S 6 (15), Ben Act 3, 1883, S. 2, Ben Act 3, 1884, S 6 (13), Bom. Act 1, 1874, S 2; Mad Act 5, 1884, S 3 (*xxiii*).

The word "road", according to Webster applies generally to highways, and as a generic term includes highways, streets, and lanes The word 'road" is often defined to include public bridges, and is equivalent to the words "county may" "county road" "common road," and "state road"

A "highway" or "road" is an open way or public passage, it is ground appropriated for forming a communication between one city or town and another,

A road is an open way or public passage, ground appropriated for public travel As a generic term, it includes "highway, street, sidewalk and a lane.'

"Road" means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way. Ben Act III of 1884 (Municipal), S 6, cl 13.

The word "*roads*" in S 32 of the Bengal Municipal Act does not include the soil beneath the roads. 13 C 171.

"**Road-authority**' defined Act 11, 1886, S. 3 (3).

Road bed. "The road bed of a railroad is the foundation upon which the superstructure of the road rests. It is distinguished from 'roadway,' which means the right of way"

Road Board. Authority making and improving roads, authority having the care of the public roads.

Road metal Broken stones for road making.

"**Road patrol**" defined Ben. Act 5, 1887, S. 2.

Road side Border of road.

Road way. Main part of the road excluding sidewalks

Roadway (*in Railroad law.*) The ground allowed to a railway for track purposes.

Roads—Roadstead The road or roadstead in the commercial sense and by the maritime definitions is a place where ships may ride at anchor at some distance from the shore In the very name, (as) of "Hampton Roads", is implied a place of anchorage at a distance from the shore.

Lord Hale, in his work on maritime law says that a road is "an open passage of the sea, which, though it lies out at sea, yet in respect of the situation of the land adjacent and the wideness of the place is a safe place for the common riding or anchoring of ships."

Rob. "Rob", as the term is used by the English law writers "means the felonious taking from the person of another of money or goods against his will by force or putting him in fear."

Robbery

In construing a bill of lading exempting the ship-owner from loss or damage by robbers it was said that. "Even if the term 'robbers' in these bills of lading, in the absence of the usual term "thieves", could be construed as used in its most broad and general sense, and as including theft (*Cent Dict* 7) as used in Shakespeare's lines "Thieves for their robbery have authority when judges steal themselves", rather than in the limited technical sense of a taking by open violence only, still it is doubtful, I think, whether the phrase 'loss or damage occasioned by robbers' could be extended beyond the direct and proximate consequences of accomplished acts of theft or robbery" (*Ame Words and Phrases*)

"**Robbery**", defined Act 45, 1860, S 390

In all robbery there is either theft or extortion Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint Extortion is robbery if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (Penal Code, S 390)

"'ROBBERY, is when a man taketh anything from the person of another feloniously" (*Termes de la Ley*)

The term "robbery' in the risk note includes theft from a running train 97 I C 940=A I R 1927 Nag 34, *See also* 6 Pat 168=8 Pat L T 147=A.I.R. 1927 Pat 9.

Per *Walsh*, J —The word "robbery" when used in the expression "robbery from a running train" need not be interpreted with reference to the definition of 'robbery" contained in the Penal Code 1926 All 369=96 I C 1039 (F B)

Per *Sulaiman*, J —There is no justification for holding that the word "*robbery*" in Risk Note B under the Railways Act means simple theft, without implying any idea of force or fear 24 A L J 825= 96 I C. 1039=1926 All 369 (F.B)

Per *Ashworth*, J —"Robbery" means what" robbery" is defined to mean in the Penal Code, even if this is not correct it must mean something more than mere theft by stealth from a train, running or otherwise. 24 A.L J 825=96 I C. 1039=1926 All. 369 (F. B.).

Robes-master of the robes An officer of the Royal household who had the ordering of the sovereigns robes.

Rock or earth oil "Rock or earth oil", as used in a policy of fire insurance upon a paper mill and machinery containing a clause prohibiting the storing or use on the premises of "petroleum, rock or earth oil", etc., includes kerosene

Rod. A "Rod" pole, or perch, in length, is 59 Imperial Standard Yards (S. II, 41 & 42 V. c. 49.)

Rolls of exchequer.

Rogue, (*Fr.*) An idle sturdy beggar (*Tomlins Law Dic*)

Rogue and Vagabond. As to who are "Rogues and Vagabonds", *See* S 4, Vagrancy Act, 1824, 5 G. 4 c 83)

"Rogue money", (*in Scotland*) was a fund assessed by the freeholders of shires to defray the charges of apprehending, and prosecuting criminals (II G I c 26)

Rohilla The name of a highland clan of Pathans who early in the eighteenth century took possession of the District, now called after them Rohilkand

Roll In modern practice, a record, whether kept on parchment or on paper, whether rolled or bound up in leaves in the form of a book Anciently a sheet, or connected series of sheets, of parchment on which records were written, and which when completed were rolled and so kept

Roll of honour List of those who have died for their country in war

Rolldar, *Rolldar* (*H*) One who is entered on the collector's roll or record as proprietor (*Wil Gloss* 445)

Rolled gold Thin coating of gold on baser metal in jewellery.

"**Rolling-stock**", defined Act 9, 1890, S. 3 (10).

ROLLING STOCK Includes everything used on railways or tramways for the conveyance of passengers or the transport of goods

"ROLLING-STOCK" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds Act IX of 1890 (Railways), S 3 (10).

" 'Rolling Stock', in respect of Railways includes waggons, trucks, carriages, of all kinds, and locomotive engines used on railways"

The "rolling stock" of a railroad is incapable of being affixed or annexed in any one place, but is intended for locomotion Its whole use is in its locomotive facilities The term by which it is ordinarily designated—"rolling stock"—implies the very reverse of annexation and a permanent fixture It is essential to the successful operation of the railroad, but not a part of the railroad itself. It is an accessory to the trade and business of the road, and not to the road itself The road is completed when the bed is graded, the superstructure laid the rails put down, and everything is ready for the reception of the locomotives and cars. It is equipped when the rolling stock and all other necessary appliances and facilities for business are finished and put upon it for use

The rolling stock of a railroad company "embraces the movable property belonging to the corporation," by which "is plainly meant such property as in its ordinary use is taken from one part of the line to another, such as cars, locomotives, and their attachments and usual accompaniments".

Rolls of exchequer Those relating to the revenues of the country

ROLLS OF THE EXCHEQUER The Rolls of the Exchequer now placed in the Record Office under the

Rolls of parliament

charge and superintendence of the Master of the Rolls consist of the records of that Court, both on its administrative and judicial sides (Scargill Bird, Guide to the Public Records)

Rolls of parliament The ancient Rolls of Parliament now deposited at the Record Office *See* Introduction to Statutes of the Realm, May's Parliamentary Practice, Ilbert's Legislative Methods and Forms, Clifford's Private Bill Legislation, (*Ency of the Laws of England*)

"**Roman catholic**", defined. Act 15, 1872, S 3

Roman catholic Member of the church of Rome.

Roman law In a general sense, all the laws which prevailed among the Romans, including the collections of Justinian, now generally denominated the civil law

Roncaria. (*Old English law*) "Roncaria or Runcaria signifieth land full of brambles and criers (*Co Litt* 5*a*)

Rood A land measure, A rood of Land is "1210 square yards according to the Imperial Standard Yard" (S 12, 41 & 42 V. c 49)

Room In its broadest sense a room is any space or apartment separated from others by partitions, and in this sense any closet or any small apartment would be a room, but, as commonly used, the rooms of a dwelling house are understood to include those apartments which are adapted, with more or less convenience, to personal occupation.

Roots The root of a tree or plant is that part thereof underground by means of which it draws nourishment from the soil The position of the root is sometimes of great importance in establishing which of two adjoining land owners should have the ownership of the tree. (*Ency. of the Laws of England*)

Ror The name of a caste in the Punjab, they are fine stalwart men of much the same type as the Jats, whom they almost equal as husbandmen

Rosary. "Rosaries" are composed of beads, a metal chain, and a cross, the beads being fastened on the chain at regular intervals, and is not complete without a cross They are used by Roman Catholics in counting their prayers, and are never used for ornament

Roster The word "roster" is used instead of "register", and comprehends a list of military officers connected with a regiment, brigade, or division, and is kept as records of orders and official communications

Roster rates In a suit to eject a non-occupancy tenant, damages should not be awarded against the defendant on the basis of the *roster rates*, such rates having been fixed when prices were at their peak 1938 R D 186=1938 A W.R. (B R) 117.

Rotary club British society with many branches for international service to humanity originally named from clubs entertaining in rotation

Rouble Russian silver coin and monitary unit.

Rough copy (*of picture*). One reproducing essential features only.

Royal charter

Rough draft Preliminary form of document etc.

Even a Rough Draft may under certain circumstances be construed as a perfected agreement *See Gray* v *Smith*, 58 L J Ch 803, 43 Ch D. 208)

Rough estimate Preliminary or unfinished estimate as opposed to the final estimate.

Rout (*See* Riot) "A Rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled". (*Steph Cr* 49)

Route (*Milit*) Formal written orders for marching

Route, road, course Route is to road as the species to the genus, a route is a circular kind of road, it is chosen as the circuitous direction towards a certain point, the road may be either in a direct or indirect line, the route is always indirect, the route is chosen only by horsemen, or those who go to a considerable distance, the road may be chosen for the shortest distance, the route and road are pursued in their beaten track, the course is often chosen in the unbeaten track, an army or a company go by a certain route, foot passengers are seen to take a certain course over fields

Route march March of battalion etc for training purposes

Routine Fixed order of doing things, regularity of procedure

Roy n'est lie per ascun statute, si il ne soit expressment nosme The king is not bound by any statute, if he be not expressly named to be so bound

Royal Belonging to the king or queen

ROYAL, REGAL, KINGLY Royal signifies belonging to a king, in its most general sense, regal signifies appertaining to a king, in its particular application, kingly signifies properly like a king A royal carriage, a royal residence, a royal couple, a royal salute, royal authority, all designate the general and ordinary appurtenances to a king, regal government, regal state, regal power, regal dignity, denote the peculiar properties of a king, kingly always implies what is becoming a king, or after the manner of a king, a kingly crown is such as a king ought to wear, a kingly mien, that which is after the manner of a king

Royal air force (*raf*) Air force in the service of the state Third war service (consisting of army, navy and air forces)

Royal army medical corps. Medical branch of the army

Royal assent. Royal Assent to an enactment is the final sanction to perfect an Act of Parliament, (1 Bl Com 184)

Royal burghs A burgh is called a royal burch if it is held of the crown

Royal charter. "A Royal Charter is a written instrument containing a grant by the Crown to persons therein designated, either of *jura regalia*, or other franchise or liberties, rights, powers, privileges or immunities, or of chattels or estates in land, or

Royal engineers.

any of these made in the form of letters patent with the great seal appended to it, and directed or addressed to all the subjects of the crown" (*Grant, Law of Corporations*, p. 9),

Royal engineers Engineer corps of the army.

Royal exchange Building in London for dealings between merchants.

Royal fishes The term "royal fishes" was used at the common law to designate whales and surgeons. They were so designated because they belonged to the King as a matter of prerogative

Royal flying corps. Royal Air Service

Royal forces. The army navy, marines, air force and militia

Royal marines Marines under the control of the Admiralty, sometimes quartered on shore, and sometimes sent to do duty on board of transports or merchant ships

Royal military college, (*In England*) Military College at Sandhurst for infantry and cavalry.

Royal mines. Gold and Silver mines

Royal naval reserve (R.N.R). Merchant service officers etc. men and fishermen ready for naval service

Royal navy The royal navy of England has ever been its greatest defence and ornament, it is its ancient and natural strength, the floating bulwark of the island—*Sir Wm. Blackstone*, (1765) Com Bk I ch. xiii, 387

Royal palace Is a 'house" belonging to the Reigning Monarch as part of the royal possessions (33 H 8 c 12),

Royal society The Royal Society consists of a number of persons associated together for the purpose of promoting mathematical and physical science It is the most influential of the scientific societies, and was incorporated by Charles II in 1663 (*Ency of the Laws of England*)

Under the existing statutes of the *Royal Society*, every candidate for election must be recommended by certificate in writing, signed by six or more fellows, of whom three at least must sign from personal knowledge. From the candidates so recommended, the council annually select fifteen by ballot and on the first Thursday in June the names so selected are submitted to the Society in the form of a printed balloting-sheet with space left for erasure and substitution of names Princes of the blood royal may, however, be proposed at any ordinary meeting, and put to the vote on the same day, and any member of the Privy Council may be balloted for on the third ordinary metting from the day upon which his certificate is read Foreign members, not exceeding fifty, may be selected by the council from among men of the greatest scientific eminence, and proposed to the Society for election (*Ency of the Laws of England.*)

Royalist Supporter of monarchy or of the royal side on a civil war.

Royalties and rentals. Royalties are commonly understood as meaning something proportionate to the use of a patented device, in other words, a kind of excise In some of its uses it is a broader word than "rentals", and yet in other aspects "rentals" is a broader word than "royalties" Rentals, in their ordinary signification, are not limited as royalties in their ordinary signification, that is, to something proportionate to the use of a patented device.

Royalty Royal persons, members of the royal family

ROYALTY Has several meanings (1) percentages or dues payable to landowners for mining rights (2) sums paid for the use of a patent, (3) percentages paid to an author by a publisher on the sales of a book

OTHER DEFINITIONS A royalty is a tax or duty paid to the owner of a patent for the privilege of manufacturing or using the patented article.

Royalty is a tax or duty paid to the owner of a patent for the privilege of manufacturing or using the patented article, something proportionate to the use of a patented device, in other words, a kind of excise, specific sums paid annually, or at other stated periods, for the right to use a patented device, whether it is used much or little or not at all.

"Royalty" is the most appropriate word to apply to rental based on the quantity of coal or other mineral that is or may be taken from a mine.

Rozah (*A*) A garden; in India the term is applied to a Muhammadan tomb

Rozan (*Persian*) A fast especially the Ramzan.

Rozinah (*Hindustani*). A daily allowance, a pension

Roznamcha reports Roznamcha reports will not be evidence of the facts mentioned in the reports, but must be proved like other facts 107 I C 907= 29 Cr L J 312=A I R 1928 Nag 255.

Roznamkha (*H.*) Diary.

Rubakari (*Hindustani*) A document narrating the proceeding of a Court or officer, the record of a case. A form of instructions for proceeding in a particular business (*Macnaughten's Mohammadan Law*)

"Rubbish" defined, Ben Act 5, 1876, s. 6 (16); Ben Act 3, 1884, s 6 (14), Ben Act 3, 1899, s. 3(41); Mad. Act 3, 1904, s 3 (32)

'RUBBISH", is generally used in respect of things which have become valueless to the owner and the property in which he has abandoned. (*Filbey* v. *Combe*, 2 M. & W. 677, 6 L J.M.C 132).

"Rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term "offensive matter", Ben Act III of 1884 (Municipal) S. 6, Cl 14.

Rubric (*in Ecclesiastical Law*). A rule or order in a service book, prescribing the manner in which some portion of divine service is to be performed, so called from having formerly been printed in red (rubricus) type, but in the Book of Common Prayer printed in italics).

Rubric.

Rubrics

Rubrics. "Rubrics" was a name given in England to the titles of Acts of Parliament, and were so called because written in red ink The title was no part of the Act, and was prefixed by the clerk, and prior to the eleventh year of Henry VII (1495) titles were very rarely prefixed at all

'Rude and indecent behaviour", as used in an Act punishing rude or indecent behaviour,means"conduct which is boisterous, rough, or uncivil, or is offensive to modesty or delicacy"

Rudmas day The feast of the holy cross.

Ruffian Rough lawless turbulent person, desperado

Rukah, (*A*) A short letter or note A note of hand. (*Macnaughten's Mohammadan Law*).

Rukhsat (*A*) Leave, dismissal, the dismissal of a guest It is usual among both Hindus and Muhammadans for the host, not the visitor to close an interview This act is called giving rukhsat, and is signalized by the host putting a garland of flowers round the guest's neck, and sometimes also bracelets of flowers on his wrists and presenting him with bouquets and attar and pansupari, and sprinkling rose-water on his head and handkerchief

"Rukka indul talab" These words in a note can have no meaning except that of a note payable on demand The word "rukka" certainly conveys the meaning of a written statement of a debt due and the words "indul talab" can only mean "payable upon demand" 21 I.C 199

Rule or rules That which is prescribed or laid down as a guide to conduct, that which is settled by authority or custom, a regulation, a prescription, a minor law, a uniform course of things; the regulation adopted by a deliberative body for the conduct of its proceedings

A "Rule" is a definite regulation prescribed as a law of conduct

"Rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment (General Clauses Act, S 3).

A rule is "that which is prescribed for the guidance of conduct or action" for instance a rule that Mulguzar and villagers must keep the village roads in order A mere statement of liability in cash or kind enforceable at the option of another party cannot be held to be a rule, nor can the failure to discharge it be held to be a contravention of the rule 14 N L J. 37 (Rev.).

Rule absolute a rule to show cause upon which on hearing, the court has made a peremptory order, that the party shall do as the rule requires

Rule in Shelley's case. A celebrated rule in English law, propounded in Lord Coke's reports in the following form That whenever a man, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word 'heirs" is a word of limitation and not of purchase In other words, it is to be understood as expressing the quantity of estate which the party is to take, and not as conferring any distinct estate on the persons who may become his representatives.

Rules.

Rule nisi A rule which will become imperative and final unless cause be shown against it.

RULE NISI a rule to show cause why a party should not do a certain act, or why the object of the rule should not be enforced.

Rule nisi and rule absolute An order made by the Court on motion requiring a person to show cause why he should not do some particular act, or commanding the performance of the particular act forthwith When the rule is to show cause, it is called a *rule nisi,* which is served on the opposite party and when it comes on for hearing the Court, having heard counsel, discharges the rule or makes it absolute (3 Steph Com 628) When it directs the performance of the act forthwith, it is called a *rule absolute.*

Rule of course: a rule granted as matter of routine without application to the judge, or with only a formal application, otherwise called *office rule* (*Kinney*)

Rule of court An order made either between parties to a suit on motion Or to regulate the practice of the court (*Tomlins Law Dic.*).

RULE OF COURT is a term said to mean uniformity, regulation in practice alike to all suitors, established and fixed, as much as a statute itself, and known to all litigants and attorneys, an order made by a court between the parties to a cause before it, or touching the discharge of duty by those engaged in the conduct of its proceedings, either as permanent officers of the court or as serving therein in some temporary capacity, an order generally made by a court having competent jurisdiction

Rule of law and rule of construction. *See* 94 I. C 750=7 Pat L.T 631=1926 Pat. 356

Rule of procedure Rules made by any judicial or legislative body, as to the mode and manner of conducting the business of the body.

Rule of property A settled legal principle governing the ownership and devolution of property, the decisions of the highest court of a state when they relate to and settle some principle of local law directly applicable to title.

Rule of the road The customary rules of driving are (1) That in meeting, each party shall bear or keep to the left, (2) that in passing the foremost person bearing to the left, the other shall pass on the offside, and (3) that in crossing the driver coming transverse shall bear to the left hand, so as to be behind the other carriage (2 Steph N.P. 984) These rules are judicially recognised (1 Taylor on Evidence, 10th ed, s. 5, p. 6), and constitute what is called the law or rules of the road (*Ency. of the Laws of England*).

Rule to show cause A rule commanding the party to appear and show cause why he should not be compelled to do the act required, or why the object of the rule should not be enforced; a rule *nisi*

"Rules" and *"rule"* mean, respectively the rules made or to be made and notified by the Local

Rules

Government under the authority of any Act, and any one of such rules Pun Act III of 1911 (Municipal) S 3 cl 12

"**Rules**" defined *See also* Bye-law, Act 20 1891, s 3 (9), Act 10, 1897, s 3 (47) Ben Act 1, 1899, s 3 (3), Bom Act, 1, 1904, s 3 (39), Bur Act 1, 1898, s 2 (52), Bur Act 6, 1907, s 4 (2), F B & A Act 1, 1909, s 5 (52), P Act I, 1898, s 2 (18), U P. Act I, 1904, s 4 (37), Act 5 of 1908, s 2 (18), Act 3, 1909 s 2, Act 2, 1912, s 2

"RULES", in a legal sense, mean "laws"

"Rules" include prescribed forms Extradition Act (XV of 1903), S 2

RULES, BY-LAWS, ORDINANCES, REGULATIONS In a city charter empowering the council to make "ordinances, rules, regulations and by laws" for certain purposes, such terms are all equivalent to each other

Ruling or rulings A settlement or decision of a point of law arising from the trial of the case, without necessarily the force and solemnity of a judgment or order

Rummaging a ship Search made by customs officers for concealed dutiable or prohibited goods

Rump Remnant of the long parliament after 1648 or 1659

Rumpere, (*Lat*) To break, to revoke

Rumpitur testamentum cum, in eodem statu manente testatore, ipsius testamenti jus vitiatur A testament is broken when, the testator remaining in the same state, the legal force of the testament itself is destroyed

Run An order of court directing a receiver to "conduct and run" a hotel is sufficient authority to perform acts necessary to the conduct of the business, and hence sufficient to authorize the receiver to make purchases of necessary merchandise on credit, in the absence of any provision enabling him to raise money

Run into debt Get into debt, become debtor, get oneself in involved circumstances

Run into print Write indignantly to newspaper

"Run with the land "A covenant is said to 'Run with the land' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land A covenant is said to '*Run with the Reversion*' when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion" (Woodf 172, citing, Spencer's Case, 5 Rep 16 a)

Runagate Vagabond

Runaway (*Noun*) Fugitive

Run away with Elope with

Runner One who touts for share-broking business and is remunerated by a share of the profits on what he introduces

Running account (*See* Account) An account with a bank for money loaned, checks paid, etc, which during the time makes monthly statements, striking the balance due each month, which is carried forward and charged, constitutes a "running account" and is in effect but one transaction

Running at large Strelling without restraint, applied to animals

Running days Consecutive days, including Sundays and holidays

RUNNING DAYS are days occupied in a voyage, etc, under a charter, including Sundays In Commercial Law "The meaning of 'Running Days' is that the freighter shall not waste time in loading and unloading" (*per* Abinger, C B, *Pringle* v *Mollett*, 6 M & W 83)

"Working days vary in different ports and different countries, and merchants and ship-owners thinking it would be desirable to count Lay Days irrespective of the particular customs of particular ports, introduced the phrase 'Running days' as distinguished from Working Days The phrase 'Running Days' is a well-known nautical phrase, and means all the days in which in ordinary course the ship is running and by that phrase is meant the whole of every day, during both day and night They are the days during which if the ship were at sea she would be running Therefore 'Running Days' comprehends every day, including Sundays and holidays In *Brown* v *Johnson* (2 L J Ex 373, 10 M & W 331), Ld Abinger said, 'I think the words Days and Running Days mean the same thing—namely consecutive days, unless there be some particular custom" (*per* Esher, M R, *Neilsen Watt*, 55 L J Q B. 89, 16 Q B D 72)

Running fire (*Milit*) Rapid succession of fines or shots, successive shots from different points

Running lease A lease which provided that the tenancy should not be confined to any portion of the land granted but allowed the tenant the use of all the land he could clear in his lifetime.

Running light A railroad engine is said to be "running light" when it is not drawing cars

Running lights The lights shown by vessels between sunset and sunrise

Running powers Railway company's right of running trains over another's line

Running stream To constitute a running stream of water course, for the obstruction of which an action will lie, there must be a stream usually flowing in a particular direction, though it need not flow continually It may sometimes be dry. It must flow in a definite channel, having a bed, sides, or banks, and must usually discharge itself into some other stream or body of water. It must be something more than a mere surface drainage over the entire face of a tract of land occasioned by unusual freshets or other extraordinary cause It does not include the water flowing in hollows or ravines in land, which is the mere surface water from rain or melting snow, to lower land, but which at other times are destitute of water Such hollows or ravines are not in legal contemplation watercourses for the obstruction of which an action will lie.

Running trains A "running train" means a train in motion between stations (6 L L J 237=79 I C. 428=A.I R 1924 Lah. 594.)

Running with the land

The expression "running train" includes a train temporarily stopped at a signal between stations (96 I C 785=A I R 1926 All 724)

A stop for a few minutes at the signal does not mean that the train ceased to be a running train (47 All 136=L R 6 A (Civ) 59=85 I C 474=A I R 1925 All 273)

Running with the land Said of covenant which affects real property

Rupee. The Indian Monitary writ, a silver coin "The name of a silver coin of comparatively modern currency, for it is remarkable that there do not exist any specimens in that metal of a date anterior to the establishment of the Muhammadan power in India, while a great many in gold have been preserved of a far higher antiquity (*Fifth Report*)

Ruptarii Soldiers, or rather robbers (*Wharton*)

Rupture The word "rupture" means to break apart, or to separate the parts

RUPTURE, FRACTURE, FRACTION Soft substances may suffer a rupture, as the rupture of a blood-vessel, hard substances a fracture, as the fracture of a bone Rupture and fraction, though not fracture are used in an improper application, as the rupture of a treaty, or the fraction of a unit into parts

Rural Pertaining to the country

RURAL, RUSTIC Rural applies to all country objects, except man, it is, therefore, always connected with the charms of nature, rustic applies only to persons, or what is personal, in the country, and is therefore, always associated with the want of culture A rural habitation may be fitted for persons in a higher station, but a rustic cottage is adapted only for the poorer inhabitants of the country

Ruse-de-guerre. A stratagem of war

Russoom (*See* Resum) Customs, customary commissions, gratuities, fees, or perquisites Shares of the crops and ready money payments received by public officers, as perquisites attached to their situations.

Russoom Nezarat Perquisites of the office of Nazir

Russoom zemindary Customary perquisites attached to the office of a Zemindar Perquisites or shares of the sayer duties allowed to Zemindars, and deductions from the collections equal to about five per cent on the net receipts in the mofussil treasury, enjoyed by the Zemindars in addition to their nancar or saveram lands (*Fifth Report*)

Rust "Rust", as used in bills of lading exempting the carrier from liability for loss or damage resulting from "rust", should be construed in its general sense, and includes the oxidation of zinc The oxidation of iron produces one kind of rust, the oxidation of iron zinc, another Both are equally and truly rust The term "rust", though most commonly applied to the red or yellowish rust or iron, because iron is in much more familiar use than other metals, includes as part of its definition the oxidation of other metals, as well as of iron

Rusticum forum The decision by arbitrators is the decision of a tribunal of the parties' own choice and election "It is a popular, cheap, convenient, and domestic mode of trial, which the Courts have always regarded with liberal indulgence They have never exacted from these unlettered tribunals—this 'rusticum forum'—the observance of technical rule and formality" While this is true, Courts, especially Courts of Equity, will in proper cases look into and examine the proceedings of arbitrators to a certain extent, arbitrators have been guilty of corruption or fraud, partiality, misconduct, or gross or palpable mistake, or excess of power, in making their award, the Court will set it aside and declare it null and void

Rusticum judicium (*Lat*) A rough or rude judgment or decision

Rusticum jus. The application of an equal division of damages, in the event of a collision caused by mutual fault, is said to be the "rusticum jus" Chancellor Kent applies to it that term, that is to say, it is an application of that sense of fair dealing and of justice imbedded in our nature, the conclusions of common sense

Rusum (*A*) Customs, customary commissions, gratuities, fees or perquisites (*Mac. Mah Law.*)

Rusum-i-choudari (*H*) Fees and perquisites of the headman of a village (*Wil Gloss*)

Rusum i-gathri (*H*) A fee levied under the Mohammadan government on all bales and packages passing through the Custom House of Murshedabad (*Wil Gloss*)

Rusum-kanungoi (*H*) A small fee on the revenue collections allowed to the kanungo (*Wil Gloss.*)

Rusum-i-khazana (*H*) Fees charged at the public treasury on all receipts and payments (*Wil. Gloss*)

Rusum-i-khazanchi, (*H*) Fees or commission payable to a cashier or treasurer (*Wil Gloss* 439)

Rusum-i-nazarat (*H*) Fees payable formerly to the Nazir or head officer in charge of remittances from the collectorates to the treasury, now the fees payable to the Nazir of a court on serving a process (*Wil Gloss.*)

Rusum-sazawali (*H*) Charges formerly levied in Bengal to defray in the first instance the expense of sazawals, or revenue offices employed on special and temporary duty, as collecting arrears from defaulters, but afterwards converted into a permanent charge upon the revenue payers (*Wil Gloss* 440)

Rusum tihai, (*H*) A fine or quit rent levied formerly on rent free lands in Bundelkhand, supposed to be a third of the usual assessment (*Wil Gloss*)

Rusum-zamindari (*H*) The fees or perquisites allowed to the zamindar by the Mohammedan government, or by a commission generally of a fixed per cent on the gross collections, or it sometimes designates his Malikana, also fees levied by a Zamindar, on his tenants, either on particular occasions, or as a fine or quit rent (*Wil. Gloss.*)

Ruta. Things extracted from land, as sand, chalk coal, and such other matters.

Ruta

Ryot

"**Ryot**" defined (*See also* Raiyat), Mad. Act 1, 1908, S 3 (15).

RYOT Peasant, subject, tenant of land.

The tenant of an old waste which is not ryoti land does not come under the definition of ryot. 21 I C 532 (533).

"**Ryoti land**" defined Mad Act 1, 1908, S 3 (16)

Ryotwar An adjective meaning according to ryots It is applied to that system of land revenue in which the Government settlement is made directly with the ryot without the intervention of a Zamindar or other middle-man

Ryotwari Arrangement about rent made annually in India, directly between the Government and the ryots

Ryotty Relating to a ryot.

S

S. An abbreviation of section, statute, or superior.

S.C Same case.

S P Same point.

Sa et la (*Lat*) Here and there.

'**Sab sudha**" The use of the words *sab sudha* in a grant does not cause mineral right to be included within it (A I R 1917 P C 163, *Rel on* 106 I C 399=6 P. 638=9 P L T 25=A I R 1928 Pat. 66)

Sabbath. A name sometimes used for Sunday The Jewish Sabbath is Saturday. Sabbath and Sunday are used indiscriminately to denote the Christian Sabbath, Sunday. (*State* v *Drake*, 64 N C 591).

"SABBATH" and "SUNDAY" are not strictly synonymous terms—the one signifying Saturday, the seventh day of the week, the Jewish Sabbath, and the other the first day of the week, commonly called the Lord's Day. But by common usage the terms are used indiscriminately to denote the Christian Sabbath that is, Sunday.

Sabha. (*Karn*) An assembly, an assemblage of persons of rank or respectability, or the place in which they assemble, as a hall of audience, a Court of justice, also a gaming room or assembly. (*Wil Gloss.*)

GRAMA-SABHA. A village Court composed of the principal inhabitants with the headman presiding. (*Wil Gloss.*)

KULA-SABHA. (*from kula a family*). A Court of the members of the family

RAJA-SABHA. (*S.*) A royal Court, the chief Court of justice, at which the king or his representative presided

Sabhavyogam. (*Mal.*) An association of Nambudris or Nambudri houses supported by endowments of lands Its affairs are managed by a committee and the income is divided periodically among the members. 3 Mad 234 (*Moore's Mal Law*)

Sachent (*Lat*) Let them know, a word used in the commencement of old deeds and charters.

Sacrilege.

Sachent a toutz ceux qute icy sount et a toutz ceux que avener sount (*Lat*) Know all those who are here, and all those who are to come

Sachidari (*Punjabi*) The true or pure, the title of a class of Sikhs

Sacrament, (*Sacramentum.*) Usually applied to the Holy Sacrament of The Lord's Supper "By the Rubrick there must be three at least to communicate, and a minister is not without lawful cause to deny it to any who shall devoutly and humbly desire it. But notorious sinners are not to be admitted to it till they have repented, nor those who maliciously contend, until they are reconciled, etc also the Sacrament is not to be administered to such who refuse to be present at the prayers of the church, or to strangers, for a minister is not obliged to give it to any but those of his own parish, and the partakers of the Holy Sacrament ought to signify their names to the curate at least a day before it is administered" (Can 27, *Tomlins Law Dic.*)

"The word Sacramentum signified, in its general meaning, an Oath The later Fathers of the Church applied the term to designate a Holy Mystery The English Church expresses most clearly the Catholic Doctrine defining a Sacrament to be, 'an outward and Visible Sign of an Inward Spiritual Grace given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof" (Phil Ecc Law 483, *Ency of the Laws of England*)

Sacramentum An oath as a very sacred thing (*Ainsworth Dict*)

SACRAMENTUM, is an oath, a juror's oath.

SACRAMENTUM (*Lat.*) (*In Civil Law*) A gage in money laid down in court by both parties that went to law, returned to him who had the verdict on his side, but forfeited by the party who was cast to the exchequer, to be laid out in *sacris rebus*, and therefore so called

Sacramentum decisionis, The oath of decision, the decisive oath

Sacramentum fidelitalis, the oath of fealty

Sacramentum habet in se tres comites, veritatem justitiam, at judicium, veritas habenda est in jurato, justitia et judicium in judice, an oath implies or requires three attendant circumstances truth, justice and judgment, truth is to be observed in the party sworn, justice and judgment in the judge (before whom the oath is taken)

Sacrilege Larceny or other trespass in a church, breaking a church or chapel and stealing therein; profanation of holy things

SACRILEGE means an act violating the sanctity of an ecclesiastical place or person (*See* 2 Hale, P C 365)

SACRILEGE (*Sacrilegium*) is Church robbery, or a taking of things out of a holy place, as where a person steals any vessels, ornament, or goods of the church If anything belonging to private persons, left in a church, be stolen, it is only common theft, not sacrilege But the cannon law determines that also to be Sacrilege, as likewise the stealing of a thing known to be consecrated, in a place not consecrated. (Treat Laws. 360.) (*Tomlins Law Dic.*)

Sacrilegus omnium.

Sacrilegus omnium preadonum cupiditatem et scelera superat. A sacrilegus person exceeds all robbers in cupidity and wickedness

Sadana-patrikai (*Tam.*) A bond, a deed, a will

Sadanantaram (*Tam*) An additional document or voucher, a fresh or additional count in an indictment

Sadar (*A*) [See *Sadr*] Principal, chief, eminence, superiority, supreme, the chief seat of Government, the presidency as opposed to the provinces or mofussil

SADAR (*Mar*) A chief Court, but it is also used as a term in papers of accounts to signify the general heading or statement at the head of several columns of detail

Sadar kharchu (*Tel*) Remission or allowance by the native Government in Northern Sarkars of a certain percentage of the revenue raised from a village for repairing tanks, alms to mendicants and other incidental charges

Sadarat (*H*) The office of chief Judge or Chancellor (*Wil Gloss* 451)

Sadawarta (*Hindi*) The charitable distribution daily of food to all who come to take it

Distributions of provisions daily to passers, by mendicants and paupers in Kamaon, a grant of land to provide for the distribution of food at certain fixed spots to pilgrims (*Wil Gloss*)

Saddle horse Horse suitable for riding.

'Sadelwar and madiri kosaru' These are illegal cesses (28 M L J 81=27 I C 688)

Sadhana (*Tam*) A village exempt form taxation, a royal grant or patent, the same as sasanam

Sadhana-muri. (*Tam*) A promise or voucher in writing.

Sadharana (*S*) That which is common, as a common property, a specific or genuine character, possessions in common the 44th year of the Hindu cycle, A D 1850 (*Wil. Gloss*)

Sadharaner The word "*Sadharaner*" means that which is common There is nothing in the meaning to suggest that the word means 'public' (51 Cal 1124=130 I C 870=32 Cr L J 590=35 C W N 397= A.I.R 1931 Cal 433)

Sadhoraja (*Sansk*) is the son who was in the womb of the mother at marriage.

"Sadhvi and pativrata" A woman who broke through the rule of perpetual widowhood by remarriage was not a 'sadhvi' or chaste woman, she was not a woman who could be said to have preserved undefiled the bed of her husband, and to have devoted herself to the sacred duty (vrita) of honouring his memory and to have retained her competency to perform the religious acts conducive to his happiness in the next world. And possession of these qualifications was a pre-requisite to her inheriting her husband's wealth. [6 N.L R 103=7 I. Cas. 543 (546.)]

Sadir. (*Tam.*) Boundary limits.

Saepe constitatum.

Sadism That state of sexual perversion in man in which the sexual inclination manifests itself by the desire to beat, to maltreat, humiliate and even to kill the person for whom the passion is conceived

Sadr (*H*) Eminence, superiority, chief, supreme; the highest or foremost of anything, the chief seat of Government, the presidency as opposed to the provinces or Mufassil, but the term is most usually applied to India to denote establishment or individuals employed in the Judicial and revenue administration of the State

SADR (*H*) The sum total of revenue payable to the government direct exclusive of the charges of collection (*Wil Gloss*)

SADR (*H*) The chief native registrar or accountant of a district or collectorate

SADR (*H*) The chief kazi or Mohammadan Judge (*Wil Gloss*)

SADR (*H*,) The engagement of for revenue instalments payable to government by the principal revenue payer, as distinguished from those entered into with him by his under-tenants.

SADR, (*H.*) The chief revenue office, in a district that of the collector, on an estate, that of the proprietor or the chief manager (*Wil Gloss*)

SADR, (*H*) The chief Judge, the chancellor under the Mohammadan government, he was especially charged with the investigation of the cases of all those who applied to the sovereign for grants of revenue, he had also charge of wakf property or religious endowments, and the appointmant of kazis and other law officers (*Wil Gloss*)

SADR, (*H*) The chief court of justice, the East India Company's supreme court and court of final appeal in India, the term sudder court had also been made applicable to the courts of highest civil and criminal jurisdiction in all the Presidencies

Sadr-adalat (*A*) The supreme Court, the name of the highest court established under the East India Company in each Presidency.

Sadr-amin A chief commissioner or arbitrator, a native civil Judge

Sadr-diwani-adalat The chief Civil Court under the East India Company.

Sadr nizamat and diwani adalat The supreme Criminal and Civil Court, the title of a supreme Court and Court of final appeal established under the East India Company

Sadr-tirni guzar Leading men entrusted with the duty of collecting tirni

Sadr wasil baqi navis District revenue accountant.

Sadrat patra, (*H*) An assignment or grant under the authority of government, or recorded in the Collector's Office (*Wil Gloss.*)

Saepe constitatum est, res inter alios judicatas aliis non prejudicare It has often been determined that matters adjudged between other parties do not prejudice.

Saepe numere

Saepe numero ubi proprietas verboram attenditur, sensus veritatis amittitur Oftentimes where the propriety of words is attended to (where the attention is occupied with the proper meaning of word) the true sense is lost

Saevitia (*Lat*) In the law of divorce, cruelty, anything which tends to bodily harm and in that manner renders cohabitation unsafe

Safe Webster defines "safe" to mean free from danger of any kind, as safe from enemies, safe from disease.

"SAFE", as used in the statement that employers are bound to furnish safe machinery, safe appliances, safe places to work, etc, does not have an absolute or unqualified meaning, since they would operate to make an employer an absolute insurer of the safety of his employees The word "safe", as so used, means merely to require the exercise of care with regard to safety

The words "SAFE AND SUITABLE", as used with reference to the duty of the employer to furnish his employee with safe and suitable appliances, mean nothing more than reasonably safe and suitable

Safe berth A "safe berth" for anchorage, which a later vessel is required to allow to one previously anchored, means a berth in which, taking into consideration all the exigencies likely to arise, there should be no danger of collision

Safe conduct. A written permission given by a belligerent government, or one of its naval or military commanders, enabling an enemy subject to go to a particular place for a particular object (*Risley, Law of War* 156)

SAFE CONDUCT. A security given by the prince, under the great seal, to a stranger, for his safe coming into and passing out of, the realm, The royal prerogative of granting safe-conducts, is considered by Blackstone as nearly related to, and plainly derived from, that of making war

SAFE CONDUCT is a kind of passport issued by the supreme authority of a belligerent State, or by the commander-in-chief of its forces, enabling a citizen of an enemy State, or goods belonging to an enemy, to pass without molestation Safe conducts are generally issued for a particular place and time and the reason of such permission being given is generally stated (*See* Riseley, The Law of War, Wheaton International Law.)

SAFE CONDUCT AND PASSPORT A distinction is sometimes made between a passport, conferring a general permission to travel in the territory belonging to, or occupied by, the belligerent, and a safe-conduct, conferring permission upon an enemy subject or others to proceed to a particular place for a defined object.

Passports and safe-conducts are not binding upon the other belligerent, they may also be withdrawn by the belligerent granting them on grounds of military expediency, in which case the persons holding them must be allowed to withdraw in safety They may be given for an indefinite period or for a limited time.

Safe deposit company A company which maintains vaults for the deposit and safe-keeping of valuables in which compartments or boxes are rented to customers who have exclusive access thereto, subject to the oversight and under the rules and regulations of the company

It was formerly the custom for banks to accept gratuitously the custody of boxes containing securities for their customers, but this custom has been discontinued since the establishment of companies making that their special business The relation of the company to the depositor is rather that of bailor and bailee, though it has been said that there is a resemblance to the relation of landlord and tenant, but that it exists merely in form (9 *Harv L Rev* 131)

Safeguard A protection of the king to one, who is a stranger that fears violence from some of his subjects, for seeking his right by course of law. (*Tomlins Law Dic*)

A notification by a belligerent commander that buildings or other property upon which the notification is posted up are exempt from interference on the part of his troops (*Holland, Laws and Customs of War*)

The term is likewise used to describe a guard of soldiers who are detailed to accompany enemy subjects or to protect certain enemy property Soldiers on this duty are inviolable on the part of the other belligerent, if they fall into the hands of the other belligerent they must be sent back in safety to their own army

Safe loading place A place where a vessel can be rendered safe for loading by reasonable measures of precaution (14 Q.B D 105, 54 L J Q B 121)

Safely 'Safely and securely" in a declaration in bailment means with due care (15 L.J C P 182.)

A declaration against a cab proprietor, which stated that plaintiff hired the vehicle, and that defendant undertook to convey him and his luggage "safely and securely" from, etc, meant "safely and securely" with reference to the degree of care which under the circumstances, the law required of the defendant, that is, that he should use such a reasonable degree of care that the plaintiff should incur no damage or loss through the defendant's default or negligence, and did not import absolute assurance

Safe pledge A sufficient surety, *salvus plegius*. A surety given that a man shall appear upon a certain day (*Bracton*, I, 4, Ch 1)

Safe port "It seems that a port into which a ship cannot enter when fully laden is not a 'safe port'" (1 Maude & P 320-n, citing, *General Steam Navigation Co* v. *Slipper*, 11 C B N. S. 493.)

"Although the ship can physically get into it(as far as navigation and what may be called the natural incidents are concerned), yet if that would be at the certain risk of confiscation then the place is not a 'safe port,'" (*per* Blackburn, J, *Ogden* v *Graham*, 31 L.J. Q B. 29)

Safee namah (*See* Safi Nama) A testimonial given by the defendant upon the final settlement of a cause, that the matter in dispute has been cleared up or settled. (*Fifth Report.*)

Safi khat.

Safi-khat (*H*) A receipt, a deed of acquaintance

Safi-nama. (*H.*) A deed of acquaintance, a deed of release or of acquiescence in the terms of a razinama of which it is the counter-part

'Sagdi,' 'Nasakhana' (*in the Religion of the Parsis*) A Sagdi is a roofed structure intended for people who accompany a corpse to the Towers to rest, wash their hands and faces and say their prayers in Sagdis are also used for Parsis to congregate in and recite their prayers on certain days held sacred to the dead. A *Nasakhana* is a house where iron biers and other requisites for carrying the Parsi Dead to the Towers are kept and where the corpse bearers reside (2 Ind Cas 701 (714)=11 Bom L R 85=5 M L T 301=33 B 509)

Sages de la ley (*Lat*) Sages of the law, persons learned in the law

Sagotra (S.) A kinsman one allied by community of name and descent, a gentile relation (*Wil Gloss*)

Sagotra marriage The custom of sagotra marriages amongst the Waish Aggarwals is a well established and recognized custom and although it may not be approved by a certain section of that community, it carries with it no sort of stigma or evil consequences The issue of such marriages is perfectly legitimate and the bond is recognized on all sides (14? I.C 211=34 P L R 207=A.I R 1933 Lah 585)

Sagotra sapinda (S) A kinsmen by common descent who is also connected by obsequial offerings (*Wil Gloss*)

Sahabat (*Plur of Sahib*) Companions especially the companions of Mohammed through whom his sayings have been handed down forming a body of traditional law inferior in authority only to the Kuran (*Wil Gloss*)

Saheb (*A*) A lord, a master. The word is often affixed to titles expressive of rank, as Raja Saheb, Collector Saheb

Sahib (*H.*) A master, a lord, a companion in Hindustani, the usual designation and address of a respectable European, like Mister, Sir When European authorities are spoken of collectively, they are sometimes termed Sahiban-aalishan, most exalted gentlemen

Sahibah. A lady, mistress, madam.

Sahodara (S.) Related by libations of water to diseased kinsmen, brother (*Wil Gloss*)

SAHODARA (S) Uterine brother, a brother of whole blood

Sahodari A sister by the same mother. (*Wil Gloss.*)

Sahodha. (S.) If a pregnant woman marry whether her pregnancy is known or not, the son belongs to the husband and is called, Sahodha (*Smrit Chandrika.*)

SAHODHA (S) The son of a pregnant bride, one of the twelve sons formerly recognized by Hindu Law (*Wil. Gloss.* 453.)

Sailing

Saiba (*A.*) A woman who has had intercourse with man, as opposed to a virgin, in Mohammadan law (*Wil Gloss* 454)

Saibat (*A*) A female slave or she camel set at liberty under a vow, the word is used in the formula of manumission, Anti-saibat, thou art free (*Wil. Gloss*)

Said. Mentioned before (*see 2* Kent 555).

Said (*See* Saiyd) (*H*) A lord, a chief a designation assumed by a number of Mohammadans who pretend to be descended from Husain, the son of Ali, the grandson of Mohammad (*Wil Gloss*)

The word "said" is often used as a word of reference to what has been already spoken of or specified, and, if there is a question as to which of the antecedent things on propositions specified is referred to, it is generally held to refer to the last of such antecedent propositions or things.

"SAID"—"SAME" The reference of the word "said" is to be determined, in any given case, by the sense. Same refers to the next antecedent, but in the interpretation of a written instrument, the word "said" does so only when the plain meaning requires it (2 Kent 555, *Wilkinson* v. *State*, Io Ind 373)

The words "SAID" AND "SUCH," when used by way of reference to a person or thing, shall apply to the same person or thing last mentioned

"Said territories". *See* Salt Act (XII of 1882) S 3

"Said trustees" The power of appointment of New trustees is sometimes given, 'to the said Trustees,' and then the question arises whether a sole survivor can appoint It is conceived that 'the said trustees' means, the persons or person representing the trust for the time being under the Settlement, and that the survivor can therefore exercise the power" (Lewin 787)

Said zada, (*H*) The descendant of a Said, or of Mohammad (*Wil Gloss*)

"Sail' is a technical word, and means, 'Start on Voyage" (*per* Byles, J *Barker* v *McAndrew*, 34 L J.C P. 195), to move on a prosecution of a vogage.

"A vessel has *sailed* the moment she is ummoored and got Underway, in complete preparation for the voyage, with the purpose of proceeding to sea without further delay at the Port of Departure Ld Mansfield said, 'To constitute a sailing under this warranty the vessel at the time of sailing must be, in the contemplation of the captain, at absolute and entire liberty to proceed to her Port of Delivery in a mathematical line if it were possible. (*Thellusson* v *Staples*, 1 Doug 366, n), referring, probably, to her being ready so far as her preparations and equipments for the voyage are concerned," [Philips on Insrce, S 772, *See also Sea Insrce Co.* v *Blogg*, (1898) 1 Q.B 27 *See also* 3 B & C, 499]

Sailab (*H*) Flooded or kept permanently moist by a river

Sailabi (*Hindustani*) Land watered by inundation

Sailing It is sometimes important, in the construction of a charter party, or marine insurance policy, to

Sailing instructions.

know when a vessel commenced her voyage, and to this end to determine what constitutes a sailing It has been held that complete readiness for the sea, with the intention of proceedings at once on the voyage is sufficient, though head winds should prevent any actual progress (*Bowen* v *Hope Ins Co*, 32 Am Dec. 213.)

A ship by quitting her moorings on or before the day named in a state ready for sea with a *bona fide* intention of prosecuting the voyage has "sailed," notwithstanding her progress was soon after delayed by an unforeseen event, but if she was not ready for sea when she quit her moorings this is evidence that there was no such *bona fide* intention, any appearance to the contrary notwithstanding, it will be held that she had not said (Macachlan Merch. Shipp 414)

Sailing instructions. Written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet in case of dispersion by storm, by an enemy, or by any other accident Without sailing instructions no vessel can have the full protection and benefit of convoy (Marsh Ins 368)

Sailors Seamen, mariners

Saint. A holy person, one of the spirits of the blessed departed in heave n

PATRON SAINT A saint who is regarded as a protector (as) St George of England.

Sair (*H*) In its original purport the word signifies moving, walking, or the whole, or the remainder, from the latter it came to denote the remaining or all other sources of revenue accruing to the Government, in addition to the land tax, from a variety of imposts, as customs, transit duties, licences fees, house tax market-tax, etc in which sense the term is current throughout India, the several imposts under this name were abolished by the British Government, with the exception of Government customs, duties on spirituous liquors, and other minor specified items

"SAIR" are duties on markets and customs on goods levied under the former government of Bengal. (*Wil Gloss*)

Sair-jama (*H.*) The total amount of the revenue in addition to the land tax (*Wil. Gloss*)

Saiyd (*A*) (*See* Said) A lord, the designation of the descendants of Ali, the son in-law of the Prophet There are Sunni as well as Shiah Saids.

Sajjada. (*H*) A mat or carpet on which Mohammadans kneel or sit whilst praying (*Wil Gloss*)

Sajjadeh nishin (*P*) Sitting on a praying carpet. The supervision of a religious endowment (*Mac. Mah Law*)

THE TERM SAJJADA-NISHIN is usually applied to the spiritual superior of a mosque or religious endowment, as distinct from the Mutawalli, although the two offices are not unfrequently united in the same person, also any religious ascetic of the Mohammadan faith (*Wil. Gloss.*)

The office of a *sajjadanashin* implies the existence of a religious institution the holder of the office being the person in charge of the spiritual affairs of the institution He is the curator of the *Dargah* and is supposed to continue the spiritual line. (A I R. 1924 Lah 382)

Sajji Name of several saline plants on which camels browse

Saka. (*S*) An era in general, but the term is applied especially to that which is reckoned from that reign of a prince of the South of India named Salivahana, commencing in the 79th year of the Christian era, and to be identified with the latter by adding 78 and one-fourth (*Wil Gloss.*)

Sakshi. (*Mal*) Lit witness, a forfeit of ten to twenty per cent on money advanced when the mortgagee wishes to surrender before the expiry of his term (*Moore's Malabar Law*) An item of fees payable at the renewal of a kanom (*Mat Sundaram Iyer's Malabar Law*)

Sakshikkanam Fees paid to one who witnesses the execution of title-deeds.

Sakti, (*S*) Power, ability, the personified power of a divinity, the Supreme goddess (*Wil Gloss*)

Sakulya (*S*) A kinsman, or more especially a distant kinsman, not nearer than five, seven or ten degrees (*Wil. Gloss*)

Sakunat. Where a person states that he is having his *sakunat* at a certain place, it does not necessarily mean that he ordinarily resides at that place (145 I.C 755=34 P L R 658=A.I R 1933 Lah 851)

Salagrama (*S*) A stone found in the Gandakhi river, supposed to be a type of Vishnu and worshipped by his votaries (*Wil Gloss*)

Salam (*Arabic*) Peace The common word of salutation among Musalmans, and now in general use by all classes of persons, uttering the exclamation salam bowing and raising the right hand to the forehead

Salami A free gift made by way of compliment or in return for a favour (*Macnaghten's Mohammadan Law*)

Salami Taoji and Tehwari dasahara. Payable with rent *See* 18 C L J 83

"Salaried office" defined. Mad. Act 5, 1884, s. 3 (*viii*).

"Salaried servant of Government" defined Ben. Act 3, 1885, s 5, Bom Act 1, 1884, s. 3 (3)

The words *"salaried servant of Government"* do not include a retired servant of Government in receipt of a pension [Bom. Act I of 1884 (Local Boards), S 3 Cl (3)]

"SALARIED SERVANT OF GOVERNMENT" shall not include a retired servant of Government in receipt of a pension, or a person in receipt of a salary from Government who is not a full-time servant of Government [Bom Act III of 1901 (District Municipal), S 3, cl (9).

"Salary" defined. Act 2, 1855, s. 3 (4), Mad. Act 4 1884, s 3 (*x.*)

SALARY. (*Salarium*) A recompense or consideration made to a person for his pains and industry in

Salary

Salary.

another man s business' It is so called as Pliny saith in the thirty-first book of his Natural History, c. 7 because it is as necessary for a man as salt, and makes his labour relish, as salt doth his meat (*Termes de la ley, Tomlins Law Dic.*)

SALARY is a periodical allowance made as compensation to a person for his official or professional services or for his regular work, an agreed compensation for services, payable at regular intervals; the periodical compensation due to men in official and other situations, an annual or periodical payment for services, a stipulated periodical recompense, a stipend wages, hire, an allowance. A fixed sum paid to a person for his services, yearly, half-yearly, or quarterly, stipend, wages, annual or periodical wages or pay, hire, fixed regular wages, as by the year, quarter, or month

Salary is strictly an agreed compensation for service payable at regular intervals, but a more liberal meaning is frequently given to the word, and its synonyms are "STIPEND", "HIRE", "WAGES", "PAY", AND "ALLOWANCE"

SALARY AND FEES DISTINGUISHED. "Salary" denotes a recompense or consideration to be paid a public officer for continuous, as contra-distinguished from particular services, and may be denominated annual or periodical wages or pay So that "salary" and "wages" are often treated as synonymous, but the terms "salary" and 'fees" are not held to be synonymous, since fees indicate compensation or recompense for particular acts or services

SALARY AND GRATUITY. A sum paid to an employee as gratuity not by the employer but by a stranger who was interested in the employer out of charitable motives is not chargeable under the head "salaries" in S 7 of the Income-tax Act, because it is not paid by the employer or any one on behalf of the employer [12 Rang 477=152 I C 986=A I R 1934 Rang 377 (S B)]

SALARY AND HONORARIUM. Salary is a reward or recompense for services performed. It is usually applied to the reward paid to a public officer for the performance of his official duties. Salary is also applied to the reward paid for the performance of other services, but if it be not fixed for each month or year it is called *honorarium* (Pothier, Pand.) According to M Duvergier, the distinction between honorarium and salary is this By the former is understood the reward given to the most elevated professions for services performed, and by the latter the price of hiring of domestic servants and workmen (19 Toullier, n 286, p. 292, note.)

SALARY AND PRICE There is this difference between salary and price, the former is the reward paid for services or for the hire of things, the latter is the consideration paid for a thing sold.

SALARY AND WAGES. Salary seems to denote a higher degree of employment and is suggestive of a larger compensation for more important services than wages

Salary is generally regarded as a per month or per annum compensation, while wages are defined as compensation paid or to be paid by the day, week, etc.

Sale.

"SALARY OR INCOME" Wages earned by a daily piece-work labour.—If constitute *See* 71 M.L J. 432.

"WAGES AND SALARY, seem to be synonymous and convertible terms, though use and general acceptation have given to the word salary a significance somewhat different from the word 'wages' in this, that the former is understood to relate to position or office, to be the compensation given for official or other service as distinguished from 'wages' the compensation for labour" (3 L.R A 642)

Wages and salary have also been held to be synonymous in some cases.

"Sale" defined; N. B. This word also occurs in combination with other words (as) mortgage by conditional sale, retail sale, whole-sale; Act 9, 1872, s 77, Act 4, 1882, s 54, Mad Act 3, 1864, s 2, Mad. Act 1, 1886, s. 3 (14), Sale of Goods Act, s. 3

SALE. The transferring the property of goods from one to another, upon valuable consideration. (*Tomlins Law Dic*)

Sale is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price

"Sale" is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer. [Act IX of 1872 (Contract), s. 77.]

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument [Act IV of 1882 (Transfer of Property) s 54 *See* 25 M.L.J 245=18 I C 199, 17 M.L. J 220=30 M 393]

'Sale' in the Punjab. Pre-emption Act shall not include sales in execution of a decree or order of a Civil, Criminal or Revenue Court or of a Revenue Officer [Punjab Act II of 1905 (Pre-emption), s. 3, cl 5

"Sale" is the exchange of property for money or for property capable of being valued in money. [5 A. 65=2 A W N 175]

OTHER DEFINITIONS A sale, in its broadest sense, may be defined as the transfer of the property in a thing for a price in money, usually the term "sale" is confined to a personal property. A sale may be defined as an agreement whereby one party, called the seller, transfers to the other party, called the buyer pays or agrees to pay A sale of goods is also termed a "bargain and sale" and an "executed contract of sale."

A sale, as defined by Blackstone, is a transmutation of property from one man to another in consideration of some price or recompense in value

'Sale' is correlative to 'Purchase' and *"prima facie,* means, a sale effectual in point of law including the execution of a contract where the law requires a contract in writing" (*per* Buckley, J, *Rosenbaum* v. *Belson*).

Sale.

"A *Sale* implies that there shall be one who sells and another who buys" (*per* Cockburn, C J, *King* v. *England*, 33 L J Q B. 145)

In English Law "The word, '*Sale*', virtually includes within it the word 'Mortgage' which is practically a sale" (*per* Romily, M R *Bennett* v *Wyndham*, 23 Bea 526).

SALE *'Date of sale'* if means date of *actual* sale or date of *confirmation of sale* (10 Pat L T 396=A I R 1929 Pat 236)

SALE AND ACCORD AND SATISFACTION A sale differs from an accord and satisfaction in that the thing given in accord and satisfaction is for the purpose of quieting a claim and not for a price.

SALE AND ASSIGNMENT FOR BENEFIT OF CREDITORS A sale is to be distinguished from an assignment for the benefit of creditors An assignment for the benefit of creditors contemplates a transfer of property to an assignee in trust to apply the same or the proceeds thereof to the payment of debts, the surplus, if any, to be returned to the debtor

SALE AND BAILMENT. In a bailment, at most, only a special property passes to the bailee, who receives possession for a particular purpose, upon contract that after the purpose has been fulfilled it shall be redelivered to the bailor or otherwise dealt with according to his discretions, while the general property remains in the bailor The common test of bailment or sale is whether it is the intention of the parties that the thing delivered shall be returned The transaction is a bailment if the identical thing is to be returned, although in altered form If the receiver is not bound to return the identical things but is at liberty to return something else, as a rule the property passes, and the transaction is in effect a sale or an exchange But if the option to return other articles of the same kind applies only in case of a loss for which the bailee is liable the transaction is a bailment It depends upon the substance of the agreement, and not upon its form, or upon particular expressions used, whether a transaction is a bailment or a sale

SALE AND BARGAIN "To sell" means to transfer a thing in consideration of a price paid or agreed to be paid in current money, while a bargain is where the consideration, instead of being payable in money, may be made in goods or merchandise

SALE AND BARTER A sale is an exchange of goods or property for money paid or to be paid, as distinguished from barter, which is an exchange of one commodity or article of property for another, an exchange of goods, a commutation, transmutation or transfer of goods for other good

SALE AND CHATTEL MORTGAGE A sale is to be distinguished from a chattel mortgage, which is the transfer of the title to personal property as security for the payment of money or the performance of some other act, subject to the condition that upon performance by the transferer the title shall revest in him

SALE AND CONTRACT FOR WORK, LABOUR, AND MATERIAL Whether a contract is one for the sale of goods or is merely a contract for work, labour, and materials is chiefly important in determining whether the contract is one "for the sale of goods" within the statutes requiring writing on stamped paper and registration for sales of certain kind

SALE AND CONTRACT TO SELL There is a fundamental distinction between a contract to sell in the future and a present sale—often expressed by "*executory*" and "*executed*" *sales* It depends upon whether the property in the goods is transferred. If transferred, there is a sale though the price be not paid, if not transferred it is a contract of sale, even though the price be paid (Williston, Sales) Conditional sales constitute an intermediate class—the assent to the transfer though not the transfer, being given at the time the bargain is made Such transactions partake more of the nature of sales than of contracts of sale, the title being transferred by force of the original bargain.

A contract for the sale of immovable property creates no interest in the property, it creates a right *in personam* and establishes a fiduciary relationship Such a relationship of trustee and *cestui que trust* endures only so long as some obligation remains undischarged by the trustee 121 I C 18=A I R 1930 Mad 84

SALE AND DEPOSIT OF GRAIN IN WAREHOUSE Where grain is deposited in a warehouse on an understanding express or implied that the warehouseman may mix it with other grain of like quality, and shall return to the depositor the amount of his deposit out of the mass, which is to be kept good to that extent, the various owners of the grain are tenants in common, and the transaction is a bailment If the warehouseman commingles his own grain, he becomes tenant in common with the depositors The transaction is a bailment notwithstanding the depositor retains the right to elect whether to demand a delivery of grain or money But the transaction is in effect a sale if the delivery is upon such terms that the warehouseman is not to return, but is to pay for, the grain, or that he has from the beginning the right to use or sell the grain and to pay in grain or money If in lieu of grain the warehouseman is to deliver flour, which is to be made from grain in the common mass, the transaction is a bailment (*Ame Cyc*)

SALE AND EXCHANGE OR BARTER If the consideration for the transfer of the property is other goods, no price being fixed in money, the transaction is an exchange or barter

'Sale' undoubtedly, in general, implies an exchange for money and is so defined in Benjamin on Sale" (*per* Wills, J, *Coats* v *Inl. Rev*, 66 L J Q B. 436).

"Sale and exchange" is a term which, in reference to real estate, implies that the proceeds of the sale are to be vested in another estate of the same character, and to be settled to the same uses

SALE AND GIFT. If there be no valuable consideration for the transfer of the property, the transaction is a gift.

Sale and mortgage. When a bill of sale is executed as security, it is generally held to be a mere mortgage Thus in cases where there has been no change of possession, or the sale is accompanied by a defeasance, or provides for redemption, or a reconveyance, the transaction is ordinarily held to be merely a mortgage.

Sale and mortgage.

SALE AND OFFER TO SELL An offer to sell imposes no obligations until accepted according to its terms, and an offer rejected cannot be afterwards accepted (30 L. Ed 376.)

SALE AND TRANSFER IN PAYMENT OF DEBT A transfer of title by a debtor to a creditor in payment is in effect a sale and not a mortgage.

DIFFERENT KINDS OF SALES ABSOLUTE SALE An *absolute sale* is one made and completed without any condition whatever

CONDITIONAL SALE A conditional sale is one which depends for its validity upon the fulfilment of some condition The term is usually confined to sales in which the seller retains the title until the payment of the price

Conditional sales must of course be distinguished from those contracts by the terms of which the property shall not pass until payment, but payment is to be made on delivery These contracts are also to be distinguished from transactions by the terms of which the buyer has the privilege of returning unsold goods It is the distinguishing feature of the so-called conditional sale that the title to or property in the goods remains in the seller until payment of the price, but the buyer is entitled to the possession and use of the goods until default in payment

EXECUTED AND EXECUTORY SALES *See* sale and contract to sell *supra.*

FORCED SALE A *forced sale* is one made without the consent of the owner of the property by some officer appointed by law, as by a sheriff in obedience to the mandate of a competent tribunal This sale has the effect to transfer all the rights the owner had in the property but it does not, like a voluntary sale of personal property, guarantee a title to the thing sold, it merely transfers the rights of the person as whose property it has been seized This kind of a sale is sometimes called a judicial sale

JUDICIAL SALE *See* Forced sale *supra.*

PRIVATE SALE A private sale is one negotiated and concluded privately between buyer and seller, and not made by advertisement and public outcry or auction.

PUBLIC SALE AUCTION SALE A public sale is one made at auction to the highest bidder Auction sales sometimes are voluntary as when the owner chooses to sell his goods in this way, and then as between the seller and the buyer the usual rules relating to sales apply, or they are involuntary or forced when the same rules do not apply

A VOLUNTARY SALE is one made freely without constraint by the owner of the thing sold, this is the common case of sales, and to this class the general rules of the law of sale apply.

Sale and return. A "contract on sale and return" is an agreement by which goods are delivered by a wholesale dealer to a retail dealer, to be paid for at a certain rate if sold again by the latter, and if not sold to be returned

A "sale and return" is a condition subsequent the title passing at once, subject to the right of the purchaser to rescind the contract and return the property, if the same is not sold.

Sale by sample.

Sale or return is selling of goods to a retailer on condition that if he fail to resell them within a given time the seller will take them back and refund the money paid for them or make an equivalent allowance

The class of contracts known as "contracts of sale or return" exists where the privilege of purchase or return is not dependent upon the character or quality of the property sold, but rests entirely upon the option of the purchaser to retain or return In this class of cases the title passes to the purchaser, subject to such option, and if before the expiration of a reasonable time or the exercise of the option the property is destroyed, even by inevitable accident, the buyer is responsible for the price

Sale by sample "A sale by sample is where a small quantity of any commodity is exhibited by the vendor as a fair specimen of a larger quantity called the 'bulk, which is not present, and there is no opportunity for a personal examination To constitute such sale it must appear that the parties contracted solely with reference to the sample, and mutually understood that they were so dealing in regard to the quality of the bulk "

"A sale by sample contemplates that the goods are *in esse*, that the sample is taken from the bulk, and that the latter is equal in quality to the sample".

The circumstances, merely, that at the time of the sale a sample was produced, is not sufficient to constitute the sale one by sample To have that effect it must be fairly inferable from the evidence that the parties mutually understood, or at least that the seller intended the buyer to understand, that the bulk of the commodity sold should in kind and quality be equal to the sample shown Neither is a sale conclusively one by sample because, at the time of the sale, a sample was produced, and it was inconvenient or impracticable to examine the bulk of the goods sold These circumstances, however, should be duly considered in arriving at a conclusion that the sale was not one by sample The question, therefore, is in every case one of the intention of the parties, to be determined from the evidence

A sale of grain or other commodities in bulk cannot be regarded as a "sale by sample", simply because a portion only is exposed to view If the bulk is thrown open to inspection, the buyer is considered to have inspected the bulk, and not to have relied upon that only which is exposed to view as a sample The intention of the parties in such case is to sell by inspection, not by sample

"SALE BY SAMPLE" contemplates that the goods are *in esse*, that the sample is taken from the bulk, and that the latter is equal in quality to the sample The term does not include an agreement to manufacture goods to correspond with the pattern

In judicial sales the proceedings are altogether hostile to the owner of the goods sold, which are taken against his will and exposed to sale without his consent It would be a great injustice to make him responsible for the quality of the goods thus taken from him, nor can the marshal or auctioneer, while acting within the scope of their authority, be considered in any respect whatever as warranting the property sold The marshal, from the nature of the transaction, must be ignorant of the particula

Sale for the coming out.

state and condition of the property He is the mere minister of the law to execute the order of the Court, and a due discharge of his duty does not require more than that he should give to the purchasers a fair opportunity of examining and informingthemselves of the nature and condition of the property offered for sale An auctioneer, in the ordinary discharge of his duties, is only an agent to sell, and, when selling for a sheriff at a judicial sale, he acts only as a special agent of the officer, without any authority, express or implied, to go beyond the single act of selling the goods, and the sheriff, as an officer to execute the orders of the Court, has no authority in his official character to do any act that shall expressly or impliedly bind any one by warranty Such a sale is not a "sale by sample", according to the mercantile understanding of that practice or the legal acceptation of the term

SALE IN EXECUTION OF A DECREE Is not identical with 'sale-deed by Court in pursuance of a decree' 116 I C 495=A I R 1929 A 462

SALE IN GROSS is one without regard to quantity.

The term "sale in gross", as applied to a sale of land, means a sale by the tract, without regard to quantity

Sale for the coming out Early sale of shares in a company prior to the issue of share certificate

SALE WITH RIGHT TO REPURCHASE A sale reserving to the seller a right to repurchase is not a mortgage, especially when there is no debt to be secured and no obligation to repay If, however, there is a right reserved by the buyer to demand and enforce repayment the transaction is not a sale but in the nature of a mortgage

Sale-note A memorandum given by a broker to a seller or buyer of goods, stating the fact that certain goods have been sold by him on account of a person called the seller to another person called the buyer Sale-notes are also called bought and sold notes

Sale on condition. (*See* Conditional sale, *supra*) The fact that under transactions by peddlers the sales were on the instalment plan the title being retained until the terms of the sale were complied with, did not eliminate from the transaction all the characteristics of a contract of sale Most of the sales made by commercial travellers or drummers are mere conditional sales, yet no one would think of denying that they are sales, the title to the property remaining in the seller until the conditions of the sale are fully complied with.

Sale on credit. A sale is not one on credit, where no time was given for payment of the price, or leave given to take the property away without payment.

SALE ON TRIAL If it is a sale on trial, it is said to be a sale on condition precedent to buy if satisfied, the title does not pass until the condition prescribed is fully performed, although the possession is delivered, being rather a bailment with the option to buy than a sale

Some instances of sales, dependent on conditions precedent, are afforded by *'sales on Trial'*, or *'Approval'* and by the bargain known as' *Sale or Return'* In the former class of cases there is no sale till the approval is given either expressly or by implication

Saliva

resulting from keeping the goods beyond the time allowed for trial In the latter case the sale becomes absolute, and the property passes only after a reasonable time has elapsed, without the return of the goods" (Benj 590 cited with approval *Elphick* v. *Barnes*, 5 C P D 326)

SALE PER AVERSIONEM A "sale per aversionem" was by the Roman law a sale of lands for a gross sum, to be paid for the whole premises, and not at a specified price by the foot or acre

"SALES GUARANTEED" The term "sales guaranteed," as used in a contract for the sale of goods, means that if the goods were not sold, or if they proved to be not sellers, the purchaser might return them and have credit for their value

"SALESROOM" Where premises were leased to be occupied as a studio and salesroom, and for no other purpose, a sublease to a person occupying the premises as a dramshop, was a breach of the contract, the Court saying that "while we often hear dramshops spoken of as 'saloons', and see them so mentioned in city ordinances, and signs upon them often read, 'Sample Room', 'Family Resort', and other designations, yet no one has ever, we believe yet endeavoured to attract custom by calling a dramshop a 'studio' or a salesroom," (cited in *Ame Words and Phrases*).

"SALE TO BE KEPT UNDER THE HAMMER" The phrase "the sale to be kept under the hammer" implies that the sale has in fact started 11 P L.T. 743

SALE WARRANT Document given in the case of goods sold on payment of deposit conditionally on an early discharge of the balance

Salianah (*Hindustani*). An annual pension. Compare Rozinah

Salic law. The earliest barbarian code, dating from the fifth century, compiled under Pharamond, King of the Franks,, *see* 1 Poll & Maitl Hist 32

Salic or salique law (is the) name of a code of laws, so called from the Salians, a people of Germany who settled in Gaul under their king Pharamond.

The most remarkable law of this code is that which regards succession No part of the salique land passes to women, but the men alone are capable of taking, that is, the sons succeed to the inheritance This had always excluded women from the throne of France

Salien land Land having salt deposits

"Saline substance" defined. Mad. Act 4, 1889, s. 3 (*c*).

Salis, (*H*). An umpire, an arbitrator. (*Wil. Gloss.*)

Salisani koribain Where a pleader was authorised by the vakalatnama in respect of *'salisani kori bain', held,* that he was thereby given power to refer the dispute to arbitration. 56 Cal. 21=A I.R. 1929 Cal. 322.

Saliva "By the grant of the boillourie of salt, it is said that the soil shall pass, for it is the whole profit of the soil. And this is called Saliva, of the French word *salure* for a salt-pit; and you may read *de salwa* in Domesday, and *selda* signifieth the same thing; and where you shall read in records *de*

Salmon.

lacerta in profunditate aquae salsae there *lacerta* signifieth a tathom" (Co Litt 4 b, *Stroude*)

Salmon For the purpose of the chapter relating to fish and fisheries, the term "salmon" means the common migratory salmon of the seacoast and rivers.

Saloon A place of refreshment. An apartment for a specified public use In common parlance, the word is used to designate a place where intoxicating liquors are sold, and this restricted meaning may be given to saloons, where the context or other circumstances require it, but it does not necessarily import a place where liquors are sold

A saloon is a place for the retailing of spirituous liquors.

The word 'saloon", which originally meant a large public room or parlor, has now acquired a more restricted meaning, and is usually applied to a place where intoxicating liquors are sold

"**Salt**" defined (*see also* kohat salt, natural salt), Ben Act 7, 1864, s 3, Bom Act 2, 1890, s 3 (*e*), Mad Act 4, 1889, s 3 (*b*), Reg 3, 1889, s. 33 (1).

"**Salt in possession of servant or agent**" defined, Ben Act 7, 1864, s 3

"**Salt-earth**" defined Bom Act 2, 1890, s 3 (*f*), Mad Act 4, 1889, s. 3 (*d*)

Salt-factory" defined Mad. Act 4, 1889, s 3 (1).

"**Saltpetre**" defined Act 12, 1882, s 3, Mad Act 4, 1889, s. 3 (*e*), Reg 3, 1889, s 33 (1)

"SALTPETRE" includes rasi, sajji and all other substances manufactured from saline earth, and kharinun and every form of sulphate or carbonate of soda, and Salt Act (XII of 1884), s. 3. A I R. 1923 Lah. 462.

"**Salt-revenue**" defined. Mad Act 4, 1889, s 3 (*a*).

"**Salt-revenue-officer**" defined Act 12, 1882, s. 3; Bom Act 2, 1890, s. 3 (*c*)

"SALT-REVENUE OFFICER" means any officer of the Northern India Salt Department and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act, Salt Act (XII of 1882), s. 3

"**Salt-work**' defined Ben Act 7, 1864, s 3, Bom Act 2, 1890, s 3 (*h*), Mad Act, 4, 1889, s 3 (*j*)

Salting invoices A cant term from the falsification of the invoices of goods sold and sent out into the colonies for re-sale there, by making the price paid appear greater than it has really been to enable the purchaser to make a greater profit on a re-sale.

Salus populi suprema lex The welfare of the people is the supreme law

Salute Complimentary discharge of common in honour of any one

SALUTE· The usage of nations has established certain maritime ceremonials to be observed either on the ocean or in the territorial waters of a particular State Among these is the salute by striking the flag of the sails or by firing a certain number of guns on approaching a fleet or a ship of war on entering a fortified port or harbour.

Salvage

These regulations as to Salute are established either by its own municipal ordinances or by reciprocal treaties with other maritime powers (*see* Wheaton, Elements of International Law, 4th Eng. Ed, 1904, s 160, p 258)

"**Salvage**" defined 57-8 V, c. 60, s 510 (2).

SALVAGE. A compensation allowed to persons who have saved or aided in saving ships or cargo from actual loss after wreck, or from impending danger, whether from fire, pirates, enemies, or the ordinary perils of the sea, *see* Rob El L. Rev Ed, 389

"*Salvage*, in its simple character, is the service which those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward It is personal, in its primary character at least" (*per* Ld. Stowell, The Thetis, 3 Hagg. Adm 48)

"Salvage consists (1) of an adequate compensation for the actual outlay of labor and expense made in the enterprise, and (2) of the reward as bounty allowed from motives of public policy, as a means of encouraging such exertions In determining the amount of an award the leading considerations are: the degree of danger from which the rescue is made; value of the property saved, risk to the salvors, the value of property risked by salvors and the dangers to which it was exposed, the skill shown and the time and labor spent" (*The Rita*, 62 Fed 761).

Sir John Nicholl in *The Clifton*, 3 Hogg. Adm. 117, 120 says "Now salvage is not always a mere compensation for work and labor. Various circumstances upon public considerations—the interests of commerce, the benefit and security of navigation, the lives of the seamen—render it proper to estimate the salvage reward upon a more enlarged and libel scale The ingredients of a salvage service are, *first* enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow creatures, and to rescue the property of their fellow subjects, *secondly*, the degree of danger and distress from which the property is rescued, whether it were in imminent peril and almost certain to be lost, *thirdly*, the degree of labor and skill which the salvors incur and display and the time occupied, *lastly*, the value."

The term "salvage" is sometimes used to express the service rendered, and also the goods or property saved.

The term *salvage* may mean a thing saved, as in marine and fire policies, or the service of saving a thing at risk at sea, or the reward for doing so

"A total loss, in the language of Fire Insurance, does not mean, as in Marine Insurance, the total destruction of the property, but its destruction or injury to such an extent as to render the insurer liable to pay the total sum insured A ship may be, and perhaps often is, caught by a hurricane and lost with all hands on board, but a fire rarely totally destroys the insured property The residue remaining after the fire is termed the salvage." (Bunyon on Fire Insrce. 4th ed, 168)

The doctrine of *Maritime Salvage* "has no application to goods on land, nor to anything except ships or goods in peril at sea. With regard to ordinary goods

Salvage.

on which labour or money is expended with a view of saving them or benefiting the owner there can be only one principle upon which any claim for repayment can be based—and that is, if you can find facts from which the law will imply a contract to repay or to creat a lien" (*per* Bowen, L J, *Falcke* v *Scottish Insrce*, 56 L J Ch 714, 34 Ch D 249 On this subject *see* Kennedy, Civil Salvage, Abbott, Merchant Shipping, Williams and Bruce, Admiralty Practice, Maclachlan, Merchant Shipping, Maude and Pollock Merchant Shipping, Barver, Carriage by Sea, Temperly Merchant Shipping Acts, (*Ency. of the Laws of England*)

SUBJECT OF SALVAGE The subject of salvage must be a ship, a cargo, or portions of the same.

SALVAGE—MILITARY AND CIVIL These are two kinds of salvage in this sense—military and civil *Military salvage* is a service whereby maritime property is rescued from the enemy in time of war or from pirates in time of peace *Civil salvage* is a service which saves or helps to save maritime property—vessel, its apparel, cargo, or wreck—or lives of persons belonging to any vessel when in danger either at sea or on the shore of the sea or in tidal waters, or on the shore of tidal waters, if and so far as the rendering of such service is voluntary and attributable neither to legal obligation, nor to the interest of self preservation nor to the stress of official duty. (Kennedy, Civil Salvage, 1907, 2)

In either case the person rendering the service or salvor is entitled to be rewarded, and the word salvage is used indifferently to denote the service or the reward (*Ibid* 1)

Salvage loss Partial marine insurance loss, being the value of the goods recovered deducted from the full amount of insurance, the difference between the amount of salvage, after deducting the charges and the original value of the property (*Wharton*)

SALVAGE LOSS is that kind of loss which it is presumed would, but for certain services rendered and exertions made, have become a total loss It also means, among underwriters and average adjusters, a mode of settling a loss, under a policy, in cases where the goods have been necessarily sold at a port short of the port of destination, in consequence of the perils insured against In such cases though the property be not abandoned to the underwriter the principle of abandonment is assumed in the adjustment of the loss The underwriter pays a total loss The net proceeds of the sale of the goods after deducting all the expenses, are retained by the assured, and he credits the underwriter with the amount. (2 Phill Ins & 1480.)

"A salvage loss is that kind of loss which it is presumed would, but for certain services rendered, have become a total loss The charges incurred are called "salvage charges", the property saved is the "salvage", and the difference between the amount of salvage after deducting the charges and the original value of the property is called the "salvage loss" In general, a salvage loss of goods is one in consequence of shipwreck or where by the perils of the sea the vessel is prevented from proceeding on her voyage, and the cargo or the part that is saved is obliged to be sold at a place short of the port of destination".

Samadayum.

Salvage Service. Any service rendered to a vessel in peril or distress which in any measure conduces to its safety is in the nature of a "salvage service," and is none the less such because the peril apprehended did not befall, or because the labor was insignificant and performed without actual risk.

Success has always been held to be an essential element of a salvage service, and its absence is fatal to a claim for salvage compensation.

Success is essential to a claim for salvage service, as if the property is not saved, or if it perish, or, in case of capture, it be not retaken, no compensation can be allowed

SALVAGE SERVICE AND TOWAGE SERVICE "If there is any extrinsic difference between towage and salvage, it would appear to be that salvage service must always be that given in rescue or relief of property in imminent peril of loss or deterioration, while towage may be applied merely in aid of a vessel against adverse winds or tides, or in difficult passages, while she is in possession of her ordinary powers of locomotion".

SALVAGE SERVICE is a service which is voluntarily rendered to a vessel in need of assistance and is designed to relieve her from some distress or danger either present or to be reasonably apprehended while a *towage service* is one which is rendered for the mere purpose of expediting her voyage without reference to any circumstances of danger, (*The Lowther Castle*, 195 Fed 604)

There is a clear distinction between a towage and a salvage service When a tug is called or taken by a sound vessel as a mere means of saving time, or from consideration of convenience, the service is classed as towage, but if the vessel is disabled, and in need of assistance, it is a salvage service.

Salvage undertaking. A "salvage undertaking" is a speculative venture, in which there is no reward if nothing is saved to the owner, and may result in great profit or serious loss, and hence, if a claimant appears, the salvors are not entitled to the entire proceeds, even if they have necessarily incurred expenses exceeding the same.

Salvation Army An organization for the spread of religion among the masses founded by Wm Booth in 1878

"Salvor" defined 57-8 V c 60, s 742.

SALVOR A "salvor" is a person who, without any particular relation to a ship in distress, renders useful services and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship.

SALVOR is a person who saves property or rescues it from impending peril on the sea or when wrecked on the coast of the sea, or on a public navigable river or lake, and who is under no pre existing contract or obligation of duty by his relation to the property to render such services (1 Hagg. Adm 236, *Williamson* v. *The Alphonso*, Fed. Cas No 17, 749.)

Samadayum. Lands the produce of which is receivable by tenants in co-partnership Applied to villages, the term denotes, that the landed property

Samana.

therein is held in common by all the Meerassdars or ulcoodies of the village, each possessing his proportion of the common stock, but not having a claim to any particular spot of the land beyond the period for which it is usual to make a division of the whole cultivation (*Fifth Report*) (*See* Samudayam).

Samana (S) Equal, Like, same (*Wil Gloss*)

Samanagotra (S) Of the same lineage, a gentle kinsman (*Wil Gloss*).

Samani-vriddhi (S) Moderate interest.

Samanodaka is a kinsman connected by offerings of water to deceased ancestors

SAMANODAKA "The word *samanodaka* includes descendants from a common ancestor more remotely related than the thirteenth degree from the propositus" 52 Bom 132=30 Bom L R 38=107 I C. 268 =I L R 40 Bom 108=A I R 1928 Bom 166

"Samanodakas" (S) are agnatic relations from the seventh degree to the fourteenth degree and even beyond, if agnatic relationship be clearly established

Samanodaks are those who come within the seven degrees beyond the *sakulyas* or even further so long as the pedigree can be traced (10 B 372, *ref*) 32 All 594=7 A L J 802=6 I C 698

Samantan (*Mal*) A title adopted by a few high and wealthy families, who claim to be above the Nayars, and to be a separate caste between the Nayars and the Brahmans (*Vide* A S 202 of 1888, Madras High Court, *Moore's Malabar Law*)

Samastanam (*Tam*) A metropolis, the residence of a prince or person of rank it is used in a collective sense in the south for a family of rank and distinction, a noble house

Samatudarudu (*Tel*) A revenue officer employed by the government or by a zemindar to superintend the village of a district or of a certain number of villages, to settle disputes among the cultivators, and communicate with the District Collector (*Wil Gloss*)

Samavarttana (S) The ceremony which takes place when the young Brahmin has completed his course of religious study, and returned home amongst the Marathas it is said to be a ceremony in which the Munja, or girdle of grass, is loosened, sixteen years after, it has been put on. (*Wil Gloss*)

Sama Veda One of the four vedas,—the primary source of all Hindu Codes

Sama-vibhaga (S) Division of the property amongst the sons in equal shares (*Wil Gloss*)

"Sambandham" defined. Mad Act 4, 1896, s 2

SAMBANDHAM (*Mal*) Generic term for Malabar marriage. (*Sundaram Iyer's Malabar Law*)

SAMBANDHAM (*Mal*) (Lit Connexion) The term used by the Nayars of South Malabar to denote that a man and woman are united by a quasi matrimonial bond. In Act IV of 1896 (Madras), Sambandham is thus defined for the purposes of that Act —" 'Sambandham' means an alliance between a man and a woman by reason of which they, in accordance with the custom of the community to which they belong or either of them belongs, cohabit

Same transaction.

or intend to cohabit as husband and wife." (*Moore's Malabar Law*)

Sambhandi (S) Sammandhi (karn.) A relation, a connexion (*Wil Gloss*)

Same "The same," generally refers to the last preceding antecedent. (*Co. Litt.* 20b, 385b)

"The word '*same*' may grammatically refer to more than one antecedent" (per *Jessel, M R, Court* v *Buckland*, 45 L.J Ch 216, 1 Ch D 605).

Same does not always mean identical It frequently means of the kind or species, not the specific thing

"As ordinarily understood, the word 'same', when used in comparison, means of like kind, species, sort, dimensions, or the like, not differing in character, or in the quality or quantities compared. corresponding not discordant, similar, like"

Same act or Transaction *See* 34 B 358=11 Bom. L R 499

"Same judgment-debtor" *See* Civil Pro Code, S 73 and Notes.

Where a decree is obtained against a person, and another decree is obtained against the legal representative of the judgment-debtor, although the estate of the deceased judgment-debtor may be liable in the case of both the decrees, it cannot be said that the two decrees are against the same judgment-debtor within the meaning of S 73, C P Code, 1908. 25 B 494=3 Bom L R 407 *See also* 29 B 528 (529), 24 I C 476, 8 O C 86 (88), 33 M 465=7 M L T 157 =5 I C 917, 26 M 179 (182)=12 M L J 276

Same Manner The phrase "in the same manner" has a well-understood meaning in legislation, and that meaning is not one of restriction or limitation, but of procedure It means by similar proceedings, so far as such proceedings are applicable to the subject-matter

"Same offence" [in Criminal Procedure Code (Act V of 1898), S 239] imply that both the accused should have acted in concert or association They do not apply to a case in which the allegations against the two accused are mutually exclusive. 21 I C. 163 (164)=14 Cr L J 563

Same parties The decision of a matter directly and substantially in issue in a suit is *res judicata* in a subsequent suit between parties who, though they were nominally on the same array of parties in the first suit, were really opposed to each other with respect to such matter 4 A 92=1 A. W. N. 137. *See also* 6 Cal 17

"SAME PARTIES" includes their heirs or assigns.

"Same rent and covenants", "same form" " On the whole, it is indisputably settled that the words, "Under the same Rent and Covenants" are not, of themselves, sufficient to include the covenant for Renewal Nor will a covenant to grant a lease 'in the same form' include the covenant for renewal" (1 Platt. 724)

Same transaction What amounts to "same transaction" is a question of fact to be decided in the circumstances of each case [I.L R. (1937) All 779= 1937 A W R 748=1937 A Cr C. 119=1937 A L.J 1073 =171 I.C .994=A. I.R.1937 All. 714]

Same transaction.

Separate offences by individual conspirators which are not committed in pursuance of the conspiracy, but which are isolated acts committed individually during the continuance of the conspiracy are not part of the same transaction with the conspiracy itself and with those acts which are alleged to have been the subject of the conspiracy. [I. L. R. (1937) All. 779=1937 A W R 748=1937 A L J 1073=171 I.C 994=A I R. 1937 All 714]

Where the accusation against all the accused persons is that they carried out a single scheme by successive acts done at intervals but there was complete unity of project, and the whole series were all linked together by one motive and design, it constitutes "one and the same transaction within the meaning of S 239 of the Criminal Procedure Code, (V of 1898) [14 Bom L R 972=13 Cr L J 833= 17 I C. 705 (712)]

It is a question of fact in each case whether the acts are so connected together as to form part of the same transaction The word transaction must be read as meaning a completed act. Mere interval of days will not disturb the oneness of the transaction, nor necessarily the fact that different sets of persons were engaged on different occasions But if the aim of the accused on the different occasions is directed towards effecting different purposes, the transactions are different [28 M L J 397=17 M L. T. 242=(1915) M W N 241=28 I C 659=16 Cr L J. 323]

Samiji tenure. Right of Samigidar to retain possession of land without paying rent (A I R 1929 Lah 77.)

"Sampans." *See* 14 Bur L.R 22=7 Cr L J 311

Sample A small quantity of commodity exhibited

The word "sample", both in its legal and popular acceptation, means that which is taken out of a large quantity is a fair representation of the whole, a part shown as a specimen

SAMPLE is a small quantity of any commodity or merchandise exhibited as a specimen of a larger quantity called the bulk A part shown as a specimen.

" The fair import of the exhibition of a sample is that the article supposed to be sold is like that which is shown as a parcel of the article It is intended to save the purchaser the trouble of examining the whole quantity It certainly means as much as this "The thing I offer to sell is of the same kind and essentially of the same quality as the specimen I give you.' I do not know that it would be going too far to say that it amounts to a declaration that it is equally sound and good "

SALE BY SAMPLE "A sale by sample, only has reference to the quality of the article sold" (per *Parke, B , Nichol v Godts,* 23 L J. Ex 315).

In the Sale of Goods Act, a sale by *Sample* implies, "that the bulk shall correspond with the sample in quality", that "the buyer shall have a reasonable opportunity of comparing the bulk with the sample", and ' that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample."

Sanadi-zamindar.

When a sale is made by sample, the vendor warrants the quality of the bulk to be equal to that of the sample (*Benj. Sales*) and if it afterwards turn out that the bulk does not correspond with the sample, the purchaser is not, in general, bound to take the property on a compensation being made to him for the difference. (1 Camp. 113.)

Sampling Orders. Orders addressed to the superintendent of a dock or warehouse authorising the giving of specified samples to the person named.

Samskara. (S) According to the Hindu Law marriage is a *samskar* and hence the marriage of every coparcener is a family necessity. (6 S.L.R. 246=19 I C. 835)

Samudayam. Lands the produce of which is receivable by the tenants in copartnership Applied to villages, the term denotes, that the landed property therein is held in common by all the Meerassadars or Ulcudies of the village, each possessing his proportion of the common stock, but not having a claim to any particular spot of land beyond the period for which it is usual to make a division of the whole cultivation

SAMUDAYAM (*Mal.*) A council of Brahmans, a Committee for managing common property or the concerns of a temple, the office of one who manages the affairs of a temple on behalf of the Uralans. The agent or manager who acts on behalf of the Uralans is termed a Samudayi (*Moore's Malabar Law.*)

Samudaya-gramam. (*Tam*) A village held or cultivated in common, also one in which the produce, as before, is equally divided between the proprietors and cultivators.

Samudayanilam (*Tam*) Land held and cultivated in common

Samudayi. (*Mal*) Manager of the Devaswom (*Mal.*) (*Sundaram Iyer's Malabar Law*)

Sanad A deed of grant, a patent, a charter or written authority for holding either land or office. (*Mac. Moh Law.*)

Sanad-bazu (*H*) A general term for the whole of the Sanads issued by the emperor and his officers, granting and giving possession of assignment of revenue (*Wil Gloss*)

Sanad diwani (*H.*) A grant of or assignment of land, or rather of the government revenue assessed upon it (*Wil Gloss*)

Sanad-maniyam. (*Tam.*) Rent free land held under government (*Wil. Gloss.*)

Sanad-i-Milkiyat i-Istimrar A written authority for the permanent possession of lands or office. (*Mac Moh. Law*) The deed or document by which the British Government recognised the absolute ownership of the Zamindars of Bengal, and in some parts of the south, at a fixed assessment. the term is current in the Northern Circars. (*Wil. Gloss.*)

Sanadi-inam. (*Tel*) A grant of rent free land held under a patent or order of the government. (*Wil Gloss.*)

Sanadi-zamindar, (*H*). A zamindar appointed under a royal patent, on default of heirs, to succeed

Sanae mentis

to another zamindar, or on the supercession of the latter. (*Wil. Gloss.* 461.)

Sanae mentis (*Lat*) Of sound mind.

Sanchaita, (*Karn.*) The management of an estate by the Collector or Revenue Officers of the Government

Sanchakara, (*Karn*) Earnest money, a pledge, a deposit.

Sanction. That part of a law which inflicts a penalty for its violation or bestows a reward for its observance. Sanctions are of two kinds,—those which redress civil injuries, called civil sanctions, and those which punish crimes, called penal sanctions.

"SANCTION" also means prior approval, or Ratification. (*Re de la Warr*, 16 Ch.D. 587; 50 L J Ch. 383.)

Sanction to prosecute A sanction to prosecute is quite distinct from a direction to prosecute A sanction leaves the private prosecutor to exercise his unfettered discretion as to whether he will proceed or not. An order expressly ordering a prosecution is, therefore, not a sanction to prosecute [35 I.C. 481=10 S L R 65 *See also* Criminal Procedure Code, (1898), Ss. 195 and 476.

The order of a Magistrate ordering a prosecution *suo motu* is not a sanction.

A Collector ordering the prosecution of a person for an offence under S. 182, Penal Code, for making false allegations against one of his subordinates in a written petition puts himself in the position of a prosecutor and is disqualified from performing the judicial function of deciding whether to grant a sanction or not His order is a mere executive order. 35 I C. 481, *per* Justice Pratt and Justice Crouch.)

Sanctuary. (*Sanctuarium*) A place privileged for the safeguard of offenders' lives, being founded upon the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege. (*Tomlins Law Dic.*)

This is a term which may be properly applied to any privileged place or refuge where the process of the law cannot be executed.

SANCTUARY. (*in old English Law*), A consecrated or privileged place, wherein no arrest could be made

Sanctuary existed among the Greeks. The Romans are said to have recognized the peculiar sacredness attached to particular places as well as to the altars of their temples and the statues of their emperors It is probable that the church sanctuary came into existence from the time of Constantine A. D 303 The Code of Theodosius, A D. 392, enacted a law concerning the asylum and church. A latter law about A.D 450, extended the limits to the precincts including the houses of the bishops and clergy, the cloisters, Courts and cemeteries. About 680 the King of Wessex in his Code of laws provided for sanctuary. Many subsequent Acts were passed in England regulating the subject. The greater crimes were excluded from the privilege of sanctuary, and the fugitives in any one place were limited to twenty, In 1623 the privilege was abolished. (*Jenks, Hist.* E. L. 157. See *Cox Sanctuaries.*)

Sanga.

'Sand and gravel'. The meaning of the words "sand and gravel", in a deed from a municipality reserving the right to enter on the land and take sand and gravel for the purpose of making and repairing highways is to be determined by evidence to prove the meaning of the words as generally understood in such locality. (*Ame. Words and Phrases*)

Sand packing A term in use among people engaged in raising cotton, preparing it for market, and selling and purchasing it, indicating the fraudulent packing or baling of cotton by the placing of sand or other worthless foreign substance in the bales.

Sandai (*Tam*) A market, a fair, an annual fair.

Sandaita (*Karn*) Land, etc, not let, but farmed by the proprietor or Government, an estate or the like, in charge of the Collector or the Government Officer in opposition to what is farmed.

Sandaitagar. (*Karn*) One who looks after Government land that has not been rented.

Sandawa. (*Mar.*) A vent, an outlet for superfluous water from a reservoir, a sluice.

Sandhya. (*S*) Either of the three principal periods of the day, sunrise, noon, sunset, also the religious worship appropriately observed at those periods, whether performed singly, as by bathing at those hours in some sacred stream, accompanied by gesticulations and prayers or with others, either in domestic worship or in temples by communities of Brahmans. evening twilight, and specially the service then performed (*Wil. Gloss*)

Sane. Whole; sound, in healthful state. It is applicable equally to the mind and to the body. (*Den* v. *Vancieve*, 5 N J.L. 661).

Sane man. A "sane man" is defined by Chief Justice Shaw, in 43 Am. Dec 373, to be 'a voluntary agent acting on motives and must be presumed to contemplate and intend the necessary natural, and probable consequences of his own acts"

Sane memory, *i.e*, perfect and sound mind and memory, to do any lawful act, etc. (*Tomlins Law Dic*)

SANE MEMORY is that understanding which enables a man to make contracts and his will, and to perform such other acts as are authorized by law.

To be of the "sane memory" required in order to warrant testator in making a will, he must have been of mental capacity to receive and recognize external facts and things in the manner of men in general, *i.e*, through the medium of his senses. This is the first faculty or operation of the mind required by law. Secondly, he must also be able to retain in mind the facts and things so perceived and recognised, whether for a longer or shorter time, so that he may conceive of them and reflect upon their import, without confounding them with mere imaginations or hallucinations, or the speculations of other men.

Sanga. (*Hindi*). A kind of bridge used in the Himalayas, a number of beams, laid side by side, a project from each bank of the river slightly pointing upwards, firmly secured by being built into the bank and heavily laden at the shore end; another set of beams

Sangama.

is made, in like manner to project beyond these and others again till the space left in mid stream can be crossed by single timbers.

Sangama (*Sanskrit*). Meeting, the confluence of two rivers Compare Triveni, confluence of three rivers

"Sanghika kyaung". *See* 12 Rang 455=156 I C 370=A 1 R. 1935 Rang 1

Sangoru (*Tel*) Half of the whole produce of a crop, the share of the crop assigned to the cultivator, usually considered to be half the produce, but sometimes valued at only 20 or 30 per cent.

Sangoru-palu. (*Tel*) A half-share

Sanitary In an act providing for laying out of ditches, drains, and levees across the land of others for agricultural, sanitary or mining purposes, the word "sanitary" comprehends and imports the idea of public health

The word "sanitary", in a city charter providing that the assembly can authorise the construction of sewers in sewer districts when the board of public improvements shall recommend it as necessary for sanitary purposes, embraces everything pertaining to the health of the inhabitants.

Sanitary authorities. Persons having jurisdiction over their respective districts in regard to sewerage, drainage, supply of water, prevention of nuisances, etc

"Sanitary board" defined. Ben. Act 3, 1884, s 6 (14-A), ins Ben Act 4, 1894, s 8.

"SANITARY BOARD" means the persons for the time being appointed, either by name or by official designation, by the Local Government by notification in the Gazette to constitute a Sanitary Board for any local area. *See* Ben Act III of 1884 (Municipal), S 6, Cl (14-a).

"Sanitary Commissioner" defined Ben. Act 1 1892, s. 4 (*i*), U. P. Act 2, 1892, s. 2 (*b*).

Sanitation It is a mistake to consider sanitation as equivalent to a drainage system Sanitation means the science of health and hence the health of the inhabitants can be considered under the term 'sanitation' Word sanitation used in U P Municipalities Act of 1916 explained (53 All 500=133 I.C. 148=1931 A L.J. 206=A I R 1931 All 147)

SANITATION, in Bengal Local Self Government Act, includes water supply. Ben Act III of 1885, S. 5.

Sanity. The state of a person who has a sound understanding, the reverse of insanity

"SANITY" is the presence of reason, thought, and comprehension.

"Sanity, when used as a test of criminal responsibility, is the ability of a person to distinguish between right and wrong in reference to the act which he is about to commit The true test is not, as is sometimes laid down, the capacity merely to distinguish between the rightfulness and wrongfulness of the act committed, but there must also be sufficient will power to choose whether he shall do or refrain from doing it.

Santana.

Sanity being the normal and usual condition of the mind the law presumes that every individual is in that state.

Sankalpadarar. (*H*). A person holding land rent free or at a quit rent under a solemn declaration or vow of the grantor one who holds lands as security for a loan to the proprietors, which the borrower has solemnly promised to repay. (*Wil Gloss*)

Sankalpanama. (*H*) A deed of gift or assignment according to a previous promise. (*Wil Gloss* 462)

Sankara (*S*) The name of a celebrated teacher and reformer who lived about the eighth century, and founded a dominant sect of Saivate, teachers especially in the South of India, where the heads of many maths, or monastaries, as at the great establishment of Sringari, are still termed Sankaracharis (*Wil. Gloss*)

Sankha A great Hindu Sage and writer of an important Smriti that bears his name.

Sankha likhita A great Hindu Sage and writer of an important Smriti that bears his name.

Sankhyayana A great Hindu Sage and writer of an important Smriti that bears his name.

Sannadhi-inamu (*Tel*) A grant of rent-free land held under a patent or order of the Mohammadan Government

Sans. (*Fr*). Without

Sans impeachment de wast. Without impeachment of waste.

Sans jour (*sauns jour*). Without day.

Sans nonbre Without number, without stint.

Sans pluis Without more, without further words.

Sans recourse Without recourse "Without recourse to me" a term which when written on a bill of exchange by an endorser frees him from liability on the document.

Sans waste. Without waste.

Sansarai Fee charged by malguzars to those for steeping and retting hemp in water.

Santa (*Tam Santai*,) A market a fair, an assemblage for the sale of goods. (*Wil Gloss.*)

Santan The word "*Santan*" [under Mitakshara, S 5, sub-Ss 4 and 5] has a wide meaning and in the English translation of Amarakosha its equivalent is 'lineage', 'race', and it denotes descendants of a man up to the third degree. [10 A.L J. 303=34 A. 663=16 I.C. 529 (532)]

The word 'Santan' as used in Bengali documents at the end of the 19th and the beginning of the 20th century means "issue" generally and not necessarily male descendants. (21 C.W.N. 854=41 I. C. 511=26 C.L J 250)

Santan literally means "continuation" and the entire scheme of sapinda relationship under Hindu Law is based on the identity of the body of the father, son, grandson, and great-grandson. [16 O.C. 122=20 I C. 32 (34).]

Santana. (*S.*) Issue, offspring.

Santana

Santana sreni krame The words, 'Santana sreni krame' used in a will, import an absolute estate, such as would have been given had the words been 'your children and grandchildren'. [4 C 23=3 C L. R. 339 =5 I.A 138 (P C.)]

Santanam The word "Santanam," a Telugu word, used for issue in a will, besides meaning child, has a certain implication of succession or heirship. (107 I C 497=27 M L W 156=1929 M W N 909=A I R 1928 Mad 297 *See also* 41 I C. 511, 1915 P.C. 70, 1 M W N. 305)

"Santhathi" The word "Santhathi" is wide enough to include natural as well as adopted children. (1916) 1 M W N 306 and 27 M L.J 694, Foll. 107 I C 289=A I R 1928 Mad 126 *See also* 28 L W 819 =112 I C 243, 62 I C 745, 49 I C 704, 145 I C 300 =38 L W. 272=1933 M W.N. 701=A I.R. 1933 Mad 659

The word "Santhati" would include an adopted son (60 Bom 498=162 I C 780=38 Bom L.R 193=A I R 1936 Bom 182)

The word '*Santhathi*", is wider than *Puthra Pouthra* or 'from son to grandson,' (62 I C 745=13 L W. 513.)

The word "Santhathi" is wide enough to include natural as well as adopted children (1916) 1 M W N 306 and 27 M L J. 694 Foll. [40 Mad. 263=107 I.C 289=A I R 1928 Mad 126 *See also* 28 L.W. 819]

SANTHANAM OR SANTHATHI. Adopted son if included in—Such son not included where the issue is of a female *See* 27 L W 156=27 L.W 819.

Santhathi brahmasam (*Mal*) A gift to a Brahman with the right of perpetual enjoyment to him and his descendants (4 M. 148, *Moore's Malabar Law*)

Santhathi paramparayamai. The use of the words "santhathi paramparayamai" in a grant for maintenance does not exclude the right of collateral heirs to inherit (42 Mad 581=17 A L J 153=36 M L J 164=23 C W N 549=29 C L J 551=25 M L T. 400=21 Bom. L R 585=1919 M W N 511=10 L W 322=49 I C. 704 (P.C), on Appeal from 27 M L J 694=27 I C 283]

Sanwak-nama (*Hindi.*) A written obligation by which a person borrowing money bound himself, and sometimes his family, to be slaves for life, or until the debt was repaid. (*Wil Gloss.*)

Sanyasi *See* 57 All 85=153 I C 1078=7 R A. 679 =1935 A.W.R 218=A.I R. 1935 All. 329

Sanyashi mohunt Asthan is mainly an institution of ascetics and sanyashis having no worldly connections of wealth or family and the mohunt is presumed to have no property other than that of the institution and the offerings made to him. But he may hold private property, the character of which he must prove as such In absence of such proof an alienation by a mohunt is *ultra vires*. The fact of many alienations by successive mohunts means so many breaches of trust. (7 O.L.J. 547=60 I.C. 440=23 O. C. 303)

Sapiens incipit a fine, et quod primum est in intentione ultimum est in executione. A wise man begins with the end, and what is first in intention is law in execution.

Sar-daftar-diwani.

Sapientis judcis est cogitare tantum sibi esse pernissum quantum commissum et creditum. It is the part of a wise judge to think that a thing is permitted to him only so far as it is committed and entrusted to him

Sapinda (*S*) A kinsman connected by offerings of balls of rice or of meat to common ancestors, the affinity extends to three individuals only in descent from the common ancestor, some authorities extend it to seven persons in both the ascending and the descending line (*Wil. Gloss*)

The term "sapinda" is used by Vijnaneswara not to indicate connection by funeral oblations, but unity of corporeal particles [6 C L J 190 (201), 42 Cal 384=27 M L J 333=18 C W N 1154=1 L.W 831=16 M L T. 447=1914 M.W N 835=10 N.L R. 112=16 Bom L R 863=12 A L J 1281=20 C.L J. 573=25 I. C. 290=41 I.A. 290 (P.C.)]

It is a rule of construction of Hindu Law that a word once used in one sense is to be taken, to mean the same thing throughout the book The word 'sapinda' in the chapter on inheritance has the same meaning as in the chapter on Achar in Yinavalkya Smriti [54 All 698=I R 1932 All 448=1932 A L.J. 533=138 I.C. 561=A.I R 1932 All 417 (F B.)]

Sapindas are of two classes (*a*) Gotraj and (*b*) Bhandhus Gotraj comprise Gotraja Sapinda and Samanodakas who are the preferential heirs, failing whom the succession devolves on the Bhandhus or Bhinna gotra Sapindas

Sapindana (*S*) Performed on the first anniversary after a person's death, in which the deceased is associated with his progenitors and balls of food are presented to him with his father and grandfather and water is given for four other ascending generations: sometimes the process is so far abridged that the sapindana is performed on the twelfth day after a person's death Some other supplementary Sradhas within the twelve months are occasionally practised but they are of local observance.

These Sradhas are also designated as Ekoddishta, designed for an individual being intended to secure the admission of the one person deceased into the region of the pitris or manes as contrasted with the Ekoddishta Sraddhas are the parvana.

Sapindaship Under the Mitakshara law arises from the community of corporal particles and is not dependent on the right to participate in the offering of funeral oblations, the latter may be of importance in settling the order of preference of heirs in the same class, but is not relevant in a question of exclusion from a class of heirs [59 I A 173=1932 A. L. J. 632=36 C W N. 1073=56 C.L J 204=1932 M W. N 1037=136 I C. 747=9 O W.N. 478=A I.R. 1932 P. C. 142=63 M.L.J. 287 (P C)]

Sapratibanda (*S.*) (Obstructed) property devolving on parents or uncles, brothers and the rest upon the demise of the owner without male issue are instances of obstructed inheritance.

Saptapadi. (*S.*) The seven steps. Part of the Brahmanical marriage ceremony on completion of which the marriage is irrevocable. (*Moore's Malabar Law.*)

Sar-daftar-diwani, (*H*) The chief clerk of the office of the Diwan. (*Wil. Gloss.*)

Sar desmukh,

Sar-desmukh, (*Mar.*) The head of the Maratha officers termed Desmukhs in an extensive district, and standing between them and the government see Desmukh in some places the title has become hereditary (*Wil Gloss*)

Sar-deshmukhi haq *See 22* Bom L R. 1176=59 I. C. 452=45 B. 196.

Sar-kanungo, (*H.*) A chief kanungo, the provincial or district registrar and accountant in Kandesh a charge of one per cent, in addition to the revenue to defray the salary of a head kanungo (*Wil Gloss*)

Sar patil, (*Mar*) The head man of district, the chief Patil it is applied also to a sort of Petty Zamindar, or an officer who superintended the assessment and collection of the rents of a district, and received a percentage on their realization

Sar rishta, (*H*) A record, a register, office employment an office of registry or record it is sometimes but inaccurately, used for the officer (*Wil Gloss.*)

Sar subhadar, (*Mar*) An officer of the Maratha Government superior to the Malatdar. (*Wil Gloss*)

Saracenic This name is sometimes applied to the whole school of architecture referred to under the head Hindustani.

'**Sarai**" defined. Act 22, 1867, S 2.

SARAI (*Persian*) A large building, a rest house for travellers. The word is compounded in the English caravansary.

SARAI A house; a palace, a seraglio; a building erected for the accommodation of travellers. (*Mac Moh. Law.*)

Sarakah i sagrar A minor species of larceny without open violence. (*Mac. Moh Law.*)

Sarana (*Tel*) A fine formerly levied upon persons stealing ears of corn, also on owners of cattle trespassing on corn fields.

Sarani. (*Tel*) A sluice, a canal, a drain.

Saranjam Grant of revenue only—Grantee not competent to create occupancy rights—Effect of resumption of grant [26 A L J 32=106 I C 1=27 L.W. 124=32 C.W.N 329 (P C)]

'SARANJAM'. The word ordinarily signifies charges and expenses of collecting the revenue it does not include Government revenue [33 C L J 332=25 C W.N. 308=61 I C. 818=A I.R. 1921 Cal 212]

'Saranjam'. *See* 17 Bom L.R. 187=28 I.C. 485.

The words *saranjam*' and "*inam*" are not mutually exclusive. The term "inam" is one of more generic significance applicable to a Government grant as a whole [36 Bom. 639=23 M L J 383=16 C W.N 1058 =12 M L T. 472=1912 M.W N 1140=14 Bom L R 1226=17 C L.J. 17=16 I.C. 239=39 I.A 202 (P C)].

SARANJAM. Distinguished from 'Inam'. (53 B. 12= 115 I.C. 369=1929 B. 14.)

A grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the Royal share of the revenue only There is no presumption that a grant of Saranjam is a grant of Royal revenue only. It must be determined in

Sarbarakhari.

each case upon the facts what was the quality of the original grant although it may be that it is ordinarily a grant of the Royal revenue only.

The practice of the Saranjam is the best index of the meaning of the grant. (168 I C. 357=38 Bom. L.R. 1339=9 R.B 367=A I.R. 1937 Bom 109.]

Saranjam meaning of the word "saranjam" is a Marathi term and is equivalent to a Jagir. The terms Saranjam and Jagir are not mutually exclusive. [39 I A. 202= 16 C.W N 1058=23 M.L J. 383= 12 M L T. 472=1912 M W N 1140=14 Bom L R 1226= 36 Bom 639=17 C.L J. 17=16 I.C. 239 (P.C.)]

"SARANJAMI". The word 'Saranjami' ordinarily signifies collection charges. (25 C.W N. 308=61 I.C. 818=33 C L J 332)

Saranjami does not include government revenue. (25 C W N. 708=61 I C 818=38 C L J 332.)

'**Saranjam inam**' meaning of. *See* 36 Bom. 639= 16 I C. 239 (P.C)

Saranjam or jaghir A saranjam or jaghir, the terms being now convertible, is *prima facie*, and in the absence of express words or necessary implication to the contrary, a grant of the royal share of the revenue only, and not of the soil (5 Bom L R 983)

Sarasari. (*Mal*) Average: term applied to the settlement of 1819 (Kan). (*Sundaram Iyer's Malabar Law*)

Sarasari and bemiadi. A "Sarasari" lease no doubt connotes the idea of a temporary settlement But coupled with the expression "bemiadi', it can only mean a permanent lease but variable as to rent. (55 Cal 435=110 I C 368=A I R 1928 Cal 392)

Sarasari chitta (*Mal*) Accounts prepared in 1819 (Kan). (*Sundaram Iyer's Malabar Law*)

'**Sarasari jimbadari**'. The expression refers to an ordinary tenancy with no particular incidence such as fixity of rent attached to the tenancy. (88 I C 377 =A.I.R 1925 Cal 1209)

Saraswati (*S*) The goddess of letters and arts: the name of a river, commonly, Saraswati or Sursootee. (*Wil. Gloss*)

Saraswati-puja. (*S*) The worship of the goddess Saraswati

Saraswathi Vilas. A digest on ancient Hindu Law written by Partab Rudra Deo, King of Orissa, a work of great authority in the Orissa Province.

Sarbarah. (*H*) Substitute for a village headman.

Sarbarahkar patra. (*H*) A deed appointing a manager or steward. (*Wil. Gloss.*)

Sarbarahkari. (*H.*) Management of property, Stewardship, trust. (*Wil. Gloss.*)

SARBARAKARIS (ORISSA).—Tenures in Orissa are classified into "*maurasi sarbarakari*" and "*muafi sarbarakaris*". The former has a permanent heritable interest while the latter has only a temporary tenure during the continuance of the lease. "*Sarbarakars*" who were in possession from generation to generation before 1803 were classified as "*maurasi*" while those who could not prove the existence of

Sarcasm.

such a tenure but who nevertheless, were in possession long and at the time of the settlement were recognized as "*mirasi*": These latter cannot consequently claim to have acquired a permanent and heritable right in the property held by them, notwithstanding that they may have been described as sub-proprietors in the *khewats* and *khatians* (152 I C. 759=15 P L T. 639=A I R 1934 Pat 632)

Sarcasm. A bitter sneer, a satarical remark in scorn or contempt.

Sardaftar, (*H.*) Chief record office chief accountant and registrar.

Sardar (*H*) A chief, a headman, a commander the head of a set of palanquin bearers (*Wil Gloss*) A prince; a military officer a title of honour

Sardarni (*H*) A female head of an establishment, commonly applied to a woman who brings up girls for prostitution (*Wil Gloss*)

Sari. A Hindu woman's chief garment.

Sari-bhagamu (*Tel*) An equal share, a term used in the division of crops

Sarkar. (*Hind*) The Government, the supreme authority in the state.

Sarkar-abi. (*H*) The High Court, the chief authority, the government, the viceregal establishment of the Nawab of Bengal a jagir or assignment to defray the expense of the Nawab's household was so termed. (*Wil Gloss* 466)

Sarkhel (*Mar.*) A title of rank amongst the Maratha conferred by the Peshwa. (*Wil. Gloss*)

Sarkil (*Tam.*) A minister, a chamberlain, a major-domo (*Wil Gloss*)

Sarmukh. (*Mar.*) A head or principal chief, the title of the Holkar family.

Sarna The landlord has no right to cut down trees forming a grove called Sarna in an Oraon village A sarna is not merely the actual tree which is worshipped but comprises the whole body of trees, in the grove in which the trees are worshipped, stand, and ancient custom forbids any one to cut trees or branches of trees standing on the Sarna groves (98 I.C 523=8 P L.T 219=A I R 1927 Pat. 104)

Sarna grove *See* 98 I C 523=A.I.R 1927 Pat. 104.

Sarnaubat (*Mar*) The highest military officer under a Peshwa also the Governor of a fort, or of a part of it (*Wil. Gloss*)

Sarnisbat. (*Mar.*) An officer under the former Government, one under the Havildar, also superintending public works. (*Wil Gloss.* 467.)

Sarogi (*Panjabi.*) A name of the Jain division of the Baniyas

Sarrifa (*H.*) The place where money is exchanged, a banker's, a money changer's shop. (*Wil. Gloss*)

Sarrishtah-i-Amanat. (*H.*) In Bengal under the Mohammadan and early British rule, an office for the examination and adjustment of disputed and outstanding accounts, particularly those of officers dismissed or charged with embezzlement or under exactions. (*Wil. Gloss.*)

Sasana.

Sarrishtah-diwani. (*H*) The office of Dewan or collector, also the expenses of his office, including his own allowances. (*Wil. Gloss.*)

Sarsai *See* Land Measure.

Sarugadu. (*Tel*) A platform on which plants are placed ready for conveyance to the fields in which they are to be transplanted

Saruva (*Tel*) A ridge or low bank Low ground cultivation A small bridge over a water-course.

Saruvapanta (*Tel*) A crop in low wet ground.

Sarva (*S*) All, entire, whole.

Sarvadumbala (*Tel*) An allotment of land entirely rent-free

Sarvagraharamu (*Tel*) A village granted to Brahmans, entirely rent-free.

Sarva-inamu (*Tel*) Land held free of any charge or tax, a grant of the entire revenues of a village or tract of land

Sarvamaniyam (*Tam.*) Land granted in free tenure, or exempt entirely from payment of revenue or rent to the grantor, whether the individual proprietor or the Government. (*Wil Gloss*)

The use of the term "*Sarvamaniyam*" in connection with a grant does not necessarily imply that the *kudivaram* is vested in the grantee The term is used in contradistinction to *Ardhamaniam* to imply that the entire Government revenue and not a share alone has been granted in Inam (26 I C 117)

Sarvamokhasa. (*Tel*) Land free of all revenue charges.

"Sarvanga vykalyam". The expression "sarvanga vykalyam" should be translated as not partial but general dilapidation. 112 I.C. 65=A I.R. 1929 Mad. 118.

Sarvapanta (*Tel*) The first crop of wet land, the entire crop

Sarvaswadanom. (*Mal*) A kind of Nambudiri marriage. (*Sundaram Iyer's Malabar Law*)

SARVASWADANAM (*Mal*) Lit the gift of the whole property, a transfer of property, to a son-in-law in a Nambudri family in trust for the issue of his marriage (*Vide* 9 Mad. 260 and 11 Mad. 157.) (*Moore's Malabar Law*)

Sarvaswadantharam. This word in a will confers absolute estate on the donor (23 L W. 81=91 I.C. 973=1926 Mad. 236)

The Tamil word "SARWASWATHANTHIRAMAYI" in a deed of settlement in favour of a wife clearly indicates an absolute estate. (I R 1932 Mad 808=139 I. C 867=36 L.W. 733=1932 M.W N 1277=A.I.R. 1933 Mad. 80=63 M.L.J. 911.)

'Sarvaswatantramayum and Santhathi pravesamayum.' *See* 18 C.W.N. 470=22 I C. 499.

Sasana: Sasanam. (*Tam*) Ordering, directing, restraining, punishing, a royal order or edict, a royal grant or patent especially such as is a commonly engraved on copper plates, a written engagement or contract, a written deed of any kind.

DHARASASANA (*Karn.*) A deed or gift of land, etc.

Sasanavritti

KRAYASASANA, (*Karn*) A deed of sale.

TAMRA-SASANA (*S*) An edict or grant inscribed on copper plates. (*Wil Gloss*)

Sasanavritti (*S.*) Maintenance enjoyed under a written deed or grant

Sasun birt A grant of revenue or any perquisite conveyed by deed for the maintenance of a person. (*Mac Mah Law*)

Sasvatam. (*Mal*) Perpetual, used of a perpetual lease (*Moore's Malabar Law*)

Sasvatapatti (*Karn*) A permanent grant.

Saswataberiju (*Tel Karn.*) The perpetual assessment of lands, an established village assessment.

Saswatom (*Mal.*) Perpetual lease or mortgage with or without reservation of rent, either in consideration of present money payment or past or future service (*Sundaram Iyer's Malabar Law.*)

Sata or Satakhatt A preparatory instrument in the nature of articles of agreement intended to be followed by the execution of a more formal contract. (*Mac Moh Law*)

Satan The enemy of man, the chief of the fallen angels, the devil.

Sati, (*Sanskrit.*) A faithful, virtuous wife, especially one who burns herself with the corpse of her husband.

SATI (*Punjabi*) The name of an Early Turanian tribe, they claim to be of Persian descent

SATI (*in Hindu Law*) Sati was the ancient custom of a widow ascending the funeral pyre with her dead husband This was an old Aryan custom, found among the ancient Indo-European races and mentioned in the Atharva Veda as primeval custom The custom lingered in India and was invested with such a halo of sanctity by a newly invented ideal of superhuman chastity and love as made women, who became *Satis*, glorified beings, more divine than human But there were very few real *Satis* Many of the widows, who in their paraxysm of grief, or forced by their relatives, became *Satis*, had to be burnt with such barbarous cruelty as would shock the most hardened mind. In Rajputana and in Nepal, on the death of a prince, it was not unusual for fifty or sixty women who were his wives and *concubines* to burn themselves on the funeral pyre as *Satis* The law has put a stop to this cruel practice based upon a false ideal invented by a fanatical priesthood (*Ghosh Hindu Law*)

According to the Rishis, however, in the case of a Brahmin widow *Sati* is forbidden She is to lead the life of the ascetic, which alone leads to salvation Madhavacharya laid down, that notwithstanding texts, "sati" in all cases, is against the plain injunction of the Veda (*Ghose Hindu Law*, 782.)

Satin (*Beng*) A co-wife, expressing the relationship of a man's different wives, each is said to be Satin to the other. (*Wil. Gloss.* 471)

Satisfaction Is the giving of recompense for an injury, or the payment of money due on bond, judgment, etc. In which last case, it must generally be entered on record. (*Tomlins Law Dic.*)

Satisfactory evidence.

Acceptance by the creditor of the consideration of an accord extinguishes the obligation, and is called "satisfaction"

SATISFACTION. Equivalent or compensation; that which satisfies, indemnification, reward, remuneration, requital, amends; atonement; recompense In law, release and discharge of the obligation in reference to which it is given, payment of a legal debt or demand; the discharging or cancelling of a judgment or a mortgage, by paying the amount of it

The satisfaction contemplated by S 47, C. P Code, 1908, must have arisen out of some transaction between the parties subsequent to the decree [17 B. 23 (10 Bom.H C R 361, R)

"SATISFACTION", "IN SATISFACTION" AND "IN FULL SATISFACTION" is all one (Co Litt 213a)

A deed acknowledging a payment "*in Full Satisfaction*" (or, "in Satisfaction") of rights may amount to a Release, and, if those rights relate to property, it may amount to a "Conveyance or Sale". (*Garnett v. Inl Rev*)

"When a testator gives a direction that a particular thing shall be taken by any one 'IN OR TOWARDS SATISFACTION' of his share, and the thing spoken of exists and belongs to the testator I cannot doubt that, according to the plain and obvious meaning, he gives that thing [*per* Rigby, L J, Re *Cosier*, (1897) I Ch 325, 66 L J Ch. 236]

SATISFACTION, CONTRACTS TO A term used to express a class of contracts in which one party agrees to perform his promise to the satisfaction of the other The cases have been classified by Prof Lawson, in 46 Cent L J 360, as follows (1) Where the fancy taste, sensibility, or judgment of the promisor are involved. (2) Where the question is merely one of operative fitness or mechanical utility In the first class the courts refuse to say that where a man agrees to pay if he is satisfied with the performance, he should be compelled to pay if some one else is satisfied with it. The courts recognize, that in matters of taste or opinion there is no absolute standard as to what is good or bad.

In the second class of cases Mr Lawson maintains that the same principle of law should be applied, and gives a number of cases where it has been applied. (*Ame. Cyc*)

Satisfactory A contract for the sale of machinery "warranted to perform in a satisfactory manner" means satisfactory to the defendant.

A contract to instal a patent passenger elevator, which is 'warranted satisfactory in every respect", means satisfactory to the purchaser; and while it could not be rejected for mere caprice, yet a *bona fide* objection by him to its working is a sufficient objection to an action for the price thereof.

Where a machine was sold on the understanding that it need not be accepted unless it worked satisfactorily, the buyer, in operating it, was bound to exercise only such judgment and capacity as he possessed, and might reject it as unsatisfactory, though in the hands of a person of ordinary skill it would have worked properly.

Satisfactory evidence. That which is sufficient to induce a belief that the thing is true; in other

Satisfactory evidence.

words, it is credible evidence. (3 Bouvier, Inst. n. 3049)

That evidence is deemed satisfactory which ordinarily produces moral certainty or conviction in an unprejudiced mind

"SATISFACTORY EVIDENCE", which is sometimes called "sufficient evidence," means that amount of proof which ordinarily satisfies an unprejudiced mind beyond a reasonable doubt

SATISFACTORY OR SUFFICIENT EVIDENCE IS that amount or weight of evidence which is adapted to convince a reasonable mind.

Satisfactory title A contract to convey, and to furnish a good and "satisfactory" title, is complied with by furnishing a good, marketable title, free from reasonable doubt

If one agrees to sell land with a satisfactory title, and shows a title valid and complete, the parties must have intended such a title to be satisfactory, rather, than to leave an absolute right in the purchaser to say "I am not satisfied," when no reason could be shown why he was satisfied. (79 Am St Rep 774.) A title which is required to be satisfactory to the party by whom it is to be received means a title to which there is no reasonable objection and with which the party ought to be satisfied

Satisfied When applied to a note or bond means "paid." [*Reynolds* v *Bird*, 1 Root (Conn) 306.]

"I desire it to be understood as my clear opinion that a term does not become 'satisfied' within 8 & 9 V., c 112, unless the beneficial interest in the charge secured by the term, the beneficial interest in the whole charge, and the beneficial interest in the whole estate, are united and merged in one person" (*per* James, L J, *Anderson* v *Pignet*, 42 L.J Ch. 180).

In construing S. 210, I P Code, it is necessary to attach to the word "satisfied" its ordinary meaning, and not to understand it as referring only to decrees the satisfaction of which has been certified. (10 B. 288)

"Satisfied on the certificate". The words "satisfied on the certificate" in S. 84 of the Bengal Tenancy Act (VIII of 1885) is that the Civil Court is to satisfy on the certificate of the Collector alone, and is not at liberty to take other evidence on that question but is to accept the decision of it by the Collector as final. (18 C 271)

Satius est petere fontes quam sectari rivulos. A maxim meaning It is better to seek the fountains than to follow out the streams"

Satiwar (*H*) The place where a widow has been burned by way of sati, sometimes marked by a peculiar monument (*Wil Gloss*)

Satsisya, (*S*) The virtuous pupil "satsisya", is one who is assiduous in the study of theology, in retaining the holy science and in practising its ordinances. [23 I C. 287 (2-8)]

Satta The generic meaning of the word "satta" is mercantile traffic or exchange for money The Satta is merely a commercial agreement regulating the conditions under which a tenant agrees to grow certain crops but it is in no sense, a demise of the land. (2 P.L.T. 605=A.I.R. 1921 Pat. 412.)

Savaram.

'Satta' papers. 'Satta' papers or papers recording gaming accounts are instruments of gambling within the meaning of the U. P. Gambling Act of 1925 (A I R 1927 A 480)

Saubhagin. (*H*) A woman whose husband is living (*Wil Gloss*)

Saubhagya (*S*) Good fortune, prosperity, happiness, vernacularly, an ornament that may be worn by a woman whose husband is living (*Wil Gloss* 472)

Saudayika. The gift of affectionate kindred. (*Wil Gloss*) One of the several kinds of stridhanam

SAUDAYIKA (*S*) Is whatever is received by a married woman or by a maiden from the husband's father's family from brother or from parents. A kind of stridhana

SAUDAYIKA (*S*) Property derived from kindred as an affectionate gift, the property which a man receives with his wife. the property given to a woman by her kindred, or her husband at the time of her marriage, becoming her exclusive right. (*Wil Gloss*)

"SAUDAYIKA" is a term applied to gifts made to a woman at, before or after marriage, by her parents and their relations or by her husband and his relations In other words, it means gifts from relations as distinguished from gifts from strangers A woman has absolute power of disposal over her Saudayika Stridhan, even during coverture. She may dispose it of by sale or by gift, or by will or in any other way she pleases, even without the consent of her husband (53 All 437=1931 A L J 201=130 I. C 693=32 Cr L J 576=A I R. 1931 All 265.)

Sauhagin (*H*) A woman whose husband is living. (*Wil Gloss*)

Saukari. (*Mar.*) Dealings in money and exchange relating to a banker or banking, mercantile business, (*Wil. Gloss*) See *Sowcar.*

Savaram An allotment of land, or of the Government's revenue thereof, held by Zemindars, and other principal revenue officers, rent-free as part of the emoluments of their offices.

The word Savaram did not necessarily import the absence of kudivaram right in the cultivating ryot. Wilson's and Wilkin's Glossaries define savara as an allotment of land or of the Government revenue derivable from it held by zemindars or other Revenue Officers under the Muhammadan Government as their personal compensation for services rendered by them. Mr Grant, the author of the Survey of the Northern Circars, no doubt, describes it as a grant of land. (*See* pages 7 and 155 of Vol II of the Fifth Report of the Parliamentary Committee.) The word is supposed to have the same meaning as "nunkar" in Bengal The latter word is defined by Baden Powell as 'money allowance' (or free land) In Maclean's Manual of Administration, 1893, 'savaram' is treated as a grant of land All that is clear is that savaram was compensation granted to a Zemindar or Revenue Officer under the Muhammadan Government (23 M L J 624=1912 M W N 1193=12 M L T. 561=17 I C. 333)

As regards the meaning of the word Savaram, this word like Seri, Jeroyati and similar words, seems to have different meanings in different parts of the

country but, so far as this (Madras) Presidency is concerned, the opinion of Mr. Grant Dr. Maclean, Baden-Powell and of Sir G S Forbes, seems to be that the word 'savaram' when applied to a land in a zemindari tract, indicates usually that the land itself, both melvaram and kudivaram, belongs to the zemindar free from any obligation to pay revenue to Government on the extent of such land. (23 M L J 624=12 M.L.T 561=17 I. C 353 (354).

"Savaram jeroyiti" The word "Savaram" invariably means the homefarm of the Zemindar and if the expression "Savaram jeroyiti" if ever used, it must mean "homefarm cultivation" (111 I.C. 168= A.I.R. 1928 Mad 786)

Savaramu (*Tel*) An allotment of land, or of the government revenue derivable from it, assigned by the Mohammadan Government to the Zamindars or other revenue officers as their personal compensation, it is also explained as the part of the Zamindari which the Zamindar retained in his own hands (*Wil Gloss.*)

Savi or Shavi (*Tam*) Blighted corn grain withered for want of water

Saving That which is saved; something laid up or kept from being expended, preservation from loss; exception, reservation (as a saving clause in a section of an enactment)

SAVING, ECONOMY, FRUGALITY, PARSIMONY. By saving one preserves something which might otherwise be lost or expended By economy, a man may make a limited income turn to the best account for himself and his family, by frugality he may with a limited income be enabled to do much good to others; by parsimony he may be enabled to accumulate great sums out of a narrow income.

SAVING, SPARING, THRIFTY, PENURIOUS, NIGGARDLY. Saving is keeping and laying by with care, sparing is keeping out of that which ought to be spent, thrifty or thriving is accumulating by means of saving, penurious is suffering as from penury by means of saving niggardly, after the manner of a niggard. To be economical is a virtue in those who have but narrow means. He who is saving when young, will be covetous when old, he who is thrifty commonly adds the desire of getting with that of saving, he who is penurious, wants nothing to make him a complete miser· he who is niggardly in his dealings will be mostly avaricious in his character

Savings banks Institutions for the safe custody and increase of the small savings of the people designed for the encouragement of industry and thrift

SAVINGS BANKS are admirable institutions established throughout the kingdom, for encouraging economy among the labouring class of people by providing for the investiture of their savings in government security. (*Tomlins Law Dic.*)

SAVINGS BANK is an institution in the nature of a bank, established for the purpose of receiving deposits of money, for the benefit of the persons depositing, to accumulate the produce or so much thereof as shall not be required by the depositors, their executors or administrators, at compound interest, and to return the whole or any part of such deposit, and the produce thereof to the depositors, their executors or administrators, deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution, but deriving no benefit whatever from any such deposit or the produce thereof, (Grant, Bank, 5th ed, 262, Bolles, Banks & Dep. 177.)

OTHER DEFINITIONS. Webster defines a "savings bank" to be "a bank in which savings are deposited and put to interest."

Savings banks are established for business purposes Their functions are to receive, hold, and invest moneys that may be deposited with them, and to repay the money deposited, under reasonable regulations in their by-laws. In order to make the business successful, these institutions are required to keep their money invested as closely as may be consistent with the ordinary demands of depositors.

Savings bank book A savings bank book has a peculiar character. It is not a mere pass book or the statement of an account. It is issued to the person in whose name the deposit is made, and with whom the bank has made its contract It is his voucher, and the only security he has as evidence of his debt. The book is the instrument by which alone the money can be obtained, and its possession is thus some evidence of title in the person presenting it at the bank.

Saving clause. A saving clause is an exception of a special thing out of general things mentioned in a statute.

A "saving clause" is ordinarily a restriction in a repealing Act and saves rights, pending proceedings, penalties, etc, from the annihilation which would result from unrestricted repeal.

In a legal instrument a saving clause is a clause exempting something which might otherwise be subjected to the operation of the instrument. In an act of parliament, a saving clause which is repugnant to the body of such act is void

Savitri. (*S*) The same as the Gayatri or most holy verse of the Veda, a short prayer addressed to Savita, or the sun where its name and the repetition of which is an essential part of the ceremony of investiture with the Brahminical thread; hence it sometimes implies the rite of initiation (*Wil Gloss*)

Savour To partake of the nature of Personal estate consisting of an interest in, or arising out of land, is said to "savour of the realty," and is called "impure personalty." (*See 2* Black. Com 386)

Sawar. (*Hindustani.*) A horseman, a horse-soldier, a mounted police-man; and particularly a mounted attendant or messenger of a chief or officer of state.

Sawmy bogum. (*S.*) The lord's enjoyment or possession. The lord's right as proprietor Quit-rent or acknowledgment of proprietary right. (*Fifth Rep*)

"Say about". Words frequently used in contracts to indicate an uncertain quantity. They have been said to mark emphatically the vendor's purpose to guard himself against being supposed to have made an absolute promise as to quantity. [21 W.R. 609 (Eng.).]

Say.

"Say; say about." "These two words used together seem to be employed for the purpose of showing that nothing absolute or definite in the way of allegation of quantity was intended on the part of the vendor" [*per* Montague Smith, J., in *M Connel* v *Murphy*, (1873) L R 5 P C 217, but see *Morris* v. *Levison*, (1876) 1 C P D. 155]

"SAY FROM." In a contract for sale "say from 1,000 to 1,200 gallons," these are words of expectation (*William* v *Danial*, 4 L J. Ex 174)

"SAY, NOT LESS THAN." In a contract for sale of wool the words "say not less than 100 packs," are not mere words of expectation, but amount to a contract to deliver at least that quantity (*Leeming* v. *Snaith*, 16 Q B. 275, *Stroud*)

Sayadaw (*in Burma*) *See* 12 Rang. 455=156 I C 370=A.I R. 1935 R. 1.

SAYER (*H*) What moves. Variable impost, distinct from land rent or revenue, consisting of customs, tolls, licences, duties on merchandise and other articles of personal movable property, as well as other duties and taxes on houses, shops, bazars etc. (*Fifth Report.*)

"Sayer" means all sorts of imposts in addition to land revenue and does not include minerals (55 Cal 35=46 C L J 307=32 C.W.N 16=106 I C. 117=A I R 1927 Cal. 956)

Weighment dues being mostly connected with agricultural produces weighed by the weighmen, should be classed as *sayar* as defined by S 3 (4) of the Agra Tenancy Act. But *parjot* which is kind of ground-rent paid by persons who are not agriculturists must be excluded from the definition of *sayar*. (1936 R.D 520.)

The word sayar would include fish and other river products but it does not include river-bed land which has become dry (14 R D 256)

Sayerdar (*Persian.*) An officer who under the Sikh Government collected transit duties.

Scab "The word 'scab' is one of ancient origin, in its application to persons of disrepute. Among the dictionary definitions of the word 'scab' we find the following 'A mean, paltry, or shabby fellow; a term of contempt'. And again 'Specifically, in recent use, a workman who is not of the union, who refuses to join a strike, or who takes the place of a striker; an opprobrious term, used by the workman or others who dislike his action.' A publication calling plaintiff a 'scab' is libelous *per se*." (*Ame. Words and Phrases.*)

Scaffold. Temporary platform for the execution of criminals.

Scandal A report on rumour, whereby one is affronted in public. (*Tomlins Law Dic*)

"SCANDAL", in pleading, consists in the allegation of anything which is unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause. Any unnecessary allegation, regarding the moral character of an individual, is scandalous. [1 Daniell, Ch. Pl. & Prac. (6th Am. Ed.) 347.]

Scheduled canal.

SCANDAL; SLANDER. "Scandal" and "slander" mean the same in the language of the law.

Scandalous. A pleading is said to be "Scandalous," if it alleges anything unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges a crime immaterial to the issue But the statement of a scandalous fact that is material to the issue is not a scandalous pleading. (*Millington* v. *Loring*, 50 L.J Q.B. 214, 6 Q B D. 190)

Facts not material to the decision are impertinent, and, if reproachful, are scandalous.

The term "scandalous", as applied to the pleading of scandalous matter, cannot be applied to any matter which is not also impertinent and unnecessary.

Scandalous matter (*In pleading*) Unnecessary matter criminatory of the defendant or any other person, alleged in the bill, answer or other pleading, or in the interrogatories to or answers by witnesses. (Adams, Eq 306) "Impertinent matters which is also criminatory, or which otherwise reflects on the character of an individual" (*Manhattam Trust Co.* v. *Traction Co*, 188 Fed 1008) It consists of an unnecessary allegation bearing cruelly on the moral character of an individual or standing matter contrary to good manners, or unbecoming the dignity of the Court to hear (*McNulty* v. *Wesen*, 130 Fed. 1012)

The Court has a right to preserve the purity of its records, its proceedings are not to be converted into a machinery for circulating scandal. It may strike out allegations which wound the character of one party without being of real service to the other. [*Riddle* v. *Stevens*, 2 S & R. (Pa) 537]

Matter which is relevant can never be scandalous (Story, Eq Pl & 270, 15 Ves 477); the degree of relevancy is of no account in determining the question (Cooper, Eq Pl. 19, 2 Ves. 24.)

Scandalum magnatum. (*Lat*) (*In English law.*) Scandal or slander of great men or nobles. An offence at common law which consisted of scandalizing the sovereign, his ministers, members of parliament, the Court and the Judges, and certain other persons of high rank, words spoken in derogation of a peer, a Judge, or other great officer of the realm. (3 Bl Com 124)

SCANDALUM MAGNATUM are words spoken in derogation of a peer, a Judge, or other great officer of the realm. (1 Ventr. 60)

Scarecrow Webster defines "scarecrow" to be "any frightful thing set up to frighten crows or other fowls from corn fields; hence, anything terrifying, without danger; a vain terror."

"Schedule" defined. Mad. Act 4, 1884, S. 3 (xxiv); Act 10, 1897, S 3 (48); Ben. Act 1, 1899, S. 3 (37); Bom. Act 1, 1904, S 3 (40); Bur. Act 1, 1898, S. 2 (53), E. B. & A. Act 1, 1910, S. 5 (53); P. Act 1, 1898, S. 2 (49); U. P. Act 1, 1904, S. 4 (38).

SCHEDULE. A small scroll; list summary, index, or inventory; a writing, additional or appendant.

"Schedule" means a schedule to the Act or Regulation in which the word occurs. [Act X of 1897 (General Clauses), S. 3 (48).]

"Scheduled canal" defined. Reg. 4, 1898, S. 3 (2).

Scheduled district.

"Scheduled district" defined. Act 14, 1874, S. 1, Act 15, 1874, S 2; Act 10, 1897, S 3 (49); Ben Act 1, 1899, S 3 (38), Bom Act 1, 1904, S 3 (41), Bur Act 1, 1898, S 2 (54); E B & A Act, 1, 1909, S 5 (54), P. Act 1, 1898, S 2 (50), U P Act 1, 1904, S 4 (39).

"SCHEDULED DISTRICT" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 [Act X of 1897 (General Clauses), S. 3 (49)]

Scheme A plan, a purpose, a specific organization for some end, a combination of things by design

Scheme suit Suit for the settlement of a scheme by Court for the better administration of public trust or charity.

Schism. "Schism" is defined by lexicographers to mean in a general sense division or separation, but appropriately a division or separation in a church or denomination of Christians occasioned by a diversity of opinions, breach of unity among people of the same religious faith.

They are guilty of Schism who "separate themselves from the Communion of Saints, as it is approved by the Apostles" and rules in the Church of England and combine themselves together in a new brotherhood (9th Canons Ecc. 1604)

Scholar. To say of Physician "thou wert never Scholar, and are not worthy to speak to a Scholar," is slander *per se*, although it be urged that "a Physician may be no good Scholar and yet a good Physician" (*Cawdry* v *Highley*, cited *Stroude*, 1798)

Scholarship Webster defines "scholarship" to mean maintenance for a scholar or student, the foundation for the support of a student

School An institution of learning of a lower grade than a college or a university A place of primary instruction.

"SCHOOL" is a generic term, and denotes an institution for instruction or eduction in general

A school is an institution for learning, an educational establishment: an assemblage of scholars, those who attend upon the instruction in a school of any kind; any place or means of discipline, improvement, or instruction

The term "school" also denotes a collective body of pupils in any place of instruction and under the direction and discipline of one or more instructions

ACADEMY. An academy is commonly understood to mean a school or seminary of learning holding a rank between a university or college and a common school, in which the arts and sciences in general are taught.

School board The words "school board" mean any agent, committee, or board of education intrusted with the conduct of the schools in their jurisdiction (as) the appointment of teachers and the management of the prudential affairs of the district schools.

School district A "school district" is a corporation organized for educational purposes

"SCHOOL DISTRICTS" are formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children.

School time.

A school-district is a political or civil subdivision of the state formed for the purpose of aiding in the exercise of that governmental function which relates to the education of the children in the district.

Schoolhouse A school house is a house, or building appropriated for the use of schools or for instruction, but usually applies to buildings for subordinate schools, and not to colleges.

School laws Laws which provide a system of education and create and designate the officers by and through whom the system is to be administered are known as school laws.

Schoolmaster A master or teacher in school.

SCHOOLMASTER AND PUPIL The authority of a schoolmaster over his pupil is derived from, and is similar to, that of a parent over his child A parent may "delegate part of his parental authority during his life, to the tutor or schoolmaster of his child who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, namely, that of restraint and correction, as may be necessary to answer the purposes for which he is employed" (Black Com Vol I, 453.)

Schoolmistress A woman who teaches or who merely attends to the management of the school

School officer The term "officer of schools" has been held to mean a person whose office pertains to the management of schools. (*Ame Cyc*)

Schoolroom Room for teaching in school; school accommodation.

School ship A vessel used for teaching practical navigation

School supplies The phrase "school supplies" would include maps, charts, globes, and other apparatus necessary for use in schools

School teacher One who teaches in school.

SCHOOL TEACHER A school teacher, in regard to a pupil intrusted to his care by a parent or guardian, stands in *loco parentis*, and can exercise the same authority as the parent, and is responsible in the same manner The rules of law which are applicable to the parental control are also to be applied to the school teacher, and where a teacher used only reasonable force in chastising a child, and only sufficient to maintain the discipline of the school, he should not be punished for an assault.

Schooltime Hour at which school opens.

BOARD SCHOOL. School under the management of School Board.

CORPORATION SCHOOL. Public school maintained by the city corporation or Municipality

ELEMENTARY SCHOOL. An elementary school is a school or department of a school at which elementary education is the principal part of the education there given.

GRAMMAR SCHOOL. High school for secondary education.

HIGH SCHOOL A high school may be defined as a school where the higher branches of a common school education are taught: school for secondary education, standing between the primary school and the university course.

Sci.

MUNICIPAL SCHOOL Public school maintained from the Municipal funds.

NATIONAL SCHOOLS. Schools under the management of Commissioners of National education (in Ireland)

PAROCHIAL SCHOOLS. School in Parish for general education.

PRIMARY SCHOOL. School for elementary instruction.

PRIVATE SCHOOL. A private school is one managed and supported by private individuals.

PUBLIC SCHOOL School under the control of the Education or School Board –open to all public, one maintained from public funds

PUBLIC OR COMMON SCHOOL The term "public" or "common", when applied to schools, has no reference to the kind of studies to be taught, but in this connection the word means open to all, belonging to the public Public schools are the schools which municipalities or districts are required to maintain, or authorised to maintain, although not required to do so as a part of the system of common education, and which are open and free to all the children and youth of the municipalities or districts in which they are situated, who are of proper age or qualifications to attend them, and which derive their support entirely or in part from money raised by a general state, local, or district tax.

RUGGED SCHOOL. Free school for destitute children's education.

SUNDAY SCHOOL School held on Sunday—especially for religious education

Sci. (*Fo*) An abbrevation of *scire facias*, the name of writ founded on some public record.

Science The knowledge of many methodically digested and arranged, so as to be attainable by one, a body of principles and deductions to explain the nature of some matter *Vredemburg* v *Behan*, [33 Wend. (N. Y) 205.]

"SCIENCE", in its general meaning includes pure or speculative science as well as the applied sciences (*per* Ld Macnaghten, *Inl. Rev* v *Forrest*, 15 App. Cas 353, 354)

Scienter (*Lat knowingly*) The allegation in a pleading of knowledge on the part of a defendant or person accused, which is necessary to charge upon him the consequence of the crime or tort

SCIENTER, is a term used to express that the defendant was aware of circumstances, knowledge of which is necessary to make him liable, as that a dog was mad or vicious. (*See* 77 N. Y. Supp 337)

'Scienter', as applied to the keeper of a vicious dog, means no more than reasonable cause to apprehend that he might commit the injury complained of.

A man may do many acts which are justifiable or not, according as he is ignorant or not ignorant of certain facts He may pass a counterfeit coin, when he is ignorant of its being counterfeit and is guilty of no offence, but if he knew the coin to be counterfeit which is called the *scienter*, he is guilty of passing counterfeit money.

Scot and lot.

Scienti et volenti non fit injuria (*Lat.*) An injury is not done to one who knows and wills it.

Scientia, (*Lat*) Knowledge; information.

Scientia sciolorum est mixta ignorantia The knowledge of socialists is a mixed ignorance

Scientia utrinque par pares contrahentes facit. A maxim meaning 'Equal knowledge on both sides makes the contracting parties equal."

Scintilla juris. (*Lat*). Spark of law or right.

Scintilla of evidence The doctrine that where there is any evidence however slight, tending to support a material issue the case must go to the jury, since they are the exclusive judges of the wright of the evidence.

"A mere scientilla of evidence, if it means anything, means the least particle of evidence, evidence which, without other evidence, is a mere trifle".

Scimiter Short single edged curved sword, used by the Turks and Persians.

Scire (*Lat*). To know; to be aware of; to have knowledge of.

Scire debes cum quo contrahis. A maxim meaning 'You ought to know with whom you contract."

Scire facias A writ judicial, most commonly to call a man to shew cause to the court whence it issues, why execution of judgment passed should not be made out. (*Tomlins Law Dic.*)

A *scire facias* is a (judicial) writ founded on some matter of record, such as a judgment, recognizance, letters patent, etc, and requiring the person against whom it is brought to show cause why the person bringing it should not have advantage of such record, or, as in case of a *scire facias* to repeal letters patent why the record should not be annulled or vacated; also the name of a writ, and of the whole proceeding, founded on some public record

"The cases in which *scire facias* is employed are divided into two classes One class is where the writ is the commencement of an original action, as to repeal letters patent, charters and the like. In the other class it is a judicial writ to carry on a suit in which some other person has acquired an interest, to revive a judgment, or for like purpose"

Scire feci (*Lat*). I have caused to know; the return to a writ of *scire facias*.

Scire leges, non hoc est verba earum tenere, sed vim ac potestatem. To know the laws is not to observe their mere words, but their force and power.

Scire proprie est rem ratione et per causam cognoscere To know properly is to know a thing in its reason, and by its cause.

Scold *See* Common Scold.

Scope. Design, aim, or purpose, extent, limits, etc

Scot. (*In old English law*) A tax, or tribute.

Scot and lot An old legal phrase embracing all parochial assessments for the poor, the church, lighting, cleansing, and watching.

Scotale.

Scotale. " 'Scotale' is an extortion prohibited by a statute and it is where any officer of the forest keeps an ale-house, to the intent that he may have the custom of the inhabitants within the forest to come and spend their money with him, and for that he shall wink at their offences committed within the forest". (*Termes de la Ley. Cowel.*) An extortion by officers of the forest who kept ale houses and compelled people to drink under fear of their displeasure (Manw Forest Laws)

Scotch marriages. *See* Gretna Green.

Scotland—Scotch cases "I do not discuss the Scotch cases. They are not binding on us as authorities, though of the greatest service, as containing the opinions and arguments of able and accomplished lawyers" [*Bramwell, L J, Johnson* v *Raylton*, (1881) L R 7 Q.B. 449]

Scoundrel. An opprobrious title, applicable to a person of bad character.

Scrambling possession The term "scrambling possession" means a struggle for possession on the land itself, not such a contest as is waged in the courts.

Scrap iron "Scrap iron", is all waste or refuse iron which had once been in actual use and is now only fit for remanufacture, without reference to whether it is new or old (*Ame Words and Phrases*)

Scratch out Erase (as, words from a document)

Scrawl A mark which is to supply the place of a seal.

Scribere est agere A maxim meaning "To write is to perform or act, writing is acting".

Scrip A certificate or schedule, also evidence of the right to obtain shares in a public company, sometimes called "scrip certificate", to distinguish it from the real title to shares.

"SCRIP" is also used as meaning, the certificate of actual shares in a company (per *Turner, L J, Elkington's Case, sup*)

SCRIPS AND SHARES. "In some companies nothing is required to convert *scrip holders* into shareholders. Companies constituted on this principle are called scrip companies, and, in them, scrip and shares are synonymous Usually, however a person entitled to scrip, does not acquire the rights of an actual shareholder until his scrip certificates have been delivered up and exchanged for share certificates nor until his name has been inserted upon the Company's register of shareholders". (*Lindley Comp.* 66.)

Script. The original or principal instrument, where there are part and counterpart, a writing.

Scriptum, (*In old English law*). A writing.

Scriptum indentatum: A writing indented; an indenture or deed.

Scriptum obligatorium. A writing obligatory; a bond; a writing under seal.

Scripture. Sacred writings; the Bible.

Scrivener. A conveyancer, or writer of deeds and other instruments.

Sea coast.

Scrivener. (*Money Scrivener*). One who lends or invests money for clients at interest, and is remunerated by commission or procuration fees.

Scriveners (*Money Scriveners*) are mentioned in the statute against usury and excessive interest of money (12 Ann St 2. c. 16) Money scriveners were understood to be those who received money to place it out at interest, and who supplied those who wanted to raise money on security; thus rendering themselves useful to, and receiving a profit from, both parties (*Tomlins Law Dic.*)

Money scriveners are those who are engaged in procuring money to be lent on mortgages and other securities, and lending such money accordingly. They act also as agents for the purchase and sale of real estates.

It is a business which is not known now, or at least not ordinarily existing He was a party who performed the conjoint duties of a banker, a broker, and an attorney (*Ame Words and Phrases*)

Scroll A mark which supplies the place of a seal.

Scrutineer A person appointed to count the votes at a general meeting of the members of a company.

Scrutiny (*Of Voting Papers*). An examination of voting papers

"Sculpture" defined. *See* Articles of Sculpture.

Scutage (*In old English law*) A commutation by a tenant by knight service, in lieu of actual service.

Scutagium (nominatur) quia talis praestatio pertinet ad scutum quod assumitur ad servitium militare It is called scutage because such payment belongs to the shield which is borne for military service.

Sea The ocean, the great mass of water which surrounds the land, covering nearly three-quarters of the globe. Waters within the ebb and flow of the tide are to be considered the sea (*Thackarey* v *The Farmer of Salem, Glip* 526, Fed Cas, No. 13, 852)

A large body of salt water communicating with the ocean is also called a sea, as, the Mediterranean sea, etc.

Very large inland bodies of salt water are also called seas, as the Caspian Sea, etc.

SEA, MAIN SEA "The Sea is either that which lies within the body of a country or without. "The part of the Sea which lies not within the body of a country is called the Main sea, or Ocean."

Sea bank. Seashore.

Sea board The border or shore of the sea.

Sea borne. Carried on by sea (as) Sea borne trade

Sea boy Boy employed on ship board.

Sea captain. The captain of a ship.

Sea chart Chart or map of the sea, its islands, coasts, etc.

Sea coast The coast or shore of the sea.

Sea coast. "The coast, is properly, not the sea but, the land which bounds the sea; it is the limit of the land jurisdiction, and of the parishes and

Sea cook.

manors (boardering on the sea) which are part of the land of the County. This limit, however, and its character, varies according to the state of the tide, when the tide is in and covers the land, it is sea, when the tide is out, it is land as far as low water mark. between high and low water mark it must, therefore, be considered as *divisum imperium*" (per *Sir J. Nicholl, R.* v *Forty Nine Casks of Brandy*, 3 Hagg. Adm. 275).

Sea cook. A cook on ship-board.

Sea craft. Skill in navigation.

Sea insurance "Sea Insurance," has been defined to include "any insurances of Goods, Wares or Merchandize or Property of any description whatever, for any transit which includes (not only a Sea Risk but also) any Land Risk from the commencement of such transit to the place of shipment or from the place of discharge of the ship to the ultimate destination covered by the insurance or in warehouse while waiting or being forwarded for shipment, or after discharge and while waiting or being forwarded, for shipment, or being forwarded to the ultimate destination covered by the insurance, or any other land risk incidental to the transit insured." (*See* 47 & 48 Vic C 62)

Sea Laws. Laws relating to the sea, (*Tomlins Law Dic.*)

Sea Lawyer. A captious sailor, more given to question orders than to obey them.

Sea-letter, or Sea-brief. A document expected to be found on board of every neutral ship It specifies the nature and quantity of the cargo, the place whence it comes, and its distinction.

"**Seaman**" defined 57-8 V c. 60, s. 742; Act 1,1859, s. 118; Act 13, 1876, s 2, Act 5, 1883, s. 29 (3).

SEAMAN. A man below the rank of an officer employed in the navigation of a ship at sea, a sailor.

SEAMAN. A sailor, a mariner, one whose business is navigation, (Laws of Oleron, art. 7, Laws of Wisby, art 19.) The term seaman in its most enlarged sense, includes the captain as well as other persons of the crew, in a more confined signification, it extends only to the common sailors.

Seamen are persons engaged in navigating ships barges, &c, upon the high seas. Those employed for this purpose upon rivers, lakes, or canals, are denominated watermen.

A seaman is defined to be one whose occupation is to assist in the management of ships at sea The term is exceedingly broad in its signification and is held to include carpenters, clerks, cooks, coopers, deck hands, divers, engineers, firemen, fishermen, mates, pilots, porters, pursers, salesmen, sealers, slaves hired as seamen, stewards and wreckers It does not include, however, lightermen plying within a harbour on a light vessel, nor does it include masters, musicians, performers in a show on board a vessel, physicians, or the servants of the master (*See* Temperley, Merchant Shipping Acts; Abbott, Merchant Shipping; Maude and Pollock, Merchant Shipping.)

A COOK ON A VESSEL is a "seaman", and as such is subject to the captain's orders.

Seal.

The CREW OF A VESSEL in a general sense comprises all persons who, in pursuance of some contract or arrangement with the owner or master, are on board the same, aiding in the navigation thereof.

A FIREMAN on board a steamer is a "seaman."

"Seamen" includes a PILOT, he being a person employed in the navigation of a vessel.

Seashore. That space of land between high and low water mark.

Seaworthiness The sufficiency of the vessel in materials, construction, equipment, officers, men, and outfit, for the trade or service in which it is employed. It is that quality which fits a ship for carrying safely the particular cargo which it takes on board for the voyage for which it is destined. (The Thames, 61 Fed 1014)

There is an implied warranty that at the commencement of a voyage the ship is seaworthy for the adventure insured.

"The warranty of seaworthiness has always been relative. Though absolute when it attaches, its precise extent and limitations are relative and vary according to the standard which the parties must have been supposed to contemplate as applicable to the adventure" (*per* Collins, L J., The Vortigern, 1899, p. 158, 159)

Seaworthy. A term applied to a ship, indicating that she is, in every respect fit for undertaking a voyage.

The term "seaworthy", as used in the law of marine insurance, means that "the ship must be in such condition when the policy attaches as to resist ordinary peril, and to accomplish the voyage under ordinary risks.

SEAWORTHY. "The term seaworthy used in respect of a ship means that the ship shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it. If the assurance attaches before the voyages commence, it is enough that the state of the ship be commensurate to the then risk, and, if the voyage be such as to require a different complement of men, or state of equipment in different parts of it—as if it were a voyage down a canal or river and thence across to the open sea—it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it. But the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the master or crew shall do their duty during the voyage and their negligence or misconduct is no defence to an action on the policy where the loss had been immediately occasioned by the perils insured against" (*per* Parke, B., in *Dixon* v. *Sadler*, 5 M. & W. 414, 9 L J. Ex. 50. See also *Stroud.*)

HEAVY SEA. A sea on which the waves run high.

HIGH SEAS. The open ocean.

MAIN SEA. The ocean.

SHORT SEA. A sea in which the waves are irregular and interrupted.

Seal is taken either for wax impressed with a device and attached to deeds, &c., or for the instru-

ment with which the wax is impressed In Law the former is the most usual sense. (*Tomlins Law Dic.*)

SEAL is an impression upon wax, wafer, or some other tenacious substance capable of being impressed [*Warren* v. *Lynch*, 5 Johns (N Y) 239; 4 Kent 452] It does not seem necessary that an impression be made. (6 C P. 411)

Lord Coke defines a seal to be wax, with an impression (3 Inst 169, Brooke, Abr.) but any other material besides wax may be used.

An impression made with ink, by means of a wooden block, is sufficient sealing. (*R.* v. *St. Paul, Covent Garden*, 14 L J.M.C 10)

If a party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print it is good" (Touch 57)

Merline defines a seal to be a plate of metal with a flat surface on which is engraved the arms of a prince or nation, or private individual or other device with which an impression may be made on wax or other substance, on paper or parchment, in order to authenticate them, the impression thus made is also called a seal.

At common law, and in early times, a seal, no doubt, meant an impression made on wax, or other thing that would receive and retain an impression, for seals were introduced by the Normans, and used, in fact, as a signature at a time when each man had his signet and a certain coat of arms or engraving on it

Seals are of great antiquity, their use beginning at a time when writing was not common but when every individual possessed a coat of-arms or other distinctive device, and in early times much importance attached to their employment as a means of distinguishing the person. In English Law the effect of a seal being affixed to a private written instrument was to convert it into a specialty, importing a consideration, and rendering unnecessary the recital of a consideration However, with the growth of education, the signature to an instrument has now become more important than the seal, and in some countries seals have been entirely abolished by statute, while in others the decided tendency of modern decisions is to minimize if not to entirely do away with the old distinction between sealed and unsealed instruments. (*Ame. Cyc*)

In modern practice a seal is a particular sign, made to attest in the most formal manner the execution of an instrument A *public seal* has been defined as an impression made of some device, by means of a piece of metal or other hard substance, kept and used by a public authority

GREAT SEAL. The state seal of the United Kingdom.

PRIVY SEAL. Official seal appended to royal grants.

SET ONE'S SEAL. To give one's authority or assent to.

UNDER SEAL. Authenticated in a formal manner.

Sealed. "The word 'sealed' has acquired an enlarged meaning, even when applied in the law. In the earlier times wax, upon which some impression was made, was understood by the act of sealing Gradually, however some symbol adopted by the maker in lieu of the actual seal was allowed in law, and this, ought to be the crucial test in such matters, namely, the adoption by the party who is required to seal of something in its stead."

Sealed up A bottle containing milk, seized by the milk inspector, on the top of the cork of which was placed sealing wax, which did not extend over the mouth of the bottle, so that the bottle was not made air tight, will not be deemed to be "sealed up", within a statute providing that a portion of the sample of milk seized by an inspector shall be sealed up, to be delivered to defendant or his attorney in case a complaint is made.

Sealed with the seal of the Court. The Seal of a Court will be taken judicial notice of and the phrase "Sealed with the Seal of the Court," proves itself (*Doe d Duncan* v *Edwards*, 8 L J Q B 98.)

Sealed and delivered The common formula of attestation of deeds and other instruments, written immediately over the witnesses names.

"Sealed and labelled". The word 'label' according to the ordinary acceptance of the term would denote a written slip of paper or a metal or any other thing fixed or attached to articles of manufacture for the purpose of describing them or specifying their quality, etc, or the name of the maker Neither the word "labelled" nor the word "sealed" necessarily means that it should contain the name of the manufacturer. All that is required is that it must be distinctive from which the maker or manufacturer or the firm could be easily traced. Where a certain quantity of oil exported for sale was found to be highly adulterated and the accused was prosecuted for an offence under Food Adulteration Act *Held*, that the accused cannot be convicted and the proper procedure was to take a full tin of oil in its unopened condition and test it for adulteration (9 Pat L T 434=106 I C 587=29 Cr L.J 75=A I R. 1928 Pat. 213)

Sealed note A sealed note is an unconditional bond under seal.

Sealed verdict A verdict is either privy or public, and a privy verdict is where the judge has left or adjourned the Court, and the Jury, being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the Judge out of court Such a verdict is of no force unless afterwards affirmed by a public verdict given openly in Court, where at the jury may vary from the privy verdict; so that a privy verdict is indeed a mere nullity, and it is held that a sealed verdict partakes of all the characteristics of a privy verdict, and is no verdict in itself, but must be affirmed by the jury in open Court. (*Ame. Words and Phrases.*)

Sealing wax. Wax for sealing letters.

Search. An examination of a man's house, premises, or person for the purpose of discovering proof of his guilt in relation to some crime or misdemeanour of which he is accused.

Proceedings for the search and seizure of property stolen or illegally withheld are in most instances of a criminal nature and are usually ancillary to the prosecution of some particular offence, but may or may

Search.

not be accompanied by a criminal prosecution depending upon the nature of the facts disclosed, if any.

In the registration law an examination made in the proper office for mortgages, liens, judgments, or other incumbrances against real estate. The certificate given by the officer as to the result of such examination is also called a *search certificate.*

Search, right of (*In International Law*) *In time of peace.* The right of a public vessel to visit and search private vessels for the purpose of investigating their character. Within the territorial waters of a state it may be exercised by the public vessels of said state for the enforcement of revenue and other domestic laws. As it is a police measure it cannot, apart from treaty stipulations, be exercised upon the high seas, except after pursuit of an offending vessel which has escaped from the territorial waters of the state, and by public vessels generally where there is a well-grounded suspicion of piracy.

In time of War. The right of a belligerent to visit and search neutral merchant vessels It is exercised, first, as an incident to the belligerent right to capture, upon the high seas, private property of enemy subjects In the case of The Maria, I c Rob 340, Lord Stowell held that the "right is so clear in principle that no man can deny it who admits the legality of maritime capture, because if you are not at liberty to ascertain by such inquiry, whether there is property that can legally be captured it is impossible to capture". Secondly, it is exercised as an incident to the recognized belligerent right to prevent the carriage of contraband by neutral vessels to the enemy and to punish breaches of blockade.

Search light. A strong electric bright art light used on board ship, on steam engines, and in military operations.

Search warrant. A search warrant is generally defined to be an order in writing signed by a Magistrate and directed to an officer, commanding him to search for personal property and bring it before the Magistrate.

SEARCH WARRANT is granted by a justice of the peace for the searching of a house, shop or other premises, for stolen or unlawful goods.

Search warrant is a warrant requiring the officer to whom it is addressed to search a house or other place, therein specified for property therein alleged to have been stolen, and, if the same shall be found upon such search, to bring the goods so found, together with the body of the person occupying the same, who is named, before the justice or other officer granting the warrant or some other justice of the peace, or other lawfully authorized officer.

Searcher. An officer of the customs, whose business it is to search and examine ships outward-bound, if they have any prohibited or uncustomed goods on board, etc. (*Tomlins Law Dic*)

Season. One of the four periods of the year.

Season ticket A ticket entitling the holder (generally at a concession rate) to travel between certain places on a railway line for a certain period.

Seat of justice. The judges seat; the place where the court-house and court-offices are located; the place where the courts are held, and where the court

Second of Exchange.

records are kept. (*Ellis* v. *State*, 92 Tenn. 85; 20 S. W. 502.)

"Seated land" as used in the tax laws, is land that is occupied, cultivated, improved, reclaimed, farmed, or used as a place of residence. (*Ame. Words and Phrases*)

Se-baptist (*Eccles*) One who baptises himself.

Sebastomania. (*In Medical Jurisprudence*) Religious insanity or monomania.

Secession The act of withdrawing; separation (as) secession of a state from the union.

Seclusion Seclusion means voluntary confinement or retreat from social life.

The words "SECLUSION" AND "RECLUSION" have quite different meaning. The former signifies a voluntary, the latter an involuntary, confinement. (*Phillips* v. *Reinach*, 38 La. Ann. 547, 551)

Second The word "second", as added to a person's name, is no part of the name, but only an addition or description used to designate the individual referred to, and, where no addition is required by law, an error in it cannot invalidate. Therefore the enrolment in a militia of "L C, Jr" as "L C, Second," is valid. "Junior" and "second" being synonymous, and also being no part of the name. (*Ame. Words and Phrases.*)

Second adventist One who lives in expect. of a second coming of Christ to establish a personal kingdom on earth.

Second class paper. Bills, notes, and other securities for the satisfaction of which persons or firms of only moderate standing are responsible. (Opposed to First Class Paper).

"Second cousin" defined. Act 10, 1865, s 86, Act 39, 1925 s. 99.

SECOND COUSIN. The child of a cousin.

Second cousins Those who are related, being descended from the same great-grandfather, or great-grandmother. (L R. 19 Ch. D 204).

Second estate. A name for the English Home of Lords.

Second hand. Not new; that which has been previously used.

SECOND HAND In the Merchants Shipping Act, 1894, "'Second hand' means, with respect to a Fishing Boat, the Mate, or person next to the skipper, in authority or command on board the boat" (S. 370)

Second hand evidence. This term is sometimes applied to hearsay evidence, and should not be confounded with secondary evidence. (*See* Powell. Evidence)

"Second-in-command" defined. Act 15, 1887, S. 3 (5); Act 5, 1892, S. 2 (5); Reg. 2, 1888, S. 2 (3).

Second of Exchange. The words "second of exchange, first unpaid," in a bill of exchange which had been discounted in good faith, do not import knowledge to the indorsee that the bill was one of a set. (16 L Ed. 323.)

Second offence.

Second offence. "When a 'Second offence' is the subject of distinct punishment it is an offence committed after conviction of a first." (Maxwell, 427; *Stroud*)

Second story. In America, the second range of rooms from the first level called in England the first floor. (*Twentieth Cen Dic.*)

Secondarily liable. The person "primarily liable" on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily liable." (*Ame. Words and Phrases.*)

Secondary. An officer who is second or next to the chief officer; as, secondaries to the prothonotaries of the Courts of King's Bench or Common Pleas; secondary of the remembrancer in the exchequer, etc. (*Jacob L. Dict*)

"SECONDARY' is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by accident, but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a "Secondary cause" (*per* Mellish, arg. *Smith* v. *Accident Insce* 39 L J. Ex. 214).

Secondary conveyance Conveyance which presupposes some other conveyance precedent and only serves to confirm, alter, retain, restore, or transfer the interest granted by the original conveyance.

"Secondary evidence" defined Act 1, 1872, S 63

"SECONDARY EVIDENCE" is that which is inferior to primary. Thus, a copy of an instrument or oral evidence of its contents is secondary evidence of the instrument and its contents

SECONDARY EVIDENCE is such as from necessity in some cases is substituted for stronger and better proof.

Secondary evidence means and includes—(1) certified copies given under the provisions of law, (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, (3) copies made from or compared with the original, (4) counterparts of document as against the parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it. [Act I of 1872 (Evidence), S. 63]

Secondary school. School for higher education

Seconds. (*In Criminal Law.*) Those persons who assist, direct, and support others engaged in fighting a duel.

Secret. The word a "secret," in a statute making it a ground for attachment that the debtor has secreted his property with intent to defraud creditors, means to hide it or to put it where the officer of the law will probably not be liable to find it.

Secret committee of the House of Commons A Secret Committee of the House of Commons is a Committee especially appointed to investigate a certain matter, and secretary being deemed necessary in furtherance of its objects, its proceedings are conducted with closed doors. All other Committees are open to members of the house, although they may not be serving upon them. (*Brown.*)

Secretary of state.

Secret disposition. "Secret disposition of the dead body of a child," to conceal the birth thereof, "include cases in which the body is placed in a situation where it is not likely to be found, except by accident or upon search, although the body is in no way concealed from any one who happens to go to that place" (Steph. Cr. 170, citing *R.* v. *Brown*, L.R. 1 C. C. R 244, 39 L.J M C. 94)

Secret partnership A secret partnership is a partnership where the existence of certain persons as partners is not avowed or made known to the public by any of the partners.

Where the business of a firm is conducted entirely in the name of one of the partners, the other partner is a secret or dormant partner.

A DORMANT OR SECRET PARTNER is one whose connection with the firm is really and professedly concealed from the world.

Secret profit. In all fiduciary relationships,—*e.g.*, *cestui que trust* and Trustee, Company and its Directors, Master and Servant, Principal and Agent,—the fundamental rule is that, the person entrusted with, or employed to discharge, a duty, is not to make a Secret Profit thereby, for "a Watch-Dog has no right, without the knowledge of his master, to take a sop from a possible Wolf," [*per* Bowen, L J., Re *North Australian Co.* 1892, 1 Ch. 341]

Secret service A department of Government whose operations are kept secret.

Secret trust "When property is vested in a person for purposes not declared by the instrument devising it, and it appears that but for the testator's confidence that those purposes would be fulfilled the device would not have been made, a secret trust is created; and, on the ground that fraud would be committed by the devisee or grantee if he did not fulfil those purposes, that trust may in equity be enforced against him." (*Godefroi*, on Trust.)

"Secretary" defined. Act 5, 1873, S 3, Act 11, 1876, S 3, Act 5, 1888, Ss. 4 (8), 50 (4), Bom. Act 13, 1866, S 6.

SECRETARY. One intrusted with the management of business

The "secretary" of a corporation is one of the general managing agents of the company, and when in the discharge of the duties of his office he represents the corporation itself. Therefore the representations by him in the course of the business of the corporation are binding on it.

SECRETARY AND CLERK. The terms "clerk" and "secretary" as applied to subordinate ministerial functionaries, are by popular usage synonymous terms and are frequently used interchangeably. "Secretary" is defined as a "person employed to write orders, letters, dispatches, public or private papers, records and the like; an official scribe, amanuensis, or writer." A clerk is defined as "one who is employed to keep records and accounts, a scribe a penman, an accountant; as the clerk of the Court."

"Secretary of State" defined. 10 Ed. 7, c. 5, S. 2

SECRETARY OF STATE is not the same as Government *See* 1933 All. 466=1933 A.L.J. 796.

Secrets of State.

Secrets of state The production in court of documents containing secrets of state will not be compelled if it would be injurious to the public interest and if the officer in custody of them claims the privilege.

Sect A "sect" is a body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system, as the Presbyterian sect.

A sect is a class of people holding in effect the same religious faith and associating together in the same form of religious discipline, and worship Mere difference in faith with regard to doctrinal points seemingly does not constitute a sectarian difference, but the test lies in the similarity of discipline and worship, though there be diversity of opinion in regard to doctrine

Sectarial marks. Emblems marked on the foreheads of the different sects in India

Sectarian Webster defines "sectarian" as pertaining to a sect or sects, peculiar to a sect; bigotedly attached to the tenets and interests of a denomination

Sectarianism Sectarianism includes adherence to a distinct political party as much as to a separate religious sect

"Section" defined. Act 10, 1897, S 3 (50), Ben Act 1, 1899, S 3 (39), Bom Act 1, 1904, S 3 (42), Bur Act 1, 1898, S 2 (55), E B & A Act 1, 1909, S 5 (55), Mad Act 1, 1891, S 3 (4), P. Act 1, 1898, S. 2 (51), U P Act 1, 1904, S. 4 (40)

SECTION A part separated from the rest, a division, a portion as, specifically, a distinct part of a book or writing, the sub-division of a chapter, the division of a law or other writing a paragraph. (*State* v *Babcock*, 23 Neb 128, 36 N W 348 (The smallest numbered subdivision of a statute, code, text book, etc, which contains a distinct subject.

"Section" shall mean a section of the Act or Regulation in which the word occurs [Act X of 1897 (General Clauses), S. 3 (50)]

The word "section' denotes one of those portions of a chapter of a Code which are distinguished by prefixed numeral figures (Penal Code, S 50 *See also* 10 Bom L.R 801=8 Cr.L J 272=33 B. 77=1 I C 641)

Secular. The word "secular" means temporal or worldly, also, opposed to spiritual or holy, temporal things, things of the world. (*Allen* v *Deming*, 40 *Am. Dec.* 179)

Secundum. (*Lat.*) According to, in favour of, near.

Secundum aequum et bonum. According to what is just and good.

Secundum allegata et probata. According to what is alleged and proved.

Secundum consuetudinem manerii. According to the custom of the manor.

Secundum legem communem Angliae. According to the common law of England.

Secundum naturam est commoda cujusque rei eum sequi, quem sequuntur incommoda. It is

Security for costs

according to nature that the advantages of anything should attach to him to whom he disadvantages attach.

Secundum naturam, norman legis. According to nature, the rule of law

Secundum subjectam materiam According to the subject-matter.

Secure Webster defines "secure" to mean 'to make certain, to put beyond hazard"

"To secure" is to make safe, to protect from danger, to insure, to inclose effectually

Secured creditor A creditor holding security the realisation of which would satisfy his claim

A "Secured creditor" is one who has security for his debt

"SECURED CREDITOR" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land, (Act III of 1909) (Presidency Towns Insolvency). [S 2, Cl (*g*)]

"SECURED CREDITOR," means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor [Act V of 1920 (Provincial Insolvency), S 2, Cl (*e*)]

Securities Documents entitling the holder to specified realisable rights in land, money, stocks, shares, bonds, mortgages, etc

"Security" Defined [*N B*—This word also occurs in combination with other words (as) Government security, Insufficient security, Public securities, Valuable security] Act 7, 1889, S. 3 (2).

SECURITY That which renders a matter sure, an instrument which renders certain the performance of a contract A person who becomes the surety for another, or who engages himself for the performance of another's contract

The term "security" signifies that which makes secure or certain In its proper use, it relates to pecuniary matters, and often consists of a promise or right with or without possession of the thing upon which it rests It implies in its common acceptation that which prevents loss or makes safe Dr. Johnson defines it as anything given as a pledge or caution Dean Swift uses it as synonymous with "safety" or "certainty." Webster defines it as anything given or deposited to secure the payment of a debt or the performance of a contract

Speaking generally security is anything that makes the money more assured in its payment or more readily recoverable as distinguished from, *e g*, a mere 'I O U' which is only evidence of a debt, and the word is not confined to a document which gives a charge on specific property, but includes personal securities for money (107 I C. 213=A.I.R. 1928 Sind 89)

COLLATERAL SECURITY is security given for the payment of a debt or the performance of some other act.

Security for costs In certain cases the defendant may require the plaintiff, before proceeding with the action, to give security for costs—**the object**

Security for money.

of course, being to prevent a defendant being harassed with litigation unless there is some responsible person who can be made liable for the costs if the action fails

Security for money The expression "security for money," is not one of very precise or well-defined meaning, but it may be taken generally to include every document or transaction by which the payment of money is assured, or its recovery facilitated, as distinguished, for instance, from a mere evidence of debt like an I O U. Thus mortgages, whether legal or equitable, and whether accompanied by a written memorandum or not, bonds, cheques, promissory notes, bank notes, bills of exchange, judgments [*Guardians of West Ham* v *Ovens*, (1872) L R 8 Ex 37], are all securities,

A residuary devise of the testator's "furniture, jewellery, moneys and *securities for moneys*, was held not to cover all of the testator's moveable property. (31 C 166=8 C W N 273)

Security proceedings Order under security proceedings under Criminal Procedure Code—Terms "Conviction" and "Acquittal" not properly applicable to (20 A L J 519=A I R. 1928 All. 357. *See also* 8 S.L R 215)

Securius expediu tur negotia commissa pluribus, et plus vident oculi quam oculus Matters entrusted to several are more securely despatched, and (several) eyes see more than (one) eye.

Sedhya. (*Karn*) Agriculture farming

Sedhyagar. (*Karn*) A farmer, a cultivator.

Sedhyamu. (*Tel*) Land prepared for ploughing

Sedition An offence, tending towards treason, but wanting the overt act (*see* Rob El L Rev ed, 493) The raising commotions or disturbances in the State, it is a revolt against legitimate authority (*Erskine, Inst*)

SEDITION In the Scotch Law is defined to consist in attempts made by meetings, or by speeches or publications, to disturb the tranquillity of the state (*Tomlins Law Dic*)

The offence known in England as "sedition" consisted of speaking or writing against the character and constitution of the government, or seeking to change it by any means except those prescribed or are recognized as lawful

Allegations against Home Government is not sedition (1930 Lah. 156)

Seditious Pertaining to or exciting sedition.

Seditious agitator, The obvious meaning of the words "seditious agitator", as they would naturally be understood by ordinary men, when published in reference to another, is that he is a disturber of the public peace, a subverter of just laws, and a bad citizen.

Seduce, seduction To "seduce" is to draw aside from the path of rectitude and duty in any manner, to entice to evil, to lead astray, to tempt and lead to iniquity; to corrupt; to deprave; to induce to surrender chastity.

Seigneur.

To "seduce" is to draw away from the path of rectitude and duty in any manner by flattery, promises, bribes, or otherwise.

Seduction is the act of a man in enticing a woman to have unlawful intercourse with him by means of persuasion, promises, bribes, or other means without the employment of force

"Seduced", means that a virtuous woman has been corrupted, deceived, and drawn aside from the path of virtue, which she was pursuing, by such acts and wiles, "in connection with a promise of marriage", or otherwise as are calculated to operate upon a virtuous female

On each occasion when a woman is persuaded to indulge in illicit intercourse, she is being tempted into sin and so "seduced" consequently, though a woman has lost her chastity and become a prostitute, she can be "seduced" again for the purpose of S 366-A of the Penal Code (99 I C 98=28 Cr L J 66=A I R 1927 Sind 104)

The seduction of a married woman is known as *criminal conversation*, for which the husband has an action against the seducer (2 *Greenl Ev* 40)

See The jurisdiction of a bishop or archbishop; a throne

HOLY SEE. The Papal Court.

"See back" See back, on the face of a Railway Cloak Room Ticket and printed thereon in such a way as to give reasonably sufficient intimation that there are conditions on the back gives to the person taking it notice of the conditions on the back of it, under which the article is accepted for custody. (*Parker* v *S E Ry.* 46 L J C P 768)

The words '*see back*" or "See Over", in order to operate as notice must not be in very small type [*per* Wright, J, *G N Ry* v. *Palmer*, (1895) 1 Q B. 802].

Seeds Seeds which have been sown in the earth immediately become a part of the land in which they have been sown. *quae sata solo cedre intelliguntur.* (Inst 2, 1, 32)

"To kill *seeds*," means, to destroy, by artificial means, the vitality or germinating power of such seeds

Seen The word "seen" [in Evidence Act (I of 1872), S 63 (5), means something more than the mere sight of the document The clause clearly contemplates the evidence of a person who, having seen and examined the document, is in a position to give direct evidence of the contents thereof (23 I C. 11 (12) *See also* 12 A.L J. 339=25 I C. 77.)

An oral account of the contents of a document given by an illiterate person who has merely seen it with his eyes is not secondary evidence within the meaning of S 63 (5) of Evidence Act The word 'seen' means something more than the mere sight of the document. (12 A.L J. 239=23 I C. 11)

Segregate. To separate from others.

Seigneur, seignior. (*Fr.*) A lord: a master or owner

GRAND SEIGNIOR. The title of the sultan of Turkey.

Seigniorage.

Seigniorage Mint charge for converting bullion into coin a royalty or prerogative of the sovereign, whereby an allowance of gold and silver, brought to a mint in the mass to be exchanged for coin, is claimed (*Cowel*) Mintage, the charge for coining bullion into money at the mint (*Black L Dict*)

SEIGNIORAGE is the profit made by the Government on the coining of money In early reigns a seigniorage was levied on both gold and silver coinage, and a considerable profit accrued to the Crown from this source The Statute 18, Car II, c 5, S 1, abolished seigniorage on both gold and silver and since then no seigniorage has ever been levied on gold (*See* Annual Report of the Deputy Master and Comptroller of the Mint for 1906, issued in 1907)

Seigniory A lordship, a manor. Seigniory in gross, a lordship independent of a manor

Seised Possessed of land under claim of a freehold interest

The term "seized" is equivalent to the term "possessed"

Seisin Actual possession.

"'SEISIN' or Seison, is common as well to the English as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire*, a verbe" (Co Lit 153*a*)

"Seisin" does not mean the same thing as "possession" It does mean possession, but it is a possession of a freehold estate, such as by the common law is created by livery of seisin.

"SEISIN" AND "OWNERSHIP" as to corporeal hereditaments, in the common law sense of the term mean practically the same thing Mere occupancy does not constitute seisin in the legal sense of that term.

Seisin in fact is actual possession (2 Bl Com 209, 311.)

Seisin in law. "Seisin in law" is a right to the immediate possession of land according to the nature of the estate.

In order to constitute a seisin in law there must be a right of immediate possession according to the nature of the interest, whether corporeal or incorporeal

"SEISIN IN LAW" is a right to the possession of the free hold, where there is no adverse occupancy thereof.

Seisina facit stipitem (Seisin makes stock) The seisin determines the root of descent The old law by which descent was traced from the person last seised in fact

Seize seized This word, in its relation to real estate, is "one of the most technical words in our law—a word that has no meaning except technical It has not got into vernacular use that I am aware of" (per *James, L J*, *Leach* v *Jay*, 47 L J Ch. 877).

The word 'seize' in O 21, R. 43, C P Code, means taking possession forcibly or in pursuance of a warrant or legal process Where the amin accompanied by the party went to the house of the defendant with a warrant of attachment before judgment and removed certain articles mentioned in the inventory with the help of coolies *Held*, that an attachment

Self-accusation.

must be deemed to have been effected by the seizure and removal of the articles from the defendant's house. (1930 M W N 487 *See also* 23 I C 241.)

Seizing in transitu "Seizing in transitu" is the exercise of a qualified right over the property of another, and exists only where the party entitled to exercise it has possession of the property, active or constructive It is founded upon equitable principles.

Seizure In general "Seizure" is a forcible taking possession (per *Cave*, J, *Johnston* v *Hogg*, 52 L J Q B 343, 1914 M.W N 309=23 I.C. 241; 1930 M.W N 487)

The legal definition of the word "seizure" is the taking possession of property by an officer under legal process

SEIZURE, in Art 29, Sch II, Limitation Act (XV of 1877) involves something in the nature of a transfer of possession, actual or symbolical. [22 I C 870 (873)]

"Seizure" is the act of taking possession of property of a person condemned by the judgment of a competent tribunal to pay a certain sum of money, by a sheriff or other officer lawfully authorized thereto by virtue of an execution, for the purpose of having such property sold according to law and to satisfy the judgment.

"Seizure", as applied to a levy by a sheriff, means that he must make his levy in view of the goods, but he need not necessarily carry them away

Seizure notes Notes made out by a customs officer on discovering and taking possession of goods fraudulently obtained or bearing fraudulent trademarks

Selaga (*Tel*) An allowance of grain and other perquisites allotted to the hereditary village karnam, or accountant, in the Northern Circars a term used by measurers of grain, who call out the numbers of the measures up to one hundred, and then exclaiming, Selaga, begin a fresh enumeration from one. (*Wil Gloss*)

Salami "Selami" or premium when paid for recognition of a transfer of a holding from one tenant to another is not agricultural income and is not exempt from assessment (25 C W N 80=61 I C. 112= 32 C L J 433)

Select Chosen for excellence, picked out as best and most suitable

SELECT, APPOINT. The word "select", when used by a city mayor in appointing a person to an office, is equivalent to the word "appoint".

"SELECTION" OR "CHOICE" means the power to determine between two or more No selection or choice can be made when there is no alternative.

Selectmen The word "selectmen" means the selectmen of the town or ward, or the mayor and aldermen of a city

The word "*selectmen*" shall extend to and include the mayor and aldermen of cities.

Self-accusation The act of accusing one's self,

Self-defence

Self-defence (*In Criminal Law*) The protection of one's person and property from injury. (*Whart. Crim Law*)

Every person is entitled to defend himself from attack, and may use force in doing so. (*Cf* 3 Black, Com 120, 121) This right of private redress extends not only to the defence of one's own person, but also to the defence of a husband or wife, a parent or child, or even, as has been said, a master or servant [*ibid* 3 *R* v *Ross*, (1884, 15 Cox, 540] It also extends to the defence by a man of his goods, (*see* 3 Bl Com 121, *Blades* v *Higgs*), 1861, 10 C B N, S 713] A person attacked may use as much force as he reasonably believes to be necessary to defend himself (*See* Pollock on Torts, Steph, Dig. Cr Law, Archb Cr Pl, Addison on Torts, Clerk and Lindsell on Torts)

The essential elements of "*self-defence*" are (1) The defendant or accused must be free from fault, that is, he must not say or do anything for the purpose of provoking a difficulty, nor must he be disregardful of the consequence in this respect of any wrongful word or act (2) There must be a present impending peril to life or of great bodily harm, either real or so apparent as to create the *bona fide* belief of an existing necessity (3) There must be no convenient or reasonable mode of escape by retreat, or declining the combat

The doctrine of self-defence may be thus defined Where a person, being without fault and in a place where he has a right to be so far as his assailment is concerned, is violently assaulted, he may without retreating, repel force by force, and he need not believe that his safety requires him to kill his adversary, in order to give him right to make use of force for that purpose When, from the acts of his assailant he believes, and has reasonable ground to believe that he is in danger of losing his life or receiving great bodily harm from his adversary, the right to defend himself from such danger or apprehended danger may be exercised by him, and he may use it to any extent which is reasonably necessary, and if his assailant is killed as a result from the reasonable defence of himself he is excusable

Self-destruction This term in an insurance policy is synonymous with, not more comprehensive than, suicide It does not include an intentional though insane killing of one's self.

A provision in a policy of life insurance that "self-destruction" is a risk not assumed by the company under the contract means suicide, and does not include accidental self-killing

Self-determination. Determination by one's self or by a body without extraneous impulse

Self-disserving evidence (or self-disserving statements) *See* Self-regarding evidence.

Self-disserving statements are termed "admissions" in civil cases and "confessions" in criminal cases They are also classified as "plenary" when the statements are not absolutely inconsistent with the existence of facts different from those indicated by it. (*See* Best on Evidence)

Self-evident Evident by itself without proof.

Self-explanatory. Obvious; bearing its meaning on its own face.

Selling out.

"Self-governing colony," means, and includes Canada, Newfoundland, New South Wales, Victoria, South Australia, Queensland, Western Australia, Tasmania, New Zeland, Cape of Good Hope or Natal

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland. (Copyright Act, S 35)

Self Government Government by the joint action of the mass of the people, democracy.

SELF-GOVERNMENT "Self-government' means government for the people and by the people, considered as the totality of organic institutions, constantly evolving in their character as all organic life is, but not a dictatorial multitude. (*Ame Words and Phrases*)

SELF-INFLICTED INJURIES "Self-inflicted injuries," as used in an accident policy providing that the insurer shall not be liable to the insured for self-inflicted injuries means injuries which are self-inflicted by the insured when he is capable of rational voluntary action, and not when he is insane.

Self-inflicted wound Wound inflicted by one's self.

Self-interest Private interest

Self-murder. Suicide.

Self-protection Self-defence.

Self-regarding evidence That evidence for or against a party which is afforded by the language or demeanor of himself or of those who represent him When in favour of the party supplying it, the evidence may be said to be "*self-serving*", when otherwise "*self-disserving*", and these terms are also applicable to the statement and demeanor of witnesses.

Self-serving evidence. Same as Self-regarding Evidence.

Sell A power to "*sell*, means, in the absence of any context, a power to sell for money, and a person who exercises such a power is bound to sell for money" (*per* Stirling, J., *Paine* v. *Cork Co*, 69 L. Ch. 158)

Seller. One who disposes of a thing in consideration of money, a vendor. This term is more usually applied in the sale of chattels and the term *vendor* in the sale of lands and estates.

"SELLER" is the term used in the law of sales to designate the person selling goods which are the subject of the sale.

In the Sale of Goods Act, 1893, "'Seller' means a person who sells, or agrees to sell, goods."

"Seller's lien" defined, [*See* Lien.] Act 9, 1872, S. 95.

Sellers over The condition of a market when sellers are in excess of buyers.

"Selling" defined (*See also* Sale,) Mad. Act 3, 1864, S. 2, Mad. Act 1, 1886, S. 3 (14).

Selling out. To dispose of entirely. (In Stock Exchange.) The term applies to the case of a buyer

Semble.

of stock for the account failing to pay for it, when the stock is officially sold and the transaction closed

Semble. (*Fr* it seems) A term frequently used before the statement of a point of law which has not been directly settled but about which the Court has expressed an opinion and intimated what a decision would be.

Semi. Half, partly

Semi-colon According to well established grammatical rules, this is a point only used to separate parts of a sense more distinctly than a comma. (*Lambert* v *People*, 32 Ame Rep. 293)

The semi-colon and the comma are both used for the same purpose in punctuation, namely, to divide sentences and parts of sentences, the only difference being that the semi-colon makes the division a little more prolonged than the comma

Webster defines the office of a "semi-colon" as follows "It is used to distinguish the conjunt members of a sentence"

Semi-conscious Half-conscious or imperfectly conscious

Semi God A demi god

Semi-matrimonium Half-marriage Concubinage was so called in the Roman Law. (Tayl. Civ. L 273)

Semi official Partly official

Seminary A seminary is a place of education, as a school, academy, college, or university, where persons, especially the young, are instructed in the several branches of learning to fit them for their future employment, specifically a school for the education of men for the priesthood or ministry

Seminaries of learning, within the meaning of a statute exempting from taxation all seminaries of learning, includes an academy or seminary for the instruction of females agreeably to the faith and practice of the Church, and includes the lands and buildings used exclusively for the purpose of the seminary, and dormitories and convenient out-buildings used in connection therewith.

Semper in dubiis benigniora praeferenda In doubtful cases the more favourable construction is always to be preferred.

Semper in dubiis benigniora praeferenda sunt In doubtful cases, the more favourable constructions are always to be preferred

Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est In doubtful cases, such a course should be taken that a contract made *bona fide* should be in the safest condition (most carefully upheld), unless when it has been openly made against law

Semper in obscuris quod minimum est sequimur. In things obscure we always follow the least obscure.

Semper in stipulationibus, et in ceteris contractibus, id sequimur quod actum est. In stipulations and in other contracts we follow that which was done (*i.e.*, by the actual state of facts).

Senile dementia

Semper ita fiat relatio, ut valeat dispositio. preference should always be so made that the disposition (in a will) may have effect

Semper praesumitur pro legitimatione puerorum The presumption always is in favour of the legitimacy of children.

Semper praesumitur pro-negante The presumption is always in favour of the one denying

Semper qui non prohibet pro se intervenire, mandare creditur He who does not prohibit the intervention of another in his behalf is supposed to authorize it

Semper sexus masculinus etiam femininum sexum continet The male sex always includes the female

Semper specialia generalibus insunt Species are always included in generals

Sena (S) An army (*Wil Gloss*)

Sena-khas-khel (*Mar*) A title conferred by the Peshwa upon the Gaekwar (*Wil Gloss*)

Senapati (S) A general, a commander in chief, one of the eight great officers of the Mharatta State, a title conferred by the Peshwa upon the Raja of Berar (*Wil Gloss.*)

Senator (*In old English law*) A member of the King's Council, or council board, a King's Councillor

Senatores sunt partes corporis regis. Councillors are parts of the King's body

Send "A threatening letter is 'sent' when it is dropped in the way of the person for whom it is destined so that he may pick it up (*R* v *Jepson*, *R.* v *Lloyd*, 2 East P C. 1115, 1122, *R* v *Wagstaff*, *Russ & Ry* 398), or is affixed in some place where he would be likely to see it (*R.* v *Williams*, 1 Cox C. C 16), or is placed on a public road near his house so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*R* v *Grimwade*, 1 Den 30, Va, *R* v *Jones*, 5 Cox C C 226), although in none of these cases would the paper be popularly said to have been 'sent'" (Maxwell 336, *Stroude*)

The expression "send", used in the R 25, O 5, (Act V of 1908), C. P Code, means that the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered" 11 I C 351 (352) =13 Bom L R 323=35 B 213. *See also* Eng Inter Act, 1889, S 26

Seneschal A steward also one who has the dispensing of justice. (*Co. Litt* 61 a)

Senile dementia Senile dementia is a mental disorder usually attacking the faculties of old persons

SENILE DEMENTIA Is that form of insanity in the old, marked by slowness and weakness, indicating the breaking down of the mental powers in advance of bodily decay.

Senility

Senility. The condition of old age, the state of being old

When an account of senility the party is unable to manage his affairs, a committee may sometimes be appointed as in case of lunacy (1 Collier, Lun. 66, *In re* Barker, 2 Johns Ch (N Y) 232)

Senior The elder This addition is sometimes made to man's name, when two persons bear the same, in order to distinguish them In practice, when nothing is mentioned, the senior is intended, (*Nell* v *Dillon*, 3 Mo 59)

SENIOR The word "Senior" is attached to the name of a father to distinguish him from a son of the same name

The addition of "Senior" to a name is a mere matter of description, and forms no part of the name It is generally used to distinguish between a father and a son of the same name, who reside at the same place, but the addition is useless, and the omission thereof furnishes no ground of objection on account of variance, where there is any other addition or description by which the real party intended can be ascertained.

"Senior heir" defined Bom Act 6, 1887, S 2 (6)

Sensus ex causa dicendi accipiendus est, et sermones semper accipiendi sunt secundum subjectam materiam The sense of words is to be taken from the occasion of speaking them, and discourses are always to be interpreted according to the subject matter

Sensus verborum est anima legis The true meaning of the words is the soul of the law

Sentence This term is now applied to the judgment of a court of criminal jurisdiction imposing on a person convicted a punishment such as fine or imprisonment

A sentence is the judgment of a court It is the final determination of a criminal court, the pronouncement by the judge of the penalty or punishment as the consequence to the defendant of the fact of his guilt

"SENTENCE", as the term is used in criminal law, is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained

SENTENCE CONVICTION The ordinary legal meaning of "conviction", when used to designate a particular stage of a criminal prosecution triable by a jury is the conviction of the accused in open court or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt, while "judgment" or 'sentence" is the appropriate term to denote the action of the court before which the trial is had, declaring the consequence to the convict of the fact thus ascertained.

SENTENCE · JUDGMENT A judgment, or judicial declaration made by a judge in a cause The term *judgment* is more usually applied to civil, and *sentence* to criminal, proceedings.

A sentence is a judgment on conviction for crime, and any proceeding that may end in a sentence is substantially criminal in its nature.

Separate use.

SENTENCE VERDICT. "Sentence" is different from a verdict. [123 I.C 731=A I R. 1930 P C. 291 (P C)]

Another meaning of "Sentence" is that it is an assemblage of words so arranged as to express an entire proposition.

Sentence of Imprisonment" defined 47-8 V.C. 31, S 18 *See also* 14 M L.J 525

Sententia. (*Lat.*) Sense, meaning, sentence, decree.

Sententia a non judice lata nomini debet nocere A sentence passed by one who is not a judge (has not jurisdiction) ought to harm no one.

Sententia facit jus, et legis interpretatio legis vim obtinet Judicial opinion makes law, and the interpretation of law obtains the force of law

Sententia interlocutoria revocari potest. An interlocutory sentence or order of a judge may be revoked (but a judgment cannot)

Sententia non fertur de rebus liquidis Sentence is not given upon matters that are not clear.

Sentry. A sentinel, a soldier on guard to observe approach of danger, a watch tower

Separate Distinct, divided, separate from another (as) separate estate

"Separate confinement" defined Act 9, 1894, S. 46 (8) expln

"Separate estate" defined Ben. Act 5, 1897, S 3 (xii).

SEPARATE ESTATE The separate estate of a married woman is one over which she has such dominion as to exclude the marital rights of the husband

The separate estate of the wife is defined to be that estate either real or personal, which is settled upon the wife for her separate use, without any control over it on the part of her husband.

Separate maintenance The allowance made by a husband to his wife for her separate support and maintenance In general, if a wife is abandoned by her husband, without fault on her part, and left without adequate means of support, a suit will lie to compel the husband to support her, without asking for or procuring a decree of divorce (Schoul Hus. & W 485, *Garland* v *Garland*, 50 Miss 694, *Van Arsdalen* v *Van Arsdalen*, 30 N J Eq 359)

"Separate property" defined. Ben Act 5, 1897, S 3 (xii)

The separate property of a married woman is that property settled to a married woman's separate use by deed or by will, with power of appointment, and rendered subject to her exclusive control.

"Separate salt work" defined. Ben. Act, 7, 1864, S. 5.

"Separate scheme" defined. Ben. Act 6, 1880, S. 54.

Separate use (*of married woman*) "No particular form of words is necessary in order to vest property in a married woman to her *separate use* That intention though not expressed in terms, may be inferred from the nature of the provisos annexed to

Separate village channel.

the gift" (per *Brougham, C, Stanton* v. *Hall*, 2 Russ & My 180).

"Separate village channel" defined Ben Act 3, 1876, s 47

Separation A cessation of cohabitation of husband and wife by mutual agreement.

A "separation" between husband and wife implies the consent of both parties to be affected thereby, and is not synonymous with "desertion", the very idea of which is to leave without consent of the other and in violation of duty The word "separate" means "to part from each other"

Mere separation is not desertion in the divorce law

"Separation is not necessarily desertion The latter may not arise until long after the former has occurred"

Separation deed A separation deed is one by which, either directly or through the medium of some third person, acting as a trustee, provision is made by a husband for the support of his separated wife

Sepulchre A place of burial, a tomb, a burial vault

Sequatur sub suo periculo (*In old English law*) Let him follow at his peril

Sequester (*In Civil and Ecclesiastical Law*) To renounce Example when a widow comes into court and declaims having anything to do or to intermeddle with her deceased husband's estate she is said to sequester (*Jacab Law Dict*)

Sequestrate Confiscate, divert or appropriate income of property to satisfaction of claims against its owner

"SEQUESTRATE" is defined to mean to separate from the owner for a time, seize or take possession of—as the property or income of a debtor until the claims of the creditor are satisfied

Sequestratio (*Lat*) The separating or setting aside of a thing in controversy, from the possessions of both the parties that contend for it.

Sequestration. (*In equity practice*) The process of taking the property of a defendant in contempt, and holding it in the custody of the court (*See* 3 Bl Com 444)

SEQUESTRATION signifies the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it, and it is twofold voluntary and necessary, *voluntary* is that which is done by consent of each party, *necessary*, is what the Judge of his authority doth, whether the party will or not (Fortescue, c 50, Dyer, 232, 256, *Tomlins Law Dic*)

"'Sequestration' is a word large enough to apply to all Sequestrations" (per *North, J. Wanzer*, 60 L J Ch. 494)

As a natural development from the current use of the writ of sequestration to enforce obedience to decrees, courts have come to employ it as a process in the nature of an execution, by directing that the rents and profits of the property sequestered should

Seriatim

be applied to the satisfaction of the decree in cases where the payment of money had been ordered.

The writ of sequestration is based upon, and operates to preserve, protect, and enforce, an antecedent privilege or claim of ownership or possession resting on the property seized

"Sequestration" means to seize or take possession of the property belonging to another, and hold it until the profits have paid the demand for which it is taken.

Sequestration (*In Internatianal law*) The seizure of the property of a person, and appropriation of it to the use of the government.

SEQUESTRATION AND ATTACHMENT The modern importance of the sequestration process consists practically altogether in its use as a conservatory measure to preserve pending litigation specific property subject to conflicting claims of ownership or liens and privileges Courts have inherent power in cases where there is no adequate legal remedy, to issue the writ and impound the property in controversy, pending proceedings to determine the right thereto It is merely a conservatory measure in the nature of a judicial deposit, and, unlike attachment creates *per se* no new privilege in favour of the creditor at whose instance it has issued

A sequestration is intended to accomplish it object by the actual taking of goods and chattels, or the rents and profits of lands, and withholding them until the distress brings compliance with what is then required, and it creates no lien in favour of future judgments or decrees, while an attachment creates such a lien, and nothing more It is in effect strictly an attachment to create a lien

A *sequestration* is also a kind of EXECUTION FOR DEBT (*2 Inst 472, 2 Rol. Abr. 474, Tomlins Law Dic*)

Sequestration of the property of an insolvent corporation is in the nature of an attachment or execution on behalf of the creditors.

Sequestrator Person appointed to take possession under a sequestration order, officers appointed by a court and named in a writ of sequestration As to their powers and duties, *see* 2 Madd Ch Pr. 205.

"Ser" defined Act 31. 1871, S. 2, Act 12, 1896 S 3 (*m*), Ben Act 7, 1864, S. 3, Bom Act 5, 1878 S 3 (12)

"SER" means a weight of eighty totals. [Excise Act (XII of 1896), S 3]

Seraglio A place where women are kept; a harem, a place of licentious pleasure

Serf (*In Feudal Law*) A term applied to a class of persons who were bound to perform very onerous duties towards others. (*Pothier*)

Sergeant-at-arms An officer appointed by a legislative body whose duties are to enforce the orders given by such bodies generally under the warrant of its presiding officer An officer who attends upon the Lord Chancellor with the mace.

Seriatim (*Lat*) In a series, severally; as, the judges delivered their opinions *seriatim*, in order; one after another.

Seriaunt.

Seriaunt, (*Fr Sergeant*) The highest degree in the profession of common law, sergeant

Sergeant-at-law Formerly in England the highest degree of barrister

Serigramam (*Tel.*) A village, the lands of which are considered to belong in proprietary right to the Government (*See* 111 I C 168=1928 Mad 786)

Seri-hissa. (*Tel*) A tenure in the Nizam's country by which irrigated or rice lands, the cultivator being the owner, pays eleven-twentieths of the produce to the Government.

"Seri land". The word "seri" is always used in the Kistna District of the Madras Presidency in the sense in which the word "ryoti" is used in the Madras Estates Land Act "Seri land" always means "land in which the tenant has an occupancy right" (111 I.C 168=A I K 1928 Mad. 786)

Serious "Serious" means "important, weighty, momentous, and not trifling", Important, not slight *See* 74 Ill 231.

Serious and wilful misconduct, What is *"Serious and wilful misconduct"* is a question of fact having regard to the whole matter of each case (*Rumboll* v *Nunnery Colliery Co*, 80 L T 42)

Serious bodily harm or injury The term "serious bodily harm" as used in a statute relating to self-defence, is interchangeable or synonymous with the term "great bodily harm"

Serious illness The term "serious illness", in an application for a life policy, means such illness as is likely to impair permanently the constitution and render the risk more hazardous

"The term "serious illness", as used in an application for a life insurance policy in a question whether the applicant ever had any serious illness, means a grave, important, and weighty trouble.

The term "serious illness", in a statement by an applicant for life insurance that he has had no serious illness, will be construed to mean that the applicant has never been so ill as to impair his constitution and render the risk unusually hazardous The term does not include every sickness which may terminate in death, as such an interpretation would cause it to embrace almost every distemper in the entire catalogue of diseases (*Ame Words and Phrases*).

Serjeant or Sergeant (*Lat Serviens.*) A word diversely used in our law and applied to sundry offices and callings (*Tomlins Law Dic*)

Serjeant-at-arms (*In English law.*) An officer whose duty is to attend the person of the king, to arrest traitors, to attend the Lord High Steward sitting in judgment on a traitor, and the like

Serjeant of the mace, or serjeant at mace. An officer who attends the Lord Mayor of London, and the chief magistrates of other corporate towns.

Serjeant's inn The Inn to which the serjeants-at law belonged (*See* Inns of Court, 3 Steph Com. 292) It no longer exists

Serjeants at-law A very ancient and the most honourable order of advocates at the common law. is the highest degree in the common law, as

Servant.

a Doctor is in the Civil Law, but, according to Spelman, a Doctor of Law is superior to a Serjeant, for the very name of a Doctor is magisterial, but that of a Serjeant is only ministerial' (*Tomlins Law Dic*)

Serjeanty A special kind of knight service, held only of the King. GRAND SERJEANTY when the tenant was not bound to attend the King in wars, not liable to aid of escuage but performed some particular military duty or honorary service (*See* 2 Bl. Com 73.) *Petty serjeanty*, when the tenant held by annual render of some weapon or the like, in effect, like common socage, (*See* 2 Bl Com 81)

"The exact idea of serjeanty as conceived in the thirteenth century", says a recent writer on this subject, "is not one easily defined" Several different classes of men were grouped together under one heading, the bond between them being very slight and the distinction between serjeanty and knight's service on the one hand and socage on the other is hard to determine, (1, Poll & Maitl 262)

Sermo index animi Speech is the index of the mind

Sermo relatus ad personam intelligi debet de conditione personae Language, which is referred to a person, ought to be understood of the condition of the person.

Serni (*S*) Means an assemblage of classes led by eminent merchants

"Servant" defined. [*N B*] This word is also used in combination with other words (as) Public servant, Railway servant, Salaried servant of Government

A "servant", as defined by Webster, 'is one who serves or does service voluntarily or involuntarily, a person who is employed for another for menial offices or for other labour, and is subject to his command, a person who labours or exercises himself for the benefit of another, his master or employer, a subordinate helper"

A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master

OTHER DEFINITIONS A person employed to labour for another, especially in law, one employed to render service or assistance in some trade or vocation. An employee, a person hired to assist in domestic matters, living within the employer's house, and making part of his family, any person who works for another for a salary, a person hired for wages, to work as the employer may direct, and under his control, a person who, by contract or operation of law, is for a limited time subject to the control of another is exercised, one who does work under the direction of another who not only prescribes the nature of his work, but directs, or any moment may direct the means also, or as it has been put, retains the power of controlling the work.

The term "servant" is very broad, and if taken in its legal sense, would embrace all classes of persons retained, hired, or employed in the business of another.

Servant in husbandry

"Any person who works for another for a salary is a servant in the eye of the law."

The several CLASSES OF SERVANTS are (1) slaves, (2) menial servants, (3) apprentices, (4) labourers; (5) stewards, bailiffs, factors, agents, etc (*Ginter* v *Shelton*, 102 Va 185, 45 S E 892) The first sort of servants acknowledged by the laws of England are "menial servants," so called from being *intra maenia*, or do nestics Another species of servants are called "apprentices," from apprendre, to learn A third species of servants are "labourers," who are only hired by the day or week, and do not live *intra maenia*, as part of the family. There is yet a fourth species of servants, if they may be so called, being rather in a superior—a ministerial—capacity, such as stewards, factors, etc, with regard to such of their acts as affect their master's or employer's property. Besides these four sorts of servants may be mentioned clerks and shopmen, who, however confidentially they may be employed, are servants in the eyes of the law, merchant seamen, persons working in mills and factories, or mines and collieries (*Lewis* v *Fisher*, 45 Am. St. Rep. 327—citing 1 *Blackstone Comm* c 14)

SERVANT AND CONTRACTOR "There is a very plain distinction between becoming the servant of an individual, and contracting to do certain specific work The same person may contract to do work for many others, and cannot, with any propriety, be said to have contracted to 'serve' each of them" (*per* Bayley, J., *Hardy* v. *Ryle*, 9 B & C 611, 612).

SERVANT AND EMPLOYEE. In most cases the term servant is synonymous with EMPLOYER, and always includes those who render menial or manual services.

Servant in husbandry A "Servant in husbandry" is a person, whether male or female, whose chief employment is in works of husbandry, *i e*, management or working of horses or cattle, or the gathering in of crops, or any other work strictly pertaining to the manual labour required by farmers Therefore a farm bailiff is not (*Davis* v *Berwick*, 3 E & E. 549, 30 L J M C 84), but a dairy maid, who also does household work, is, a servant in husbandry (Ex p Hughes, 23 L J M C 138, *Stroud*.)

"Servant of the queen" defined, Act 45, 1860, s. 14.

The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chap 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government. (Penal Code, S. 14).

Servants. Domestics, those who receive wages and who are lodged and fed in the house of another and employed in his service.

SERVANTS. Persons employed by men of trades and professions, and private individuals under them, to assist them in their particular callings; or such persons as others retain to perform the work and business of their families, which comprehends both men and women and servants are menial, or are not so, menial, being domestics, generally living within the walls of the house. (Wood's Inst. 51; *Tomlins Law Dic.*)

Serve. To perform service. As applied to a summons of court to deliver it with judicial effect; in such manner as to charge the person with the receipt of it.

Serve a process of writ. To formally communicate a process of writ to the person to whom it is intended.

Serve a sentence To undergo a sentence,

Serve an attachment To levy a writ of attachment on the person or goods by seizure

Serve an execution To levy an execution on the person or property of a debtor by seizure

Serve an office To discharge the duties of an office

Served Where a sheriff makes his return "Served", a legal service is understood, that is, that it has been served according to law.

"Service" defined [*See* Active service, Military service, Naval service]

SERVICE. Applied to the commencement of a suit, that notice given to the defendant which makes him a party to the proceeding, and makes it incumbent upon him to appear and answer to the cause, or run the risk of having a valid judgment rendered against him in consequence of his default, serving the defendant with a copy of the process, the particular act of the officer by which the copy of the citation was communicated, the judicial delivery or communication papers, execution of process, the delivery or communication of a pleading, notice, or other paper in a suit, to the opposite party, so as to charge him with the receipt of it, and subject him to its legal effect.

SERVICE (*In Contracts*) The being employed to serve another

ACTIVE SERVICE (*Milit*) Service as soldier in the field

"Service by post' defined 52 3 V., c 63, s. 26.

SERVICE BY POST. Where any Act of the Governor-General in Council or Regulation made after the commencement of this (General Clauses) Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. [Act X of 1897 (General Clauses.) S. 27.]

A document is served "By Post", "by properly addressing prepaying and posting, a letter containing the document, and (unless the contrary is proved) to have been effected at the time at which the letter would be delivered in the ordinary course of post" (S 26, Interp Act, 1889). *See also* 35 Bom 213=11 I C. 351=13 Bom.L.R. 323.

Service grant. In the case of a grant for upkeep of mosque and performance of religious services therein the grantee is not bound to account for disposal of income so long as services are performed. (42 M L.J 272=1922 M.W.N. 74=15 L.W. 241=A.I. R. 1922 Mad. 8.)

Service line

"Service line" defined, Act 9, 1910, s. 2 (*l*).

Service of summons A letter containing the summons sent by registered post and returned with the endorsement "refused" is *prima facie* good evidence that the defendant had an opportunity of accepting it and amounts due and proper service (39 C W N 934)

'Service of a railway" is not limited to the actual running of the trains [3 Bur L J 147=26 Cr L J 190 =83 I C 894=A.I.R 1924 Rang 373 (2)]

"Service privy" defined, Ben Act 3, 1899, s 3 (42)

Service wattan *See* 36 Bom 151=12 I C 727

Serviens (*Lat*) (*In old English law*) A serjeant, or pleader

Serviens domini regis. A king's serjeant, a public officer

Servient estate or tenement The term 'servant estate", in the law of easements, is used to designate the estate in which another owns an easement

"Servient heritage" defined Act 5, 1882, s 4

"Servient owner" defined Act 5, 1882, s 4

Servitia solita et consueta The usual and customary services

Servitium (*Lat*) Service

LIBERUM SERVITIUM (*Lat*) Free service

Servitium forinsecum (*Lat*) Forinsic, Foreign, or extra service, service due to the king over and above the service due to the lord, in Feudal law

Servitium intrinsecum (*Lat*) Intrinsic or ordinary service the ordinary service due to the chief lord from tenants within the fee

Servitium liberum (*Lat*) Free service

Servitium militare Military service, knight service

Servitium regale Royal service, granted by royal prerogative to the lord of a manor

Servitium scuti (*service of the shield*). Knight service

Servitium semper sequitur homagium Service always follows homage

Servitium socae, socage, sokae, Service of the plough

Servitium solita et consueta The usual and customary services

Servitor Servant, one who serves

Servitude State of being a slave

SERVITUDES, Burdens affecting property and rights (*Tomlins Law Dic*)

A servitude or easement is a right which the owner of one estate, the dominant, has over another estate, the servient, which does not belong to him They are charges of one estate for the benefit of another, and are rights in *alieno solo* as distinguished from rights of ownership proper.

Servitus servitutis.

A NATURAL SERVITUDE is one which arises in consequence of the natural condition or situation of the soil.

A REAL OR PRAEDIAL SERVITUDE is a charge laid on an estate for the use and utility of another estate belonging to another proprietor.

RURAL SERVITUDES are those which are due by an estate to another estate, such as the right of passage over the serving estate, or that which owes the servitude, or to draw water from it, or to water cattle there, or to take coal, lime, and wood from it, and the like.

URBAN SERVITUDES are those which are established over a building for the convenience of another, such as the right of resting the joists in the wall of the serving building, of opening windows which overlook the serving estate, and the like

SERVITUDE IN GROSS A "servitude in gross" is a personal servitude imposed on land for the benefit of persons owning a right, irrespective of ownership of the land

Servitus. (*Lat*) A servitude, an easement,

Servitus actus The servitude or right of walking, riding or driving over another's ground

Servitus altius non tollendi The servitude of not building higher

Servitus aquae educendae The servitude of leading water

Servitus aquae educendae The servitude of leading off water

Servitus aquae hauriendae The servitude or right of drawing water from another spring or well

Servitus cloacae mittendae. The servitude or right of having a sewar through the house or ground of one's neighbour

Servitus fumi immittendi. The servitude or right of leading off smoke or vapor

Servitus ineris ferendi. The servitude of bearing weight

Servitus itineris The servitude or privilege of walking, riding and being carried over another's ground

Servitus luminum The servitude of lights.

Servitus non ea natura est, ut aliquid faciat quis, sed ut aliquid patiatur aut non faciat The nature of an easement is not that one should do anything, but that one should suffer, or refrain from doing something.

Servitus oneris ferendi the servitude of bearing weight

Servitus pascendi The servitude of pasturing

Servitus praedii rustici. The servitude of a rural or country estate.

Servitus praedii urbani. The servitude of an urban or city estate, an urban servitude.

Servitus praediorum. A praedial servitude.

Servitus projiciendi. The servitude of projecting

Servitus servitutis esse non potest. There cannot be an easement of (on) an easement.

Servitus stillicidi

Servitus stillicidii The servitude or right of drip, the right of having the water drip from the eaves of one's house on the house of one's neighbour

Servitus tigni immittendi The servitude of letting in a beam, the right of inserting beams in a neighbour's wall

Servus facit ut herus det The servant does (the work) in consideration of his master's giving (him wages).

Sessio parliamenti, The sitting of parliament.

Session. A sitting of justices in court, as the Sessions of Oyer and Terminer, etc (*Tomlins Law Dic*)

"The literal signification of the word 'Sessions' is 'sittings'

A "session" of Court signifies the time during the term which the court sits for the transaction of business, and the session commences when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term

SESSION AND TERM There is a broad distinction between an ADJOURNED SESSION and an ADJOURNED TERM of the court The word 'session" means a meeting of the court "Term" has a definite meaning, well known and well understood

Session laws The Acts passed at a legislative session

Session of Parliament (*Sessio Parliamenti*) The sitting of the Parliament, the Session of Parliament continues till it be prorogued or dissolved. (4 Inst 27 *Tomlins Law Dic.*)

Sessions "'Sessions', in our law, is a sitting of Justices in Court upon their Commission as the Sessions of Oyer And Terminer" (*Termes de la Ley*)

This term is used to denote the sitting of a Court of Justice, usually to exercise criminal jurisdiction (as) sessions court.

"Sessions case" *See* 4 C 16, 7 C L R 168.

"Sessions division" defined Act 5, 1898, S 7.

Set (*Mar*) One holding a Sanad or grant of lands for military service applied especially to a local militia acting also as police and as garrisons of forts also assignment of or grant of revenue of land for certain services, the assignment as well as the office, may be hereditary (*Wil Gloss*)

SET This word appears to be nearly synonymous with "lease". A lease". A lease of mines is frequently termed a "mining set".

Set apart. In a treaty providing that certain land shall be set apart to certain persons the words "set apart" are sufficient to convey title in fee simple to the land reserved.

To "set apart" land for a particular purpose, does not require that the setting apart should be irrevocable Re *Ponsford and Newport School Bd*, 1894, 1 Ch. 454]

"SET APART". Meaning of. *See* A I.R. 1936 Mad. 299.

Set-off

Set aside When it is said that a voluntary deed is void as against the creditors of a grantor, or will be set aside, the terms "void" and "set aside" are to be understood as meaning only that the conveyance, while good as against all others, shall not operate to defeat the equality of the creditors of the grantor.

Set fire. "As to what constitutes "setting fire" to constitute arson it is not necessary that flame should be seen" (*R* v *Stallion*, 1 Moody 398)

Set forth Where there are, in the operative part of a deed clear and unambiguous words of description of the lands or chattels to be thereby conveyed, such words will not be restricted by a statement that such lands or chattels are "described" or mentioned," or "specified", or "set forth" in a Schedule which gives an imperfect enumeration. (*Walsh* v. *Trevanion*, 19 L J Q B 458)

Set-free To release

Set-off A mode of defence, whereby the defendant acknowledges the justice of the plaintiff's demand on the one hand but on the other sets up a demand of his own to counterbalance it, either in whole or in part (*Tomlins Law Dic*)

The right of set-off is the right of a defendant in an action for a fixed and ascertained sum of money, where he has himself a liquidated demand against the plaintiff, to set one demand against the other

"Where there are mutual debts between the plaintiff and defendant, or if either party sue or be sued by the other one debt may be set against the other."

SET-OFF is a claim for debt or damages set up by the defendant against the plaintiff in reduction of his claims

A set off is a cross-action by the defendant against the plaintiff, which is allowed by statute to avoid a multiplicity of suits when the debts are mutual that is, when the parties are the same, and the debts are due in the same right

SET OFF, COUNTER CLAIM AND DEFENCE DISTINGUISHED A set-off, strictly speaking, is not a defence to the action in which it may be filed and when plaintiff's claim has been wholly satisfied by a set off he has not been defeated by a defence, but rather has been paid by the extinguishment of claims against him to an equal amount Nor is a counter-claim a defence, and placing a defence on the one side, and counter-claim and set-off on other, they will be readily distinguishable by the consideration that while the former merely precludes, or resists, any recovery on the part of plaintiff, the latter are in the nature of cross-demands, and admit of a recovery in the action by defendant against plaintiff

A counter-claim is a claim presented by a defendant in opposition to or deduction from the claim of plaintiff.

"SET-OFF" AND "COUNTER CLAIM', "confer definite and independent remedies upon a defendant against the plaintiff (*per* Brett, L.J., *Pellas* v. *Neptune Marine Insrce*, 5 C P.D 39)

A "counter-claim" may be defined as, a claim independent of and separable from, the plaintiff's claim and which formerly would have had to be enforced by a cross-action.

Set on foot.

Set on foot. Arrange; place in order.

Set out The use of the words "set out", in reference to the facts necessary to be set out in an indictment, means no more than the word "aver" or "allege"

"Set up an alibi". Where a defendant in a criminal prosecution sought to break the prosecution case by testimony tending to show that he was elsewhere at the time of the commission of the offence charged in the indictment, in common expression he is said to *"set up an alibi."*

Sets of exchange It has been common from a very early period, for the drawer to draw and deliver to the payee several parts commonly called a set, of the same bill of exchange, any one part of which being paid, the others are void

Settle. To adjust or ascertain, to pay

IN CONTRACTS. An agreement by which two or more persons who have dealings together so far arrange their accounts as to ascertain the balance due from one to the other, payment in full

Webster, defines "settle" as meaning, in law, "to adjust to liquidate, to balance, as an account, to pay, as a debt."

"To settle" is either synonymous with "to adjust" or it means "to pay"

"SETTLE" has a double meaning, and is used alike to denote an adjustment of a demand and repayment so that it is an ambiguous term, and evidence may be introduced to show the sense in which it is used

The word "settled" has no precise or determinate meaning In popular language, it intends going into a town or place to live and take up one's abode A person is said to be settled where he has his domicile or home.

"SETTLE A FAIR AND EQUITABLE RENT" The words "settle a fair and equitable rent" in S 105 (1), B T. Act do not exclude a case in which the existing rent is not varied (33 C 837=4 C L J 138)

"Settled" The same subject of property is *"settled,"* or "in *settlement,*" means that the property in it during successive periods is distributed among several owners for those periods respectively, and it often happens that during one or several of those periods the ownership is also distributed among several persons whose periods of enjoyment are wholly or partially concurrent (*See* Peachy on Settlements, 1860, Vaizey on Settlements, *Ency of the Laws of England.*)

"Settled estate" defined. Ben Act, 3, 1904, s 2 (1) (*b*), U P Act 2, 1900, s 2

SETTLED ESTATE. The meaning of "settled estate", whether in legal or in popular language, as contradistinguished from "estate in fee simple" is understood to be one in which the powers of alienation, devising, and transmission according to ordinary rules of descent are restrained by the limitations of the settlement (28 L.J.C P. 127)

"Settled estate" signifies, "all hereditaments and all estates or interests in any such hereditaments, which are the subject of a settlement."

Settlement of accounts.

"Settled for periods" The words "settled for periods" are not an admission that the settlement was *de jure* [77 I C 1048=32 M L T. 162=1923 M W N 511=50 Cal 446=50 I A 121=28 C W.N. 453=A I R 1923 P.C 1=45 M L.J 444 (P C).]

"Settled raiyat" defined. Act 8, 1885, s. 20 (1).

It cannot be said that a settled *raiyat* must necessarily be a *khudkhast raiyat* within the meaning of S 11, Cl (3) of the Putni Regulation The essential thing in a *khudkhast raiyat* is that he is a resident cultivator, who holds land in the village in which he has his fixed residence Even a non-resident cultivator can acquire the status of a settled *raiyat* by holding and cultivating lands in a village for a period of twelve years (41 C W.N. 1234=A.I.R 1937 Cal 686)

"Settlement" defined (*See also* permanent settlement) Act 1, 1877, s 3, *illn*, Act 2, 1899, s 2 (24), U P. Act 3, 1901, s 4 (11).

SETTLEMENT Discharge of a debt or claim, settling of a sum of money on a wife as a provision for herself and children, and (*in Stock Exchange*), fortnightly settling period.

STATUTORY DEFINITIONS "Settlement" means any non-testamentary disposition, in writing, of moveable or immovable property made (*a*) in consideration of marriage, (*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or (*c*) for any religious or charitable purpose, and included an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition [Act II of 1899 (Stamp, S. 2, Cl. 24)]

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act), whereby the destination or devolution of successive interests in moveable or immovable property is disposed of or is agreed to be disposed of [Act I of 1877 (Specific Relief), S 3]

A *Settlement* is, "any instrument, whether voluntary or upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever". (Eng Stamp Acts, 1870 and 1891)

Settlement of accounts A "settlement" is a contract between two parties by means of which they ascertain the state of the accounts between them and strike a balance

SETTLEMENT OF ACCOUNTS is a compromise or a contract between two parties by means of which they ascertain the state of the accounts between them and strike a balance, a determination by agreement; a mutual adjustment of accounts between different parties, and an agreement upon the balance, an

Settlement of land revenue.

accounting; adjustment; liquidation in regard to amounts, as a settlement of accounts, an adjustment between persons concerning their mutual dealings, an adjustment of accounts or claims, liquidation or payment.

The word "settlement" of accounts does not necessarily mean payment or satisfaction, though it may mean that It means liquidation of amount, arrangement of difficulties, adjustment, etc.

AMICABLE SETTLEMENT (OF ACCOUNTS). When a creditor relinquishes his claim to a sum of money due to him on the debtors taking a special oath proposed by him, that amounts to an *amicable settlement* between the creditor and debtor within the meaning of S. 12 (1) of the Debt Conciliation Act (20 N.L J 27.)

"Settlement of land revenue" defined Act 8, 1885, s. 110, *expln.*

"Settlement", in reference to paupers, has become in a manner technical, in so much that, when it is said that a person has a settlement in a particular town, it means that in case of need he has a right to support from the inhabitants of that town

Settlement, deed of. A deed made for the purpose of settling property, *i e*, arranging the mode and extent of the enjoyment thereof The party who settles property is called the settlor (*Brown*)

"Settlement-holder" defined. Reg. 1, 1886, s. 3 (*h*).

"Settlement-officer" defined Ben. Act 8, 1879, s. 3, Ben. Act 9, 1880, s 4 [ins. Ben Act 4, 10, 1910, s. 2 (3)]

"SETTLEMENT-OFFICER" means the Collector or any officer in charge of the revenue jurisdiction of a district, and includes any Assistant Commissioner, Deputy Collector or Sub Deputy Collector whom the Collector or other officer as aforesaid may authorize to conduct the inquiries and proceedings connected with any settlement of land-revenue, and any officer who may be appointed by the Lieutenant-Governor to make any such settlement Ben. Act [VIII of 1879 (Rent Settlement), S 3.]

Settling day. The last day of the Stock Exchange account.

Settling issues Deciding the forms of the issues to be determined in a trial. (*3 Steph. Com*)

"Settling rent" settling a rent must be distinguished from settling a dispute relating to rent. Where there is no rent fixed in the record of rights or where the rent mentioned is accepted as correct and increase or abatement is demanded, the decision of the officer is one settling the rent But where the Special Judge has found what the actual rent payable by the tenant is, it is not settling a rent. 32 C.W N. 999.

"Settlor" defined. Ben. Act 3, 1904, S. 2 (1) (*c*). Person who makes a settlement of property is called a "settlor" (*Brown*)

Sevaka. (*Tel*) A servant, a slave, a worshipper; a slave of a particular class in Chota Nagpur. (*Wil Gloss.*)

Seval. (*Tam.*) Watching corn in a field.

Severe.

SEVAL (*Tam.*) A red soil of the second class.

Sevalal (*Tam*) A watcher in a corn field.

Sever (*In practice*) To separate; to insist upon a plea distinct from that of other co-defendants.

Several Separate, distinct, individual, exclusive, appropriated. In this sense it is opposed to common, and it has been held that the word could not be construed as equivalent to respective.

"Several", meaning of [42 M L J. 559=(1922) M. W N 278=30 M L T. 344 (H C)=16 L.W 52=A.I. R. 1922 Mad 214]

"Several covenant" A several covenant is "a covenant by two or more severally, *i e*, separately". (*Jacob*)

Several liability (*See* Joint and Several liability) A liability imposed on two or more persons severally or separately

Several fishery A right to fish in a private water, either exclusively, or in conjunction with the owner of the soil.

"Several fisheries" means and includes, "all fisheries lawfully possessed and enjoyed, as such, under any title whatsoever (being a good and valid title at law) exclusively of the public by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons or in any other person or persons." (S I, 13 & 14 V, C 88)

Severalty. An estate held entirely by one owner in his own right

"He that holds lands or tenements in severalty or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein." (*2 Bl Com* 179)

Severance The separating or severing of two or more, joined as one. (*Tomlins Law Dic.*)

SEVERANCE in pleading, the adoption by several defendants of separate pleas instead of joining in the same plea In estates, the destruction of any one of the joint unities of a joint tenancy. The term is also used to signify the cutting of crops or the separating of anything from the realty.

SEVERANCE is the separation of a part of a thing from another, for example, the separation of machinery from a mill is a severance and in that case the machinery, which while annexed to the mill was real estate, becomes by the severance personalty, unless such severance be merely temporary. (*Morgam* v. *Varick*, 8 Wend. (N.Y) 587.]

Severance is the dissolution or severing of parties to a suit; or of joint tenants or coparceners.

A severance may be effected in various ways, namely, by partition which is either voluntary or compulsory, by alienation of one of the joint tenants, which turns the estate into a tenancy in common; by the purchase or descent of all the shares of the joint tenants so that the whole estate becomes vested in one only. (*Comyns. Dig.*)

Severe. (*See* Serious illness) Within the meaning of a life insurance policy, severe illness

Sevvaram

means such an illness as has, or ordinarily does have, a permanent, detrimental effect upon the physical system (*Boos* v *Life Ins Co*, 64 N Y 236.)

SEVERN Severn "is a wild unruly river, and many times shifts its channel" (*Hale, De Jure Maris*, ch 4.)

Sevvaram (*Tam*) A just division of the produce of a field between the owner and the cultivator

Sevyamu (*Tel*) Cultivation, ploughed land

'Sewa' The word "Sewa" may mean "in addition to" or "part from" Its meaning depends upon, the context (92 I C 338=2 Pat L R Cr 242=6 P L.T. 355=A I R 1925 Pat 313)

'Sewage', defined Ben Act 3, 1884, S 6 (17), Ben Act 3, 1899, S 3 (43), Bur Act 3, 1898, S 2 (9), Mad Act 3, 1904, S 3 (34), U P. Act 3 1894, S 3 (5)

"SEWAGE" means night-soil and other contents of privies drains, and cess pools [Ben Act III of 1884 (Municipal), S 6, Cl (17)]

"Sewage" means night soil and other proper contents of water-closets, atrines, urinals, privies, and cesspools, it includes polluted water from sinks, bath-rooms, stables, cattle-sheds and other like places (Bur. Act III of 1898, S. 2, Cl. (9))]

There is no prescribed definition of "*Sewage*" in the English P H Act, 1875, but the term as used in that Act, includes liquids (not injurious to health) coming from manufacturing processes, as well as ordinary house sewage (*per* Charles, J, *Peebles* v *Oswaldthistle*, 66 L J Q B 106)

Sewapanthis *See* 102 I C. 893=1927 Lah L J 276

Sewer According to Webster 'sewer" signifies a drain or passage to convey off water and filth underground.

In *Sutton* v *Norwich Corporation*, (1858) 27 L J Ch. 739 at p. 742, 6 W R 432, Vice Chancellor Kindersley says "The word 'sewer' comes from the word to 'sew', *i e*, to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals etc." In Wharton's Law Lexicon, the word is similarly defined as being a trench or channel through which water flows.

The word 'sewer' in S. 3 of the Bombay Municipal Act III of 1888 means drain or passage for the carrying off other water besides liquid filth 14 Bom L.R. 1169=14 Cr. L J 43=18 I C. 267 (268)

A sewer has been described as "a large and generally underground passage or conduit for fluid and feculent matter from a house or houses to some other locality," and again, as "a closed or covered water way for conveying and discharging filth, refuse and foul matter, liquid or solid" The word "sewers" in the English Public Health Acts has been construed to include all drains which receive the drainage of more than one house, and under such Act the word "sewer" applies not only to the main into which the various drains flow, but to the contributing drains as well Sewers are private and public; the one kind being under the dominion and subject to the use of a private individual, and the

Sexton.

other under the control of the authorities and subject to use by the public generally, though not necessarily accommodating the whole public

OTHER DEFINITIONS Sewer is a subterranean passage for drainage, usually constructed and maintained by a municipal corporation

A sewer is a trench artificially made for the purpose of carrying water in to the sea, river or some other place of reception

Sewer is a fresh water trench with banks on both, sides, to carry the water into the sea or other reservoir and thereby preserve the lands against inundations, etc (*Tomlins Law Dic*)

"Sewer" includes a pipe, ditch or channel, or any other device, for carrying off sewage [Bur Act III of 1898 (Municipalities) (S 2, Cl 10)]

SEWER AND DRAIN. A drain as distinguished from a sewer may be open and is so arranged as to carry away surface water, and the term "sewage" is generally held to include matter carried away in drains as well as that carried away in sewers.

It has been said that the only difference between drains and sewers is that they are "called sewers in cities and closely populated communities, while they are called drains in rural and agricultural communities, and the further difference that sewers are generally covered over to prevent the escape and dissemination of foul odors and noxious gases, and conceal the passage of their contents through the streets while drains are open And whatever technical differences there may be in the definitions of the two, the principles applicable to drains and sewers are very similar (*Ame Cyc*)

"Sewerage-connection" includes—(*a*) any sewer between any water-closet, latrine, urinal, privy, bath-room cook-room, sink, sullage-tray, manhole or trap on the one hand, and any sewer set apart by a committee for sewage and other offensive matter on the other hand, and (*b*) any cistern, flush-tank, land, building, machinery, work or thing constructed or used for collecting and passing any sewage into any sewer vested in a committee [Bur Act III of 1898 (Municipalities) S 2, Cl (11)].

Sewered "What is meant by a street being 'Sewered,' S. 150, P H Act, 1875, is, that it is 'sewered as a street,' as a certain space devoted to traffic with an interval between the houses, and as comprising the houses on either side It would be wrong to say a street is 'sewered' when all you have is a series of sewers draining some of the houses on one side in one direction, and the house on another side in another direction, not forming part of one system," [*per* Kekewich, J *Handsworth* v. *Derrington*, (1897) 2 Ch 438, 66 L J Ch 691, *Stroud*]

Sewing machine A sewing machine is a tool. There is no reason why a tool should be confined to primitive implements. (19 N.L R. 22=65 I C 416=A. I R. 1923 Nag 289.)

Sextery lands Lands given to a church for maintenance of a sexton or sacristan. (*Cowell.*)

Sexton "The Sexton, is the keeper of the holy things belonging to the divine worship. (*Phil. Ecc. Law* 1516.)

Sexual intercourse.

The word "sexton" is probably identical with segesten, segerstane, sacristan, saxton(Latin sacrista, the keeper of holy things for divine worship) The office of sexton, which originally was the same as that of ostiarius, in the continental portion of the Catholic Church of the West varies in practice in different parishes. (*See* Johnson, Clergyman's Vade Mecum, Phillimore, Eccl Law, Parish Law, Prideaux, Churchwarden's Guide, *Ency. of the Laws of England*)

SEXTON is an attendant or care-taker in a church building usually with care of the attached burying ground A woman may be a sexton (2 Srra 1114, *Ame Cyc*)

Sexual intercourse means actual contact of the sexual organs of a man and a woman and an actual penetration into the body of the latter (*State* v *Frazier*, 54 Kan 719)

Sey. (*Tam*) A field of rice corn, a certain measure of land

Seykal (*Tam*) Land which is cultivated, or capable of cultivation

Seykal-karambu (*Tam*) Land lying waste though capable of cultivation

Seykal-tarisu (*Tam*) Fallow or uncultivated land although formerly cultivated and capable of cultivation.

'Shade right' A 'Shade right,' is the customary right of the owner or occupier of the land to compensation for the damage done to his crops by the shade of adjacent trees It is a covenant running with the land and cannot be transferred independently. (7 N L R 1=10 I C 689)

Shadi (*Hindustani*) A marriage, a wedding, the festive celebration of a proper nikah

Shadid (*H*) Strong, vehement, violent presumption. (*Mac Moh Law*)

Shafia (*H*) A person having the right of preemption. (*Wil Gloss*)

The word "*Shafi*" in Wajib-ul-arz in its original sense never contemplated the question of blood relationship It means a conjunction, and under the Muhammadan Law there are three classes of preemptors, co-sharers in the subject matter of sale, co sharers in its appurtenances, and contiguous neighbours (9 I. C 49)

Shafia i-jar (*A*) A person having the right of pre-emption from occupying property in the neighbourhood of that which is for sale. (*Wil Gloss*)

Shafia-i-khalit (*A*) A person having right of pre-emption from occupying property in contact or intermixed with that which is for sale. (*Wil Gloss*)

Shafi-khalit By the term Shafit Khalit, according to the Hidya is understood a partner in the immunities and appendages of the property, such as a right to water and roads. (31 A. 519=6 A L.J 690 =2 Ind Cas. 458.)

SHAFI KHALIT are neighbours by common tenancy; partners. (*Mac. Moh. Law.*)

Shall

Shah (*Persian.*) A sovereign ruler The title is also given to eminent pirs or saints, and Saids often affix it to their names.

Shahajog (*Mar.*) Creditable, trustworthy; applied especially to a hundi, or bill of exchange marked with this word implying that the bearer may be trusted with the money also to coins which are manifestly good in Guzerat a promissory note, a cheque on the bank payable to bearer (*Wil Gloss.*)

Shahjog hundi A shahjog is not a bill of exchange nor a promissory note It is payable to the holder only and does not mean a hundi payable to bearer. (22 C L J 209=19 C.W N 1320=33 I C 250)

Shaikh (*H*) An old man, especially, one who has authority and respect an elder, a chief. a title given to various Mohammadan saints the head of an Arab tribe, the term is also used to designate the descendants of Mohammed, of Abubakr, and Omar. (*Wil Gloss*) The designation of those Musalmans who profess to be descended from the first or second caliphs or from the prophet's uncle Abbas.

Shajara Mash A Record of Right

Shajja (*A*) A wound, a personal injury short of destroying life wound of ten kinds are recognized by Mohammadan law as affecting the head and face in particular (*Wil Gloss*)

Shajra. Village map.

"Shalishani kariben" The use of the words in the Vakalatnama confers on the pleader an authority to refer the dispute to arbitration 121 I.C. 675 =56 Cal. 21=A.I R. 1929 Cal. 322

Shall In common parlance, a term which, it is said, has always a compulsory meaning, and in its common and ordinary usage, unless accompanied by qualifying words which show a contrary intent, always refers to the future, but it may be used in the sense of "must" of which it is a synonym As used in statutes, the word is generally mandatory; although it is not always imperative but may be consistent with an exercise of discretion Thus it may be construed to mean "may" when no right or benefit to any one depends on its imperative use, when no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or to any individual by giving it that construction, or when it is absolutely necessary to prevent irreparable mischief, or to construe a direction so that it shall not interfere with mental branches of government, and it also means "may" when used by a legislature in a grant of authority to a Court (*Ame Cyc.*)

The word "shall" in its ordinary signification is mandatory though there may be considerations which would influence the Court in holding that the intention of the legislature was to give a discretion. 51 M 839=A I.R 1928 M. 265=54 M L J. 344

The use of the word "shall" would not by itself make a provision of the Act mandatory It is to be construed with reference to the context in which it is used. 32 Bom L.R 1252=A.I R. 1930 B. 554.

'SHALL' does not always import obligation which excludes all discretion on the part of the doer. *See* 3 Bom.L.R. 653.

The word "shall" in S. 45 of the Specific Relief Act (I of 1877) has been used in its primary

Shall.

sense, *i e*, with an absolute and compelling force and is not a matter of discretion merely 26 B 396=4 Bom L R. 1 *See also* 9 Bom L.R 356=5 Cr L J 332, 2 S L R 18 Cr =10 Cr L J 231, 3 M L T 269= 18 M L J 150=31 M 185=7 Cr L.J. 346, 1 S L R. 50 Cr.=8 Cr L J. 170.

"Shall" construed as mandatory *See* 4 O W N 993 =105 I C. 912=1927 O. 506, 97 P L R 1911=8 I C 869.

The word "shall" in S 12, C P. Code (Act V of 1908) is imperative on the suitor and not upon the Court for whose benefit it is intended. 7 A 230 (F B); 5 A.W N 1 (*per* Petheram, C J)

The word "shall" in O. 46, R 7, C. P Code, has only a directory sense, and is not mandatory. 11 A 304=9 A W.N 75

"The words 'SHALL AND LAWFULLY MAY' are, in their ordinary import, obligatory, and ought to have that construction, unless it would lead to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act" (*per* Parke, B, in *Chapman* v. *Milvain*, 19 L.J Ex 230)

'SHALL' AND 'MAY' There is no authority for the proposition that the word 'may' can, in any connection, be read as meaning 'shall', though the word 'shall' may, under certain circumstances, be substituted for the word 'may' 21 C. 833 (835)

SHALL AND WILL. "Shall and will release" is not an actual release, but only a covenant to release (*per* Holroyd, J. *Thomas* v *Courtnay*. 1 B & Ald. 8)

SHALL BE The words "shall be," in S 57 of the C. P. Code, are an instruction which the Courts are bound to follow, and they are therefore a restraint upon jurisdiction 7 A 230 (F B)

"SHALL BE ALLOWED" The expression "shall be allowed" cannot be construed to mean "shall be admitted" or "shall be entertained" To admit the application is not the same thing as to allow it 165 I.C 387=40 C W N. 526=63 C.L.J. 19=A I R. 1936 C. 430.

"SHALL BE ANNULLED" Construed as discretionary and not mandatory 91 I C 467=1926 S 94

The words "SHALL BE COMPELLED TO GIVE" in S. 132 of the Evidence Act (I of 1872) apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. 21 C. 392 (400).

"SHALL BE DEEMED TO CONTRACT," The use of the expression "shall be deemed to contract" in S 55, Sub sec 2 of the Transfer of Property Act makes it clear that the contract so deemed to have been entered into should be taken as part and parcel of the transaction of sale, and where the circumstances require a writing registered, as embodied in such writing 15 M.L.J. 396.

SHALL BE LAWFUL "Whenever it is provided that it shall be lawful for a corporation or any officer to act in a certain way, it may be insisted on as a duty for them to act so, if the matter is devolved on a public officer and relates to the public or third persons (*Woodbury, J.*, 50 U. S. (9 How.) 248; 13 L. Ed. 125.)

Shall presume.

"Shall be lawful", as used in statutes, is synonymous with "must", which has always been held equivalent to 'shall' 10 Vt. 418 (419).

SHALL BE LIABLE TO PAY The expression "shall be liable to pay the costs" in cl (1), S 35, Administrator General's Act (II of 1874) shows that it was intended not to impose upon a creditor to whom the condition of exemption was inapplicable, an absolute obligation to pay the costs of the suit, but to leave a discretion to the Court to relieve him of the obligation if the circumstances of the case required it 25 C 54

"SHALL BE REJECTED" The phrase "his plaint shall be rejected" read with the provision as to an extension of time means that the plaint shall be rejected if the Court should not deem it proper to allow further time A I R 1923 L 643

"SHALL DEVOLVE" 111 I.C. 718, 8 I C 869 (872).

'SHALL HAVE POWER,' These words are enabling and not compulsory *See* 18 C W N 430=24 I C. 404

"SHALL HAVE REGARD TO" *See* (1937) 1 M L J (Supp) 1

"SHALL INCLUDE" The expression "includes" or "shall include" is used in interpretation clauses in two senses The ordinary and general sense in which it is used is to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include This expression is also susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expression defined It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning, which for the purposes of the Act must invariably be attached to those words or expression. 28 S L R 27=153 I C. 60=36 Cr L J 240=A I.R. 1934 S. 96

"SHALL INQUIRE" *See* 7 Bom L.R. 688.

"SHALL," "MAY" AND "IS LIABLE" The use of the words "shall" or "shall not" implies that no discretion whatever was intended to be allowed, while the use of the words "may be" or "is liable" implies the existence of a discretion of some kind but it is not a necessary conclusion that the discretion allowed is unrestricted 6 O W N. 19.

"SHALL NOT ACQUIRE ANY RIGHTS" 22 C. 641.

"SHALL NOT BE FILED" The words "shall not be filed" exhibited or recorded in any Court of Justice, or received or furnished by any public officer," in Court Fees Act, 1870, S 6, means that such certificate cannot come into existence until the person, who has the permission of the Court to obtain it, deposits the requisite amount of stamp duty. 12 C. 542

"Shall presume" defined Act 1, 1872, S. 4.

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as

Sham

proved, unless and until it is disproved (Evidence Act, 1872, S 4) *See also* 3 I C 709, 7 A L J 682=6 I C 609 (F B), 8 A L J 1025

"SHALL TAKE EFFECT" Meaning of *See* A I R 1936 P C. 123 (P C),

"SHALL TAKE EVIDENCE" *See* 31 A 453=6 A L J 685=3 I C. 482

Sham Good in appearance but false in fact, as a sham plea or answer

The word "sham" is defined by lexicographers as false, counterfeit, or pretended, and it has received the same interpretation when applied to pleadings

Sham answer In pleading, a sham answer is one good in form, but false in fact, and not pleaded in good faith 99 Fed Cas 838

Sham pleading A sham pleading is a pleading known to the party to be false, and generally interposed for the purpose of delay or other unworthy motive

A sham answer is one which is known by the party to be false, and is put in for the purpose of delay, or some other unworthy object (6 How Prac 312, 313)

Shameful A correct newspaper report headed "Shameful conduct" is libel, though the report itself be protected (*Clement* v *Lewis*, 3 Brod. & B 297, 3 B & Ald 702)

Shamil (*Kan*) Extra Assessment imposed by Hyder and Tippu (*Sund Iyer's Malabar Law*)

'Sham or colorable sale', meaning of *See* 24 M. L.J 293=18 I C 382.

Shamilat Comprehensive or coparcenary concern, lands which have never been divided, but are part and parcel of an estate held in common or in partnership by the whole proprietary body of a village, the lands of such village, which are not let out or severally appropriated, but which are cultivated in common, and of which the produce is divided amongst the proprietors according to recorded portions

Shamilat-banjar. Portions of common land—Kanara.

Shamilat-beris The entire assessment, the original with all additions.

Shamilat Deh Common land of a village.

Shamilat-taaluk A subordinate proprietary estate one comprehended within a zamindari, and paying revenue through the zamindar, but considered to be hereditary and independent property, and inalienable as long as the dues to the superior holder and Government are paid

"Shan State" defined Act 13, 1898, S. 3 (*e*), Act 6, 1900, S 2 (*e*), Bur Act 1, 1898, S. 2 (56)

Shanabhog (*Kan.*) Kurnam. (*Sundaram Iyer's Malabar Law.*)

"Shankalap koshist", meaning of. It may or may not be an under proprietary tenure (9 O L J 618 =A I R 1923 Oudh 27, Sykes Oudh Taluqdari Law, pp. 181-183).

Share

Shanti (*Mal*) The office of priest in a temple (*Moore's Malabar Law*) Temple priest in Malabar (*Sundaram Iyer's Malabar Law*)

Shara (*Arabic*) The law, the precepts of the Koran.

Sharab. (*Hindustani*) Spirituous liquor, whence the English Sherbet.

SHARAB (*Arabic*) In Muhammadan law, the offence of drinking wine Also the right to water or to use the draw-wells or channels of irrigation

"Shara-i-am" There can be no other meaning of the expression Shara-i am except a public thorough fare (171 I C 866=A I R 1937 Lah 70)

"Sharai dower" meaning of *See* 1 Luck C. 645.

Sharakat-baradari, (*H*) The association of brothers, or member of the same family living together on a common property (*Wil Gloss*)

Sharakati, (*Mar*) A term applied to villages or estates, the revenues of which are shared by government with others (*Wil Gloss*)

"Sharakati Inam" *See* 149 I.C. 292 (2)=35 Bom. L.R 150=A I R 1933 Bom. 168

Sharh-i vikayah A work on Muhamadan Law. "The Vikayah which was written in the seventh century of the Hijrah, by Burhanash-Shariyat Mahmud, as an introduction to the study of the Hidayah, has been comparatively eclipsed by its commentary, the Sharh-l-vikayah, by Ubaid Allah Ben Masuud This author's work combines the original text with a copious glossory explanatory and illustrative" (Introduction to Morley's Digest of Indian Cases Vol 1, p cclxx)

Shaiahmuaiyan raiyat has a complete right of transfer of his holding (159 I C 711=16 Pat L.T.702 =A I.R. 1935 Pat 470)

Sharaya ul-Islam is the most authoritative textbook of the Shiah Law [14 All 429 (F B.), *Rel. on.* 23 A L J 768=89 I C 690=A I R 1925 All 720.]

'Share" defined 46-7 V c 30, S. 2, Act 11, 1876, S. 3

SHARE A portion of anything. Sometimes shares are equal, at other times they are unequal.

The word "share" ordinarily means a part or definite portion of a thing owned by a number of persons in common. It contemplates something owned in common by two or more persons, and has reference to that part of the undivided interest which belongs to some one of them.

"'Share', *prima facie*, would not apply to Real Estate" [per *Turner, V. C*, *Stokes* v *Salomons*, 9 Hare, 83, 20 L J Ch 343]

A "SHARE" IN A COMPANY, "does not denote rights only, it denotes obligations also, and when a member transfers his share he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends or bonuses already declared, nor does he transfer liabilities in respect of calls already made, but he transfers his rights to future payments and his liabilities to future calls" (per *Lindley, L. J.*, Re *National Bank of Wales*, 66 L.J. Ch. 225, 226).

Share and share alike.

SHARES AND STOCK (OF A COMPANY), "Share" means share in the share capital of the company and includes stock except when a distinction between stock and shares is expressed or implied [Act VII of 1913 (Companies), S. 2, Cl (16)

"Share and Share alike" The phrase "'Share and share alike' has the same meaning as 'equal y to be divided'" (*Sug. Pow* 656, citing *Phillips* v *Garth*, 3 Bro C C. 64).

Under a will giving to each of the three children of the testator equal proportions, "share and share alike," each child takes an equal third part of the estate. (*29* N. Y. 39, 92).

The term "share and share alike", as used in a will bequeathing property to be divided among several beneficiaries, share and share alike, "does not necessarily mean that all the persons named should receive an equal share in the property, but such direction may be satisfied by being applied to a division between classes, and not to that between individuals, as, for instance, where testator made a residuary legacy to his living brothers and sisters, naming them, and to the heirs of the deceased sister to be divided in equal shares between them, the heirs of the deceased sister take, not an equal share with other persons named, but *per stripes*" (14 Atl 850, 852).

A devise to heirs, "share and share alike", will be construed as a direction that such heirs are to take *per capita*, and not *per stripes* [49 Mass (8 Metc) 450, 454.]

"Share in a Corporation" defined. Act 5, 1908, S 2 (19).

"SHARE IN A CORPORATION" shall be deemed to include stock, debenture stock, debentures or bonds Act V of 1908 (C P Code), S 2, Cl. (19)]

SHARE IN NET PROFITS A "share in the net profits" is an interest in the profits as profits, and implies a participation in the profits and losses. (53 N Y Supp 839, 840)

Share list A list of prices of shares of railways Banks, etc

Share of minor The share of the minor of which S 247 of the Contract Act speaks is no more than a right to participate in the property of the firm after its obligations have been satisfied [49 I.A 108=49 C 560 (570)=26 C.W.N 954=43 M L J. 41]

Share of stock of a corporation is the title of the shareholder to his proportion of the corporate property (55 Ame. Rep. 122).

A "share of stock" is "a right which the owner has in the management, profits, and ultimate assets of the corporation".

Chief Justice Shaw, by way of a definition of "share of stock," says: "The right is, strictly speaking, a right to participate in a certain proportion in the immunities and benefits of the corporation, to vote in the choice of their officers, to share in the dividends of profits, and to receive an aliquot part of the capital on winding up and terminating the active existence and operation of the corporation". "A share of stock is an incorporeal, intangible thing". (*Ame. Words and Phrases*).

Sharogar.

Share-brokers Persons engaged in the business of buying and selling shares and stocks for clients.

Share certificate Document issued by a public company to a shareholder, certifying the number of the shares held.

"Shareholder" defined [*N B* This word is also used in combination with other words (as) Recorded co-sharer, Recorded sharer] Act 11, 1876, S 3

In Company Law "*Shareholder*", 'only means the person who holds the shares by having his name on the register" (per *Chitty, J*, Re *Wala Wynaad Mining Co*, 52 L J Ch 88)

A shareholder in a corporation is one who has a proportionate interest in its assets and is entitled to take part in its control and receive its dividends. (67 Fed 816, 817)

Share warrant A document certifying that the bearer owns the shares specified and that they are fully paid up

Sharing in cultivation 'Sharing in cultivation' does not necessarily mean actual ploughing A person who helps another in his agricultural pursuits would be 'sharing in cultivation' although he does not actually plough the fields Sharing is not confined to ploughing, sowing, attending the crops or reaping them (94 I C 190=A I R. 1926 All 465)

Where the cultivation is personal the sharing must be personal, but where it is not personal it need amount to no more than taking a part in whatever arrangements are made by the tenant-in-chief When a member of an agriculturist family attempts to eke out the resources of the family by some extra work away from home which is not connected with agriculture, he does not cease to "share in the cultivation" *29* I C 22

DEFERRED SHARES Shares not entitling the holder to a full share of the profits, and sometimes to none at all, until the expiration of a specified time, or the occurrence of a specified event.

ORDINARY SHARES Shares forming the common stock of a company

Sharik The term Sharik means a partner or co-sharer with the vendor 7 A L J. 415=6 I C. 115. *See also* 7 A L J 1066

Sharik-fi-nafs-ul-mubaiat, (*H*) A partner in the matter of buying and selling. (*Wil. Gloss*)

Sharik Shikmi The words denote persons who hold land which has descended to them from a common ancestor, though their holdings are thus distinguished from owners in the village or patti who do not hold land so descended

Sharik zamindar Does not mean a co-sharer in the same Khatan Khewat It means a co sharer in the Zamindari. 2 I.C. 383 (All)

Sharkayan. In "wajib-ul-arz obviously refers to sharers in the sense of proprietors in the village and not merely to relatives or sharers in a joint family" and "*yakjadi* in Riwaj-i-am in all probability means the same". *See* 69 P R. 1885.

Sharogar In the southern pollaims, an officer or peons, or militia generally; but also an officer of any kind. (*Fifth Report.*)

Sharper

Sharper A swindler, a trickster, cheat.

Shartha Mulgeni (*Mal*) Mulgeni with a condition (*Sundaram Iyer's Malabar Law*)

Shaunaka (*Brihat*) A great Hindu sage and writer of an important Smriti that bears his name.

Shawls The word "Shawls" in the Railways Act is used in a special and restricted sense as meaning a costly woollen fabric and does not cover articles of cheap manufacture at home or abroad (39 C 1029, *Foll*, 42 A 7, *not Foll*) 47 B 18=24 Bom L R 416 =A I R 1922 B. 416 *See also* 41 M L J 603=14 L W. 614=65 I C 99

Sheep "Sheep", as used in an indictment charging a stealing of a sheep, includes a lamb. 2 Har. 541

Sheets of tin Sheets of tin, attached by their side to the shop by hinges and supported at the other end by props thus forming a verandah over the street and when the props are taken away the sheets hang down straight, cannot be considered as fixtures under Cal. Mun. Act. 63 I.C. 155=48 C. 602

Shell (*Milit*) A hallow projectile containing a bursting charge of gun powder or other explosive ignated at the required instant

Shell proof Proof against or able to resist shells or bombs.

Shell Room A magazine on board ship where shells are stored.

Shelley's Case, Rule in A case in which is stated the rule that you cannot limit an estate to a man for life, with a remainder to his children, or heirs in fee or tail The latter words will be words of limitation, not purchase, and the man will take a fee (*See* 1 Coke 104, 2 Bl Comm 172, Rob. El L. Rev. ed 101)

Shelter Refuge, a retreat; harbour, protection.

Shelve. To put aside

Sherif Shereef A descendant of Mohammad through his daughter Fatima

Sheriff (*Sax, scyre, shire, reve, keeper*) A county officer representing the executive or administrative power of the state within his county, the chief officer, under the King, in every shire or county, being so called from the first division of the kingdom into counties. (*Tomlins Law Dict*)

It seems that anciently the government of the county was by the king lodged in the earl or count, who was the immediate officer to the crown, and this high office was granted by the king at will sometimes for life, and afterwards in fee, but when it became too burdensome, and could not be commodiously executed by a person of so high rank and quality, it was thought necessary to constitute a person duly qualified, to officiate in his room and stead; from hence he is called Sherriff, from Shire reeve, *i e*, Governor of the Shire or County. He is likewise considered in our books as bailiff to the crown, and his county of which he hath the care, and in which he is to execute the king's writ, is called a Bailwick. (Co. Litt 168. *Tomlins Law Dict*)

Sheriff The office of "sheriff" is recognised in the earliest annals of English Law. It is much older than Magna Charta, and the exact time of its creation is involved in much obscurity, but the place and function of the sheriff is easily determined He has been in all times a chief peace officer of his bailwick Under all systems of government which have recognized the law as the supreme rule of action, it has been found absolutely necessary to vest in some one person the ultimate power to preserve the peace and quell disorder and suppress riots, and this person is the sheriff His power is largely a discretionary one In all times of great emergency or in a crisis of unusual danger, the limits under which his discretion may be exercised have been held by the courts not to be fixed (*Ame Words and Phrases*)

In English law the sheriff is the principal officer in every county, and has the transacting of the public business of the county The duties of the sheriff consist principally in executing writs, precepts, warrants from justices of the peace for the apprehension of offenders, etc

The word "sheriff" as a generic term, includes--not only the sheriff proper but also deputy sheriffs, constables, and the whole class of officers performing duties usually appertaining to the office of sheriff.

A DEPUTY SHERIFF is the deputy of the sheriff one appointed to act for the sheriff and not in his own name, person, or right.

Sheriff's Jury A jury composed of no determinate number, but which may be more or less than twelve, summoned by the sheriff for the purpose of an inquisition or inquest of office

UNDER-SHERIFF. The deputy of a sheriff who performs the execution of writs

Sheriff's Sale. A sale of property by a sheriff or his deputy, in execution of the mandate of legal process. (*Anderson Law Dict*)

A sheriff's sale supposes a judgment establishing the debt due, an execution upon that judgment; that delivered to an officer under oath, a levy upon property by such officer, advertising the same for sale naming some public place for the sale, an exposure of the property at public auction by such officer at the time and place thus advertised, so that not only the debtor himself and that particular creditor, but all the creditors of the same debtor, may attend and bid upon the property, and prevent a waste for want of bidders, and, in the end, an official return of the sale by such officer upon such execution to the office whence it issued where it may be seen by any person who may desire to see it An auction sale by a sheriff, made by agreement of the parties interested and without any previous advertisement, and not under any legal precept warranting the sale, is not, therefore, a sheriff's sale (19 Am Dec. 707)

Sheristadar. Keeper of the records, or one who keeps a record of accounts or particular transactions. The recorder in a Court of Justice under the Company's Government. A revenue accountant of a district, who checks the accounts of the regular village curnum or accountant.

Sherry. A kind of wine.

Shesham (*S.*) means the residue.

Sheti Watan (*H.*) The hereditary fees and perquisites of a seth. (*Macnaughten's Mohammadan Law.*)

Sheti Watan

Shet Sanadi.

Shet Sanadi. A shet sanadi is defined as 'One holding a sanad or grant of lands for military service, applied especially to a local militia acting also as police and as garrisons of forts, also an assignment or grant of revenue of land for certain services, the assignment, as well as the office may be hereditary" The services to be rendered need not necessarily be in the village itself or in connexion with the administration of the village 53 B 222=56 I A 44=A I R 1929 P C. 30=56 M L J 429 (P C)

Shevia (*Lat*) The word "shevia" in the Roman Law seems to have represented what we term "float", while "ratis" answers properly to our word "raft"

Shevul or shewul A description of land so called in Tanjore.

Shiah (*Arabic*) A follower, meaning a follower of Ali, the son-in-law of Muhammad, the name of the second great division of the Muhammadans

Shibeh i kawiy (*H*) Violent presumption. (*Mac Moh Law.*)

Shibeh-i-umd, (*H.*) Culpable homicide (*Mac Moh Law*)

Shift. Change (as) working by shifts in a factory.

Shifting burden of proof Changing the burden of proof from one party to another

Shifting clause In a settlement, a clause by which some other mode of devolution is substituted for that primarily prescribed.

"Shifting cultivation", defined Bur Act 4, 1902, S. 3 (13).

"SHIFTING CULTIVATION". Includes *taungya* cultivation and cultivation of such other kinds as the Local Government may, by notification, declare to be shifting cultivation for the purposes of the Forest Act Bur. Act IV of 1902 (Forests), S 3, Cl 13,

Shifting trust An express trust may operate in favour of additional or other beneficiaries upon specified contingencies and is thus a shifting trust (*Ame Words and Phrases*)

Shifting use A shifting use is a use which arises in derogation of a preceding estate It is distinguished from a "springing use" which is one which arises from the seisin of the grantor and where there is no estate going before it (90 N C 284, 288)

Shikami kashtkar (*H*) A holder of part of the village lands as a subordinate or dependent occupant cultivating his own share, and paying his proportion of the Government revenue through the representative of the community. (*Wil Gloss*)

Shikami-pattidar. (*H*) A coparcener in a joint tenancy village who cultivates his own lands, and pays his proportion of the government revenue, through one or more of the community, whose names are recorded in the government books as undertakers for the whole. (*Wil Gloss*)

Shikar. (*Persian*) Hunting, also game.

Shikari. A hunter, one engaged in, or whose profession is, the pursuit of game.

Ship

Shikast (*H*) Breaking, fracture, deficiency broken, impaired, carried away by inundation deficit in the collections, loss on the renter of an estate a broken or running handwriting This is a word used in various connections (*Wil Gloss*)

Shikast piwust (*H*) Literally "broken and joined" Alluvial land properly so called. (*Mac. Moh Law,*)

Shikdar shikkdar (*H*) A revenue officer or collector appointed either by the government or a zamindar to collect the revenue from an estate or a small tract of country under the Mogul Government it was sometimes applied to the chief financial officer of a province, or to the viceroy in his financial capacity under the Marathas, an officer in charge of a few villages collecting the revenue and superintending the cultivation subordinate to the officer in charge of the larger division, called Taraf (*Wil. Gloss*)

Shikdari (*H*) The office of the revenue collector termed shikdar. (*Wil Gloss*)

Shikmi The word shikmi as used in the word shikmi-taluq denotes some degree of dependence on the zamindar, and some vernacular equivalent having to be found for non-occupancy, it would not be inapt to describe tenants who are so much less independent of their landlords than tenants who possess occupancy rights [61 I A 93=38 C W N. 365=A I R. 1934 P C 5=66 M L J 298 (P C)]

'Shikmi dakhilkar' The word 'dakhilkar' is commonly used in the upper part of India as meaning a tenant with occupancy rights and the words 'shikmi dakhilkar' mean that the under-raiyat has occupancy rights in respect of the holding [A I R. 1931 Pat 361]

Shikmi ghatwali tenure Not liable to be sold in execution [4 C 388, 8 Pat. 116=116 I C. 41=A I.R 1929 Pat 198]

Shikmi sharik by its etymological sense means a partner whose name is not disclosed *See* 75 P R. 1908=122 P W R 1908

Shikmi taluq The word "shikmi" as used in the word "shikmi-taluq" denotes some degree of dependence on the zamindar [61 I A, 93=13 Pat 251=147 I.C 977=A.I R. 1934 P C 5=66 M L J 298 (P C)

Shilakkasu (*Mal*) Equivalent to Keikuli A fee or fine paid by a tenant to a Jenmi upon the renewal of a lease (*Moore's Malabar Law; Sund Iyer's Mal Law*)

Shilling The name of an English coin, of the value one-twentieth part of a pound. In the colonies there were coins of this denomination; but they varied greatly in their value.

Shinwari The name of a Pathan tribe living about the west rn end of the Khyber pass, and subsidized by the Amir of Kabul. They engage in the carrying trade and have a superior breed of mules and donkeys.

"Ship" defined *N B*—This word is also used in combination with other words (as) *See* British Indian ship; British ship; British steamship. Coasting ship Coasting steamer; Coasting vessel: Foreign-going ship; Foreign ship; Home-trade passenger ship

Ship.

Home-trade ship, Pilgrim ship, Steamer, Steam ship, Vessel) 33 4 V C 90, S. 30; 41-2 V c. 73 S 7, 57-8 V c 0, S 742, 6 Edw 7, c 58, S 13, Act 7, 1880 S 2, Act 5, 1883, S 3, Act 10, 1887, S 5 (1), Act 10, 1897, S 3 (51), Act 8, 1899, S 2 (*f*), Act 15, 1908, Sch I, Pt 2, *Expl* 1 (*a*), Ben Act 1, 1899, S 3 (40), Bom Act I, 1904, S 3 (43), Bur Act 1, 1898, S 2 (57), E B & A Act 1 1909, S 5 (56), P Act I, 1898 S 2, (52)

"Ship", shall include every description of vessel used in navigation not exclusively propelled by oars [Act X of 1897 (General Clauses), S 3 (51).]

"SHIP" means any vessel used for the carriage of goods by sea Act XXVI of 1925 [Carriage of Goods by Sea), Sch Art 1, Cl (*d*)]

In the Merchant Shipping Acts, "'*Ship*' has been defined to include every description of Vessel used in Navigation, not propelled by oars" (S 2, Mer Shipping Act, 1854 In Re *Ferguson*, 40 L J Q B 110, L R 6 Q B 291, 19 W R 746), Blackburn, J, (pointed out that "include" in that definition did not connote an exclusive application), and said,—"Whether a ship is propelled with oars or not, she is still a ship Most small vessels use something of the kind to propel them The vessels which came over in the Armada, with perhaps a thousand men on board, were rowed by hundreds of slaves Yet not one could say they were not ships I can only suggest that 'Eve y vessel that substantially goes to Sea is a Ship' I do not mean to say that every little boat that goes a mile or two outside a harbour is a ship, but that where it is really and substantially the business of a vessel to go to sea, it is a ship If the absence of oars were the test of a ship this would take in the case of river steamers which never go to sea Whenever the vessel is substantially a sea going vessel, whether it be decked or not decked, it would be a ship", within the meaning of the Merchant Shipping Act Accordingly in that case, it was held that a coble of 10 tons burthen, 24 feet in length decked forward only, with two moveable masts and a sail for each, and which coble was accustomed to go 20 miles out to sea, and was usually under sail, but was sometimes propelled by oars, was a "ship" But a vessel to be a "ship" within the definition need not necessarily, have been to sea A launched unfinished vessel intended for navigation is a "ship" (*The Andalusian*, 46 L.J P D & A 77 2 P. D 231)

Ship, is a vessel employed in navigation, for example, the terms the ship's papers, the ship's husband, ship wreck, and the like, are employed whether the vessel referred to be a brig, a schooner, or a sloop, or a three masted vessel

"Ship and equipment" defined 33-4 V, c 90, S 30

Ship brokers Persons engaged in promoting business between shipowners and traders, One who transacts business relating to vessels and their employment between the owners of vessels and merchants who send cargoes.

Ship damage "The term '*ship damage*' is imputable only to such damage as happens by the insufficiency of the ship, or the neglect of those who have charge of her" (*East India Co* v. *Tod*, 1 Brown P.C. 405; *Stroud*)

Ship passengers

Ship letter A letter despatched by a private vessel and not by the usual postal channels.

Ship-money An imposition charged upon the ports, towns, cities, boroughs, and counties in England in the time of King Charles I, by writs commonly called ship writs, under the Great Seal of England, in the year 1635 and 1636, for the providing and furnishing certain ships for the King's service, etc, which was declared to be contrary to the laws and statutes of the realm, the petition of right, and liberty of the subject by stat (17 Car 1, c 14, *Tomlins Law Dic*)

In *R* v *Hampden*, 3 State Trials, 825 it was decided "that when the good and safety of the Kingdom in general is concerned and the whole Kingdom in danger, the King might be writ under the Great Seal of England command all the subjects of this his Kingdom at their charge to provide and furnish such number of Ships with Men, Victuals, and Munition, and for such time as the King should think fit, for the defence and safeguard of the Kingdom from such danger and peril, and that by Law the King might compel the doing thereof in case of refusal and that the King is the sole Judge both of the danger and when and how the same is to be prevented and avoided" (Preamble, 16 Car I, c 14); for 'the Dominion of the Sea, as it is an ancient and undoubted right of the Crown of England, so it is the best security of the land, it is impregnable so long as the sea is well guarded The wooden walls are the best walls of this kingdom" (per Coventry, L. J *R* v *Hampden*, 3 State Trials, 837, 838). But that decision and the prior extra judicial opinions," were and are contrary to and against the Laws and Statutes of this Realm, the right of property, the liberties of the subjects, former resolutions in Parliament and the petition of right made in the third year of the Reign of His Majesty that now is." (S 2, 16 Cr. I, c. 14)

"Ship of a foreign state", defined *See also* Vessel of a Foreign State, 54-5 V. c. 31, S. 9.

Ship of war The term "ship or vessel of war" includes her armament, search lights, stores, and in fact everything attached to or on board of the ship in aid of her operations (*Ame Words and Phrases*)

The ports of every nation are considered as open to the ships of war of other powers with whom it is at peace They are exempt from all forms of process in private suit and cannot be seized or interfered with by judicial proceedings to punish violation of the public laws Such violations are to be remedied by the offended state appealing directly to the other sovereign. But such ships must not appear as a disturbing agency in the port of a friendly state They must conform to the rules of quarantine and anchorage, and a ship of war which refuses to comply with such local regulations may be refused admittance, or her stay limited. If any of her crew while on land infringe the laws of the country, they are subject to the local authorities, but if an offender escapes to his vessel, he cannot be pursued there. (Snow, Lect. Int Law 33, 1 Halleck, Int. L Baker's ed 217)

Ship passengers The general rules governing the rights, duties and liabilities of carriers of passengers

Ship receipt.

by land apply also to carriers of passengers by water

Ship receipt. "A ship receipt is the written acknowledgment of the mate receiving a cargo, acknowledging the receipt of the goods on board, describing them by the marks on them or the boxes."

"**Shipment**", in reference to goods, means a delivery on board a vessel.

SHIPMENT is the act of dispatching or shipping, especially the putting of goods or passengers on board for transportation by land or water

"SHIPMENT". The term "shipment" includes not merely the loading of goods on board the ship but also the starting of the ship. (20 C L J. 133=20 C.W N. 159=27 I C. 7)

A mercantile contract provided "SHIPMENT" IN FEBRUARY and the bill of lading was dated the 28th February The ship actually sailed some days later *Held*, that "Shipment" means "putting on board" Usually a bill of lading is not prepared till after the goods have been received on board and bears the same date as that of the master's receipt and the date of shipment is sufficiently proved by the production of the bill of lading. (28 I C 196)

"SHIPMENT BY STEAMER OR STEAMERS", means, that if a considerable portion of the goods under the contract in question are shipped by steamer within the time, that is to be a shipment which will satisfy the contract and one which the purchaser cannot reject because another portion is not shipped in time" (*per* Mellish, L J *Brandt* v. *Lawrence*, 46 L.J Q B 237, 1 Q B D. 344)

Shipper The owner of goods who entrusts them on board a vessel for delivery abroad by charter party or otherwise

The "SHIPPER" OF GOODS "means, the man who puts the goods into the vessel, with the intention of taking them to their destination" (*per* Jervis, C J., *Ribble Nav Co* v *Hargraves*, 25 L J C P 99)

Shipping articles An agreement, in writing or print, between the master and seamen or mariners on board his vessel (except such as shall be apprenticed or servant to himself or owners) declaring the voyage or voyages, term or terms of time, for which such seamen or mariners shall be employed; and other conditions of service

Shipping bills. Customs document containing particulars of goods on ship-board

Shipping business The term "shipping business" in its broadest extent may mean any and every kind of business relating to ships and may include ship building. (*Ame Words and Phrases*)

Shipping cards Cards issued by ship brokers giving dates of sailings, approximate dates of arrivals, and other information of use to shippers and traders

Shipping charters (*See* Charter Parties) A charter is merely a contract concerning a ship and does not require any particular form for its validity Usually it is a contract by which the shipowner agrees to carry goods or passengers on a specified

Ship's husband.

voyage, or it is an agreement for the use of the entire vessel for a period of time in such localities as may be designated The term "charter" commonly is not applied to a shipment of an individual package. Charter-parties are usually in writing, and terminable at will. As in other contract, the minds of the parties must meet without variance between the offer and acceptance

Shipping note Delivery or receipt note concerning goods sent for shipping.

Shipping price. "Shipping price", as used in an agreement for the purchase of nuts at the then "shipping price" at a certain port, is not equivalent to "reasonable price" "A contract to furnish a cargo at a reasonable price means such a price as the jury, upon trial of the case, shall under all the circumstances decide to be reasonable This price may or may not agree with the current price of the commodity at the port of shipment at the precise time when such shipment is made The current price of the day may be highly unreasonable from accidental circumstances, as on account of the commodity having been purposely kept back by the vendor himself, or with reference to the price at other ports in the vicinity, or from various other causes." (10 Bing. 376, 383)

"**Shipping value**" (*In Marine Insurance*) "includes not only the cost but, the premiums of insurance" (*per* Blackburn, J, *Anderson* v *Morice*, L R 10 C P 614)

Shipping weight. Weight of goods put on shipboard

Ship's bill A "ship's bill" is a bill of lading retained by a ship, designed only for information and convenience, and not for evidence as between the parties of what constituted their agreement. (20 L. Ed 804)

Ship's certificate of registry Document issued after the completion of the building of a ship, setting forth the name, build, tonnage, and other particulars

Ship's clearance inwards The customs certificate that all dues and demands in respect of an outgoing vessel have been satisfied.

Ship's clearance outwards. The customs certificate that all dues and demands in respect of a home-arriving ship have been satisfied.

Ship's company. The term "ship's company" embraces all the officers, as well as the common seamen. (28 Fed Cas 733, 735)

"A mere passenger, from the time of the Laws of Oleron down to the present day, has not been considered one of the crew or ship's company, the latter being the mariners, and having a voice in times or peril in consultation, and being under obligation for service and obedience." Therefore the terms in a statute making criminal certain acts on the part of a member of the crew, or ship's company, does not apply to a passenger (26 Fed. Cas. 928, 931)

Ship's husband. A peculiar agent appointed by the owner of a ship to look after the repairs, equipment, management, and other concerns of the ship.

Ship's manifest.

He is an agent "to do what is necessary to enable the ship to prosecute her voyage and earn freight." (*Barker* v *Hughley*, 32 L J C P. 270) He is the agent of the owners of a ship, who manages the affairs generally, sees to repairs, insurance, charter-parties, etc

The ship's husband or managing owner has authority to do whatever is necessary to enable the ship to prosecute her voyage and earn freight And for all such purposes he is the agent of the owners and can bind them by his contracts

Ship's manifest A ship's paper, containing full details of the vessel's cargo and the ports for which she is bound.

Ship's officer. Any one who by authority exercises the function of control over the ship the actions of the crew or any part of it, by giving directions to their work, is ship's officer. (30 Fed 490, 491)

Ship's papers The papers or documents required for the manifestation of the ownership and national character of a vessel and her cargo, and to show her compliance with the revenue and navigation laws of the country to which she belongs These documents are required for the manifestation of the property of the ship and cargo, etc These papers, must go with the ship and comprise the certificate of registry, the contract with the seamen, Charterparty or Bills of Lading, Manifest, Official Log and Bill of Health

Ship's passport Document, given in time of war to the master of a neutral ship, containing all particulars necessary to show the vessel's nationality, ownership, equipment, cargo, etc.

Ship's protest Declaration, made before a notary setting forth particulars of loss or damage to ship or cargo, necessary for production to underwriters before adjustment of claim

Ship's report A form which every master of a ship is required to fill up immediately on arriving in port, setting forth all particulars as to vessel, crew, cargo, etc

Ship's store bond A document given by a shipowner or captain in respect of dutiable articles to be used as stores during a voyage

Ship's stores Articles necessary for the provisioning of a ship

Ship's tackle, apparel and furniture. Special apparatus or appliances on board of a vessel engaged in a particular business, which are indispensable to the proper prosecution thereof, and not constituting in any sense a portion of the cargo, are a part of the ship's "tackle, apparel and furniture", and liable as such for seamen's wages and supplies. (11 Fed 602, 606)

Shipwreck The breaking of a ship so that she no longer exists in her original nature (*Ame. Words and Phrases*)

Shipwrecked goods. The words "shipwrecked goods," in their ordinary legal meaning, are confined to goods cast on shore, and cannot be extended to boats or other property afloat, not appearing to have ever been cast a shore, or thrown overboard, or lost from a vessel in distress. (106 Mass. 286, 288; *Ame Words and Phrases.*)

Shop.

Shipyard. "Shipyard," as used in a fire insurance policy on the stock in a shipyard, embraces the ground adjoining the inclosure so far as it is used for keeping the stock of ship timber there provided for use [4 N Y Super Ct. (2 Sandf) 497, 505]

Shirakat nemeh (*H*) A deed of partnership. (*Mac Moh Law*)

Shire A Saxon word which signified a division; it was made up of an indefinite number of hundreds —later called a county (1 Steph. Com 76)

"Shishya shishanukrame" These words in a deem of endowment, means disciple following after disciple, and do not show that the maker of the endowment intended that one disciple should be succeeded by his own disciple, and not by a brother disciple, of the previous shebait. (13 I C 329, 330)

Shist (*Kan*) Remainder, Kist Balance of standard of rent after deductions Land allowed to be held at a favourable rent by an individual, either as a reward for services, or as a compensation for duties to be discharged, being similar in its application to manium (*Fifth Report*)

Shist or rekha (*Kan*) Old assessment of Vizianagar and Bednore Rajas (*Sund Iyer's Mal. Law*)

'Shivaijama,' meaning of—Incidents of tenure (*See* 1914 M W N 24=21 I C 807)

Shivaijama grant Incidents of. *See* 1914 M. W N 380.

Shock. A "shock" is a sudden agitation of body or mind It may affect the body or mind. (60 Fed. 557, 559)

SHOCK "Shock" is defined by Charles L Dana, M D, as a sudden depression of the vital functions, especially to the circulation, due to the nervous exhaustion following an injury or a sudden violent emotion, resulting either in immediate death or in prolonged prostration, and is spoken of as being either corporeal or psychical, relating, respectively, to the vital powers and the emotions of the mind. (72 Pac 590, 593)

"Shoots" The word "shoots" means discharges a fire arm or other weapon" It does not mean going for shooting (25 S L.R. 217=134 I C. 377=A.I R. 1931 Sind 156)

The word "shoot" is frequently—perhaps usually —employed in the sense of "skill" (52 N W. 775, 778) (as) he shot him dead.

"Shop" defined Mad. Act 3, ins., 1864, S. 2, Mad Act 5, 1879, S 4 (1)

SHOP is a place kept and used for the sale of goods (77 Am Dec 333) A building as distinguished from a place of sale which is open like a stall. In order to constitute a shop there must be some structure of a more or less permanent character. (6 B. & S. 303.)

A shop must be "something more than a mere place for sale, it imports a place for storing also, where the commodities admit of storing" (*per* Meller, J., *Pope* v. *Whalley*, 34 L.J M.C. 80).

"In order to constitute a shop, there must be some structure of a more or less permanent character"

Shop.

(*per* Mellor, J, *Hooper* v. *Kenshole*, 46 L J M C. 162, 2 Q B D 127)

The word "Shop" implies a place where a retail trade is carried on. (*R.* v *Chapman*, 7 J P 132)

The word "shop" in its ordinary meaning denotes a building which is primarily used by buying and selling goods. (69 P R. 1915=31 I C 191 *See also* 15 Bom 530)

The word "shop" denotes a building primarily used for the retail sale of goods Where a building was mainly used as a residence, the mere fact that a part of it is used as a tailor's workshop does not convert the whole of it into a shop (73 I C 454=A I R. 1923 Lah 209)

The word "shop" in S. 5 of the Punjab Pre-emption Act is primarily a place where goods are bought and sold and cannot be extended to business premises in the general sense of the word Consequently the house where a carpenter lives does not become a shop merely because he also works in that place. (100 I C 910=A I R. 1927 Lah 328)

"Shop" includes dwelling-house and warehouse or other place of business, or place where business is transacted [Bur. Act IV of 1899 (Rangoon Police), S 5, Cl (3)]

"A tavern would not come within the definition of 'shop,'" (*per* Huddleston, B, *Coombs* v *Cook*, Cab & El 75)

SHOP AND STALL "Shop" is an English word meaning the building itself, as distinguished from a place of sale which is open like a stall (27 N W 586.)

SHOP AND STORE "Shop" ordinarily means a place in which a mechanic pursues his trade, as a carpenter shop, blacksmith shop, or shoemaker's shop It is not the legal equivalent of "store", as used in a statute making it an offence to keep a store open on Sunday (25 Am Rep 643)

The words "store" and "shop" may be used interchangeably, so that a butcher shop is a "store", within the meaning of a statute prohibiting the keeping open of a store on Sunday (58 Ark 1)

Shop books The books of a retail dealer, mechanic, or other person, in which entries or charges are made of work done, or goods sold and delivered to customers, commonly called "account books," or "books of account."

Shop-keeper One who keeps a shop for sale of goods on retail.

SHOP-KEEPER differs from a merchant in that he is a small dealer. (25 Ame Rep 643)

Shop-man One who serves in a shop, one who attends to customers

Shop steward A "shop steward" is an officer of a labor union, whose duty is to keep a record of all non-union men on works where he is employed, and present their names at the branch meeting (*Ame. Words and Phrases*)

Shop-woman. A woman employed in a shop

FANCY SHOP. Shop where fancy goods are sold

Short title.

"Shore" The shore of the sea is that part of it covered by water, whether in winter or summer. (*See* 30 Ame Rep 331)

'SHORE," denotes that specific portion of the soil by which the sea is confined to certain limits. The Crown, by the grant of the 'sea shore,' would convey not that which at the time of the grant is between the high and low water marks, but that which from time to time shall be between these two termini Where the grantee has a freehold in that which the Crown grants, his freehold shifts as the sea recedes or encroaches" (*per* Bayley, J, *Scratton* v. *Brown*, 4 B & C 496, 498)

SHORE AND BEACH. "Shore" is defined to be land on the margin of the sea or a lake or river, that space of land which is alternatively covered and left dry by the rising and falling of the tide, the space between high and low water marks It is synonymous with "beach" (*Ame Words and Phrases*)

SEA-SHORE is that ground that is between the ordinary high-water and low-water mark This doth, *prima facie* and of common right, belong to the king, both in the shore of the sea and in the shore of the arms of the sea" (*Hale*, De Jure Maris, Ch 4.)

Shore bills Bills of exchange having less than ten days to run.

Shoreward. Towards the shore

Shorage. Duty on goods when brought on shore from a ship

Short. Every merchant who sells you something not yet in his stock, but which he undertakes to get for you, is selling "short" in the language of the stock market (73 Am St. Rep 812)

A short transaction in relation to stocks is a sale of stock before purchase, usually with a view of purchasing at a future time, at a lower price, for delivery.

Short dated Having little time to run from its date as a short dated bill

Short exchange Rates quoted for bills payable on sight or within a few days after.

Short interval Two months and fourteen days is too long a period to constitute a *short interval* (A I.R 1923 Rang 176)

Under the Burmese Buddhist Law, where a husband and wife die within a short interval, the surviving parents of both share the joint acquired property of the former *'Short interval'* for this purpose is a period not exceeding one month. (63 I C 715=13 Bur L T. 194)

Short loans Advances for short specified periods at a fixed rate of interest

Short title The modern practice of giving a short descriptive title to an Act of Parliament began with the Clauses Consolidation Acts of 1845. In England the Short Titles of existing Acts prior thereto, and of subsequent Acts which have not in themselves a short title, are provided by The Short Titles Act, 1896. *See also* the Indian Short Titles Act 14 of 1897.

Short Titles Act

Short Titles Act An Act for shortening language of Acts, 13 & 14 V ,c 21, repealed and replaced by Interp Act, 1889, *See also* Indian Act 14 of 1897

AT SHORT SIGHT means that a bill is payable soon after being presented.

"Short voyage" defined. Act 10, 1887, S. 5 (4).

Shortage. Shortage is any deficiency in a quantity warranted.

Shortly The statement that memoranda are inadmissible to refresh the memory of a witness unless reduced to writing "shortly after the time of the transaction" about which witness is testifying, has apparently a very unsettled meaning

Shot Act of shooting, a marksman; a missile, the distance passed by it, a small pellet.

Shot proof. Proof against shot

Shotriumdar or shrotriumdar (*See* Shrotriem) The holder or possessor of a shortrium. (*Fifth Report*)

Should The expression 'should' in footnote of Form No 26, Appendix A of the Indian Companies Act, 1913 indicates that the provision is not mandatory (A I R 1931 Cal 265=35 C W N 727=131 I C 592 *See also* 5 L B R 17=2 I C 361=9 Cr L J 581)

Show "Show" means to make clear or apparent, as by evidence, testimony, or reasoning, to prove

"Showing" a case to be within the purview of a statute consists of a disclosure of the facts which prove it within such statute

"SHOW" AND "STATE" There is a material distinction between "showing" a fact and "stating" it In the former case satisfactory proof may be required, in the latter the mere recital of the fact is sufficient. (8 Am. Rep 709)

"Show cause" Where the Court calls on a party to "show cause", that by necessary implication would allow the other side to answer (*per* Brett, L J, *Davis* v *Spence*, 1 C P D 721)

The expression "show cause" in the second para of S 44 of the Dekkhan Agriculturists' Relief Act (Bombay Act 17 of 1879) mean, to allege and prove sufficient cause It does not mean merely to "allege cause" without proving it, or, in other words, merely "to object" (20 B 208)

The words "show cause" in S 525, C P Code do not mean simply putting in a verified petition of objections. The party opposing the filing of the award must show sufficient cause, that is to say, must establish by argument, or proof, or both, reasonable ground for the conclusion that the award is open to any of the objections mentioned in S. 526 or S. 521 (8 A 340=6 A.W.N 107)

Show place. Place for exhibition of goods

Show-room Room where a show is exhibited or goods displayed to the best advantage

"SHOWS AND AMUSEMENTS", as used in a Rev Statute authorizing city councils to license and tax the exhibitions, "shows and amusements" include horse races held in an inclosure. (*Ame. Words and Phrases.*)

Shukrana.

Shradha (*S*) Offerings to the manes. (*Moore's Malabar Law*)

"Shree sahi" The word "shree sahi" can be taken to be the signature of the person whose name appears in the document as the executant of the same. (58 Cal. 686=133 I C 696=A I R 1931 Cal. 596)

Shrew A brawling troublesome woman, a scold.

Shrift Confession made to a priest, absolution—especially of a dying man

Shrine Sacred place, an altar, anything hallowed by its associations

SHRINE To hear a confession and give absolution to

Shroff (*Hindustani*) A banker, a money changer. Also and more commonly, an expert employed in Banks and treasuries to examine money

"SHROFF" is generic term for an Indian banker or financier, and is not confined to any particular community [112 I C 610=30 Bom L R 1317=A I. R. 1928 Bom 487]

Shroffage The business of examining coins to detect the base ones

Shrotriem A shortriem grant may be a grant of kudivaram as well as melwaram What it includes in a particular case depends on the terms of the grant and the surrounding circumstances. [145 I C. 588 (2)=A I R 1933 Mad 194 *See also* 1 L W. 41=23 I C 113]

"Shrotriem Grant". 15 M L.T 277.

Shrutis or the vedas, are the primary sources of Hindu Law

Shufah (or shufaah) Any possession coveted in Mohammadan law, the right of pre-emption vested in partners, coparceners and neighbours, with respect to land and real or immovable property. (*Wil Gloss.*)

SHUFAAH (*H*) (In the language of the law) signifies the becoming proprietor of lands sold for the price at which the purchaser has bought them, although he be not consenting thereunto The right of pre-emption. (*Mac Moh Law*)

Shubha. (*H*) Doubt, suspicion in law a legal defect, a flaw what may be pleaded in Bar of punishment also anything which may appear lawful but really unlawful (*Wil Gloss*)

Shudkar (*H*) Ground tilled and sown: an estimate or valuation of a crop from inspection only the designation of the temporary settlement of the revenue of the North West Provinces made in 1830 an inspector and valuer of the crop. (*Wil. Gloss.*)

Shukka. (*H*) A royal letter or missive, a letter from a superior (*Wil Gloss*)

Shukrana (*H*) Praise, acknowledgment, thanks. a complementary or greatful present a fee or present paid by the party to a suit in whose favour it is decided a ceremony practised at the marriage of Mahammadans in India, the sending of cloths, jewels and sweetmeats, sugar and spices from the

Shurkai Deh.

relations of the bride groom to those of the bride of whom the nearest of kin is required to consent formally to the marriage. (*Wil Gloss*)

Shurkai Deh The words "shurkai deh" taken in their natural meaning, imply that the pre-emptor in question must be a partner with the vendor in the same mahal (11 I C. 320)

Shurkayani Shikmi. *See* 5 A L J 52=1908 A W N 16=30 All. 77

Where the wajib-ul arz of a village gave a right of pre-emption, first to *shurkayan-i shikmi* then to *shurkayan i-jadd* and lastly to *khewatdars*, held that *shurkayan-i shikmi* was intended to denote relatives by blood in not co-sharers in any sub-division of the mahal (30 A 77=5 A L J 52)

Shut down 'A saw-mill which has stopped running for the winter is "shut down" within the meaning of such term in a provision of an insurance policy, though men are employed upon the premises, shipping lumber therefrom, and the machinery has not been dismantled and put in shape for the winter To say that a saw-mill is shut down when it is not running and is idle is to use an expression which is perfectly plain and easily understood by the average layman It calls for no expert opinion To assert the contrary is idle It would be little more unreasonable to say that the train stopping at a station had not stopped because freight was being delivered from the cars" (41 Pat 922, 926, 112 Calif. 548; *Ame Words and Phrases*)

Shut for dividend The term refers to the period when the transfer books of the public companies are closed for the making out of dividend warrants No transfer can be registered during this period

Shyster A trickish knave, one who carries on any business especially a legal business in a dishonest way.

Si a jure discedas vagus eris, et erunt omnia omnibus incerta If you depart from the law you will go astray, and all things will be uncertain to every body

Si aliquid ex solemnibus deficiat, cum aequitas poscit, subveniendum est When any one of the proper forms is wanting, it will be added if equity requires,

Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima If you look at its antiquity, it is the oldest if at its dignity, it is the most honorable, if at its jurisdiction, it is the most comprehensive. (Spoken of the High Court of Parliament)

Si assuetis mederi possis, nova non sunt tentanda. If you can be relieved by accustomed remedies, new ones should not be tried

Si in aere non habeat, in pelle luat If a man has not (the means of satisfaction) in money, he must pay in his skin, if a man cannot pay his fine he must go to prison.

Si nulla sit conjectura quae ducat alie, verba intelligenda sunt ex proprieta non grammatica quae est ex origine, sed populari ex usu. If there be no conjecture which leads to a different result (if there be no reasonable ground for a different interpretation), words are to be understood, not according to their strict grammatical and etymological meaning, but in the popular and ordinary sense.

Sickness

Si non appareat quid actum est, in contractibus veniunt ea quae sunt moris et consuetudinis in regione in qua actum est If it be not clear (if the instrument do not clearly show) what has been done, the custom and usage of the place in which the transaction took place may be applied in explanation of the contract

Si quid universitati debetur singulis non debetur, nec quod debet universitas singuli debent If any thing is due to a corporation, it is not due to the individual members of it, nor to the members individually owe what the corporation owes.

Si quis in nomine, cognomine, praenomine legatarii erraverit, si de persona constat, nihilominus valet legatum If one should have made a mistake in the nomen, cognomen or praenomen of a legatee, if it be clear as to the person intended, the legacy is nevertheless valid

Sianat (*H*) Protection in law the privilege of being under the protection of the law restricted to the faithful and withheld from aliens and infidels (*Wil Gloss*)

Sibandi (*Persian*) Irregular soldiery, a sort of militia or imperfectly disciplined troops maintained for the garrisons of forts and guards in towns and villages and for the collection of revenue

Sic enim debere quem melierem agrum suum facere, ne vicini deteriorem faciat Every one ought so to improve his land as not to injure his neighbour s.

Sic hic (*Lat*) So here.

Sic interpretandum est ut verba accipiuntur cum effectu (A statute) is to be so interpreted that the words may be taken with effect

Sic volo, sic jubee, stat proratione voluntas. So I will, so I order, stand my will for the reason.

Sicca (*Hindustani*) A seal, a stamp, a coining die Applied as an adjective especially to the silver currency of the Moghul emperors, whose sicca rupee was the general standard of value until superseded by the Company's rupee The sicca rupee as last coined weighed 192 grains, of which 176 were pure silver

The Calcutta Sicca Rupee though coined by the Company is never known as Company's Sicca Rupee. (46 Cal. 347=30 C L J 246=47 I C 109)

Sich "is a little current of water which is dry in summer, a water furrow or gutter". (*Jacob.*)

Sickness "Sickness", connotes disease (*per* Campbell, C.J, *R.* v. *Huddersfield*, 26 L J. M.C. 171).

Incurable blindness is "Sickness". (*R.* v. *Bucknell*, 3 E & B 587.)

Lunacy is "Sickness". (*Burton* v *Eyden*, 42 L J. M C. 115)

Archibald, J., said, "There can be no doubt that insanity is a species of sickness".

Sickness.

Inability to work from mere old age, is not "sickness. (*Dunkley* v *Harrison*, 51 J P 227).

Pregnancy is not, of itself, "sickness". (26 L J M C 169)

Sic utere tuo ut alienum non laedas so use your own that you harm not another's *See also* (1937) 1 M L J 197.

Sicut natura non facit saltum, ita nec lex As nature does nothing by a bound or leap (in a hurried or irregular manner), so neither does law

Sicut me deus adjuvet So help me God.

"Siddhi" defined Ben. Act 5, 1909, s 3, E B & A Act 1, 1910, s 5.

Side "No doubt, in a certain context, the word 'Side' might be so used as to be shown, by that context, to be contra-distinguished from the top, or bottom, or end of a subject of quadrilateral or any other figure But for this purpose a determining context is necessary In the absence of such a context, it is accurate, both in scientific and in ordinary language, to say that a quadrilateral table has four sides" (*per* Cairns, C, in *Ridsdale* v *Clifton*, 2 P D 341, 46 L J P C 60, 61)

To speak of a thing being on the "*Side*" of some other thing," contemplates some degree of proximity" (*per* Fry, L J, *Ravensthorpe* v *Hinchcliffe*, 59 L J M C 22)

Side lines The side lines of a road or railroad are the lines which include the territory covered by the road Public roads and highways and railroads are regarded as having three lines, the side lines and the center line equi-distant between the side lines

Sidelings are 'means betwixt or on the sides of ridges of arable land" (*Jacob*)

Sidewalk That part of a public street, road or highway designed for the use of pedestrians

A sidewalk is that part of a street which the municipal authorities have prepared mainly for the use of pedestrians. (85 Am St Rep 335)

As used generally it does not mean a walk or way constructed of any particular kind of material, or in any special manner, but ordinarily is used to designate that part of the street of a municipality which has been set apart and used for pedestrians, as distinguished from that portion set apart and used for animals and vehicles (*Graham* v. *Albert Lea*, 48 Minn 201, 50 N W 1108)

Generally the sidewalk is included with the gutters and roadway in the general term street

Sidi (*H*) A name given to the descendants of natives of Africa in the west of India, some of whom were distinguished officers of the Mohammadan princes of the Dakhin especially Bijapur they furnished the Mogul empire also with the chief naval officers on the coast of Guzerat (*Wil. Gloss.*)

Siding The words "sidings," "switches" and "turnouts," in relation to railroads, are of modern growth, and not only in popular use, but in the dictionaries, are treated to some extent, as interchangeable The only definition that Webster gives of "siding" is the turnout of a railroad, and "turnout' is defined as "a short side track on a railroad which

Sign.

may be occupied by one train while another is passing on a main track; a siding" (*Ame Words and Phrases*)

Siege Sitting down with an army round or before a fortified place in order to take it by force.

Sight, loss of "Loss of sight in both eyes", in an accident Insurance means, totally blind [*Bawden* v *London, &c, Assrce*, (1892), 2 Q B 534, 61 L J Q.B. 792).

Sight bills Bills of exchange payable at sight, without allowance of days of grace.

Sighting a bill A bill is said to be sighted when presented for payment to the person on whom it is drawn

Sigillare (*Lat*) To seal, to affix a seal.

Sigillatum (*Lat*) Sealed.

Sigillum (*Lat*) Seal

Sigillum adulterinum (*Lat*) A spurious or counterfeit seal

Sigillum est cera impressa (*Lat*) A seal is wax impressed

"Sign" defined. Act 1, 1869, S 2, (Sub U P Act 3, 1910, S 2), Act 6, 1887, S 3, Act 10 1897, S 3 (52), Act 6, 1901, S 2 (1) (r), Ben Act 1, 1899, S 3 (41), Bom Act 4, 1902, S 3 (*f*), Bom Act 1, 1904, S. 3 (44), Bur Act 1, 1898, S 2 (58), E. B & A Act 1, 1909, S 5 (57), Mad Act 1, 1891, S 3 (29), P. Act 1, 1898, S 2 (53), U P Act 1, 1904, S 4 (41).

SIGN To affix a signature to, to ratify by hand or seal, to subscribe in one's own handwriting.

"Sign" will its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions. [Act X of 1897 (General Clauses), S 3 (52).]

"Sign" includes mark, when the person making the mark is unable to write his name [Act VI of 1886 (Births, Deaths and Marriages Registration), S. 3.]

The impression of the facsimile of a testator's signature of his will by some other person in the presence and by the direction of the testator is not the marking of a mark, but really the affixing of the name to the document It comes strictly within the meaning of the words used in S 50, Act X of 1865. (25 C 911=2 C W N 642.)

To "sign" a paper is to subscribe one's own name to it The requirement that the passenger purchasing a return ticket should sign it contemplates that the purchaser will use his real name, not the name of another.

Exactly what constitutes a "signing" has never been reduced to a judicial formula, but it has usually been regarded that whatever is intended as a signature is valid signing, no matter how imperfect or unfinished or fantastic or illegible or even false the separate characters or symbols used may be (33 Am. St Rep 805.)

The actual signing of a written instrument in a legal sense may imply more than the clerical act of

Signed and sealed

writing the name The element of intent may enter into the act, not the intent merely to place the name on the paper, but to affix it to the instrument in token of an intention to be bound by its conditions, for a signing consists of both the act of writing a person s name and the intention in doing this to execute, authenticate, or to sign as a witness

"SIGN" AND "SUBSCRIBE" Although of a different derivation than "subscribed", and although its literal meaning may have a shade or two of difference, the two words are substantially the same, except where, in a statute, or connection with a context, some peculiar or additional meaning to the words is indicated (*Ame Words and Phrases*)

Signed and sealed "Signed and sealed", as used in the certification of deed must be construed agreeably to the common understanding and acceptation of its meaning as an equivalent expression for "signed, sealed and delivered" or "executed" 26 Ark 128 (131)

Signed, sealed and delivered The words "signed, sealed and delivered,' as used in a deed declaring that the deed was signed, sealed and delivered by the grantor, constitute some evidence of a delivery of the deed, but when it is shown conclusively by other evidence that there was no delivery, these words can have no force (1 Am St Rep 237)

Sign manual The signature of the King to grants or letters patent, inscribed at the top (2 Sharsw Bla Com 347) Any one's name written by himself (*Webster's Dict*, *Wharton Law Dict*, *Tomlins Law Dict.*)

The sign manual or signature of the Sovereign, countersigned by the proper minister, is a less formal manner of expressing the royal pleasure in executive action than the use of the Great Seal or an Order in Council

Sign of Fraud Anything out of the usual course of business is a 'sign of fraud' Taking an absolute deed as a security for money is a mark of fraud, for it is calculated to deceive creditors, and to make them believe that no part of the property is subject to their demands, when in fact it is otherwise. (*Ame Words and Phrases*)

Signal A means of communication between vessels at sea or between a vessel and the shore The international code of signals for the use of all nations assigns arbitrary meanings to different arrangements of flags or displays of lights Where a steamer did not hear the signal but should have heard it, she is as culpable as if she had heard and disregarded it. (The City of New York, 49 Fed 956)

Signal fire A fire used as a signal.

Signal flag Flag used in signalling,—its color, shape, markings, etc., indicating various significations

Signal of distress (*by a ship at sea*) A "signal of distress" is a request for assistance and if competent persons, on such request, subject themselves to labor, danger and expense to get on board of the vessel, and there offer their services for such reward as the law will give them, if such offer be rejected it would seem that some compensation should be made for the labor, expense and danger so incurred, especially where the vessel subsequently comes to a place of safety. (23 Fed. Cas. 440, 442.)

Signature.

Signal post. A pole on which flags, arms, lights, etc are displayed as signals.

Signatory (*Inter National Law*) A term used in diplomacy to indicate a nation which is a party to a treaty.

"Signature" defined. Act 6, 1901, S. 2 (1) (*r*).

Signature A sign or mark impressed upon anything a stamp, a mark, the name of a person written and subscribed by himself

The verb "to sign" is defined "to affix a signature to, to ratify by hand or seal, to subscribe in one's own handwriting" A "signature" has been defined as "a sign, stamp, or mark impressed, as by a seal, especially the name of any person written with his own hand, employed to signify that the writing which precedes accords with his wishes or intention, a sign manual"

By signature is understood the act of putting down a man's name at the end of an instrument, to attest its validity The name thus written is also called a signature

SIGNATURE is the name of person written on a document to signify that the writing accords with his wishes or intentions This is what is ordinarily meant by speaking of a person's "signature", but the law does not always insist upon the name of the person being written, initials or a mark intended to represent a person's name have been held to be a sufficient "signature" by him Further, unless a statute makes a personal signature indispensable, signature by a duly authorised agent is sufficient. [*R* v. *Kent Justices*, (1873), L R 8 Q.B 305]

A signature, according to Greenleaf, consists both of the act of writing the party's name and of the intention of thereby finally authenticating the instrument

A signature as contemplated by S. 59, T P Act, need not be by the mortgagor personally, but may be by some person acting on his behalf and under his authority If the mortgagor is illiterate, it is a good signature, if, in the presence and at the request of the mortgagor, some other person sign the mortgagor's name on his behalf as executant of the deed 33 I C 861=4 C L J. 41.

In *Morton* v *Copeland* (16 C B 535), Maule, J., said, "*Signature* does not, necessarily, mean writing a person's Christian and surname. but any mark which identifies it as the act of the party, provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party."

Where a witness to a will is unable to write, the mark of that witness is signature. (51 Am. St. Rep. 121)

SIGNATURE by initials is good and valid in law. (Re *Wingrove*, 15 Jur. 91)

To constitute a "signature" it is not necessary that the party should write his entire name, his mark being held sufficient, and if the signature be made by another guiding his hand with his consent it is held sufficient.

Attestation proves no more than that the signature of an executing party has been attached to a docu-

Signed.

ment in the presence of a witness It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions (1916) 43 I A 249=44 C 186 (199)=36 I C 4.0 =31 M L J 563

"Signed" defined Act 8, 1885, S 3 (14), Act 22, 1886, S 3 (15), Act 5, 1908, S 19, expln (2), Mad Act 1, 1908, S. 3 (17).

"SIGNED" includes "marked" when the person making the mark is unable to write his name, it also includes, "stamped" with the name of the person referred to · Ben Act VIII of 1885 (Tenancy), S 3 (14).

"Signed," save in the case of a judgment or decree includes stamped, Act V of 1908 (C P Code), S 2, cl. 20

In every case where a statute requires a particular document to be signed by a particular person, it must be a pure question on the construction of the statute whether the signature by an agent is sufficient. (*Per* Bowen, L J, Re *Whitley*, 55 L J Ch 541, 32 Ch D 337).

"Signed the instrument" 58 Mad 220=A I R 1935 Mad 178 (2)=68 M L J. 191

Signet A seal commonly used for the sign manual of th sovereign (*What Lex*)

SIGNET (*Fr*) Is one of the King's seals in England, used in sealing his private letters, and all such grants as His Majesty's hand by bill signed, which seal is always in the custody of the King's secretaries, (2 Inst 556) The Law takes notice of the Sign-manual and privy Signet. (*Tomlins Law Dic*)

'Signing' 'Signing' a judgment does not mean initialling but means the writing of the full name of the Magistrate or the judge 54 Mad 252=A I R. 1930 Mad 867=59 M L J 674.

"Signing otherwise than as a witness" The words "signing otherwise than as a witness" in S 61 of the Stamp Act (I of 1879) includes the writing of a person's name by himself, or by his authority, with the intention of authenticating a document as being that of the person whose name is so written (27 C 324)

Signum (*Lat*) A seal, a sign, a mark, a species of proof

Sijdah (*Arabic*) Adoration, prostration, an attitude in prayer.

Sijdahgah (*Arabic*) A place for praying

Sikh. (*Punjabi*) The name of a religious sect founded in the Punjab at the end of the fifteenth century by Nanak Shah, a Hindu reformer, of the Khatri caste

A Sikh is included in the term Hindu as used in Probate and Administration Act (V of 1881) 31 C. 11=30 I.A. 249=13 M L J 381 (P C).

"Sikh" and "Singh" are not interchangeable terms, though the word "Sikh" is now a days commonly used for Singh. A.I R 1926 Lah. 100.

Silk

ikh faith or Sikhism Generally speaking, Sikhs as a community are merely a section of Hindus. Sikhism, however, has at all times been a proselytising religion There is no *a priori* legal or customary bar to the conversion of a Muhammadan man or woman to the Sikh faith Such a convert after initiation becomes a Sikh and even a Singh, provided in the latter event that the initiation has been effected by the *pahol* system of baptism instituted by Guru Govind Singh 99 P R 1913=100 P L R 1913= 18 I C 930.

Sikhni ghatwali khorposh *See* 19 C W N 549= 20 C L J 103=27 I C 5

Sikka (*H*) (See *Sicca*) A coining, die, a stamp, a mark, a seal, a signet, a royal signet, a stamped coin, especially the designation of the silver currency of the Kings of Delhi, adopted by other Indian Princes and eventually by the East India Company. (*Wil Gloss*)

Sikka-rupiya (*H*) A sicca rupee, a silver coin, the standard of value in Bengal under the company's administration, until changed to the company's rupee the silver coin now current (*Wil Gloss*)

Sikka-sanad (*H*) A grant from the crown under sign manual, or bearing the Raja's seal. (*Wil. Gloss*)

Silahbardar. (*H*) An armour bearer. (*Wil. Gloss*)

Silahdar (*Arabic*) One who wears arms; but particularly a horse soldier who provides his own horse and arms as distinguished from a bargir

Silahkhanah (*Hindustani*) An arsenal, an armoury.

Silasasana. (*Sanskrit*) A sasana or grant inscribed on a stone

TAMRA SASANA An edict or grant inscribed on copper plates.

Silence The state of a person who does not speak, or one who refrains from speaking.

Mere silence cannot be considered as a consent to a contract, except in cases where the silent person is bound in good faith to explain himself, in which case silence gives consent (*Moore* v. *Smith*, L R. 6 Q B 597, *French* v *Vining* 3 Am Rep 440) But no assent will be inferred from a man's silence unless he knows his rights and knows what he is doing, nor unless his silence is voluntary

Mere silence, in the negotiation of a contract, is not the same as to suppress when there is a duty to disclose, which latter would avoid the contract [*per* Chitty, J, *Turner* v *Green*, 64 L J Ch. 539, (1895), 2 Ch. 205].

Silent leges inter armae. The laws are silent among arms (in times of war)

Silk. In general, it may be stated that all goods made substantially of "silk" will be treated as silk commercially, unless it directly appears that commerce has given another name to the admixture. 26 L. Ed. 525.

SILK. It is very often necessary to determine whether an article is made of *silk* or not for the p

Silk lace.

pose of determining the duty to be imposed on it, or carrier charges to be paid on it The Court in *Brunt* v. *Mid. Ry* refused to define how much admixture of silk would make a fabric "silk", and held that in cases of doubt it would be a question of fact Pollock, C B said, "The line is shifted according to circumstances". But the summary of the facts in that case as given in the judgment of Martin, B, seems to supply as good an indication as could probably be stated as to what the test should be, he said, "We have here a fabric of which the most valuable portion is silk, the face of it is silk and the object of the manufacture is to give it a face of silk, and an ignorant person would say it was silk"

Silk lace. "Silk lace", as used in Act imposing a duty of 60 per cent on silk laces, means any lace of which silk constitutes the material of chief value, though it is mixed with cotton, as well as laces which are made wholly of silk. (29 L Ed 453)

"Silks in a manufactured state," etc, The terms "silks in a manufactured state and whether wrought up or not wrought up with other materials," used in Sch II of the Indian Railways Act 1879, were not intended to apply to all classes of goods in which silk may be introduced 6 M 420

Silver "Silver" in Revenue Act, 1867, 30 & 31 V. c. 90, does not mean pure silver, but merely what in common parlance is called silver. (*Young* v. *Cook*, 47 L. J M C 28)

Simanta (S) A ceremony performed during jestation. one of the Samskaras, or essential rights of Hinduism In Telugu, according to a vulgar corruption current, the word occurs as Srimantam (*Wil Gloss*)

Sime asvari (*Karn*) Charge for village expenses consolidated by Tippu with the land revenue (Mysore).

Similar. Sameness in essential particulars. Similar denotes partial resemblance, and may also denote sameness in all essential particulars, *Com.* v *Fontaine*, 127 Mass 494 Similar offence may mean an offence identical in kind. (*Id*)

In construing that part of the Revenue Act fixing the duty to be paid on cloths composed wholly or in part of wool, or mohair, or goat's hair, and all goods of similar description, the Court said "The statute does not contemplate that goods classed under the words 'of similar description' shall be in all respects the same If it did, these words would be unnecessary. They were intended to embrace goods like, but not identical with, those named" (101 U S 278, 283, 25 L. Ed 845.)

"Similar Notice". *See* 4 Bom L R 384.

Similiter (*Lat*) Likewise, the like.

Similitudo legis est, casuum diversorum inter se collatorum similis ratio, quod in uno similium valet, valebit in altero. Legal similarity is (consists in) the like reason of different cases when compared together, that which has force in one of the like cases shall have force in the other.

Simony. Simony is the entering into a contract by which Holy Orders or ecclesiastical preferment are to be given for monetary or other valuable consideration, *e g*, marriage It is the corrupt Presentation of any one to an Ecclesiastical Benefice, for money, gift or reward" (2 Bl Com 278)

Simultaneously

It is the selling and buying of holy orders or an ecclesiastical benefice (*Bacon Abr*) By simony is also understood an unlawful agreement to receive a temporal reward for something holy or spiritual

Simple Contract, A parole promise (As opposed to one under seal)

Simple contract debt "Debts by simple contract, are such where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by deed or special instrument, but mere oral evidence, the most simple of any, or by notes unsealed, which are capable of more easy proof, and (therefore only) better, than a verbal promise" (2 Bl. Com 465, 466).

Simple Larceny "Simple Larceny is 'the felonious taking, and carrying away, of the personal goods of another'" (4 Bl Com. 229).

"Simple mortgagee", defined Act 4, 1882, S. 58 (*b*)

Simple obligation. An obligation which does not depend for its execution on any event provided for by the parties,—one not based on a contingency

Simple Trust The simple trust is where property is vested in one person upon trust for another; and the nature of the trust, not being prescribed by the settlor, is left to the construction of law." (*Lewin*)

Simplex (*Lat.*) Simple simplex commendatio. (*Lat*) A mere commendation or praise

Simplex commendatio non obligat Mere recommendation does not bind (the vendor).

Simplex dictum Simple averment, mere assertion without proof.

Simplex et pura (donatio) dici poterit, ubi nulla est adjecta conditio, nec modus A gift may be said to be simple and pure where there is no condition or qualification annexed to it

Simplex justitiarius Simple justice.

Simplex loquela Simple speech, the mere declaration or plaint of a plaintiff

Simplex obligatio. A single obligation; a bond without a condition

Simplex peregrinatio. Simple pilgrimage.

Simplicitas est legibus amica, et nimia subtilitas in jure reprobatur Simplicity is a favorite of the laws, and too great subtlety in law is reprobated

Simpliciter (*Lat*) Simply; of its own force; without any addition.

Simulated. Fictitious; feigned.

Simulation The concert or agreement of two or more persons to give to one thing the appearance of another, for the purpose of fraud. (*Merlin, Report.*)

Simultaneously Simultaneous publication of a Book means publication on the same day (*Cooks* v. *Purday*, 17 L.J.C.P. 273).

Since

Since The proper signification is after, and in its apparent sense includes the whole period between the event and the present time, *Jones* v *Bank*, 79 M 195, 9 Atl 22, since the day named does not necessarily include that day, *Monroe* v *Acworth*, 41 N H 201.

"Sind Sagar Doab" Defined. P Act 1, 1902, S 1 (2).

Sine. (*Lat*) Without

Sine animo remanendi, revertendi Without intention of remaining, returning

Sine consideratione curiae Without the judgment of the Court

Sine cura. Without cure or charge

Sine decreto Without authority of a judge

Sine die Without day, without appointment of a day to appear again.

Sine dilatione Without delay

Sine liberis Without children

Sine numere Without stint or limit.

Sine prole Without issue

Sine qua non (*Lat*) Indispensable condition

Sinecure The word (from the Latin sine, without, cura, care) is popularly applied to any office carrying a revenue or salary to which no employment or duties are annexed

Sine die (*Lat*) Without day

Singh (*H*) A lion a name borne by men of the princely or military caste and Rajputs, and by Sikhs when fighting men it also denotes in composition, anything chief or noble, as Sinhasana, a lion seat, *i e*, a throne. (*Wil Gloss*)

"SIKH" AND "SINGH" are not interchangeable terms, though the word 'Sikh" is now-a-day commonly used for "Singh," and "Sikh means disciple, and the followers of all the Gurus were called "Sikh". (A I R. 1926 Lah 100 at p 102)

Singhara is a crop which is sown annually and has its roots in the bed of the tank, and, in such a case, the bed of the tank must be considered to be "agricultural land" for the purpose of growing this crop. (16 N.L J 277)

Singlebond. A bond merely for the payment of a certain sum of money, without any condition in or annexed to it is called a simple or single bond The term "single bond' is sometimes used to signify a bond given by one obligor as distinguished from one given by two or more (9 O.L.J. 416 = A I R. 1923 Oudh 19)

Single Entry. (In Book-Keeping) An entry made to charge or to credit an individual or thing, as distinguished from double entry, which is an entry of both the debit and credit accounts of a transaction.

'Single transaction', meaning of. 38 Mad. 134= 18 I.C. 135.

Single Woman A "Single woman," includes a widow (*Antony* v *Cardenham*, Fort. 309) and also a Married Woman living apart from her husband (*R.* v. *Pilkington*, 2 E. & B. 546.

Sisya

Singular. Words in the singular shall include the plural, and words in the plural shall include the singular, unless a contrary intention appears (*See* Gen Clauses Act)

In Acts of Parliament the singular includes the plural, and *vice versa* (S 1-b, Eng Interp. Act, 1889)

Sink A ship is not "sunk" if she springs a leak and thereby takes in a great deal of water which presses her down very low and much wets the cargo, but notwithstanding which she gets into port (*Bryant & May* v *London Assrce* 2 Times Rep 591)

Sinking fund One created for paying interest and principal on a debt (*See* 14 N Y 379)

SINKING FUND The surplus revenue of the kingdom beyond the actual expenditure, which is directed to be applied towards the reduction of the National Debt

Sinking fund A fund arising from particular taxes, imposts or duties which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal

Sipahsalar (*Persian*) A commander-in-chief.

"Sir" defined U P Act 3, 1901, S. 4 (12), (13).

SIR A word used in addressing a man, a gentleman, the title of a Knight or Baronet

Sir (*Hindi*) A name applied to the lands in a village which are cultivated by the hereditary proprietors or village Zamindars themselves as their own especial share, either by their own labourers and at their own cost, or by tenants-at-will, not being let in lease or farm

Sire One in the place of a father, as a sovereign; an elder, a progenitor.

Sirimah (*H*) The allowance paid to a proprietor of Sir lands when he is out of actual possession of them (*Wil Gloss.*)

"Sir-land" defined Act 18, 1881, S. 4 (A); Act 11, 1898, S 2 (1)

SIR LAND—INCIDENTS. 13 O.L J 726

Sirwan, (*H*) A person appointed by the owner of a village to superintend its affairs and enforce cultivation (*Wil. Gloss* 485, Sistu, Tel karan, S) Land tax assessment, especially revenue assessed in money in carnata it designates the standard assessment without additions, which was fixed originally by the Bidnur government, or that which under the Harihar administration applied to revenue in kind as well as money, but the word always denoted the fixed or standard rate on the land, exclusive of other imposts (*Wil. Gloss* 486)

Sister The word "sister" as used in S 2 of Act 2 of 1929 must be interpreted according to the plain meaning of the word in the English language, which ordinarily means a sister of the full blood. 1938 N. L J. 66 (F B), 11 Luck 148=1935 O W. N. 545= A I R 1935 Oudh 332=172 I. C. 858=A. I. R. 1938 Nag. 97.

Sisya. There is clear distinction between a chela and a sisya A chela is a personal attendant who may be raised to the rank of a sisya 23 I.C. 287 (290).

Sit

Sit. To occupy a seat, to be permanently fixed, to be prepared for deliberate action.

Sitting in a suit When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by S 38 of the Presidency Small Cause Courts Act (XV of 1882) they are sitting in a suit within the meaning of those words in S 61 21 I C 302 (304)

Sittings The holding of a court

"Situate". *See* 16 M L J. 444=4 Cr L J 443=30 M 136

Situs. (*Lat*) Position, situation; location; site

Siva (*S*) The Hindu triad the deity presiding over destruction and renovation, and ordinarily worshipped in the form of the Linga (*Wil Gloss.*)

Sivalaya (*S*) A temple of Siva.

Sivaratri (*S*) The night of Siva, a popular festival in honour of Siva of the fourteenth of the moons wane in Maha, a religious fast is observed during the day and night, and Siva is worshipped in the form of the Linga (*Wil Gloss.*)

Sive tota res evincatur, sive pars, habet regressum emptor in venditorem The purchaser who has been evicted in whole or in part has an action against the vendor

Siwai (*Lit*) Extra Assessment made on miscellaneous income as from forest, fisheries, etc means besides, except, over and above any addition to the standard or customary revenue, whether as an increase of the amount or in the shape of a new or additional cess or impost profits from lands other than those of cultivation as the rent of fisheries, forest produce and the like, some of which are included in fixing the assessment dues claimed by the proprietors of a village from non-proprietary residents for houses, shops and temples, in some cases recognised and recorded officially (*Wil. Gloss.*)

Siwai Jama, (*H.*) Extra revenue money extra or miscellaneous collections the term denotes the revenue derived from all taxes except those raised from land, and exclusive of customs and transit duties comprising under the native governments a vast number of petty and vexatious imposts in Mysore it is also applied to escheats, the effects of a person dying without heirs, which descended to the government. (*Wil. Gloss*)

Six Months "A Six Month's" notice to quit, means, a notice served six months prior to the day the tenancy is to be determined, and is not, necessarily, equivalent to a "half-year's" notice, six lunar months may frequently suffice (*Walker* v *Constable*, 3 Wils. 25. *Flower* v *Darby*, 1 T R. 159)

Siyaha. Daily cash account of tahsil.

Siyahanavis. Clerk responsible for writing up the siyaha

Siyasut, (*A.*) Exemplary punishment at the discretion of the Judge for offenders committing heinus and flagrant crimes. (*Macnaughten's Mohammadan Law.*)

"Sketch" defined. 52-3 V, c. 52, S. 8, Act 15, 1889, S. 2 (5).

Slander of Title

"SKETCH" includes any photograph or other mode of representing any place or thing Official Secrets Act (XIX of 1923), S 2, *See also* English Official Secrets Act, 1889, 52 & 53 V, c 52, S 8

Skill The art of doing a thing as it ought to be done

Every person who purports to have skill in a business, and undertakes for hire to perform it, is bound to do it, with ordinary skill and is responsible civilly in damages for the want of it (11 M & W 483), and sometimes he is also responsible criminally. *See* 2 Russ Cr 288

In the employment a skilled person to do a work there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes, *Harmer* v *Cornelius*, 5 C B N S 246, 28 L J C P 85, that he has an ordinary degree of skill and knowledge which would reasonably be expected 'from one acting in the particular employment" (*Jenkins* v *Betham*, 15 C B 189) the highest skill is not required (*Rich* v *Pierpart*, 3 F & F 35).

"Skilled work" Means—(*i*) working as an artisan, or (*ii*) working as a clerk or shop assistant, or (*iii*) working for the purpose of any exhibition or entertainment, or (*iv*) service in any restaurant, tea-house, or other place of public resort, or (*v*) domestic service, or (*vi*) any other occupation which the Governor-General in Council may, by notification in the Gazette of India, declare to be skilled work

Skipping (*In custom*) used in referring to the temporary transfer of articles from one package to another

Skirmish An irregular fight between two small parties, a contest

Sky-scaper. A lofty building of several storeys.

"Sky Sign" defined. Ben. Act 3, 1899, S. 3 (44).

Slander Defamation by word spoken (*see* 3 Bl Com 123) Words falsely spoken which are injurious to the reputation of another False defamatory words spoken of another. (See *Odgers, Libel*) The maliciously defaming of a man in his reputation, profession or livelihood, by words, as a libel is by writing (*Tomlins Law Dict*)

Slander of Title is falsely and maliciously to write or speak defamatory words affecting the title of another to real or personal property, words tending to disparage the extent or nature of title A statement tending to cut down the extent of one's title "An action on the case lies for special damage sustained by reason of the speaking or publication of the slander of the plaintiff's title" 3 Bing N C 371.

SLANDER OF TITLE is the name given to any words, whether spoken or written, which impugn the plaintiff's title to any property, real or personal, in possession or remainder, vested or contingent. Words which disparage the goods which the plaintiff sold or manufactured were formally called libels, or slanders, "in the nature of slander of title".

An action for slander of title is an action for special damage sustained by reason of the speaking or publication of the slander of the plaintiff's title.

Slander of Title.

The property may be either real or personal, and the plaintiff's interest therein may be anything that has a market value It makes no difference whether the defendant's words be spoken, written, or printed save as affecting the damages, which should be larger when the publication is more permanent or extensive, as by advertisement

Slander of Title or of Goods Anything uttered in denial of ownership or depreciation of goods, whereby a man suffers loss of sales or custom

Slanderer. A calumniator who maliciously and without reason imputes a crime or fault to another of which he is innocent.

"Slaughter-house" defined (*See also* Municipal Slaughter-house, Private Slaughter-house) Ben Act 3, 1899, S 3 (45), Mad Act 3, 1904, S 3 (35).

"SLAUGHTER-HOUSE" means any place used for the slaughter of cattle, sheep, goats, kids or pigs for the purpose of selling the flesh thereof as meat, Ben Act III of 1899 (Municipal), S 3, cl 45

Places used for slaughtering animals have long been subjected to statutory restrictions contained in different local and Municipal Acts passed for various purposes.

Slave One over whose life liberty and property another has unlimited control Every limitation placed by the law upon the absolute control modifies and to that extent changes the condition of the slave

Slaves "Slavery" is defined as "the state of entire subjection of one person to the will of another" The term implies the relation of two persons in the character of master and slave, the former being defined as one who has another or others under his immediate control, a lord paramount or employer of slaves, and the latter as a person who is the chattel or property of another and is wholly subject to his will, a bond servant, a serf

Slaves and Slavery "Pure and proper slavery does not, nay cannot, subsist in England, such, that is, whereby an absolute and unlimited power is given to the master over the life and fortune of the Slave And, indeed, it is repugnant to reason, that such a state should subsist anywhere, and the law of England abhors, and will not endure, the existence of Slavery within this nation" (*Tomlins Law Dict*)

"Slave Court" defined. 36-7 V, c 88, S 2

"Slave trade" defined 36-7 V, c 88, S. 2.

SLAVE TRADE The traffic in slaves, or the buying and selling of slaves for profit.

Although the slave trade was formerly recognized as a lawful commerce, unless repudiated by positive law, yet it was one that was abhored by man in all civilized countries Statutes were early passed prohibiting slave trade and the importation of slaves, and providing that upon the importation of a slave into the state he became free.

Slay When not used in relation to battle, the word is synonymous with kill. (*State* v. *Thomas*, 32 La Ann 351.)

Sledge A hurdle used to draw traitors to execution. (1 Hale P. C. 82.)

Smarta.

Sliding scale of wages. A scale of wages regulated by appreciation or depreciation in the market value of the products of labour.

Slinging Act of putting chains round goods lying alongside a ship for convenience of hoisting

Slip (*In Marine Insurance*) The term refers to a slip-note of particulars required by an underwriter before undertaking to insure

"The 'Slip' is in the practice of Marine Insured policy the complete and final contract between the parties, fixing the terms of the insurance and the premium, and neither party can, without the assent of the other, deviate from the terms thus agreed on without a breach of faith, for which he would suffer severely in his credit and future business" (per *Blackburn, J*, *Ionides* v *Pacific Insrce.* L R. 6 Q B. 684).

It is, however, not a "Policy of Insurance" at all, nor is it even a contract to issue a policy, "it is a contract of Sea Insurance not enforceable" [Per *Mathew, J*, *Home Marine Insrce* v. *Smith*, (1898), 1 Q B 829].

Sluice. A frame to keep or let water out of a ground (*Tomlins Law Dict.*)

Slum. A low squalid street or neighbourhood.

Slump A sudden serious fall of prices, business, etc.

"Small cause" defined Act 18, 1884, S 3 (1); Act 6, 1900, S 2 (*f*); Reg 7, 1901, S 2 (1) (*e*)

"SMALL CAUSE" means a suit of the nature cognizable by a Court of Small Causes under the Provincial or Presidency Small Cause Courts Acts *See* Pun Regln VII of 1901 (N.W F P Law and Justice) S 2 (1), cl. (*e*).

"Small cause" means a suit of the nature cognizable by a Court of Small Causes Bur Act VI of 1900 (L B Courts), S 2, cl (*f*).

"Small Cause Court" and "Court of Small Causes" defined. Act 15, 1882, S 4, Act 9, 1887, S 4, Act 7, 1892, S 2 (4), Bom Act 3, 1888, S. 3 (*l*).

In this (Presidency Towns) Act, *"the Small Cause Court"* means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be. Act XV of 1882 (Presidency Small Cause Courts), S 4

Small Cause Court judgment A Court of Small Causes need not give reasons for its decision and need not give even a concise statement of the case. A.I R 1925 Oudh 648

Small pox. Chicken pox

Smart money A term sometimes applied to such damages as are in excess of the actual loss and are allowed in theory when a tort is aggravated by evil motive, actual malice, deliberate in evil motive, actual malice.

Smarta (*S*) Relating to the Smriti or the Hindu laws, applied especially in the south of India to a numerous and influential sect of Brahmans founded by Sankaracharya, whose exposition of the principal of unity, according to the Vedanta doctrine they

Smarta Vicharam.

professedly follow · Siva is nevertheless held by them in especial honour their chief establishment is at Sringeri but they are found throughout the Dakhin, and are treated by with great veneration by the people in general (*Wil. Gloss*)

Smarta vicharam. (*Mal*) Caste inquiry among Nambudiris (*Sundaram Iyer's Malabar Law*)

Smasana, (*S*) A place set apart in which the dead are burned (*Wil Gloss*)

Smelting Smelting, though by derivation synonymous with melting has come to mean a melting of ores in the presence of some re-agent which operates to separate the metallic element by combining with a non-metallic element (*Lowrey* v *Smelting & Aluminum Co*, 68 Fed. 354.)

Smite To strike with the fist, hand or weapon, to beat or kill

Smriti, (*S*) The body of the recorded or remembered law, the ceremonial and legal institutes of the Hindus. (*Wil Gloss*)

Where all *Smritis* are of equal importance and where there is a conflict between two or more Smriti writers, the Judges are free to choose any they like 33 Bom. 433=11 Bom L R. 708=3 I C 765

Smugglers Those persons who conceal prohibited goods, and defraud the King of his customs by importing goods without paying the duties imposed by the laws of Customs and Excise (*Tomlins Law Dict*)

Smuggling The offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles without paying the duties chargeable upon them, the fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited (Quoted and approved by Brewer, J, in *Dunbar* v. *U S.*, 156 U S 185, 15 Sup Ct 325, 39 L Ed. 390)

Snare. A trap, that by which any one is entrapped In *Jones* v *Davies*, Day, J, said "A Snare is an instrument of destruction, it is not a Net, neither is a Net a Snare"

So In this manner or degree, thus, on this account, in a high degree "So COMPLETED", or "SO ALTERED"—imports the doing of the thing in the manner and so as to satisfy the requirements previously prescribed (per Smith, J, *G Q Ry* v *Halesowen Ry*, 52 L J Q B 479)

The words, "SO FAR AS MAY BE" in C P Code, O 22, R 11, must be construed as meaning so far as may be necessary in order to carry into effect the remedies contemplated by the Chapter 7 A. 693 =5 A W N 169 (F B)

"So help me God." The formula with which an oath concludes when the words of it are repeated by the person swearing.

"So help you God" the formula with which the administration of an oath always concludes.

Sober and temperate habits Whether a man is of "Sober and Temperate Habits," within a declaration leading to a Life Policy, is peculiarly one of fact for the jury (*Life Assn. of Scotland* v *M'Blain*, Ir. Rep 9 Eq. 176).

Solar month.

Socage or soccage. A tenure of lands by or for certain inferior services of husbandry, to be performed to the lord of the fee (*Tomlins Law Dict*)

Socage soccage, socagium, soccagium, sockagium, sokagium (*Lat*) (*In English law*) A tenure by any certain and determinate service not military

Social status The words *"social status"* are intended to indicate such matters as adoption and legitimacy, and not rights of precedence and the like enjoyed by a *patel* as such.

Societas (*In old English law*) Complicity in crime (In the civil law) Partnership

Sodomy Sodomy, in its broadest meaning, is the carnal copulation by human beings with each other against nature or with a beast, in which sense it includes the crime against nature, beastiality, and buggery In its narrower sense sodomy is the carnal copulation between two male human beings, *per anum*.

SODOMY is a carnal copulation committed by a human being with another human being, *per anum*, or with a beast

"Every one commits the felony called Sodomy who (*a*) carnally knows any animal, or (*b*) being a male, carnally knows any man or any woman *per anum*" (Steph. Cr 114)

Emission of seed is very generally declared to be unnecessary to the commission of the offence of sodomy.

The agent and the pathic are both liable as principals, if each is adult and consents to the commission of the offence, but if either the agent or the pathic be a boy of tender age the adult alone is liable, and although the minor consent

Sodomite. One who has been guilty of sodomy

Sohag grant *Babuana and sohag* grants differ essentially in their nature from absolute grants and are subject to the *Kulachar* under which they are authorised and in accordance with which they are made 42 Cal 582=27 M L J. 373=41 I A 275 (P C)

The custom governing the succession to and the inheritance of *sohag* property is the same as the custom governing the succession to and the inheritance of *babuana* property 42 Cal 582 (P C)

Soil The superficies of the earth on which buildings are erected or may be erected The soil is the principal, and the building, when erected, is the accessory.

"Sojourn" implies something more than "travelling," and applies to a temporary, as contradistinguished from a permanent, residence (*Henry* v. *Ball*, 1 Wheaton 5.)

Sola. Signifies "this only." This term is applied to a document of which only the original exists.

Solage-gudde. (*Karn*) The fees of the village accountant.

Solar. Pertaining to the sun; measured by the progress of the sun, produce by the sun.

Solar day. From sun rise to sunset.

Solar month: A calendar month.

Solar time.

Solar time. Time measured by the progress of the sun

Solar year or sidereal year Consists of 365 days, 6 hours, 9 minutes and 9 6 seconds

Solarium (*In the civil Law*) A rent paid for the ground, where a person built on the public land.

Solatium (*Lat*) consolation, compensation, sentimental damages

"**Soldier**" defined. 44-5 V c, 58, s 190 (6), Act 45, 1860, s 131, *expln* Act 5, 1869, Pt 1, cl (*e*) (8), Act 2, 1874, s 3, Act 15, 1910, s 2 (*b*).

SOLDIER A military man, a private in the army

Soldiers The military state of the kingdom includes the whole of the soldiery, or such persons as are peculiarly appointed among the rest of the people for the safeguard and defence of the realm (*Tomlins Law Dict*) *See also* 3 All 214.

A militiaman "is a soldier to all intents and purposes" (*per* Campbell, C J)

Sold note. *See* Bought and sold notes

SOLD NOTE, is the name of an instrument in writing, given by a broker to a buyer of merchandise in which it is stated that the goods therein mentioned have been sold to him (1 Bell. Com 435, Story, Ag & 28)

Sole Alone single, used in contradistinction to joint or married (as) *feme sole* or corporation sole.

Sole tenant, (*solus tenens*) He that holds lands by his own right only, without any other joined (*Tomlins Law Dict*)

Solemn Formal, in regular form.

Solemn affirmation Statements made upon solemn affirmation must be taken to be statements upon solemn declaration 39 Bom 115=11 Bom.L R 1308=4 1 C 594

Solemn war A war made in form, a war solemnly declared by one state against another.

Solemnes legum formulae. (*In the civil Law*) Solemn form, a formal observance.

Solemnisation of marriage The law of England is hostile to private or clandestine marriages, and does not now recognise the validity of marriages solemnised in England unless they have been solemnised in one or other of the manners prescribed or allowed by law

Solemnitas intervenire debet in mutatione liberi tenementi, no contingat donationem deficere prodefectu probationis. Solemnity ought to be observed on the change of (ownership of) a free-hold, lest it happen that the gift fail for want of proof

Solemnity The formality established by law to render a contract, agreement, or other act valid.

Solemnization The "Solemnization" of a Marriage means the consummation of a valid and effectual marriage (*Chapman* v *Bradley*, 33 L.J. Ch. 139, 4 D.G J. & S. 71, 12 W.R 140)

Soma

Solicitation Asking repeatedly; request, expression of wish for (as of prostitute) Solicitation to commit a crime is usually held to be punishable as a misdemeanor, though the offence solicited may not be committed (*Com* v *Flagg*, 135 Mass. 545, *State* v *Murphy*, 27 N L J 112)

Solicitor A person employed to follow and take care of suits pending in courts. (*Tomlins Law Dict*) *See* Cordery on Solicitors, Fowke and Henderson, Partnership between Solicitors, Clerke and Brett, Solicitor's Remuneration Act, Atkinson, Solicitors' Liens and Charging Orders, Morgam and Wurtzburg on Costs, Poley on Solicitors, (*Ency of the Laws of England*)

Solicitor-General The Solicitor-General in England is one of the law officers of the Crown. He is not a member of the Cabinet, but is a Minister of the Crown, and a member of the House of Commons, and the duration of his office depends upon the continuance in power of the party to which he belongs He is an *ex officio* member of the General Council of the Bar His duties are substantially the same as those of the Attorney-General to whom he is subordinate He has full power to represent the Crown in the absence of the Attorney-General, and the whole business and authority of the A-G during a vacancy in his office devolve upon the Solicitor-General [*R* v *Wilkes*, (1770) 4 Burr 2554]

Solidum (*Lat.*) An entire or undivided thing; the whole

"**Solitary confinement**" defined. Act 9, 1894, s. 46 (11), expln

Solitary confinement In a general sense, the separate confinement of a prisoner, with only occasional access to any other person, and that only at the discretion of the jailor, in a stricter sense, the complete isolation of a prisoner from all human society, and his confinement in a cell so arranged that he has no direct intercourse with or sight of any human being, and no employment or instruction

Solo cedit quod solo implantatur (*In the civil Law*) That which is planted in the soil belongs to the soil.

Solo cedit quod solo maedificatur that which is built upon the soil belongs to the soil.

Solutio. (*Lat.*) Payment, the satisfaction or discharge of an obligation in any mode.

Solutio indebiti Payment of what is not due; payment by mistake, of money not due.

Solutio pretii emptionis loco habetur the payment of the price (of a thing) is held to be in place of a purchase (operates as a purchase).

Solvency Ability to discharge debts and obligations in full; the state of a person who is able to pay all his debts, as also such state of his property as that it may be reached and subjected by process of law, without his consent, to the payment of such debts.

Solvent. One who has sufficient means to pay is debts and all obligations

Soma (S) The moon, also a climbing plant from which a juice is extracted by pressure which when

Somayaga.

fermented is offered in libation to Gods or to the God of Fire. (*Wil. Gloss.*)

Somayaga. (*S*) A sacrifice, a ceremony in which the juice of the Soma plant is presented in oblation, and drunk by the assistants when in a state of fermentation it is a vedic ceremonial, and has much fallen into disuse. (*Wil Gloss*)

"Some part thereof." Meaning of. *See* 23 Ind. Cas. 833 (835).

"Some portion of the property" The expression "some portion of the property" in S 28 of the Registration Act means not a substantial portion, but any portion of the property 11 A. 136=16 I A. 12. *See also* 41 Cal. 972, 7 All 590

"Sometime". " 'Sometime' is in some places put for the time just past, and 'Late' for the time past long since, for which reason 'Late', used in the sense of 'sometime' may be well permitted, and especially in Counts, which, if they have matter of substance, shall never abate" (*Wrotesley* v *Adams*, Plow 190, *Stroud.*)

Somnambulism Sleep-walking. The mental condition in this affection is not very unlike that of dreaming Many of their phenomena are the same, and the former differs from the latter chiefly in the larger number of the functions involved in the abnormal process. In addition to the mental activity common to both, the somnambulist enjoys the use of his senses in some degree, and the power of locomotion He is thereby enabled to perform manual operations as well, frequently as in his waking state

Usually, however the action of the senses is more or less imperfect, many of the impressions being incorrectly or not at all perceived The person walks against a wall, or stumbles over an object in his path, he mistakes some projections for a horse, strides across it, and imagines himself to be riding, he hears the faintest sound connected with what he is doing, while the voices of persons near him, and even the blast of a trumpet are entirely unnoticed For the most part, he operates asleep, groping about in the dark,endeavouring to make his way out of the house through doors or windows, making some inarticulate sounds, perhaps, and all the while unconscious of persons or things around The power of the perceptive faculties, as well as that of the senses, is sometimes increased in a wonderful degree

The somnambulist always awakes suddenly, and has but a faint conception, if any, of what he has been thinking and doing If conscious of anything, it is of an unpleasant dream imperfectly remembered This fact, not being generally known will often enable us to detect simulated somnambulism. If the person on waking continues the same train of thought and pursues the same plans and purposes which he did while asleep, there can be no doubt that he is feigning the affection When a real somnambulist for some criminal purpose undertakes to simulate a paroxysm he is not at all likely to imitate one of his own previous paroxysms, for the simple reason that he knows less than others how he appeared while in them If, therefore, somnambulism is alleged in any given case, with no other proof than the occurrence of former paroxysms unquestionably genuine, it must be viewed with suspicion if the character of the alleged paroxysm differs materially from that of the genuine ones In one way or other a case of simulation would generally be detected by means of a close and intelligent scrutiny, so difficult is it to imitate the mixture of consciousness and unconsciousness,of dull and sharp perceptions, which somnambulism presents. The history of the individual may throw some light on the matter.

Sons and the rest.

The legal consequences of somnambulism should be precisely those of insanity, which it so nearly resembles. The party should be exempt from punishment for his criminal acts Somnambulism though possibly not technical insanity, will sometimes have the same effect as excusing crime (*Fain* v *Com*., 78 Ky 183, 39 Am Rep 213, 1 Bish N Cr L 395). "Simply because the person committing it would not know what he was doing" (*Stephen, J*, in 23 Q B D 168) The only possible exceptions to this principle are to be found in those cases where the somnambulist, by meditating long on a criminal act while awake, is thereby led to commit it in his next paroxysm Hoffbauer contends that, such being generally the fact, too much indulgence ought not be shown to the criminal acts of the Somnambulist But surely this is a rather refined and hazardous speculation, and seems like punishing men solely for bad intentions—because the acts, though ostensibly the ground of punishment, are actually those of a person deprived of his reason The truth is, however, that criminal acts have been committed in a state of somnambulism by persons of irreproachable character (*Tayl Med Jur* 744 See *Gray Med Jur* 265, *Whart & S Med Jur*. 492, *Rush* on the Mind 302, 18 Am Journ of Ins.236, *Ency. of the Laws of England*, *Ame Cyc*)

"Son", defined (*See also* Child) Act 10, 1865, S 87, Act 1, 1869, S. 21, Act 21, 1870, S 6, Act 10, 1897, S 3 (53), Ben. Act 1, 1899, S 3 (42), Ben Act 3, 1904, S. 2 (1) (*h*), Bom Act 1, 1904, S 3 (45), Bur. Act 1, 1898, S 2 (59), E B & A. Act 1, 1909, S 5 (58), Mad Act 1, 1891, S. 3 (30), P Act 1, 1898, S 2 (54), U.P Act 1, 1904, S. 4 (42); U. P. Act 1, 1896, S 21

"SON", in the case of any one whose personal law permits adoption, shall include an adopted son, Act X of 1897 (General Clauses), S 3, (53.)

Where the personal law of the parties permits adoption, the word 'son' will include an adopted son. 12 Lah 50=135 I.C. 48 (1)=A I.R. 1931 Lah. 661.

'Sons in Mitakshara Chapter II, 6 (1) includes grandson'. 40 M L J. 270=48 I.A. 85=26 C W N. 842=60 I C. 251 (P C.) [On appeal from 35 I C. 687.]

SON OF MAN Christ as the second person in the Christian Trinity.

"Sons and daughters". Mean legitimate ones; unless those that are illegitimate are indicated by the context (*Edmunds* v. *Fessey*, 29 Bea. 235.)

Sons and grandsons The words "sons and grandsons" used in a Hindu will had no other effect than the term "heirs" used in English wills. 24 M. 299.

Sons and the rest. The expression "sons and the rest" in Chapter IV, S. 10, placitum 26, of the Mayu-

Son-in-law.

kha, means only "sons, grandsons and great-grandsons" and no more. 17 B 758.

Son-in-law. The husband of one's daughter.

Son to grandson Per *Subrahmanya Aiyar J.*—The expression from 'son to grandson' imports an absolute grant of property under the Hindu Law (15 M L J 299, 28 M 363)

Sonship (*in Hindu law*) "Twelve sons are mentioned by the truth-seeing sages Among them six are heirs of their own kinsmen, and the other six are kinsmen but not heirs The son begotten by one-self is first, Kshetraja is second, the Putrikaputra is the third, Paunarbhava is the fourth, Kanika is fifth, Gudhotpanna is the sixth These offer the pinda The Apabiddha, Sahodha, Dattaka (adopted son) the Krita, and the son who offers himself, these six are of mixed caste and not heirs but kinsmen (*Yama*, cited in the *Dattak-Chandrika*)

Twelve (kinds of) sons are seen in ancient history The first is the son begotten by the husband on his legally married wife The second is the kshetraja, the third is the Putrika, the fourth is the Paunarbhava, the fifth is the Kanika, the heirs and kinsmen, preservers from a great danger Now among those who are not heirs (adayada), the first is the Sahodha, the second is the Dattaka, the third is the Krita, the fourth is the Swayamupagata, the fifth is the Apabiddha, the sixth is the Sudraputra. These are kinsmen, not heirs

Now they quote (the following rule) These (last mentioned) six (sons) shall take the heirtage of him who has no heir belonging to the first-mentioned six classes (Vasistha, XVII, 12-16, 26-28, 30-33, 36-39.)

Sonee. The name of the sect of Muhammadans who revere equally the four successors of Muhamud *See* Shya The Turks are Sonees, and the Pursians Shyas. (*Fifth Report.*)

Sonthal parganas tenures in the Sonthal Parganas there are for practical purposes three classes of ghatwalli tenures, (*a*) Government ghatwallis created by the ruling power, (*b*) Government ghatwallis, which since their creation and generally at the time of the Permanent Settlement, have been included in a zemindari estate and formed into a unit in its assessment, and (*c*) zemindari ghatwallis, created by the zemindar or his predecessors and alienable with his consent The second of these classes is really a branch of the first. 51 I.A 37 (50)=3 Pat. 183.

Soon Within a reasonable time. (*Sanford* v *Shepard*, 14 Kan 232)

"Soonest". *See* 86 I.C 571=29 C.W N. 422=A.I. R. 1925 Cal. 609.

Sophism. Specious fallacy.

Sorcery. It was formerly punished in England like witchcraft.

Sorcerers. A witch.

Sornadyem What is receivable in money. Rent receivable in money, not in kind. (*Fifth Report*)

Sortitio. (*Lat.*) A casting or drawing of lots.

Sovereign.

Sortitio judicum. (*Lat.*) A drawing of judges on criminal trials

Soukar or sowcar (*See* Sowcar) A merchant or banker A money-lender. (*Fifth Report.*)

"Sound" In a warranty as to the sound condition of an animal (as) a horse, the word 'sound' means "that the animal is sound and free from disease at the time he is warranted" (*Per* Parke, B, *Kiddell* v *Burnard*, 9 M & W 670, 11 L J Ex 269)

Alderson, B, said "The word 'Soundness' is explained and qualified by reference to the purposes for which the warranty is given Any disease, therefore, which tends to impede the use for which the horse is designed, is an unsoundness." (*Elton* v. *Brogden*, 4 Camp 281)

Sounding in damages. Said of an action to recover damages only

"SOUNDING IN DAMAGES" When an action is brought not for the recovery of lands, goods, or sums of money (as is the case in real or mixed actions or the personal action of debt or detinue) but for damages only as in covenant, trespass, etc., the action is said to be sounding in damages. (Steph Pl 126.)

Sound mind That state of a man's mind which is adequate to reason and comes to a judgment upon ordinary subjects like other rational men.

Sound mind and memory. This phrase does not mean a mind without a flaw, or a memory without a fault (*In re Blair*, 16 N Y Supp 874)

Source "Source of water supply," in the English Public Health Act, "mean, any stream, reservoir, aqueducts, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water or not" (London P H. Act, 1891)

"Source of income" defined Act 2, 1886, S. 24 (1) *See also* Income tax Act, 1922, S 4

Per *Courtney Terrell, C J*—The source of the income must be considered in its proximate rather than in its ultimate significance 13 Pat 336=15 Pat.L.T. 85=A I R 1934 Pat 178 (S B).

Sources of the law The authority from which the laws derive their force. A term used to include all the reliable testimonials of what constitutes the law

South-sea company. An ancient company of merchants trading to the South sea They were incorporated, with certain powers and privileges on lending the Government ten millions of money towards paying the debts of the army, etc. (*Tomlins Law Dic.*)

Sovereign. A person, body, or state in which independent and supreme authority is vested A chief ruler with supreme power; a king or other ruler with limited power, supreme civil, military, and political power, the person or body of persons in whom the ultimate authority of law rests.

SOVEREIGN This term is used in England to designate the King, or Queen, of the United Kingdom; often also in the phrases "Our Sovereign Lord the King" or "our Sovereign Lady the Queen" in Acts of Parliament and proclamations. There is implied in

Sovereign power.

it the theory that the King is the possessor of sovereignty or the powers of supreme government, as a monarch in the strict sense of jurists and constitutional writers, and in that sense it has long ceased to be a correct designation The King is neither "sovereign" nor "monarch," but this notwithstanding he hardly is mentioned oftener by his appropriate and affected names (*Austin*, Jurisprudence, Campbell's Ed note p 242)

SOVEREIGN, piece of gold coin current (*Tomlins Law Dict*)

Sovereign power, or sovereignty By this is meant the power of making laws, for, wherever that power resides, all others must conform to and be directed by it, whatever appearance the outward form and administration of the government may put on For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases And all the other powers of the state must obey the legislative power in the execution of their serveral functions, or else the constitution is at an end (1 Comm 49, *Tomlin's Law Dic*)

In our constitution the law ascribes to the King the attribute of sovereignty, but that is to be understood in a qualified sense, *i e*, as supreme magistrate, not as sole legislator, as the legislative power is vested in the King, Lords and Commons, not in any one of the three estates alone (*Tomlin's Law Dic*)

Sovereignty The supreme power which governs the body politic that constitutes the state, a term used to express the supreme political authority of an independent state or nation, power by which any state is governed.

The king can do no wrong, he cannot constitutionally be supposed cap ble of injustice Sir John Nicholl Goods of King George III deceased, (1822) 1 St Tr (N S) 1287

An *hiatus* in government is so detested and abhorred, that the law says, 'the King never dies," that there may never be a "cesser" of regal functions for a moment Wilmot, I C J, *Case of John Wilkes*, (1763) 19 How St Tr 1130

It is true that the King never dies, the demise is immediately followed by the succession, there is no interval, the Sovereign always exists: the person only is changed Lord Lyndhurst, *Viscount Canterbury* v. *Att-Gen.* (1843), 1 Phill 322.

SOVEREIGNTY, POLITIC, BODY POLITIC A people whom Providence hath ca t together into one island or country are in effect one great body politic, consisting of head and members, in imitation of the body natural, as is excellently set forth in the statute of appeals, made 24 H 8, c. 12, which styles the King the supreme head, and the people a body politic (these are the very words), compact of all sorts and degrees of men, divided into spirituality and temporality And this body never dies Sir Robert Atkyns, L C B, *Trial of Sir Edw. Hales* (1686), 11 How St Tr. 1204.

All Governments rest mainly on public opinion, and to that of his own subjects every wise Sovereign will look The opinion of his subjects will force a Sovereign to do his duty, and by that opinion will

Special contract

he be exalted or depressed in the politics of the world, Lord Kenyon, *Trial of John Vint and others*, (1799) 27 How St Tr 640.

Sowcar An Indian merchant or banker, a money-lender in India.

Sowar Horseman

"Sowjanyam" meaning of *See* A I R 1935 Mad. 411.

S.P C A Society for the prevention of cruelty to animals

S P C A animal agent An agent of the S P C.A who has been appointed in respect of offences under S 53 of the Madras Act III of 1888, a member of the Madras City Police force is a public servant 46 Mad 90=16 L.W 794=23 Cr L J 736=69 I C 464= A I R 1923 Mad 188 (1)

Space writer In journalism, one paid for his article by the space they occupy when printed.

Speaker. Official president of a legislative Assembly

Speaker of the House of Commons In order to enforce the forms and rules of the House of Commons, and to act as its organ and mouthpiece in all matters, speaker is chosen by the Commons or other Legislative body at the commencement of every new Parliament, or when a vacancy occurs by death or otherwise The member chosen for this high and honourable office is styled "The Speaker", because it is his business to speak to or address the Sovereign in the name of the House, when occasion requires, and during his absence except when he is represented by a deputy, no business can be transacted by the House, nor any question moved but that of adjournment *See* Erskine May's Parliamentary Practice, Anson's Law and Custom of the Constitution, (*Ency of the Laws of England*)

'Spear'. As the word 'spear' is used in S 4 of the Arms Act in contradistinction to spear-head, a spear cannot be held to include spear-head 167 I C 935= 1937 A L J 41=A I R 1937 All 228

Special. Designed for a particular purpose

Special Act A Special Act as opposed to a general or public Act means, one that is "directed towards a special object, or special class of objects" (*per* Ld Hatherley *Garnett* v *Bradley*, 3 App Ca, 950 *See also* General Clauses Act).

Special agent An agent authorized to transact only a particular business for his principal, as distinguished from a general agent

"Special agreement" defined. Act 22, 1886, S 71

Special bail. Bail to the action, given as a security to abide the event

Special bastard A bastard born before the marriage of parents who afterwards inter-marry

Special case Case reserved, statement in writing of facts proved or settled between the parties to obtain the opinion of the Court in leave

Special contract. A contract in writing under seal.

Special Commissioner.

"Special Commissioner" defined. Ben. Act, 2, 1869, S. 1.

Special constable. Private person sworn in for a special occasion

Special correspondent Appointed by newspaper to report on special facts

Special damages Damage sustained by wrongful act and for which damages beyond general damages may be claimed

Special demurrer A demurrer based on some defect of form, which is specially set forth

Special deposit A deposit made of a particular thing with the depositary

Special edition (Of a newspaper) is one which includes later intelligence and news than the ordinary edition

As a matter of practice, it is usual even in cases tried by Courts of Small Causes, except in comparatively unimportant cases of everyday occurrence such as those for the recovery of petty debts, to say out the particulars of the suit and to give reasons for the decision arrived at, thus enabling the High Court, in revision, to satisfy itself that the decree or order was according to law without the necessity of perusing the whole record The words "need not" in O 20, R 4, C P Code were not meant to be read as "shall not" 1 Rang 274=76 I C 600=A I R 1923 Rang 252

The judgment of a Court of Small Causes must contain the points for determination and the decision thereon A judgment therefore consisting only of words "the claim is decreed with costs" is liable to be set aside by the High Court in revision. 79 I C 547= A I R 1925 Oudh 283

Small Cause Court Judge can reduce his remarks to intelligible minimum containing points of determination 3 P L T 122=A I R 1922 Pat 337

Special indorsement An indorsement in full on a bill of exchange or promissory note, which, besides the signature of the indorser, expresses in whose favour the indorsement is made

Special injunction An injunction by which parties are restrained from committing waste, damage or injury to property

Special issue A plea of specific traverse, or the issue thereon An issue upon a special plea

Special jury A jury ordered on the motion of either party, in cases of unusual importance or intricacy

"Special law" is a law applicable to a particular subject. Penal Code, S 41

"Special laws" in the Penal Code (Act XLV of 1860), Ss 40 and 41, are only laws, such as the Excise Opium and Cattle Trespass Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the general Penal Code The Whipping Act is not a special law in this sense, it creates no fresh offences, but merely provides a supplementary or alternative form of punishment for offences which are already punishable primarily under the Penal Code or (in the case of juvenile offenders) other enactments (22 I.C. 147.)

Special settlement.

"Special local meeting". Means a meeting of the shareholders whose names are registered in a branch register, convened for the transaction of some particular business specified in the notice convening the meeting, Act XLVII of 1920 (Imperial Bank of India), S 2, Cl (*j*)

"Special local resolution" Means a resolution passed at a special local meeting Act XLVII of 1920 (Imperial Bank of India), S 2, Cl (*k*)

Special magistrate" defined Act 5, 1898, S. 14

"Special meeting" defined Act 1, 1876, S 3.

"SPECIAL MEETING" Means a meeting of shareholders convened for the transaction of some particular business specified in the notice convening the meeting, Act XLVII of 1920 (Imperial Bank of India), S 2, Cl (*l*)

Special occupant A person having a special right to enter on and occupy lands granted *pur auter vie*, on the death of the tenant, and during the life of *cestui que vie* (*Kinney*)

Special or local law The types of law covered by the above phrase are such as the Opium Act or the Gambling Act and not a vast system like the English common law A I R 1925 Rang 345

Special partner A partner with a limited or restricted responsibility, a limited partner

Special partnership A partnership limited to a particular business, or a particular subject

Special plea A special kind of plea in bar, consisting usually of some new affirmative matter

Special pleader A person whose occupation is to give opinions on statements made verbally or in writing and to draw pleadings and such practical proceedings as may be out of the usual course

Special pleading The popular denomination of the science of pleading Biassed reasoning, sophistry

SPECIAL PLEADING is the art of drawing up pleas in confession and avoidance In popular language, it is the adroit, and plausible advocacy of a client's case in Court

Special privilege A right, power, franchise, immunity or privilege granted to, or vested in, a person or class of persons to the exclusion of others and in derogation of the common right

Special property That of a bailee, or officer in possession of the goods That property in a thing which gives a qualified or limited right.

"Special resolution" defined Act 11, 1876, S 3, Act 6, 1882, S 77.

"SPECIAL RESOLUTION". Means a resolution passed at a special meeting Act XLVII of 1920 (Imperial Bank of India), S 2, Cl (*m*).

Special rule A rule granted on the motion of counsel in court

Special sessions An extra session of the Court held for special purposes.

Special settlement (*in stock exchange*) is the day fixed for first settlement upon which stock is first admitted to quotation on the Stock Exchange.

Special tram.

Special tram. Fxtra tram for special purpose

Special traverse A traverse or denial, the design of which, as distinguished from a common traverse, is to explain or qualify the denial, instead of putting it in the direct and absolute form

Special trust A special trust is one where a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in case of a simple trust, a mere passive depositary of the estate, but is required to exert himself actively in the execution of the settler's intention as, where a conveyance is made to trustees upon trust to reconvey, or to sell for the payment of debts. (*Lewin Trusts*)

Special verdict A special finding of facts, leaving to the court the application of the law to the facts found

Special warrant (In Bombay Prevention of Gambling Act IV of 1887, S. 6) Is one that is limited in some ways. It may be limited with regard to (*a*) the person or persons executing it, (*b*) the place to be entered and searched, (*c*) the person or persons to be arrested, or (*d*) the things to be seized 2 I C 371(372)

Specialist, one who devotes himself to the particular study or practice of a special subject Specialist in work on eye, nose. etc, with totally disabled hand cannot perform every kind of duty of his occupation A I R. 1917 P C 78

Specialty A bond, bill, or such like instrument a writing or deed, under the hand and seal of the parties (*Litt Tomlins Law Dic*), a contract or obligation under seal (*See* 2 Bl Com 465)

Specialty debts (*In England*) Bonds, mortgages, debts, secured by writing under seal, they rank next to those of record and above simple contract debts

A "Specialty" is a contract under seal, and a "Specialty debt" is an obligation secured by such a contract, *e.g.*, a bond, or mortgage. (*Talory* v *Jackson*, Cr Car 513)

Specie Metallic money issued by public authority. This term is used in contradistinction to paper money, which in some countries is issued by the government, and is a mere engagement which represents specie (as) specie payments, remitted in specie

SPECIE has another meaning The following is an extract from Parson's Maritime Law —The primitive meaning of the word is 'Appearance', and it is in this sense that it is commonly applied to memorandum of articles Thus if a box of a chariot is lost and nothing but the wheels remain, these cannot be said to have the appearance of a chariot, and consequently, the article no longer *exists in specie*, and the underwriters are liable as for a total loss with salvage (*Judah* v *Randal*, 2 Caines Ca 324) But it has been held that the value of the article has nothing to do with its existence *in specie* Thus, fish though absolutely spoiled (*Cocking* v *Fraser*, 3 Caines Rep 108), was held to exist *in specie*. And pork has been held not to lose its identity by being roasted (*Skinner* v *Western Marine Insrce* 19 La. 273, Parsons Maritime Law. 381.)

"It is well settled that if the goods insured arrive at the port of destination existing *in specie*, the underwriters are not liable although the goods are of no value whatever.

Esher, M R,. said:—"That test is, whether, as a matter of business the nature of the thing has been altered The nature of a thing is not, necessarily altered because the thing itself has been damaged wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice in business But if the nature of the thing is altered and it becomes, for business purposes something else so that it is not dealt with by business people as the thing which it originally was,—if it is so changed in its nature by the perils of the sea as to become an unmerchantable thing which no buyer would buy and no honest seller would sell,—then there is a Total loss" [per *Esher, M R, Asfar* v *Blundell*, (1896) 1 Q.B 127, 128, 65 L.J.Q.B 141]

Specie point The point above or below the mint par of exchange it is found more profitable to pay in specie than bills.

Specific Not general or vague, appropriate to or concerned with a particular kind "The meaning of the word '*specific*' is the reverse of 'general'" (per *Ld. Hatherley, Chaloner* v *Bolckow*, sup)

"Specific legacy" defined. Act 10, 1865, S 129, Act 5, 1881, S 3

"Specific moveable property" The term 'specific moveable property' as used in Act 48 and 49 of the Limitation Act (XV of 1877) means property of which you may demand the delivery *in specie* The phrase is only apt when the thing to which you are entitled is in the possession of some third party" [22 Cal 877 *See* 11 C W N 862=6 C L J 535 (538)].

Specific performance The execution of a contract as made the actual performance of a contract by the party bound to fulfil it As the exact fulfilment of an agreement is not always practicable, the phrase may mean, in a given case, not literal, but substantial performance (Waterm Spec Perf)

SPECIFIC PERFORMANCE of contracts is a remedy by which a party to a contract is compelled to do or omit the very acts which he has undertaken to do or omit In general, the contract must have the essentials of a contract valid and binding at law in order to be enforceable It must be a concluded contract, there must have been a clear mutual understanding and a positive assent on both sides as to the terms of the contract, it must be sufficiently definite and certain, the parties must have the capacity to contract; it must be upon a valuable consideration, and it must not be illegal.

"Specific performance is relief which this Court will not give, unless in cases where the parties seeking it come" promptly, and as soon as the nature of the case will permit [Lord Cranworth, *Eads* v. *Williams*, (1854) 4 D M & G 691]

"Specific performance of a contract is its actual execution according to its stipulations and terms, and is contrasted with damages or compensation for the non-execution of the contract" (*See* Fry on Specific Performance, Story's Equity Jurisprudence; Selden Society's Select Cases in Chancery, White and Tudor's Equity Cases, Sugden's Venders and Purchaser's, Dart's Vendors and Purchasers; *Ency. of the Laws of England.*)

Specific property.

"Specific property" *See* 22 I C 524 (525)

Specifically The word "specifically" in S. 22 of the Dekkhan Agriculturist's Relief Act (XVII of 1879), has no greater force than the word "specific" in S 58 of the Transfer of Property Act. (26 B 33=3 Bom L.R. 545.)

"Specifically denied" Meaning of plea I L.R 1937 All 723=171 I C. 743=1937 A L J 710=A I R 1937 All 646)

To deny '*specifically*' a statement in a pleading, you "must deal specifically with each allegation of fact" of which you do not admit the truth. (*Thorp* v *Holdsworth*, 3 Ch D 637)

Specification A particular and detailed list or account of a thing, of work to be done or of goods to be supplied in the carrying out of order or contract.

In architecture, a statement of the mode of construction and of all material, with a particular description of each piece and of the mode of joining

In military law, the clear and particular description of the charges preferred against a person accused of a military offence (*Tyter*, Courts-Mar 109)

In the patent law, it means the description and claims (6 Fed 611) A written description of an invention or discovery, and of the process of making and using it

Specified In sub-S *(a)* of S 584 of the Code of 1882, the word "specified" means specified in the memorandum or grounds of appeal [17 I A 122=18 C. 23 (26) (P C)]

Specified law "Specified law" in Cl *(a)* of S 584 of the Code of 1882 does not mean 'the statute law' "Specified" in that clause means "specified in the memorandum or grounds of appeal" [19 I A 228=20 C. 93 (P C)].

"Specified law and usage having force of law" The expression "specified law" in S 584 *(a)* C P Code, means the statute law, and the expression, "usage having the force of law" in the same clause means the common or customary law of the country or community [7 A 649=5 A W N 151 (F B)]

Speculation More or less risky investment of money for the sake of, and in expectation of unusually large profits

SPECULATION does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential [45 I A 29= 42 B. 373 (378)=44 I C 284=34 M L J 305 (P C)].

Speculative damages Damages which are allowed when the probability that a circumstance will exist as an element for compensation becomes conjectural.

Speculator. One who practises speculation in trade or business of any kind.

Speech. A formal discourse in public. The liberty of speech is guaranteed to members of the legislature in debate, and to counsel in Court.

Spell. Any form of words supposed to possess magical power.

Spirit.

Spelling The art of putting the proper letters in words in their proper order.

It is a rule that bad spelling will not vitiate a contract when it appears with certainty what is meant. for example where a man agreed to pay thirty pounds he was held bound to pay thirty pounds, and sentence was holden to be seventeen. (Cro Jac 607, 10 Co 133 a, 2 Rolle, Abr 147) Even in an indictment understood has been holden as understood (1 Chitty Cr Law)

Spendthrifts A spendthrift is a person who, by excessive drinking, gambling, idleness, or debauchery of any kind shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the town to charge or expense for the support of himself or family.

Spendthrift trust The term commonly applied to a trust which is created with a view of providing a fund for the maintenance of another, and at the same time securing it against his improvidence or incapacity, for his protection

Spes Hope

Spes accrescendi. Hope of surviving.

Sphere of Influence A portion of unappropriated territory over which a state possessing territory contiguous to it claims to exercise such exclusive control, though not amounting to ownership as to bar the entry of any other power for purposes of colonization Between 1880 and 19 0 a number of treaties were entered into between the European powers defining their respective spheres of influence in Africa

Also a portion of the territory of a weak state over which a stronger state assumes to exercise a certain measure of control for the sake of economic or other advantages An example of an international agreement providing for such spheres of influence is to be found in the treaty between Great Britain and Russia in 1907 by which Persia was partitioned into three zones, one neutral and the other two British and Russian spheres of influence respectively.

Spin The name of one of the two divisions of Kafirs

Spin Turin The name of an agricultural tribe settled between Pishin and the Sulaiman range.

Spinning-house A house of correction used by the authorities of the University of Cambridge for the detention of women of light character consorting with or soliciting members of the University in *statu pupillari* The legality of detention therein was exhaustively discussed in *Kemp* v *Nevill*, (1861), 10 C B N S 523

Spinning-wheel A machine for spinning yarn.

Spinster "'Spinster' is the name usually given to all unmarried women for the Viscount's Daughter downward." (*Cowel*).

SPINSTER is an addition given, in legal writings to a woman who never was married. (*Lovelace, Wills* 269) So called, because she was supposed to be occupied in spinning

"Spirit" Defined (*See also* Liquor.) Act 12, 1896, S. 3 (1). Ben. Act 5, 1909, S. 2 (19); E.B. & A.

Spirit world.

Act 1, 1910, S 3 (19) Mad. Act 1, 1886, S. 3 (8). U. P. Act 4, 1910, S 3 (8)

"SPIRIT" means any liquor, containing alcohol obtained by distillation [Excise Act (XII of 1896), S 3]

Spirit world The world of disembodied spirits

HOLY SPIRIT Holy ghost, the third person in the Christian Trinity

Spiritual courts. Ecclesiastical courts

Spiritual Law "Law *Spiritual*" is the Ecclesiastical Laws allowed by the laws of the realm

Spiritual Lords The two archbishops and twenty-four of the bishop of the Church of England who sit as peers in the British House of Lords

Spiritualism In law the significance of spiritualism is chiefly involved with the conveyance of land and the disposition of property by will by spiritualists. It is generally held that belief in spiritualism is not necessarily such evidence of insanity as to make one incompetent to make a conveyance of real estate

Spiritualist One who holds the doctrine of spiritualism or spiritism

Spiritualities The revenues of a bishop as bishop, his ecclesiastical receipts

"SPIRITUALITIES of a Bishop, *spiritualia episcopi* are those profits which he receives as a Bishop not as a Baron of the Parliament Such are the duties of his visitation, his benefit growing from ordaining and instituting priests, prestation money, which upon reasonable cause he may require of his clergy, and the benefit of his jurisdiction" (*Cowell*)

"Spirituous liquor" defined, Act 15, 1910, S 2 (*c*). *See also* 15 Cal 452, 24 Cal 159=1 C W N 1.

Spits Instruments of wood iron, or steel, used by customs officers in examining goods for dutiable articles.

Splitting cause of action Dividing a single cause of action, claim, or demand into two or more parts and bringing a suit for one of such parts only, intending to reserve the rest for a separate action The whole tendency of the cases is to require a plaintiff to try his whole cause of action at one time. He cannot even split up his claim

Spoliatio. (*Lat.*) (*In old English law*) Forcible deprivation of possession, dissesin

Spoliation. Pillaging; seizure of property by violence, depradation.

SPOLIATION. A waste of church property by an ecclesiastical person. (3 Bl Com. 90)

"Spoliation, is an injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right thereunto, but under a pretended title".

In admiralty law by spoliation is also understood the total destruction of a thing; as the spoliation of papers by the captured party is generally regarded as a proof of guilt.

p ring

In torts, destruction of a thing by the act of a stranger, as the erasure or alteration of a writing by the act of a stranger is called spoliation This has not the effect to destroy its character or legal effect. (1 *Greenl Ev* & 566)

Spoliator (*Lat*) A despoiler, disseisor, a destroyer (of a deed)

Spoliatus debet ante omnia restitui. The party dispossessed ought first of all to be restored

Spolium (*Lat*) (*In the civil law*) A thing violently or unlawfully taken from another

Spondent peritiam artis (The workman engaged for hire) promises the skill of his craft

Sponging house Bailiff's house for preliminary confinement of arrested debtors, a house to which debtors when arrested are taken before commitment to prison

Sponsalia sunt mentio et repromissio nuptiarum futurarum Sponsals are the mention and promise of future nuptials

Sponsio ludicra (*Lat*) A trifling engagement,—upon which a Court will not sustain an action

Sponsion The act of becoming surety for another

Sponsions (*In International Law*) Agreements or engagements made by certain public officers, as generals or admirals, in time of war, either without authority or by exceeding the limits of authority under which they purport to be made

Sponsor (*In Civil Law*) He who intervenes for another voluntarily and without being requested The engagement which he enters into is only accessory to the principal (See *Dig* 17, I 18) God father or God mother, person who undertakes to answer for another's conduct

Spot goods Such as are ready for immediate delivery

Spouse Bride, wife, husband or wife as the case may be, married pair

Spriha (S) means desire for worldly things.

Spring "A 'Spring of water', both in law and ordinary language is a definite source of water. When we talk of a spring of water we mean a source of water of a definite, or nearly definite area The word 'Spring' comes from the water springing or bubbling up It may be an underground spring which supplies a well, and we may say that water 'wells up' It may be above the ground, *e.g*, the ordinary spring from which a small stream or rivulet runs A spring of water, means, a source of water of a definite and well-marked extent existing in nature" (*per* Jessel, M R *Taylor* v *St Helen's*)

SPRING A fountain A natural source of water, of a definite and well-marked extent [6 Ch D 264 (C A)] A natural chasm in which water has collected, and from which it either is lost by percolation, or rises in a defined channel [41 L.T Rep (N S) 457] The water issuing by natural forces out of the earth at a particular place It is not a mere place or hole in the ground, nor is it all the water that can be gathered or caused to flow at a particular place. A well is not necessarily a spring nor is water which by the expenditure of labor can be gathered into a

Spring tide

reservoir (*Furner* v *Seabury*, 135 N Y. 50; 31 N.E 1001; *Ame Cyc*)

Spring tide. High tide occurring after full and new moon.

"Springing use" is an estate in realty which arises by its own vigour, on the happening of an event or series of events, and which takes into itself the legal estate in the realty by virtue of a statute

Spy Person secretly collecting and reporting information for military or other purposes The chief rules of international law with regard to spies are embodied in Arts 20 21 of the convention concerning the laws and custom of war on land

"A person can only be considered a spy when acting clandestinely or on false pretence in the zone of operations of a belligerent with the intention of communicating it to the hostile party The following are not considered spies Soldiers and civilians carrying out their mission openly intrusted with the delivery of dispatches intended either for their own army or for the enemy's army To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory

"A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage"

It is an unsettled question whether balloonists sent out to gain information are to be regarded as spies, and with the advent of airships which will probably be largely used for reconnaissance purposes, the question of the status of those using them for such purposes will, before long, demand a settlement (*Spaight*, War Rights on Land 202-215)

Squad. Party of men being drilled or employed together

"Square" This word is applied to the measurement of the area of building sites [London Building Act, 1894, sub-s 23, s 5, a def adapted from 7 & 8 V, c 84, S 2]

"Square mile" and **"Miles Square"** mean areas of those dimensions, and not land geometrically square (*Robertson* v *Day*, 49 L J P C. 9, 5 App Cas 63)

Squatter. One who settles on the lands of others without any legal authority, this term is applied particularly to persons who settle on the public land

Squeezing the bears A phrase denoting the condition to which "bears" are reduced when buyers to whom they have contracted for delivery are themselves the holders of the available stock.

Sraddha, (*S*) An obsequial ceremony in which food and water are offered to diseased ancestors of the offerer, or to the pitris or manes collectively these ceremonies are observed on occasions of rejoicing as well as of mourning and hence various Sraddhas are enumerated (*Wil Gloss*) (as) the Mahalaya Sraddha, Parnana Sraddha, Nandhi Sraddha; Darsa Sraddha.

Stable

Sraddha ceremonies (*in Hindu Law*) Sradda (s) is the obsequial ceremonies offered to deceased ancestors among Hindus On failure of son, sapindas, on their failure Samanodakas the mother's Sapindas, and mother's Samanodakas, perform the Sraddha, the Putrikaputra performs the Sraddha of the maternal father On failure of all, the widows perform the Sraddha of their husbands without vedic mantras On their failure the king causes to be performed, from the wealth, left by the deceased, by men of his caste, all ceremonies beginning with cremation, for the king is the Bandhava of all castes (*Markandeya Purana*, Ch 30, v 19-23)

Srauta (*S*) Of or belonging to the vedas, as a text, a ceremony (*Wil Gloss*)

Srauta karma (*S*) A religious or ceremonial observance enjoined by or conformable to the veda. (*Wil Gloss*)

Sraya (*Karn*) Depreciated land, land let at a rate below its original value, which it is expected would gradually rise again in value

Sraya-chittu (*Karn*) Lease of land let below its value

Sridhana (*S*) Woman's separate property in Hindu Law.

Srikara A writer on Ancient Hindu Law—who wrote a commentary on Manu Dharma Sastra

Sri Rama, (*S*) One of the Avathars of Vishnu, Rama whose name in this form is also used as a term of salutation between those who especially worship in this Avatara (*Wil Gloss*)

Sri Ramanavami (*S*) The ninth of Chaitra, the anniversary of the birth day of Sri Rama held as a festival (*Wil Gloss*)

Srotrium Land allowed to be held at a favourable rent by an individual, either as a reward for services, or as a compensation for duties to be discharged, being similar in its application to maunium (*See* 1 L W 41) Lands or a village held at a favourable rate properly an assignment of land or revenue to a Brahman learned in the Vedas, but latterly applied generally to similar assignments to native servants of the Government, civil or military, and both Hindus and Mohammadans, as a reward for past services a Srotrium grant gives no right over the lands, and the grantee cannot interfere with the occupants as long as they pay the established rents

Srotriumdar (*Tam*) The holder or possessor of a Srotrium

Sruti (*S*) Hearing, applied especially to the vedas collectively in contradistinction to the Smriti law (*Wil Gloss.*)

St Abbr of Saint

St George Order of Knighthood.

Stab To make a wound with a pointed instrument A stab differs from a cut or a wound (*Russ. & R* 56, Russ Cr 597, Bac Abr Maihem (B).

Stabitur praesumptioni donec probetur in contrarium The presumption shall stand until it be proved to the contrary.

Stable is a place for horses, a cow-house is not a "Stable" (*R* v. *Haughton*).

Stablestand

Stablestand "'Stablestand' is a term of the Forest laws, and it is when one is found standing in the Forest with his bow bent ready to shoot at any deer, or with his greyhounds in a lease ready to slip" (*Termes de la Ley*, citing Manwood 133 b)

Staff Body of officers attached to a commander for the purpose of keeping the parts of an army, etc., in relation, body of assistants by whom an institution or business is carried on (as) the regimental staff, staff officers.

Staff captain The senior grade in the navigating branch of the British army

Staff college A college where military officers are trained in the higher branches of professional knowledge, and prepared to hold staff appointments

Staff corps A body of British officers on the permanent Indian establishment, appointed from it, to do duty with native regiments

Staff duty The occupation of an officer who serves on a staff, having been detached from his regiment

Staff sergeant. A sergeant of the highest rank

Staff surgeon A navy surgeon of senior grade

Stag One who buys shares in a new company with the view of operating for premium only

"Stage carriage" defined Act 16, 1861, S. 1, Ben Act 2, 1891, S 3 (4)

Every carriage drawn by one or more horses which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India shall, without regard to the form or construction of such carriage, be deemed to be a stage carriage within the meaning of this Act (Stage Carriages Act (XVI of 1861), S 1)

"STAGE CARRIAGE" has been defined to mean "any carriage for the conveyance of passengers which plies for hire in any public street, road or place and in which the passengers or any of them are charged to pay separate and distinct fares for their respective places or seats therein" (32 & 33 Vic 115 S. 4)

The proprietor of a stage coach if he undertakes for reward to carry goods as well as passengers is a common carrier of the goods But if he only holds himself out to carry passengers, the fact that the passengers are permitted to take luggage with them and that the driver of the coach accepts a gratuity for carrying such luggage does not render the proprietor liable as a common carrier, if he makes no charge for the carriage of the luggage (*Middleton* v *Fowler*, (1699), (1 Salk 282, *Brooke* v *Pickwick*, (1827) 4 Bing 218)

Stage coach. Stage carriage.

The driver of a stage coach must have competent skill and know the road

Stage play In the English Theatres Act, 1843, 6 & 7 V c 68, "Stage play", has been defined to include "every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof" Provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any

Stamp-duties.

booth or show which, by the Justices of the Peace or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind" (S 23) A dialogue is within that definition (*Thorne* v *Colson*, 25 J P 101)

Stains (Blood stains) Blood stains are the red-brown colour left by the contract of blood with any absorbent material or the evaporated residue of blood left on non absorbent surfaces and consisting of the cellular elements of the blood and the dried albuminous matters (*Ame Cyc*)

Stake A deposit made to answer an event

Stakeholder. One with whom a deposit is made by two who lay claim to it A third person chosen by two or more persons to keep in deposit property the right or possession of which is contested between them, and to be delivered to the one who shall establish his right to it Thus each of them is considered as depositing the whole thing This distinguishes this contract from that which takes place when two or more tenants in common deposit a thing with a bailee (*Domat, Lois Civ* I, t 7, S 4).

A person having in his hands money or other property claimed by several others is considered in equity as a stakeholder (1 Vern. 144.)

Stale cheque A cheque that is not presented for payment within a reasonable period.

Stale demand Claim for a long time dormant and undemanded

Stall Compartment or space appropriated to a dealer in a market or bazaar, small open fronted shop.

Stallage (*Sax, stal*) The liberty, or right of pitching or erecting stalls in fairs or markets, or the money paid for the same (*Blount, Whart Dict*; 6 Q.B 31) It must be founded upon a reasonable consideration between the public and the grantee and the tolls must be reasonable (1 Steph Com 450)

Stallion Uncastrated male horse

Stambha-puja (S) Worship of the posts of the temporary pavilions erected for marriages or other festive occasions (*Wil Gloss*)

"Stamp" defined *See* Indian Stamp Act.

STAMP An impression made by order of the government, on paper which must be used in reducing certain contracts to writing, for the purpose of raising a revenue (See *Stark Ev*, 1 *Phill. Ev*) A paper bearing an impression or device authorized by law and adopted for attachment to some subject of duty or excise.

"Stamp' would mean both an impressed stamp by means of a die as an adhesive stamp" (S 122, English Stamp Act, 1891). *See also* Tilsley on the Stamp Laws, Alpe, Digest of the Law Relating to the Stamp Duties, Highmore's Stamp Act; Griffith, Digest of Stamp Duties.)

Stamp-collector. Person who collects postage stamps as curiosities.

Stamp-duties A branch of the perpetual, revenue of the kingdom They are a tax imposed upon all parchment and paper where on any legal proceedings, or private instruments of almost any nature what-

Stamped.

ever, are written and also numerous other purposes. These imposts are very various, according to the nature of the thing stamped or taxed, rising gradually from a very small amount to large amounts proportioned to the property conveyed From small beginnings they have now increased to an amount which nothing but the absolute necessity of their being imposed for state purposes could prevent us from styling enormous These duties are managed by special officers appointed for the purpose They now extend to such an astonishing variety of articles and depend on such a multiplicity of statutes, which are continually being added to and are also varying (by increasing) the amount, that no table or compendium which could be framed, would probably be of any service after one session of the legislature. (*Tomlins Law Dic*)

POSTAGE STAMP Stamp indicating amount of postage paid on letters

"Stamped" defined *See* Duly stamped

Stamping In respect of the English Weights and Measures Act, 1878, 41 & 42 V c 49, " 'Stamping' includes, casting, engraving, etching, branding, or otherwise marking, in such manner as to be, so far as practicable, indelible, and the expression 'Stamp' and other expressions relating thereto, shall be construed accordingly" (S. 70).

Stand. To abide by a thing, to submit to a decision, to comply with an agreement, put up with, be subjected to (as) "must stand his trial for murder"

STAND Be candidate for seat in Parliament or other Legislative Assembly or for office.

Stand and deliver Peremptory demand comparable to highwayman's

Stand committed To be committed.

Stand down. Retire from witness box.

Stand fire Face enemy's fire or adverse criticism without yielding

Stand for Be the symbol of; contend openly on behalf of a principle

Stand mute Upon arraignment for treason or felony, to make no answer, to answer foreign to the purpose

Stand over. Be left for later settlement.

Stand point. Point of view.

Standard. "'standard or standard,' signifieth an ensign in war, but it is also used for the principal or standing measure of the King." (*Termes de la Ley*, Estandard, *Cowel*) Figuratively, distinctive flag or principle to which allegiance is given (as) raise the standard of revolt.

STANDARD. (*In War*) An ensign or flag used in war (*In Measures.*) A weight or measure of certain dimensions, to which all other weights and measures must correspond as, a standard bushel. Also, the quality of certain metals, to which all others of the same kind ought to be made to conform, as standard gold, standard silver.

Standard bearer. (*Fig.*) Conspicuous advocate of a cause.

Standing timber.

Standard foot or inch. One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch [Measures of Length Act (11 of 1889) S 4]

Standard gold Gold composed of twenty parts of pure gold and two parts of copper alloy.

Standard money. Coin whose value in exchange depends upon the intrinsic value of the metal it contains

Standard orders standing orders General regulations of the procedure of the two houses of a parliamentary body, respecting the manner in which its business shall be conducted.

Standard rent *Standard rent* can be fixed before expiry of the lease (49 Cal 523=26 C W N 78=68 I C 274)

Standard silver. Silver composed of thirty-seven parts of pure silver and three parts of copper alloy.

Standard sizes Sizes at which articles are usually made

GOLD STANDARD System by which the basis of legal tender is gold.

"**Standard weight**" means the weight prescribed for any coin (Act III of 1906 (Coinage), S 2, Cl. (*e*)]

Standard yard. The imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard. (Measures of Length Act(11 of 1889) S. 2)

Standardizing Arithmetical calculation for ascertaining the value of bullion, that is converting the gross weight of gold or silver that is not of the standard into its equivalent in weight of standard metal.

Standing army Army maintained even in times of peace.

Standing by "Standing by" implies an acquiescence in an infringement of a right the legal effect of which would to make it fraudulent in the possessor of the right to afterwards set up his right (*See per* Fry J, *Willmott* v *Barber*, 15 Ch. D. 105, 106, 49 L J. Ch. 792.)

"**Standing Committee**" defined. Mad. Act 3, 1904, s 3 (36)

"**Standing crops**" defined. Act 17, 1879, s. 2 (6th)

Standing orders. Procedure Rules for Parliament or other Legislative bodies.

Standing timber, standing trees. The word "standing timber" means trees the wood of which can be used for building or repairing houses or for other industrial purposes, and implies an intention, sooner or later, to serve the trees from the soil. The term "standing trees," however does not imply any such severance or use. (35 I. C. 713.)

Fruit trees are not included in the term 'standing timber. (49 All 330=25 A.L.J. 199=101 I.C. 287= A.I.R. 1927 All. 254)

Stanom

STANDING TIMBER which has to be cut down and removed is movable property [133 I C 157=1931 A.L J 608=A I R 1931 All 392 (F B)]

Stanom (*Mal*) Status and attendant property of the senior Rajas. (*Sund Iyer's Mal Law*, See *Sthanam*)

"**Stanomdar**" Meaning of *See* 73 I C. 275=A I. R. 1921 Mad 247

Star board The righthand side of a ship, to one looking towards the bow.

Star-chamber. A Chamber at Westminster so called, because at first the ceiling thereof was adorned with images of gilded stars And in the stat. 25 Hen 8 c, 1 it is written the Starred Chamber (*Tomlins Law Dic*) A civil and Criminal Court noted for arbitrary procedure.

Star of India An order of knighthood

Star-proof. (*Milt*) Impervious to star light.

Stare decisis. A bi l by the decisions, (see 1 Bl Com 70), a latin phrase meaning 'to stand by decided cases, to uphold precedents, to maintain former adjudications

It is a general maxim that when a point of law has been settled by decision, it forms a precedent which is not afterwards to be departed from The Rule as stated is "to abide by former precedents (*stare decisis*), where the same points come again in litigation as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion, as also because, the law in that case being solemnly declared and determined, what before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or swerve from according to his private sentiments, he being sworn to determine not according to his own private judgment, but according to the known laws and customs of the land,—not delegated to pronounce a new law, but to maintain and expound the old one –*jus dicere et non jus dare*" (*Broom*, Leg Max , As it was said Alderson, B, "My duty is plain It is to expound and not to make the law, to decide on it as I find it, not as I may wish it to be". 7 Exch 543, quoted by Coltman, J , in 4 C B 560).

STARE DECISIS Applicability to questions of procedure *See* 50 A 41, 1927 Rang 4, 13 M I A 73 (393)

Though an old Court is superseded by a superior Court and its decisions are no more absolutely binding on the latter, still they ought to be valued as the embodiment of the settled law of the land on the principle of *stare decisis* [4 R 313=A I R. 1927 Rang 4 (F B.)]

State (*Lat stare, to place, establish*) A body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage, by the joint efforts of their combined strength. (*Cooley*, Const Lim 1)

A self-sufficient body of persons united together in one community for the defence of their rights and to do right and justice to foreigners In this sense, the state means the whole people united into one body politic.

Statement.

The various uses of the word "state" are well expressed in *Taxas* v *White*, 7 Wall 700, 19 L Ed. 227 It sometimes designates a people of community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country Often it denotes only the country, or territorial region, inhabited by such a community. Not infrequently it is applied to the Government under which the people live At other times it represents the combined idea of people, territory, and government In the same case a state is defined as a political community of free citizens, occupying a territory of defined boundaries, and organized under a government.

State craft Art of government.

"**State forest**". defined. Reg 5 1890, S 2 (2)

'**State land**" defined Bur Act 4, 1898, S. 4 (1), Reg 3, 1889, S 23

"STATE LAND" means land belonging to or at the disposal of the Government, and includes—(*a*) land hitherto termed royal land, (*b*) land held on condition of rendering public service or as an appanage to or emolument of a public office, (*c*) islands and alluvial formations in rivers, (*d*) waste-land and land included within reserved or village forests, and (*e*) land which has been under cultivation but has been abandoned and to the ownership of which no claim is preferred *See* Bur Regn. III of 1889 (U B Land and Revenue), S 23

State notes (*Currency Notes*) Notes of a state or government, undertaking to pay bearer on demand the amount specified *in specie*

State of siege Condition of things in which Civil law is suspended or made subordinate to military law

State's evidence King's evidence, approver.

Stated account An agreement by both parties that all the items are true, one which has been examined by the parties, and where a balance due from one to the other has been ascertained and agreed upon as correct, one that has been expressly or impliedly acknowledged to be correct by all parties

Statement The act of stating, reciting, or presenting verbally or on paper.

The term '*statement*' is of more general import than the term 'writing' The former in the absence of anything to the contrary may include both oral and written statements but the latter can by no possible stretch of its meaning include an oral statement (7 A L.J 408=6 I C 101)

A statement is within the meaning of S 193, Penal Code, whether made "verbally" or 'other wise'. (10 B. 288)

The expression "statement made in the ordinary course of business" in S 32 (2) of the Evidence Act means a statement made during the course not of any particular transaction of an exceptional kind, but of business or professional employment in which the deceased was ordinarily or habitually engaged. (65 C L J 603.)

STATEMENT distinguished from "information" *ee* 115 I.C. 1=A I R. 1929 Lah. 338.

Statement of claim.

Statement of claim The specification of the plaintiff's cause of action

Statement of objects and reasons It is not permissible in India to refer to the Statement of Objects and Reasons which accompanies the draft Bill when it is first introduced in the legislative body Unlike the preamble, the headings and the marginal notes, the Statement of Objects and Reasons is no part of the Act as passed by the Legislature [5 All 619=125 I C 477=A I R 1930 All. 225 (F B).]

"Station", defined (*See also* Police-station) Ben Act 5, 1876, S. 6 (20)

Station master One who has charge of a station, — especially on a railway

Station to station An ordinary contract to carry from "Station to Station", involves an obligation to unload and deliver at the receiving station, or at least to provide proper appliances for that purpose (*per* Hawkins J., *Royal National Lifeboat Inst* v. *Lond. & N. W Ry*, 3 Times Rep 601).

Stationary office Office for providing books, stationary, etc, to Government offices

Statist A statesman, a politician, one skilled in government

Statistics A collection of facts and figures regarding the condition of a people, class, etc, the science which treats of the collection and arrangement of facts bearing on the social, moral and material condition of the people.

Statuary This word includes a marble bust chiselled by an artist or a marble full-length figure (*Sutton* v. *Ciceri*, 15 App Cas 144, 62 L.T. 742)

Status The status of an individual means the legal position of the individual in or with regard to the rest of the community (L R 4 P D 11) The rights, duties capacities and incapacities which determine a person to a given class, constitute his status, (*Campb Austin* 137)

STATUS is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (*Salmond*, Jurisprudence 253 257), or, to be verbally accurate, of his capacity for rights and duties (*Holland*, Jurisprudence 88)

Status: Estate A man's estate is his measureable property, what we call his status is his position as a lawful man, a voter, and so forth The liability of every citizen to pay rates and taxes is a matter of status, what a given citizen has to pay depends on his estate, or portions of it assigned as the measures of particular imposts.

Status quo The existing state of things at any given date

Status quo ante bellum. A phrase used in international law to indicate the condition of the territory of a belligerent and the ownership of the property of the subjects of such belligerent as they existed prior to the breaking out of war, which, under the stipulations of some treaties of peace are restored to their former ownership. In other treaties, a belligerent who has possession of an enemy's territory or property at the end of the war retains it.

Statute law.

Statute, signifies an act of the Legislature (*Tomlins Law Dic*), a law established by the act of the legislative power The written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state

It is said that "statute" (statutum) was first used in an act of 55 Henry III (21 Law Mag & Rev. 310)

This word is used to designate the written law in contradistinction to the unwritten law

The meaning of the term "statute" varies according to the connection in which it is used For certain purposes an enactment to which a state gives the force of law is a statute, although not originating in the legislature Under certain circumstances a municipal ordinance may be deemed to be a statute, although usually not included within the meaning of such term Under the civil law "statutes" is a term applied to all sorts of laws and regulations, to whatever provision of law which permits, ordains or prohibits anything (*Ame Cyc*)

"Acts of Parliament are the works of the Legislature, and the publication of them has always belonged to the King, as the Executive Part and as the Head and Sovereign." [Lord Mansfield, *Millar* v. *Taylor*, (1768) 4 Burr Part IV 2404]

"Notwithstanding all the care and anxiety of the persons who frame Acts of Parliament to guard against every event, it frequently turns out that certain cases were not foreseen. [Lord Kenyon, C J , *Farmer* v. *Legg*, (1797) 7 T.R. 190]

"There is nothing so common in the framing of instruments as that whilst the framer of them is studious to avoid one inconvenience, he incurs another which does not present itself to his view, This is often to be seen in Acts of Parliament [Rooke, J , *Lord Nelson* v *Tucker*, (1802) 3 & Bos. Pull 275]

"An Act of Parliament can do anything, as it may make a woman Mayor or Justice of the Peace, but it cannot alter the course of nature" Wild, J , *Crow* v *Ramsey*, (1670) Jone's (Sir Thos) Rep 12

The sense and meaning of an Act must be collected from what it says when passed into a law, and not from the history of changes it underwent in the House where it took its rise That history is not known to the other House, or to the Sovereign" Willes, J , *Millar* v *Taylor*, (1769) 4 Burr. 2332 cit. *Caird* v *Sime*, L R 12 App Cas 356.

"No stops are ever inserted in Acts of Parliament or in deeds, but the Courts of law, in construing them, must read them with such stops as will give effect to the whole" Lord Kenyon, C J , *Doe d. Willis and others* v. *Martin and others*, (1790) 4 T.R. 65

"Statute adult" defined. 57 8 V c 60, S. 268 (2).

Statute barred Applied to a debt barred by limitation.

Statute book A record of the statutes and enacted laws of a country.

Statute law. "Statute law" is frequently used interchangeably with statute; but the term is broader in its meaning, and includes not only statutes as already defined, but also the judicial interpretation and application of such statutes.

Statute law.

A statute law is the written expression of the legislative will It is the positive declaration of what the law shall be by that branch of the government possessing legislative functions, as distinguished from the executive and judicial functions of co ordinate branches It either makes positive what is recognised as law, modifies that law, or declares to be unlawful that which hitherto had been lawful. When duly enacted it becomes controlling in respect to the matter to which it properly relates, and unless transcribing certain fixed constitutional limitations, its effect is absolute until again changed by like legislative authority.

AFFIRMATIVE STATUTE An affirmative Act giving new rights does not destroy existing rights unless the legislature apparently intends that the two rights should not co-exist together (A I R. 1928 Cal. 808)

AMENDATORY STATUTE Unless required in express terms or by clear implication, an amendatory act will not be given a retrospective construction Proceedings instituted, orders made, and judgments rendered before the passage of the amendment will theretore not be affected by it, but will continue to be governed by the original statute.

CURATIVE STATUTES Curative statutes are by their very nature intended to act upon past transactions, and are therefore wholly retrospective.

The effect of curative statutes is usually to make the acts to which they relate valid *ab initio*

DECLARATORY STATUTE. A declaratory act is one that does not purport to change the former law, but only to determine the proper construction to be placed upon the common law or a former statute

Statutes-merchant were contrived for the security of merchants only, to provide a speedy remedy to recover their debts: but at this day they are used by others who follow not merchandize, and are become one of the common assurances of the Kingdom. (*Tomlins Law Dic*)

Statute roll A roll on which an act, after receiving the royal assent was formally entered

Statutes of England "Statutes of England", mean acts of parliament, enacted by the king, by the assent of the lords, spiritual and temporal and of the commons and parliament assembled:

Statutory meeting of shareholders in a company is a general meeting which it is compulsory to hold within a fixed time from the time of starting business.

Statutory obligation. An obligation arising under a statute.

Statutory Order and Statutory Rules and Orders. Ordinances made whether by the Sovereign in Council, a Department of the Executive, a Local Authority or any other corporation or person under powers expressly delegated by the Legislature and the sections of Acts which effect such specific delegations are referred to as "Statutory powers."

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis A statute is to be generally interpreted, although the words be special if the purpose be general.

Steam-yacht.

Stay of execution (*In practice*) A term during which no execution can issue on a judgment means to suspend the enforcement of a judgment or order until something else happens *e g*, an appeal can be heard (*Ann Pr* R S C, R 16, Ord. 58)

Staying proceedings The suspension of an action Proceedings are stayed absolutely or conditionally

Every Court has inherent power to temporarily suspend the proceedings in any action where the plaintiff is in default or has disobeyed any lawful order of the Court. In addition, large powers of staying proceedings are given to the Court by various statutes rules, and orders.

Steal To take by theft

Steam Steam is the elastic aeriform fluid into which water is converted when heated to the boiling point It is an element of power In most countries there are statutes regulating the use of steam engines

Steam boiler. Boiler for generating steam.

Steam engine, etc. Those worked by steam power

Steam launch In the Thames Conservancy Act, 1894, S 3, 'Steam launch,' has been defined to include any vessel propelled by steam, electricity, or other mechanical power, not being used solely as a tug or for the carriage of goods, and not being certified by the Board of Trade as a Passenger Steamer to carry 200, or more, passengers"

Steam navigation The breakdown of an Engine, the disabling of a Screw, and things of that kind, are Risks of Steam Navigation (*per* Coleridge, C J, *Mercantile S S Co* v. *Tyser*, 7 Q B D. 73, 29 W.R. 790.)

"Steam-pipe" means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime-mover or other first user, and includes any connected fitting of a steam-pipe. [Boilers Act (V of 1923), S. 4.]

"Steamship" defined (*See also* British steamship); Act 7, 1884, S 3 (1), Bur. Act 8, 1907, S 2 (2).

"I am very far from saying that where it is convenient as it often is, for a steam vessel to use sailing power instead of steam power when the wind happens to be favourable it is necessary that the vessel should be at all times and under all circumstances propelled by steam, but the meaning of a vessel being a steamship is that the principal motive-power used shall be the power of steam, and not sails" (*per* Cockburn, C J, *Fraser* v. *Telegraph Construction Co*, L R. 7 Q B 568, 41 L J Q B 250).

"Steamvessel" defined. (*See also* Inland steamvessel), Act 6, 1884, S 5 (2); Bur. Act 2, 1910, S. 3.

STEAMVESSEL" includes a motor-launch or other vessel propelled by mechanical means. [Bur. Act VIII of 1907 (Defile Traffic), S 2, Cl. 2].

Steam-yacht Yacht propelled by steam or vapour.

Steamer.

"Steamer" defined. (*See also* Coasting steamer; Foreign steamer; Passenger steamer). Act 15, 1908, Sch 1, Pt. 2, expln. 1 (*a*).

"Steerage passage" defined. 57-8 V c. 60, S. 268 (4).

"Steerage passenger" defined. 57 8 V. c 60, S. 268 (3).

FROM STEM TO STEM From one end of a vessel to the other

Stem. The prow of a ship.

Stenographer. One who writes in short-hand, by using abbreviations or characters for words.

Stenography The art of writing in cipher or secret characters

Step-child One who stands in the relation of a child through the marriage of a parent (also step-bairn)

Step country An adopted country.

Step-daughter. The daughter of one's wife by a former husband or of one's husband by a former wife.

Step father. The husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.

Step-in-aid of execution. The words "Take some step in aid of the execution of a decree," mean to obtain some order of the Court in furtherance of the execution of the decree. (30 C 761=8 C.W N 251.)

The expression "a step-in-aid" of execution in Art. 182, Limitation Act, includes any application made according to law, in furtherance of the execution proceedings under a decree [12 A 39) (F B). *See also* 22 B 340 (342, 343), 12 C.W N 621 (622), 11 C P.L.R. 161, 19 All. 477, 21 A.W.N 29.]

Step-mother The wife of one's father by virtue of a marriage subsequent to that of which the person spoken of is the offspring.

Step-son. The son of one's wife by a former husband or of one's husband by a former wife.

Sterility. Barrenness; incapacity to produce a child. It is curable and incurable. When of the latter kind at the time of the marriage, and arising from impotency, it is a good cause for dissolving a marriage. (1 *Fodere, Med. Leg* 254)

Sterling. (*Sterlingum*) was the epithet for silver money current within the United Kingdom (*Tomlins Law Dic.*)

STERLING. Current money of Great Britain but anciently a small coin worth about one penny, and so called as some suppose because it was stamped with the figure of a small star, or, as others suppose, because it was first stamped in England in the reign of King John by merchants from Germany called Esterlings.

POUNDS STERLING originally signified so many pounds in weight of these coins.

Genuine; having passed the test; money; standard rate.

Stifling prosecution.

Sterling bonds Bonds payable in British Currency only.

Stet (*Lat*) Let it stand.

Stet processus (*Lat.*) Let the process stand or be stayed.

Steward Formerly an officer of disputes, namely, a keeper of the Courts (Co Litt 61)

STEWARD compounded of the Sax. *Steda*, *s e*, and *Ward*, as ward or keeper, *t e*, a man appointed in my place or stead The term hath many applications, but always denotes an officer of chief account within his jurisdiction (*Tomlins Law Dic.*)

Sthala (*S*) Spot, site place, firm ground, whence, in some of the dialects, a field, a portion of land, comprising several fields, a tract, a district

Sthala-karnam. (*Tel*) The accountant of a district.

Sthalalu-jabita. (*Tel*) A list of fields, shewing the number of cultivated lands and the crops raised on each.

Sthana (*S*) Place, site, station, an open place in a town, also the residence of a religious mendicant. also a staying, the act or place of staying or abiding, also continuation, figuratively, it denotes rank or dignity (*Wil Gloss*)

Sthanam. (*Mal*) A station, rank or dignity. (*Moore's Malabar Law*)

Sthani (*Mal.*) The holder of a Sthanam. (*Moore's Malabar Law*)

Sthanikam (*Mal*) One who holds or belongs to a place, one who holds an office, a placeman, a Governor or superintendent of a district; the director or manager of a temple, sometimes held hereditarily, a person who superintends the ceremonies or officiates in a temple, an officiating priest or Brahman

Sthapati (*S*) A carpenter, a wheel wright, a mason, a master carpenter or mason a guard of the female apartments.

"Sthavee karsha kabuliyat." Meaning of. *See* 19 C W N. 1129=29 I.C. 461.

Stiffening order. A customs house permit for a ship before completely unloading to take ballast or heavy cargo on board for steadying purposes.

Stifle To suppress; or conceal, to destroy.

TO STIFLE, SUPPRESS, SMOTHER. The leading idea in all these terms is that of keeping out of view: stifle is applicable to the feelings only, suppress to the feelings or to outward circumstances; smother to outward circumstances only. we stifle resentment; we suppress anger In regard to outward circumstances, we say that a seditious book is suppressed by the authority of government, that vice is suppressed by the exertions of those who have power; an affair is smothered so that it shall not become generally known.

Stifling prosecution. Agreeing, in consideration of receiving a pecuniary or other advantage, to abstain from prosecuting a person for an offence.

Stipend

Stipend A provision made for the support of the clergy, salary, settled pay.

Stipendium (*Lat.*) Stipend; wages; the pay of a soldier

Stipes or Stirps. (*Lat.*) A stock, a source of descent

"**Stipulated**". Meaning of *See* 12 M.I A. 157.

Stipulated damages Same as Liquidated damages

"**Stipulated period**". The period described in S. 8 of Regulation XVII of 1806 as "the stipulated period" must be ascertained by referring to the date fixed in the proviso for redemption, as the date at which the mortgagor may redeem the subject of the security by repaying the capital of the loan The period so ascertained will not be altered or affected by the failure of the mortgagor to make due and regular payment of termly interest before that period arrives A separate stipulation which, for other purposes, accelerates the time at which the principal is to become due and makes no provision for the mortgagor making payment in order to avoid forfeiture, cannot legitimately be taken into account in considering, what ought to be regarded as 'the stipulated period". (*22* I A 183=*23* C 228=5 M L J. 261)

Stipulation. A material term or article in an agreement

In practice an agreement between counsel respecting business before a Court (*Anderson L Dict*)

When made in open Court, with reference to the subject-matter of a pending cause, stipulations are contracts not only between the parties, but between them and the Court Stipulations are regarded as proceedings in the cause, and as such are under the supervision of the Court, and may be binding upon parties who are incapable of binding themselves by contract out of Court.

In Admiralty Practice a recognizance of certain persons in the nature of bail for the appearance of a defendant (3 Bla Com. 108)

STIR, MOVE Stir is specific, move a generic term; to stir is to move so as to disturb the rest and composure either of the body or mind, hence the term stir is employed to designate an improper or unauthorised motion, a soldier must not stir from the post which he has to defend, atrocious criminals or persons raving mad are bound hand and foot, that they may not stir.

"**Stock**", defined (*See also* Capital Stock), India. (Stock), Act 27, 1866, S. 2, Act 11, 1876, S 56.

STOCK Includes the national debt of a country, and fully paid up shares in a company.

In Mercantile Law, stock is the capital of a merchant, tradesman, or other person, including his merchandise money, and credits. The goods and wares he has for sale and traffic.

In Corporation Law, a right to partake, according to the amount of the party's subscription, of the surplus profits obtained from the use and disposal of the capital stock of the company. (Ang. & A. Corp. 557.)

Stock-holder.

"'Stock cannot be considered as money" (*Nightingale* v. *Devisme*, 1 Bl W 684)

"Stock" means any fund, annuity or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India [Act XXVII of 1866 (Trustees), S 2]

Stock or shares of corporations "Stock" is a term used to denote first, the capital stock, second, the shares of stock or of the stockholder, third, as being applied so as to include both *See* 44 L.J. Ch. 24, 45 L.J Ch 614, L.R 7 H L 717

STOCK, STORE. Store implies a quantity, but agreeable to the derivation of the word, it implies an accumulated quantity Any quantity of materials which is in hand may serve as a stock for a given purpose, thus a few shillings with some persons may be their stock-in-trade any quantity of materials brought together for a given purpose may serve as a store The stock is that which must increase of itself, it is the source and foundation of industry, the store is that which we must add to occasionally, it is that from which we draw in time of need By a stock we gain riches, by a store we guard against want; a stock requires skill and judgment to make the proper application a store requires foresight and management to make it against the proper season A tradesman stocks himself with such articles as are most saleable, a fortress or a ship is stored with provisions

Stock Exchange A society of stock-brokers and stock-jobbers In the transaction of business they are governed by certain usages and by rules framed by the committee of the stock exchange Also, the place where they meet to transact business

The *Stock Exchange* is in some senses a law unto itself Not that the rights of parties to a stock exchange bargains can be understood without a knowledge of ordinary legal principles, at the same time, much of the law which governs stock exchange transactions, whether such law be constituted by the rules of the market or by judicial decisions, has no application to contracts outside the area of Capel Court The practitioner must therefore be prepared to unlearn some of the law which he has to apply in ordinary contracts when he comes to deal with a case in which stock and share transactions are involved (*See* Stutfield Rules and Usuages of the Stock Exchange.)

Stock-holder or Share-holder In a broad sense, a stockholder is one who is the holder or proprietor of stock in the pubic funds, or in the funds of a bank or other stock company.

STOCKHOLDER in a corporation is one owning stock; one possessed of the evidence that the holder is the real owner of a certain undivided portion of the property, in actual or potential existence, held by the company in its name, as a unit, for the common benefit of all the holders of the entire capital stock of the company.

Stock in Trade.

Shareholder, in a corporation, is one who has a proportionate interest in its assets, and is entitled to take part in its control and receive its dividends.

Stock in Trade Comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person's trade.

Stock-jobber. A dealer in stock, one who buys and sells stock on his own account on speculation.

Stock Receipt. Receipt of registered stock given to the purchaser by the seller on payment of the consideration

Stocks A machine made of wood, through which the legs of offenders were fastened, and their persons thus put in confinement.

"Stolen property" defined. Act 45, 1860, S 410, Bur Act 6, 1907, S. 4 (3).

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property," whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property (Penal Code, S. 410)

"Stone" defined Reg 12, 1887, S 2 (1)

"Stone-tract" Defined. Reg 12, 1887, S. 2 (2)

"STONE-TRACT" means a tract which the Local Government has, by notification in the official Gazette, declared to be a local area in which precious stones are found [Bur Regn. XII of 1887 (U B Rubies), S 2, cl 2]

"Stop further proceedings" The words "to stop further proceedings" in S 347, Cr P Code, (V of 1898) only requires the Magistrate to stop proceeding with the case as a trial and instead to commit the case to the Sessions for trial by that Court [23 M.L J 368=17 Ind Cas 410 (412)]

Stoppage in transitu The right of a vendor to rescind a contract of sale, and seize the goods while still in the hands of the carrier (*See* 2 Bl. Com. 448) The right of an unpaid vendor, in certain cases to stop the goods sold, in transit.

The right of stoppage *in transitu* is the right of an unpaid seller, who has parted with the possession of the goods, to resume the possession thereof, in the event of the buyer's insolvency while they are still in the course of transit, notwithstanding that the property in the goods may have passed to the buyer, and to retain them until payment or tender of the price The right exists only in the event of the buyer's insolvency; and the effect of exercising it is not to rescind the contract of sale, but merely to revive the seller's lien on the goods and the right extends only to the goods themselves.

Stopping a Cheque or Note. This is resorted to when a cheque or note has been lost or stolen. The bank is notified of the loss or theft, and in the case of a cheque the banker may refuse to cash it.

"Stores" defined. *See* Military stores.

Strand.

STORES. (*In Maritime Law.*) The supplies of different articles provided for the subsistence and accommodation of a ship's crew and passengers

Storey Division of house or building reached by one flight of stairs

The following definitions of the different classes of storeys occur in the London Building Act, 1894

"BASEMENT STOREY" means, any storey of a building which is under the ground storey" [sub-s S (12), S 5].

'GROUND STOREY" "means that storey of a building to which there is an entrance from the outside on or near the level of the ground, and where there are two such storeys, then the lower of the two Provided that no storey of which the upper surface of the floor is more than 4 feet below the level of the adjoining pavement shall be deemed to be the ground storey" [sub-S (11), S 5]

FIRST STOREY "means, that storey of a building which is next above the ground storey, the successive storeys abo e the first storey being the second storey, the third storey, and so on to the topmost storey" [sub-S (13), S 5].

"TOPMOST STOREY" "means, the uppermost storey in a Building whether constructed wholly or partly in the roof or not" [sub-S (14), S 5]

As regard this definition it is of general acceptation, for a "Storey" need not, necessarily be a room with four vertical walls, a room built into the roof is a "Topmost storey". (*Foot* v *Hodgson*, 59 L.J Q B. 343, 25 Q B D 160, *Stroud*)

Storing wood Keeping wood for sale without licence would amount to "storing" wood or timber. (50 Bom 760=97 I C 811=A I R. 1926 Bom 546=28 Bom L.R 1070)

Stowage Money paid for a room where goods are laid (*Tomlins Law Dic*) *Stowage* are payments for stowing a vessel

Straight. Conforming to justice and rectitude, not deviating from truth, fairness or honesty, upright

Straight, Right, direct. The *right* conduct for witness in a Court of law is to give a *direct* answer to every *straight* question.

Straight cut. The term "*straight cut*" designates that particular product of tobacco in which the plant has been so cut and treated at the time of cutting as to preserve the fibres long, even, straight, and parallel, when prepared for sale or use

Strait. A body of water having a connection with the ocean at each end, and running between a long extent of land on two sides of it.

STRAIT is a narrow sea between two lands, or an arm of the sea. Also there is a narrow coarse cloth anciently so called (*Tomlins Law Dic.*)

Strand. The word "strand" means the verge of the sea, or of any river.

STRAND. (*Sax.*) is any shore or bank of a sea or river. Hence the street in the west suburbs of London, which lay next the shore or bank of the Thames, is called the Strand. (*Tomlins Law Dic.*)

Strand.

"Strand" is synonymous with "shore", and is that portion of the land lying between ordinary high and low water mark.

Webster says that "strand" is the shore or beach of the sea or ocean, or of great lakes.

Stranded-Stranding. The word "stranded" means run on ground.

STRANDING, In a Marine Insurance, "a touch and go" is not a stranding, in order to constitute a stranding, the ship must be stationary" (*per* Ellenborough, C J, *Macdougl* v *Royal Exchange Assrce*, 1 Starkie 130).

"If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded, but if she settles and remains for any time, this is a stranding, without reference to the degree of damage which she sustains (*Harman* v *Vaux*, 3 Camp 429)

"Stranding", as used in a policy of marine insurance on a vessel, providing that the insurers are not liable for any derangement, breakage of the machinery, or bursting of the boilers, unless occasioned by strand ing, is understood to be the striking of a vessel upon a rock, bank, roof, or the like

Stranger. Is one who is not a party or privy to an act, contract, suit or other proceeding "Stranger may be derived from the French, Estrangier, aliena It signifies generally in our language a man born out of the land, or unknown, but in the Law, it hath a special signification, for him that is not privy or party to an act. A stranger to a judgment, is he to whom a judgment doth not belong, and in this sense it is directly contrary to party or privy." (*Cowel*).

STRANGER, FOREIGNER, ALIEN Stranger is a general term, and applies to one not known, or not an inhabitant, whether of the same or another country, foreigner is applied only to strangers of another country, and alien is a technical term applied to foreigners as subjects or residents, in distinction from natural born subjects.

Strangers to a suit are those who are not directly interested in the subject-matter in issue, and who have not a right to make a defence, control the proceedings, or appeal from the judgment

"Stranger", as used in a rule that a deed can never be an escrow unless it is delivered to a stranger, to hold until the condition is performed, and then to be delivered to the grantee, is a person not a party to the deed.

"Strangers" are third persons generally, all persons in the world, except the parties.

The word "STRANGER," AS USED IN THE MAHOMEDAN LAW OF PRE-EMPTION, has no reference to relationship arising from cansanguinity or marriage It is a correlative term to "pre-emptor". [5 A. 65 *See also* 31 All. 623=71 I.C. 70 (F.B.)].

Stranger means, when the right pre-empt is based on custom, one who has no share in the mahal con cerned (3 I C. 820)

A person, who is not a member of the proprietary body amongst whom a custom of pre-emption exists and who has no common rights and liabilities with the members of the proprietary body is for the purposes of the pre-emption, a stranger. (7 I.C. 70).

Stream.

Stratagem. Stratagem implies artifice, trickery, and deception

A stratagem is an artifice, particularly in war, a plan or scheme for deceiving an enemy, a trick by which some advantage is intended to be obtained, an artifice

Strategy. "Strategy" is a term ordinarily used in the operation of armies, conducted by a skilful commander, and implying tact and art in military manœuvring, and is not very appropriate to the transactions of civil life, but, as used by a jury in finding that the plaintiff employed "strategy in bringing about the agreement", meant acts and perhaps representations not in themselves unlawful, but such as are common to persons entering into contract relations, each endeavouring to make the best terms for himself in the transactions. (*Ame. Words and Phrases*)

Straw Bail A worthless surety.

Stray To wander, deviate from the right path, to rove at large. "Straying" of animals on a highway, implies that they were not in charge of some one who had control over them' [*per* Blackburn, J, *Lawrence* v. *King*, (1868) L R. 3 Q B 345]

"Stream" defined. *See* Natural stream

STREAM "Stream" means "a river, brook, or rivulet, anything in fact that is liquid and flows in a line or course" It does not cease to be a stream because its course may be opposed by some obstruction, natural or artificial, which causes its water to be deepened or its flow diminished in velocity.

"Stream" means simply water, and hence authority to construct a bridge over a stream authorizes the construction of a bridge over water, though it is not running water.

A "*stream of water*" flowing over a man's land is a current of water flowing in one line or course between the banks or sides in a certain direction and by a regular channel, and there is a broad distinction between a stream and those occasional outbursts of water which in times of freshes fill up low, marshy places, and run over and inundate adjoining land. A stream need not be shown to flow continuously. It may be dry at times, but it must have a well-defined and substantial existence. (*Ame. Words and Phrases*)

STREAM, CURRENT, TIDE A fluid body in a progressive motion is the object described in common by these terms: stream is the most general, the other two are but modes of the stream. All rivers are streams which are more or less gentle, according to the nature of the ground through which they pass; the force of the current is very much increased by the confinement of any water between rocks, or by means of artificial impediments: the tide is high or low, strong or weak, at different hours of the day; when the tide is high the current is strongest.

STREAM, POND, LAKE The controlling distinction between a STREAM AND A POND OR LAKE is that in a stream the water has a natural motion, or a current, while in a pond or lake the water is, in its natural state, substantially at rest.

'STREAM' 'AYAKUT'. *See* 37 Mad. 322=18 I.C. 770.

Stream embankment.

"**Stream embankment**" defined. Reg. 8, 1887, S 2 (*2*).

"**Street**" defined *See also* Private street, Public road, Public street, Road), Act 5, 1857, S *27*, Act 19, 1884, S *2 (2)*, Act 11, 1890, S. *2 (2)*, Act *20*, 1891 S. 3 (4); Act 16, 1903, S *2 (c)*, Act 9, 1910, S *2 (m)*, Ben Act *2*, 1866, S 51 (ins. Ben. Act *3*, 1910, S 4), Ben. Act 4, 1866, S 3 (ins Ben Act 3, 1910, S 4), Ben Act *3*, 1899, S. 3 (46), Bom. Act 5, 1863, S 28, Bom Act *3*, 1888, S 3 *(w)*; Bom Act 4, 1890, S 3 *(e)*, Bom Act *3*, 1901, S 3 (12), Bom. Act. 4, 1902, S. 3 *(t)*, Bur Act 3, 1898 S 2 (12), Mad Act 4, 1884, S 3 *(vii)*, Mad Act 5, 1884, S. 3 *(ix)*, U P Act 1, 1891, S *2 (b)*, U P. Act *3*, 1894, S. *3* (3); U P Act 1, 1900, S 3 (4), Reg. 5, 1886, S 2 (5), Reg 2, 1907, S. *2 (e)*, Reg 5, 1910, S *2 (n)*.

"**Street**" is a general term, including all urban ways which can be, and are generally, used for the ordinary purposes of travel. A "street" is a way upon land, more properly a paved way, lined, or proposed to be lined, by houses on each side.

The ordinary meaning of this word is "a place with continuous houses on each side" [per *Blackburn J*, in *Pound* v *Plumstead Board of Works*, (1871) L R 7 A C 194], or "a roadway with buildings on each side, more or less continuous [per *Lord Selborne* L C, in *Robinson* v. *Barton Board*, (1883), 8 A C 801).

In *Portsmouth* v. *Smith* (53 L J.Q B 95, 13 Q B D. 184), Brett, M R, said, The word *'Street'*, when popularly used means, a thoroughfare, bounded either on one or both sides by houses

Jessel, M R, in *Tylor* v *Oldham* (46 L J Ch 109, 35 L T 699, 4 Ch. D. 408) said,—"The definition of a *'Street'* is correctly laid down in the Imperial Dictionary'—"The street itself is no doubt, properly, the paved or prepared road, that is the street It sometimes includes the houses along each side of it But that is not its proper meaning It is called a street even without houses. There are some streets with no houses But the usual common meaning of the word street is—a road with houses on one or both sides of it'

A street is properly a paved way or road but in usage any way or road in a city having houses on one or both sides It does not include a drain or ditch on either side of the roadway (28 M. 17).

In common parlance, the word "streets" is supposed to relate entirely to the avenues and thoroughfares of cities and villages, and not to roads and highways outside of municipal corporations, and it would be placing a very liberal construction on this word to hold that it meant a highway or a road (*Ame Words and Phrases.*)

"STREET", as the term is used in the law of streets and highways, includes a mere *cul de sac*; that is, a street open at one end only.

"Street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway [C. P. Act XVI of 1903 (Municipal), S. 2, cl (c)].

The definition of "Street" in S. 3 *(e)* of the Bombay District Police Act of 1890 includes a place

Street alignment.

accessible to the public. The words "accessible to the public" mean that any member of the public as such has access to land and by "access to" would ordinarily be understood unimpeded entrance upon the land. (14 Bom L R. 499=15 I C 785=13 Cr L J 513.)

The expression "Street" is defined as meaning, any road, foot-way, square, court, alley or passage accessible whether permanently or temporarily to the public whether a thoroughfare or not. As regards accessibility, mere physical access apart from the right of access cannot be regarded as test. (30 B 558, 6 Bom 686, 20 B 146; 60 P L R. 1918, *Ref to*, 71 I C. 775=A I R 1924 Lah 393)

"Street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years; and, when there is a footway as well as a carriageway in any street, the said term includes both [Bom Act III of 1888 (Bom City Municipal), S 3 cl. *(w)*]

"Street" means a public or private street [Ben. Act III of 1899 (Municipal) S 3, Cl (46).]

"Street" shall mean any road, footway, square, court, alley or passage, accessible whether permanently or temporarily, to the public, whether a thoroughfare or not, and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid, and shall include also the drains on either side and the land, whether covered or not by any pavement, verandah, or other erection, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property or property reserved by Government for any purpose other than a street," [Pun Act III of 1911 (Municipal) S 3, Cl. (13) *(a)*]

The word "street" INCLUDES A SIDEWALK

The word "street", as it is generally used, includes the roadway, the gutters, and the sidewalks, though it is no doubt often used in a more restricted sense, so as to include only the roadway

A street of a city includes the sidewalks, and any obstruction of the sidewalk is therefore an obstruction of the street

S. 17 of Bombay District Municipal Act (VI of 1873), which vests "streets" in the municipality gives not merely the bare surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes (12 B 490.)

"**Street alignment**" defined. [Ben. Act 3, 1899, S. 3 (47), Mad. Act 3, 1904, S 3 (37).]

"STREET ALIGNMENT" means a line dividing the land comprised in and forming part of a street from the adjoining land. [Ben Act III of 1899 (Municipal), S. 3, Cl. (47)]

Street crossing.

Street crossing. A crossing is the inter-section of two streets, and from the nature of the term can have no property fronting upon it.

Street improvement "Street improvement" implies special benefit to the abutting property after the improvement is made.

"Improvement" as used with respect to streets and sidewalks in a general sense, will include any repairs upon a street or a sidewalk, but as used in a city charter, authorizing the city to improve the highways and providing that it shall not be liable for failure to exercise such power, "improve refers to the betterment of streets and sidewalks, where they have been already established and put in proper condition and not to such repairs and improvements as are necessary to make and keep them reasonably safe for travel"

Street railroad A street railroad or railway has been defined as a railroad or railway laid down upon roads or streets for the purpose of carrying passengers. Ordinarily the chief characteristics of a street railroad are That it is constructed upon and passes along streets and highways, that it is usually constructed so as to conform to the grade of the street and so as not to interfere with the use of the street by pedestrians and vehicles, that it is operated for the transportation of passengers from one point to another in a city or town, or to and from its suburbs, that its cars run at short intervals, at a moderate rate of speed as compared with the speed of commercial railroads, and make frequent stops, particularly at street crossings to take on and leave off passengers, and that primarily its business is confined to the transportation of passengers and not freight.

Whether or not a certain railroad is a street railroad is not determined alone by the kind of rails it uses in its tracks, or by its position in reference to the surface of the street, or by the fact that its tracks are laid in and confined to the streets of a city, but its character usually depends upon the purposes it fulfils, and if it is designed and used primarily for street passengers and for their reception and discharge along its route it is a street railroad without regard to the method of construction or operation, the kind of motive power used, whether animal or mechanical

Street railway company A "Street railway company" is a corporation by which a street railway is constructed, maintained, or operated

Street walker Means night-walker and refers to a woman walking the streets to pick up men" (*R. v Bootie*, 2 Burr 684, 685)

Street walking. "Street walking" is the act of a common prostitute offering herself for sale upon the streets at unusual or unreasonable hours, endeavouring to induce men to follow her for the purpose of prostitution

Street work Street work is a phrase of common parlance, and has a well-defined signification The words mean exactly what they indicate, namely, work upon the street, or work in repairing or making the street.

"Streets and alleys" ordinarily relate exclusively to the ways or thoroughfares of towns or cities.

Strict construction.

They are laid out and dedicated to public use, and especially for the use and convenience of the property holders of the towns or cities, by the proprietor thereof, or laid out and established for the same purposes by the corporation authorities.

STREETS, HIGHWAYS AND ROADS. The term "highway" is a generic name for all kinds of public ways, whether by land or by water Ordinarily, however, the term is confined to public ways over land. Thus used it means a way open to all the people without distinction for passage and repassage at their pleasure. Accordingly the term includes country, roads, streets and alleys in cities, towns, and villages, and public ways of every description It accordingly includes not only public ways devoted to vehicular transportation, but also public ways of all kinds, including footways, bridle paths, and drift ways In its broadest sense the term 'road" is synonymous with "way" and thus applies to any place set apart and appropriated, either *de jure* or *de facto*, for the purpose of free passage, whether by public authority or by the general licence or permission of the owners of the land, and also to private ways. In legal acceptation the term "road" is regarded as synonymous with "highway". It is said to be a generic term for all kinds of ways, and thus includes highways, streets, alleys, and lanes

USE OF STREET HIGHWAY, AND LAW OF THE ROAD A public highway is open for use by the entire public, or any part thereof, simply for passage, in any reasonable manner, as to drive cattle, or for haulage, but not for sports or diversions. But even one using the highway unlawfully has rights against the negligence of others

Strengthen. To add strength force or rigor (as) to strengthen an argument

TO STRENGTHEN, FORTIFY, INVIGORATE Whatever adds to the strength, be it in ever so small a degree, strengthens, whatever gives strength for a particular emergency fortifies, religion fortifies the mind against adversity whatever adds to the strength so as to give a positive degree of strength, invigorates.

Strenuous, bold Strenuous expresses much more than bold, boldness is a prominent idea, but it is only one idea which enters into the signification of strenuousness, it combines likewise fearlessness, activity, and ardour An advocate in a cause may be strenuous, or merely bold, in the former case he omits nothing that can be either said or done in favour of the cause, he is always on the alert, he heeds no difficulties or danger; but in the latter case he only displays his spirit in the undisguised declaration of his sentiments.

Stri. (*S.*) A woman, a wife, a female

Strict The word "strict" is defined as follows — "Strenuously enjoined and maintained, observed, kept, or enforced with rigid exactness, as strict order, strict silence, strict honesty, in strict confidence (*Ame. Words and Phrases.*)

Strict construction The rule requiring penal statutes to be "construed strictly" means that, in cases of doubtful construction, that interpretation should be adopted which restricts the operation and enforcement of the penal provisions.

"STRICT CONSTRUCTION" is that which refuses to expend the law by implications or equitable conside-

Strict Interpretation.

rations, and confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason When the sense of the law is manifest, and leads to nothing absurd, there can be no reason not to adopt it Statutes exercising the power of taxation in any of its forms, or delegating that power to political sub-divisions, are to be strictly construed.

Strict interpretation "Strict interpretation" of statutes relating to crime means this "Such statutes are to reach no further in meaning than their words No person is to be made subject to them by implication, and all doubts concerning their interpretation are to preponderate in favour of the accused Only those transactions are covered by them which are within both their spirit and their letter."

Stricti Juris A licence to trade with the enemy in time of war is said to be *"stricti juris"*, and by this is meant that the licence granted to the person is to be construed strictly as to the extent of the power granted by it in respect to the manner in which he may exercise it, the objects in which he may trade, and the persons with whom and means and circumstances under which he may exercise the power (*Ame. Words and Phrases*)

Strictum jus, (*Lat*) Strict Law (as distinguished from equity).

Stridhan (*In Hindu Law.*) The property held by a Hindu woman unconditionally, and subject to no restrictions is strithan property devolving upon her own heirs. "That alone is her peculiar or stridhan property, which she has power to give, sell, or use —independently of her husband's control" (Dayabhaga). (1 A 661)

Stridhana. (*S*) Woman's wealth the peculiar property of a woman or wife over which, under ordinary circumstances, she has independent control, and which descends to her daughter or next of kin, her power to dispose of it during her husband's life is sometimes subject to his will, and he has a right to use it in cases of distress or necessity the rights of both husband and wife to this description of property depend, however, very much upon the customs that prevail in different places. Woman's property is variously distinguished according to its sources when it is derived, or circumstances under which it is acquired as follows (*Wil Gloss*, *See also* 34 Bom 385=12 Bom L.R 386=6 I C 530)

STRIDHANA means "what was given to a woman by the father, mother, husband or brother or received by her at the nuptial fire or presented to her on her husband's marriage to another wife and the like is denominated woman's property. (Yaj II 144)

The gift or bequest from a maternal grandfather, having the essential attribute of a gift from relations or affectionate kindred, falls within the class of stridhan called saudayika, of which the wife can make a gift without reference to her husband (Definitions of the word "saudayika", textual and judicial, enumerated) (57 Bom 85=34 Bom.L R 1144=A.I R. 1932 Bom 559)

When a Hindu woman dies possessed of *stridhan* property called *anavadhaya* (a gift subsequent to marriage),and the claimants to that property are her sons and daughters, these all become entitled to share the property equally as heirs, with this difference however, as to daughters, that the unmarried have preference over the married. (34 B 385=12 Bom L R. 386=6 I C 530)

Stridhanam (*Mal*) Gift among Moplas at the time of marriage (36 M. 385) (*Sund Iyer's Malabar Law.*)

STRI SOTHU, (*Mal*) (Woman's property) Property to be held by females only (1910 M W N 693, 32 M 315, 43 M 393) (*Sund Iyer's Malabar Law*)

STRI SOTHU OR HENUMMULA, (*Mal*) Where an instrument of gift in Malabar limits the descent of property to the female line and excludes males at the same time forbidding partition we think the gift was of the class known as "stri sothu" or Henummula and that the intention was that the property should be held by the class of females jointly as a Tavazhi with marumakattayam incidents (8 I C. 567)

Stridharma (*S*) The duty of a wife or of a woman in general (*Wil Gloss*)

Strike A combined withdrawal from work of a body of workers, for the purpose of obtaining better terms or higher wages from their employers

A "STRIKE" is popularly defined as a simultaneous cessation of work on the part of the workmen, and its legality or illegality must depend on the means by which it is enforced, and upon its objects

"A strike is a combination among laborers employed by others to compel an increase of wages, a change in the hours of labor, some change in the mode or manner of conducting the business of a principal, or to enforce some particular policy in the character or number of the men employed, and the like"

"There is no authority which gives a legal definition of the word 'Strike', but I conceive the word means, a refusal by the whole body of workmen to work for their employers, in consequence of either a refusal by the employers or the workmen's demand for an increase of wages, or of a refusal by the workmen to accept a diminution of ages when proposed by their employers" (*per* Kelly, C B, *King* v. *Parker*, 34 L T 889)

"A 'STRIKE' is properly defined as, a simultaneous cessation of work on the part of the workmen" (*per* Hannen, J, *Farrer* v *Close*, L R. 4 Q B. 612).

"STRIKE" is a word of an artifical character and does not represent any legal definition or description. It is an agreement between persons who are working for a particular employer not to continue working for him (112 I C 303=32 C.W.N. 805=A I.R. 1928 Cal 491)

The conduct of the workmen amounting to a concerted refusal to work for the employers as the result of a trade dispute is a strike A strike is not the less a strike because it does not involve any breach of contract (58 Bom 262=36 Bom L R. 190 =A I.R. 1934 Bom 126)

STRIKE. (*In mining law*) The term "strike", as used in the mining law, designates the direction of a vein or lode across and through the country.

Striking off execution application In India the striking an execution proceeding off the file is an

Striking off execution application.

act which may admit of different interpretations according to the circumstances under which it is done, and, accordingly, their Lordships do not lay down any general rule which would govern all cases of that kind, but they are of opinion that when a very long time has elapsed between the original execution and the date at which it was struck off it should be presumed that the execution was abandoned and ceased to be operative, unless the circumstances are otherwise explained [20 W.R. 133=12 B.L R 411 (P C)]

An order passed on an execution petition ending with the word "petition struck off" is an order not known to the law and its effect has to be determined by a consideration of the circumstances of the case and the terms of the order itself Where, therefore, an application was made for the execution of a decree by sale or a debt, but the applicants failed to pay certain warrant fees, as the sale had been stayed by an order of the High Court, and the petition was, consequently "struck off," the order simply amounts to an adjournment *sine die* (1912 M.W N 407=15 I C. 406)

An order directing an execution application "to be struck off the file" is not an order sanctioned by any rule or by the Code. (A I R 1926 Mad 453 and A I. R. 1927 All 16, *Foll*) It is merely an order made quite irregularly for statistical purposes and therefore subsequent proceedings in execution are to be deemed as merely a revival or continuation of those earlier ones which are irregularly stopped by being "struck off" (158 I.C 829=A.I R 1935 Mad 885.)

Where an execution case is still pending but cannot be proceeded with by reason of an injunction and has been "struck off the file," or is removed by an order which does not terminate it finally but has the effect of only removing it from the list of pending cases, there is no warrant for holding that the decreeholder is bound to apply for revival of the said proceedings after the removal or discharge of the injunction It is also the duty of the Court to have in sight all undisposed cases and, when the bar is removed, to direct the party to take the necessary steps for further progress of the case (63 Cal 57= 39 C.W N. 1030=A I R 1936 Cal 239)

An order was passed on an execution application, "proclamation not filed, struck off" Under the circumstances of this case, this was held to amount to a dismissal of the application under O 21, R 57, C. P. Code (V of 1908) [17 C W N 204=18 I C. 441 (442).]

The words "struck off" in S 62, Chota Nagpur Landlord and Tenant Act (I of 1879), mean that the suit has and never had any existence They imply that the suit is withdrawn (13 C WN. 287=36 C 115=9 C.L J 9=1 I.C 447)

Stripe. Blow made with a lash, rod, etc. (as) in whipping.

Strong. "Strong", as used in a representation for the purpose of securing credit that the company was strong, means financially strong or able.

"The words 'STRONG' AND 'WEAK' are relative terms, both having reference to the medium of the class to which they are applied; one being above and the other below it".

Stumpage.

Strong Beer. "Strong beer", as used in an indictment, means a malt inebriating liquor.

Strong liquor. "Strong or spirituous liquors", as used in a law providing that whoever shall sell any strong or spirituous liquors, without having a licence therefor, shall forfeit a certain amount should be construed to include ale or strong beer.

Struck jury "Struck jury" means a special jury.

"Structural alteration, addition or renewal" shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting used for replacement is not inferior in strength, efficiency or otherwise to the replaced part or fitting. (Boilers Act, 1923, S 2)

Structural convenience Nuisance attributable to want of, or defect in, a *structural convenience*, "does not include one arising from the want of proper cleansing". (*Barnett v. Laskey*)

Structure. "Structure" is defined to be that which is built or constructed, an edifice or a building of any kind, in the widest sense, any production or piece of work, artificially built up or composed of parts and joined together in some definite manner; any construction

The term "structure" includes or COMPREHENDS A BUILDING

In its broadest sense a "structure" is any production or piece of work artificially built up or composed of parts joined together in some definite manner, and in such sense a fence is a structure

The word building or structure is not defined in the Pre-emption Act but it may be stated that every building is a structure though every structure is not a building and the word structure can be applied to wall or a shed or any other unsubstantial erection for which the word building cannot be used. (73 I.C. 911 =A I R. 1924 Lah 172)

Structure building Structure is used of almost anything which is regarded as made of parts or particles put together, whether natural or artificial and has the sense of composition, or mode of putting together, or formation, as the structure of the globe, the structure of a natural rock, the structure of a poem or a discourse When used in a sense more closely synonymous with building, it draws the attention to the internal putting together of the parts rather than to any purpose of it A curious structure, a lofty structure, an insecure structure. (*Smith Syn. Dic.*)

Stubble In a lease requiring that the premises should be sowed with wheat, oats, or barley, and hay, and providing that all the "stubble" on the land should belong exclusively to the landlord, "stubble" includes whatever is left on the ground after the harvest time.

Stump. A stump is that part of a tree or plant remaining in the earth after the stem or trunk is cut off, the stub.

"Stumpage" is the value of the timber in a standing tree.

The standing timber on land is commonly called "stumpage".

Stump-tail.

Stump-tail. "Stump-tail" means deprecated currency.

Stupor. "Stupor" means a different thing from excitement It signifies a suspension or great diminution of sensibility; a state in which the faculties are deadened or dazed.

Sub. At, before, under.

Subah. A province, such as Bengal. A grand division of a country, which is again divided into Circars, Chuklahs, Pergunahs, and villages. (*Fifth Report.*)

Subahdar. (*Per*) The Governor of a province or district, a Viceroy Subahdar is also the name of an Officer in the native army. The Subahdar Major used to be the native Officer of the highest rank in an infantry regiment, then came in order the Subahdar, Jamadar, the Hawaldar, and the Naik.

Subahdari-parwana. (*H.*) An order issued by a Subahdar: a vicerigal assignment of revenue. (*Wil Gloss*)

Subahdarry abwab. The imposts or cesses of the Subahdar or viceroy Viceroyal imposts of Jaffier Khan, Soujah Khan, Aliverdi Khan, and Cossim Ally, levied on the land to the amount of the standard assessment, the zemindars who paid them being authorized to collect them from the ryots, in the same proportions to their respective quotas of rent (*Fifth Report.*)

Subakraya-sasanam (*S.*) A deed of corporate sale, in which the Mirasidars of a village divest one of their numbers, who may be a defaulter, of his share, and divide it amongst themselves, having been made responsible for the revenue due (*Wil. Gloss.*)

"**Sub-agent**" defined. Act 9, 1872, S. 191.

SUB-AGENT An agent appointed by one who is himself an agent.

Subaltern. Officer in the army, under the rank of captain.

"**Sub-collector**" defined Bom Act 3, 1869, S. 13.

Sub-colore. (*Lat.*) Under colour.

Sub-colore juris. (*Lat.*) Under colour of right

Sub-colore officii (*Lat*) Under colour of office.

Sub-conditione. (*Lat*) Under condition.

Sub-contract A contract subordinate to another contract.

"**Sub-contractor**" defined. Act 6, 1901, S 2 (1) (*s*).

A "SUB-CONTRACTOR" is one who has entered into a contract express or implied, for the performance of an act with a person who has already contracted for its performance.

The word "sub-contractor", means one who directly contracts with the original contractor.

The "sub contractor" is an undercontractor, one who takes under the original contract, and presumably with knowledge of the terms and conditions thereof.

Sub-cura mariti. (*Lat*) Under the care of the husband.

Sub-section.

Sub-deacon, Is he who delivers the vessels to the Deacon, and assists him in the administration of the sacrament of the Lord's Supper". (*Phil. Ecc. Law* 89.)

"**Sub-district**" defined. Act 16, 1908, S. 5.

"**Sub-division**" defined". Act 5, 1898, S. 4 (*v*).

The word "sub-division" means division into smaller parts of the same thing or subject matter.

"SUB-DIVISION" means a sub division of a district (C P Code, S 4)

"Sub-division" in Oudh Laws Act (XVIII of 1876) S 9) has no special technical meaning and is confined only to a portion of a village which is described as a thok or patti in the Revenue Records. [13 I C. 490 (491). *See also* 23 I C 151 (153).]

"**Sub-divisional Canal officer**" defined". Act 8 1873, S. 3 (8); Bur. Act 2, 1905, S 3 (9).

"SUB-DIVISIONAL CANAL-OFFICER" means an officer exercising control over a sub-division of a canal. [Pun. Act VIII of 1873 (North India Canal and Drain), S 3, (Cl 7)]

"**Sub-divisional magistrate**" defined Act 5, 1898, S. 13

"**Sub-divisional officer**" defined. Bur. Act 6, 1907, S 4 (4)

"SUB-DIVISIONAL OFFICER" means the officer in charge of a sub-division of a district as constituted for revenue and general purposes. [Bur. Act VI of 1907 (Villages), S 4, Cl 4.]

Subjoin. To join under, to add at the end; to annex.

Sub-judice. (*Lat.*) Before a judge or court; pending decision of a competent Court.

Sub kingdom. A subordinate kingdom; a division of a kingdom.

"**Sub-lambardar**" defined" Act 18, 1881, S. 4 (12).

Sub-lease A lease by a tenant to another person of a part of the premises held by him, an under-lease.

Sub-modo (*Lat.*) In a qualified manner.

Sub-mortgage. The sub-mortgagee simply has a simple mortgage of a mortgage. (167 I.C. 449=A.I.R 1937 Rang. 56)

"**Sub-nomine.** Under the name.

Sub-pede sigilli. Under seal.

Sub-potestate (*Lat*) Under power.

Sub-potestate parentis, Under the power of the parent.

Sub-potestate viri (*Lat*) Under the power of the husband.

'**Sub-section**" defined. Act 10, 1897, S. 3 (54); Ben. Act 1, 1899, S 3 (43), Bom. Act 3, 1888, S 3 (*dd*); Bom. Act 1, 1904, S. 3 (46); Bur. Act 1, 1898, S 2 (60); E B & A Act 1, 1909, S. 5 (59); Mad Act 1, 1891, S. 3 (31), P. Act 1, 1898, S. 2 (55), U. P. Act 1, 1904, S. 4 (43).

"**SUB-SECTION**", shall mean a sub-section of the section in which the word occurs. [Act X of 1897 (General Clauses) S. 3 (54).

Sub-sigillo.

Sub-sigillo Under seal.

Sub-silentio (*Lat.*) Under silence.

Sub-suo periculo (*Lat*) At his own risk.

"**Sub-tenant**" defined Act 18, 1881, S 4, Act 11, 898, S 59, U P Act 2, 1901, S 4 (7).

SUB-TENANT One who leases all or a part of rented premises from the original lessee for a term less than that held by the latter

"**Subjacent and adjacent soil**" defined. Act 5, 1882, S 7, Explⁿ to Ill. (*e*).

Subjects The members of the Commonwealth under the King as their head. (*Tomlins Law Dic*)

The word "subject" means a subjection to some sovereign power

A person domiciled in a country, enjoying the protection of its sovereign, is deemed a "subject" of that sovereign, and is deemed a "subject" of that country.

"BRITISH SUBJECT"—"NATURAL BORN BRITISH SUBJECT" Dicy, Confl Laws, says: "The term 'British subject' means any person who owes permanent allegiance to the crown, the words "permanent allegiance" being used to distinguish the allegiance of a British subject from the allegiance to the Crown A "natural born British subject' means a British subject who has become a British subject at the moment of his birth."

Subject is also defined as that of which anything is affirmed or predicated, the theme of a proposition or discourse, that which is spoken of, that which is brought under thought or examination.

SUBJECT, SUBORDINATE, INFERIOR, SUBSERVIENT It is the part of the prince to protect the subject, and of the subject to love and honour the prince; it is the part of the exalted to treat the subordinate with indulgence; and of the latter to show respect to those under whom they are placed, it is the part of the superior to instruct, assist, and encourage the inferior; it is the part of the latter to be willing to learn, ready to obey, and prompt to execute. It is not necessary for any one to act the degrading part of being subservient to another

SUBJECT, LIABLE, EXPOSED, OBNOXIOUS We are subject to disease, or subject to death; this is the irrevocable law of our nature, tender people are liable to catch cold; all persons are liable to make mistakes: a person is exposed to insult who provokes the anger of a low bred man a minister sometimes renders himself obnoxious to the people, that is, puts himself in the way of their animosity.

Webster distinguishes the shades of meaning between the word "liable" and its synonym "subject" He says "Liable denotes something external which may befall us; 'subject' refers to evils which arise chiefly from internal necessity. Hence the former applies more to what is accidental; the latter, to things from which we often suffer." An event is liable if its occurrence is within the range of possibility.

TO SUBJECT, SUBJUGATE, SUBDUE. Subject is here the generic; the two other specific terms: we may subject either individuals or nations; but we subjugate only nations. Subjugate and subdue are both employed with regard to nations that are compelled to submit to the conqueror, but subjugate expresses even more than subdue, for it implies to bring into a state of permanent submission whereas to subdue may be only a nominal and temporary subjection

Subject to.

"**Subject of an action**" The subject of an action is what is primarily understood as the subject-matter of the action, and, as Mr Pomeroy says, finds its primary and modern application in equitable, rather than legal proceedings The cause of action is the right claimed or wrong suffered by the plaintiff on the one hand, and the duty of the defendant on the other, and these appear by the facts of each separate case."

SUBJECT (OF STATUTE) The subject of a law is the matter to which it relates and with which it deals.

A provision that every act shall embrace but one subject and matters properly connected therewith, it is held that the words "subject' and "matters" are as nearly synonymous as it is possible for two English words to be, and that they both are used simply to avoid repetition, the only difference between them being created by the officers which they are respectively made to perform in the clause in question "It is quite evident," says the Court "that the word subject is here used to indicate the chief thing about which legislation is had, and 'matters' the things which are secondary, subordinate, and incidental."

Subject matter The "subject-matter" involved in a litigation is the right which one party claims as against the other and demands the judgment of the Court upon it.

"SUBJECT-MATTER" is equivalent to the phrase "cause of action." (130 I C 513=A I.R. 1930 Lah. 937)

"**Subject-matter of the suit**" Whether a particular matter is the subject-matter of or relates to a suit is primarily a question of fact depending upon the circumstances of each case Although a matter is not strictly the subject-matter of a suit, it may relate to or have reference to the suit if it forms part of the consideration (169 I C 741=1937 P W N 51=A I R 1937 Pat 232, A I R 1937 Mad 504)

SUBJECT-MATTER OF SUIT is not always same as claim in suit. (30 L W 562=A I R. 1929 M 798)

"**Subject of the sale** The phrase "the subject of the sale does not admit of physical possession" does not refer to anything other than the nature of the property conveyed by the sale and has no reference to the ability or inability of the vendor to place the vendee in actual physical possession of the property sold, from whatever cause that inability may arise 8 A.W.N 227.

"**Subject thereto**" See *Gray* v *Golding*, 8 W. R. (Eng) 371, 2 L T. 198

'**Subject to**' The effect of the words "subject to" in a deed is to introduce condition or proviso. (67 I C. 433=21 Bom L R 466=A I R 1922 Bom. 404)

The use of the word "subject to" in a transfer of property subject to an existing agreement, was construed to mean subject, not only to the disadvantages imposed by such agreement, but also to the advantages given thereby.

Subject to

The acceptance by a grantee of a deed containing the clause, "*subject, nevertheless, to all liens of mortgages and taxes thereon*," was not an admission that there were any such liens If they existed, the title was subject to them, but their existence and validity were not conceded.

SUBJECT TO JURISDICTION Only those who are subject by their birth, naturalization or residence are within the terms of this phrase

The phrase "*subject to the jurisdiction thereof*" means those who are within the dominion of the State and under the protection of its laws, with the consequent obligation to obey them when obedience can be rendered. (*Ame Words and Phrases*)

SUBJECT TO MORTGAGE. The acceptance of a deed subject to a specified mortgage does not imply a promise on the part of the grantee to pay the mortgage debt

"SUBJECT TO THE PROVISIONS OF THE EVIDENCE ACT", meaning of 99 I.C 258=A I R 1926 Pat 440

Subjects in dispute The expression "the subjects in dispute" in S 42, Civil Procedure Code, 1882, signifies the jural relation between the parties to the suit, for the determination of which the suit was brought (26 M. 760=13 M L.J 448)

Subjugate To bring under one's power or dominion, to conquer

Submarine (*Milit*) A submersible boat, capable of being propelled under water, especially for firing torpedoes, a mine in the sea

Submission. That act is called a "submission" by which parties refer any matter in dispute between them to the decision of a third person, the person to whom the reference is made is an "arbitrator," and the judgment pronounced by the arbitrator is an "award"

A "submission" is a contract by which the parties agree to refer matters which are in dispute, to be finally decided by the award of Judges named by the parties and called "arbitrators."

"SUBMISSION" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not [Act IX of 1899 (Arbitration), S 4, cl (*b*)]

Submission of controversy is a proceeding of a statutory origin, whereby the parties submit any matter of real controversy between them for final determination, to any Court, upon an agreed statement of facts, signed by the parties, and supported by an affidavit that the controversy is real and the proceeding in good faith to determine the rights of the parties. It is a very old practice, and is a substitute for an action, and stands in lieu of a special verdict, and is entirely different from an agreed statement of facts used merely as evidence upon the trial, which is simply the result of an agreement of the parties as to what the evidence in the case will prove The practice is encouraged whenever the facts can be agreed upon.

Submit. To refer to the judgment of another

SUBMIT. To "submit" a question to the vote of the stockholders of a corporation is to leave or commit the matter to the discretion or judgment of such stockholders.

Subpœna.

"Subordinate" defined. Act 24, 1859, s. 1; Mad. Act 3, 1909, S. 2.

For the purposes of transfer applications of suits from the Original Side of the High Court the Judge sitting on the original side is subordinate to the appellate side of the High Court. (11 L B.R 446=A.I. R 1923 Rang 22)

"Subordinate Court" defined Act 18, 1879, S. 3.

"SUBORDINATE COURT" means all Courts subordinate to the High Court, including Courts of Small Causes. [Legal Practitioners Act (XVIII of 1879), S 3]

"Subordinate Judge" defined. Act 3, 1873, S 8; U P Act 2, 1896, S 3 (3)

'Subordinate Magistrate, first class", construction of references to Act 5, 1898, S. 3.

"Subordinate Magistrate, second class", construction of references to Act 5, 1898, S. 3

Subordinate officer The test whether officers are "subordinate" or not is not whether a review of such of their determinations as are quasi judicial may be had, but whether in the performance of their various duties they are subject to the direction and control of a superior officer, or are independent officers, subject only to such directions as the statutes give *See also* 7 A L J 991=7 I C 51=11 Cr L J. 438

Subornation. Instructing or procuring another to commit an offence (*see* 4 Black Com 137).

SUBORNATION is a secret underhand preparing, instructing, or bringing in a false witness; and from hence subornation of perjury is the preparing or the corrupt alluring to perjury (*Tomlins Law Dic*)

Subornation of perjury Where the crime of perjury is committed at the instigation or procurement of another, it is termed "subornation of prejury."

In perjury and subornation of perjury, the act of the two offenders is concurrent, parallel, and closely related in point of time and conduct The two crimes both culminate in the delivery of false testimony. Still the offences are dual, each having in it elements not common to the other There is sufficient inherent difference between the two to warrant the law making power in separating the act into its component parts, making that of the suborner a new and independent offence, punishable with greater or less severity than that inflicted on the perjurer.

Subpoena (*Lat*) Under a penalty, a judicial writ commanding appearance of a person under a penalty.

The sole office of a writ of subpœna is to bring the defendant into Court, in order that the Court may acquire jurisdiction over his person.

Bouvier defines "subpœna" as a "process to cause a witness to appear and give testimony, commanding him to lay aside all pretences and excuses, and appear before a Court or Magistrate therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned. The purpose of a subpœna is to place the witness under the order of the Court,

Subrogation.

and a writ which does not affect this is not subpœna within the meaning of the law.

Subrogation "Subrogation" is a substitution of one person or thing for another.

SUBROGATION is the substitution of another person in the place of a creditor, so that the person in whose favour it is exercised succeeds to the rights of the creditor in relation to the debt The doctrine is one of equity and benevolence, and like contribution and other similar equitable rights was adopted from the civil law, and its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice. The right does not necessarily rest on contract or privity, but upon principles of natural equity, and does not depend upon the act of the creditor, but may be independent of him and also of the debtor.

"SUBROGATION is substitution of one creditor for another by operation of law and it is difficult to see how the substitution could be effected unless the new creditor was put in all respects in place of the party to whose rights he is subrogated It is well established that the right to a cession or assignment of the security can be claimed by a person who, though not primarily liable to discharge a debt, is obliged to pay it for his own protection" (T P. Act, S 74.)

The doctrine of "subrogation" is that one who has been compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other, and to indemnify from the fund out of which should have been made the payment which he made

SUBROGATION AND ASSIGNMENT DISTINGUISHED A distinction must be observed between subrogation to and an assignment of a mortgage. Subrogation is an act of law, and not of contract.

Subscribe To write underneath To "subscribe" means primarily "write under something", and if in the particular matter the "subscription" is required to be made in a particular manner, the prescribed manner must be observed [*see per* Brett, M R, in *A-G* v. *Brad Laugh*, (1885) 14 Q B D 686], but the word is frequently used 'merely to describe a signing of the name, without reference to the part of the paper on which the name, is written" [*per* Lord Campbell, C. J, in *Roberts* v *Phillips*, (1855), 4 El & Bl. 456].

To "subscribe" for shares in a company would appear to mean an agreement to take the shares by means of a formal application or otherwise—at all events an agreement under which there would be a liability to pay, but the term may be controlled by the context. [*Arnison* v. *Smith*, (1889), 41 Ch D., at p. 357].

As used, in the statute directing that all devises of land be in writing and signed by the testator, and be subscribed by three or more witnesses, the words "subscribed" and "signed" are used with the same view and to the same end.

"To attest the publication of a paper as a last will, and to subscribe to that paper the names of the witnesses, are very different things. Attestation is an act of the senses, subscription is an act of the hand The one is mental; the other, mechanical. To attest a will is to know that it was published as such and to certify the fact required to constitute an actual and legal publication. There may be a perfect attestation in fact without subscription" (*Ame. Words and Phrases*)

Subsidy.

Subscribing witness. One who writes his name under an attesting clause, one who sees a writing executed or hears it acknowledged and at the request of the party thereupon signs his name as a witness; one who was present when the instrument was executed, and who at that time, at the request or with the assent of the party, subscribed his name to it, as a witness of the execution.

A "subscribing witness" is one who was present when the instrument was executed, and who at the time, at the request or with the assent of the party, subscribed his name to it as a witness of the execution

Subscription The word "subscription" includes a mark, the name being written near the mark and witnessed

SUBSCRIPTION, (*to a deed*) indicates consent by signature

A subscription of a will, within the meaning of the statutes in reference to subscribing witnesses, is satisfied by the act of the witness in affixing his mark to his name.

"A SUBSCRIPTION FOR SHARES in a corporation is an agreement to take them upon the conditions prescribed for the same and subjects the subscriber to those liabilities only which are imposed by the law or rules under which the corporation is organized"

A subscription for shares is defined as implying a promise to pay for them.

A "subscription" to the stock of a corporation implies an agreement to pay for the shares.

Subscription contract A subscription contract is a legal obligation to make a payment in money or its equivalent in furtherance of a charitable, business or other understanding The offer from which the obligation proceeds generally assumes the form of an express written promise to pay money for a stated purpose and becomes binding when accepted, and founded upon a consideration. The promise need not be to pay money, but may be to give a note, to convey land, or to furnish labour and material (*Ame. Cyc*)

"Subsidiary works" defined P Act 3, 1905, S. 3 (*xi*).

Subsidiary works in the Minor Canals Act mean all works required for the control or maintenance of the supply to a canal or for the maintenance of a canal in proper condition or for the regulation of the irrigation therefrom or for the prevention of floods or for the provision of proper drainage, in connection with such irrigation, and include also the land required for such work [Pun. Act III of 1905 (Minor Canals), S 3, Cl. (11).]

"Subsidy" defined. 54-5 V. c. 31, S. 9.

SUBSIDY (*subsidum.*) An aid, tax, or tribute granted to the King for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods. (*Tomlins Law Dic*)

Subsoil.

Money contributed by a state.government, institution, or person, in behalf of any special object.

Subsoil. *Prima facie* subsoil includes all that is beneath the surface of land [*Cox* v *Glue*, 1848, 5 C B 549]; it is a wider term than "minerals". for "minerals" are only a part of the subsoil imbedded in and intermingled with the ordinary soil [*Atkinson* v. *King*, (1878), 2 L R. Ir 339]

Substance. Bouvier defines "substance" as that which is essential, and says that it is used in opposition to "form".

Substantial cause The discovery after filing of an appeal, of fresh evidence not known to and not available to the appellant after due diligence in the first Court is a substantial cause within the meaning of O. 41, R. 27, C P Code and such evidence can be admitted at the hearing of the appeal [28 M L J 334 =17 M L.T 220, 28 I C 694 *See also* 35 Mad 477= 14 I C 140, 38 Mad. 414=30 I C 402]

"Substantial damage" defined Act 5, 1882, S. 33, *Expln.* 1.

"Substantial injury" meaning of *See* 147 I C 212=A.I R 1933 All 161=1933 A L.J 92.

Pecuniary loss is not the only kind of injury contemplated by the words "substantial injury," in S 33, Bengal Land Revenue Sales Act although inadequacy of price fetched at the sale is the most common form of injury that is asserted (63 Cal. 629 40 C W.N. 271)

"Substantial person" It cannot be held as a matter of law that the word "substantial" in S 8, Cl. (2) of Bengal Regulation 8 of 1819 means a wealthy man from whom damages could be recovered by the putnidar Where the evidence showed that the man objected to carried on the trade of a tailor, that he had lakhiraj lands, that lived in the neighbourhood, was well-known, and was a "respectable" person *held* that he upon such evidence a Court of fact was justified in coming to the conclusion that the man was a "substantial" man within the meaning of the said clause.

Wealth is only one element in the position and status of the witness If, therefore, the witness lives in the neighbourhood, and if he be a respectable man and of good character, there is no reason why, upon evidence appearing of such facts, a Judge of fact, in estimating the position of the man, may not properly come to the conclusion that he is a substantial person (2 I A. 71=14 B L.R 394=23 W.R. 113=3 Sar 442= 3 Suth. 72)

Substantial question of law, within the last clause of S 110 of the C. P. Code, does not mean a substantial question of general importance, but a substantial question of law as between the parties in the case involved. (55 I A. 235=55 C. 944=32 C.W N. 817=55 M.L J. 651; 54 I A 126=2 Luck 93=31 C.W N. 495=A.I.R 1927 P C 110 (P C), 128 I C 622=32 Bom.L.R. 1189=A I.R 1930 Bom 509, 22 Cal 609= 22 I.A. 51.)

"Substantive and permanent". The phrase "substantive and permanent" as applied to an appointment is more descriptive of the nature and character of the appointment than indicative of the duration of that appointment. (125 I.C 647=57 Cal. 231=A I.R. 1930 Cal. 404.)

Subterranean water.

Substantive law. That part of law which creates and defines rights, not adjective law, which defines methods of enforcing rights.

"Substantive proposition". The words "substantive proposition" (in the Mun Act) connote the idea of something put forward on which the council can, if it desires, take subsequent action. A vote of non-confidence is a mere resolution of protest, which by itself, admittedly, need not necessarily be effective Therefore a vote of non-confidence is not a substantive proposition. A I R 1938 Rang. 18

Substitute "Substitute, is one placed for or under another to transact or do some business" (*Cowel*).

"Substitued security" The rule of "substituted security" is based upon the principle that the property mortgaged has taken another shape not by the tortious action of a party who was a stranger to the original contract but by the voluntary action of the mortgagor himself as by taking another property on partition or by operation of law as in the case of (1) compensation money obtained in respect of the mortgage property under the Land Acquisition Act, or (2) surplus sale proceeds of the mortgage property left over, after satisfaction of the prior mortgage debt, or (3) pre-emption price obtained on sale of the mortgaged holding under the provisions of law. The doctrine of "substituted security" does not extend to cases of wrongful conversion of the mortgage security by a person other than the mortgagor, though he may be an assignee of the equity of redemption (A I R 1930 Nag. 139 (2).)

Substituted service. Service of process authorised by the Court to be made on some other person, or in some other manner than direct personal service when the party cannot be found or evades service.

SUBSTITUTED SERVICE is the machinery by which where prompt personal service cannot be effected leave may be obtained for service by post, or upon some person known to be in communication with the party to be served, or by advertisemet, or affixing to the outer door of the last known residence or otherwise

Substitution of parties. The provisions of C.P Code, O. 1, R. 10, which enables the substitution of right persons as plaintiffs, can be applied to a case in which the original plaintiff has no right to sue, provided the suit has been commenced through a *bona fide* mistake. The words "if the suit is brought in the name of the wrong person as plaintiff" cannot be construed as excluding altogether persons who may institute the suit without any right to do so. (30 M 419.)

Subterranean Streams. "Subterranean or underground water courses" are, as the name indicates, those water currents that flow under the surface of the earth.

Subterranean water "The right to the enjoyment of a natural stream of water on the surface, *ex jure naturae*, belongs to the proprietor of the adjoining lands as a natural incident to the soil itself. He has the right to have it come to him in its natural state, in flow, quantity, and quality, and to go from him without obstruction. His right in no way depends upon prescription or the presumed

grant of his neighbour" (per *Lord Wensleydale* in *Chasemore* v. *Richards*, (1859) 7 H L. Cas 382, II E. R 140).

Suburban. The suburban portion of the city is the outlaying part, that portion which he remote from the centre of trade and population, where the houses are generally more or less scattered, and where many of the improvements and advantages enjoyed by the central and more densely populated parts of the city are wanting.

"Suburbs of Bombay" defined *See* Town and Suburbs of Bombay.

Subvert Webster defines the word "subvert" as meaning to overthrow (as) subversion of Government or of the constitution

Succeeding In the construction of statutes the words "preceding", "following", and "succeeding", when used by way of reference to any section or sections, shall mean the section or sections next preceding, next following or next succeeding, unless some other section is expressly designated in such reference.

Successful party These words in rule 23 of Sind Judicial Commissioner's Court Rules, cannot be given so wide a construction as to include success in proceedings before another Court The expression means the party who, as a result of the Court's judgment, is entitled to formulate a claim for costs against another party [5 S L R 254=15 I. C. 828 (829)]

Successful vaccination Successful vaccination carries the idea merely of the production upon the person vaccinated of such symptoms or manifestations as are usually produced by such operation when considered effective The eruption produced by the inoculation, with its accompanying characteristics, is only the evidence that the vaccination is successful.

"Succession" defined Act 8, 1885, S 3 (13)

Succession The act or right of legal or official investment with a predecessor's office, dignity, possessions, or functions, a series of persons following one another, a lineage, an order of descendants. In the law of descent, the coming in of another to take the property of one who dies without disposing of it by will.

The word "succession" is a word of technical meaning, and refers to those who by descent or will take the property of a decedent It is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract.

The word "succession" is often used synonymously with the word "descent".

"Succession" is the transmission of the rights and obligations of a deceased to his heirs.

"Succession" includes both intestate and testamentary succession [Ben. Act VIII of 1885 (Tenancy), S 3; I L R (1937) Mad. 814=A.I R. 1937 Mad. 316=(1937) 1 M L J 619 (F.B.).]

Succession, Series, Order. We observe the succession of events as a matter of curiosity; we trace

the series of events as a matter of intelligence; we follow the order which the historian has pursued as a matter of judgment the succession may be slow or quick, the series may be long or short, the order may be correct or incorrect. The present age has afforded a quick succession of events, and presented us with a series of atrocious attempts to disturb the peace of society under the name of liberty The historian of these times needs only pursue the order which the events themselves point out. (*Crabb*)

Succession and Survivorship There is no 'succession' in an undivided Hindu family and therefore, the surviving members after the death of a member of a Hindu family are not his 'legal representatives' within the meaning of S 2 (11) of the Code [2 Lah 114=61 I C. 628=3 Lah L J. 349]

"Succession by law" is the title by which a man, on the death of his ancestor intestate, acquires his estate, whether real or personal, by right of representation as his next heir.

Succession duty Tax imposed on any succession to property often varying with the degree of relationship

Succession tax, Succession duty A tax on property passing by will or by the statute of inheritance is a "succession tax". (*See* 16 and 17 V,c. 51, S 27)

A "succession tax" is not a tax on property, but on the privilege of succeeding to the inheritance It is not a direct tax upon the land taken by descent, but is an impost upon the devolution of the estate and the right to become beneficially entitled thereto, or to the income thereof

A "succession tax" is an excise and is within the power of the state to lay and collect taxes, duties, imposts and excises

Succession to business. The real test to determine whether there is "succession to business" within the meaning of S. 26 (2) of the Income-tax Act, is the identity of the two businesses and the time intervening between the closing down of the old business and the opening of the new one in its place The delay is a question of degree and in some cases the delay may mean a cesser of profit-making operations and never any real cessation of the business at all. But where the time intervening between the two businesses is so great that "succession to old business" cannot be inferred, there is no "succession to business" within the meaning of S 26 (2) of the Act. [1937 Rang L.R 26=168 I.C 209=A I R. 1937 Rang. 102 (S B.)]

There can be succession to a person without there being succession to that person's business, succession to a person is not the same thing as succession to a business A person may be succeeded by another in a business in the sense that it is the same sort of business although not the same business. When one person is succeeded by another, there must be a wiping out of the original individual, *i.e*, the particular business activity together with all the old liabilities and assets appertaining to it must change hands. Meaning of words "succeeded" and "succession" explained [27 S.L.R. 47= 138 I.C. 673=A I R. 1932 Sind 189.]

Successively. "In a successive manner; in a series; in an order, following in order or uninterrupted course."

Successor

In many cases devises to several persons successively, have been contended to be void on account of the uncertainty respecting the order in which the objects are to take Where the devise is to several specified individuals in succession, the obvious rule is to hold them to be entitled in the order in which their names occur If it be to a class of persons, constituted such in virtue of birth,--as to children, sons, or brothers,—then priority according to seniority of age may be presumed to be intended And the circumstance of a condition being imposed on the devisees has been held not to vary the order in which they are successively entitled" (I. Jarm 374 and cases therein cited, *Stroud*).

Successor A successor is one "that followeth or cometh in another's place" (*Jacob.*)

The word "successor' is an apt and appropriate term to designate one to whom property descends, and in association with the words "heirs, administrators, and assignees", plainly imports a devolution or charge upon the obligator's estate

The word "successor" includes a heir as well as a transferee. (60 I C 641=L R. 5 Oudh 101)

The word 'successors' in the ordinary form of *sanad* granted to Oudh Talukdars means heirs, *i e*, those who succeed to the estate under the grant, but it does not include those who take the whole or part of it by alienation [40 M L J 577=43 All 297=48 I A 135=19 A L J 433=8 O L J 225=34 C L J 113=24 O C 118=1921 M W N 349=14 L.W 680=60 I C 937=29 M L T 409 (P C) On appeal from 31 I.C 748=18 O C. 188]

In an Oudh Talukdari primogeniture sanad 'successor means those designated persons who would succeed in the event of an intestacy and not persons who take by sale, gift or bequest (43 M L J 453=49 I A 195=44 A. 301=29 A L J 994=27 C W N 53=31 M.L.T. 21)

The expression "successor" in Agra Tenancy Act, S 158, does not mean that the person succeeding must necessarily be the heir of the person who preceded him [10 I C 39 (40)]

The word "successor", in a deed of a corporation, has reference in its strict sense to the successor of individuals who compose the corporation.

"Successor in office" defined. Act 6, 1890, s 11

"Succinct" means brief, precise, exactly. It is derived from the two Latin words, "sub," under, below, and "cingere", to girdle, and literally means "girded below", or from below; hence compressed into narrow shape (*Ame. Words and Phrases*)

Succurritur minori, (*L.*) A minor is to be aided. (*favoured*) in law.

Such. "Such" is defined by Webster as "having the particular quality or character specified; representing or referring to the object as already particularized in terms which are not mentioned"

"SUCH DEBTS AND LIABILITIES." *See* 33 C. 1065=4 C L.J 238, 20 Cal. 609; 7 C L J. 578.

"SUCH FURTHER AND OTHER RELIEF." *Per* Stanley, C J.—The word "such further and other relief' [in S. 92 (*b*), C. P. Code, 1908] may well include the taking possession of the trust property from the

Suffer

hands of a third party to whom the same may be shown to have been improperly alienated. (28 A 112 =2 A L J 591 *See also* 24 Cal. 48, 24 Cal. 418, 28 Cal 418, 23 I C 111)

"SUCH FURTHER EVIDENCE AS MAY APPEAR NECESSARY" in Cr P Code, V of 1898, S 117, is evidence *ejusdem generis* with the evidence described in the words which immediately precede it, *i e.*, evidence as to the truth of the information on which action was taken 22 I C 996 (998).

"SUCH LOCAL LIMITS AS MAY BE FIXED." *See* 14 Cr, L J. 91=17 C.W.N 531=18 I C 651

"SUCH NOTICE." *See* 28 A. 122=2 A.L J. 665.

"SUCH OTHER RELIEF" *See* 3 Bom.L R. 543.

SUCH OTHER THINGS. "Such other things" must be read *ejusdem generis* with the words going before and if they occur after the words, "mortgages, simple loans, share", mean choses in action [A.I R. 1923 Mad. 679=45 M L J 233=75 I C. 848]

"SUCH PLAINTIFF" *See* 18 M.L J 155

"SUCH SALE" *See* 28 A 674=2 A L J. 465=33 Cal 890.

'SUCH SUIT" *See* 34 B 638

Sud (*H*) Interest, profit, usury an extra tax exacted from the cultivators in Bengal under the native government, and in the early period of British rule, on pretext of defraying the interest due by the Zamindars on arrears of revenue (*Wil Gloss*)

'Sudda inam' The expression *'Sudda inam'* appearing in a deed of grant of a service *inam*, does not show that the *inam* consisted of the land itself and not merely of the *melwaram*. The meaning of the expression is merely that there is nothing payable to Government in consideration of the *inamdars'* possession of the land 17 I C 481

Sudder The chief seat of government, contradistinguished from mofussil or interior of the country. The Presidency. (*Fifth Report*)

Sudder Dewanny Adawlut The chief Civil Court of justice under the East India Company's Government, held at the Presidency. (*Fifth Report*)

Sudder Nizamut Adawlut The chief Criminal Court of justice under the East India Company's Government (*Fifth Report*)

Sudra and Kusti (*in Parsi Religion*) mean 'the sacred shirt and girdle, which are the outer symbols of the profession of the Zoroastrian faith [2 I. C 701 (742)]

Sudras By "sudras" it was intended to include all Hindus who are not Dwijas or twice-born classes. 20 M L J 49=5 I C 42=33 M. 342.

Sue (*See* Suit.) To "sue", according to Webster, is "to seek justice or right by legal process".

"To SUE. Generally speaking, means, to bring actions in a Court (*per* Bayley, J., *Guthrie* v. *Fisk*, 3 B & C. 183).

"Sued forth" Meaning of. *See* 12 B. 496, 21 Bom. 351 (364).

Suffer. "Suffer", as used in an Act providing that no woman endowed of lands, tenements, or hereditа-

Suffer.

ments shall commit or suffer waste on the same, etc, does not render the dowress liable for acts amounting to waste committed without her permission by third persons.

SUFFER, PERMIT, ALLOW, ADMIT. One of the meanings of the word "suffer" is to allow, to admit, or to permit.

The word "suffer" includes knowledge of what is to be done under the sufferance and permission. The word "suffer" is not as positive a word as the word "permit"; the later denoting a decided assent.

To "permit" is defined as not to hinder. Webster defines the word as more negative than "allow", that it imports only acquiescence or an abstinence from prevention He defines the word "suffer" as having an even stronger passive and negative sense than "permit", and as implying sometimes mere indifference It would seem, therefore, that to permit or suffer implies no affirmative act It involves no intent. It is mere passivity, indifference, abstaining from preventive action (*Ame. Words and Phrases*)

Sufferance. Tenant at sufferance is he who holdeth over his term at first lawfully granted (*Termes de la Ley*) A person is tenant at sufferance that continues after his estate is ended, and wrongfully holdeth against another, etc An estate at sufferance, is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all. (*Tomlins Law Dic*)

"There is a great diversity between a TENANT AT WILL AND A TENANT AT SUFFERANCE, for tenant at will is always by right, and tenant at sufferance entereth by a lawful lease, and holdeth over by wrong. A tenant at sufferance is he that at first came in by lawful demise, and after his estate ended continueth in possession and wrongfully holdeth over." (*Co Litt.* 57 b.)

Sufferance wharf. A licensed wharf upon which dutiable goods may be landed and stored until the duty is paid.

"Suffering" of a judgment within the meaning of the Bankruptcy Act, does not imply anything more than mere passive unresistance of an insolvent debtor to regular judicial proceedings against him.

Sufficient. "Sufficient", means adequate to suffice; equal to the end proposed; competent

Sufficient ability. An Act making it an offence for the husband, being of "sufficient ability", to refuse or neglect to provide for his wife, refers as well to capacity or skill to earn or acquire money, as to property actually owned. A husband may earn money by his industry or labor, or he may get and often gain a fortune or receive a large salary in consequence of his skill in some direction, and thus become able to support his wife and family Ability and refusal to support constitute one act of delinquency, and where a man has physical and mental power to acquire means he comes within the intent of the law. (*Ame. Words and Phrases.*)

'Sufficient cause' *See* 97 P.L.R. 1911=8 I C. 869 =3 I.A. 209.

The words "sufficient cause" in S. 5, Limitation Act, should receive a liberal construction so as to advance substantial justice when no negligence nor

Sufficient time.

inaction, nor want of *bona fide*, is imputable to the appellant (34 C. 216=5 C.L.J. 380.)

The term "sufficient cause" in S. 5 of the Limitation Act (XV of 1877) apparently covers not only those circumstances (such as the Courts being closed or time being spent in obtaining copies, or the party being a minor or insane) which the law expressly recognizes as extending the time, but also such circumstances as are not expressly recognized but which may appear to the Court to be reasonable. [25 M 166, 33 C 1323=10 C W N. 986, 17 C.W N. 807, 21 B 552, 13 Mad. 269, 25 Mad. 166.]

With reference to the question as to what is "sufficient cause" within the meaning of C P. Code O. 22, R. 9 and other similar provisions it cannot be laid down as a general proposition that ignorance of law can never be considered, but it should be allowed as such only in very special cases [81 P R 1888 (F. B.). *See also* 7 I C 391, 21 I.C 951, 184 P.R. 1889, 43 P R. 1889, 34 C. 216, 95 P.R. 1908; 15 I. C. 708]

SUFFICIENT CAUSE AND GOOD FAITH A mistake of law no matter how honestly made, cannot be held to amount to "sufficient cause", in S. 5, Limitation Act, (IX of 1908) unless it can be said that such mistake was made "in good faith" that is to say, the mistake was made notwithstanding due care and attention on the part of the appellant 59 P R 1913=18 I. C 37 (40).

Sufficient evidence. By "sufficient evidence" is meant that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt.

"Sufficient", as used in an Act providing that a sheriff's deed shall be taken and considered by the Court as sufficient evidence of the authority under which the sale was made, the description of the land, and the price at which it was purchased, is a synonym for "*prima facie*" only, and not "conclusive".

"Sufficient ground" *See* 1 L B R. 348.

"Sufficient means" (for payment of court fees.) *See* 128 I.C. 848=A I.R. 1930 Rang. 324.

"Sufficient reason." defined. Act 11, 1886, S. 43.

Though it is difficult and perhaps undesirable to attempt to define precisely the meaning of the words "any other sufficient reason" in O. 47, R. 1, C. P. Code, yet, from the earlier part of the clause it is clear that a point which might have been, but which was not, discovered at the trial by the exercise of due diligence, was not intended by the section to afford any sufficient reason for review. (13 C. 62, on appeal from 11 C. 767.)

Sufficient Security Sufficient security, means adequate security, and it makes no difference whether it is personal or real security. The fact that the real estate offered as security had a previous mortgage upon it is no legal objection to its sufficiency. It might notwithstanding be abundantly adequate.

Sufficient time. A guaranty of a machine, stating that if, on starting the machine, it should in any way prove defective or fail to work, the purchaser should give prompt written notice to the agent from whom he purchased and allow "sufficient time" for a

Suffrage.

person to be sent to put it in order, and the defective part, if any, replaced, means a reasonable time under the circumstances

Suffrage A vote, the act of voting, the right or privilege of casting a vote at public elections, a vote in approbation or assent

It may be laid down as a general proposition that the "right of suffrage" may be regulated and modified, or withdrawn, by the authority which conferred it The right is not a natural right, of which a person cannot be deprived, but is a privilege, which may be granted or denied by the government as general policy may require (97 Am Dec 248) There have always been limitations upon the right of suffrage, even in the most liberal democracies In nearly all countries, for example, the right has been denied to woman minors, aliens. and persons *non compos mentis* In England at an early day the right to vote for members of Parliament was limited to those possessed of a certain property qualification, and in a number of other countries the right of suffrage depends upon the possession of a certain amount of property, or upon the payment of taxes, and in some states it depends upon the ability to read and write (*Ame Words and Phrases*)

Suffragette A woman who demands votes for woman

Suffragist. One who urges or advocates extension of the right of voting—especially to woman.

Sufi- (*A*) Wise, the name of a sect who outwardly conform to Islam, but have adopted a mystical pentheism resembling Vedanta Philosophy

Sufism. A form of pantheistic mysticism within Islam

Suggest In a will in which the testator bequeaths money to a church, and suggests, if the spire or steeple be unfinished at the time of his death, funds be used for the purpose of completing the same, "suggest" only indicates a desire, and is not a positive direction for such use of the money. There is nothing in the word "suggest", either in its meaning as ordinarily employed or as affected by the context of the will, that can be regarded as expressive of confidence, or belief, or desire, or hope, or will, or as the equivalent of a word of entreaty or recommendation is, in fact, not a precatory word at all, in the ordinary sense.

Suggestio falsi (*Lat*) Representation of untruth, false representation. An affirmative fraudulent act as distinguished from a negative act of fraud, known as *suppressio veri*

Suggi. (*Karn*) Spring harvest, the second crop of rice.

Suggikal. (*Karn*) Harvest time, a season of plenty.

Suicide. "Suicide" means self-killing. It is not restricted to mean a wrongful act of self-murder It means self-killing to the same extent as homicide means killing any one else

The word "*suicide*" and the words "TO DIE BY HIS OWN HAND", or "BY HIS OWN ACT", or "TO TAKE HIS OWN LIFE", mean the same thing, and each conveys the idea of voluntary, intentional self-destruction.

Suit

A suicide "is one who deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death, as if, attempting to kill another, he runs upon his antagonist's sword, or, shooting at another, the gun bursts and kills himself

"SUICIDE" does not, necessarily, involve the idea of a felonious self-destruction To "commit suicide" is for a person voluntarily to do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having, at the time, sufficient mind to will the destruction of life (*Clift v. Schwabe*, 17 L J C P 2, 3 C B. 437.)

A death by accident even though it be the result of one's own act is not suicide, and upon this principle self-destruction by an insane man or a lunatic is not an act of suicide within the meaning of the law

ATTEMPT TO COMMIT SUICIDE If the act of suicide fails to accomplish its purpose, it constitutes an attempt to commit suicide, which is an offence

Sui juris (*Of his own right*) A person who can validly contract and bind himself by legal obligation, uncontrolled by any other person, is said to be *sui juris*, in other words, a person not subject to any incapacity, such as non-age, or insanity, possessing full social and civil rights, not under any legal disability, or the power of another or guardianship.

"Suit" defined Act 9, 1908, S 2 (10), Act 22, 1886, S 3 (2).

SUIT Prosecution or pursuit of some claim, demand or request, the act of suing, the process by which one endeavours to gain an end or object, attempt to attain a certain result, the act of suing, the process by which one gains an end or object, an action or process for the recovery of a right or claim, the prosecution of some demand in a Court of Justice, any proceeding in a Court of Justice in which plaintiff pursues his remedy to recover a right or claim, the mode and manner adopted by law to redress Civil injuries, a proceeding in a Court of Justice for the enforcement of a right

A suit is any proceeding in a Court of Justice on which a plaintiff pursues his remedy to recover a right or claim

The word "suit" embraces actions at law as well as equity cases

"A suit is defined to be the prosecution of some demand in a Court of Justice" *See* 7 Bom. L R 138

The term "suit" is a very comprehensive one, and is said to apply to any proceeding in a Court of Justice by which an individual pursues that remedy which the law affords him The modes of proceeding may be various, but if the right is litigated between the parties in the Court of Justice, the proceeding in a suit.

The word "suit" ought to be confined to such proceedings as, under that description, are directly dealt with in the Code of Civil Procedure, or such as by the operation of the particular Act which regulates them are treated as suits. (22 C. 943)

Suit

"Suit" does not include an appeal or an application [Act IX of 1908 (Limitation), S 2 (10) *See also* 2 I C 632, 23 Cal. 415, 23 P R 1883]

In a Code which deals with both 'suits' and 'appeals' it cannot be said that the word suit has been used in the same sense as appeal [53 All 516= 1931 A L J 964=A.I R 1931 All. 533]

The expression "suits" used in Cl (*ix*) of S 7, Court Fees Act means "appeal" as well, as the expression has been used to cover the entire litigation from its beginning to the end [167 I C 577= A I R 1937 Nag 6, 54 P R 1912=15 I C 463 (465), *per* Robertson, J.]

The word "suit" in the last clause of para 2, S 11, Court-Fees Act, does not mean the entire suit It can fairly be construed as the suit or claim in respect of the mesne profits. [24 C 173=1 C W N 243. *See also* 33 C 1232 (1234), 6 C L J 462, 21 All 323 (325)=19 A.W.N. 104, 28 C 242 (245), 6 Bom. L.R 1102]

A suit and all appeals made therein are to be regarded as one legal proceeding [53 Bom 453=31 Bom L R 484=A I R. 1929 Bom 262]

A suit, according to S 48 of the C P Code, must commence with a plaint, and a proceeding, which is capable of terminating in a decree or an order having the force of a decree, cannot on that ground alone be deemed a suit, if it had not commenced with a plaint In this view, a proceeding under S 244, C P Code, is not a suit within the meaning of S 12 [22 M 256 *also* 14 C P L R 100 (102), 17 C P L R 178 (190), 1 S L R. 86 (87) (F B)]

The word "suit" will include execution proceedings. [85 I C 746=47 All 57=A.I R. 1925 All 276, *See also* 39 P R 1903, 5 B 448, 16 C 457, 39 P R 1903, 1 P L.R 1901]

The word 'suit' in S. 4 of the Pensions Act (XXIII of 1871), could not be deemed to include execution proceedings [30 B. 101=7 Bom L R 659 *See also* 16 Bom 731]

The word "suit" in Ss 51 to 55 Act IX of 1879, Court of Wards Act, does not mean only what is usually called a "regular suit" It embraces all contentious proceedings of an ordinary civil kind whether they arise in a suit or miscellaneous proceedings (18 C. 500.)

A land acquisition proceeding is not a "suit" within the meaning of S. 11, C. P Code, so as to render a decision come to therein binding when the same question arises in what is strictly a suit (20 M 269)

The word "suit" as used in S. 102, Act VIII of 1869 (Bengal), is intended to cover all proceedings prior to decree and subsequently in execution (19 W.R C.R. 307)

"Suit" does not include application under Provincial Insolvency Act (1937 M.W.N 1046)

Proceedings commenced by taking out originating summons are suits within Cl 12 of the Letters Patent (56 C. 979)

'Suit,' meaning of *See* 8 S L R. 260=28 I C 60, 19 C.L J. 310=23 I.C. 12, 7 All 247=5 A.W.N 15

Suit for determination

SUIT, ACTION "Suit" is a term of wider signification than action, it may include proceedings on a petition [*In re Walli's Trusts*, (1888), 23 L R Ir 7]

SUIT, APPLICATION There is nothing to prevent the Court from treating a suit as an application (7 O W N 887=A I R 1930 Oudh 468)

SUIT, CASE The use of the word "cases" instead of "suits" in S 115, C P Code shows that the section contemplates legal proceedings which are not suits in the strict sense but which are governed by the provisions of the Civil Procedure Code (129 I C. 367=A I R 1930 Cal 744)

TO SUE The words " to sue " in S 43 of the C P Code 1882, mean to make a legal claim or to take legal proceedings against any person It does not necessarily mean to file a suit by means of a plaint such as is referred to in the Code Taking any legal proceedings in matters of any kind would be to sue (7 Bom L R 138)

Suit against Secretary of State Per *Brand, J* — So far as suits against the Secretary of State in Council are concerned, in India, it is a complete fallacy to attempt to consider them from the point of view of the English Common law which does not recognize actions against the Crown on the principle either that "the Crown can do no wrong" or that the King cannot be sued in his own Court The principle applicable in India is wholly different, for, not only has the Crown submitted itself by statute (through its character as the successor of the East India Company) to certain 'remedies,' but it has by S 65, Government of India Act, 1858, constituted a corporate defendant in the form of the Secretary of State in Council as its representative for the purpose of being sued in respect of those remedies In the result therefore, the East India Company, and, through the Company, the Secretary of State in Council, is, by virtue of S 65, Government of India Act, 1858, and of S 32 of the Act of 1919, in a wholly different position from the Crown as it stands under the English Common law [1937 Rang L R 35=168 I C 272=A I R 1937 Rang 89 (S B)]

Suit dismissed "for default", dismissed "for want of prosecution" (A I.R. 1937 Rang 437)

Suit for an account in Provincial Small Cause Courts Act (IX of 1887), Art 31, is a special form of suit It does not mean every case in which accounts have to be looked into in order to ascertain the correctness or otherwise of the amount claimed by the plaintiff [14 I C 786 (787). *See also* 28 Cal. 394]

The words "suit for account" occurring in the first para of S 11 of the Court Fees Act, 1870, would be applicable to such portion of any suit as claims that relief, *viz*, relief by way of account (6 Bom.L.R 1102. *See also* 24 Cal 173=1 C W N 243.)

"Suit for determination of any right to or interest in, immovable property" A suit for recovery of unpaid purchase-money under a contract for the sale of land is a suit "for the determination of any other right to or interest in immovable property." (28 M 227.)

The expression "Suit for determination of any right to or interest in immovable property" in S. 19, Cl (*g*) of the Presidency Small Cause Courts Act

Suit for foreclosure.

(XV of 1882), refers only to suits expressly brought for the purpose of obtaining a decree determining a right or interest in immovable property, and not suits for money or moveable property in which a question of title to immovable property may be raised by the defendant. (15 B 400.)

"Suit for foreclosure" defined Act 4, 1882, S 67

Suit for land The words "suit for land or other immovable property" in Cl 12, Letters Patent, 1865, mean a suit for the purpose of acquiring possession of, or establishing a title to, or a right in, land or other immovable property [29 C 315, 27 M 157, 33 M 131=20 M L J 130=3 I C 930, 34 M 257=38 I A 193 (P C)]

The expression "suit for land" must be construed as an action, the primary object of which is to establish claims regarding the title to property or possession of property and no suit can be described as a "suit for land" as the result of the decision in which the title to, or possession of, immovable property will not in any manner or measure be directly affected A suit for an account of the management of a trust is really a suit for administration of trust and not a "suit for land", and, therefore, is not excluded from the jurisdiction of the High Court, though the trust properties are in the moffussil (49 M L J 311=22 L W 160=90 I C 188=1925 M W N 365=A I R 1925 Mad 1084)

The phrase "Suit for land" in Cl 12 of the Letters Patent, is by no means limited to a suit for the recovery of land, the expression is not to be read with a technical limitation, which never had been associated with it Where the leading purpose of a suit is to establish a title to possession of land situate outside the local limits of the jurisdiction of the Court and to secure that possession from molestation, and the claim is based not on any contract, trust or fraud or any circumstance giving rise to privity between the parties but is brought to vindicate rights resulting from ownership and possession alleged to be with the plaintiffs, the suit is a suit for land within the meaning of the clause [29 B 249=6 Bom L R 958 *See also* 37 B 494=17 I C 198=14 Bom L R 846, 4 B 482 As to what is not suit for land (*see* 14 B 353, 22 B 701, 7 Bom L R 319)

'Suit for money received' for plaintiff's use, meaning of. *See* 32 C 527

The words "suit for money" in S 380, C P. Code, 1882, has a wider meaning than a "suit for debts" In considering the question whether a suit is for money, the Court "must look at the substance" A suit to recover moneys and certain specified articles or the value thereof is a suit for money (17 Cal. 610)

'Suit for payment of money, meaning of. *See* 16 C W N. 763=14 I.C. 290.

"Suit for redemption" defined. Act 4, 1882, S. 60.

Suit for rent A suit by a landlord for a sum of money (less than Rs 500) agreed, to be paid by a tenant out of the rent to a third person on behalf of the landlord, must be regarded as a suit for rent and not for damages [27 C 67, 4 C.W.N. 3 (F B.)]

Suit involving question of title *See* A.I R 1930 Pat. 389.

Sukhavasi

"Suit of a civil nature" defined Act 5, 1908, S 9 expl

"Suit of the nature cognisable in Courts of Small Causes" The construction of the words a "suit of the nature cognisable in Courts of Small Causes," in S 102, C P Code (V of 1908) does not depend upon the tribunal in which the suit is brought and is equally applicable whether the suit be brought in a Court of Small Causes or in any other Court. (25 C 872, *also* 12 A 579, 25 All 457 Note)

"Suit or proceeding" The words "suit," "proceeding," and words of similar connotation have different meanings in different statutes and it is not possible to lay down a general rule of interpretation which would be applicable to all cases In each particular case the question has to be examined in reference to the context and that meaning is to be preferred which will best fit in with it (113 I C. 529 =10 Lah 165=A I R 1928 Lah 627)

'Suit relating to maintenance," in Provincial Small Cause Courts Act (IX of 1887), Art 38 does not include a suit by one brother *A* against another brother *B* on an agreemeot in the partition deed between them that *B* is to provide certain quantity of paddy to *A* for the maintenance of their mother for recovery of the paddy The said suit contemplates a suit to which the maintenance holder is a party (22 I C 39, 40)

"Suit to establish one's right," meaning of. *See* 11 B H C R 174.

Suit to which this Act applies" in the Usurious Loans Act means any suit,—(*a*) for the recovery of a loan made after the commencement of this Act, or (*b*) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act in respect of any loan made either before or after the commencement of this Act, or (*c*) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act Act X of 1918 (Usurious Loans), S 2 (3)

Suitable The ordinary and general signification of "suitable" is "likely to suit," "capable of suiting", or "adopted" This is by no means equivalent to "adequate" That which is adequate must be suitable, but that which is suitable may not be adequate.

According to the definitions in Webster's and the Dictionaries, "suitable" means fitting, capable of suiting, or appropriate The test of the suitableness of an article for a certain purpose is, not whether it is commonly used therefor, but whether it possesses actual, practical, commercial fitness for that purpose.

Sukarchakia (*P*) The name of a Sikh misl, that to which belonged Ranjit Singh, who reduced all the misls except the Phulkia under his sway as Maharaja.

Sukhavasi One who lives at his ease or where he pleases, applied to a person who is not bound to any particular spot by the possession of houses or land but lives comfortably by trade or industry *See also* 1 L.W 41=23 I C 113 (*Wil Gloss.*)

SUKHAVASI means one who lives in comfort without any particular employment. (1937) 2 M L J. 931.

Sukhavasikudigal

Sukhavasikudigal. (*Tam*) Persons who live by the produce of rented lands

Sukhavasikudigan, (*Tam*) Persons who live by the produce of rented lands (*Wil Gloss.*)

Sukhavasitirvai (*Tam*) Tribute or tax which persons living by rented lands pay to the landlords or proprietors

Sukhavasivaram. (*Tam*) The share of the produce accruing to the cultivator,as distinguished from that which goes to the Zamindar or the Government.

Sukla (*S*) White, bright the third year of the the Hindu cycle

Sulah (*H*) Reconciliation, compact, treaty in law, composition, or a contract by which contention is put an end to or prevented, whether the subject in dispute be bodily injury or a civil engagement. a compromise or agreement. (*Wil Gloss*)

Sulah nameh (*P.*) A writing of concord. A deed of compromise (*Mac Moh. Law*)

Sulka (*S*) **Tax,** toll, duty, marriage fee or dower, profits of domestic labour when considered the perquisite of the wife. in the dialects of the south this may become Sunka, or Chunka. (*Wil. Gloss*)

Sulka fee properly is the sum paid to the father of the bride as a consideration of his daughter, as applied to female property it is explained as money given to her to induce her to go to her husband's house, or pay to a woman for her work done or as a bribe to do something herself or induce her husband to do it. (*Wil Gloss*)

Kulka as defined by Katyayana is "whatever is received by women (for sending their husbands to work) on houses, on furniture, on carriages, on milking utensils and on ornaments is called sulka

Sultan (*A*) A sovereign, an emperor, first known in India as the title of Mahmud of Ghazni.

Sultani. (*H*) Relating to the Sovereign, proceeding from him or from the government. (*Wil Gloss.*)

Sultau'l maghrib (*A.*) The prayer at sunset. This, the fourth prayer of the Musalman day, is appointed to be said a few minutes after sunset.

Sum When used with reference to values, "sum" imports a sum of money. (*See also* 27 L.J Ex 31; 7 Ex. 58.)

In a suit on the note, the "SUM DEMANDED" is not only the principal of the note, but also the interest on the same.

In acts relating to jurisdiction, "SUM IN CONTROVERSY" has precisely the same meaning as "sum demanded" The demand of a sum is the sum in controversy

Sum Payable Money payable on a cheque bill, note, or draft

Summa ratio est quae pro religione facit (That is the greatest reason which makes for religion) **Summons.**

That rule of conduct is to be deemed most binding which religion dictates

Summarily "Summarily" as used in an Act providing that cases of a certain character "shall be tried summarily before a justice of the peace or other officer authorized by law, on information under oath", generally implies a trial without a jury and without adopting the elaborate formalities prescribed for ordinary trials

Summary Hasty, provisional (*See* 4 Bl. Com. 280) 'Summary" is defined by Webster to mean short, concise, reduced into a narrow compass or into a few words

'Summary enquiry" The expression "enquire summarily" in the Bengal Minors Act (XL of 1858) does not mean that the Court is to act on mere hearsay or the report of the Tahsildar deputed by the Collector to make enquiry, but that the Court should, as far as possible, adopt and follow the rules ordinarily applicable to judicial proceedings. (9 A W N 170)

Summary jurisdiction In English law the grant of "summary jurisdiction", or the decision of matters in a "summary manner", implies some substitution of a short and quick remedy instead of, or as an alternative to, the more elaborate process of the common law *See* Magisterial Synopsis and Formalist, Stone, Justices, Manual Douglas, Summary Jurisdiction Procedure, Paley, Summary Convictions (*Ency. of the Laws of England*)

Summary proceedings Proceedings have been classified as regular or summary When a Court acts or professes to act upon common-law principles, its proceedings are called regular, and not summary, however expeditiously it may act, but when a Court of common-law jurisdiction is by some law authorized to act different from the common-law mode it is called a summary proceeding, a summary proceeding being defined to be a form of trial in which the established formal course of a legal proceeding is disregarded Summary proceedings are not, however, as might be inferred from this definition, exclusively criminal in their nature but are more often available to enforce civil rights.

Summary proceedings in respect of an infringement of copyright *See* 33 C. 571=10 C.W N 134 =2 C L J 511.

Summary Procedure If a person chooses to take advantage of summary procedure, he must suffer its disadvantages as well as enjoy its benefits. (15 C 521, 6 Lah 206, *Ref to*) 11 Lah 369=31 P. L R 752=A I R 1929 Lah 865

Summary process "Summary", as applied to process, means immediate, instantaneous, in contradistinction from the ordinary course, by emanating and taking effect without intermediate applications or delays.

Summons A "summons" is a process issued from the office of a Court of Justice requiring the persons to whom it is addressed to attend the Court for the purpose therein stated.

"SUMMONS" is the name of a writ, commanding the Sheriff, or other authorized officer, to notify the

Summons case.

party to appear in Court to answer a complaint made against him and in writ specified, on a day therein mentioned.

Summons is an instrument issuing out of a Court having jurisdiction of the action, directed to the ministerial officer, commanding him to execute the same

"**Summons-case**" defined Act 5, 1898, S. 4 (v).

"SUMMONS-case" means a case relating to an offence, and not being a warrant-case (Cr P Code, S 4)

"**Sumps**" is a mining phrase denoting rude wells or cisterns along the line of the shaft in which the water in the mine is trained to collect, and from which it is pumped out of the mine by the same engine which moves the cars in the shaft.

Sumptuary laws Laws restraining excessive expenses of living (*See* 4 Bl Com 170) *Sumptuary Laws*, were laws made to restrain excess in appare, and prohibit costly clothes, of which there were many in England, but they are all repealed by statute 1 Jac 1 c 25=3 Inst 199. (*Tomlins Law Dic*)

Sunday The Lord's Day, set apart for the service of God, to be kept religiously, and not be profaned (*Tomlins Law Dic*)

"SUNDAY" is not an ordinary working day It is a day observed by the Christian world as holy and set apart for the purposes of rest and worship.

Sunday is a non-judicial day and by the common law all judicial proceedings which takes place on that day are void

It is laid down in distinct terms by high authority, that of Lord Coke and Comyns, that Sunday is not a juridical day" (Cockburn, C J, *Wimsor* v *The Queen*, (1866), L R 1 Q B D 308)

"I do not think there can be the smallest doubt that to sit judicially on Sunday on any business would be indecent and improper, and ought never to be done if it can be helped" [Blackburn, J, *Wimsor* v *The Queen*, (1866) L R 1 Q B D 317]

If a trial is held or a Sunday followed by a conviction it is an irregularity in procedure which has prejudiced the accused who could not be said to have had a fair opportunity to defend himself, the fact that the accused did not ask the court to adjourn the case does not make any difference [124 I C 619= 31 Cr.L J 705=A I R 1930 Nag 255]

"Sunday" embraces the twenty-four hours next ensuing the midnight of Saturday There is no distinction between the Sabath and Sunday. The Sabath is emphatically the day of rest, and the day of rest is the Lord's Day or Christian Sunday.

Sunday is a day of the week—the first day of the week, a holy day, the day set apart for cessation from all secular employment by the Christian world.

Although the words "Sabbath" and "Sunday" are not strictly synonymous, the one signifying the Jewish Sabbath, which is the seventh day of the week, and the other, the first day of the week, yet the expressions "the first day of the week," the

Superannuation allowance.

"Sabbath," the "Lords day" and "Sunday" are used interchangeably and synonymously both in legislation, and in common parlance It is not generally comprehended within the meaning of the term "holiday".

Sunday is among the first and most sacred institutions of the Christian religion The fourth commandment directs abstention from labour on the Sabbath, but the day there designated is the seventh day of the week There is nothing in the New Testament relating to Sunday or the Sabbath, but by common consent, the Christians at an early date substituted the first day of the week for the seventh and have since observed it as a day of rest and worship, in comme oration of the resurrection

Sunka-chauki (*Tel*) Custom-house (*Wil Gloss*)

Sunkam (*Tam*) Duty on goods, custom, toll (*Wil Gloss*)

Sunnah (*A*) Traditional law, the name of a compilation of the sayings and practices of Muhammad, made about a hundred years after his death, to supplement the Koran when that was found insufficient to regulate the affairs of the then greatly extended empire The sunnah is invested with the force of law and some of the authority of inspiration

Sunnat (*H*) The traditional law of Mohammadans based upon the sayings and doings of Mohammad, and of scarcely inferior authority to the text of the Koran in the estimation of the Sunnis, although not recognised by the Shias: also any obligatory religious ceremony, a circumcision. (*Wil Gloss*)

Sunni (*A*) A follower of the sunnah, the name of the first great division of the Muhammadans.

SUNNI (*H*) A follower of the traditions the designation of one of the two great divisions of the Mohammadans, characterized not only by the difference which the members pay to tradition, but by their affirmation of the lawful succession of the first four khalifs, Abubakr, Omar Othman, and Ali, in opposition to the Shias, who denounce the three first as usurpers (*Wil Gloss*, 494)

Sunset The term "sunset", as used in an Act requiring polls to be kept open on the day of the election until sunset, is not used in the precise mathematical sense, but rather in a more practical sense, requiring only a reasonable approximation to that time

"Sunstroke" or "heat prostration" is a term applied to the effects on the central nervous system, and through it on other organs of the body, by exposure to the sun or to overhead hot air Though most frequently observed in tropical regions, this disease also occurs in temperate climates during hot weather.

"**Superannuation allowance**", defined 55-6 V. c. 40, S. 4.

"SUPERANNUATION ALLOWANCE' includes, any pension or superannuation, or other retiring allowance", (S. 4, 55 & 56 V. c. 40.)

Supercargo.

Supercargo A supercargo is a person employed to go with a cargo on voyage and oversee it and dispose of it to the best advantage (*Jacob*) He is an officer in a ship, whose business is to manage the trade A person employed by commercial companies or private merchants, to take charge of the cargoes exported, to sell them abroad to the best advantage, and to purchase proper commodities to reload the ship homewards

"Unless his authority be expressly or impliedly restrained he must, from the nature of his employment, be invested with a complete control over the cargo, and everything which immediately concerns, it" (*per* Ellenborough, C J, *Davidson* v *Gwynne*, 12 East 396)

Superflua non noncent Things superfluous do no harm

Superintend "Superintend" means to have or exercise the charge and oversight of, to oversea, with the power of direction, to take care of, with authority, as an officer superintends the building of a ship or the construction of a fort, to have charge and direction of, as of a school, direct the course and details of some work, as the construction of a building, or movement, as of an army, to regulate with authority, manage

Superintendence "Superintendence" means the act of superintending, care, and oversight, for the purpose of direction, and with authority to direct

The word "superintendence" seems properly to imply the exercise of some authority or control over the person or thing subjected to oversight

In the English Employees Liability Act (1880), S 8, a "person who has superintendence entrusted to him" means a person whose sole, or principal duty is that of superintendence, and who is not, ordinarily, engaged in Manual Labour"

"Superintendent", defined 57-8 V c 60, S 742, Act 6, 1901, S 2 (1) (*t*), Ben Act 1, 1887, S 2, Bur Act 2, 1898, S 3 (2), Reg 3, 1881, S 2, Reg 1, 1894, S 10 (*b*), Reg 5, 1896, S 2 (1)

A "superintendent" is one who has the oversight and charge of something, with the power of direction

"Superintendent of police" means, in the case of a Presidency town or the town of Rangoon any officer appointed by the Local Government to perform the duties of a Superintendent of Police under this Act [Criminal Tribes Act (VI of 1924), S 2]

"SUPERINTENDENT OF POLICE" includes any police-officer of a like or superior rank, and any person upon whom the powers of a Superintendent of police are for the purposes of this Act conferred by the Governor-General in Council or by any Local Government. [Official Secrets Act (XIX of 1923), S 2)]

"Superintendent of vaccination", defined Bur. Act 6, 1908, S 5 *See also* Vaccination Act, 1880

"Superintending canal-officer", defined. Act 8, 1873, S. 3 (7), Bur Act 2, 1905, S 3 (7).

Superstition.

"SUPERINTENDING CANAL-OFFICER", means an officer exercising general control over a canal or portion of a canal, [U P Act VIII of 1873 (Canal and Drain), S 3, Cl. (7)]

Superior Worcester defines the term "superior" as meaning higher in dignity, or excellence (as) superior Court, official superior

"Superior court", defined, 22-3 V c 63, S 5, 24 V c 11, S 4, 44-5 V c 58, S 190 (29), 44-5 V c 69, S 39.

"SUPERIOR COURT At common law "superior Courts" were Courts of general jurisdiction, and the term was used to distinguish them from "inferior Courts", or Courts of limited jurisdiction

To constitute a "superior Court" as to any class of actions, its jurisdiction of such actions must be unconditional, so that the only thing essential to enable the Court to take cognizance of them is the acquisition of jurisdiction of the parties

Superior fellow servant A "Superior fellow servant" is one higher in authority than another, and one whose commands and directions his inferiors are in duty bound to respect, although engaged at the same manual work

"Superior holder", defined, Bom Act 2, 1876, S 3 (4), Bom. Act 5, 1879, S 3 (13)

SUPERIOR HOLDER 'An inamdar is a "superior holder" within the definition of Regulation XVII of 1827 and Bombay Acts I of 1865 and V of 1879, and as such is the person primarily responsible for the payment of land revenue (17 B 422)

'Superior holder" means the person having the highest title under Government to any land *See* Bom Act II of 1876 (Bom City Land Revenue), S 3 cl (4).

Superior officer", defined, 44-5 V c 58, S 190 (7), Act 5, 1869, Pt I cl (*e*) (7), Act 14, 1887, S 2 (1) (*e*), Act 15, 1887, S 5 (2), Act 5, 1892, S 4 (2), Reg 2, 1888, S 4 (2)

'Superior military officer", defined Bur Act 15, 1887, S 5 (2)

Supersede A compulsory order 'supersedes' a voluntary winding-up (of a Company) as from the date of the order, but that does not mean that it entirely puts an end to everything that has been previously done in the voluntary winding-up" (*per* Cotton, L J *Thomas* v *Lionite Co*, 50 L J Ch 544)

Supersedeas A supersedeas is in practice a writ containing a command to stay a proceeding at law. Originally it was a writ directed to an officer, commanding him to desist from enforcing the execution of another writ which he was about to execute, or which might come in his hands In modern times the term is often used synonymously with a "stay of proceedings".

A "supersedeas" is a statutory remedy by which the enforcement of a decree of a Court is superseded or delayed during appeal.

Superstition Excessive reverence or fear based on ignorance, false worship of religion.

Superstitious uses

Superstitious uses Various bequests to Jews, Dissentors, and Papists for religious or quasi religious purposes, which in England were made void by several statutes, and the King might divert them to such uses as were "truly charitable" (*see 3 Bl Com* 428)

Supervising farmer The term 'supervising farmer" covers a person who employs farm labourers and does but little work himself "We think that the supervision of a farm includes in its care and over sight the doing of such incidental things as may be required for keeping it in order, and does not mean absolute idleness as far as physical labour is concerned"

Supervision "Webster says 'supervision' means to oversee for direction to superintend, to inspect

Supervisor A surveyor or overseer (*Tomlins Law Dic*)

The word "supervisors" when applied to county officers, has a legal signification, and means those officers having the general management of the affairs of the county The duties of such officers are various and manifold, but mostly executive

Supplement A "supplement" is that which supplies a deficiency, that which fills up, completes, or makes an addition to something already organised, arranged or set apart, a part added to or a continuation of something It is used sometimes as a synonym of "appendix"

"SUPPLEMENT" is a supplying by addition of what is wanting

Supplemental affidavit A "supplemental affidavit" is not confined to an explanation of the original affidavit, but may set up a new and different defence

Supplemental bill A supplemental bill "is a bill filed for the purpose of supplying a defect which has arisen in the progress of the suit by the happening of some event subsequent to the filing of the original bill, and is in continuation of the original suit"

A SUPPLEMENTAL BILL is considered merely as an addition to the original bill and while it is often permissible and proper to introduce matter that has occurred after the institution of the suit and of such a nature as cannot be properly the subject of an amendment, yet such new matter must not be such as to change the rights and interests of the parties before the Court

A 'supplemental bill' relates to matters occurring after bill filed as change of interest *pendente lite*, etc

Supplementary proceeding A supplementary proceeding is a separate proceeding in an original action in which the Court where the action is pending is called upon to exercise its jurisdiction in aid of the judgment in action, and is entirely statutory

Suppletory oath. An oath administered to a party where the facts have been proved by only one witness, in order to make full proof (in civil law)

Supplicatio. (*Lat.*) (In Pleading) A rejoinder.

Supposed.

Supplies. Extraordinary grants to Government, by Parliament, to supply the exigencies of the State. (*Tomlins Law Dic*)

Supply The word "supply" is defined in the Standard Dictionary as "that which is or can be supplied, available aggregate of things needed or demanded, an amount sufficient for a given use or purpose" In the Imperial Dictionary, "that which is supplied, sufficiency of things for use or want, a quantity of something furnished or on hand" (As used in a contract to purchase all supplies of a certain description for a certain period from a certain firm, the word means all of the specifies goods necessary for the purchaser's business during such period

"Supply of water for domestic purposes" defined Act 19, 1884, S 2 (8), Ben Act 3, 1899, S 3 (15), U P Act 1, 1891, S 2 (*f*).

A "*supply of water for domestic purposes*" does not include a supply of water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains or for any ornamental purpose [Bur Act XIX of 1884 (Rangoon Water-works), S 2, cl (8).]

Support Not only does the word "support" include "bearing weight" but it is also used by the student and understood in common phraseology as covering "to keep from falling" and other kindred expressions.

"SUPPORT" according to Webster, means to sustain, to supply funds for the means of continuing, as to support the expenses of the Government

In an agreement whereby a person who conducted the business of a store belonging to another was to have a support for himself and family out of it as a compensation for his services includes clothing and food for the family and necessary medical attendance to those of them that are sick

"Support" generally means articles for ordinary sustenance as food etc, and does not include medicines, unless the context shows such intention.

Support and maintenance Expenses for the "*Support and maintenance*" of the Prisoners from a Borough, includes the expense of keeping up the County Prison, as well as the prisoners' food, clothing and bedding, but not the expenses of conveying prisoners, or of their prosecution, or of keeping up County Lock-up Houses (*R.* v *Gravesend*, 5 E & B. 459)

Suppose. "Suppose" as used by a witness who, after stating that he had known a slave in answer to interrogatories as to such slave's value, said "I suppose he was worth dollars", is used in the sense of "believe" and the witness really gave his opinion of the slave's value

Supposed "The supposed cause of action (in a pleading) means, the alleged cause of action" (*per* Alderson, B, *Eavestaff* v *Russell*, 10 M & W. 366; *Scadding* v *Eyles*, 9 Q.B. 860, 862; 15 L.J.Q.B. 364),

Supposition

Supposition In an instruction that "If the evidence, though in part circumstantial, is to your mind consistent with the supposition that defendant is guilty of this charge and inconsistent with the supposition that he is innocent of it", etc., "it is your duty to find him guilty," the word "supposition" is used in the sense of hypothesis and as meaning primarily what is not known to be true and not proved and hence the instruction is not erroneous

Suppress Under a Charter authorising the Municipal Council to provide for the suppression of vice and immortality, the council has authority to pass ordinances making certain acts misdemeanours and providing for their punishment, since "suppress" means to prevent, put down or end by force, and no better way exists to put down than to provide for punishment (*Ame Cyc*)

The words "ABATE" AND "SUPPRESS" in a statute giving a city corporation power to abate nuisances and suppress gambling houses, are practically synonymous

Suppression Where there is an obligation to speak a failure to speak will constitute the "suppression of a fact" but where there is no obligation to speak silence cannot be termed "suppression"

Supra (*Lat*) Above, over.

Supra dictus. (*Lat*) Aforesaid.

Supra potest (*Lat.*) over protest

Supratdar Custodian of property under attachment

SUPRATDAR is, to all intents and purposes, in possession of the property on behalf of the Court and practically holds the position of a receiver. (92 I C 40=A I R 1926 Nag 257)

Supremacy Sovereign dominion, authority, and pre-eminence, the highest estate (*Tomlins Law Dic*)

Supreme Court "The Supreme Court of the United Kingdom is the High Court of Parliament, consisting of King, Lords, and Commons, who are invested with a kind of omnipotency in making new laws, repealing and reviving old ones, and it is on the right balance of these three depends the well-being, and indeed the very being, of our constitution" (Bac Ab Courts, D 1)

Supreme law "Supreme law of the land" as used in Const Arts 1, and 2, providing that the constitution of the United States is the "Supreme law of the land", relates to those matters wherein the general Government assumes to control the individual states

Surah (*A*) A chapter of the Koran, of which there are 114, each divided into verses.

Surat-i-hal A representation or report of the facts and circumstances of a transaction, whether made by an individual before witnesses, or by a subordinate officer, to a superior functionary an inquest (*Wil. Gloss.*)

Surcharge An overcharge of what is just and right, to overburden, in equity practice, to add an item to an account, an overcharge, beyond what is just and right (*Merch Dict., Tomlins Law Dic.*)

Surface streams.

"Surety" defined. Act 9, 1872, S 126

SURETY. The bail that undertakes for another man in a criminal case, or civil action, etc. (*Tomlins Law Dic*), a pledge; a person who becomes answerable for the debt or default of another He is not supposed to have actual custody of his principal, like bail, and may be sued immediately without a previous suit against the principal

A surety is a person who binds himself for the payment of a sum of money or for the performance of something else, for another who is already bound for the same

Surety of the Peace is an acknowledgment of a bond to the Crown, taken by a competent Judge or Magistrate, as a surety that the Peace shall be kept by a particular person or persons (Jacob 4 Bl Com. Ch 18)

This is considered by Blackstone as a species of preventive justice, by obliging persons, whom there is a probable ground to suspect of future misbehaviour, to stipulate with, and to give full assurance to the public that such offence as is apprehended from them shall not happen, through the means of pledges or sureties for keeping the peace, or for their good behaviour 4 Com c 18 (*Tomlins Law Dic.*)

SURETY OF THE PEACE AND FOR GOOD BEHAVIOUR, is either because the party who was in fear is thereby secured, or the suspected party gives security (*Tomlins Law Dic*)

Suretyship A primary undertaking to answer for the debt, default, or miscarriage of another.

"SURETYSHIP" is an accessorial promise by which a person binds himself for another already bound and agrees with the creditor to satisfy the obligation if the debtor does not.

Surface "Surface" means that part of the land which is capable of being used for agricultural purposes

"SURFACE", or superficies, *prima facie*, means. nothing more than "the top of the earth and whatsoever is upon the face thereof" (*Cowel*)

'Surface damage" is a term well known in the English colliery districts It is damage to the crops by using the surface, or by the smoke coming from the colliery works or pit-heaps, in respect of which compensation is payable under leases or reservations of coal, or where people work coal by custom under copyhold lands It is difficult to say that the injury to the foundations of a house extending to the walls and roof of the house, or the subsidence of the soil partially or wholly destroying the future fertility of the soil, is a surface damage, it may be damage to the house and land, but not surface damage". (*Allay v Wagstaff*, 4 H & N. 688, 29 L J. Ex 58)

Surface rights "Surface rights" as used in sale of surface rights of land, means the entire surface of the land reserving the minerals to the grantor.

Surface streams. "Surface streams" are streams which flow in a permanent, distinct, well-defined channel from the land of one owner to that of another.

Surface waters.

"Surface streams" are regarded as a species of private property and their use is regulated by rules differing very materially from the rules applied to subterranean streams

Surface waters Waters of a casual and vagrant character following no definite course, oozing through the soil or spreading over the surface

"SURFACE WATERS" are those which, however originating, are shed and passed from the lands of one proprietor to those of another without any distinct or well defined channel

Surgeon. Signifies him that dealeth in the mechanical part of physic and the outward cures performed with the hand (*Tomlins Law Dic*)

"In strictness, to act as a Surgeon something must be done by the hand" (*per* Knight-Bruce, L J, ex p Crabb, Re *Palmer*, 25 L J Bank 49)

"A *Surgeon*, formerly, was a mere operator, who joined his practice to that of a Barber In latter times all that has been changed, and the profession has risen into great and deserved eminence But the business of a Surgeon is, properly speaking, with external ailments and injuries of the limbs" (*per* Best, C J, *Allison* v *Haydon*, 4 Bing 621)

A DENTIST is one whose profession is to clean and extract teeth, repair them when diseased and replace them when necessary by artificial ones and a dentist will not be held to be a surgeon or physician within the statutes relating to privileged communication

Surgery Act or art of treating injuries, wounds or diseases by manual operation, place for surgical operations

Webster's dictionary describes "surgery" as a branch of medical science It cannot be denied that practical surgery is ordinarily thus spoken of

Surla An instrument used by house-breakers

Surmaster School master next in rank to the headmaster

Surmise. A suggestion

Surname Name over above the Christian name

Surnis (*Mar*) One of the eight chief officers of the Maratha State as first organised the general record keeper, registrar, and superintendent of correspondence, by whom all deeds and grants were examined and authenticated (*Wil Gloss*)

Surpanch The word "surpanch" might indicate either an umpire or referee in case of a difference of opinion among the arbitrators or might imply a chief or head arbitrator, to organize and convene the sittings, inform the parties, send reports to the Court and do other administrative business connected with the arbitration in like manner as is done by a senior Judge of any other tribunal Fallon defines the word surpanch as meaning either a chief umpire or referee or a president, chairman, or foreman of a jury Wilson describes it as meaning the president of a panchayat 16 O C. 94=17 I C. 321 (322) Where a matter was referred to arbitration by three persons, two of whom were described as panches and the third as surpanch, it was held that this did not mean that the two panches alone were to act and the surpanch was only to be approached in case of difference of opinion. (*Ibid.*)

Surplus "Surplus" is defined as "overplus, that which remains when use is satisfied, excess beyond what is prescribed or wanted in law, the residue of an estate after the debts and legacies are paid"

It is to the particular language and to the circumstances of each will that we must look in order to see whether the word 'Surplus', or 'Residue', is to be taken as indicating surplus or residue properly so called, or merely as indicating" a share of a particular fund (*per* Cranworth, C, *Southmolton* v *A-G*, 5 H L Ca 26)

"Surplusage" 'Surplusage' comes of the French 'Surplus' that is, an overplus, and signifies in the law an addition of more than needs which sometimes is the cause that a writ shall abate, but in pleading many times it is absolutely void, and the residue of the plea shall stand good" (*Termes de la Ley*, *Tomlins Law Dic*)

"SURPLUSAGE" is defined in Anderson's Law Dictionary, as "matter in any instrument foreign to the purpose, whatever is extraneous, impertinent, superfluous, or unnecessary" Surplusage, in construing a writing may be rejected

"Surplusage" is that which is impertinent or entirely superfluous, as not being necessary either to the substance or the form of the pleading

Surplusage allegations in an indictment do not render it insufficient when there is sufficient matter alleged to indicate the crime and the person charged.

Surprise "Surprise" is the act of taking unawares, sudden confusion or perplexity.

"SURPRISE" is defined by Mr Story to be, "in private transactions an undue advantage taken of a party under circumstances which mislead, confuse or disturb the just results of his judgment, and thus expose him to be the victim of the artful, the importunate and the cunning.

"Surprise" is defined in practice to be that situation in which a party is unexpectedly placed, without any default of his own which will be injurious to his interest

The word "surprise" in its legal acceptation, denotes an unforeseen disappointment against which ordinary prudence would not have afforded protection

Surrender The yielding up of a lesser estate to him who has a greater

SURRENDER is a deed or instrument testifying that the particular tenant for life or years, of lands and tenements, doth yield up his estate to him that hath the immediate estate in remainder or reversion, that he may have the present possession thereof; and wherein the estate for life or years may merge or down by the mutual agreement of the parties. (*Co Litt.* 337, *Tomlins Law Dic*) It may be either express or implied. Implied surrenders are generally referred to as surrenders by operation of law Express surrenders are within the Statute of Frauds (in England) the Stamp and Registration Acts (in India.)

Surrender.

SURRENDER AND RELEASE A *surrender* is of a nature directly opposite to a release for as that operates by the greater estate's descending upon the less, a surrender is the falling of a less estate into a greater (2 Comm c 20, p 326, *Tomlins Law Dic*)

SURRENDER AND MERGER A distinction is pointed out between "surrender" and "merger" and it is said that "merger" is a wider term than "surrender" in that it takes place when the two estates are united, either in the hands of the remainderman or reversioner or in the hands of the tenant of the particular estate without regard to the method in which the two estates were united, while surrender is confined to the relinquishment by the tenant of the particular estate to his successor in reversion or remainder

SURRENDER BY OPERATION OF LAW "A surrender may arise either from the express agreement of the parties or by operation of law, and whenever a surrender is implied from acts of the parties it is a surrender by the operation of law"

A surrender is implied and effected by operation of law when another estate is created by the reversioner with the assent of the tenant, incompatible with the existing estate or term or by the taking of a new lease by the lessee

SURRENDER IN DEED is surrender by deed of conveyance, as the grant of a life estate to the remainderman

SURRENDER BY BAIL To give the principal again into custody

SURRENDER OF HOLDING In order to constitute *surrender of holding* there must be an actual "ceasing to cultivate" A notice of surrender, if accepted by the landlord, is not itself a complete surrender (1936 R D 98=1936 A W R 222)

SURRENDER TO LANDLORD By the expression "surrender to landlord", it cannot be said that the landlord, supposing he was a proprietor or a permanent tenure holder, acquired the land by transfer, succession or otherwise within the meaning of S 22 of the Bengal Tenancy Act (VIII of 1885) (2 C L J 570)

Surrender value (*In Insurance Law*) The value of a life insurance policy at any given time when the person insured, because of inability to continue paying premiums desires a lump sum to be paid to him in consideration of what he has already paid

Surrenderee. A person to whom a surrender is made

Surrenderor. A person who surrenders.

Surreptitiously Allegations in a bill that certain things were done 'surreptitiously" is a mere statement of conclusion It neither informs the conscience of the Court of the facts of the case upon which it is asked to act nor enables the defendant to meet the accusation of wrongdoing made against him (*Ame Words and Phrases*)

Surrogate (*Surrogatus*) Is one that is substituted or appointed in the room of another, as by a Bishop, Chancellor, Judge, etc. (*Tomlins Law Dic*)

A bishop's chancellor, who usually presides in the diocesan Court A Judge of matters of probate and guardianship.

Survey mark

In American law, the name given in some of the states to the judge or judicial officer who has the administration of probate matters, guardianships etc.

Surrogate's Court or surrogate Court One of the several denominations of distinct tribunals for the establishment of wills and the administration of the estates of men dying either with or without wills

Surround To encompass, to cut off from communication.

SURROUND, ENVIRON, ENCIRCLE. A town may be surrounded by enemies, a valley may be environed by hills, a bason of water may be encircled by a wreath of flowers

Sursanna. (*Mar*) An era, partially current in the western Maratha districts, adopted probably from the Mohammadans, it commences with the Hijra year 745—A D 1344 (*Wils Gloss*)

"Survey" defined Ben Act 5, 1875, S 2, Ben Act 1, 1887, S 2, Mad Act 4, 1897, S 3 (*vi*).

SURVEY "To survey" has several significations It may mean to inspect, or take a view of, to view with attention, to view with a scrutinizing eye, to examine with reference to condition, situation and value, to measure, as land and many others "Survey" as a noun may mean an attentive or particular view or examination, with the design to ascertain the condition, quantity or value

"A 'survey' as the term is used in marine insurance," says Mr Justice Story "is a common public document, looked to by both underwriters and owners as affording the means of ascertaining upon the very spot, at the very time the state and condition of the ship and other property at hazard"

To measure, lay out, or particularly describe land or estate in lands, and to ascertain not only the bounds and royalties thereof, but the tenure of the respective tenants, the rent and value of the same, etc (*Tomlins Law Dic.*)

"SURVEY" (of land) includes identification of boundaries and all other operations antecedent to, or connected with, survey. [Ben Act I of 1887 (Survey), S 2]

"Survey-boundary mark " defined [Bom. Act 2, of 1876, S 3 (3)]

The words "*survey-boundary-mark*" mean, primarily, any iron or other mark set up by the officer, who conducted the Bombay City-survey and include any such new mark that may hereafter be set up by the Collector or under his orders, according to the provisions of this Act [Bom. Act II of 1876 (Bom. City Land Revenue), S 3, Cl. (3).]

"Survey-mark" defined Act 5, 1880, S. 1-A, Act 17, of 1887, S. 3 (17); Mad. Act 4, 1897, S 3 (*vii*), Reg 1, 1899, S 3 (8)]

"SURVEY-MARK" means any pillar, pipe, post or other mark erected or placed above or below the surface by or by order of any officer appointed by the Local Government to make a survey of any land on or within the boundaries of such land for the purpose of indicating survey points or lines [Bur. Act V of 1880 (Burma Boundaries), S 1-A.]

Survey-number.

"Survey-mark" includes boundary-mark [Pun Act XVII of 1887 (Land Revenue), S 3, Cl (17).]

"**Survey-number**" defined [Act 18, 1881, S 4 (6-*a*), Act 11, 1898, S 2 (1), Bom. Act 5 of 1879, S. 3 (6))]

SURVEY-NUMBER" means a portion of land of which the area and assessment are separately entered, under an indicative number in the land records (Bom Act V of 1879 (Land Revenue Code), S 3, Cl. (6)]

'**Survey-officer**" defined Bom Act 5, 1879, S. 3 (2)

Surveyor One that has the overseeing or care of some person's lands or work, an overseer, a measurer of land (*Tomlins Law Dic*)

Survive The word "survive" in its popular signification may mean "overliving a specified individual," or "living beyond a specified event," or it may mean "still living" or "living at some designated period of time

The primary meaning of the "survive" is to live beyond the life or extent of, or to outlive, but it also has a secondary meaning, namely, to live after, and as used in the phrase, "if either of my said sons should die without leaving a child which shall survive him," the testator could not have used the word "survive" in its ordinary acceptation, but in the sense of "who shall live after him" There has been much discussion in the books as to the proper construction of the words 'survive" and "survivor" when used in wills, but it is now settled by numerous decisions that the same rule of construction will be applied to these words as to any others, namely, that they shall be taken in their literal and ordinary import unless there is something in the context or attending circumstances which shows that they were used in a different sense

As to meaning of word in C P. Code, O. 22, Rr 2 and 4, *see* 119 I C. 537=1929 Sind 225.

Survive "Survivor" is usually applied to the longest liver of two or more partners or trustees, and has been applied in some cases to the longest liver or joint tenants and legatees, and to others having a joint interest in anything

Romilly, M R., said, "My opinion is, that the meaning of the word '*survive*' or 'survivor' imports that a person who is to survive must be living at the time of the event which he is to survive I have consulted several dictionaries on this subject I have consulted Johnson and Richardson, and the authorities cited by them, and in all instances it appears to me to mean to 'outlive,' that is, to be alive at the time of a particular event, or the death of a particular person, which event or person the other is to survive It is true that Dr Johnson puts as one of the meanings, 'to live after another' But all the passages from the English writers cited tend to the conclusion that the person who survives an event,must be living at the time when that event takes place, and that 'to live after,' is somewhat ambiguous in itself" On a context, "survive" has been construed "to live after." (Re *Clark*, 13 W.R. 115, 3 D G J. & S 111)

"**Surviving children**" includes a sole surviving child (Re *Brown*, W.N. 96, 164).

Suspension.

"**Surviving husband** "Surviving husband" as used in the Statutes and legal phraseology has the same force and meaning and the same legal effect as widower

Surviving wife A woman who has been divorced cannot be deemed a "surviving wife," but unless there has been a judicial decree dissolving the marriage relation, a wife who outlives her husband in a surviving wife, no matter how bad her conduct may have been

Survivor The longer liver of two joint-tenants, or of any two persons joined in the right of a thing He that remaineth alive, after others be dead, etc (*Tomlins Law Dic*)

Where a trust deed conveys certain property to certain trustees, and to the survivor of them, or the assigns of such survivor, the term "the survivor or his assigns" necessarily imports the power to transfer by the survivor

Survivorship The living of one of two or more persons after the death of the other or others In relation to property the condition that exists where a person becomes entitled to property by reason of his having survived another person who had an interest in it

"Title by survivorship" exists only when the estate is held in joint ownership (as) among Hindu coparceners governed by the Mitakshara law

Susi (*P*) A striped coloured fabric much used for making trousers for Muhammadans

Suspect The use of the word "suspect" in a petition for search warrant, that the complainant has come to suspect and does suspect etc, is not a sufficient compliance with the statute, requiring the complaint to make oath or affirmation that he believesthe stolen goods are concealed in some house or place described in the complaint "Suspicion may be upon very light grounds, and imports a less degree of certainty than belief" *See* 6 Bom 402.

Suspend To delay, to debar from any privilege, office or emolument, for some time

SUSPEND. "Suspend" is defined to mean to interrupt, to cause to cease for a time, to stay and delay, to hinder the proceeding for a time

'**Suspending payment**' The expression suspending payment' is a well-known commercial expression, and a merchant suspends payment when he ceases to discharge his mercantile obligations in due course. In ordinary parlance the terms 'insolvent' and 'suspending payment' have practically the same meaning. [7 Bom.L R 154 *See also* 1891 App Cas (Eng) 316]

Suspense, suspension, (*Suspensio*) A temporal stop or hanging up as it were, of a man's right for a time (*Tomlins Law Dic*)

Suspense account An account of transactions which it is impossible to enter in the books in the regular way, and they have to be held in suspense

"**Suspension,**" as used when speaking of the suspension of a priest of the Catholic Church, is a judicial act imposing a sentence forbidding such priest to exercise the functions of a priest.

Suspension of payment.

The word "suspension" means the temporary intervention or cessation of something (as) office, work or labour

Suspension of payment When traders firms or companies, unable to cope with their liabilities, decide to cease paying further debts, and announce the fact to their creditors it is called a "suspension of payment"

Suspicion The word "suspicion" is defined as being "imagination of the existence of something without proof, or upon very slight evidence or upon no evidence at all"

"KNOWLEDGE" AND "SUSPICION" are not synonymous terms Thus where an employee's indemnity policy provided for notice of any act of dishonesty as soon as it came to the knowledge of the employer, notice was not required when the employer merely entertained suspicion as to the employee

"SUSPICION" IS WEAKER THAN "BELIEF" AND "OPINION" The expression of a suspicion that another has committed a crime is actionable

"CREDIBLE INFORMATION' AND "REASONABLE SUSPICION" *See* 1934 Sind 193=36 Cr L J 332

Suspicious person The words "suspicious person" are used to designate one against whom there is reasonable cause to believe that he has committed a felony, and whose arrest without warrant is authorised by law The belief necessary to authorise such arrest is generally nothing more than a well-grounded suspicion

Sustain To hold of, maintain, prove, sanction

TO SUSTAIN, SUPPORT, MAINTAIN We sustain a load, we support a burden, we maintain a contest The principal difficulty in an engagement is often to sustain the first shock of the attack, a soldier has not merely to support the weight of his arms, but to maintain his post

DAMAGE "SUSTAINED AT THE TIME OF COLLECTOR'S TAKING POSSESSION" These words in S 23 (1) of the Land Acquisition Act (1 of 1894) include not only damage that has been actually caused at that time, but also what can be reasonably anticipated and estimated then [12 I C 202 (204)]

Sustenance. "Sustenance" is that which supports life, food, victuals, provisions

Susti (*Swasti*)—(*Mar*) A tenure by which land is held of a proprietor by a tenant paying the full government assessment (*Wil Gloss*)

Suthri (*P*) A Sikh sect founded by one Sucha, a Brahman by birth, in the time of Har Rai, the seventh Guru They are called also Suthrashahi

Suus (*Lat*,) His own.

Suus haeris. A proper heir, a rightful heir.

Suus judex (*Lat*) One's own judge, a proper judge

Suvarna. (*S*) Gold: a goldsmith's weight (*Wil. Gloss*)

Suzereign A crown vassal. (*Kinney.*)

Swamp

Svarupam. (*Mal*) The four principal dynasties termed the *Kola, Nayarirppu, Perimbadappu* and *Trippa Svarupams* represented by the Kolartiri or Chirakkal Rajah, the Zamorin, and the Cochin and Travancore Rajahs (*Moore's Malabar Law*,) *see* Swarupam

Svatantram Own or independent property, hereditary right, either to real or personal property, or to privileges, perquisites or fees also any fee or perquisite claimable by a proprietor from a hereditary or other cultivator of proprietary lands, either in his own right or in that of a coparcenary body of proprietors *See* 1 L W 41

Svatantharakaran (*Tam*) An owner, an heir, one who enjoys any property of his own right *See* 1 L.W 41

Svatantradittam (*Tam*) Certain fees of corn with straw before threshing, received by the Mirasidars in the Tamil provinces, any fee or privilege claimable by the village servants, musicians or the like

'Svikara Nemanam' *See* 9 M L T. 139=8 I C 517

Swada (*S*) An exclamation used at the presentation of oblations to fire, or to the manes, or at the closing term of a short prayer to them (*Wil Gloss* 496)

Swagamdatta is one who gives himself as son, one of the twelve kinds of sons in Hindu Law

Swami (*S*) (*Tam*) A master, an owner, a husband, a lord a title given to idols in the South of India, and thence is often borne by individuals it is also applied especially as a title to the head of the religious order or establishment used sometimes honorifically in the telugu plural Swamulu (*Wil Gloss* 496)

Swamibogam (*S*) The proprietors or landlords right in the Tamil country it means the share of the produce or the rent which is paid to the Mirasidar or hereditary proprietor by the tenant cultivator holding the land in farm for a fixed period In Malabar and Karnata it is the fee or acknowledgment paid by the mortgagee or tenant, often no more than a pepper corn rent, to the janmkar or birthright proprietor it also signifies any grant or contribution for an idol (*Wil Gloss*)

The word *Swamibhogam* usually implies that the ownership of the soil does vest in the person who is entitled to *Swamibhogam*. [41 M.L J. 175=62 I C 750=14 L.W 40]

SWAMIBHOGAM distinguished from *'Tirwa'* [56 I C 248=52 M 549=31 Bom L R 830=33 C W N 601=116 I.C 601=1929 P.C. 156=57 M L.J. 1 (P.C.).]

Swamp In larger streams the "swamp" is spoken of distinct from the river.

"Swamp and overflowed lands" are lands rendered unfit for successful cultivation by reason of the overflow If lands by reason of the overflow were generally rendered unfit for the successful cultivation of the staple crops, they are swamp and overflowed lands.

Swanubogam

Swanubogam (*Tam*) The occupation or enjoyment of an estate by the proprietor himself, or if leased to another, an acknowledgment from the tenant that he holds the land under the proprietor. (*Wil. Gloss.* 496)

Swaraj (*Mar*) The share of the revenue claimed by the Mara has from any conquered country, the same as the Chouth (*Wil Gloss*)

SWARAJ Self-Government This word does not necessarily mean Government of the country to the exclusion of the present Government, but its ordinary acceptance is "home rule" under the Government The vernacular word used, if literally translated, would mean 'Self Government' but Self-Government would not necessarily mean the exclusion of the present Government or independence [34 C 991, 1 I C 22 (31)]

The word Swaraj is used in different senses and the sense in which it is used in any particular case must be judged mainly by the context of the speech in which the word is used [1 I C 22 (32), 5 M L T 1=32 M 3=9 Cr L J 108, 5 M L T 16=32 M. 30=1 I C 36=9 Cr L J 130, 34 C 991=6 C L J 699=11 C W.N 1050 =6 Cr I J 297]

Swarnadayam (*Tam.*) Rent or revenue receivable in money, not in kind (*Wil Gloss*)

Swarnam (S) Gold, money (*Wil Gloss*)

Swarupam (*Mal*) A ruling dynasty (*Sundaram Iyer's Malabar Law*)

Swastivacakam land Land given as inam for certain services in the temple The alienation of a *Swasthivachakam* inam land is invalid even though the alienation is made in favour of a member of the family. (24 L W 674)

Swatandradittam (*Tam*) *See* Svatantradittam.

Swati An inhabitant of Swat.

"Swear" defined (*See also* Affidavit, oath), 41-5 V c. 58, s 190 (28 52 V c 10, s 11), 52-3 V c 63, s 3, Act 10, 1897, s 3 (55), Ben Act I, 1899, s 3 (44), Bom. Act, 1, 1904, s 3 (47), Bur. Act, 1898, s 2 (61), E B & A Act, 1909, s 5 (60), Mad Act 1, 1891, s. 3 (20), P Act 1, 1898, S 2 (56), U P Act 1, 1904, s 4 (44).

"SWEAR," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing [Act X of 1897 (General Clauses) S 3 (55)]

The term "swear" includes every mode authorised by law for administering an oath.

By statute it is generally provided that the words "swear" or "sworn" shall include the words "affirm" or "affirmed"

Swearing (*in old English law*) was an offence against God and religion, and sin of all others, the most extravagant and unaccountable, as having no benefit or advantage attending it (*Tomlins Law Dic*)

Sweating system. The practice of working poor people at starvation wages.

Sword.

The term "Sweating system" involves a system oppressive to the workman whereby an unconscionable or unjust profit is wrung from the sweat of his brow by paying him insufficient wages for his work There is, generally, a middleman taking advantage of the circumstances in which the workman is placed and grinding down, for his own profit, below the fair rate the wages of those employed Where the system prevails the epithet 'pernicious' is not at all too strong" [*per* Chitty J, *Collard* v *Marshall*, (1892) 1 Ch 571, 61 L J.268, 66 L T 28, 40 W R 473.]

Sweepstakes A method of gambling.

Swindle To cheat under the pretence of fair dealing

A fraudulent sale of goods, for the purpose of preventing them from being attached by the creditors, by the vendor, is a fraud in law, which in an action of slander will justify the application of the epithets "cheating" and "swindling"

Swindler A swindler is "a cheat, one who lives by cheating" (*Jacob, Tomlins Law Dic.*)

A swindler is one who obtains money or goods under false pretences.

The word "swindler" is an exotic, which came from Germany, has but recently become naturalized in our language. In Todd's Johnson "swindler" is defined to be a sharper, or a cheat, and "to swindle" is to cheat, to impose upon the credulity of mankind, and thereby to defraud the unwary by false pretences Webster defines "swindler" as a cheat, a rogue, one who defrauds grossly, or one who makes a practice of defrauding others by imposition or deliberate artifice. In Tomlins Law Dictionary (edition) of 18.6 the word is defined as a cheat, or one who lives by cheating Swindling is not a crime known to our law To call one a swindler is about equivalent to saying he is a cheat, which has never been held actionable (*Ame Words and Phrases*)

Swindling The term "swindling" does not import a crime known to the law, and hence words charging one with being a swindler are not actionable *per se*.

Switch A "switch", as the term is used in speaking of an electrical switch, is any device by which one line may be electrically connected with another.

AN ELECTRIC SWITCH", in general terms, is a device for opening and closing a single circuit in some regular and systematic manner.

A "switch" as the term is used in railroad law is a "device for moving a small section of track, so that rolling stock may be run or shunted from one line to another." (*Ame Words and Phrases.*)

Switchman. Points man.

Switch yard. The words **"switch yard"**, as employed in connection with and descriptive of railway service, consists of side tracks upon either side of the main track, and adjacent to some principle station or depot grounds where cars are placed for deposit, and where arriving trains are separated and departing trains made up. (*Ame Words and Phrases.*)

Sword. An offensive weapon with a long blade and sharp edges.

Sword craft

Sword craft Skill in the use of the sword as a weapon.

Sword marriage. A sword marriage is an institution peculiar to Kshatriyas and it is not common to persons of other castes It is a form of union which by custom has been recognised by Rajputs and some other communities No such general custom amongst Marattas exists In the Tanjore Raja's family there were unions by which women were admitted to the seraglio and were known as sword wives But the sword wives though of a much higher status than dancing girls had only the status of permanent concubines attached to the palace and their issues could claim only the rights of illegitimate offspring *See* 48 Mad 1=A I R 1925 Mad 497

Swordstick A swordstick is a weapon different from a *kirpan* The two expressions cannot be regarded as synonymous [A I R 1924 Lah 600 *Ref* 108 I C 596=29 Cr L J 425= A I R 1928 Lah 239]

Sworn [*See* Swear] The word "sworn" when applied to public officials required to take the oaths therein prescribed, shall refer to those oaths, when applied to other officers, it shall mean sworn to the faithful discharge of the duties or their officers before a justice of the peace or other person authorised to administer oaths in such cases

The words "SWORN", "DULY SWORN" or "SWORN ACCORDING TO LAW", used in a statute, record, or certificate of administration of an oath, refer to the oath required by the laws or rules in the cases specified, and include every necessary subscription to such oath.

Sworn enemies. Enemies determined not to be reconciled

Sworn friends Fast or close friends.

Sworn to a lie The words "sworn to a lie" do not of themselves impute a charge of perjury, and hence are not actionable *per se*

A statement that a person "swore false and swore to a lie" does not imply that the person spoken of was guilty of perjury, and is not actionable

Syaha. Unsigned *Syaha* entries are not evidence of payment of rent (1937 R D 459)

Sycophant A common informer, a servile flatterer.

The word "sycophant" comes from the Greek words meaning "fig informer", but it would scarcely be contended to-day that a man could not properly be called a sycophant unless he had dealings in figs In short, words by use are sometimes degraded, sometimes ennobled, sometimes narrowed in meaning sometimes broadened (*Ame Words and Phrases*)

Syllabus. A head note to a decision, a note prefixed to the report of an adjudged case, containing an epitome or brief statement of the rulings of the Court upon the point or points decided in the case.

Syllogism Logical form of argument consisting of three propositions of which the first two are called premises, and the last, which follows from them, the conclusion.

Syrup.

Symbolical delivery "Symbolical delivery" is a substitute for actual delivery, when the latter is impracticable, and leaves the real delivery to be made afterwards As between the parties, the whole title passes by such delivery, when that is their intention

Symbolical possession Interrupts adverse possession of a party against whom the symbolical possession is obtained 5 Cal 584 and 22 C W N 330, followed (A I R 1922 Cal 313)

Sympathetic strike The term "sympathetic strike" is otherwise known in America as a boycott, (*Ame Words and Phrases*)

Synagogue An assembly of jews for worship, a Jewish place of worship

Synarchy Joint sovereignty,

Syndicate, (*in commercial law*), an aggregation of persons for the purpose of an undertaking too large for effective management by a single person

Syngraph A deed, bond, or writing, under the hands and seals of all the parties (*Civ Law*)

Synod (*Synodus*) A meeting or assembly of ecclesiastical persons, concerning religion (*Tomlins Law Dic*), religious council or court A "synod" is a "convention of bishops and elders within a district The synod have a supervisory power over presbyteries, but, unlike presbyteries, are not essential to the existence of the general assembly, the only connection between the general assembly and the synod being that the former has a supervisory power over the latter"

The word "synod" signifies simply a meeting of the few adjoining presbyteries A synod is in no sense an ecumenical council, which is a council of all, and not of a part

Synodal "is a tax paid in money to the Bishop or his Archdeacon, by the Inferior Clergy, at their Easter Visitation", (*Termes de la Ley*)

Synomosy A body of political or other conspirators bound together by oath, a secret society

Synonymous The word "synonymous" means conveying the same or approximately the same meaning

"Synonymous words" are words expressing the same thing, conveying the same or approximately the same idea

Synopsis A view of the whole together, a general view of a single subject

SYNOPSIS "Synopsis" means to cut short, diminish, reduce, a brief or partial statement, less than the whole, an epitome.

Syringe. A syringe is a kind of pump, so that the application of the principles and appliances already used in pumps to a syringe does not constitute prior invention for the purpose of getting a patent

Syrup. The words "syrup" of "figs" or "fig syrup", being descriptive, cannot be sustained as a valid trade-mark or trade-name, as applied to a syrup, one of the characteristic ingredients of which is the juice of the fig. (*Ame. Words and Phrases.*)

System

The Century Dictionary describes "syrup" to be "a solution of sugar in water, made according to official formula, whether simple, flavored, or medicated with some special therapeutic or compound". It is defined by Webster as a "thick liquid, made from the juice of fruits, herbs, etc, boiled with sugar" The Standard Dictionary defines syrup generally 'as a thick, sweet liquid," and specifically as "a saturated solution of sugar in water, often combined with some medicinal substance, or flavored, as with the juice of fruits, for use in confections, cookery, or the preparation of beverages'. This authority further states that "syrups are commonly named from their source of flavoring" *(California Fig Syrup Co v Frederick Stearns and Co.* (U S) 73 Fed 812, 815, 33 L R A 56)

System "The word 'system' is defined by the Encyclopaedic Dictionary as a plan or scheme according to which things are connected or combined into a whole, an assemblage of facts or of principles and conclusions, scientifically arranged or disposed according to certain mutual relations, so as to form a complete whole, as a system of philosophy, a system of government", etc

System, method. System expresses more than method, which is but a part of system system is an arrangement of many single or individual objects according to some given rule, so as to make them coalesce Method is the manner of this arrangement or the principle upon which this arrangement takes place All sciences must be reduced to system, and without system there is no science, all business requires method, and without method little can be done to any good purpose

T

Taahud-dar *(H.)* One who has entered into an agreement for the public revenue due on his own share the holder of a farm or lease *(Wil Gloss)*

Taallukah-jaaid *(H)* Literally new dependencies, a term applied to tracts annexed to the zamindari of Vijayanagara *(Wil Gloss)*

Taallukdar *(Taleqdar)* *(H)* The holder of a Taluq in some places a government officer a collector of revenue from the cultivators, either on behalf of the state or of the former of the revenue, whose undue exactions it is his duty to prevent. *(Wil. Gloss.)*

Taallukor Taluk *(H)* Connexion, dependence, possession, property, a dependency, a portion of a district, a division of a province an estate applied to a tract of proprietary land usually smaller than a Zemindari, although sometimes including several villages, and not unfrequently confounded with a zemindari

Taayyul. *(H)* Land held in jagir by a member of a Royal family as an appanage it is now applied especially to certain lands held by the king of Delhi, or members of his family in the neighbourhood of Delhi, or to some held by the king of Oudh it formerly designated lands granted in jagir burthened with special services, or sometimes paying a quit-rent *(Wil. Gloss.)*

Tacking.

Taayyul-shahi *(H)* The royal domain, land in Delhi and the neighbourhood, the occupants of houses on which paid ground-rent to the king of Delhi, *(Wil. Gloss)*

Taba Following, dependent, obedient, a follower, a dependent

Tabadar One owning obedience, the rank and file in the grades of ghatwal service [(Ben) *Bad Pow.* I, 585]

Taba-i-tabiun *(A)* The followers of the followers, the successor of the Tabiun, from whom they received traditions respecting Mohammad, which they repeated and which although of inferior weight, are of authority in the body of the traditional law of the Mohammadans *(Wil Gloss)*

Ta barrak *(H.)* A benediction sacred relics a portion of what is left of food presented to great-men, given to their attendants *(Wil Gloss.)*

Tabernacle A place of worship, the place in which the consecrated elements of the Eucharist are kept.

A tabernacle for the reception of the reserved sacrament is not a lawful Church ornament *(Kensit v St Ethelburga,* 1900 P 80.)

Tabidar *(H)* Dependent, a dependant, a follower, a subject *(Wil Gloss)*

Tabidari *(A Mar)* Dependence, allegiance, subjection

Tabiun *(A)* Followers especially designating the successors of the companions of Mohammad, or the contemporaries of the companions whose relations of the sayings and doings of the Prophets, they received them from the companions, form part of the sunna, or traditional law. *(Wil Gloss)*

Tablet *(Medicine)* Dose of some medicinal drug in the form of a small slab.

Tacit Unspoken, implied, not expressed (as) tacit consent

"TACIT" is said of that which, although not expressed, is understood from the nature of the thing, or from the provision of the law.

Tacit acceptance Acceptance is tacit, when some act is done by a person which necessarily supposes his intention to accept, and which he would have no right to do but in his acceptance.

Tacit mortgage. The law in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it This is called "legal mortgage" or statutory charge. It is called "tacit mortgage" because it is established by the law without the aid of any agreement.

Tack Duty, rent reserved upon a lease, a lease or contract of location, also an addition, supplement.

TACK *(in Legislation)* To treat a measure as part of a money bill in Parliament with which it had no connection, an order to prevent amendment or rejection by the Lords.

Tacking The doctrine known by the name of tacking *(see)* consolidating and priorizing two or more claims.

Tacking a mortgage.

The uniting securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge on lien, which is prior, without redeeming or discharging the other liens also, which are subsequent to his own title.

Tacking a mortgage, is the doctrine that enables a mortgagee who is secured by the legal estate, to tack on to that security another security which he holds on the same property and so give the latter security priority over a mesne incumbrance prior in date thereto, if he took his other security without notice of the mesne incumbrance to be so displaced, (*Fisher*, Art. 5 Ch 3, Ss 2 and 3) This doctrine does not hold good in own law. (*See* T P. Act.)

"TACKING IT ON AS A RIDER" is a legislative phrase, designating the practice of putting a measure of doubtful strength on its own merits into the general appropriation bill, in order to compel members to vote for it, or bring the wheels of Government to a stop

Tackle. Tools, weapons, ropes, rigging, etc, of a slip

TACKLE It has been said that by the words "Tackle, furniture, apparel, and all other instruments, thereunto belonging," the boats of a Ship are not transferred (*Molloy De Jure Mar*, B 2, C 1, S. 8)

Tadakhul (*A*) Concordance, when the number of shares may be divided without remainder by the number of sharers, as where there are nine shares and three sharers the numbers are termed Mutadakhul. (*Wil Gloss* 507)

Tadal-punjai (*Tam*) High land incapable of irrigation.

Tafrik. (*H*) Separation, division, separate or individual interest or responsibility in law a judicial divorce, one pronounced by the Kazi, as distinguished from one executed by the husband himself on his own authority (*Wil Gloss*)

Tafrik-nama (*H*) A document or deed settling the shares and proportions claimed by different parties (*Wil. Gloss*)

Tafsirat-ul-Ahmedia A comprehensive commentary on the Koran by Mulla Jeevan, sometimes referred to on questions of Mohamadan Law.

Tafwiz-ul-talak. Divorce by delegation giving to a wife the option or liberty of being separated, or to a third person authority to pronounce a separation between husband and wife (*Wil Gloss*)

Taghrib (*H*) In law, banishment, transportation according to some it means only imprisonment, which is a sort of banishment, or separation from family and friends (*Wil Gloss*)

Tahajjud (*A*) Prayers repeated at midnight by devout Mohammadans also Tahajjud namaz and Tahajjud-salat (*Wil Gloss*)

Tahkim. (*H*) Placing a person in authority in law, arbitration, also investing a person with authority to decide a dispute. (*Wil Gloss.*)

Tahzirat-i-Hind.

Tahlil Repetition of the Mohammadan creed, 'There is no god but god: Mohammad is the Prophet of god'.

Tahnama (*Mar.*) A treaty of peace. a bill of articles or items agreed upon by two parties.

Tahsil (*H. Mar*) Collection especially of the public revenue derived from the land the revenue collected in the Dakhina a statement prepared and kept by the village accountant of the persons from whom the revenue is receivable, and the amount due by each (*Wil Gloss*) The office of the Tahsildar, office of the Taluk Revenue Department

TAHSIL Collection especially of the public revenue derived from the land, the revenue collected, in the Dekhan a statement prepared and kept by the village accountants of the persons from whom the revenue is receivable, and the amount due by each

"Tahsildar", defined (*See also* Circle Tahsildar) Mad Act 1, 1908, S. 3 (18), Reg 1, 1894, S 10 (*h*).

TAHSILDAR (*H*) A native collector of revenue, a native officer collecting the revenue from a given tract under a Zamindar or the Government (Beng Reg 2, 1793, 3, 1794, 8, 1797, 27, 1803, Mad Reg. 27, 1802, 2, 1803, 11, 1816 (*Wil Gloss*)

Officer in chief executive charge of a tahsil Also a native officer who collects the revenue for a zamindar or under a Collector

Tahsildari (*H*) The office, duty, or jurisdiction of a Tahsildar, the district of which he collects the revenue

TAHSILDARI (*H*) The office duty or jurisdiction of a native collector of the district of which he collects the revenue usually consisting of one or more villages or Perganas and yielding revenue to the extent of some lakhs of rupees (*Wil Gloss*)

Tahsildar-nishandar (*H*) A duly appointed and responsible native collector of revenue (*Wil Gloss* 500),

Tahsil-Diwani (*H.*) Collections of revenue payable into the public treasury. (*Wil Gloss.* 500.)

Tahsil-jabita (*Tel*) Daily account of payments made by the cultivators to the Collector

Tahsil-puraja. (*Tel.*) A daily cash account kept by the village accountant under the collector, of the revenue payments of the cultivators, and of the village disbursements.

Tahsil-wasilat (*H*) The amount realized by the collector of a taluk or district, whether on behalf of a zemindar or the government. (*Wil. Gloss*)

Tahtavi. "The most celebrated of the commentaries written on Durrul-Mukhtar is the 'Tahtavi,' a work used in this country" (*Tagore Law Lectures*, 1873, p 46)

Tahuddari (*C P*) A lease-tenure on favourable terms for reclamation of waste. (*Bad. Pow* II, 449)

Tahvildar Treasurer of a tahsil

Tahzirat-i-Hind The words "Tahyirat-i-Hind" means Indian Penal Code (A.I.R. 1930 L. 885.)

Tai.

Tai (*Tam*) The tenth Tamil month (January-February.) (*Wil Gloss*)

Taidad (*A*) Number, computation An extract from the Collector's register of lands (*Mac Moh Law.*)

A taidad', is an extract from a public register or other document of authority in confirmation of a claim (126 I C 769=51 C L J 297=A I R 1930 Cal 411)

Tail (*Fee tail*) An estate in fee *Tail* is a limited fee, as opposed to fee-simple it is that inheritance whereof a man is seised to him and the heirs of his body, begotten or to be begotten, limited at the will of the donor (*Tomlins Law Dic*)

TAIL Limitation; prescription

Tail female An estate limited to a man and the female heirs of his body

Tail general. An estate limited to a man and the lawful heirs of his body

Tail male An estate limited to a man and the male heirs of his body

Tairkhana (*H*) A charge on the revenue, or a special tax, for the expenses of the imperial aviary at Delhi (*Wil Gloss*)

Taiul Royal domain, the emperor of Delhi's private estates

Taizih Monthly account of land revenue collections

Tajik A tribe of Arabic descent settled in Afghanistan They are industrious and peaceable, and skilful in agriculture, trade and manufactures Some are Sunnis and some Shiahs Some have taken service in the British Indian Army

Tajja The word *Tajja* means issue of an outcaste

Tak (*Sindh*) A strip of land for digging a canal (*Bad Bow* III, 328)

Taka (*Mar*) A land measure, varying in different places (*Wil Gloss.* 501)

Takabandi (*Mar*) Fixing the land tax at so much per taka settled or estimated according to the Takas it contains (land), keeping an account in Takas (the copper coins so named) (*Wil Gloss.*)

Takah (*H*) A coin, the value of which appears to vary in different parts of India in Hindustan it is said to be a copper coin equal to two paisas, in the Dakhin it is called an aggregate of four paisas or one anna (*Wil Gloss* 501)

Takavi Loan for agricultural purposes given by the state, advances of money made by the Government to the cultivators at the time of sowing, especially in the south of India, where the Ryotwari settlement prevails, to be repaid when the crop is gathered, similar advances are made in bad seasons, and the like, or sometimes made to the cultivators to enable them to extend their cultivation.

Takavi-kaikagada (*Karn*) A bond or note of hand given by the cultivators in acknowledgment of advances received.

Take care of

Takavi-patramu (*Tel*) A written acknowledgment for advances given by the cultivators to the Collector

Takaza (*H*) Importunity in urging the settlement of a claim on payment of a debt, dunning in the south of India formerly, enforcing payment by various modes of annoyance, as by stationing persons at the house of a debtor from morning to night at his expense for their daily hire obstructing the conveyance of water into the debtor's dwelling, or cooking in it, the creditor sometimes took his station himself at his debtors door, threatening to do himself personal injury to sit in Dharna for the sake of extorting compliance with any demand (*Wil Gloss.*)

Takbast (*H*) Laying down a boundary, fixing the limits of estates by a native surveyor, preparatory to a professional survey by a superior officer (*Wil Gloss*)

Takbast Map. A Survey map

Takbir (*H.*) Repetition of the Mohammadan belief in God, or Allah-U-akbar, in Hindustan it is multiplied by various repetitions to the same effect· It is also considered as the especial war cry of the Mohammadans (*Wil Gloss*)

Take. To take an article signifies merely to lay hold of, grab, or seize it, with the hands or otherwise.

To "take" signifies to lay hold of, and when applied to land, implies to gain or receive into possession, to seize, to deprive one of the possession, to assume ownership

TAKE The word "take" has very many shades of meaning The precise meaning which it is to bear in any case depends upon the subject in respect to which it is used

"Take" as contained in a warrant issued by a Governor, authorising the agent of another state to take and receive into custody a fugitive from justice is synonymous with "arrest", and authorises such arrest

In its usual signification the word "taken" implies a transfer of possession, dominion or control. A thing is not taken unless such a change of status is effected In trespass, trover or replevin, the taking is not accomplished until the goods are within the power or control of the defendant A devisee takes under a will only when the possession and control of the devisor has ceased

"Take" a girl under 16 "out of the possession and against the will of her father or mother, etc" does not imply force, actual or constructive, it means, being a party to the father, etc being deprived of the possession of the girl, her willingness being immaterial. (*R* v *Manktelow*, 22 L J M C 115; *Dears* 159, *R.* v. *Timmins*, 30 L J.M.C. 45)

"TAKE ACTUAL POSSESSION". *See* 98 P.R 1876.

"**Take care of**" as used in an undertaking whereby one agrees to support and take care of another, is to be construed according to the various circumstances of the party, and does not necessarily imply that the person to be supported is not to use any exertions to support himself.

Take care of

"TAKE COGNIZANCE" *See* 17 C W N 795=20 I C 409=14 Cr L J 425

TAKE COUNSEL Deliberate together, consult

TAKE EFFECT "Take effect", as used in the provision of a will as follows "It is my wish and I hereby so direct, that none of the legacies, bequests, and devises in any of the clauses of this, my will, shall be executed or take effect until", etc, is used synonymously with and as an equivalent to the word "executed"

TAKE EFFECT AT MY DEATH The words "take effect at my death" when used in an instrument attested as a deed, and in all respects in the form of a deed, are to be treated as merely designed to postpone the possession or enjoyment by the grantee until after the death of the grantor, and do not necessarily render the instrument a will

TAKE EXCEPTION Raise objection to

TAKE FOR GRANTED Assume as true or permitted

TAKE HIS OWN LIFE A life policy exempting the Company from liability if the insured "takes his own life", is limited to the deliberate act of the insured in ending his own existence or committing any unlawful malicious act, the consequence of which is his own death The insured must be of years of discretion and in his senses when committing such act, as "it would be unreasonable to interpret it as including death by accident or by mistake, though the direct or immediate act of the insured may have contributed to it"

TAKE IN To obtain backwardation

TAKE IN THE ACT Catch red-handed, catch actually doing something (as) thief taken in the act of stealing

"TAKE" LEGAL PROCEEDINGS, is to commence suit or other proceedings in a Court of law

"TAKE NOTICE" The commencing words in the prescribed form by which one party or his pleader gives notice of a motion or petition to the other party

TAKE OATH Swear solemnly

TAKE ORDERS Be ordained as clergy

TAKE OVER Succeeds to the charge of.

TAKE POSSESSION Enter into possession, take delivery of

TAKE SILK Become K.C. or. Q C

TAKE STOCK Ascertain amount and state of one's stock in trade

"TAKE SUCH MEASURES, ETC" The words "to take such measures" in the Bombay District Municipal Act (VI of 1873) imply in themselves something actively to be done by the Municipality, rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life, and the Courts ought not to strain an act in favour of an interference with private rights which is not justified by the primary sense of the language (14 B 180)

TAKE THE CHAIR (IN A MEETING). Be chairman, preside at a meeting, start proceedings

TAKE TO WIFE Choose or make one's wife, to marry.

Takhlia

TAKE UP "Take up" in an allegation in a pleading that plaintiffs, who were indorsers, were compelled to take up said note, means that, the note not being paid when due, in compliance with the contract of indorsement they paid the amount to the holder, and that he surrendered the note to them, and does not mean that the note was absolutely paid

TAKING UP A BILL Discharging a bill when it falls due

"Taken" as used in a verdict finding the defendant guilty of larceny, and stating that "we find the value of the ore taken to be" a certain amount, must be understood to have been used in its ordinary English significance, and clearly refers to the ore stolen

TAKEN. An appeal is "taken" when notice of intention to appeal is served, or, in other words, whenever a legal step is taken which sets the proceedings in the appellate court in motion

TAKEN AS TRUE 'Taken as true" as used in an instruction that what defendant has testified to against his interest is to be taken as true, is saying no more than that they are presumed to be true, or are conclusive, for the purposes of the case in hand

TAKEN IN THE ACT As used in an Act providing that homicide is justifiable when committed by the husband on the person of any one taken in the act of adultery with the wife provided the killing takes place before the parties to the act of adultery have separated, does not mean that the husband must discover or see the wife and the adulterer in the very act of adulterous intercourse in order to fulfil the term "taken in the act of adultery", as such positive proofs of the commission of the crime are not required and are rarely attainable, and as the crime of adultery itself may be established and proven by circumstantial evidence, the law does not hold the husband to a greater or higher degree of proof than that required to establish the fact of adultery, and the law always estimates a man's right to act on reasonable appearances, and where the acts of the parties, and their words coupled with their acts, presented appearances of a character such as would have created the reasonable apprehension and conviction in a person of ordinary mind that the parties taken were in the act of adultery, and the circumstances were such that any reasonable and sensible man would have concluded that they were in an act of adultery, or were about to commit or just had committed the act, it would be sufficient to justify the homicide The adultery referred to in the statute does not mean the adultery which is defined as a specific offence by the Code, but means ecclesiastical adultery, or adultery as it is known in common parlance—that is, a violation of the marriage bed—no matter whether the adultery consist of but one or more acts or whether the parties lived in habitual carnal intercourse or not (*Ame Words and Phrases*)

Takharuj (*H.*) In law a composition entered into by joint heirs to property, by which some relinquish their shares for a specific payment. partition of an estate amongst themselves by the lawful heirs (*Wil. Gloss*)

Takhlia. (*A.*) Vacating in law extinguishment, tacit or declared, of all right by the seller in an article

Taking.

which he has sold manumission of a slave divorce of a wife (*Wil. Gloss*)

Takhsis (*Ben.*) A tenure, with condition that the area held and rent paid shall be made 'precise' at some future time (*Bad-Pow* I, 541.)

Takhsis-jama-bandi (*H*) A particular statement of the assessment concluded with the revenue payers under the Mohammadan governments also, the standard assessment of Todar Mal, as corrected by Jafiralikhan in 1772 (*Wil Gloss*)

Takia The word *takia* connotes a graveyard of an individual faqir (134 I C 870=14 O L J 390=8 O W N 579=A I R 1931 Oudh 293)

Takid (*H*) Injunction, warning direction, an order from a superior

Takid chithi (*Mar*) A letter of injunction, a written mandate or direction

Takiddar (*Mar*) A person sent to give injunction or warning sentinal stationed to keep back stragglers or camp followers from a field or village (*Wil Gloss*)

"Taking", as the term is used in the law of larceny means a taking without right and with an intention of converting the property to a use other than that of the owner and without his consent

The taking necessary to constitute larceny means a fraudulent and secret taking, so as not only to deprive the owner of his property, but also to leave him without knowledge of the taker

The term "taking", in the law of larceny, necessarily imports that the property taken is in the possession of another, but in this connection it is necessary to discriminate between what constitutes in law a possession of property and what amounts only to its care and charge Thus a servant has charge of the property of his master but not the possession thereof, and if he appropriates the property it is a taking from the possession of the master

TAKING (*in abduction*) An act providing that any person who shall *take away* any female under the age of 14 years without the consent of her father, mother, or guardian, for the purpose of concubinage or marriage, shall be punished, etc, means some positive act by which the female is taken away from her home, or from the person having the legal charge of her, sufficient to amount to an abduction

TAKING AND RETAINING The Penal Code makes a distinction between "taking" and "retaining" and between "taking" and "detaining" and "concealing" in Ss 361 and 363 [*See* 15 O C 351=14 Cr L J 93=18 Ind Cas 653 (654)]

The phrase "TAKING FOR PUBLIC USE" is defined to be the actual seizing or direct taking of specific property for public use

A taking of property for a public use "means a taking altogether, an entire change of ownership"

Private property is "taken for public use" when it is appropriated to the common use of the public at large.

TAKING BY FORCE. "Taking by force" as applied to the action of trespass, is taking without right or permission, in violation of the lawful possession of another

Tal.

TAKING POISON "Taking poison" as used in a life insurance policy insuring against death from injuries through external violence and accidental means, unless it is caused from taking poison, suicide, etc., means the voluntary, intentional taking of poison and does not include cases of accidental poisoning.

Takiya A small building occupied by a Muhammadan fakir, who supplies a huka and water to travellers

Takka The name of a Scythian tribe formerly in the Punjab, and who, accordingly to tradition, were nearly exterminated by the raja of Jind Some remnants remain near Rawalpindi

Takoli. (*C P*) A local term for the fixed tribute or land revenue paid by holders of Zamindari estates. (*Bad-Pow* II, 450 *note*.) A lenient assessment, usually a low fraction of the kamil jama imposed on jagirs and zamindaries

Taksim (*H*) Division, dividing, partition, sharing, distribution of the assessment of the revenue upon the several sub-divisions of an estate or district, the same as Taksim-jama (*Mar*) A portion, a share (*Wil Gloss*)

Taksimdar (*Mar*) A sharer, the holder of a share, either of land perquisites or privileges, one who receives a portion at a division of property (*Wil Gloss* 503)

Taksimi (*H*) Divisible, portionable, liable to a partition according to allotment (*Wil Gloss*)

Taksim-jama (*H*) In Mohammadan finance the distribution of the whole standard assessment among the different territorial sub-divisions, whether large or small, a province, a zemindari or a village also the apportionments of the revenue payable by a village or estate amongst joint proprietors (*Wil Gloss*)

Taksim-nama (*H*) A deed of partition among joint proprietors

Taksim nameh, (*P*) A deed of division (*Mac Moh Law*)

Taksim-pargana war (*H*) Subdivision of the whole assessment under the Moghul government, according to the district divisions termed parganas accounts of the standard assessment of each pargana, extracted from the general rent roll of the empire (*Wil Gloss*)

Taksim-i-taalluk (*H*) A taluq which was separately registered in the original rent roll, of the land revenue of Hindustan (*Wil Gloss* 503)

Takub (*Mar*) Suspension, stoppage in a state of suspension, as a public work, collection of revenue the head under which outstanding balances of revenue are entered pending the decision of the superior authorities as to their realization or remission (*Wil Gloss*)

Takwa is a deadly weapon [26 Punj L R 221=88 I C 995 (2)=26 Cr L J 1251 (2)=7 L L J 175=A I R 1925 Lah 373]

Takya (*Pj*) A masonry platform, etc, meeting place of a village (*Bad Pow I* 151)

Tal (*H*) A pond, a lake.

Tal

Tal (thal) (*Tam*) Stubble or stem of corn, of flowers and the like

Tal (thal), (*Derajat, Pj*) A land-share. (*Bad Pow II*, 654.)

Talab Pay, wages, salary request, demand, petition calling or sending for summons demand of arrears of revenue (*Wil Gloss*)

Talab (or talao) A lake, or embanked reservoir for irrigation (Ajmer), generally, for a 'tank' or pond (*Bad Pow* II, 348)

Talabana (*H*) Daily pay or fees to a subordinate officer of the court charged with serving process, issuing summonses or writs, payable by the parties on whom they are served (Ben Reg XXVI, 1884, S 14) (*Wil Gloss*)

Talab-baki (*H*) An account showing the amount due from each payer of the revenue, the sums realised and balance due (*Wil Gloss*)

Talab chitti (*H*) A warrant, a summons, a writ, a written demand for arrears of revenue (*Wil Gloss*)

Talab-dastak (*H*) A summons, a writ, a demand for payment of revenue

Talab-ishad (*H*) Claim made in the presence of witnesses, especially by a claimant of the right of pre-emption

Talab-i Muwasabat (*P*) Immediate demand, particularly as applied to the right of pre-emption (*Mah Moh Law*)

The expression "I am a pre-emptor, my right extends to the land" does not constitute a TALAB-I-MOWASIBAT or first demand either by express terms or by implication under Muhammadan Law (10 I C 143)

Talab-i-mawasibat and Talab-i-ishhad Talab-i-mawasibat is the first demand in respect of a right of pre-emption under Mahomadan Law It is not material in what words the claim is preferred, it being sufficient that they imply a claim to pre-empt Talab-i-ishhad is the second demand, and it is necessary that at time of making this demand reference should be made to the fact that the talab-i-mawasibat had been previously made (12 I C 85)

In order to dispense with the necessity of *talabi-ishhad* the *talabimowasibat* must be accompanied by the formality that is prescribed under the Mahomedan Law for the invocation of witnesses Where that is not done there must be a second demand (48 C L J 548=114 I.C 155=A I R 1929 Cal 136)

Talab-nama, (*H.*) A warrant, a writ, a notice or summons (*Wil Gloss*)

Talabi (*Ajmer.*) Land watered by a 'tank'. (*Bad. Pow* II, 356)

Talabi brahmatters In Chota Nagpur Province especially in the Manbhum District the tenures known as *talabi brahmatters* among others take rank among the hereditary tenures at a fixed rent not liable to enhancement These tenures escheat to the Crown and not to the zemindars (11 Pat 569=138 I C. 419=A I R 1932 Pat. 157)

Talachchennaval (*Mal*) The principal native collector of revenue

Talak-ul-bidait

Taladi (*Tam*) A second cultivation on the same ground

Taladipor (*Tam*) A stack of grain that has been beaten and winnowed by hand but not trodden out by cattle.

Talai (*Tam*) The head, principal, chief

Talai-kaval (*Tam*) The main or principal guard, the town or village watch

Talaivan (*Tam*) A head person, prefect, governor, director, a king, a priest, an elder, an elder brother

Talai-vari (*Tam*) Poll-tax.

Talaivila (*Mal*) First selling price of grain or other produce after harvest

Talaiyadi (*Tam*) The first corn reaped and threshed

Talaiyana-attatchi (*Tam-Mal*) The principal evidence

Talaiyari A guard or chief watchman, a village police who gives information of crimes and offences, and escorts and protects persons travelling to neighbouring villages

Talak (*H*) Divorce, dissolution of marriage, various kinds of divorce are recognised by Mohammadan Law

Talakhasan *See* 10 Lah 470=114 I C 74=1929 Lah 6

Talaki (*A*) In law, forestalling the market by meeting a kafila and buying up the goods. (*Wil Gloss* 505)

Talak-i-ahsan (*A*) The most reputable kind of divorce, in which the husband pronounces, I have divorced you once before the date or time of the woman's probation has expired, this is reversible (*Wil Gloss* 505)

Talak-i-bidat Heterdox divorce, in which the husband makes the usual declaration three times in one month, this is deemed irreversible (*Wil Gloss*)

Talak-i-husn The form in which the husband pronounces three different sentences of divorcement in many months, this is irreversible, and the wife cannot be taken back until she has been married and divorced by another man

Talak-i-sunna Divorce, legal according to traditional law

Talak-kinaaiat A divorce in which the term used, although not expressly declaring a divorce are legally sufficient

Talak-muajjal Divorce which is to take place at a specified time, also applicable to divorces under various specified conditions

Talak-sarih Divorce in which the declaration is explicit

Talak ul-bidait The irregular divorce where a husband repudiates his wife by three divorces at once, it is valid form of divorce according to Hanafi laws and becomes irrevocable [8 Pat. 690=115 I.C 546=1929 Pat. 81 (F.B.)]

Talam.

Talam (*Tam*) A place, a site

Talam-kaval (*Tam*) A guard, the main guard, village or town guard or watch

Talapattam (*Mal*) Poll-tax, head-money, a lease where head money is paid in advance (*Moore's Malabar Law*)

Talappanam (*Mal*) Head-money, poll tax

Talari (*Tam Talayari*) The village watchman, one of the subordinate officers of a village (*Wil Gloss*)

Talatdar (*Mar*) An officer whose duty it is to collect the sums due by the cultivators to the government (*Wil Gloss*)

Talati (*Mar*) Collection of revenue from the cultivators, the officer collecting it (*Wil Gloss*) A *stipendiary* village accountant where there is no "watan" (*Bad Pow* III, 309)

Talattar (or Sthalattar) (*Tam*) The principal townspeople

Tala udaya tamburan (*Mal*) The Kartavu or superior lord of a vassal

Talavara (*Karn*) A village watchman paid for his services by a grant of land at quit rent

Talayari (*Mal*) (See *Talari*) A headman or a chief (*Wil Gloss*), A village watchman

Talbana Charge for serving summons.

Taleband (*Mar*) A treasury account showing the correspondence between the balance in hand and that which should be left on a comparison of receipts and disbursements The term is commonly confined now to the jamabandi taleband

Taleband-baki (*Mar*) The balance of revenue as shewn in the account at the end of the year

Taleband goshwara (*Mar*) An abstract of the Taleband account

Taleband-jama (*Mar.*) The headings under which the items of the revenue are entered, which are realised subsequently and in addition to the assessment derived from concealed cultivation detected, or from land taken into cultivation after the settlement of the assessment (*Wil Gloss*)

Talen A weight of 62 pounds, also a sum of money among the Greeks, of about 1001 Value (*Merch Dict Tomlins Law Dic*)

Tales (*Lat*) Such, so many—a term applied to jurors

Tales juror A "tales juror" is one added to a deficient penal, so as to supply the deficiency

Talesman A juror summoned to fill up a panel for the trial of a particular cause

Talari. (*toti*) *See* Talari.

Talikattukalyanam Formal marriage ceremonies preliminary to Sambandhan (*Sund Iyer's Malabar Law.*)

A mock marriage ceremony gone through by Nayar girls in childhood. (*Moore's Malabar Law*)

Talion Law of retaliation. (*Wharton.*)

Taluqa.

Talis interpretatio semper fienda est, ut, evitetur absurdem, et inconveniens, et ne judicium sit illusorium Interpretation is always to be made in such a manner that what is absurd and inconvenient is to be avoided, and so that the judgment be not nugatory

Talis non est eadem, nam nullum smilie est idem What is like is not the same, for nothing similar is the same.

Talk out (*a motion*) In Legislative proceedings to get rid of a motion by prolonging discussion till time of adjournment

Tallia (*Lat*) A tax, a tribute, a share taken out of one's income or means

Talliage Lord Coke defined the word "talliage" to mean burdens, charges or impositions put or set upon persons or property for public uses

Talon The last portion of bearer-bond coupon sheet, containing the intimation that on presentation a fresh sheet of coupons will be exchanged for it

Talook (*Taluk*) The being dependent, dependence, a dependency A district the revenues of which are under the management of a Talookdar. (*Fifth Report*)

Talookdar The holder of a talook (*Fifth Report*)

Talookdary The jurisdiction of a Talookdar (*Fifth Report*)

"Taluk' (Talook or Taluq) defined Bom. Act 1, 1884, S 3 (4), Mad Act 5, 1884, S 3 (11).

TALUK Now applied to the subdivision of district used in W and S India as the tahsil is in upper India (*Bad -Pow* I, 325 III, 308)

TALUK (*Hindi*) Connection, dependence, possession, property, a dependency, a district, a division of a province, an estate

Taluka Division of collectorates.

TALUKA. (*Tel*) An estate, applied to a tract of proprietary land usually smaller than a zamindari, although sometimes including several villages, and not frequently confounded with a zamindari

"Taluka or Taluqa" defined U P Act 3, 1899, S 3 (3), U P Act 3, 1901, S 4 (14)

The word "*taluqa*" means any local area for which a taluqa local board is established, inclusive of the portion of such area, if any, for the time being within a municipal district or a military cantonment, [Bom Act I of 1884 (Local Boards), S 3, Cl (4)]

"Taluqa" means an estate in Oudh to which the provisions of the Oudh Estates Act, 1869, apply [U P Act III of 1899 (Court of Wards), S 3, Cl (3)]

Taluq *See* Taluk, Talook

TALUQ (*Ben*) A landholding or 'tenure' which is subordinate to a landlord or superior Separation of into dependent and independent (the latter became landlord estates) (*Bad -Pow* I, 412, 524) Applied to groups of cultivators in Chittagon. (*Ibid* I, 492, 555.)

TALUQ is used chiefly in the North as equivalent to jagir. *See* 13 M I.A 248=2 Suth. P C 293=2 Sar. P C 524

Talukdar

Taluqa, applied in old days to signify the area under a local chief, sometimes the same as pargana

TALUKA, ILAKA, JAGHIR, ZEMINDARY The use of the words "*Taluka*", "Ilaka" "Jagir" & "zemindari" may not be entirely inconsistent with the construction that the grant was only of the revenue payable in respect of the Pergunna, and was only of a money payment in the nature of a person, But these words point to the grant being a grant of land rather than of revenue charged on land (22 C W N 577=47 I C 632=1918 M W N 384)

"**Talukdar**" defined (*See also* Registered Talukdar, Talukdar, Thakur or Jagirdar) Act 1, 1869, S 2, Act 24, 1870, S 2, Bom Act 6, 1888, Ss 2(1), (a), 2 (2), U P Act 3, 1901, S 4 (14)

TALUKDAR (*Per*) The holder of a taluk or estate, or the officer in charge of a taluk or the division of a Zillah

"TALUQDAR" includes a thakur, mehwassi, kasbati and naik and a mulgameti who holds land directly from Government (Bom Act VI of 1888 (Guzrat Taluqdars), S 2, Cl (*a*))

TALUQDAR In Oudh Estate Act (I of 1869), S 10, is defined to mean any person whose name is entered in the first of the lists mentioned in section 8 [9 I C 83 (86)]

TALUKDAR (*Ben*) General meaning of 1 566, (Jessore Dist) 1 549, 11 (N W P and Oudh)

TALUQDAR (holder of a ta'alluq or dependency), in Oudh chiefly, but known elsewhere A manager of land, and contractor for the revenue, resembling the Bengal Zamindar, in Oudh legally recognized as landlord in N W P, generally not, but certain rights have been recognized 1 88

Talukdari (*S*) The Oudh Settlement 11 255 "Tenure, (1) that of the Oudh Taluqdar, (2) in Northern India generally, is the 'double tenure', where there is a superior' landlord, with limited overlord rights, while the village landholders are preserved in their practical position as proprietors 1 198, (3) the tenure of certain chiefs in Ajmer and in Bombay Tenure (N W P) described 11 157 Principles on which claims to, were recognized 11 158 Illustrations of the growth of the right 11 162, tenure, the (Oudh) 1 314, 11 206 Attempts to abolish the system, 11 211

TALUKDARI tenure, the III 275, 281, 3, present condition of III 285

TALUKDARS (*Oudh*), general remarks on 11 200, 4 The old Hindu Rajas become, 11 208 Their curious torts 11 223 note Their emoluments and general position 11 214,244, III. (*Ajmer*) Chiefs called (holding istimrari estates) 11 336 IV (Pj) Under the Sikhs 11 540 The tenure (so called) at the present day 11 697 V (C P) Estate so called 11 445, VI (Bombay)

TALUKDAR (*Ben*) General meaning of, 1 506, illustration of, 526 (Jessory distt 549 11 (N W P) and Oudh Talukdar, in Oudh chiefly but known elsewhere A manager of land, and contractor of the revenue, resembling the Bengal Zemindari in Oudh legally recognized as landlord, in N W P generally not but certain rights have been recognized i 88.

Talukdar's estate

Talukdari, (*S*) The Oudh settlement 11 255 Tenure (1) that the Oudh Talukdar (2) in Northern India generally is the double tenure where there is a superior landlord with limited overlord rights, while the village landholders are preserved in their practical position as proprietors 1 198, (3) the tenures if of certain chiefs in Ajmere and in Bombay Tenure (N W P) described 11 157 Principles on which claims to, were recognized 11 158 Illustrations of the growth of the right (*Bad Pow* II, 162)

TALUKDAR OR TALOOKDAR (*H*) The holder of a Taluk, in some places a Government officer, a collector of revenue from the cultivators, either on behalf of the State or of the farmer of the revenue whose undue exactions it is his duty to prevent

TALOOKDARS INDEPENDENT AND DEPENDENT – DISTINCTION BETWEEN Bengal Regulation VIII of 1793 draws a wide distinction between "independent talukdars" and "dependent talukdars" The former come within the category of "actual proprietors of land," whereas the latter do not, "they are considered as lease holders only" (S 7) [28 C W N 145=33 M L. T 408=1923 M W N 702=A I R 1923 P C 217]

TALUKDAR, Thakur or Jagirdar" defined. Reg 4, 1872, S 1

Taluqdari Pertaining to a taluq also a large estate consisting of a taluq

Talukdari or Talookdhary (*H*) The jurisdiction of a Talookdar

The words "*Talukdari estate*" in S 31 of the Guzarat Talukdars' Act are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a talukdâr (24 Bom L R 709=A I R 1922 Bom 342)

'Talukdari estate' *Wanta* lands are lands held by Rajputs who after the Muhammadan conquest of Gujarat, received one-fourth of the land of certain villages on condition of keeping order in those villages The lands are held either rent-free or at a small quit rent (4 B 367, Ref)

"Talukdari Mahal" defined U P Act 3, 1901, S 4 (14)

'Talukdar's Estate' Gujarat Talukdar's (Act VI of 1888) Bom S 31 means only the estate held by a talukdar on talukdari tenure and not property held on any ordinary tenure by the Talukdar, which was distinguishable from the former (3 Ind Cas 773=11 Bom L R 736)

TALUKDAR'S ESTATE In Bombay Act VI of 1888 (Gujarat Talukdar) the expressions "talukdar's estate" and "Talukdari estate" denote different matters, so that when the Act speaks of a "Talukdar's estate" it means something other than a "talukdari estate" The expression "Talukdari estate" in S 21 of the Act means an estate of talukdari tenure so that even if one be not a "Talukdari" within the meaning of Act, he may still be one who holds a "Talukdari estate," or an estate of talukdari tenure, (4 Bom L.R 817)

The expression "talukdar's estate in S 31 of the Talukdari Settlement Act (Bombay Act VI of 1888), means the estate held by the talukdar as a talukdar.

It does not therefore include that which a talukdar owns as assignee of a mortgage-debt by a private investment of his money. 9 Bom.L.R. 1122. *See*

Talukeh Judeed

also I L R 34 B 55, 11 Bom L R 736, *also* 3 I C 773=11 Bom L R 736=34 B 55, 12 Bom L R 903 (909)=35 B 97

Talukeh Judeed New dependencies or acquisitions, mostly by conquests in the Northern Circars

Talukeh Kudeem Old dependencies, or acquisitions Original zemindaries in the Northern Circars

Talukeh Mhalzaminee Dependencies of pecuniary security Pergunnahs of neighbouring Zemindars in the orthern Circars, for the annual rent of which security had been given

Talukeh Zebberdesty Dependencies or acquisitions made by violence, without any authority in the Northern Circars

Tamassuk (*I*) A bond or obligation in writing (*Mac Mah Law*)

Tamassuk-i-hazir zamini (*H*) A bond or recognisance as a security for personal appearance, a bond formerly given by Zamindars to the revenue officers of the government on receiving the grant of a zamindari as a security for their personal appearance whenever required by the government or its officers (*Wil Gloss* 507)

"Tamassukla Kalami" Effect--Deed construction

Where a deed, described in its concluding words as a "tamassukla kalami", set out that the three obligors had borrowed Rs 50 from *R* that they agreed that that sum was to be paid by them together with interest previous to the redemption of the putti which they had already mortgaged to him and went on to say that redemption of the mortgaged property could not be had without previous payment of the sum which had been borrowed under it, *held*, that the property previously mortgaged was not made a security for the payment of the latter debt (18 I C. 461)

Tamasul, (*H*) Equality, in Mohammadan law, the division of an inheritance among the legal sharers when their number and that of the shares is the same as for instance, where there are four sharers having equal rights severally to four shares, such numbers are termed Mutamasul other terms describe various modifications of the principle of allotment as follows (*Wil Gloss* 506)

Tamban (*Mal*) A prince, a member of a royal family (*Wil Gloss* 507)

Tambatti, (*Mal*) A princess, a female of royal descent

Tambi (*Mal*) A younger brother, the title of the Rajah of Travancore

Tamburan (*Mal*) A prince, a Raja, a lord, a master, the title of the Cochin, Raja (*Wil Gloss*), The head of a Hindu Religious Endowment of Mutt

Tamburatti (*Mal*) Titles given to the males and females in a Royal family (*Moore's Malabar Law*)

Tamburatti The senior lady in a kovilagom (*Sundaram Iyer's Malabar Law*)

Tamil (*Tam*) The tamil language, that of the people subject to the Madras Presidency, from Madras to Cape Komorin

Tamlik, (*H*) Possessorship, property.

Tangible immovable property.

The word 'tamlik,' does not indicate transfer of the proprietary rights of the property in suit (111 I C 805)

The word "Tamlik" is very often popularly used in the sense of a settlement in the case of trust properties Where a disciple is appointed as successor to the mutwallship and trust property is made over to him the transaction can well be described by the use of the word "Tamlik", (111 I.C 805=A I.R 1929 Oudh 65)

Tamliknama (*H*) A deed of transfer whether of gift or conveyance (*Wil Gloss*)

Tamlik-wataulıat nama (*H*) A deed of gift and trusteeship which assigns property in trust to a particular person, with the proceeds of which he is to defry the expenses of a religious establishment, and if there be any surplus, he may apply it to his private use (*Wil Gloss*)

Tamudri (*Mal*) The sea King or ruler of Calicut, commonly called Zamorin (*Moore's Malabar Law*)

Tanab (*I*) A measuring chain, used in old Mughal surveys (*Bad Pow* I 275)

Tanahdar The keeper or commandant of a Tannah A petty police officer whose jurisdiction is subordinate to that of a Daroga

"Tanaka" The word "tanaka" occurring in a document evidencing a loan means a mortgage and not merely an assignment of land revenue, (39 Mad 1010, Foll) (1918 M W N 146=43 I C 871=7 L W. 36)

"TANAKA" *See* 27 M L J 195=26 I C 537

Tanaka (of a widow) 10 P W.R 1917

Tanakuz (*A*,) Being discordant Repugnancy (*Mac Mah Law*)

Tandu (*Mal*) (Sanskrit) palanquin hanging on silk cords An open palanquin, which in the Malabar Province is also called Manchal and which Englishmen call Manchill The attainment of the rank of Valumpudavum is indispensable to qualify any per on whether a common man or a Raja to ride in a palanquin.

Tangal (*Mal*) Mopla priest (*Sundaram Iyer's Malabar Law*)

Tangar (*C P*) Land lying so as to receive no drainage water. (*Bad Pow* II, 430)

"Tangible immovable property" The words "tangible immovable property" in S 54 of the Transfer of Property Act includes an undivided share in a house or shop (11 Ind Cas 673=14 O C 161, *per* Evans, J C)

It is quite easy to give possession of an undivided share in immovable property either directly or by handing over to the purchaser a proportionate share in the rent and for that reason such share is tangible immovable property within the meaning of S 54 of the Transfer of Property Act (IV of 1882) (11 Ind. Cas 674=14 O C 161)

By 'tangible property is, meant lands, buildings, etc which immediately or through the medium of tenants may be the subject of possession deliverable by the seller to the buyer By the phrase 'reversion or other intangible thing' it is apparently intended to denote all the various interests which are included under the

Tangigalu and tama.

general title immovable property, but do not any more than choses in action involve possession (11 Ind Cas 673=14 O C 161.)

"Tangigalu and tama" The Kanarese words "Tangigalu and Tama" are generic terms for younger sisters and younger brothers

"Tank", defined Reg 8, 1887, S 4.

TANK A pond or pool, or lake, a tank is often of many acres in extent, an irrigation reservoir, a dammed up ravine or other suitable place forcollecting the water off the highlands

Tank if includes well *See* 115 I C 637=1929 A. 544

TANK (*Milit.*) Steel box travelling by motor power containing crew and guns and serving as peripatetic fort in battle

Tank, (*or tanka*), (*Mar*) A silver coin containing four mashas of silver (as) Sri Rama Tanka.

Tanka (*or tanki*) A quit rent levied on certain formerly revenue free holdings (*Bad Pow* I, 569)

Tankha The Maratha fixed assessment in money (as opposed to any former revenue assessment varying with the year's crop (*Bad Pow* II, 326.)

Tankhah (*P*) An assignment on lands, or order on the Treasury for the payment of a stipend, or salary, or the like (*Mac Mah. Law*)

Tankhwa (*P*) Salary, wages, a note or order of appointment to a jagir (*Bad Pow* I, 529 note)

Tankihul hamidiah A treatise on Mussalman jurisprudence by Ibu Abideen

Tankor tank. A silver coin containing four mashas of silver (Maratha)

Tanna. A station, a military post or station, often protected by a small fort, a petty police jurisdiction subordinate to that of a Daroga

Tantum bona valent quantum vendi possunt Things are worth what they will sell for.

Tantum habent de lege quantum habent de justitia Precedents have value in the law to the extent that they represent justice

Tantu. (S) Means children

Tapal. The post, the carriage and delivery of letters by post (*Wil Gloss*)

Tapasnis (*Mar*) An officer under the Maratha government whose duty it was to enquire into, and report upon, robberies and other crimes committed in his district he was also authorised to apprehend offenders, or to compel the village authorities to apprehend them, and upon their failure, to impose upon the village a fine in proportion to the value of any property stolen, a sort of inspector of police (*Wil Gloss*)

Tape prices (*In Stock Exchange*) Latest prices as recorded on the "tapes" of the telegraph instruments at various places, supplied by the authority of the Stock Exchange

Tappa *See* Thappa, Thappadar

TAPPA (*H*). A small group of villages recognized for administration purposes (*Bad Pow.* I, 179) illustration of the term *Ibid* II, 685, 9)

Tarakan.

A small tract or division of country, smaller than a pargana, but comprising one or more villages a division of country for the revenue of which only one engagement is entered into with the government a small estate in some parts of the North West Provinces a tappa denotes a tract in which there is one principal town, or a large village, with lands and villages dependent upon them or a cluster of villages acknowledging the supremacy of one amongst them, and forming a sort of corporate body although not otherwise identical (*Wil Gloss*)

Tappadari-mauza (*H*) The principal village of a Tappa, usually giving its name to the whole Tappa (*Wil. Gloss*)

Tappalu (*Tel*) Corn of which the ears are empty from blight or dearth

Taqavi. (*See* Takavi) (*A*) An advance or loan made to agriculturists to make improvements, buy seed, cattle, etc, now regulated by law (*See* 66 I C. 620=8 O L J 343)

Tar (*Chattisgarh, C P*) An irrigation channel (*Bad Pow* II, 372)

Tara. (*Mal*) A village, a cluster of villages which formerly formed the unit for civil administration, corresponding to the word Amsam as now used (*Moore's Malabar Law*) A village, the same as Desam in the Malabar Province

TARA. Street or hamlet, a Nayar's location (See (*Bad. Pow* III 148, 157)

Taraddadi Ploughed but not sown

Taraddudu-jabita (*Tel*) An account, shewing the species and quantity of seed sown, the extent of land under cultivation, and the portion left fallow

The word 'Taraf,' means a sub-division of an estate or Pergunnah including several villages 3 C L J 560=1 M L T 175 (P C)

Taraf (*H.*) Lit. Side, part also a tract of country, in some places it merely designates the lands or estate belonging to an individual which is named after him, as, Taraf Jaynarayan Ghosal (*Wil Gloss*)

Taraf-bant. (*H*) The holding of several separate divisions of village lands by different branches of the community, the coparceners of one Taraf having no interest in another, although included under the same village

Taraf-dar (*H*) An officer of government in charge of a Taraf, collecting the revenue and exercising chief revenue and police authority in his district

Taraga (*Mal*) (Royal grant) Lease or counterpart of a lease (44 M 344, 4 M 509) (*Sun Iyer's Malabar Law*)

Taragu. (*Tam*) Brokerage, commission, a small deduction from the price of the articles purchased claimed by the agent of the purchaser, a balance, a measure also in Tel Wastage, deficiency (*Wil Gloss* 511)

Tarai. (*H.*) Moist land in general, especially applied to the strip of malarious jungle-country along the foot of the Himalaya.

Tarakan. (*Mal.*) A broker, an agent the name of a caste of Sudras. (*Wil. Gloss.*)

Taram

Taram. (*Tam.*) Sort, kind, class, it is especially applied in the south of India to designate the different classes of village lands, and the heads under which they are arranged in the village accounts The name of a system of revenue assessment, under which the soils were classified according to their natures and capabilities, and each class separately assessed in each village

Taram-chiththa (*Tel.*) A rough valuation or classification of land (*Wil Gloss*)

Taramdarudu (*Tel*) An assessor, a surveyor and classifier of land

Taraph-bandi (*Mar*) A system of assessment and tenure in which the lands of a village are divided into large parcels, each of which is held of Government by an entire family, not a branch of it, the individual members of the family making an arrangement among themselves for the cultivation of the several portions, but being answerable collectively for the whole assessment (*Wil Gloss*)

Tarappadi. (*Tam*) Statement of the extent of a village as arranged in different classes

Tarappadi-kanakku (*Tam*) The portion of the village register which records the extent and description of the several sorts of the village lands

Tarappadi-maniyam (*Tam*) Those portions of the village lands which are particularised in the village register as held rent-free hereditarily, either by ownership or by office

Tarappurattu (*Tam.*) Fraud in classifying the lands of a village

Tarataka (*Mar*) A fee on marriages, or rather on the awnings erected in front of the houses at the celebration of a marriage (*Wil Gloss*)

Taravad (*Mal.*) The family group or 'house-communion' managed by elders (Karanavan) (*Bad Pow* III 157.)

Taravadu (*Mal.*) A house or family Dr Gundert defines the term as a house chiefly of noblemen, ancestral residence of landowners, a family The term was applied only to the families of authority in a Nayar village (Tara)

Taravattukaran (*Mal*) A householder, a man of family, the managing member of a united family

Taravattukaran or pramani (*Mal*) In every Desam four householders or Taravattukarai possess a certain hereditary sthanam or dignity which points them out as the proper persons to apply to whenever a marriage, a death, a religious ceremony or dispute takes place They are sometimes called Pramani, or principal inhabitants, and latterly under the Company's Government, Mukhyastanmar They did not possess the Koyma or controlling authority in the Desam, but were a kind of arbitrators When a dispute could not be settled by their mediation, it went to the Desavali (*Log Mal Manual*)

Tarawatta (Tarwad) (*Mal*) A house, a family especially a united family whose affairs are managed by one or more of the chief members, the union may be broken up altogether or sub-divided by mutual consent, the family are bound by the acts of the recognised manager, the institution appears to be in some respects peculiar to Malabar, and to present some singular provisions, as where certain special

Tariff

rights are conferred on the females of the Tarwad as compared with the males.

Tarawatta janma (*Mal*) Family hereditary property

Tarawattu-mutal (*Mal*) Family property

Tare Deduction made in respect of boxes, cases, or other things used in packing goods, leaving only the actual weight of the goods to be paid for

TARE "Tare" as used in an Act providing that a certain allowance should be made for "tare" on articles subject to duty by weight, is the amount allowed for the outside or covering of the article imported, whether it be box, barrel, bag, bale, mat, etc, and in a commercial sense and usage, has a separate and distinct meaning and application from "draft" which is an allowance to the merchant when the duty is ascertained by weight, to insure good weight to him

Tare and tret The first is an allowance in merchandise made to a buyer for the weight of the box, bag or cask wherein goods are packed, and the last is deduction from the weight, for waste in emptying and reselling the goods, by dust, dirt, breaking, etc

Tarf (or taraf) (*A*) A major division in some joint villages (*Bad Pow* I 159), (Ben, Chittagong), a group of lands, the holders of which are under a leader or headman (tarfdar) (*Ibid* I 489, 555 (Bo) a small section of a taluka called also peta *Ibid* III, 308)

Target. (*Milit*) Shooting mark

TARGET A shield originally made of leather, wrought out of the back of an ox (*Blount. Tomlins Law Dic*)

"TARI" defined, Act 12, 1896, S 3 (*g*), Ben Act 5, 1909, S 2 (20), E B & A. Act 1, 1910, S. 3 (20), U P Act 4, 1910, S 3 (6)

"TARI" means the sap of any kind of palm-tree [Excise Act (XII of 1896), S 3]

TARI (*H*) The juice or sap of the palmyra tree and of the cocoanut which is drawn off by incisions made in the bark, and the exudation is received by small earthen vessels fastened over the wounds in the bark when first drawn the juice is sweet, somewhat insipid, and harmless, but when allowed to stand for a day or more it undergoes spontaneous fermentation and becomes fiery and highly intoxicating spirit (*Wil Gloss*)

Tariff. (*H*) Determination, ascertainment, a table of rates of export and import duties, in which sense the word has been adopted in English and other European languages (*Wil Gloss* 512)

TARIFF Custom, duties, toll, or tribute, payable upon merchandise exported and imported, are so called (*Tomlins Law Dic*) List of duties charged on specified articles of export or import.

"As defined by the law dictionaries, the word "tariff" is a cartel of commerce; a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kind of merchandise, with the duties or customs to be paid for the same as settled by authority or agreed on between the several princes and states that hold com-

merce together" This definition is practically the same as that given by Webster, Worcester, and the Standard Dictionaries

Tariff reform Policy of substituting protection for free trade

Tarige-kula (*Karn*) One who pays taxes, a tenant of the soil

Tarikat (*A*) Things left after death effects, inheritances, bequests (*Mac Moh Law*)

Tarisu, (*Tam*) Waste or uncultivated land, whether so from time immemorial or only for a season, fallow, any uncultivated field (*Wil Gloss*)

Tarisu-nilam. (*Mal*) Waste or fallow land

Tariz (*H*) Statement of particulars of landed property deposited in the Collector's Office (*Wil Gloss*)

Tarjama (*Mar*) Translation, interpretation, in Mar also an abstract statement, a report of proceedings, an abstract framed from the Revenue papers of the total receipts, expenses and balances of the Government on all accounts of the year In Bengal it is also applied to the English abstract which accompanies native documents transmitted to the superior authorities (*Wil Gloss*)

Tarjaman (*H*) A translator, an interpreter whence the European corruption, Dragoman (*Wil Gloss*)

Tarkari (*H*) A tax imposed on gardens or ground on which vegetables are grown, especially those of most value, as ginger, turmeric, tobacco, and the like on which a higher rate of assessment is usually levied (*Wil Gloss*)

Tarraddud (*P*) Improvements Taraddukar (locally), a tenant privileged as having made improvements. (*Bad-Pow* II, 664)

Tarrarai. (*Mal*) *See* 6 M H C 411

Taru (*Tam*) A tree as in Sanskrit, but it is a term inserted in deeds of sale or gift of land, to indicate the conveyance of all the vegetable products of the lands transferred

Tarumbu (*Tam*) A dam to stop a stream and turn it into a different direction

'Tarwad" [*See* Tarvad] defined Mad Act 4, 1896, S 2

TARWAD (*Mal*) A joint undivided Marumakkathayam family (*Sundaram Iyer's Malabar Law*) 14 M L J 415=28 M 182 (F B)

A Marumakkathayam family consisting of all the descendants in the female line of one common female ancestor (*Moore's Malabar Law*)

Tasdik (*H*) Verifying, attestation a countermark attached to documents passing through the hands of Government officers or clerks especially on petitions to the Mohammadan Government for assignment of revenue specification of establishment and expenses fixed amount or scale of expenditure for any special purpose (*Wil Gloss*)

Tasgisu (*Tel*) Account of the Government share of the crop, valued according to the current rates

Tashhir (*A*) Ignominious exposure Ordering a criminal to be carried through the city as an example (*Mac. Moh Law*)

In Mohammadan Law, public exposure, as by carrying the delinquent through the town on an ass with his face blackened, formerely the special punishment of purjery (Beng Reg II 1807, abolished by Act II, 1849, *Wil Gloss*)

Tashkhis (*H*) Distinguishing, ascertainment valuation, assessment, corrected assessment, net standard revenue, or the actual or absolute amount of realisable revenue particular account of such revenue, or the available funds which it constitutes (Beng Reg II, 1795, *Wil Gloss*)

TASHKHIS (*Ben*) A tenure on a rent fixed beforehand, (*Bad Pow* I, 561) (Pj etc) A contract for a fixed sum of Land Revenue, representing an average value of the grain share, as estimated *Ibid*, I, 272

Tashkhis jama-bandi (*H*) The net amount of revenue engaged for at the perpetual settlement in Bengal, the total amount of revenue to be collected under the terms of that settlement an account showing these particulars a statement of the net annual settlement previously concluded with Zamindars, Talukdars, and others

Tashkhis-mukarrari (*H*) A fixed assessment assessment of the lands in Cuttack made by the Subahdars of Bengal when Orissa was also under their authority (*Wil Gloss*)

Tashkhis-i-Bhunsla The assessment of the lands in Cuttack made by the Government of Nagpur when the province was subject to the Bhunsla or Raja of Nagpur (*Wil Gloss*)

Tashkhis-i-tumar jama (*H*) The revised assessment of the revenue of Bengal by Jaffir Ali Khan in 1722, in modification of that originally fixed by Todar Mal (*Wil Gloss*)

Tattudari A land tenure in the Northern Circars held at a low unalterable rent (Fifth Rep, *Wil Gloss*)

Taufir (*A*) Excess (*Ben*) Lands acquired by encroachment, or in excess of the proper estate (*Bad Pow* I 439 note)

TAUFIR (*H*) Increase applied in revenue language to an augmentation of the revenue, either from extended cultivation or the lapse or resumption of alienated assignments excess above an intended amount of assignment, which when realised in a jagir, was considered to be the right of the estate, although rarely acknowledged or paid

Taufir-i-Jagirdaran (*H*) Increase or surplus revenue on the resumed assignments of the holders of Jagirs (*Wil Gloss*)

Taufir-kamil (*H*) The highest rate of assignment imposed the standard revenue assessment

Taufir-mauza (*H*) A village not originally included in the assessment a village in excess (*Wil Gloss*)

Taufir-zamin (*H*) Lands in addition to, or excess of an original grant or measurement (*Wil. Gloss*)

Taujih.

Taujih (*H.*) Explaining adjustment of accounts assessment a revenue account showing, under the name of each payer of revenue, the total amount as it falls due by monthly instalments, the portion actually paid, and the balance outstanding it is usually a village account, and is kept by the village accountant also a register of the estates of a collectorate kept in the Collector's office (Act I of 1845, *Wil Gloss*)

Taujih-mahal (*H*) An estate that pays an assessed revenue

Taujih-nawis (*H*) An accountant who keeps the account termed Taujih

Tauliat (Tauliyat) (*A*) Transferring property The superintendency of Mosques and religious establishments (*Mac Mah Law*)

TAULIAT (*H*) Trusteeship or superintendence of a religious foundation the management of the funds appropriated to its support appointing a person to such an office, transferring property to him for such a trust In Mohammadan law, it also signifies a sale in which the owner disposes of the article sold at the price which he originally paid for it (*Wil Gloss*)

Tauliat-ma-al-wasiat (*H*) A deed of endowment or trusteeship executed as a bequest or will to take effect only after the death of the devisor (*Wil Gloss* 515)

Tauliat-nama (*H*) Deed of trusteeship, one appointing a person to the management of a religious endowment (*Wil Gloss*)

Tauliyat-nameh. (*P*) A deed of transfer (*Mac Mah Law*)

Tauzi-bigha (*N W P, local*) One of the artificial lots in bhaiachara villages, (*Bad Pow* II 139)

Tavali (*Mal*) (or Tavazhi) A branch of a tarwad which has separated more or less from the parent stock (*Moore's Malabar Law*)

Tavanai-kraya-patram (*Tam*) A deed of sale, after a term by which land is transferred or mortgaged liable to redemption within a stipulated term but becoming the absolute property of the mortgagee if not redeemed within the time (*Wil Gloss*)

Tavazhi A branch of the family being descendants of the same mother (*Sun Iyer's Malabar Law*)

"TAVAZHI" *See* 38 Mad 48=17 I C 769

Tavern. The word "tavern" is defined in the statute prohibiting gambling at taverns as including every house of public resort

A "tavern" under an act, relative to licensed taverns is not only a place where wine is sold and drinkers are entertained, but where a provision is made also for the lodging of wayfaring people

The word "tavern" has been judicially defined to be a house in which a licence to sell liquors in small quantities to be drunk on the spot had been granted The word "tavern" is practically synonymous with "*bar-room*" or "*drinking shop*"

TAVERN as used in an act requiring a license for keeping a tavern or house of entertainment is synonymous with "house of entertainment".

Tax-Taxation

"Tavern' is defined by Webster "as a house licensed to sell liquor to be drunk on the spot In some of the United States "tavern" is synonymous with 'inn' and 'hotel' and denotes a house for the entertainment of travellers as well as the sale of liquors, licensed for that purpose"

"TAVERN" *See* 15 B 530

Tavern-keeper "Tavern-keeper" and "inn-keeper" are synonymous "Inns" and "taverns" are both houses of public entertainment A person who makes it his business to entertain passengers and travellers and provide lodging and necessaries for them, their horses and attendants, is a common "inn-keeper", and it is no way material whether he have any sign before his door or not (*Ame Words and Phrases*)

Tavit (*Pun*) A small casket made to contain a talisman, and worn on the arm or fastened round the neck

Tawafuk Commensurability, the division of the shares by a common divisor, as where there are eight sharers and twenty shares both divisible by four, termed, Mutawafuk (*Wil Gloss*)

Tawari and Salami', meaning of 25 I C 540

Tawiz (*H*) An amulet, a charm, especially a verse of the Kuran engraved on a stone or a piece of metal, inclosed in a case and strung on a thread worn round the neck a platform or slab of stone placed over a grave (*Wil Gloss*)

'Tax" defined Act 16, 1903, S 2(*f*), Bom Act 3, 1888, S 3 (*p*), Bom Act 3, 1901, S 3 (14), Reg 2, 190, S 2 (*f*)

Tax—taxation Tax is a tribute or imposition laid upon the subject, which being certainly and orderly rated, was wont to be paid into the King's Exchequer It differs from what is commonly called a subsidy in this, that it is always certain as it is set down in the exchequer book (*Tomlins Law Dic*)

The term "tax" and "taxes" have been defined as a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state, burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes, and the enforced proportional contribution of persons and property levied by authority of the state for the support of government and for all public needs

TAXATION is the act of laying a tax, or imposing these burdens or charges upon persons or property, or in other words, the process or means by which the taxing power is exercised

OTHER DEFINITIONS In a general sense the terms 'tax' and "taxes" include every burden that may be lawfully laid upon the citizen by virtue of the taxing power The essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority, in the exercise of the taxing power, the contribution being of a proportionate character, and payable in money, and imposed, levied, and collected for the purpose of raising revenue, to be used for public or governmental purposes

Tax-Taxation

"Taxes" are defined to be burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes

"Taxes" are defined as being the enforced proportional contribution of persons and property, levied by authority of the state for the support of the Government and for all public needs

"A tax is a portion of the property of the citizens required by the Government for its support in the discharge of its various functions and duties, and may be imposed when either person or property is found within its jurisdiction"

Taxes are public burdens, of which every individual may be compelled to bear his part, and that in proportion to the extent of protection he receives or the amount of property held by him, as the will of the Legislature may direct The power of taxation is said to be an incident of sovereignty, and co extensive with that of which it is incident

A "tax" has been defined to be a word of general import, including almost every species of imposition on persons or property, for supplying the public treasury, as tolls, tribute, subsidy, excise, impost or customs In a more limited sense it is a sum laid for the same purpose upon lands, houses, property, provisions, and occupations

A tax is the means by which a burden primarily borne by the state is transferred to the citizen The obligation may have relation to debt already incurred, or it may be in anticipation, dependent on future contingencies Three things are essential to a tax First, the ascertainment of a sum certain, or that can be rendered certain, to be imposed on the collective body of taxpayers, second, the legal imposition of that sum as an obligation on the collective body of tax-payers, third, an apportionment of such sum among individual taxpayers, so as to ascertain the part or share that each should bear

The word "tax" as a verb, when used in respect to fees or costs, is defined to mean to assess, fix, or determine judicially the amount of, as to fix the cost of an action in Court Anderson's Law Dictionary defines the word to mean to assess, adjust, fix, or determine, as to tax the items and the amount of costs in a case

"Tax" includes any toll, rate, cess, fee or other impost leviable under this (Municipal) Act [C P Act XVI of 1903 (Municipal), S 2, Cl (*j*).]

TAXES NOT DEBTS As the obligation to pay taxes does not rest upon any contract express or implied, or upon the consent of the taxpayer, a tax is not a debt in the ordinary sense of that word, and for the same reason taxes are not assignable as ordinary debts, unless it is expressly so provided, nor are they the subject of set-off between the taxpayer and the state or municipality, nor do they draw interest like ordinary obligations, save where the statute so declares It is, however, the individual and not his property which pays the tax, although the property is resorted to for the purpose of ascertaining the amount of the tax and for the purpose of enforcing its payment where the owner makes default (*Ame Cyc*)

TAXES AND ASSESSMENTS DISTINGUISHED. In a broad sense taxes may be said to include assessments for improvements, since the right to impose

Tax-Taxation

assessments has its foundation in the taxing power of the government, but in practice and as generally understood there is a clear distinction between the two terms, and ordinarily such assessments are not included in the terms "taxes" or "taxation" Taxes are burdens or impositions laid for purposes of general revenue, while assessments are special and local impositions upon property in the immediate vicinity of a public improvement, made for the public welfare, which are necessary to pay for the improvement and made with reference to the special benefit which such property derives from the expenditure

The words "TAXATION" AND "ASSESSMENT", do not have the same signification The power of taxation is a power which the Legislature takes, to impose taxes upon the property of the citizens for the support of the Government The word "assessment" is employed to represent those local burdens imposed by municipal corporations upon the property bordering upon an improved street, for the purpose of paying the cost of the improvement, and laid with reference to the benefit the property is supposed to receive from the expenditure of the money Property not benefited by the improvement cannot be subject to an assessment for it

"Taxes proper, or general taxes" says Mr Justice Brewer, "proceed upon the theory that the existence of Government is a necessity, that it cannot continue without means to pay its expenses, that for those means it has the right to compel all the citizens and property within its limits to contribute, and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all On the other hand special assessments or special taxes proceed upon the theory that, when a local improvement enhances the value of neighbouring property, that property should pay for the improvement"

'LICENCE" AND "TAX" are frequently and properly employed as convertible terms, though not precisely synonymous, for a licence fee, whatever name or designation is given it, when plainly imposed for the sole or main purpose of revenue, is in effect a tax

The word "tax" in its proper sense does not include a licence issued for retaining liquor

TAXATION AND LICENSING DISTINGUISHED While in a broad sense a licence fee may be regarded as a tax, there is properly speaking and as generally understood a clear distinction between licensing and taxation, and between licence fees and ordinary taxes Licence fees exacted for the primary purpose of regulating or restraining occupations deemed dangerous to the public or to be specially in need of public control are imposed in the exercise of the administrative power, and not that of taxation, and where the object of the imposition is not to raise revenue the fact that the fee demanded is greater than the expense of issuing the licence, and therefore does in fact produce revenue, is not sufficient to make it a tax If, however, the fee or charge is imposed solely or primarily as a means of raising revenue it is a tax, regardless of the name by which it may be called

TAXES AND TOLLS. Tolls for the actual use of passage over land or water highways cannot be

Tax-Taxation

treated as taxes. They are not levied on the property or on persons as their share of any public burden laid on the people, but they are a fixed compensation for the use of that which has value and which is actually used to advantage Thus taxes levied on those who used a stream, which had been improved for logging purposes by the state, is not a tax It is collected for the same purpose as turnpike tolls, or railway and wharfage charges, which no one ever has supposed were public taxes, or a tax at all

FEES OF PUBLIC OFFICERS NOT TAXES. Fees prescribed to be paid by individuals to public officers, whether in the judicial or executive department of government, for services rendered, are not ordinarily taxes, unless the object of the requirement is to provide general revenue rather than compensation for those officers Thus where statutes provide for the inspection of given commodities, with a view to determine their quality and fitness for use, the fees to be paid to the inspectors are not properly classed as taxes.

TAXATION AND EMINENT DOMAIN DISTINGUISHED While both are attributes of the sovereign power and both involve the taking of private property for public use, there is a clear distinction between the power of taxation and the right of eminent domain An appropriation under the power of eminent domain is in the nature of a forced sale to the state or municipality, affecting only the individual owner concerned, and requiring compensation by the payment of a just price in money, while taxation is laid upon a whole community, or upon a class of persons in a community, according to some rule of apportionment, and constitutes their contribution to the expenses of government, and imposes on the taxing power no duty of making compensation other than that involved in the general advantages accruing from organised and efficient civil government (*Rul Case Law*)

TAX, RATE, ASSESSMENT The Tax is imposed directly by the government for public purposes, as the land tax, the window tax, and the like, and the Rate is imposed indirectly for the local purpose of each parish, as the church rates, the poor rates, and the like The tax and rate is a general rule or ratio, by which a certain sum is raised upon a given number of persons, the Assessment is the application of that rule to the individual The house duty is a tax upon houses, according to their real or supposed value, the poor rate is a rate laid on the individual likewise, according to the value of his house, or the supposed rent which he pays, the assessment, in both these, is the valuation of the house, which determines the sum to be paid by each individual it is the business of the minister to make the tax, of the parish officers to make the rate, of the commissioners or assessors to make the assessment, the former has the public to consider, the latter the individual An equitable tax must not bear harder upon one class of the community than another an equitable assessment must not bear harder upon one inhabitant than another (*Carbb.*)

TAX, DUTY, CUSTOM, TOLL, IMPOST, TRIBUTE, CONTRIBUTION Tax is the most general of these terms, and applies to or implies whatever is paid by the people to the government, according to a certain estimate; the customs are a species of tax which are

Tax-Taxation

less specific than other taxes, being regulated (formerly) by custom rather than any definite law, the customs apply particularly to what was customarily given by merchants for the goods which they imported from abroad the duty is a species of tax more positive and binding than the custom, being a specific estimate of what is due upon goods, according to their value, hence it is not only applied to goods that are imported, but also to many other articles inland toll is that species of tax which serves for the repair of roads The preceding terms refer to that which is levied by authority on the people, but they do not directly express the idea of levying or paying Impost, on the contrary, signifies literally that which is imposed, and tribute that which is paid or yielded the former, therefore, excludes that idea of coercion which is included in the latter The tax is levied by the consent of many, the impost is imposed by the will of one, and the tribute is paid at the demand of one or a few, the tax serves for the support of the nation, the impost and the tribute serve to enrich a government Conquerors lay heavy imposts upon the conquered countries, distant provinces pay a tribute to the princes to whom they owe allegiance Contribution signifies the tribute of many in unison, or for the same end, in this general sense it includes all the other terms

TAXATION DIRECT AND INDIRECT A direct tax is one which is demanded from the very person who it is intended or desired should pay it Indirect taxes are those which are demanded from one person in the expectation and the intention that he shall indemnify himself at the expense of another Where, therefore, any corporation or person, allowing any property liable for succession duty to be transferred, paid or given, contrary to the provisions of an Act for recovering succession duty is made liable for such duty and statute makes no provision for reimbursement of the company from any quarter, the taxation is not in direct taxation [31 L W 188=122 I C 309=A I R 1930 P C 10=59 M L J 214 (P C)]

According to the accepted terminology and practice of fiscal legislation and administration, export duties are ordinarily classed as duties of customs and excise. While it is no doubt true that a tax levied on personal property, no less than a tax levied on real property, may be a direct tax where the taxpayer's personal property is selected as the criterion of his ability to pay, a tax such as a tax on timber to be exported, is levied on a commercial commodity on the occasion of its exportation in pursuance of trading transactions, cannot be described as a tax whose incidence is, by its nature, such that normally it is finally borne by the first payer, and is not susceptible of being passed on On the contrary, the existence of an export tax is invariably an element in the fixing of prices, and the question whether it is to be borne by the seller or purchaser in whole or in part is determined by the bargain made Therefore the tax on timber to be exported exhibits the leading characteristic of an indirect tax as defined by authoritative decisions (99 L J P C 113=124 I C. 590=1930 A C 357=A I R 1930 P C. 173)

DOUBLE TAXATION OR DUPLICATE TAXATION Duplicate taxation is not open to legal objection when it is plainly intended or when it naturally and unavoidably results from the law.

Tax-Taxation

EXEMPTION FROM TAXATION The term "exemption" presupposes a liability, and in the law of taxation it is properly applied only to a grant of immunity to persons or property which otherwise would have been liable to assessment Further, an exemption is a grant, a mere omission to tax or failure of the taxing officers to perform their duty is not exemption, nor can the term be applied with propriety to a release from taxation granted in return for a consideration rendered

TAXATION OF COSTS Taxation is the proceeding by which a solicitor's bill of costs is submitted for revision to an official of the Court, who goes through the bill, item by item, and allows, disallows, or moderates every charge contained in the bill

Tax collector Person employed to collect tax money

A "tax collector" is a tax gatherer He turns the money which he collects over to the public treasury

The "tax collector" is the official representative of the public in the matter of the collection of taxes He is empowered to enforce collection by resort to summary remedies and upon sale he executes the papers evidencing the same

A collector of taxes is a public officer whose duty it is to collect the taxes and pay the same into the treasury of the state or to the parties entitled

Tax farmer Person paying a sum of money to the state for the proceeds of a tax to be collected by him

Tax legislation "Tax legislation" means the making of laws that are to furnish the measure of every man's duty in support of the public burdens and the means of enforcing it

"Tax payable", meaning of *See* I L R (1937) Mad, 792=167 I C 894=1937 M W N 511=45 L W 184=A I R 1937 Mad 300=(1937) 1 M L J 182 (F B)

Taxpayers Persons who, as paying the taxes may claim a voice in state expenditure or administration

A "taxpayer" is a person owning property or doing business in the state subject to taxation and on which he regularly pays taxes

Tax sale A "tax sale" is a sale made of property proceeded against by the state as belonging to some one other than itself, in enforcement of taxes due by that property and its owners

A "tax sale" or, what is the same thing, a sale for non-payment of public revenue on land is a sale made in a proceeding *in rem*

Taxable costs "Taxable costs" are in contemplation of law full indemnity for the expenses of a party who is successful in a suit between party and party

Where an award provided that one of the parties should pay the taxable costs of a suit which had been pending in Court, the phrase "taxable costs" meant such as the party was entitled to have taxed by law

Taxable inhabitant A "taxable inhabitant" is one who is or may lawfully be taxed, one who possesses all the qualifications necessary to authorise the proper taxing authorities to assess him with a tax

Taxable property The word "taxable property" when used in the title relating to taxation shall include taxable estates, both real and personal including choses in action

Taxable value "Taxable value" is the sum at which property is appraised for taxation

Taxing master Officer of the Courts, who examines and allows or disallows items in the bill of costs, the officer of the Court whose duty it is to tax the costs of actions is known as a "taxing master".

Taxing power The "taxing power' is one of the attributes or incidents of sovereignty It is and must be inherent in every form of Government The necessity for the exercise of the power rests wholly in the discretion of the Legislature, and that discretion extends to the selection of the subjects of taxation or the things to be taxed, whether it be persons or property, business or vocation

Taxi or taxi cab or taxi car. Motor car for hire

Taxi man Driver of taxi

Taya (*Punj*) Properly an uncle, but used like chacha, to designate a father-in-law

Ta'yyul (*said to be Turkish*), used in Delhi for certain villages, the rents of which went to the Emperor's privy purse (*Bad Pow* I 43 note, II, 686)

Tazia (*H*) A representation or model of the tomb of Hasan and Hasain, at Karbala, carried in procession at the Mohurram by the Indian Shias it is usually made of a light framework of Bamboo ships covered with paper, painted and ornamented with glass and artificial flowers, and illuminated within and without it is sometimes of considerable size and elobarate execution, and according to the wealth and piety of the owner, may be constructed of more costly materials, as glass, ivory, sandal wood or silver the common ones are usually thrown away or destroyed at the end of the solemnization, the more valuable ones are preserved (*Wil. Gloss*)

Tazia-dar (*H*) A person who sets up a Tazia at the Mohurram

Tazia-khana (*H*) The place where the model tombs of Ali and his sons are kept when too costly to be thrown away

Taziana (*H*) A whip, a scourge, an instrument formerly used in the company's courts for the punishments of delinquents, but the use of which has been abolished (*Wil Closs*)

Taziana bardar (*H*) The functionary who was formerly charged with the duty of flogging culprits condemned to be whipped (*Wil Gloss*)

Tazir. (*A*) An infliction of punishment by flagellation or otherwise, at the discretion of the Judge, for any offence, whether of word or deed, not subject to a specific legal penalty (*Mohammadan Law*)

TAZIR. (*H.*) Punishment, correction in law punishment inflicted at the discretion of the Judge with a view to public justice. that is in cases where,

Teach and instruct

from some impediment or collusion, the legal penalties might be escaped or evaded, these discretional penalties are to be imposed they may extend from simple reproof to mutilation and even to death (*Wil Gloss*)

"Teach and instruct" A contract in articles of apprenticeship that the master will "teach and instruct" the apprentice in the particular business implies, in the absence of any contract or stipulation, that this covenant will be performed at the place where the master is carrying on the business at the date of the articles or within a reasonable distance of that place, at all events if the apprentice does not board and lodge in his master's house [*Eaton* v *Western*,(1882), 52 L J Q B 41, *Ency of the Laws of England*]

Teaser "Teaser" is the name given to a machine used for cleaning cotton

Technical Peculiar to a particular art, science or craft (as) technical skill, technical school or education

The "technical import" of words is that which is suggested by their use in reference to a science or profession, that which particular use has affixed to them, and when the natural and technical import unite upon a word, both their rules combine to control its construction, and no other signification than that which they suggest can be affixed to it, unless upon the most positive declaration that a different one was designed

Technical error "Technical error" as used in an act providing that, in consideration of questions presented on an appeal, the Supreme Court shall not regard technical errors, etc, means "merely abstract and practically harmless errors"

Teding penny, in old English Law tething penny, or tithing penny, was a small duty or payment to the sheriff from each tithing towards the charge of keeping Courts, etc (*Tomlins Law Dic*)

Teerva lease deed A teerva lease deed does not show that the lessor was entitled to the teerva only and not to possession of land, but is one that provides for payment of rent in money [24 M L J 75=13 M L T 106=1913 M W N 176=18 I C 77 (79)]

Tehbazari (*P*) Ground-rent of a stall in a market (*Mac Mah Law*)

Tehsil or Tehseel Acquisition, attainment, collection of the public revenues (*Fifth Report*)

Tehsildar Officer who has charge of the revenue collections, a native collector of a district (*Fifth Report*)

Tehsil dewanny Collections of the revenues payable into the public treasury (*Fifth Report*)

"Teji mandi" Teji mandi contracts are not wagering contracts if giving or taking of delivery is purported, teji means brightness and mandi means dullness (24 Bom L R 60=65 I C. 682=A I R 1922 Bom 66)

Teji mandi transactions There is no presumption as regards Teji mandi transactions that they are wagering transactions (1922 Bom 408 Foll), (26 B. L R 1097=85 I C 613=A I R 1925 Bom 79, 37 Bom 264=16 I.C. 576)

Telegraph.

'TEJIMANDI TRANSACTIONS' are not by themselves wagering contracts Unless it is positively proved that the parties agreed neither to ask for nor to give delivery, the transactions are valid and enforceable. Tejimandi transaction stands on the same footing as *vaida* traansactions, only the former is the less speculative of the two (65 I.C 682=24 Bom L R 60=A I R 1922 Bom 66)

There is no presumption that transactions of Teji mandi contracts are wagers, and in the absence of evidence to the contrary, they should be treated as genuine contracts [A I R 1927 Bom 408 Appl] [1926 M W N 830=28 Bom L R 1376=98 I C 338=A I R 1926 P C 119=51 M L J 809=53 I A 241=51 Bom 1 (P C), 53 B 367=116 I C 251=A,I R 1929 B 157]

Telegram A telegram is any message or other communication transmitted or intended for transmission by telegraph A communication by telephone has also been held to be a telegram for some purposes (*Ame Cyc*)

"Telegraph" defined Act 13, 1885, S 3 (1)

TELEGRAPH means of making known facts to distant observer (used in Newspaper titles, as, the "Daily Telegraph")

The word "telegraph" is derived from the Greek and signifies to write afar off or at a distance It is a word which has been applied to various contrivances or devices to communicate intelligence by means of signals which speak to the eye or ear for a moment But in its primary and literal signification of writing, printing or recording at a distance, it never was invented, perfected or put into practical operation till it was done by Morse

In its general legal significance the term "*telegraph*" is used to designate any apparatus for transmitting communications by means of electric signals Such apparatus generally consists on an extended wire, to the ends of which are attached certain instruments, respectively used for sending and receiving signals transmitted through the wire, and which instruments are connected with batteries producing electric currents

The term "telegraph" is sufficiently broad and comprehensive to include any apparatus for transmitting messages by means of electric currents and signals, or by means of a wire, whether the communication is made by electricity or not, and in the construction of statutory provisions has repeatedly been held to include the telepone

Even before the invention of the modern electromagnetic telegraph the term was applied to various contrivances or devices to communicate intelligence by means of signals which appeal to the eye, but the term as now generally used applies distinctively to the electro-magnetic telegraph, which was first perfected and put into practical operation by Morse, although the term applies whether a wire is used or not, and a telegraph line is such whether furnished with the Morse intruments or the typewriting instruments or other devices which have been invented to accomplish the same purpose The telegraph in common parlance is generally understood as referring to the entire system of appliances used in the transmission of telegraph messages by electricity

"Telegraph" as now usually accepted and in common parlance, is generally understood as referring to

Telegraph authority

the entire system of appliances used in the transmission of telegraphic messages by electricity, consisting of, first a battery or other source of electric power, secondly of a line, wire or conductor for conveying the electric current from one station to another, thirdly of the apparatus for transmitting, interrupting and, if necessary, reversing, the electric current at pleasure, and fourthly of the indicator or signalling instrument

The term "telegraph" means any apparatus for transmitting messages by means of electric currents and signals, and embraces within its meaning the narrower word "telephone"

"**Telegraph authority**" defined Act 13, 1885, S 3 (6)

"**Telegraph line**" defined Act 13, 1855, S 3 (4)

The term 'line" has been defined as a wire connecting one telegraphic station with another, or the whole system of telegraph wires under one management and name The term "line" as applied to telegraph and telephone lines has, however, both a popular and a technical meaning, and in a statute will be construed according to what appears to have been the intention of the legislature

"**Telegraph officer**" defined Act 13, 1885, S 3 (2)

Telegraph restante A direction on a telegram intimating that it has to remain at the office where it was received until called for

Telegraph station Telegraph stations are the ordinary offices for the business of telegraphy along the line of telegraph

Telegraphic transfers Messages by telegraph authorising the transfer of amounts specified from one person to another by process of debit and credit entries by bankers This is often resorted to in transactions between traders in different countries

Telegraphing money orders Payment of sums of money to a person named on the order, at any post office, telegraph office other than the issuing one, intimation being sent by telegraph

Telegraphy Telegraphy has been defined as the transaction of business over or through wires

TELEGRAPH AND TELEPHONE DISTINGUISHED Strictly speaking the telegraph and telephone are different and clearly distinguishable They have certain points of resemblance, such as the use of poles and wires and the employment of an electric current, and the common object of transmitting intelligence to a distance, but they also have certain well-defined differences, particularly in regard to the character of the terminal instruments, and the mode of transmitting messages, the telegraph conveying messages by means of sounds, representing words, letters, or figures, requiring skilled operators to transmit, receive, and translate the same, while the telephone convey and reproduces the sound of the voice, and with proper connections and facilities can be used by any person and requires no skill or experience to operate it This distinction leads to important differences in regard to the manner in which such companies transact business with their patrons and the facilities which they are required to furnish.

Telephone.

The term "telegraph" is sufficiently broad and comprehensive to include the telephone, and since the latter is comparatively so recent an invention as not to be mentioned in many statutes relating to telegraph companies it has been held that in applying the principles of the common law or in construing statutes the telephone is to be considered a telegraph unless there are express statutory provisions governing the case (*Ame Cyc*)

The term "telegraph" as used in statutes does not, however, always or necessarily include the telephone, particularly where there is separate legislation relating specifically to telephones

Telepathy Communication of impressions from mind to mind without the aid of the senses

Telephone A telephone has been defined as an instrument for transmitting spoken words In a general sense the name "telephone" applies to any instrument or apparatus which transmits sound beyond the limits of ordinary audibility, but since the recent discoveries in telephony the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires similar to telegraphic wires The exact meaning of the word "telephone" may vary according to the sense in which it is used, and so may refer generally to the art of telephony as an institution, or more particularly to the apparatus used in the transmission and reception of telephonic messages, and in the latter case may refer either to a particular instrument, or to the entire system of appliances used in the transmission of telephonic messages

The telephone is simply an improved telegraph and was formerly called the speaking telegraph The instruments used at the terminals are different, but the poles, the wires, the insulators, and the generation of the electric current are all the same The slight technical difference was exceedingly well-stated by an expert witness in the following language In sending telegraph messages the sender writes out into words what he wishes to transmit, and another party takes it and translates it into sounds that represent letters which are sent over the wire by breaking the electric current, which reproduces the sounds at the other end, which are retranslated by the operator at the end into words and delivered to the customer, and in sending the message by telephone the person who desires to send a message speaks into the instrument and instead of breaking and interrupting the current it is partially broken and varied by the air waves produced by speaking, and the spoken words of air waves pass over the wire by their effect on the electric current—that is, they are reproduced into sound waves and give out the same sound at the other end as was spoken into the instrument at the transmitting end (*Ame Words and Phrases*)

"Telephone" differs from "telegraph" very materially, in this that the transmission of news, the sending and receiving of messages, by telegraph, can only be done by those having a knowledge of the business and having a knowledge of the art and science of telegraphy. Webster defines "telephone" as an instrument for conveying sounds to a great distance.

Telephone Company.

Telephone company. Telephone companies like telegraph companies are common carriers of information, and their lines are daily employed in the transaction of commerce on correspondence between individuals living at a distance, in the same province or in different provinces

A "telephone company" is a common carrier, in the sense that it is bound to furnish service to any one offering to comply with its reasonable requirements

"Telegraph companies", like common carriers, are public servants, and held to a high degree of diligence and a strict discharge of duty, and, having violated their duty and been negligent in its discharge, such companies are generally liable in damages (*Ame Words and Phases*)

A "TELEPHONE COMPANY" IS A "TELEGRAPH COMPANY" in the meaning of the latter term as used in a statute providing for assessing telegraph lines and property Both the telephone and telegraph are used for distant communication by means of wires stretched over different jurisdictions. The fundamental principle by which communication is secured is the same

TELEGRAPH AND TELEPHONE COMPANIES AS COMMON CARRIERS Telegraph and telephone companies have frequently been termed "common carriers," or common carriers of news or information, but while they are in the nature of common carriers in regard to their quasi-public character, and their duty to serve the public generally and without discrimination, and in being subject to legislative regulation and control, they are not strictly speaking common-carriers, and their obligations and liabilities are not to be measured by the same rules that obtain with regard to common carriers

Telephone exchange A telephone exchange is an arrangement for putting up and maintaining wires, poles, and switch-boards within a given area, with a central officer, and the necessary operators to enable the individual hirers of telephones within that area, to converse with each other

Telephone line In its proper sense "line" means wire connecting one telephone station with another, or the whole of a system of telephone wires under one management or name

Telephonic system. A tolephonic system is simply a system for the transmission of intelligence and news It is perhaps in a limited sense and yet in a strict sense, a common carrier

Teli Workers in Oil

Teller (*Parli*) One of the Members of Parliament selected to tell in the House of Commons Divisions

Temperance Avoidence of excess—especially in the use of alcoholic liquors, teetotalism

Webster defines it as "habitual moderation in regard to the indulgence of the natural appetites and passions—especially in respect of spirituous liquors, restrained or moderate indulgence, moderation, as temperance in eating and drinking, temperance in the indulgence of joy or mirth"

Temperance saloon A "temperance saloon" is a place where non-intoxicating drinks and other refreshments are kept for sale

Temperate. "Temperate" within the meaning of a question, in an application for life policy, whether the applicant has always been temperate, is to be construed as meaning abstinence from the excessive or injurious use of liquors and not total abstinence. The word "temperate" suggests moderation and restraint from excessive or injurious use, and not total abstinence

The words "SOBER AND TEMPERATE" as used in an application for insurance, are to be taken in their ordinary sense They do not imply total abstinence The moderate, temperate use of intoxicating liquors is consistent with sobriety, but, if one uses liquors to such an extent as to produce frequent intoxication he is not "sober and temperate" within the meaning of the contract

"TEMPERATE HABITS", as used in an application for a life insurance policy, in which the insured stated that he was a man of temperate habits, means customary conduct, to pursue which he has acquired a tendency from frequent repetition of the same acts. It would be incorrect to say that a man has a habit of anything from a single act An occasional use of intoxicating liquors does not render the insured a man of intemperate habits, nor would an exceptional case of excess justify the application of such character to him If the habits of the insured in the usual, ordinary and every day routine of his life, were temperate, the representations made are not untrue, within the meaning of the policy, although he may have had an attack of *delirium tremens* from an exceptional over-indulgence

Tempest A "tempest" is a violent wind, storm, tumult, or commotion. In Webster's Dictionary it is defined as an extensive current of wind, rushing with great velocity and violence, and a storm of extreme violence, and as synonymous with "storm."

Templars, or Knights of the Temple A religious order of knighthood, instituted about the year 1119, and so called because they dwelt in part of the buildings belonging to the Temple at Jerusalem. They entertained Christian strangers and pilgrims charitably, and in their armour led them through the Holy Land, to view the sacred monuments of Christianity, without fear of Infidels, for at first their profession was to defend travellers from highwaymen and robbers This order continuing and increasing for near two hundred years, was far spread in Christendom, and particularly in England, in the 13th and 14th centuries (See *Tomlins Law Dic*)

Temple Building treated as the dwelling place or devoted to the worship of God

TEMPLE The exclusion of others or outsiders from interference with the management of the institution by the founders will not take away the institution from the definition of a "temple" So long as there was no intention on the part of the founders to exclude the right of worship, the restriction of the right of outsiders to interfere in the management of the temple is not a determining factor in considering whether the temple is a public or private temple [46 L W 388=1937 M W N. 1145=A.I.R. 1937 Mad 973=(1937) 2 M L J. 485]

Temple, Church These words designate an edifice destined for the exercise of religon, but temple is adapted to the lofty style, and church to the familiar style, at least as far as regards the Christian revealed religion. Temple conveys the

Temple Bar

idea of that which is august, it marks in the proper sense that edifice which is consecrated to the deity, Church seems to indicate something more common, it serves particularly for the assembly of the faithful

INNER AND MIDDLE TEMPLE Two inns of Court on the site formerly occupied in London by the Templars

Temple-Bar Gateway, which formerly marked the westward limit of the City Corporation's jurisdiction in London

Temporal affairs. Other than ecclesiastical or religious affairs

Temporal Peers or Lords Members of the House of Lords other than Bishops

Temporal power Especially that formerly held by the Pope as Sovereign of a State

Temporarily. The expression "for the time" and "for the time being" are equivalent to the word "temporarily", and each constitutes a good definition of that word

The word "temporarily" in S 41 of the Ajmere Land and Revenue Regulation shows that it was intended to include something more than an absolute and complete transfer of all proprietary rights (7 A.L J 370=5 I C 503)

"Temporarily-settled estate", defined Reg 1, 1886, S 3 (*d*)

Temporary Lasting or intended to last only for a time

"Temporary," means lasting for a time only, existing or continuing for a limited time, not of long duration, not permanent, transitory, changing, lasting for a short time

Bouv Law Dict (p 573), defines "temporary" thus "That which is to last for a limited time, as a temporary statute or one which is limited in its operation for a particular period of time after its enactment"

Temporary alimony "Temporary alimony" is intended for the support of the wife pending an action for divorce

"Temporary injunction", defined Act 1, 1877, S 53

TEMPORARY INJUNCTION A temporary injunction merely prevents action until a hearing can be had

A PRELIMINARY INJUNCTION is commonly spoken of as a 'temporary injunction", and is granted pending a hearing on the merits

Temporary insanity. "Temporary insanity" as used in an act providing that neither intoxication nor temporary insanity produced by the voluntary recent use of ardent spirits shall constitute any excuse for the commission of crime, is that condition of the mind directly produced by the use of ardent spirits, and where a fit of intoxication is carried to such a degree that the person becomes incapable of knowing that the act he is doing is wrong and criminal, he is in that condition known as "temporary insanity."

Temporary removal "Temporary removal" as applied to leaving a house or one's residence means a removal to another place for a fixed and temporary purpose or for a temporary reason.

Tenant

"Temporary removal" means a removal for a fixed and temporary purpose, or for a temporary reason

Temporary statute A temporary statute is a statute limited as to its duration.

Temptation "Temptation" as the term is used in the statement that seduction must be accomplished by means of temptation, deception, etc, is that which tempts to evil, an evil enticement or allurement The temptation may be by conduct or act, or by suggestions of confidence and secrecy If they are believed by an unmarried woman, and she is induced thereby to surrender her chastity, it will constitute seduction

Ten o'clock An entry in a justice's docket that a case was adjourned to a certain day at "ten o'clock" will be understood to mean that it was adjourned to 10 o'clock A M and not 10 o'clock P M

Tenacious, pertinacious We may be tenacious of that which is good, as when a man is tenacious of whatever may affect his honour, but we cannot be pertinacious in anything but our opinions, and that too in cases when they are least defensible A liar is tenacious of his reputation for truth sophists, freethinkers, and sceptics, are the most pertinacious objectors to whatever is established

"Tenancy", defined Act 16, 1887, S 4 (8), Act 17, 1887, S. 3 (4)

TENANCY The condition of a tenant, the temporary possession of land or house belonging to another.

"A tenancy exists where one has let real estate to another to hold of him as landlord When duly created and the tenant put in possession, he is the owner of an estate for the time being, and has all the usual rights and remedies of an owner to defend his possession But a tenancy does not necessarily imply a right to complete and exclusive possession It might, on the other hand, be created with implied or express reservation of a right to possession on the part of the landlord, for all purposes not inconsistent with the privileges granted to the tenant"

No particular form of words is necessary to create a tenancy Any words that show an indication of the lessor to devest himself of the possession and confer it on another, subject to his own title, is sufficient

"Tenant", defined (*See also* Absolute occupancy tenant, Ex-proprietary tenant, Occupancy tenant, Ordinary tenant, Raiyat, Sub-tenant, Under-tenant, Village-service-tenant) Act 18, 1881, S 4 (14), Act 8, 1885, S 3 (3), Act 22, 1886, S 3 (10), Act 16, 1887, S 4 (5) and (7), Act 17, 1887, S 3 (4), Act 11, 1898, S 2 (10), Ben Act 6, 1908, S. 3 (*xxvi*), Mad Act 5, 1884, S 3 (*xxvii*), Mad Act 1, 1909, S 3 (1), U P. Act 2, 1901, S 4 (5), U P Act 3, 1901, S 2 (5), Reg 3, 1879, S 2 (3), Reg 6, 1893, S 2 (4), Reg 1, 1899, S 3 (7)

TENANT The party to whom a lease is made is called the "tenant"

One who holds land by any kind of title, whether for years, for life, or in fee, is a tenant

"Tenant" is a word which standing by itself denotes in law "one who holds lands by any kind of title whether for years or for life or in fee" and does

Tenant

not necessarily mean a lessee unless it is used in opposition to landlord (27 M 401)

Tenancy implies possession of the land by a person claiming a subordinate interest A person who has parted with his interest to possess and enjoy the land can by no stretch of imagination be called a tenant (62 C L J 147)

The word 'tenant' in the Tenancy Act includes a sub-tenant" (171 I C 909=A I R 1937 Nag 160)

'Tenant' as including ex-tenant *See* 33 C W N 769

"Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person [Ben Act VIII of 1885 (Tenancy), S 3]

"Tenant" means any person holding land as a tenant of Government, and includes the predecessors and successors in interest of a tenant [Pun Act V 1912, (Colonization of Government Land), S 3]

In S 52, Act VIII of 1885 (B C), the word "*tenant*" means the tenant of the tenure and not one of many tenants It does not include a co-sharer-tenant having only a fractional share in the tenure (27 C 417)

Tenant under the N W P Rent Act is a person not having a title adverse to the landholder's who is liable to pay rent (13 A W N 1 History of Occupancy Tenant in Oudh *See* 13 A W N 3)

A tenant under the Agra Tenancy Act (II of 1901), does not include a rent-free grantee (31 A 49= 1908 A W N 279=5 A L J 734=1 I C 705)

Though the permanent lessees of the melvaram rights of a zemindar are his tenants in the sense that they are bound to pay rent to him yet, they are not tenants in the sense in which the word is used in S 12 of the Rent Recovery Act (VIII of 1865) (24 M 465=14 M L J 81 (P B) overruling 7 Mad 580)

The word "tenant" in Arts 78 81, 82, and 139 of the Limitation Act includes the legal representatives in interest of the tenant (19 M L J 732=7 M L T 289=33 M 260)

As to nature of tenant's possession, *see* A I R. 1923 Lah 94

TENANT AND CROPPER The difference between a tenant and a cropper is clear. The tenant has an estate in the land for the term and consequently he has a right of property in the crop If he pays a share of the crop for rent, it is he that divides off to the landlord his share and until such division the right of property and of possession in the whole is his A cropper has no estate in the land, but that remains in the landlord. Consequently, though he has, in some sense, the possession of crop, it is only the possession of a servant, and is in law that of the landlord The landlord must divide off to the cropper his share, in short, he is a labourer receiving a share of the crop

The term "cropper", and not "tenant" characterizes one who raises a crop upon the land of another under contract to raise the crop for a particular party, and therefore, such person has a lien upon the crop for whatever is due to him from the landlord.

TENANTS AND LODGERS AND BOARDERS The distinction between "lodgers" and "tenants" may in some cases be fairly drawn, and may depend on character

Tenant in fee simple

of the hiring with reference sometimes to the business of the lessor and the present intention of the parties, as gathered from all the other surrounding circumstances of the particular case The tenant is put into the exclusive possession of his room while the boarder or lodger has merely the use of them, without the actual or exclusive possession, which is in the lessor, subject to such use

"Tenant at a fixed rate", defined, U P Act 3, 1904, S 2 (6)

The expression '*tenant at fixed rates*" means a tenant holding land the rent of which under the laws in force or the customs prevailing in the family domains is not liable to enhancement, but does not include a tenant paying rent in kind [U P Act III of 1904 (Benares Family Domains), S, 2, Cl (6)]

Tenant at sufferance A 'tenant at sufferance" is one who comes into the possession of land by lawful title, but who holds over by wrong after the termination of his term

"Tenant-at-will", defined, Reg 2, 1877, S 21.

TENANT AT WILL A tenant holding over is not a tenant at will, unless he holds over at the express or implied consent of the landlord,

Tenant by courtesy The holder of an estate by courtesy

Tenant for life A "tenant for life" of estates is one to whom lands or tenements are granted or devised, or to which he derives title by operation of law, for the term of his own life or the life of another

Tenant for years One who holds lands or tenements under a demise for a term of certain number of years agreed on

Tenant from year to year One who holds lands or tenements under a demise where no certain term has been fixed, but an annual rent has been reserved

Tenant in capite Tenant in chief.

Tenants in common are such as hold by several and distinct titles, but by unity of possession, because none knoweth his own severality, and therefore they all occupy promiscuously (*Tomlins Law Dic.*)

TENANTS IN COMMON AND JOINT TENANTS Where two or more persons are seised of land in undivided shares, otherwise than by descent, they are tenants in common They claim by several titles, or in several rights though by one title (Co Litt, 189) A corporation sole may be tenant in common with himself as an individual (Co Litt. 190-a) The ownership of each tenant in common is distinct and several, and he is, as to his share, in the position of the owner of an entire and separate estate, whereas joint-tenants (*see* Joint Tenancy) compose but one owner (*See Ency of the Laws of England*)

Tenant in dower A woman who holds an estate in dower.

"TENANCY IN DOWER" arises where the husband is seized of an estate of inheritance and dies

Tenant in fee simple. One who has lands and tenements to hold to him and his heirs for ever generally absolutely

Tenant in tail

Tenant in tail. One who has lands or tenements to hold to him and the heirs of his body.

Tenant on sufferance. A tenant on sufferance is one who wrongly continues in possession after the extinction of a lawful title There is very little difference between him and a trespasser. (31 All 514=6 A L J. 584=3 I C 566)

Tenant's fixtures The term "tenant's fixtures" in a strict legal definition, is to be understood to signify things which are fixed to the freehold of the demised premises, but which nevertheless the tenant is allowed to disannex and take away, provided he reasonably exert his right to do so

Tenantable repair Such repair as will render a house fit for present habitation

Tenantry. The tenants of an estate

Tender. Offer, proposal for acceptance, offer to pay a specified sum or do certain acts, the offering of money or any other thing in satisfaction, or circumspectly to endeavour the performance of a thing, as a tender of rent is to offer it at the time and place when and where it ought to be paid (*Terms de la Ley, Tomlins Law Dic*)

"TENDER" is defined to be the offer of money in satisfaction of a debt, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it

"Tender" is defined to be an offer by a debtor to the creditor of the amount of the debt The offer must be in lawful money, which must be actually produced to the creditor, unless by words or acts he waives production, and the offer must be definite and unconditional The payment of money into Court under order is more than a simple tender A tender is an offer to pay the debtor before suit, and cannot be made after suit is brought It is purely *ex parte* If it is not accepted, the debtor must retain his money, and, if established on plea, the only effect is to stop interest thenceforward on the amount tendered But a payment into Court is different It is not *ex parte* but done by order of Court The money paid in is for the plaintiff, and the possession of it cannot be resumed by the debtor

Tender of issue A form of words in a pleading, by which the party pleading offers to refer to question raised to the proper mode of decision.

Tender years The phrase "minor of tender years", used in various connections in pleadings may embrace as well minors of 20 years as of 20 months It cannot be said absolutely what is or is not a tender age, and applying to the rule that a pleading is to be taken most strongly against the pleader, little more effect can apparently be given to the phrase "minor of tender years" than that it indicates a minor not endowed with the discretion of maturity (*Ame. Words and Phrases*)

Tending to show The statement that there has been evidence "tending to show" a particular fact is equivalent to a statement that evidence has been offered relating to such fact, the force and effect of the evidence being in no sense suggested by the term

Tenement House occupied or capable of being occupied by a tenant

"TENEMENT" signifies anything that may be holden, provided it be of a permanent nature whether it be

Tenor

of a substantial and sensible or of an unsubstantial ideal kind

The word "tenement" in legal acceptation means property held by a tenant

"Tenement" is a large word which will pass, not only lands and other inheritances, which are holden, but also offices, rents, commons, and profits arising from lands "With us the word 'tenement' is applied exclusively to land or what is usually denominated 'real property' " (*Ame Words and Phrases*)

This word, says Blackstone (2 Com 16) "though in its vulgar acceptation, it is only applied to houses and other buildings, yet in its original, proper, and legal sense it signifies everything that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible or of an unsubstantial ideal kind ' It is a word of wider meaning than "land," but not so large as "hereditament." (Co Litt 6-a)

Tenement (*tenementum*) Signifies properly a house, or home-stall, but, more largely it comprehends not only houses, but all corporeal inheritances which are holden of another, and all inheritance issuing out of or exercisable with the same (Co. Litt 619, (*Tomlins Law Dic*)

"Tenements" as used in the common law, entitling a wife to dower in all lands and tenements of which the husband died seised, is, according to Blackstone a word of greater extent than "lands" which includes any ground, soil or earth whatever and has in its legal signification an indefinite extent upward as well as downward

The word "tenements" imports not only land on which one has an estate of inheritance or other freehold, but also a tenancy for years

"Tenements' in its modern use often signifies such part of a house as is separately occupied by a single person or family in contradistinction to the whole house It may consist of a single room or continuous rooms, or rooms upon different stories, if controlled by a single person and used in connection with each other The fact that one room is occupied and used as a shop, and another for a living room or kitchen, by the same person, does not make these rooms distinct tenements

Tenement house A "tenement house" is a building, the different rooms or parts of which are let for residence purposes by the possessor to others as distinct tenements, so that each tenant, as to the room or rooms occupied by him would sustain to the common landlord the same relation that the tenant occupying a whole house would do to his landlord.

The compound words "tenement house" signify and mean a house with distinct tenements or homes, which separate and different families and persons occupy as tenants not merely a boarding house or hotel, for in these the occupancy is not one of tenancy, but that of guests or boarders.

Tenet Doctrine held by a party, sect, or religious community

Tenor "Tenor" of an instrument imports identity

Although in ordinary language in speaking of the tenor of a document only its general purport or substance may be meant, in law the word has a strict, technical meaning Technically it signifies an exact copy of the particular document.

Tenor est pactio.

TENOR EFFECT *Tenor* implies that a correct copy is set out, but *effect* alone implies that the substance only is set out (*Wharton*)

By setting forth an instrument according to its tenor in an indictment is meant an exact copy of the instrument, while by setting it forth according to its purport and effect the import or substance only is indicated

"TENOR" as used in pleadings alleging that the instruments are set out according to their tenor, binds a party to a strict recital

"TENOR OF THE BILL" as used in speaking of the tenor of a bill of exchange, "relates merely to the time and manner of payment"

Tenor est pactio, contra communem feudi naturam ac rationem, in contractu interposita Tenor is an agreement, contrary to the common nature and reason of a fee, interposed or inserted in the contract (by which it is conveyed)

Tenor est qui legem dat feudo It is the tenor of the feudal grant which regulates its effect and extent

Tent Portable shelter or dwelling made of canvass for encamped soldiers, touring officers, etc

A "tent" in the ordinary acceptation of the word, is a pavilion, portable lodge, or canvas house, inclosed with walls of cloth and covered with the same material

"Tenure" defined This word is also used in combination with other words (as) hereditary tenure, life tenure, permanent tenure, political tenure, under-tenure Act 8, 1885, s 3 (7), Ben Act 7, 1868, s 1, Ben Act 6, 1873, s 3, Ben Act 5, 1875, s 2, Ben Act 6, 1880, s 3, Ben Act 9, 1880, ss 4, 40-A, Ben Act 2, 1882, s 3, Ben Act 8, 1895, s 2 (*o*), Ben Act 6, 1908, s 3 (*xxvii*)

TENURE Tenura (from the Latin, tenere) The manner whereby lands or tenements are holden, A Tenure may be of houses, and land or tenements (*Tomlins Law Dic*)

"*Tenure*" is the holding or possession of land, the subject of tenure being designated a tenement The word does not necessarily imply dependent ownership The expression tenure is, of course, anterior to feudal holding, but in English law "tenure" implies not only a holding, but a holding of some lord (Pollock and Maitland, History of English law, Challis, Real Property, Williams, Real Property, Blackstone Commentaries, *Ency of the Laws of England*)

The word "tenure" in its technical sense, is the manner whereby lands or tenements are holden, or the service that the tenant owes to his lord, and there can be no tenure without some service, because the service makes the tenure Again tenure signifies the estate in land The most common tenure by which lands are held in this country is "fee simple", which is an absolute tenure of land, to a man and his heirs, forever, without rendering service of any kind

Tenure, meaning of 12 B L R 484=21 W R 94

The word "tenure" when used in connection with the expression "tenure of office" means the term of office

The word "tenure" is one of very extensive signification It may import a mere possession, and may include mere holding of an inheritance

Term of years.

Tenure est la maneire par quoy les tenements sonts tenures des seigneurs Tenure is the manner by which tenements are held of lords

Tenure of office Period fixed for the holding of the office

"**Tenure-holder**" defined (*See also* holder of an estate or tenure) Act 8, 1885, s 5 (1), Ben. Act 5, 1875, s 2

"Tenure-holder" means all or any of the holders of a tenure [Ben Act V of 1875 (Survey), S 2 *See also* 27 Cal 205=4 C W N 76]

A tenure-holder, within the contemplation of the Bengal Tenancy Act, 1885, must be a person who holds land which is used for agricultural or horticultural purposes (27 C 205=4 C.W N 76, 18 W.R. 234, R)

The definition of "tenure-holder" in Road Cess Act is very wide and may include persons in the enjoyment of the profits of a mela But whether in any particular case such persons are tenure-holders or not will depend on the terms of the lease. [35 C. 82 =11 C W N 1053=6 C L J 342 (F.B)].

"Terij" "Terij" is now an obsolete form It is an extract of the jamabandi slips which give details of all kinds of cultivation including *sir*, khudkasht, ex-proprietary, occupancy, non-occupancy and rent free [14 I. R 242 (Rev)=17 R,D 365]

Term Appointed limit, limited period, period during which university, school, or judicature is at work.

TERM (*Terminus*) signifies commonly the limitation of time or estate, as a lease for a term of life, or years, etc (Bract lib 2) Term is also a space of time, wherein the superior Courts at Westminster sit (*Tomlins Law Dic*)

The word "term" or "terms" in its general signification denotes "words", phrases" and "expressions" by which the definite meaning of language is conveyed and determined

"Term" as applied to time signifies a fixed period, or a determined or prescribed duration

The word "term", when used with reference to a Court, signifies the space of time during which the Court holds a session, term of Court

The word "term" when used in reference to the tenure of office means ordinarily a fixed and definite time

TERM, LIMIT, BOUNDARY The term and the limit belong to the thing, by them it is ended, the boundary is extraneous of it, they include it in the space which it occupies, or contain it within its sphere

Term of office "Term of office" means the period or limit of time during which the incumbent is permitted to hold

Term of years An estate for years is an interest in lands or tenements for some determinate and fixed period, the right to the possession of the lands being acquired by contract This is the case where a "man letteth them to another for the term of a certain number of years agreed upon between the lessor and lessee, and the lessee enter thereon" (2 Black Com 140, Co Litt 43-b) The expression "term of years" refers not only to the duration of the tenant's interest for a fixed and determinate period of time, but

Terms cash.

is used to denote the interest itself (*Ency of the Laws of England*, *See also* 4 M 381)

The words "a term of years" in S 116 of the Bihar Tenancy Act are merely classificatory term and mean nothing more than any definite term, any definite term of time may be measured in years though not necessarily at an even number of years The expression "a term of years" is a generic term and means merely a period of time which can be measured in years, *e g*, one year or half a year A lease for a term of years truly means a lease for a definite period to come to an end at a definite date and nothing more The words "a term of years" cannot be construed to mean that the term must be a term of at least two years 19 Pat L T 180

Terms cash "Terms cash" as used in a bill of goods purchased, in which the words stand by themselves, mean *prima facie* that the sale is for cash, but may be shown to have been used in a different meaning by the parties, in accordance with a usage by which the word had a different meaning, as only requiring a cash payment after the expiration of a given time

Termagant Over-hearing woman, scold, virago

Terminable lease Whatever be the interpretation to be given to the somewhat loose and ambiguous expression "a terminable lease," it is clear that a tenure under which the tenant can no longer be dispossessed by his superior cannot be brought within that term [(1867) 11 M I A 433=9 W R P C 3=2 Suth. 92=2 Sar 309]

"Terminal" defined Act 9, 1890, s 3 (11)

"TERMINALS" includes charges in respect of stations, sidings, wharves, depots, warehouses cranes and other similar matters, and of any services rendered thereat [Act IX of 1890 (Railways), S 3 (14)]

Terminal charges Railway charges for loading, unloading, and otherwise handling goods entrusted to them for transportation

The expression "terminal charges" means charges for the use of goods station and for the various duties which the Railway Company, as common carriers, perform in connection with the goods consigned to them for carriage (15 B 537.)

Terminal point A terminal point of an inter state shipment is the place of consignment, or the point at which the carriage of one common carrier ends and that of another begins

Termination of a suit A suit can ordinarily be said to terminate when there is nothing more to be done in it except execution [22 C, 952 (note)]

Terminus a quo *"Terminus a quo"* is the point or place from which the grantee of a private right of way is to set out any order to use the way

Terminus ad quem *"Terminus ad quem"* is the place where a private right of way ends

Terminus annorum certus debet esse et determinatus A term of years ought to be certain and determinate

Terminus et (ac) feodum non possunt constare simul in una eademque persona. A term and the fee cannot both be vested in one and the same person (at the same time)

Termor One who has a term in lands.

Terra (*Lat.*) Land, property, arable land.

Testament

Terra culta (*Lat*) Tilled or cultivated land.

Terra excultabilis (*Lat*) Land that may be tilled or ploughed

Terra lucrabilis (*Lat*) Land that might be gained from the sea or enclosed out of a waste to particular use

Terra manens vaccua occupanti conceditur. Land being unoccupied is given to the occupant

Terra nova New land, land newly granted or newly cleared

Terra testamentalis (*Lat*) Land by charter or writing, hoc-land

Terra transit cum onere A maxim meaning "land passes with the encumbrances"

Terrage A kind of tax or charge on land

Terre-tenant A terre-tenant, in a general sense is one who is seised of the actual possession of lands, as the owner thereof

TERRE-TENANT The person in actual occupation and enjoyment of land The name has sometimes, though less frequently, been applied also to trustees in whom the legal estate in land is vested (*Ency of the Laws of England*)

Terrier A land roll or survey of lands, describing the tenures and boundaries of the same Terriers are admissible in evidence when shown to have come from a place where they might reasonably be expected to be found, [*Croughton v Blake*, 1843) 12 Mee & W 205] A terrior or a map of a parish not signed by any of the parishioners or parish officers is not admissible evidence of the boundary of the parish [*Earl v Lewis*, (1801), 4 Esp 3.]

Terrimdar An assessor of land

"Territorial water of Her Majesty's dominions" defined 41-2 V, c 73, S 7

Territory The tract of land or district within which a Judge or Magistrate has jurisdiction is called his "territory"

"The word "territory" as generally used, describes a jurisdiction and district Thus we speak of the territories of the United States The word refers to the jurisdiction

Territory of a state comprises its ports and harbours, the mouths of its rivers, and its land-locked bays By the usage of nations the territorial jurisdictions extend also to a marine league seawards This belt of sea is known as territorial waters (*Ency of the Laws of England*)

Terror "Terror" signifies more than "alarm" or "force" It is agitating or excessive fear, which usually benumbs the faculties It is one of the passions the existence of which will sometimes reduce a homicide from murder to manslaughter, but it is never necessarily an element of self-defence.

Test oath An oath of loyalty to Government

Test paper A paper or writing shown to jury as evidence

Testament. "Swinburne defines a testament to be a just sentence of our will touching what we would have done after our death"

A "testament" is a testimonial in which is contained and set forth the will of him who makes it, esta-

Testamentary capacity.

blishing or appointing his heirs, and disposing as he thinks fit of his property after death

The words "*will*" and "*testament*" and the phrase "*last will and testament*" are exactly synonymous by common usage all over the world

OLD AND NEW TESTAMENTS. Divisions of the Bible

Testamentary capacity Mental condition such as to admit of the making of a valid will

"Testamentery capacity" exists, where the testator has undertaking of the nature of the business he is engaged in, of the kind and value of the property devised, of the persons who are the natural objects of his bounty, and of the manner in which he desires it to be distributed

Mere eccentricuty of belief, including the belief in spiritualism, is not evidence of want of testamentary capacity, provided the testator is not affected with any delusions respecting matters of fact

Testamenta latissimam interpretationem habere debent. Wills ought to have the broadest interpretation

Testamentary causes Causes or matters relating to the probate of wills

Testamentary expenses Wills sometimes contain directions that the testators' "testamentary expenses" shall be paid out of specified portions of their estates The phrase has been held to be exactly equivalent to "executorship expenses," that is to say, expenses incident to the proper performance of the duty of an executor, including funeral expenses, costs of administration, and the like [*Sharp* v *Lush*, (1878) 10 Ch D 468, 470, *per* Jessel, M R] The costs of an administration suit are included under the term. [*Penny* v *Penny*, (1879), 11 Ch D 440, *Harloe* v *Hartoe*, (1875) L R 20 Eq 471, *Miles* v. *Harrison* (1873), L R Ch 316]

Testamentary guardian A guardian appointed by the last will of the father

Testamentary instrument A "testamentary instrument" is one which declares the present will of the maker as to disposal of his property after death, without attempting to declare or create any rights therein prior to such event

Testamentary inventory A "testamentary inventory" is the instrument containing a list of the property and other articles belonging to the estate of the deceased, making a will or dying intestate, made with regularity and order (*Ame Words and Phrases*)

Testamentary jurisdiction Even in the case of the High Courts, the successors of the Supreme Courts(which alone possessed ecclesiastical jurisdiction), the testamentary jurisdiction which the charters purport to confer upon them is not given as a branch of ecclesiastical jurisdiction, and is not made dependent upon the law administered by English Courts [32 I A 241=33 C 116 (129-30)=1 C L J 594=9 C W N 938=2 A L J 758=7 Bom L R 876=8 Sar 839=15 M L J 336]

Testamentary succession "Testamentary succession" is that which results from the institution of heir contained in a testament executed in the form prescribed by law

Testamentum A will, a disposition of property, made in contemplation of death.

Testimony.

Testamentum est voluntaris nortrae justa sentia, de eo quod quis post mortem suam fieri velit. A testament is the just expression of our will concerning that which any one wishes done after his death.

Testamentum omne morte consummatum. Every will is completed by death

Testate Having left a will.

Testator (*Lat*) He who makes a will or testament

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam The last will of a testator is to be fulfilled according to his real intention

Testatrix A woman who has left a will

Testatum The witnessing clause of a deed, beginning "Now this indenture witnesseth."

Teste. This is the name given to the concluding clause of a writ, commencing with the word "witness" and expressing the date of its issue (*Ency of the Laws of England*)

Testes ponderantur, non numerantur Witnesses are weighed not counted

Testibus deponentibus in pari numero dignioribus est credendum When the number of witnesses is equal on both sides, the more worthy are to be believed

Testify "Testifying" is making a solemn declaration on oath or affirmation for the purpose of establishing or making proof of some fact

The word "testify" has three definitions (1) To make a statement or declaration in confirmation of some fact, to bear witness (2) To give evidence or testimony in regard to a case depending in a Court or tribunal (3) In law, to make a solemn declaration under oath or affirmation, before a tribunal, Court, Judge, or Magistrate, for the purpose of proving some fact.

Every mode of oral statement under oath or affirmation is embraced by the term "testify"

Testify the whole truth A certificate of an officer to a deposition, stating the deponent was first sworn "to testify the whole truth" is not a sufficient compliance with the statute, requiring the certificate to show that the deponent was sworn "to testify the truth, the whole truth, and nothing but the truth"

Testimoignes ne poent testifie le negative, mes l'affirmative Witnesses cannot testify to a negative, they must testify to an affirmative.

Testimonia ponderanda sunt, non enumeranda Proofs are to be weighed, not numbered

Testimonio A "*testimonio*" is an authentic copy of a deed or other instrument, given to an interested party as evidence of his title, the original of which is left in the public archives

Testimonium clause The clause at the end of an instrument beginning "in witness whereof", etc

Testimony The word "testimony" in its ordinary meaning, means the statement made by a witness under oath

The word "testimony" in its restricted legal sense means a statement made under oath in a legal proceeding, and does not embrace a document or private

writing. But the word "testimony" as often and possibly generally used, embraces more than mere legal statements made under oath in a legal proceeding

The term "testimony" in common language is frequently used synonymously with "evidence" though "testimony", strictly speaking, means only that evidence which comes from living witnesses, who testify orally and is included in the word "evidence" which is a more comprehensive term

The words "EVIDENCE" AND "TESTIMONY" are synonymous in meaning, though evidence includes testimony as well as all other kinds of proof

Testis (*Lat*) Witness

Testis corruptus (*Lat.*) A bribed or corrupt witness

Testis de visu praeponderat aliis (*Lat*) An eye-witness is of more weight than others

Testis incertus (*Lat*) A doubtful witness, a witness who testifies from hearsay

Testis inimicus (*Lat*) An unfriendly witness

Testis juratus (*Lat.*) A sworn witness

Testis nemo in sua causa esse potest. A Latin maxim meaning "No one can be a witness in his own cause."

Testis occulatus unus plus valet quam auriti decem. One eye-witness is worth ten ear-witnesses

Tests de visa praeponderat aliis An eye-witness outweighs others

Tetta-kula (*Karn*) A person who pays taxes, a tenant of the soil

Text-book Manual or book used in giving instruction, or set for study

"A textbook" is a book or manual used in teaching students, containing the principles of a science or any branch of learning (*Webster*), a book to be used as a standard book for a particular branch of study for the use of students

Textbooks on law Says Austin ("Jurisprudence," Vol. 1, p. 37) "Respect for a law writer whose works have gotten reputation may determine the legislator or Judge to adopt his opinions, or to turn the speculative conclusions of a private man into actually binding rules Now till the legislator or Judge impress them with the character of law. . the conclusions are the speculative conclusions of a private or unauthorised writer"

"There is one notion often expressed with regard to works written or revised by authors on the Bench, which seems to me in part at least erroneous, the notion, I mean, that they possess a quasi-judicial authority It is hardly enough remembered how different are the circumstances under which a book is written and a judgment pronounced, or how much the weight and value of the latter are due to the discussions at the Bar which precede the judgment."

"It is to my mind much to be regretted, and it is a regret which I believe every Judge on the bench shares, that textbooks are more and more quoted in Court—I mean of course, text-books by living authors—and some Judges have gone so far as to say that they shall not be quoted" [Kekewich, J, *Union Bank* v *Munster* (1887) L R 37 Ch D 54]

"It is not very often that our leading textbooks are judicially declared to be inaccurate, partly, it may be, because textbook writers generally travel along roads which have been, so to speak, consolidated by the ample weight of statutory and judicial authority, and partly because they forbear, as a rule to ramble along the by paths of speculation"

"Stereotyped rules laid down by judicial writers cannot be accepted as infallible canons of interpretation in these days, when commercial transactions have altered in character, and increased in complexity and there can be no hard and fast rule by which to construe the multiform commercial agreements with which in modern times we have to deal" [Bowen, L J, *Jacobs* v *Credit Lyonnais*, (1884) L.R 12 Q B D 601, 53 L J Q B 159]

"I must treat with reverence everything which Lord Kenyon has said but not everything which text writers have represented him to have said, which he did not say" [Lefroy, C J, in *Perse* v. *Kinneen*, (1859) (Ir Rep) L T Vol 1 (N S) 78]

Textile fabric A "textile fabric" is a fabric which is woven or may be woven, a fabric made by weaving

Thag or Thug (*Mar*) A cheat, a knave, an impostor latterly applied to a robber and assasin of a peculiar class, who sallying forth in a gang and in the characters of wayfarers either on business or pilgrimage fall in with other travellers on the road, and having gained their confidence, take a favourable opportunity of strangling them by throwing their turbans or handkerchiefs round their necks, and then plundering them and burying their bodies it has also been applied to child stealing and robbery (*Wil Gloss*)

Thagi (*H*) The practice of strangling and robbing, the practice of child stealing (Act XVIII, 1837, XVIII, 1839, III, 1848, *Wil Gloss*)

Thak Settlement, a permanent boundary mark. Thakbast, the operation (S, N.W P &c) of laying down the boundaries of villages, mahals, or estates (*Bad -Pow* II 34)

"Thakur" defined *See also* thakur or jagirdar, Act 21, 1881, S 3

THAKUR A baron or subordinate chief under a Raja

"Thakur" means also taluqdar, jagirdar and kasbati, and such other classes of holders of estates as the Local Government may, with the previous sanction of the Governor-General in Council, declare to be thakurs for the purposes of this Act. [Bom. Act XXI of 1881, S 3.]

THAKUR (*H*) An idol, a deity any individual entitled to reverence or respect, whence it is generally applied to persons of rank and authority in different parts of India, as a lord, a chief, a master, a spiritual guide, the head of a tribe, the head of a village, and the like In the west it is commonly given to the great feudal nobles of Rajputana, in the Dakhan it is borne by the headmen of the Bhils and other wild races and is there said to signify also a particular

Thakurai

tribe inhabiting the forest, in Upper India it frequently denotes the individual members of the village communities of Brahmanical or Rajput descent In Bengal it is equivalent as a term of address (as) Sir, Master, Your worship, and is a family name indicating respectable and Brahminical origin as Dwarakanath Thakur (*Wil Gloss*)

Thakurai (*H*) The rank or office of a chief or Thakur. (*Wil Gloss*)

Thakurani (*H*) A goddess, a lady, a mistress, the wife of a spiritual preceptor, the wife of a Rajput chief, and the like, in addressing a female it is equivalent to Madam, Your ladyship (*Wil Gloss*)

Thakurbari (Place where family idol is located) Not liable to partition under Hindu law (33 C W.N 1042)

Thakurdas (Bo, said to mean 'lordling'), title of certain petty chiefships (*Bad -Pow* III, 282)

Thakurdwari (*H*) A temple, a building in which the village idols are kept (*Wil Gloss*)

Thakurhajhi, (*Beng*) A wife's sister, a husband's sister, that is to say the husband calls his wife's sisters by the name, the daughter of a spiritual preceptor (*Wil Gloss*)

Takuriya. The title of a subordinate Revenue Officer in Assam charged with the collections of a subdivision of a paragana comprising two or three villages (*Wil Gloss*)

Thakur-seva (*H*) The service of an idol, applied to a grant of revenue for maintaining the worship of an idol (*Wil Gloss*)

Thal A sandy desert (Pj) (Sindh), low land between sandhills where a little moisture collects (*Bad Pow.* III 340.)

Thalapattam (*Mal*) Simple lease for a year where the tenant advances the rent (*Sundaram Iyer's Malabar Law.*)

Thalwa The words "Kashtkar" and "Thalwa" in the wajib-ul-arz must be taken to mean respectively a tenant of the village and a person who is not such a tenant (97 I C 1001=22 N L R 173=A I R 1927 Nag 23.)

Thalwai or thalkari (*Bol*) A (former) local term for a co-sharer in villages (*Mirasidar of old Reports, Pad Pow*, 3, 257)

Thalweg A German word, meaning an imaginary line drawn along the middle of a river (*Ency. of the Laws of England*)

The "thalweg" is the middle of the deepest channel of a river.

"Than" On a construction of the document in this case, the word "than" was held to mean "you" and that the document was not a pronote (10 I. C. 669=9 M L T 281)

Thana (*Hindi*) A station, especially the headquarters of a taluk, also very commonly a police station.

A division of a district or a tahsil under the police administration.

Thappadar

THANA (*H*) A station, a military post, under the native Governments, it was a military post or garrison, a place sometimes with a small fort where a petty officer, with a small irregular force, was posted to protect the country, preserve the peace, and to aid in making the collections, under the present system it properly applies, in Bengal, to the police jurisdiction into which the Zilas were divided, each Thana averaging about 20 miles square, under a daroga and establishment, in the Upper Provinces the site of Thana is regulated by considerations of area and populations, and generally corresponds with the divisions of a Pargana, its common use denotes any police station under a daroga or a subordinate officer (*Wil Gloss*)

Thanadar (*Per*) An officer in charge of a Thana

Thanadari This is the name given to a system by which lands belonging to petty native states under Chiefs incapable of effective control, are formed into circles and placed under the magisteral jurisdiction of special thanadars

THANADARI (*H*) The officer or jurisdiction of a Thanadar (*Wil Gloss*)

Police stations a cess for defraying the expense of their establishment

Thanadari lands (*Ben*) Formerly allowed rev. free to Zamindars to maintain police. (*Bad Pow* I, 429)

Thanaka (or Thanakha) A document purporting to be a simple bond contained a clause. "I and my heirs with all my property movable and immovable as 'thanakha' shall be liable", the Court held, that this could not be regarded as apt language to create a mortgage or a charge (13 M I T 327=1913 M W.N 335=24 M L J 479=19 I C 221

Thanaranangal The word Thanaranangal in a Tamil will can only mean outstanding and liabilities. (86 I C 737=A I R 1925 Mad 1175)

Thandalkara A village officer who collects the revenue from individual ryots, under the orders of the Nattanmaikara, and hands over the money to the nottakara, a person employed to collect outstandings

Thane An Anglo-Saxon nobleman.

Thaneship The office or dignity of a thane, the seigniory of a thane

Thani (*i e* sthani) A settled cultivator, old resident tenant (Ben) *Bad Pow*, I, 599. (Orissa), *Ibid*, I, 571

Thanks-offering Gift made in gratitude (especially to some charity, etc) after recovery from illness or escape from danger, ascribed to providence.

Thansa or tanka (*Jhansi*) A lump rent on an entire holding (*Bad Pow* II, 189)

Thappa (*Commonly tappa*) A seal, a stamp. (*Bad Pow* III, 343)

Thappadar, (*Sindh*) A State officer in a village who supervised the State grain-revenue payments and put his 'seal' on the grain bags. (*Bad Pow* III, 323), (Sindh), modern official of this designation (*Ibid*, III, 343.)

Tharao.

Tharao (*Mal*) Fixed assessment of 1819 (Kan) (*Sundaram Iyer's Malabar Law*)

Settlement, determination, fixing or determining (*Wil Gloss*)

THARAO (probably thahrao, from (*H*) Thahrana, to fix) An assessment introduced into Kanara (*Bad Pow* III, 150)

Tharao-band (*Mar*) or (*Tharav-band*) A paper of instructions furnished to a native revenue officer on his going to take charge of a district, a document specifying the terms of a settlement or decree, or conveying instructions for their being carried into effect. (*Wil Gloss, Bad Pow* III, 313)

Thathameda (*U B*) The 'tithe' or capitation tax (*Bad Pow.* III, 578)

Thavanai Per *Venkatasubba Rao, J*—The expression "*Thavanai*" has various meanings in various lines of business It means period of credit Evidence is admissible under S 98 of the Evidence Act to show the meaning it bears in the particular mercantile transaction in which it was used When any such case is before the Court, the Court is bound to inform its mind not only by reference to well-known dictionaries but also by evidence of the meaning ordinarily given to it amongst those who use it Per *Jackson, J*—*Thavanai* is a colourless expression meaning only period Proof *aliunde* is necessary for showing that it was used in a particular sense. (85 I.C 299=48 Mad 275=20 M L W 981=A I R 1925 Mad 161=47 M L J 844)

"Thavazhi" Ownership of property is not essential to constitute thavazhi under the Cochin Nair Act (5 Coch L J 234)

The definition of 'thavazhi' in the Cochin Nair Act does not involve the conception of joint ownership of any property by that group of individuals (5 Coch L.J 203)

The "The" is the word used before nouns, with a specifying or particularizing effect opposed to the indefinite or generalising force of "a" or "an"

The article "the" directs what particular thing or things we are to take or assume as spoken of It determines what particular thing is meant, that is, what particular thing we are to assume to be meant

Theatre Building for dramatical performance, usually with a stage at one end

Place for dramatic performance, dramatic literature or representation (As to the law governing theatres *See* Hunt, London Local Government, Strong, Dramatic and Musical Law, Williamson, on Licensing, *Ency of the Laws of England*)

A "theatre" is a house for the exhibition of dramatic performances, as tragedies, comedies, and farces, a play house comprehending the stage, the pit, the boxes, galleries, and orchestra Among the ancients it signified an edifice in which spectacles or shows were exhibited for the amusement of spectators, as its derivation from the Greek verb "to see" plainly shows.

Every edifice used for the purpose of dramatic or operatic or other representations, plays or performances, for admission to which entrance money is received, not including halls rented or used occasionally for concerts or theatrical representations, is regarded as a "theatre"

Theatre of war Scene or locality of the war

Theatrical performance. A musical performance is not a theatrical, nor a dramatic performance within the meaning of anAct prohibiting any theatrical or dramatic performance of any kind or description on Sunday

"Theft" defined, Act 45, 1860, S 378

THEFT (*Furtum*) An unlawful felonious taking away of another man's movable and personal goods, against the will of the owner (*Tomlins Law Dic.*)

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. (*See* Penal Code, S 378)

Theft-bote Compounding a felony

Their children "Their children" as used in a life policy payable to the wife of the assured, and, in the event that she died before him, then to their children, mean the children common to the assured and his wife

Their death A will devising land to two sons named, "and after their death to their children", meant the death of the survivor, and created a life estate, with remainder to their children

"Their joint and natural lives" A marriage settlement between parties "during their joint and natural lives" means during their joint lives and the life of each of them

Their lives An agreement to pay an annuity to a husband and wife "during their natural lives" binds the party to pay the annuity during the joint lives of the husband and wife and during the life of the survivor

Their part "The art as used in a will devising property to testator's children, and directing that, in the event of the death of any of them, "their part" be given to their children means "the part of such dead child" (*Ame Words and Phrases*)

Theka Where a document is otherwise an ordinary agricultural lease the mere use of the word "theka" does not alter it [15 R D 212=12 L R 55 (Rev)]

THEKA OR THIKA A contract or farm (*Bad Pow* I 546.)

"THEKA" OF FISHERY Lease or licence *See* 25 I C 666

Thekadar, Lit, Contractor, a lessee of village

THEKADAR, a Revenue lessee (Sambalpur, C P, and elsewhere). (*Bad Pow* II 379)

A *thekadar* is a non-occupancy tenant within the provisions of the *Agra Tenancy Act* (II of 1901) (6 A.L J 619=2 I C 552)

Where the lessee is given the mere possession of certain plots of land by a permanent lease and the collection of the rents and profits is not the subject of the lease, the lessee not being a lessee of proprietary

Thekadar

Thekadar Mafuja

rights in the land is not a thekadar within the meaning of S 199 of the Tenancy Act I L R (1937) A. 588=1937 R D 425=171 I C 203=1937 A.L R 813=1937 A L J 656=1937 A W R 699=A I R 1937 All 561

Thekadar Mafuja Thekadar with protected status

"**Thekadari**" defined U P Act 2, 1901, S. 4 (6).

Then The word "then" means, when used as a word of reasoning, "in that event", or ' in that case", or "therefore" It also means "at that time" or "immediately afterwards"

"THEN", meaning of *See* 33 C 68=9 C W N 1046 =2 C L J 241=2 Cr L J. 618

The word "then" as an adverb means at that time, referring to a time specified, either past or future. It has no power in itself to fix a time

Then and there "Then and there" as used in indictments specifying the time and place of the commission of the crime, is sufficient as the allegation that all the acts alleged in the indictment occurred at such time "It is undoubtedly a rule in criminal pleadings that every material fact must be alleged with the venue and be charged as done at some time and place This is usually done after the time and place have been definitely stated, by the words 'then and there'

"THEN AND there" as used in the concluding part of an indictment against one for being present and abetting a murder, refers to the act which caused the death, and not to the time and place of the death.

The words "then and there" are relative, and refer to some foregone averment, and their meaning is to be determined by the allegation to which they refer If that is a single act done, and it then avers that "then and there" another fact occurred, it necessarily imports that the two acts were precisely coexistent, and the word then refers to the precise time

"THEN AND THERE" as used in an indictment for murder, alleging an assault on *R* on a certain day and that it resulted in a mortal wound, "of which said mortal wound the said *R* then and there died" will be construed to mean "instantly".

"Then and there" as used in an indictment, means the time and place last previously mentioned therein

The use of the words "then and there" in an indictment, after several distinct times have been stated in the indictment, is bad for uncertainty (*Ame Words and Phrases.*)

Then being Where a testator directed his wife's debts and funeral expenses to be paid out of the estate, then gave the rest "then being" unto trustees, by the phrase "then being" the testator meant that which the trustees would hold after the payment of the wife's debts and funeral expenses.

Then in force "Then in force" as used in Act providing that the provisions of the Act should not apply to any actions commenced nor to any cases where the rights of action should have accrued before the time when the Act took effect, but that the same should remain subject to the "laws then in force" means the laws in force when the statute was passed and has no reference to the laws in force at the time of the accrual of a cause of action

Theological education. A will by which testatrix provided for the payment of the expenses of a "collegiate and theological education" for certain of her relatives in case they chose to take advantage of such provisions, means "such an academic and theological training as is practical and suitable to prepare a person to be a minister of the gospel, and it would be improper to construe the phrase disjunctively so as to permit a collegiate education not followed by a theological course"

Theology The science treating of God, His nature and attributes, His relation to Man and the Universe

Theory, speculation Theory is the fruit of reflection, it serves the purposes of science, practice will be incomplete when the theory is false speculation belongs more to the imagination, it has therefore less to do with realities A general who is so only in theory will acquit himself miserably in the field, a religionist who is so only in speculation will make a wretched Christian

Theosophy Any speculative system, basing knowledge of nature on intuitional or traditional knowledge of God

Therapy "Therapy" is the treatment of disease; and surgery is therapy of a distinctly operative kind

There "There" as used alone, is a word of very uncertain meaning It must in some way be confined as to locality before it conveys any definite idea

Thereabouts It was held that, as "thereabouts" is defined as nearly, or near that number, degree or quantity

"Of the measurement of 180 tons to 200 tons or thereabout" as used in a charterparty in which plaintiff was described as "of the ship A of the measurement of 180 tons to 200 tons or thereabout", was a matter of description only, and did not amount to a warranty

Where a lot of land is conveyed by boundaries and it is stated in the conveyance that the contract contains a certain number of acres or "thereabouts", the whole tract will pass, although it contains more than the specified number of acres

Thereafter "Thereafter' as used in a note promising to pay on demand and after a certain date, and interest at a certain rate thereafter, limits the interest period, for, without it, interest would have run from the date of the note

"THEREAFTER", meaning of *See* 166 I C 955=9 R P 358=3 B R. 2?6=A.I R 1937 Pat. 48.

There be, and hereby is granted. "There be, and hereby is granted" as used in an Act which declares that there be, and hereby is, granted certain lands, etc, should be construed as words which import a grant *in praesenti*, and not in future, or the promise of a grant

Therefore Where the record of a default of defendants proceeds immediately, "Therefore it is Considered by the Court" etc., the word "therefore'

Therein.

in such connection, is defined in Worcester's Dictionary as "for the reason, consequently"—and in the Webster's dictionary, "for that, for that or this reason, referring to something previously stated"

THEREFORE, CONSEQUENTLY, ACCORDINGLY Therefore is employed particularly in abstract reasoning, consequently is employed either in reasoning or in the narrative style, accordingly is used principally in the narrative style Young persons are perpetually liable to fall into error through inexperience, they ought therefore the more willingly to submit themselves to the guidance of those who can direct them, the French nation is reduced to a state of moral anarchy, consequently nothing but time and good government can bring the people back to the use of their sober senses every preparation was made, and every precaution was taken, accordingly at the fixed hour they proceeded to the place of destination

Therein As used in a notice of a motion for an order vacating and setting aside the judgment entered in said action and "all proceedings therein" the quoted phrase refers to all proceedings in the action and not merely to proceedings in pursuance of or subsequent to the judgment

There is hereby appropriated The phrase "there is hereby appropriated the sum" etc, is customarily used in bills appropriating money for the payment of salary and other expenses of government

Thereof In considering an Act providing that "no person shall be allowed to be a manufacturer of any spirituous or intoxicating liquors for sale, or a common seller thereof, without being duly appointed or authorised" in answer to the argument that "thereof" means all liquors manufactured by the defendant, the Court said "This is ingenious but we think not sound Taking it in strict grammatical construction, we cannot see how 'thereof' can include 'manufactured by himself' The section expressed more fully, would be thus 'No person shall be allowed to be a manufacturer of any spirituous or intoxicating liquors for sale, or a common seller of spirituous or intoxicating liquors.' The article is not drawn with the highest degree of skill and precision These two offences are brought together, probably because they are punishable in the same manner"

Theretofore The word "theretofore" as used in an indictment alleging that defendant on a certain date, having theretofore fraudulently devised a scheme to defraud, etc, means "before then"

Thereunto belonging These words are, in common speech of different import, according to the subject of which they are spoken If we speak of a farm or a field, with reference to the ownership, we say it belongs to such a one, meaning thereby, that it is the property of that person, if with reference to any estate of a particular name, we say it belongs to such an estate, as to the Britton Ferry estate, meaning that it is parcel of that estate, if with reference to its locality we say it belongs to such a parish or township meaning that it is statute in or part of that manor, in the ordinary and popular sense of the word "part", and not in the strictly legal sense as part of the demesnes of that manor, or as holder of the manor, or of the lord thereof.

They.

Thereupon. Where a statute directs that a thing shall 'thereupon" be done, this means that the particular thing is to be done forthwith or immediately [*Vaughan* v *Watt*, (1840) 9 L J Ex 272]

The word "thereupon' in S 89, Transfer of Property Act, relates to the actual sale and the distribution of the proceeds and not merely to the passing of the order absolute for sale (31 C 863=8 C W.N. 684)

THEREUPON Webster defines "thereupon" to mean upon this, or that, and sometimes immediately, at once, without delay, and hence where a case stated that parties in support of their motions introduced affidavits and thereupon the Court made an order, etc, it sufficiently appeared that the Court's order was based on the affidavits, and nothing else

The word "thereupon" means without delay or lapse of time

"Thereupon" is defined as meaning (1) upon that, (2) in consequence of that, (3) immediately after that and without delay.

"Thereupon and thereby" See *Atkinson* v. *Raleigh*, (1842) 3 Q B. 79

Therewith The word "therewith" according to the latest standard dictionaries of the English language is the equivalent in meaning of the words "with that or this", or "at the same time"

Thermostat A thermostat is a self-acting apparatus for the regulation of temperature

Thesaurus (*Lat*) Treasure, money hidden or buried, Treasury, Exchequer

Thesaurus absconditus Treasure hidden or buried

Thesaurus inventus Treasure found, treasure trove

Thesaurus inventus est vetus depositio pecuniae, etc, cujus non extat modo memoria, adeo ut jam dominum non habeat Treasure trove is an ancient holding of money etc., of which no recollection exists, so that it now has no owner

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum Treasure does not belong to the king, unless no one knows who hid it

These "These" is the plural of "this' and opposed to "those", and relates to the persons or things nearest or last-mentioned

"These Presents" A clause in a mortgage empowered a solicitor mortgagee to recover his charges "in or about these presents" "These presents" were construed as meaning "this deed" not the property in question [*Field* v *Hopkins*, (1890) 44 Ch D 524, 529]

They An agreement by two or more persons that they will desist from and discontinue their business is not shown to have been violated by an allegation that one of them has carried on the business, since the word "they" as used in the agreement, would thus be construed to mean that they and each of them would desist from, etc, which construction will not be given in the cases restricting trade.

The word "they" may refer to a corporation.

Thhat.

The relative pronoun 'they" as used in the Penal Code, includes females as well as males, unless there is some express declaration to the contrary

Thhat (*local, Kumaon*) The right in land

Thhatwan A proprietor (*Bad Pow*, II, 313.)

"Thicadar" The term "thicadar" has a special significance in Palamau (8 Pat 258=116 I C 781= A I R 1929 Pat 208)

Thicka doamai (or thhica dwami) tenure. History and incidents of Thicka doamai tenure in Chota Nagpur traced (7 Pat 752=111 I C 675=A I R 1928 Pat 451)

The name 'thica dwami' in the record-of-rights in Chota Nagpur is given to a cultivating tenancy which partakes largely in its origin and development of a raiyati character and is in fact a raiyati tenancy which has grown into a tenure (18 Pat L T 575= 171 I C 115=A I R 1937 Pat 463.

Thief. "Thieves" in law, as in common parlance, means those who have committed larceny.

Simply to call a man a thief is *prima facie* actionable, as it imputes felony but if it appears that the word was used as a mere term of abuse, and that there was in point of fact no imputation of actual theft conveyed by it, there is no cause of action Thus, where the defendant said of the plaintiff, "He is a damned thief, and so was his father before him", and it appears that the words were uttered in the heat of anger, during a conversation respecting plaintiff's refusal to pay over some money which he received as executor, Lord Ellenborough directed a non-suit saying that it was manifest from the whole conversation that the words as used did not impute felony

To call a man a "thief" is not necessarily actionable as importing a felony, when it is apparent, from the circumstances under which the words are spoken, that they are not intended nor understood to be used in such sense

Thik (*H*) Hire, fare, fixed price, contract for work, a farm of revenues, a contract by which a person engages to pay a fixed amount of revenue on an estate or district, on being allowed to collect the revenue payable to the proprietor or the state, a farm of cultivation, a lease, the contract for paying a money rent for the lands he cultivates, a farm of salt works paying either money or a given return of salt, the revenue accruing from such leases or farms also a mortgage in which the person who advances money on landed security occupies the land and sets off the produce against the amount of interest (*Wil Gloss*)

'Thika and mokra' Thika indicates creation of tenancy and mokra means perpetual rent (36 C L J 90=A.I R 1922 Cal 123)

Thikabandi (*H*) A settlement by farm or contract, a farm or lease, the farm held on lease in the Dakhin, a stipulated rent on each field without referrence to its extent (*Wil Gloss*)

Thika-bhet (*H*) Extra imposts, personal service, presents, or gratuities of money. (*Wil Gloss*)

Thing required or authorised by the Act

Thika dar, (or Thicadar) (*H*) A farmer, a lease holder, a middleman, one who receives the rents from the cultivators and pays a stipulated amount to the proprietor one who farms a licence for the sale of spirituous liquors or the like (*Wil. Gloss*)

Thika mokra In a document which purported to state that the tenant would pay *'thika mokra'* for authority to cultivate from generation to generation the word *'Thika'* was held to be used to indicate the creation of tenancy and the word *'mokra'* written by the scribe (which is in reality Mokarari) to indicate that the rent was fixed in perpetuity (64 I C 774=35 C L J 90=A I R 1922 Cal 123)

The word "thicca" is used to indicate the creation of a tenancy and the word *"mokra"* is in reality *"mokurrari"* indicating that the rent was fixed in perpetuity Consequently, if these two words are taken togather, there is no escape for the inference that the rent was fixed in perpetuity, in other words, that the tenure was not only *maurasi* but *mokurrari* (72 I C 1047=A I R 1924 Cal 361 *See also* 152 I.C 540=A I.R. 1934 Cal 782)

Thika-otbandi (*Beng*) Lease of land at a low or estimated rate (*Wil Gloss*)

Thika-patta (*H*) A document conveying a lease or farm

Thin "Thin" is defined as slender, slight or flimsy, so that an instruction that "I think it is very thin case" expresses an opinion as to the merits of the case detrimental to the plaintiff

Thing The word "thing' is of extensive signification, and in common parlance may intend all matters of substance, in contradistinction to person

An admission on a point of law is not an admission of a "thing" so as to make the admission matter of estoppel within the meaning of S 115 of the Evidence Act (21 A 285=19 A W N 66)

Thing adjudged "Thing adjudged" is said of that which has been decided by a final judgment, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for appealing has elapsed, or because it has been confirmed on the appeal

"Thing authorised by the Act" The institution of a suit for enhancement of rent is a thing authorised by the Act within the meaning of S 188 of the Bengal Tenancy Act in the case of tenure-holders as well as in the case of occupancy ryots [38 I A 1=38 C 270 (276-7)=13 C L J 51=15 C W N 74=9 M.L.T 1=(1911) 2 M W N 119=13 Bom L R 1=8 A L J 1 =8 I C. 842=21 M L J 92]

"Thing done. An acknowledgment of liability only extends the period of limitation within which a suit must be brought and does not confer title, and is not a "thing done" within the meaning of S 6 of the General Clauses Act (40 I A 74=35 A 227=13 M. L T 437=1913 M W N 470=17 C L.J 488=17 C. W N 605=11 A I. J 389=13 Bom L R. 489=19 I C. 291=25 M L J 131)

"Thing required or authorised by Act" *See* 38 I A 1=38 C 270 (277)=13 C L J 51=15 C W N 74=9 M L T 1=(1911) 2 M.W N. 119=13 Bom.L R. 1=8 A L J 1=8 I.C 842=21 M.L J 92.

Things.

"**Things**" [*In Evidence Act (I of 1872), S 115*] Cover estoppel in connection with representation only of "things" That is, facts, and not also representations in law [13 I C 482 (485)]

A power-of-attorney, contained among other powers a power to sell and convert into money "the goods, effects and things belonging to the principal", *held* that the word 'things' included a mortgage and that there was nothing in the deed which suggested that the "thing" is to be limited to a chose in possession but that it included a chose-in-action also and that the mortgages were capable of being transferred by the attorney [(1904) 2 Ch. 219, R) 13 C.W N 1190 *See also* 3 I C 859 (860)]

Things common "Things common" include "those things which belong to birds, beasts and all living creatures, as being able to make use of them, as well as to man Such were the air, the water from heaven, the sea and its shore. Any one might navigate on the sea and on its shore, where also he might build a cottage or a house for shelter."

Domat defines "things common to all" to be "the heavens, the stars, the light, the air and the sea"

The "things common to mankind by the law of nature" are said by Justinian to be "the air, running water, the sea and consequently the shores of the sea"

Things personal "Things personal" are said to "not only include things movable, but also something more," the whole of which is comprehended under the general name of 'Chattels'

THINGS PERSONAL Things moveable (as) money, goods and the like

"Things personal" are defined by Blackstone as things movable, or which may be carried about with and attendant on a man's person

Things public Rovers, ports, harbours and highroads were among things public Not only might the inhabitants of a place make use of things public, but also strangers could do so

"Things public" are those the property of which is vested in the whole nation and the use of which is allowed to all the members of the nation Of this kind, are navigable rivers, seaports, roadsteads and harbours, highways and the beds of rivers as long as the same are covered with water

Things real. "Things real" are such things as are permanent, fixed, and immovable and which cannot be carried out of place, as lands and tenements

"Things real" are defined in Blackstone as lands, tenements and hereditaments taking hereditaments as comprising every species of things real or which may be inheritable, which consists first, of corporeal hereditaments as lands and tenements, and second, of incorporeal hereditaments, as advowsons, rents, offices, etc

THINGS RLAI Things permanent, immovable (as) lands, tenements

"**Things** in Action' is when a man hath cause, or may bring an action, for some duty due to him and because that they are things whereof a man is not possessed but for recovery of them is driven to his Action, they are called 'Things in Action." (*Termes de la Ley*)

Think To hold or form an opinion, to judge, to consider, to believe

TO THINK, REFLECT, PONDER, MUSE The man thinks on the days of his childhood, and wishes them back, the child thinks on the time when he shall be a man, and is impatient until it is come the man reflects on his past follies, and tries to profit by experience, he ponders on any serious concern that affects his destiny, and muses on the happy events of his childhood

"Think" means believe, consider or esteem As used by a jury in a finding of fact it sufficiently expresses the finding

"We think not" as used by jurors in answering questions in a special verdict submitted to them is equivalent to "No"

"THINK" as used in the testimony of a witness testifying from recollection, in which he said, "I think," etc, means according to Webster, "to recollect or call to mind", and does not make such testimony illegal

TO THINK, BELIEVE I think from what I can recollect that such and such were the words, is a vague mode of speech, not admissible in a Court of law as positive evidence the natural question which follows upon this is, do you firmly believe it? to which whoever can answer in the affirmative, with the appearance of sincerity, must be admitted as a testimony Hence it arises that the word 'think' can only be employed in matters that require but little thought in order to come to a conclusion, and believe is applicable to things that must be admitted only on substantial evidence

Think best A trust deed authorised the trustee to sell the premises "entire without division, or in parcels, as he may think best." *Held*, that such provision did not give to the trustee the right to sell the premises according to his arbitrary discretion, without regard to the benefits to be derived on the sale in another manner than that chosen, since the power given by its very terms implied that the trustee assumed the duty of thinking on the subject, and was obliged to adopt that course which he should think would be best to secure a good price The clause does not mean that the trustee may do as he pleases, or that he may do that which would be most convenient for him, and hence such clause did not deprive the owner from insisting that it was the duty of the trustee to offer the property in parcels, and when it is shown that a sale in parcels would have been more advantageous, and that the trustee was requested to so offer the property, a sale *en masse* would be set aside

Think fit. A "power to appoint a fund in such portions as a party shall think fit" implies that he may apportion it out in such manner as he pleases

THINK FIT The donee of a power was authorised to grant leases "with or without fine, and rendering such rents and services as he should think fit" This was held to authorise the granting of a lease in which no rent was reserved [*Talbot* v *Tipper*, (1695) Skin 427]

Think proper "Think proper" as used in a will in which testator directed his executors to sell his

Third class paper

real estate "in such manner as they may think proper", are entirely without force or efficacy, since, had the phrase been omitted, the executors would have been bound to exercise the same discretion

A bond for the plaintiff's maintenance, which required the obligor to furnish to the obligee money necessary for him to spend "whenever he thinks proper" to visit his friends, means that whenever, in the honest and fair exercise of his judgment the obligee thought proper to make such visits the obligor was bound to furnish money but not if exercised wantonly or capriciously

Third class paper. Bills and other negotiable securities, the responsibility for payment of which belongs to persons or firms of inferior standing

Third party The phrase is used to introduce and denote any one, into a scene already occupied by two in a definite relation to one another, as principal and agent, guardian and ward, attorney and client

Third person The words "third person" include all who are not parties to the obligation or transaction concerning which the phrase is used

Third reading. The final reading of a Bill in Parliament or other Legislative Assembly before it is passed into law

Thirteen superstition There is a superstition that thirteen is an unlucky number—especially that of a company at table

"Thirtieth of the month" Where according to the terms of a compromise between the parties, a certain sum was agreed to be deposited in Court on the 30th of a month in ignorance of the month containing only 29 days and the deposit was made on the 1st of next month *Held*, that the deposit is in compliance with the terms (45 C L J 117=97 I C 313=A I R 1926 Cal 1232)

Thirty days Where a document was to be filed within "thirty days" after the ajournment of Court, and the last day fell on Sunday, the filing on the next day, Monday, will be construed to be a filing within the time prescribed

Where thirty days' notice of a sale is required to be published previous to the day of the sale, the rule is to exclude the day of publication and include the day of sale

This When "this" and "that" refer to different things, before expressed, "this" refers to the thing last-mentioned, and "that" to the thing first-mentioned

This day "This day" as used in a guaranty stating that, in consideration of "your having this day advanced to our client a certain sum", the guarantors undertake to pay the same, may mean "something which has been done or which is to be done this day", and parol evidence is admissible to explain its meaning.

This is to certify "This is to certify", as used in the commencement of a deed, is equivalent to "All those to whom these presents shall come"

Thread of a stream

"This section"—meaning of. (31 S L R 11=9 R. S 220=168 I C 55=A I R 1937 Sind 84)

Thittu (*Mal*) Pollution (*Sundaram Iyer's Malabar Law.*)

THITTU (*Mal*) A writ from a superior to an inferior, *e g*, an adima grant (*Sundaram Iyer's Malabar Law*)

Thodu panayom (*Mal*) Simple mortgage. (*Sundaram Iyer's Malabar Law*)

Thok Subdivision of a patti, again divided into 'beri' Sometimes the Thok is the major division, above, not below, the patti (N W P.) [*Bad Pow.* I, 159, II, 147, 8]

THOK (*C P*) Poor land rated (Maratha times) at a fixed low or nominal value (*Bad Pow* II, 376)

Thok-dar Aead of a group of lands (*Bad Pow.*)

Thora (*Mal.*) The unit of land measure

Thoroughfare A "thoroughfare", Webster says, is "a passage through", a passage from one street or opening to another

The term "thoroughfare" in its ordinary sense, cannot be applied to a road that has no outlet at one end thereof

Thoughtful Showing signs of original thought (as) thoughtful article in a newspaper

THOUGHTFUL, CONSIDERATE, DELIBERATE He who is thoughtful does not forget his duty, he who is considerate pauses, and considers properly what is his duty, he who deliberates considers deliberately. It is a recommendation to a subordinate person to be thoughtful in doing what is wished of him it is the recommendation of a confidential person to be considerate, as he has often to judge according to his own discretion, it is the recommendation of a person who is acting for himself in critical matters to be deliberate

Thousand The term "thousand brick", within the meaning of a contract for the delivery of brick at so much per thousand, must be taken in its ordinary sense, in the absence of evidence of custom showing a particular meaning, but evidence is admissible that the term by custom means so many brick, to be ascertained, not by actual count, but by the measurement of the walls in which the bricks are laid

Under certain conditions, parol evidence is admissible of a custom showing that the term "a thousand" means 1200

Thread of a stream The thread of a stream is the middle line of a channel, that is, of the hollow bed of running water, when the water is at its ordinary stages

The thread of a stream is the line midway between the banks at the ordinary stage of water, without regard to the channel, or the lowest and deepest part of the stream.

The phrase 'the middle of the river" and "the middle of the main channel" when applied to rivers as boundaries between states, mean the centre line of the main channel, or, as it is most frequently expressed the "thread of the stream"

Threat

Threat A threat in criminal law is a menace or declaration of one's purpose or intention to work injury to the person, property or rights of another

Whatever was once thought upon the subject, it is now well se tled that mere threats, in words not written, are not an offence at common law By statute, however, it is sometimes made a crime to threaten another in a manner to amount to distui bance of the public peace

"Threat" does not necesarily require that violent language be employed, but a threat may be communicated by signs or actions as fully as by word of mouth

Where striking employees had been enjoined from interfering with other employees by the use of threats or intimidation, a simple request to do or not to do a thing made by one or more of a body of strikers under circumstances calculated to convey a threatening intimidation with a design to hinder or obstruct employees in the performance of their duties, is a direct threat and intimidation, and will be punished as such

Mere vulgar and abusive epithets do not constitute "threats"

Threat, menace We may be threatened with either small or great evils, but we are menaced only with great evils One individual threatens to strike another, a general menaces the enemy with an attack We are menaced by persons only a person is threatened with a look, he is menaced with a prosecution by his adversary

A threat "is any menace of such a nature and extent as to unse tle the mind of the person on whom it operates and to take away from his acts that free, voluntary action which alone constitutes consent"

Threaten Seem to impend evil (as) threaten person with penalty or prosecution or punishment

Throne Chair of State for sovereign or King or Bishop

Through Between distant or important points, without regard to intervening spaces (as) through journey, through passenger, through traffic, through train, etc

"Through" does not always mean from end to end or from side to side, but frequently means simply within

Through contract A "through contract" as used with reference to railroad contracts for the shipment of goods, is a contract made by the carrier to whom the goods are originally delivered agreeing that the goods shall be transported to their destination, such destination being beyond the terminus of its own road and requiring the service of one or more connecting lines "Such a contract is more for the convenience of shippers than carriers. It enables property to be transported over long routes composed of many distinct companies and lines, with great safety and dispatch, and without necessity of employing any intermediate agents other than the carriers themselves It adds to the public convenience to have such contracts entered into and carried out

"Through traffic", defined, Act 9, 1890, S. 3 (12)

Tide

"THROUGH TRAFFIC", means traffic which is carried over the railways of two or more railway administrations [Act IX of 1890 (Railways), S 3, cl (12)]

"Thug" (*See* Thug) Defined, Act 45, 1860, S 310

Whoever at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a Thug (Penal Code, S 310)

Thuggery Practices of the Thugs

Thugyi (or thoogyee) (*Burma*) An officer having charge of a revenue circle (*Bad Pow* III, 527)

Thula (or tula) A subdivision of land, a minor share in a joint-village (*Bad Pow* I, 159)

"Thundu varam" —Meaning of *See* 1 L.W 41= 23 I C 113

Thuringian Code One of the barbarian codes.

"Thus enforce his rights" These words in Contract Act (IX of 1872), S 28, mean the enforcement "by the usual legal proceedings in the ordinary tribunals" [21 I C 694 (697)]

Thusilpanom (*Mal*) Fee for the writer of the renewal deed (*Sundaram Iyer's Malabar Law*)

"Ticket", defined Act 9, 1890, S 3 (16)

TICKET Card or paper securing admission to its holder (as) in a theatre, or railway, or for a lottery, etc

Ticket. Document giving particulars of shares sold and given to a purchaser by his broker

The word "ticket" has no legal or other fixed and determinate meaning There are tickets of various description and for various purposes, such as lottery tickets, playhouse tickets, or admission tickets at public exhibitions or private parties, or to a seat in a stage, or for a passage in a steam-boat, etc.

"Ticket" (in the Railways Act) includes a single ticket, a return ticket and a season ticket [Act IX of 1890 (Railways), S 3 16)]

Tickler A "tickler" or "telltale" is a contrivance to warn railroad brakemen of the proximity of a bridge

Tide Three sorts of tides are recognised by Sir Mathew Hale in De Juris Maris, c 6 They are *First*, high spring tides, which are the fluxes of the sea and those tides which happen at the two equinoxes, but the line embraced within these tides does not belong to the Crown, "for such spring tides overflow ancient meadows and salt marshes, which yet unquestionably belong to the subject" *Secondly*—the spring tides which happen twice every month, at full and change of the moon, and the shoar in question is by some opinion not denominated by these tides neither, but the lands overflowed by these fluxes ordinarily belong to the subject *prima facie*, unless the King hath a prescription to the contrary. And the reason seems to be because for the most part the lands covered with these fluxes are dry and maniorable, for at other tides the sea doth not cover them.

Tide lands.

Thirdly.—Ordinary tides, or nepe tides, which happen between the full and change of the moon, and this is that which is properly *littus maris*, sometimes called '*marettum*', sometime '*warrettum*'."

Tide lands "The words 'tide lands' in the legislation of California, applies to land covered and uncovered by the ordinary tide, which the state owns by virtue of its sovereignty."

Tide water. "Tide waters" are waters, whether salt or fresh, wherever the ebb and flow of the tide of the sea is felt.

In England the ebb and flow of the tide became the test of the navigability of a stream Other "tide waters", with a few small and unimportant exceptions, meant nothing more than public rivers, as contra-distinguished from private ones, and hence arose the doctrine of admiralty jurisdiction, which was confied to the ebb and flow of the tide—in other words, to public navigable waters.

TIDE WATER A place where the tide in the ordinary course of things ebbs and flows,

Tidal (or Thidal) (*Tam.*) High ground surrounded by water or rice fields.

"Tidal water", defined 57-8, V.,c. 60, S. 742

Tidesman A tidewaiter or custom house officer, who watches on board of merchant ships till the duty on goods be paid, and the ships unladen

Tie The word "tie" as applied to an appointment by election, signifies a state of equality between two or more competitors for the same position A tie is that which is tied It is a knot and where a casting vote is given it is simply to allow him to untie the knot

Tiggadda (*C P*) A survey mark at the meeting place of three villages

Tihan The name of the sub-division of the Khatri caste to which Angad, the second Sikh guru, belonged, the name also of a denomination of Sikhs who specially revere Angad.

Tikara (or tikara) (*C P*) A highlying light soil of uneven surface producing millets only. (*Bad Pow*, II, 429)

Tiled huts are immovable property. (4 C W N. 470)

Tillage "Tillage" means husbandry; the cultivation of the land, particularly by the plough.

"Tillage of the soil." *See* 24 M. 421

"Timber" defined. Act 7, 1878, S. 2, Bur. Act 4, 1902, S. 3 (14), Mad Act 5, 1882, S 2, Reg. 5, 1890, S 2 (6), Reg. 7, 1891, S 3 (3); Reg. 6, 1893, S. 2 (10).

TIMBER. Wood fitted for building, or other such like use, in a legal sense it extends to oak, ash, and elm, etc (*Tomlins Law Dic.*) By this word is meant (in England) great wood, that is to say, trees which serve for building or reparation of houses, such as oak, ash, and elm of the age of twenty years and upwards. (1 Cruise's Digest, 4th ed, Vol. I., p. 116, S. 5, *Ency of the Laws of England.*)

The word "timber" of commerce is squared sticks of wood used in building. The trees from which they were cut became known as "timber trees". The word "timber" may mean wood suitable for building houses or ships, or for use in carpentry, etc ; trees cut and squared, or capable of being squared and cut into beams, rafters, planks, boards, etc; growing trees, yielding wood suitable for constructive uses, trees generally, woods.

The term "timber" as used in commerce refers generally only to large sticks of wood, squared or capable of being squared, for building houses or vessels, and certain trees only having been formerly used for such purposes, namely, the oak, the ash and elm, they alone were recognised as "timber trees", but the numerous uses to which wood has come to be applied and the general employment of all kinds of trees for some valuable purpose has wrought a change in the general acceptation of terms in connection therewith, and, as defined by Webster "timber" is that sort of wood which is proper for buildings, or for tools, utensils, furniture, carriages, fences, ships and the like.

By timber is meant trees fit to be used in building. Bamboos are timber inasmuch as they are used, by the custom of the country, in the building and repairing of the houses (60 I C 521=3 Pat L T 90=6 P L J 127=A I R 1923 Pat 95)

"Timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not. [Act XVI of 1927 (Forest), S 2, Cl (6)]

The words "TIMBER" AND "FOREST PRODUCE" in S 41 are used in the widest sense as given in the definitions to be found in S 2 and not in the narrow and restricted sense [106 I.C. 790=29 Cr.L J. 198= A I R 1928 Lah. 80]

Timber trees. A grant of "timber trees" will not pass fruit trees

STRANDED TIMBER Act VII of 1878 has not the effect of taking away from private owners, and vesting in Government, any rights to drift and stranded timber which they possessed before and at the date of its passing, except in so far as these rights may be affected by their failure to prefer their claims in the manner and within the time prescribed by the Act. The object of the Act is not confiscation, but regulation, and these rights remain as they were, but subject to the important qualification that they can no longer be exercised by proprietors at their own hand and at their own discretion 24 I A 33=24 C. 504 (515)=1 C W.N 249=7 Sar 101.

Time Where a sale or purchase is spoken of in connection with the time, the time meant is that at which the sale takes place in fact, and not that to which its operation is carred back by relation 32 C. 27=31 I.A. 176=8C W N. 786=6 Bom.L.R 754(P C.).

TIME, SEASON We speak of time when the simple idea of time only is to be expressed, as the time of the day, or the time of the year, the season is spoken in reference to some circumstances, the year is divided into four parts, called the seasons, according to the nature of the weather that time is called the season which is suitable for any particular purpose; youth is the season for improvement. It is a matter of necessity to choose the time, it is an affair of wisdom to choose the season.

TIME, TERM, The time given or limited for the performance of an obligation is called its "term",

Time, bargains.

Time bargains. Contracts for the sale of a certain amount of stock at a certain price at a future day, sometimes called puts and refusals

A "time bargain" in the proper sense of the term, is a contract for the purchase of something the amount or value of which cannot be ascertained, to be delivered at a future time, and such a bargain is not necessarily invalid. It is a perfectly legitimate transaction to buy a commodity for future delivery, expecting that it will rise in value, and with the intention of realising a profit by reselling it, and that whether the commodity is a cargo of wheat or other produce, or stock or shares in a joint-stock company. [*Forget* v *Ostigny*, (1895) A C. 318, *Tacker* v. *Hardy* (1878), 4. Q B.D 685]

Time, computation of. The day of an act or statute from which a future time is to be ascertained is to be excluded from the computation. This rule is applicable, not only to contracts, wills and other instruments but to statutes and proceedings under them,

Time immemorial. From time whereof the memory of man runneth not to the contrary.

The term 'time immemorial' has in English a connotation which obviously cannot be applicable to Indian society and circumstances Literally 'time out of mind or memory', formerly was an indefinite time which was by Statute 3 Ed 1 fixed as the beginning of the reign of Richard I (1189) Proof of unknown possession or use of any right since that date made it unnecessary to establish the original grant But in India it is sufficient to adduce evidence from whence the Court may presume that it existed and that at some distant time a grant was made which has not been lost or is incapable of being proved [*See* 137 I C. 881=56 Bom 82=34 Bom.L R 92=A I.R. 1932 Bom 130)

Time of memory (*in English Law*). Time commencing from the beginning of the reign of Richard I

Time of settlement In S 37, of Act XI of 1859, the expression "time of settlement" means a time at which the contract of Government was made (24 C. 887).

Time out of memory Time beyond memory time to which memory does not extend.

Time policy (*In Marine Insurance*) Policy in respect of goods in transit, and limited to a specified period

A time policy as the term is used in the law of marine insurance is a policy on a vessel for any prescribed time which covers the vessel during such time on any voyage she may undertake

A "policy on time" as the term is used in marine insurance, 'insures no specific voyage, but covers any voyage within the prescribed time"

"Time requisite." The expression "time requisite" in S 12 (2) of the Limitation Act does not mean the time actually taken in obtaining a copy of the decree but means the time properly required for such purpose, and does not include time taken unnecessarily by the appellant. In applying this rule, the Court has to consider whether the appellant has exercised reasonable and proper diligence in obtain

Tirkal.

ing a copy of the order appealed against. [I.L R. (1937) Bom 421=167 I C. 664=9 R.B. 331=38 Bom. L R 1281=A I.R 1937 Bom 64]

"TIME REQUISITE" Meaning of. 97 I C. 728

"Any failure in reasonable diligence which produces unnecessary delay at one or more of the several stages in obtaining copy of the order will disentitle an appellant to claim the whole of the time acutually occupied in obtaining the copy The time unnecessarily occupied is not time "requisite" within the meaning of S. 12 of the Limitation Act" [(32 C L J 127, 49 C 999 and 52 C. 342, Ref) 54 C. 481=45 C L J. 553=103 I C. 235 (2)=A.I.R. 1927 Cal 623.]

Timores vani sunt aestimandi qui non cadunt in constantem virum. Fears which do not affect a brave man are vain

Tincture Medicinal solution of a drug,—especially in alcohol

Tingalppanam, (*Mal*) From Dravidian tingal (—the moon) and Dravidian panam (—money) General monthly levy on all classes of the inhabitants One of the contributions levied in Malabar by the Rajas (*Logan's Mal Man*)

Tip. (*Pj*) Kankut (*Bad. Pow* I, 271, note).

Tippali (*Mal*) is the same as Nali, a measure of which 4 go to a Idangali It is supposed that in Malabar a man has enough to eat if he has 1½ Tippalis of rice and ½ Tipali of conjee a day, or 1 Idangali of paddy of 4 Calicut Nalis There are many in a starving condition who get less, and many affluent who eat more (*Logan's Mal Man*)

Tippler A "tippler" is one who sells liquor by the quart or in larger quantities, which liquor is not drunk or intended to be drunk on the premises of the seller

Tippling house or shop "Tippling houses" are common drinking houses, kept for lucre or gain, where all persons may, if they will, resort and drink *ad libitum*

A tippling house is a place where liquor is sold and formerly represented that class of the liquor traffic now filled by saloons and bar-rooms

"Tippling house" has a definite and well-understood meaning in the common law and in common language Though the fact that spirituous liquors are sold on a single occasion in a very small quantity and permitted to be drunk in the house of the vendor, will not constitute the place, a tippling house, yet the frequent repetition of such acts will constitute the place a tippling house according to the common law and common language of the country

Tipstaff (*English law*) A ministerial officer who attends the judges in court and at chambers

Tir or Muri (*Mal*) Transfer of kanom. (*Sun. Jyer's Malabar Law*)

Tirij or Terij (*A*) An abstract, a list of owners and details of their estate (Ben.). (*Bad. Pow.* I, 467)

Tirkal (*Ajmer*) A 'triple' or total famine, *i.e*, of grass, grain and water. (*Bad. Pow.* II, 349)

Tirni

Tirni. Dues charged for grazing in waste land belonging to the state.

TIRNI. (*Pj*) A toll or rate charged per head, on an enumeration of cattle, on paying which, villages can send their cattle to graze in the jungles and waste throughout the tahsil or other defined locality, as the case may be. (*Bad, Powl* II, 546.)

"Tirni" means the dues payable to the Khan of Teri for the time being for the grazing of sheep, goats and camels by the owners of the same in the estates held by the said Khan on istamrari tenure, [Pun Regn. IV of 1902 (Teri), S 2. Cl. (*b*).]

Tirni-Guzar. Paying tirni.

Tirumalpad (*Mal*) A member of a Royal family (*Moore's Malabar Law*)

Tirupani (*Tam*) Temple repair, repair or construction of building dedicated for worship or other religious purposes, a fund for the repairs of temples created by a trifling deduction from each heap of grain at the time of harvest.

Tiruvatira Nyattutala Nyattutala is a period of fourteen days It is in the fourteen days commencing with about the 7th of Mithunam (June) that there must be constant rain for the proper growth of the pepper, the failure of this season may cause a difference of produce of perhaps 25 per cent.

Tirvai (*Mal*) Tax, duty, custom, a cess or impost, a money assessment of revenue on land, or on its produce rate of assessment according to the quality of land money rent [*Wil Gloss* 523. *See also* 52 M 549=57 M L.J 1 (P.C.)]

Tirvai-dittam (*Tam*) Rate of assessment.

Tirvai-jasti. (*Tam*) An additional assessment on inferior land when made to produce crops, usually limited to land of superior quality, as garden crops or those raised from wet or irrigated land.

Tirvaipat (*Tam.*) Land paying a fixed money assessment

Tirwa (*M*) (See *Tirvai*) Rate of assessment, tirwa kami, reduction of assessment

TIRWA is the share of the rents payable to Government and SWAMIBHOGAM the revenue derived from the tenants or occupiers over and above what was necessary to pay the tax. [116 I.C. 601=31 Bom.L.R 830=33 C.W N. 734=30 M L W. 30=56 I A 248=52 Mad 549=1929 M W N. 561=A.I.R. 1929 P.C. 156=57 M.L.J 1 (P.C)]

Tissue The word "tissue" in the trade name of an article as "French tissue" is descriptive of its texture and cannot be appropriated as part of the trade-mark.

Tissue paper. "Tissue paper" as used in Tariff Act includes merchandise imported and invoiced as crepe, or crepe tissue, which according to the finding of the Board of general appraisers, is made in a tissue paper mill, and invoiced, advertised and sold as "tissue". (*Ame. Words and Phrases.*)

Tithes. A certain part of the fruit, or lawful increase of the earth, beasts and men's labour, which in most places and of most things, is the tenth part which by the law hath been given to the Ministers

Title.

of the Gospel in recompense of their attending their office. (*Tomlins Law Dic*)

TITHES. The word tithe means properly a tenth. The legal definition of the term in English law is that it is "A tenth part, or some other thing in lieu thereof, of all the increase by yearly arising forth of the profits of the land and stock or raised by the industry of the parishioner and properly due to the clergy that have the cure of the souls in the parish where they arise" (*Ency of the Laws of England See also* Eagle on Tithes, Shelford on Tithes, Lord Selborne's Ancient Facts and Fictions concerning Churches and Tithes, Edwardes Jones, History of the Law of Tithes in England, Studd's Tithes and Tithe Rent-Charge, Leach, The Tithe Acts, Phillimore's Eccl Law, 2nd ed)

Tithing man A parish officer, a constable. (*Kinney.*)

Titius semper est errare acquitando quam in puniendo, ex parte misericordiae quam ex parte justitiae. It is always safer to err in acquitting than in punishing on the side of mercy, than of strict justice

Title A general head, comprising particulars, as in a claim of right. It is the means whereby an owner possesses his property justly, evidence of ownership.

The word 'Title' includeth a right, but is the more general word Every right is a title though every title is not such a right for which an action lies. (Co. Litt 345) Blackstone defines it to be "The means whereby the owner of lands has the just possession of his property" (2 Comm. c 13, *Tomlins Law Dic*)

"TITLE" is the means whereby a person's right to property is established.

The term "title" in S. 11, C. P Code, refers to the capacity or interest of a party that is to say, whether he sues or is sued for himself, in his own interest or for himself as representing the interest of another or as representing the interest of others along with himself. It has nothing to do with the particular cause of action on which he sues or is sued. (116 I C 738=A I R 1929 All 400)

By title within the meaning of the Tenancy Acts, is meant the nature of a man's title, and not what lands he holds under that title. (16 C. 186)

In a legal acceptation "title" has respect to that which is the subject of ownership, and is that which is the foundation of ownership and with a change of title the right of property and ownership passes.

TITLE AND INTEREST As used in an insurance the terms "interest" and "title" are not synonymous. A mortgagor in possession and a purchaser holding under a deed defectively executed have both of them absolute as well as insurable interests in the property though neither of them has the legal title. "Absolute" is here synonymous with "vested" and is used in contradistinction to "contingent" or "conditional". (*Ame Words and Phrases*)

The expression "title" in the general proposition that, when equities are equal, he that has the legal title will be preferred, includes in its broadest sense all rights capable of being enjoyed and secured under the law. One holding a legal title to lands is certain-

Title by adverse possession.

ly included, but rights amounting to less than the full legal title are equally included with it, and it is not necessary that one should acquire the full legal title to lands to entitle him to the protection of the defence of purchase for valuable considertion without notice of a prior lien

COVENANTS FOR TITLE are the modern equivalents of the warranty of title by which, upon a feoffment, the feoffer either expressly or by implication bound himself to defend the title of his feoffee to the land comprised in the feoffment

Title by adverse possession "Title by adverse possession" is not merely an equitable but a complete legal title The law creates and confers the title arising from adverse possession. It does not flow from a contract between the parties which could be reduced to writing and put on record There is no privity between the possessor and him who is dispossessed, and the right of the former does not result from any act of the latter, but is the effect given by the law to his possession.

Title by descent "Title by descent" is a title by which one person upon the death of another acquires real estate of the latter as his heir at law Property acquired by descent is property which the law, upon the death of the ancestor, casts on the heir.

Title by limitation "Title by limitation" and title by prescription to real estate are practically synonymous.

Title by purchase "Title by purchase" as defined by Blackstone (2 Bl Comm c. 15) includes every mode of acquiring an estate except that of inheritance. It includes the mode of acquiring an estate by devise or will, as well as by other modes of purchase.

Title of an Act The title of an Act is part of the Act and a guide to its right construction

"The title of an Act is a label and not an index. In the interpretation of the constitutional provision that every law shall embrace but one object which shall be embraced in the title, the object of a law must not be confused with its product The object of every law must be singular and be expressed in the title The produce may be as diverse as the object requires and finds its expression in the terms of the enactment only."

"**Title of an affidavit**" embraces its entire heading, that is, the name or style of the Court, as well as the names of the parties.

"**Title**" **to goods and chattels** "means the right to the property and the right to the possession thereof, in short, the ownership thereof".

Title to land is the evidence of his right or of the extent of his interest, the means whereby the owner is enabled to assert or maintain his possession, the right of the owner, considered with reference either to the manner in which it has been acquired or its capacity of being effectually transferred.

"**Title**" **to property** is defined as the means whereby the owner of lands hath the just possession of his property

Title bond, is the name given to an executory contract in writing for the sale of real estate to be afterwards consummated.

To.

TITLE BOND AND DEED FOR LAND. There is a wide difference between a deed for land and a title bond. The one is an evidence of an executive contract, the other is an evidence of an unexecuted contract. The former is evidence that a sale is made, the latter that a sale is to be made The one is a sale, and the other a contract for a sale.

Title deeds The muniments or evidences of ownership of land which therefore pass with the land on a conveyance of the same although not expressly mentioned [*Harrington* v *Price*, (1832) 3 Barm & Adol, 170, 37 R R. 374] The title deeds are incident to the land although not expressly granted to pass with it (*Lord Buckhurst's case* 1 Rep. 1, which is a leading case on title deeds)

'TITLE DEEDS', what are. *See* 18 C W N 898=24 I C. 949 (P C)

"God forbid, that a man should lose his estate by losing his title deeds." [Eyre, C.J., *Bolton* v. *Bishop of Carlisle*, (1793) 2 H B 263]

"No man ought to be so absurd as to make a purchase without looking at the title-deeds, if he is, he must take the consequence of his own negligence." [Ashhurst, J, *Goodtitle* v. *Morgan*, (1787) 1 T R 762]

"Immemorial enjoyment is the most solid of all titles" [Tindal, C J, In the matter of the *Serjeants-at law*, (1840) 6 Bong New Cases, 238, Elphinstone, Introduction to Conveyancing, Hood and Challis, English Conveyancing Acts]

TITLE, DOCUMENT SHOWING. *See* Documents of title

"TITLE", "DOCUMENTS OF TITLE", "INSTRUMENTS OF TITLE" The word "title" in the expressions "documents showing title" and "instruments of title" in Ss 102 and 103 of the Indian Contract Act relates only to the right to receive delivery of the goods to which the document or instrument relates It has nothing to do with ownership. A bill of lading may in this sense be an instrument or document conferring title (35 I C 954=22 C W N. 1182)

Titta (*Mal*) A shoal, a bank, an island of alluvial formation or one from which the water has recently retired

Titular Such in name with the reality (as) Titular Sovereignty.

Titulus est justa causa possidendi id quod nostrum est Title is the just cause of possessing that which is ours.

Tiyan. (*Mal.*) (also *Tiyar*) (*Islander*) A numerous caste below the Nayars whose hereditary profession is toddy drawing. They are said to be immigrants from Ceylon and to have introduced the cocoanut palm into Malabar. (*Moore's Malabar Law*, *Bad. Pow* III, 757)

"**To**" defined. Act 10, 1897, S. 9 (1).

In designating boundaries, the word "to" without the word "inclusive" excludes the object to which the line runs.

The words "FROM", "TO" AND "AT" may be taken inclusively, according to the subject-matter.

'**To BE IN GOOD BEHAVIOUR**' to His Majesty and to all his subjects. *See* 28 P.R. (Cr.) 1910=8 I.C. 383.

To let.

"To let". A distinction must be drawn between the expression "TO LET" and the expression "TO PLY FOR HIRE" though the two expressions are often used together to denote one and the same thing. The implications are different in the two expressions, there can be cases where there may be a letting of a motor vehicle without plying for hire and *vice versa*, *i*, *e*, a motor vehicle may ply for hire, *i.e.*, solicit custom, without its actually being let for hire. (15 Mys. L J 276)

"To that effect" meaning of. *See* A.I R. 1925 Cal 314

To wit Literally to know, a term used to call attention, or to introduce a detailed statement of what has been mentioned generally.

The office of "to wit" is to particularize what is too general in a preceding sentence, and render clear, and of certain application, that which might seem otherwise doubtful or obscure.

Tobacco The narcotic leaves from which cigars are made—the subject of excise tax in almost all countries

Tobra (thobra) Nose-bag, grain-bag, a fee in grain paid to the overlord in certain places (the idea being that it is grain for the lord's horse). S. Pj and Sindh) (*Bad. Pow* II, 658, III, 327)

Toda A tribe on the Nilgiri plateau. (*Bad. Pow.* III, 185 *note.*)

Toda-giras The customary payment to secure lands against the incursions of freebooters (dispossessed chiefs and ruined families of Girasiyas) who harassed the country, now become a political allowance paid to some families as by prescriptive right also called 'wol' (Bo) (*Bad Pow* III, 281).

"Toda giras allowance" defined. Bom Act 7, 1887, S 2

"Toddy" defined. Bom. Act 5, 1878, S 3 (6), Mad Act 1, 1886, S 3 (7)

TODDY is intoxicating liquor

Todi or Tottam (*Mal.*) Terms used for gardens and plantations.

Toduppanayam A deed in use The land is here pledged as security for the repayment with interest of certain sums advanced, but the lender has no right to interfere in the management of the property. In some cases it is stipulated that on failure on the part of the borrower to pay the interest, the lender shall be placed in possession of the land Where such stipulation exists the lender can sustain an action for possession. In other cases he must sue for the recovery of the principal and interest of the loan, the land being liable in the event of the money not being paid. Another term for the same deed is Chundippanayam. (*Logan's Mal Man.*)

Together. "Together" means in "company", "into or in union with each other as wholes or parts, so as to be combined or joined with each other, conjointly, in the same place or at the same spot with each other locally, as in company; at the same moment of time, simultaneously; contemporaneously; mutually; reciprocally."

Toll.

"TOGETHER". The words "the husband and wife reside or last resided together" in S. 3, Divorce Act (IV of 1860) indicates clearly that "together" must be read with "last resided" only [10 I.C 487 (488)= 171 P.L.R. 1911=47 P R 1911=122 P.W R. 1911]

"Together with improvements". The clause "together with all improvements which I may make" in an assignment of a patent for a large consideration, was construed to authorize the assignee to make and sell the original invention as improved by the inventor after the assignment

Toilet soap "Toilet soap" as used in Tariff Act will not include a medical soap containing 20 per cent of carbolic acid, and used for curative purposes.

"Toka lands", meaning of. (25 Bom L R. 794=A.I. R. 1923 Bom 417.)

Token. A "token" is defined to be a sign or mark.

Tol (*H*) A certain weight. (*Wil. Gloss.* 524)

"Tola" defined. Act 12, 1896, S 3 (*d*)

"Tola" means a weight of one hundred and eighty Troy Grains [Excise Act (XII of 1896), S. 3]

TOLA, a weight, of which about $2\frac{1}{2}$ go to the oz. avd each *rupee* weighs one *tola.* (*Bad. Pow*)

TOLA (*Beng.*) The suburb of a town or village, the part of a town occupied by persons of any particular occupation, as kasai-tola, butcher's town; a suplementary hamlet, or huts outlying from the chief village it is said to mean also uncultivated ground. (*Wil Gloss*)

The word "tola" does not ordinarily mean a subdivision of a mauza in the language of the revenue law Tola ordinarily denotes a portion of a village or town which is inhabited by a particular class. (107 I.C 692=A I.R. 1928 All 50)

Tolerably safe "Tolerably safe" and "actually dangerous" are not necessarily conflicting terms; indeed the former frequently perhaps usually, implies the latter. To illustrate, "it is a dangerous thing to stand on the brink of a rock and gaze into the turbulent waters of a river beneath, yet because hundred thousands of people have done so safely, and very few have been precipitated into the abyss beneath, the act is tolerably safe" A railroad which is in a tolerably safe condition may not be in a reasonably safe condition as required by law.

Tolerate Allow the existence or occurrence of anything, leave unmolested, put up with (as) to tolerate poligamy, to tolerate infringement of copyright.

The word "tolerate" is defined thus: "To allow, so as not to hinder; to permit, as something not wholly approved, to suffer, to endure; to admit." It implies knowledge of the thing tolerated.

"Toll" defined. Act 11, 1886, S. 3 (10); Act 2, 1901, S. 2 (*h*).

TOLL. Charge payable for permission to pass a barrier, use a market or ferry, or harbour. Dock charges and canal charges for conveyance of goods.

Toll-bar or gate.

A saxon word, signifying properly a payment in towns, markets, and fairs, for goods and cattle bought and sold It is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the same. (*Tomlins Law Dic*)

Toll is a settled, certain and defined sum exacted for the use of a common road.

"Toll" is also defined to be a compensation in markets and fairs for goods, cattle, etc., bought and sold

TOLLS, TOLLAGE The right to levy a toll is a "franchise" [*Newcastle Duke* v *Workshop, Urban Council*, (1902) 2 Ch 145] It can only be created (*a*) by a Royal grant or charter, or (*b*) by statute But where a toll has been levied for a period sufficient to create a valid custom, a lost grant or charter conferring the right to levy the toll will be presumed in this way the right arises by (*c*) prescription But a private person cannot create such a right for himself In the absence of statutory authority, no man can dedicate a highway to the public subject to the payment of a toll to himself [*Austerberry* v. *Corporation of Oldham*, (1885) 29 Ch. D. 750, *Ency of the Laws of England*)

Toll-bar or gate. Preventing passage without payment of tolls

"Toll Collector" defined Bur Act 2, 1898, S 3 (*7*)

"TOLL-COLLECTOR" means a person appointed by the Superintendent to levy tolls at a public ferry the right to levy the tolls of which has not been let. [Bur. Act II of 1898 (Ferries)" S 3, Cl (7)]

Tollgate The words "turnpikes," "tollgates" and "tollbars," in an Act relating to the taking of tolls, are used synonymously

"Toll-keeper" defined. Mad Act 5, 1863, S 16

Toll road A "toll road" is a public highway, differing from ordinary public highways chiefly in the fact that the cost of its construction in the first instance is borne by individuals or by a corporation having authority from the state to build it, and further in the right of the public to use the road after the completion, subject only to the payment of toll.

"Toll roads are in a limited sense public roads, and are highways for travel but we do not regard them as public roads in the largest sense, since there is in them a private proprietary right The private right which turn-pike companies possess in their roads deprives these ways in many essential parts of the character of public roads. It seems to us that, strictly speaking, toll roads, owned by a private corporation constructed and controlled for the purpose of private gain, are not public roads, though the people have the right to freely travel them on the payment of the toll prescribed by law They are, of course, public in a limited sense, but not in such a sense as are the public ways under full control for the state, for public ways, in the strict sense, are completely under legislative control." (*Ame. Words and Phrases*)

Tondai Mandalam.

Toll-thorough. A toll for passing through a highway, or over a ferry or bridge

"Toll-thorough" is a toll which is taken for passing over a highway in consideration of repair or other benefit done by the owner of the toll but without any interest or claim in the soil.

Toll traverse A toll for passing over a private man's ground.

Toll turn A toll on beasts returning from a market.

Tolle voluntatem, et erit omnis actus indifferens Take away the will (to do) and every act will become indifferent.

Tollitur omnis obligatio solutione ejus quod debitur Every obligation is dissolved by the payment of what is due.

Tomahawk. War axe of North American Indians

Tomb A grave, a burial vault

Tomb-stone. Stone or slab standing or laid over grave—usually with epitaph.

"Ton," defined. Act 15, 1908, S 2 (6).

TON A "ton" is a certain weight in pounds or a certain weight or space by which the burden of a ship is estimated

The word "ton" as applied to the measurement of vessels, has a certain definite meaning, well settled by custom and the navigation laws

A 'ton' is understood in commerce to mean twenty hundredweight, each hundred consisting of 112 pounds.

Tonnage Applied to vessels, capacity in tons of 1000 cubic feet

"Tonnage" is defined to be the cubical contents of burden of a ship in tons, or the amount of weight which one or several ships will carry

The modern meaning of the word "tonnage" is given correctly in Wheaton's Law Dictionary (*See* Bouvier's Dictionary of Maritime Laws) "The capacity of a ship or vessel", "the duties paid on the tonnage of a ship or vessel which are also called tonnage"

Tonnage dues Port charges, estimated on a ship's registered tonnage

Tonnage duty A "duty on tonnage" is a duty or tax or burden imposed under the authority of the state, which is, by the law imposing it, to be measured by the capacity of the vessel.

A "duty on tonnage' is a duty proportionate to the tonnage of vessels, a certain rate on each ton

Tonnage duties Duties imposed on certain goods imported, according to a certain rate per ton.

Tonnage of a ship. This is calculated not on the carrying capacity of a ship, but upon its cubical capacity, Every 100 cubic feet is reckoned as one ton.

Tonnage-tax. A tax or duty on the tonnage of vessels.

Tond A minute fraction in land-sharing. (*Bad. Pow* II 127.)

Tondai Mandalam. (*Tam.*) An ancient division of the Peninsula comprehending the modern districts of North and South Arcot, and Chinglepat,

Tondei-mandalam.

Mr Ellis, supposes it to have derived its application from Tondaman, a prince so named, who conquered the country probably before the era of Christanity, and granted peculiar privileges to the first settlors Tondaman meaning properly, a chief, a lord in general · became latterly the designation of a petty chief in the vicinity of Trichinapali whose country is known to early English writers as Tondaman's land. (*Wils. Gloss.*)

Tondei-mandalam. A tract in North Madras anciently so called the site of a great colonizing expedition (*Bad. Pow* III 113)

Tondewarum. (*Tam*) Literally, belly share. Share of the tenantry in the division of the crop The share of the cultivators in the division of the crop

Tools Things designed to help the hand in work, especially in industrial operations

Under S 60, C P. Code, a sewing machine owned by a tailor is a tool of an artisan and therefore exempt from attachment [65 I.C. 416 (Nag)]

A barber's chair and mirror, when used by him in his business, are exempt as being tools of a mechanic used in his occupation.

Law books are also common tools of trade of a lawyer.

Tools and instruments, within the meaning of a Code exempting the tools and instruments necessary for the exercise of the trade or profession of the debtor from seizure, being intended to encourage such trade or profession by enabling the debtor to sustain himself and family by his own men, the law books of a lawyer are perhaps not any less necessary to the proper exercise of his profession than the tools of a mechanic are to the latter, and enable him to carry on his trade

"Tools or implements", within the meaning of the statute exempting from execution the tools and implements of a debtor, include various machines for making boots, owned by the debtor and used in his shop, although he employs four or five men to help him.

"Tools", as used in a statute exempting tools from execution, includes the surgical instruments of a physician.

A typewriter is not exempt from execution as a tool or apparatus belonging to the profession of a physician, though he uses it in correspondence and advertising his business

"Top", as the term is used in the mining law, refers to that part of a lode which comes nearest to the surface

"Top" or "apex" (*in Mining law*) "Justice Goddard, a jurist of experience in mining law, in his charge to the jury in the case of *Iron Silver* v *Louisville*, defines 'top' or 'apex' as the highest or terminal point of a vein where it approaches nearest to the surface of the earth, and where it is broken on its edge so as to appear to be the beginning or end of the vein" (*Ame. Words and Phrases.*)

Topa, (*Pj.*) A local grain-measure; fraction of a 'bhari.' (*Bad. Pow.*)

Tort.

Topas. (*H.*) A native Christian sprung from a Portuguese father and Indian mother in the South of India In the early History of the Company these people were extensively enlisted as soldiers; hence the term came to be applied to the company's native soldiery generally in the Peninsula: it is now obsolete (*Wil. Gloss*)

Topaz A precious stone of various colours—especially yellow.

"Tope Inam" Grant to a person described as dharmakartha. [1937 M.W.N. 1089=(1937) 2 M L.J. 505]

Tophkhana. (*H*) A foundry for cannon, an arsenal, also a battery of artillery.

Topped. A herd of cattle is said to be "topped" when the best cattle are picked out, leaving only the inferior ones.

Toran. (*Punjabi*) A short stick, bearing a cross-arm, with five or seven up-rights on it, each a few inches high, and rudely cut to imitate the human figure, it is stuck into a wall near the outer doorway on the occasion of a marriage, and the bridegroom on arrival strikes at it with a stick, and it is considered a good omen if he smashes it to bits. (*W Coldstream.*)

Torment In laws relating to cruelty to animals the word "torment" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

Torrent Rushing stream—especially one that dries up in summer.

"Tort" may be defined to be an injury or a wrong committed with or without force to the person or property of another, and such injury may arise by either the nonfeasance, malfeasance, or misfeasance of the wrongdoer.

What we now understand by a *tort* is a breach of some duty between citizens, defined by the general law, which creates a civil cause of action The duty must be founded in common right, not in a strictly personal relation such as those of husband and wife or parent and child It must be a duty assigned by law, not dependant on the will of the parties, a breach of contract or of trust is not, as such, a tort, though it may also be a tort in particular circumstances There must be a private right of action, the facts producing it may or may not also constitute an offence punishable by public authority. (*Ency of the Laws of England.*)

"It is vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal" [Holt, C. J., *Ashby* v. *White*, (1703) 2 Raym 953]

"I know of no duty of the Court which it is more important to observe, and no powers of the Court which it is more important to enforce, than its power of keeping public bodies within their rights. The moment public bodies exceed their rights they do so to the injury and oppression of private individuals, and those persons are entitled to be protected from injury arising from such operations of public bodies." [Lindley, M R., *Roberts* v. *Gwyrfai District Council*, (1899) L.R. 2 C.D. 614.]

Tort-feasor.

Tort-feasor. Wrongdoer, a trespasser.

TORT SOUNDING IN EXEMPLARY DAMAGES A tort that sounds in exemplary damages is where some right of person or of property is invaded maliciously, violently, wantonly, or with a reckless disregard of social or civil obligations

Tortious The word "tortious" is a synonym of the word 'unlawful'

Tortura legum pessima The torture of wresting of laws is the worst (form of torture)

Torture is, where inflicted at all, inflicted for one of two purposes (1) as a means of eliciting evidence from a witness or from an accused person, (2) as a part of the punishment It is the boast of the law of England that it never recognised torture of either kind as legal The main reason probably was the English procedure has always been accusatorial rather than inquisitorial The best writers and judges are almost unanimously against the use of torture. It is sufficient to name Augustin, Ulpian, Montaigne, Voltaire, Beccaria, Bentham. One of the strongest authorities is the resolution of the judges in *Felton's Case* [(1628) 3 St Tr 371] "that he ought not by the law to be tortured by the rack for, no such punishment is known to or allowed by our law' This is quite in accordance with Coke's words in 3 Inst 35, "as there is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in" The chief English authority is Jardine, Reading on the Use of *Torture* in the Criminal Law of England, *see* Encyclopaedia Britannia, Title "Torture" (*Ency of the Laws of England*)

In the laws relating to cruelty to animals, the word "torture" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted

TORMENT, TORTURE Torture is an excess of torment We may be tormented by a variety of indirect means, but we are tortured only by the direct means of the rack, or similar instrument Torment may be permanent torture is only for a time, or on certain occasions

INSTRUMENTS OF TORTURE. Rack, thumbscrew, etc. used in torture

Tory Member of the political party opposed to change (opposite of whig, liberal, and especially radical).

Tossa. (*Tel*) A cultivator, a ryot.

Tota curia (*Lat.*) The whole court.

Tota curia contra cum. (*Lat*) The whole court against him

Total destruction. "Total destruction of a building", within the meaning of a fire insurance policy, must mean the complete destruction of the injured property by fire, so that nothing of value remains of it, as distinguished from a "partial loss", where the property is damaged, but not entirely destroyed This does not mean that the materials of which the building was composed were all utterly destroyed or obliterated, but that the building, though some part of it may be left standing, has lost its character as a building.

Total loss.

Total disability. A total disability is one which prevents the insured from following an occupation whereby he can obtain a living, and, in determining whether such a disability exists, both his mental and physical capabilities must be considered. (54 Mo. App. 468, 478.)

Total disability must of the necessity of the case be a relative matter, and must depend largely upon the occupation and employment in which the party insured is engaged One can readily understand how a person who labours with his hands would be totally disabled only when he cannot labour at all, but the same rule would not apply to the case of a professional man, whose duties require the activity of the brain, and which is not necessarily impaired by serious physical injury (as) if a person engaged in the general practice of medicine and surgery is unable to go to his business, enter his office, and make calls upon any of his patients, but is confined to the bed, and is only enabled to exercise his mind.

Total inability to labour "Total inability to labour" does not confine the capability of the member's earning capacity to the same employment as that in which he was engaged at the time of becoming incapacitated, but requires such member to engage in any work or employment for which he is fitted, or which he is capable of performing. (9 Am St Rep 147.)

Total income. "Total income" means total amount of income, profits and grains from all sources to which this (Income) Act applies computed in the manner laid down in that Act [Act XI of 1922. (Income tax) S 2, Cl (15).]

Total loss (*In Fire Insurance*). "Total loss", when applied to a building, means totally destroyed as a building—that is that the walls, although some portion of them remain standing, are unsafe to use for the purpose of rebuilding, and would have to be torn down and a new building erected, throughout There can be no total loss of a building so long as a remnant of the structure left standing above the foundation is reasonably and safely adapted for use (without being taken down) as a basis on which to restore the building to the condition in which it was immediately before the fire, and whether it is so adapted depends on the question whether a reasonably prudent owner of a building uninsured, desiring such a structure as the one in question was before the fire, would, in proceeding to restore the building, utilize such standing remnant as a basis. [56 L.R.A. 108.]

TOTAL LOSS (*In Marine Insurance*) "Total loss", as the term is used in the law of marine insurance, is of two kinds "First, it signifies the total destruction of the thing insured, and, secondly, such damage to the thing insured that, though it may specifically remain, has rendered it of little or no value to the owner". (1 Mass. 264, 279.)

"In the English practice, a ship is a total loss when she has sustained such extensive damage that it would not be reasonable or practicable to repair her". The other measure of practice which the courts have adopted is this: If the ship, when repaired, will not be worth the sum which it would be necessary to expend upon her, the repairs are practically speaking impossible, and it is a case of total loss.

Totavadu.

The American rule recognizes the same principle, but fixes upon a different amount of expense as giving the right to abandon. If the expenses of repairing will exceed half the value of the ship when repaired, she is considered a total loss, according to the American authorities, and may be abandoned (*Ame. Words and Phrases.*)

Totavadu. (*Tel*) A gardener, a grower of garden produce

Toti (or Totie). (*M*) The village watchman, messenger, etc (*Bad Pow.* III, 110)

Totie. A village police officer whose duties are confined more immediately to the village, but who also guards the crops and assists in measuring them

A village servant, a man of a low caste who waits upon the villagers, generally discharges the offices of police, is set to watch the crops, he appears however to be different from the menial domestic servant who bears the same name or Totti, and does the dirtiest work of the house. (*Wil. Gloss*)

Totie manyam. Rent free land given to the Totie as remuneration for his service.

Totiyakalu. (*Karn.*) Taxed corn.

Toto The name of a small, nearly extinct, hill tribe on the Bhutan frontier.

Tottakal (or Totakal). (*Tam*) Land appropriated to the cultivation of garden produce as various kinds of fruit, betel, edible vegetables, and other articles of value and therefore subject to a higher rate of assessment Garden land, applied to fields, whose original character, soil, etc, have been changed by long cultivation and care. (*Bad Pow* III, 59 *note*)

Tottam (*Tam, Mal.*) A garden, an orchard.

Tottamaniyam (*Tam*) A garden or garden ground, free of assessment.

Totti *See* Toti

Totum praefertur unicuique parti. The whole is preferable to any single part

Touch. (*In Maritime law*) The word "touch" and its derivatives is in a sense a nautical phrase It is defined thus: "To come or to attain to, to arrive at; to reach, as, to touch their natal shore" And its use is illustrated as follows "To touch at, arrive at, or come to this state," as insailing "The next day we touched at Sidon"

Where a vessel makes irregular and transient visitation to a port in course of her voyage to various ports, she is said to touch at each of the ports which she visits A vessel plies between two places, she may touch at many

The word "touching" as used in a bill of exceptions stating that a party offered in evidence sundry documents, letters, and other papers, touching the premises in question and matters in dispute, means simply "mentioning"

Toung-ya (*Burma*) (*toung* or *taung*, hill, *ya*, garden), temporary, shifting cultivation on hill-slopes, by burning the forest and dibbling in seed with the ashes just before the rains (jum, kumri, bewar, etc., of India). (*Bad. Pow.* III, 503)

Tournament Medieval tilting match between two sides, contest in any game of skill or exercise with selective competitors.

Town.

"Tout" defined. Act 18, 1879, S. 3.

"TOUT" means a person—(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business, or (*b*) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue officers, or railway stations, landing stages lodging places or other places of public resort. [Act XVIII of 1879 (Legal Practitioners), S. 3]

Tout ce que la loi ne defend pas est permis. Everything is permitted which is not forbidden by law

Toute exception non surveillee tend a prendre la place du principle Every exception not watched tends to assume the place of the principle

Tow. To tow means to drag a vessel forward in the water by means of a rope attached to another vessel, and implies that the act is done by those on board of the latter. (*Webst Dict, Marine Dict*)

Towage The towing or drawing a ship or barge along the water by another ship or boat fastened to her, or by men or horses, etc, on land it is also money which is given by bargemen to the owner of the ground next a river where they tow a barge or other vessel (*Tomlins Law Dic*)

"TOWAGE" service is aid rendered in the propulsion of a vessel, irrespective of any circumstances of peril.

Toward The word "toward", as used in the statute making it unlawful for any person over the age of ten years, with or without malice, purposely to point or aim any pistol or firearm at or toward any other person, means 'in the direction of'.

"Town" defined (*See also* Municipal town, Presidency-town, Village, town or city) Act 19, 1884, S 2 (1), Act 15, 1910, S 10 (2), Bur Act, 4, 1898, S 4 (3), Bur. Act 3, 1907, S 3 (2), Bur. Act 6, 1907, S 4 (6)

TOWN A walled place or borough; the old boroughs were first of all towns, and upland Towns, which are not ruled and governed as boroughs, are but towns, though inclosed with walls (Finch 80, *Tomlins Law Dic.*) The term "town" signifies an aggregation of inhabitants and a collection of occupied dwellings and other buildings. *See also* 6 M H C App 34

The word "town" is ambiguous It may mean either a corporation, or simply a collection of people, independent of the fact of incorporation. A town is a collection of people, and it may be either an incorporated or an unincorporated town.

UNINCORPORATED TERRITORY. The popular use and meaning of the word "town", is a large, closely populated place, whether incorporated or not, as distinguished from the country or from rural communities The legal as well as the popular idea of a town or city in this country, both by name and use, is that of oneness, community, locality, vicinity; a collective body, not several bodies, collective body of inhabitants, that is, body of people collected or

Town clerk,

gathered together in one mass not separated into distinct masses, and having a community of interest, because residents of the same place, not different places

The term "towns" stands as a generic designation, embracing townships as well as cities, and all other places corporate, established for local government of the same grade as these, and also those of an inferior order.

"TOWN" means a local area declared to be a town for the purposes of this (Burma Towns) Act by a notification [Bur Act III of 1907 (Burma Towns), S 3, cl (2)]

A VILLAGE AND A TOWN are not identical A village is ordinarily less than a town, and more occupied by agriculturists, the size of the place or employment of the inhabitants is also an important fact to be considered

It may be said that the term "town" now includes almost every character of municipal government from a city to a village, including places which are governed by a commission with some municipal governmental powers, and designated by such a title, and, if the functions of these different municipalities are similar, this term "town" would seem to include them all

Town clerk Secretary or clerk in a town corporation.

Town commons. "Town commons" is land which is the property of the town, and remains common and for public use generally.

Town council Elective body or corporation administering the affairs of the town

The word "town council" and the words "board of trustees", when used in relation to municipal corporations have practically the same meaning

The words "town councils" may be construed to include boards of aldermen.

Town councillor. Member of town council

Town crier Officer charged with crying or publishing orally public notices in the town.

"Town duties", defined. Bom Act 3, 1888, S 192 (2).

TOWN DUTIES. The expression "town duties" in Act XIX of 1844 is not to be confined to duties "appropriated by law or custom to municipal purposes", but extends to duties or cesses on goods brought into or carried out of a town, although levied by private persons (17 I A 103=14 B 526=5 Sar 578 *See also* 5 Bom L R 703)

Act XIX of 1844 has abolished "town duties" and cesses of every kind on trades and professions". (5 Bom. L,R 703)

Town election. In statutes relative to elections, the term "town election" shall apply to any meeting held for the election of town officers by the voters, whether for a full term or for the filling of a vacancy

Town folk, People of a town; town dwellers (opposed to village folk)

Town house. A person's residence in the town (opposed to country house).

"Town of Calcutta", defined Ben. Act 4, 1866, S 3, Ben. Act 5, 1880, S. 2.

Tractent Fabrilia fabri.

"Town of Bombay", defined. Act 4, 1857, S. 21.

"Town of Madras", defined Mad. Act 1, 1867, S 2, second

"Town and suburbs of Bombay", defined Bom. Act 5, 1863, S 28, Bom Act 6, 1863, S 37.

Town-reeve (*old English law*). The reeve or chief officer of a town.

Township A small division of a large original parish in England.

A township is generally spoken of as a municipality or municipal corporation

Townships, though possessing some corporate functions and attributes, "are primarily political subdivisions, agencies in the administration of civil government, and their corporate functions are granted to enable them to perform their public duties They are denominated in the books and known to the law as "quasi corporations", rather than corporations proper

'Township-officer". "TOWNSHIP OFFICER", means the officer in charge of a township as constituted for revenue and general purposes [Bur Act VI of 1907 (Villages), S 4, cl (5)]

Townsman. Town dweller

Townspeople Townsfolk

Toxicology The science which treats of poisons, their effects, antidotes and recognition of poisons. (Taylor's Principles and Practice of Medical Jurisprudence)

Toys. Broadly defined, a "toy" is an article mainly intended for the amusement of children The fact that the word is so broadly defined does not warrant the conclusion that anything chiefly used to describe the object designed to amuse children is to be classified as a "toy"

"Toys", as used in Tariff Act, include slides designed for use in magic lanterns for the amusement of children.

The term "toys" used in the tariff act, is to receive the signification ordinarily attributed to it in common usage, unless evidence shows that it has a different trade signification, but it is held that if decorated China earthenware is bought, sold, and used under the name of 'toys', it is to be so classified for duty, whether the articles are used for playthings for children or for household purposes.

Toyyil (*Tam*) Cultivated moist land

Trace To follow the whereabouts of a person (as) to trace a criminal.

Tracing. "Tracing" is a mechanical copy or facsimile originally produced by following its lines with a pen or pencil through a transparent medium called "tracing paper". (18 Fed 539, 540)

"Tract", defined. (*See also* Hill-tract.) Ben. Act 8, 1895, S 2 (r).

"Tract", in its common signification, does not imply anything as to the size of the parcel of land.

Tractent fabrilia fabri. Let smiths perform the work of smiths.

Traction engine.

Traction engine Locomotive steam engine for drawing load on the roads, ploughs, etc, without rails

A traction engine is a locomotive engine for drawing heavy loads upon common roads, or over arable land, as in agricultural operations.

Tractor. Traction engine; æroplane with engine in front.

"Trade". *See* 147 P.L.R. 1903.

'TRADE'. Exercise of calling by insolvent. (40 Cal 678=21 I C. 969)

The word "trade" in S. 175 of the Calcutta Municipal Act is used in its ordinary sense, that is to say, exchange of goods for money or goods for goods with the object of making a profit (40 C W.N. 766=1936 Cr C 699 (2)=A I R 1936 Cal 477)

In general signification, is traffic or merchandize also a private art, and way of living. (*Tomlins Law Dic.*)

Traffice, commerce, exchange of goods for other goods, or for money.

Dealing in commodites with a view, for profit; a person's commercial calling (as) Export trade, butcher's trade, etc.

"Trade" means the craft or business which a person has learned and which he carries on as a means of livelihood, a purchase or sale, a bargain, specifically, in politics,a deal, the exchange of commodities for other commodities or for money, the business of buying and selling, or dealing by way of sale or exchange

AS OCCUPATION OR PROFESSION One of the definition of "trade" given by Webster is the business a man has learned by which he earns his livelihood.

TRADE, COMMERCE, TRAFFIC, DEALING The leading idea in trade is that of carrying on business for purposes of gain, the rest are but modes of trade commerce is a mode of trade by exchange traffic is a sort of personal trade, a sending from hand to hand, dealing is a bargaining or calculating kind of trade Trade is either on a large or small scale, commerce is always on a large scale, we may trade retail or wholesale, we always carry on commerce by wholesale, trade is either within or without the country, commerce is always between different countries The commerce of a country, in the abstract and general sense, conveys more to our mind, and is a more noble expression, than the trade of the country, as the merchant ranks higher than the tnadesman, and a commercial house than a trading concern

These terms will also admit of an extended application hence we speak of the risk of trade, the narrowness of a trading spirit; the commerce of the world, a legal, or illicit, commerce, to make a traffic of honours, of principles, of places, and the like; plain-dealing or underhand dealing.

Trade or business Legal Practitioners Act (XVIII of 1879) and rule 27 of the Madras High Court Rules: where the money-lending transactions of a pleader were numerous, continuous and systematic the pleader entered into a trade or business within the meaning of the rule 27 under the Legal Practitioners Act [8 Ind. Cas. 677 (678).]

Trader.

Trade bill Bill of Exchange in respect of which value in goods has been actually received by the drawee or acceptor.

"Trade description" defined. Act 4, 1889, S 2 (2)

"TRADE DESCRIPTION" means any description, statement or other indication, direct or indirect— (*a*) as to the number, quantity, measure gauge or weight of any goods, or (*b*) as to the place or country in which, or the time at which, any goods were made or produced or (*c*) as to the mode of manufacturing or producing any goods, or (*d*) as to the material of which any goods are composed, or (*e*) as to any goods being the subject of an existing patent, privilege or copyright, and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act [Act IV of 1889 (Merchahdise Marks), S. 2, Cl. (2)]

The phrase "all rights reserved" in the outer cover of the spurious edition was held to be a trade description under S 2 of the Merchandise Marks Act (31 M 512=17 M L J 490.)

Trade fixtures "Trade fixtures" is a term usually used to describe property which a tenant has placed on rented estate to advance the business for which the property is leased, and may, as against the lessor and those claiming under him, be removed at the end of the tenant's term

Trade-mark. A "trade-mark is the name, symbol, figure, letter, form or device adopted and used by the manufacturer or merchant in order to designate the goods that he manufactures or sells, and to distinguish them from those manufactured or sold by another, to the end that they may be known in the market as his, and thus enable him to secure such profits as result from a reputation for superior skill, industry, or enterprise"

Trade-mark medicine "Trade-mark medicine" must be held to be medicine as to which a similar monopoly to that of patent and proprietary medicines has been secured, by the use of a trade-mark or trade name under which it is prepared and sold

Trade union Trade Unions up to a certain point have been recognised now as organs for good They are the only means by which workmen can protect themselves from the tyranny of those who employ them But the moment that trade unions become tyrants in their turn, they are engines for evil, they have no right to prevent people from working on any terms that they choose [Lindley, J, in *Lyons & sons* v *Wilkins*, (1896) 74 L T Rep (N S) 364 See also *Moghul Steamship Co* v *MacGregor Cow & Co*, 66, L T Rep (N S) 1, *Temperton* v *Russell & others*, 69 L T. Rep. (N S.) 78]

Trade Unions Organisations of workmen formed for mutual protection and assistance and for the purpose of improving their condition in employment.

Trader. The mere description as trader does not prevent a person from showing that he is an agriculturist [58 Bom. 58=6 I R (Bom.) 92=145 I C. 563 =35 Bom L R 715=A I R. 1933 Bom 374]

DEALER A "trader" is one engaged in trade or in the business of buying and selling, and the term is synonymous with "dealer." (35 S E. 605)

Tradesman.

TRADER. One engaged, in merchandise or commerce.

A person who makes it his business to sell for profit is a "trader" within the meaning of the Municipal (Act IV of 1884) and the fact of what he sells being the produce of his own land does not make him the less a trader, provided the sales are conducted in a shop or place of business (17 M. 100 =3 M L J 259)

TRADER—TRADESMAN A "trader" is a dealer in buying or selling, or barter

A trader is one who makes it his business to buy merchandise or goods and chattels, and to sell the same for the purpose of making profit

COMMON CARRIER A trader, within the meaning of the Bankruptcy Act, does not include the business of a common carrier

Tradesman Shopkeeper

Tradespeople Tradesmen and their families

Trading The word "trading" may have meanings which vary with its different applications In laws concerning navigation, every vessel carrying a cargo or passengers may, in general, be considered as trading

"Trading, dealing, and trafficking" within the meaning of a statute providing that no person shall trade, deal, and traffic in this state as a peddler, hawker, or petty chapman in any foreign goods, wares, and merchandise, characterizes the act of carrying about and offering such goods for sale.

Trading corporation A trading corporation is a commercial corporation engaged in buying and selling The word "trading" is a much narrower word than "business," when applied to corporations, and, though a trading corporation is also a business corporation, a business corporation may properly be any corporation organized for the furtherance of private transactions

Trading Inwards and Outwards In shipping law this phrase is sometimes employed instead of the more usual equivalent, "trading homewards", as distinguished from "trading outwards" If a vessel enters a port with cargo from abroad to be discharged at that port there is little doubt that she is a vessel trading inwards On the other hand, arriving in ballast with the view of taking a cargo on board can hardly as a general leaves one home partly loaded and then calls at another port to complete her cargo, but in such a case if the ultimate destination of the whole cargo is some foreign port the vessel will be held to be trading outwards with reference to the second port [See *Mersey Docks and Harbour Board* v. *Henderson Brother*, (1888), 13 App. Cas. 595).

Trading partnership Wherever the business, according to the usual modes of conducting it, imports, in its nature the necessity of buying and selling, the firm is then properly regarded as a trading partnership, and is invested with all the powers, and subject to all the obligations, incident to that relation

Trading with enemy "Trading," as used in reference to trading with an enemy, does not mean that signification of the term which consists in negotiation or contract, but the object, policy, and spirit of the rule is to cut off all communication or actual locomotive intercourse between individuals of

Train.

the belligerent states. Negotiation of contract, therefore, has no connection with the offence Intercourse inconsistent with actual hostility is the offence against which the operation of the rule is directed.

"Trading", meaning of *See* 19 C.W N 1239=33 I C 289

Traditio (*Lat*) Delivery or livery,

Traditio calvium. (*Lat*) Delivery of the keys, symbolical delivery.

Traditio loqui facit chartum. Delivery makes the deed speak.

Traditio nihil amplius transferre debet vel potest ad eum qui accipit, quam est apud eum qui tradit. Delivery can not and ought not to transfer to him who receives more than was in possession of him who made the delivery

Tradition Oral transmission of knowledge or belief from one generation to another.

Traduce Slander

"Traffic" defined (*See also* Through traffic) Act 9, 1890, S 3 (11)

TRAFFIC Trade, coming and going of persons, goods etc, by road, railroad or water (as) railroad traffic, motor traffic, etc

"Traffic" is the buying of something from another or the selling of something to another.

"Traffic" includes rolling-stock of every description, as well as passengers, animals and goods. [Act IX of 1890 (Railways), S 3 (11)]

Traffic in S 42 Railways Act, includes goods as well as passenger traffic [45 Bom 1324=62 I C. 1004 =25 Bom L R 809]

"TRAFFIC, TRADING, AND DEALING" within the meaning of a statute providing that no person shall trade, deal, and traffic in this state as a peddler, hawker, or petty chapman in any foreign goods, wares, and merchandise, characterizes the act of carrying about and offering such goods for sale

The words "traffic in" are synonymous with the word "deal"

Traga The shedding of blood, either his own or of a connexion, by a Bhat, in order to enforce the fulfilment of an engagement for which he has pledged his personal surety, punishable by law. (Bomb. Reg XIV of 1827, *Wil Gloss*)

Tragedy. A tragedy is a dramatic representation

Trailer "Trailer" is a term applied to a passenger coach attached to a grip car of a cable road, or to the car on an electric line containing the motive power

Trailing cars, are such cars as are not operated or controlled by a power applied to motors attached to them but which are merely drawn by cars equipped with motors

"Trailer cars propelled." *See* 18 M.L.J. 149

Train To make fit by study, exercise and proper guidance (as) to train to the law or for a lawyer.

The word "train", as used in "An act to provide for the construction of train railways", is defined to be a continuous or connected line of cars or carriages on a railroad.

Trainer.

Trainer. Person who trains racehorses or athletes.

Tramp The word "tramp" indicates a foot traveller, a tramper, often used in a broad sense for a vagrant or wandering vagabond. The idea conveyed to the mind by the word is that simply of an idle, worthless fellow, who wanders about the country seeking to secure his living without toil Because a man is a tramp, he is not necessarily dangerous.

"The "tramp" in this country is a public enemy, and he is numerous and he is dangerous He is a nomad, a wanderer on the face of the earth, with his hand against every honest man, woman, and child, in so far as they do not promptly and fully supply his demands He is a thief, a robber often a murderer, and always a nuisance He does not belong to the working classes, but is an idler He does not work, because he despises work It is a fixed principle with him that, come what may, he will not work. He is low in the scale of humanity He will steal from a fellow tramp, if in need of what that fellow has, and will resort to violence when that is necessary. The tramp has therefore become a well known, vicious class, which the state may enact laws concerning" 81 Am St. Rep, 626.

Tramp Corporation. Tramp corporations are those companies which are chartered in one state without any intention of doing business therein but operate entirely in other estates (*Ame Words and Phrases*)

"Tramway" defined Act II, 1886, S 3 (5), Act 9, 1890, S 3 (1), Ben Act 1, 1880, S 2, Ben Act 3, 1883, S. 2, Bom Act 1, 1874, S 2, Bom Act 2, 1883, S 2.

"TRAMWAY" means a tramway constructed under the Indian Tramways Act, or any special Act relating to tramways [Act IX of 1890 (Railways), S. 3 (1).]

Transaction. As to the term 'transaction' it is doubtless one of large import, and might, although by a somewhat strained use of it, be held to be applicable to proceedings in a suit, but such does not appear to be the intention of the framers of the Evidence Act, as the result of holding it to be so applicable in S 13, Evidence Act, would be to effect most important departure from the English rule of evidence, which would make judgments, decrees and verdicts of juries only admissible in matters of public interest [10 B 439 *See* U B R (1897-1901), Vol. I, 31, 20 C 537, 2 N L R. 147=4 Cr L.J 420]

The term *'transaction'* is not synonymous with the term "offence" (42 Cal. 1153=19 C W.N. 706=21 C.L J 201=26 I C 313=16 Cr L.J. 9.)

"TRANSACTION OF BUSINESS", as used in reference to a foreign corporation, is not necessarily synonymous with the term "doing business". It does not necessarily mean that the main business of the corporation must be carried on in the state, or something in the nature of that business, or that capital must be employed in the state.

TRANSACTING BUSINESS FOR PROFITS. "Transacting business for profit" is carrying on trade (108 I.C. 216 =27 M.L.W 243=A.I R 1929 Mad 146.)

Transcript is the copy of any original writing, or deed, etc, where it is written over again, or exemplified, (*Tomlins Law Dic.*); anything written from an original.

Transfer.

"Transfer" defined Act 27, 1866, S. 2; Act 1, 1869, S 2 [Sub U.P. Act 3, 1910, S. 2 (1)], Bom Act 2, 1863, S. 16 (*g*), Bom. Act 7, 1863, S 32 (*g*).

TRANSFER To convey, to make over from one to another, to remove Document whereby one person transfers property, securities, or rights to another.

A transfer is an act or transaction by which property of one person is by him vested in another

The term "transfer" means to convey or pass the right of one person over to another, unless the general meaning is restricted or limited by something accompanying it—as, for example, that the transfer was for a limited time or for a particular purpose

The relinquishment of his rights by a coparcener in favour of another coparcener cannot be strictly said to be a transfer within the meaning of S 53 of the Transfer of Property Act (10 R O. 187=172 I C 637=1938 O L R 14=1938 O W N. 104)

An abandonment of a claim to property in a suit is not a transfer. (1936 A M L J. 124)

The expression *"transfer"* by itself is not altogether appropriate to indicate a sale *in invitum* by the Court and therefore, any provision regarding voluntary transfers in the Articles of Association will not apply to transfers by Court sale. (1928 M.W N. 442= 111 I C. 225=A I R 1928 Mad 571.)

'Transfer', with its grammatical variations and cognate expressions, means to make an alienation *'inter vivos'*. [U P Act I of 1869 (Estates), S. 2, Cl (1)]

"Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another. [Act XXVII of 1866 (Trustees), S. 2.]

The term "transfer" in a wajib-ul-ars includes both sales and mortgages (7 A 478=5 A W.N 85)

A mortgage with possession by an occupancy tenant of his cultivatory holding is a transfer within the prohibition of S 9 of the Rent Act, 1881. [5 A. 495 [3 A W N 89 (F.B) *See also* 7 All 866 (F B.), 15 All 219 (F B)]

"TRANSFER" in Bengal Tenancy Act (VIII of 1885), includes a lease. A lease is a transfer of an interest in immoveable property [23 Ind Cas 925 (926)]

A lease of an occupancy holding for a term of 15 years, the effect of which is to place the lessee in possession of the holding and of the right of occupancy is a "transfer". [9 A.W.N. 145]

The terms "TRANSFER, SUCCESSION OR OTHERWISE" in S 22 of the Bengal Tenancy Act do not mean and include a surrender. (13 C.W.N. 12=8 C L.J 324=1 Ind. Cas 155)

CONTRACT TO TRANSFER AND CONVEYANCE. There is a clear distinction between a contract which still remains to be performed and specific performance of which may be sought, and a conveyance by which title to property has actually passed. Cases of mere contract are governed by the provisions of the Contract Act. Cases of transfer of immovable property are governed by Transfer of Property Act. A mere contract to mortgage or sell would not amount to an actual transfer of any interest in the immovable property, but a deed of sale or mortgage if duly registered, would operate as a conveyance of such interest. Once a document transferring immovable property

Trnsfer by indorsement.

has been registered, transaction passes out of the domain of a mere contract into one of a conveyance Such completed transaction is governed by the provi sions of Transfer of Property Act and so much of the Contract Act as are applicable thereto [1930 A L J 45=14 R.D 46=122 I C. 872=A I.R. 1930 All 1 F B)]

Transfer by indorsement The term, "transfer by indorsement", when used in reference to bills of exchange or promissory notes, means not only the making of the written indorsement on the instrument, but also includes the delivery of the instrument

Transfer of business These words in Civil Procedure Code (V of 1908), S. 150, cover not only transfers made under special provisions of the Civil Procedure Code but also cases where the whole business of a Court might be transferred to another Court without any order of transfer being passed by a superior Court under S 24 or any other section of the Code either as regards a particular case or as regards all the cases pending in a particular Court, as for instance by the changes of venue made by the Local Government. (22 Ind. Cas. 899, 903 and 904)

"Transfer of property", defined, Act 4, 1882, S 5, Act 3, 1909, S 2 (*t*).

"TRANSFER OF PROPERY" means an act by which a living person conveys property in present or in future to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act [Act IV of 1882 (Transfer of Property), S 5]

"Transfer of property" includes a transfer of any interest in property and the creation of any charge upon property [Act V of 1920 (Provincial Insolvency) S. 2, Cl. (*f*). Act III of 1909 (Presidency Towns Insolvency) S 2, Cl (*t*)]

The term "Transfer of Property Act" in S 5 of the Transfer of Property Act is a general one and is not confined to transfers of a contractual and literal character Besides including a conveyance or assignment of a contractual character, it appears, from the definition of "Transfer of property" given in S 5 to include the exercise of a power of appointment under a settlement (22 C 185)

"Transferee", defined Act 5, 1882, S 13

TRANSFFREE Person to whom a transfer is made A person by being a decree-holder of the decree-holder does not become a "transferee" of the decree-holder 'by operation of law' (5 Pat, 511=7 Pat L T. 793=96 I C. 446=A I R. 1926 Pat 320)

"Transferor", defined Act 5, 1882, S 13.

TRANSFEROR. Person who makes a transfer.

"Transferred or encumbered." The grant of a permanent lease is not a transfer within the meaning of the word "transferred" in Madras Act III of 1895 (Hereditary Village Officers) S. 5, the transfer referred to being a transfer of ownership (20 M.L.J. 417 =7 M L T 94=5 Ind Cas 125=33 M. 340)

Transgressione multiplicata, crescat poenae inflictio, When transgression is multiplied let the infliction of punishment be increased.

Transgressive trust, is one that transgresses the **rule against perpetuities.**

Translation.

Transient The Century Dictionary defines the word "transient" to mean (1) passing across as from one thing or person to another, (2) passing with time, of short duration, not lasting, temporary, one who or that which is temporary, a transient guest.

Webter defines the word "transient," "Not lasting, not permanent, of short duration" A doctor renting an office by the year, and keeping regular office hours at certain times, at a certain place, on three days of the week, is not keeping a transient office.

Transient merchant The occupation of the itinerant or trausient merchant or the mode of conducting it, closely resembles the business of hawkers and peddlers, and the methods generally practised by them in disposing of their goods and wares. The transient merchant has no office or place of business, but migrates from town to town, remaining only long enough to dispose of his stock of goods. He is usually a stranger in the community where he offers his goods and makes his sales, and is often wholly irresponsible. (*Ame Words and Phrases*)

In construing an ordinance licensing transient merchants, it is held the term "transient merchant" does not refer to the residence of the individual It more properly relates to the character of business carried on by him. (58 Am St. Rep. 447.)

"Transit" *See* 4 Ind Cas. 405.

Transit in rem judicatum. The matter passes into a judgment.

Transit terra cum onere. The land passes with its burden

Transitory action. "Transitory actions" are personal actions brought for the recovery of money for personal chattels, whether they sound in tort or in contract (1 Chit Pl. 273) All actions *ex delicto* to the person or to personal property, in which a mere personality is recoverable, are, as a general rule, by the common law, transitory in their nature Such actions have their foundation in the supposed violations of rights which, in contemplation of law, have no locality, and for which the right to compensation is recognized by the laws of all countries, and rest upon the rule of international comity, that every nation may rightfully exercise jurisdiction over all persons within its limits in respect to matters purely personal Personal injuries are transitory in their nature

A transitory action is defined by Black as one founded upon a cause of action not necessarily referring to or arising in any particular locality.

TRANSITORY ACTION is an action that may be brought in any country. (*Kinney.*)

Translate—Translation. To translate is to give the sense or equivalent of, as a word, expression or an entire work, in another language or dialect. (*Stand Dict* 1917) Hence to explain by clearer terms, or to express in a different form or style of language. Generally speaking, a translation need not consist of transferring from one language into another It may apply to the expression of the same thoughts in other words of the same language. (38 L R.A. 773)

Translation. In the common sense of the word, signifies a version out of one language into another. (*Tomlins Law Dic*)

Transmutation.

TRANSLATION (*in Ecclesiastical law.*) The removal of a Bishop from one diocese to another.

Transmutation. "Transmutation," is sometimes defined as the change from one species into another —also the change from one nature, form, or substance into another.

"Transport", defined. Act 11, 1879, S 10, Expln , Act 5, 1886, S. 3 (6) , Act 8, 1899, S 2 (*d*) , E B & A Act 1, 1910, S 3 (21) , Mad. Act 1, 1888, S. 3 (17) , U P. Act 4, 1910, S 3 (19)

Transport—Transportation Webster defines "transport" as to carry or convey from one place to another , again, to remove from one place to another , and throughout all the deviation of the word "transport", we find the same part of the definition ' to remove.'

"Transport" means to remove from one place to another within the territories administered by the same Local Government. [Opium Act (1 of 1878), S. 3]

"Transport", means to remove from one place to another within the district. [U P. Act V of 1886 (Mirzapur Stone Mahal). S 3, Cl. (6). *See also* 4 Ind. Cas. 405 , 4 Bom L R. 83]

Transportation of an excisable article from one place to another does not involve transportation to every place between those two places When the Bombay Abkari Act talks about transport from one place to another it means only transport from the starting point to the ultimate destination (39 Bom L.R. 1062)

Transportation The banishing or sending away a criminal into another country (*Tomlins Law Dic*)

TRANSPORTATION, EXTRADITION AND DEPORTATION DISTINGUISHED Strictly speaking, "transportation, extradition, and deportation," although each has the effect of removing a person from a country, are different things and for different purposes Transportation is by way of punishment of one convicted of offence against the laws of the country. Extradition is the surrender to another country of one accused of an offence against its laws, there to be tried, and, if found guilty, punished Deportation is the removing of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated either under the laws of the country out of which he is sent, or under those of the country to which he is taken. (149 U.S. 698, 37 L. Ed. 905)

Transportation Company A corporation engaged in the business of transporting petroleum by means of pipes is also a transportation company

Trans-shipment The taking of the cargo out of one ship, and loading another.

Transubstantiation is converting into another substance. (*Tomlins Law Dic.*)

Travel—traveller—travelling "Travel" has no precise or technical meaning, when used without limitation, but its primary and general import is to pass from one place to another, whether for pleasure, instruction, business, or health.

A traveller is one who travels in any way—one who makes a journey or who goes from place to place.

Treasury bills.

Traverse is used in law for the denying of some matter of fact, alleged to be done, in a declaration or pleadings, upon which the other side comes and affirms that it was done, and this makes a single and good issue for the cause to proceed to trial. (*Tomlins Law Dic.*)

Treadmill A contrivance for grinding corn, etc., formerly used in prisons

Treason The crime of treachery and infidelity to our lawful Sovereign (*Tomlins Law Dic*)

Treason is a breach of allegiance and can be committed by him only who owes allegiance either perpetual or temporary Levying war against the Government is the highest crime known to the laws of the land

Grave offences against the security of the State come under the head of treason or treason, felony, lessor offences under the heads of sedition in its various branches, and riot, etc Often these crimes overlap or the line of division is so indistinctly drawn as to give the advisers of the Crown a choice of remedies on the rare occasions when it becomes necessary to set the law in motion

TREACHEROUS, TRAITOROUS, TREASONABLE. We may be treacherous to our enemies as well as our friends; we may be traitorous to our country by abstaining to lend that aid which is in our power, for nothing but death can do away the obligation which we owe to it by the law of nature Traitorous and treasonable are both applicable to subjects, but the former is extended to all public acts, the latter only to those which affect the supreme power a soldier is traitorous who goes over to the side of the enemy against his country, a man is guilty of treasonable practices who meditates the life of the king, or aims at subverting his government

"Treasure" Defined Act, 6 1878, S. 3

"TREASURE" In the Treasure Trove Act means anything of any value hidden in the soil, or in anything affixed thereto. [Act VI of 1878 (Treasure Trove), S 3]

Treasure trove Money, bullion or other valuables found hidden in the earth or elsewhere.

TREASURE TROVE is money or coin, gold, silver, plate, or bullion, found hidden in the earth or other private place, the owner thereof being unknown In such case, the treasure belongs to the King, and is part of his ordinary revenue , but if he that hid it be known, or afterwards found out, the owner, and not the King, is entitled to it If it be found in the sea, or upon the earth, the whole or a portion belongs to the finder. (*See* Indian Treasure Trove Act)

Treasurer. An officer to whom the treasure of another is committed to be kept, and truly disposed of The chief of these was the Lord High Treasurer of England, who was a Lord by his office, and one of the greatest men of the kingdom. (*Tomlins Law Dic.*)

Treasury signifies the place where King's treasure is deposited , place where public monies are kept , the office of treasurer. (*Tomlins Law Dic*)

Treasury bills. Negotiable Government acknowledgments of loans made payable after a fixed period.

Treasury Solicitor.

Treasury solicitor. (*Solicitor to Treasury*) The Treasury Solicitor is the officer appointed by the Commissioners of His Majesty's Treasury for the purpose of conducting its legal business, of both a litigious and a non-litigious character.

Treating (*in Election Law*) means that form of bribery where the gratification consists in food, drink, entertainment, or provision. (Penal Code, S 171-E.)

"Treaty" Defined 36 7 V., c 59, S. 2, 36-7 V., c. 88, S 2, 49-50 V. c. 33, S 11

A treaty is a contract between two or more independent States, signed by or on behalf of their sovereign authorities When relating to rights and duties of subjects or citizens of the respective States in one another's possessions, treaties are generally called conventions

"Treaty" in the law of nations, "is an agreement or contract between two or more nations or sovereigns, entered into by agents appointed for that purpose, and duly sanctioned by the supreme powers of the respective parties".

A "treaty" is a contract between independent nations, or communities having the right of self-government The only requisite is that each of the contracting parties shall possess the right of self-government and the power to perform the stipulations of the treaty

The word "treaty" in S 4 (*a*) of the Bombay Revenue Jurisdiction Act ought not to be broadly interpreted The word must, seeing that it is not defined in the Act, receive its generally accepted meaning (*viz*) that it is an agreement between two or more independent Sovereign Powers or States (29 B 19=6 Bom L.R 648)

Treble costs "Treble costs", are thrice the amount of single costs (2 N J Law. 340, 342)

"Tree" Defined Act 7, 1878, S 2, Bur Act 4, 1902, S 3 (15), Mad. Act 5, 1882, S 2, Reg 5, 1890, S. 2 (5), Reg 7, 1891, S 3 (2)

A tree, strictly speaking, is that which is growing or standing in the ground, whether dead or alive There are dead and live trees, both standing, but, when the trunk is severed from the root and felled to the earth, it is no longer, properly speaking, a tree It becomes timber or lumber, according to the use to which it can be applied (27 Fed Cas 978, 982)

A tree is a woody plant, whose branches spring from and are supported upon a trunk or body and the tree may be young or old, small or great and cannot be demominated as a "shrub" or "undergrowth"; for a shrub is a low, small plant, whose branches grow directly from the earth, without any supporting trunk or stem, while "undergrowth" is a term applicable to plants growing under or below other greater plants.

"Tree" includes palms, bamboos, stumps, brushwood and canes [Act XVI of 1927 (Forest), S. 2, Cl. (7)]

Trees on the holding are not always and necessarily included in the term land. (142 I C. 147= 1933 Nag 53)

A claim for possession of trees is a claim to an interest in immoveable property. (63 I.C. 254=2 Pat L.T 622.)

ORCHARD TREES. The word "trees", generally speaking, means wood suitable to building, and does not include orchard trees.

Trespass on the case.

Tres faciunt collegium. Three form a corporation.

"Trespass" defined. *N B*.—This word is also used in combination with other words (as) Act of trespass, Criminal trespass, House-trespass, Lurking house-trespass, Lurking house-trespass by night.

TRESPASS (*Transgressio.*) Any transgression of the law less than treason, felony, or misprison of either. (*Tomlins Law Dic*)

"Trespass" signifies a passing over or beyond our right, *i e.*, a transgression or wrongful act.

Trespass, in its largest and most extensive sense, signifies any transgression or offence against the law of nature, of society, or the country in which we live, whether it relates to a man's person or his property. Therefore beating another is a trespass, for which an action of trespass in assault and battery will lie Taking or detaining a man's goods are respectively trespasses, for which an action of trespass on the case in trover and conversion, is given by the Law, so, also, non-performance of promises or undertakings is a trespass, upon which an action of Trespass on the case in assumpsit is grounded and, in general, any misfeasance, or act of one man, whereby another is injuriously affected or damnified, is a transgression, or trespass, in its largest sense, for which an action will lie. (3 Comm c 12, *Tomlins Law Dic.*)

A forcible entry on the land of another with strong hand and against the will of the owner constitutes a trespass

The term "trespass" in S. 297, Penal Code (Act XLV of 1860), appears to mean any violence or injurious act committed in such place and with such knowledge or intention as is defined in that section [14 Cr L.J. 117=17 C. W. N. 534=40 C. 548=18 I. C 677 (678)]

By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing [*Camden, L C J* in, *Entick* v. *Carrington*, (1765) 19 How. St. Tr. 1066]

"The house of every one is to him as his castle and fortress, as well for his defence against injury and violence,as for his repose" [*Lord Coke*, in *Semayne's case.* (1605) 3 Rep 186]

"Though it is not always of necessity, nor perhaps here, to go upon the original foundation of a right of law, yet I will beg leave to observe when we apply the maxim, that every man's house is his castle, we mean not to persuade the inhabiter of a poor hut, that it is provided with draw-bridges or portcullises, but only that it is under such sufficient protection as may provide for his security in a more pleasant or perhaps a better way—that it is fortified by the law" [*Lord Mansfield in Lee* v. *Mansell*, (1774) Lofft. 378.]

Trespass de bonis asportatis. Trespass for goods carried away.

Trespass on the case. The action of "trespass on the case" is defined in general terms to be an action to recover damages for wrongs not committed

Trespass.

with force, actual or implied, or, having been occasioned by force, when the injury is consequential, that is, where the injury to the plaintiff is the consequence or the result of an act of the defendant.

TRESPASS ON THE CASE signifies a form of action designed to cover all cases where an actionable wrong is claimed under the particular circumstances of the case stated. (43 L.R A. 305)

Trespass quare clausum fregit An action which lies for unlawfully entering on another's land

Trespass vi et armis (*Lat.*) Trespass with force and arms.

"**Trespasser**" defined Act 15, 1882, S. 45.

TRESPASSER. One who commits a trespass (*Tomlins Law Dic*)

Trespasser ab initio. (*Lat*) A trespasser from the beginning.

"Trial" defined. Act 18, 1891, S. 2 (7).

TRIAL is the examination before a competent court according to law of the facts or law put in issue in a cause.

It is a judicial examination of issues between the parties, whether they be of law or fact

The examination of a cause 'civil or criminal' before a judge who has jurisdiction over it, according to the laws of the land (*Tomlins Law Dic*)

"Trial" means any hearing before the Court at which evidence is taken [Act XVIII of 1891 (Bankers' Books Evidence), S. 2, Cl (7)]

"TRIAL" means the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing [I L. R. (1937) Bom 211=166 I C 598=9 R B 247=38 Cr L.J. 250=38 Bom L.R. 1189=A I.R. 1937 Bom. 55]

When charge has been read and explained to the accused and he pleads to it the inquiry becomes a trial. [29 P.R (Cr) 1914=210 P L R. 1915=26 I.C. 993=16 Cr.L.J. 81]

Trial (in S 337, Cr P Code) does not include appeal. (62 Cal. 430=157 I C. 1059=A.I R. 1935 Cal. 545.)

For purposes of S. 350, Cr P. Code, the "trial" of a warrant case covers the whole of the proceedings. It cannot be said to commence only when a charge is framed. [I.L.R (1937) Bom 211=166 I.C. 598=9 R. B. 247=38 Cr L.J. 250=38 Bom L.R. 1189=A.I.R. 1937 Bom. 55.]

Trial whether includes stage of judgment. (52 M. 355=118 I.C. 274=A.I.R. 1929 M. 201=56 M.L J. 216)

Whether the judgment is part of the trial or not. (30 S L.R. 456=167 I.C. 75=38 Cr.L.J. 350=A.I.R. 1937 Sind 22.)

Trial distinguished from '*inquiry*'. (A.I.R. 1929 Pat. 644.)

Trial, meaning of. (*See* 14 M L.J. 394; 27 M. 493; 25 C. 863=2 C.W.N. 465; 3 L.B.R. 280=5 Cr.L.J. 417.)

Trinity.

Trial at the bar. A trial before all the judges at the bar of the court.

Trial by jury is a trial presided over by a judge aided by a jury chosen according to law.

Trial de novo means trial of the entire case anew.

Trial for life "Yea, such is the law of England, the tenderest law in the world of a man's life. I say again, that no such trial for life is to be found in the world, as in England. In any place but in England, a man's life may be taken away upon two or three witnesses, but in England two or three witnesses do not do it For there are two juries, and you have four and twenty men returned, you have one and twenty men upon their oaths and consciences they have found you guilty And yet when you have done that, it is not enough by the law of England, but you are also to have twelve rational understanding men of your neighbours to hear it all over again, and to pass upon your life This is not used in any law in the world but in England, which hath the most righteous and most merciful law in the world." (*Lord Keble, C.J.*, in *Lilburne's Case*, (1649) 4 How. St. Tr. 1311.)

Scroggs, L C J.—"My rule is this, in doubtful cases, when men are upon their lives, I had rather hear what is impertinent, than not let them make a full defence". *North, L C J*—"I had rather hear things at a venture, than forbid things at a venture." [*Whitehead's Case*, (1679) 7 How. St. Tr. 388.]

"TRIAL OF AN OFFENDER." *See* U.B.R. 1905, Cr. P Code, 41.

Trial jury is a body of men drawn by lot from the jurors in attendance in court and sworn to try and determine questions of fact.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam Trial ought always to be had where the jury can have the best knowledge

Tribe The word "tribe" in Section 11, Part II, Punjab Pre-emption Act (II of 1905) is intended to cover, and does cover, the whole group of Aroras in the village who satisfy the conditions laid down in that section (2 Ind. Cas. 938.)

Tribhagamu (*Tel.*) A third of the annual crop payable to the Government.

Tribhagamu-mukhasa. A village held on condition of paying a third of the crop to Government.

Tricycle is not the same as a bycycle. (44 L.R A. 821).

Trifling amendment. An amendment of a decree which gives a fresh starting point of limitation under Art. 182 (4) of the Limitation Act must be an amendment in the real sense of the term, that is, of some substance as affecting the rights of the parties, and not merely the correction of a clerical error or a trifling arithmetical mistake such as the Court might at any time correct of its own motion. [16 Pat. 453=1937 P.W.N 624=18 P.L.T. 679]

Trihai. Portion of a forest closed against exercise of rights.

Trinity. (*Trinitas.*) The number of three persons in the Godhead, or Deity, supposed to be so peculiarly distinctive of the Christian religion. (*Tomlins*

Trinity House.

Law Dic.) There is also a trinity in the Hindu Religion.

Trinity house. A kind of college belonging to a company or corporation of seamen, called the Master, Wardens and Assistants of the Trinity House, who have authority by the King's Charter to take knowledge of seamarks, also to redress the faults of sailors, and divers other things belonging to navigation. (*Tomlins Law Dic*)

Trinity term One of the four terms of the English courts of common law

Tripartite Of three parts, a term applied to an indenture where the parties to it are arranged, and the indenture itself is executed, in three parts.

Triplicatio (*Lat*) The defendant's answer to the replication, a rejoinder

Triumviri (*Lat*) Three men, subordinate magistrates appointed for various purposes.

Trolley is a kind of low truck,—especially one worked with hand lever to convey railwaymen along the line, contact-wheel of electric tram car worked by over-head wire

Troop company. In a military sense a troop is among the horse what a company is among the foot, but this is only a partial acceptation of the term Troop signifies an indiscriminate multitude, company is any number joined together, and bearing each other company: hence we speak of a troop of hunters, a company of players, a troop of horsemen, a company of travellers.

Trouble hunter is a lineman employed by a telegraph company, whose duty it is to trace out and remedy difficulties which might arise from the contact of the telegraph wires with other wires.

Trover (From the *Fr. Trower*, to find) An action which lies where one man gets possession of the goods of another by delivery, finding, or otherwise, and refuses to deliver them to the owner, or sells or converts them to his own use, without the consent of the owner, for which the owner, by this action, recovers the value of his goods. (*Tomlins Law Dic*)

Troy-weight. A weight of twelve ounces to the pound, having its name from Troyes, a city in Champaign, whence it came first to be used in England. (*Tomlins Law Dic*)

Truce. A league or cessation of arms. (*Tomlins Law Dic.*)

TRUCE A suspension of hostilities between belligerent powers; cessation of hostilities by agreement for a fixed time

Truce of God. Obligation to abstain from hostilities on certain occasions imposed by the medieval church.

"Trust" defined. *See also* Author of the trust, Breach of trust, Criminal breach of trust, Instrument of trust. Act 27, 1866, S 2; Act 3, 1874, S. 6; Act 1, 1877, S. 3, Act 2, 1882, S. 3

TRUST. A confidence which one man reposes in another. (*Tomlins Law Dic.*)

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared

Trust.

and accepted by him, for the benefit of another, or of another and the owner. [Act II of 1882 (Trusts), S 3]

"Trust" includes every species of express, implied or constructive fiduciary ownership. [Act I of 1877 (Specific Relief), S. 3]

The words 'trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person [Act XXVII of 1866 (Trustees), S 2]

Under S 3 of the Trusts Act a trust is an obligation annexed to the ownership of property and a trustee is a person who accepts a confidence which gives rise to obligation annexed to the ownership of property (171 I C 49=10 R B. 172=39 Bom.L R. 633=A.I R 1937 Bom 374)

"Trust" includes endowments for religious and charitable purposes (10 Pat. 506=134 I C 417=1939 Pat. 354)

The person who reposes or declares the confidence of trust is called the "AUTHOR OF THE TRUST" the person who accepts the confidence is called the "TRUSTEE" the person for whose benefit the confidence is accepted is called the "BENEFICIARY' the subject matter of the trust is called "TRUST-PROPERTY" or "TRUST-MONEY" the "BENEFICIAL INTEREST" or "INTERRST" of the beneficiary is his right against the trustee as owner of the trust-property and the instrument, if any, by which the trust is declared is called the "INSTRUMENT OF TRUST" a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "BREACH OF TRUST" [Act II of 1882 (Trusts), S. 3]

Combination of producing firms designed to prevent outside competition by united action (as) oil trust, steel trust etc.

PUBLIC AND PRIVATE TRUST In the case of a temple an idol publicly constituted and publicly accessible in which the appearance may be what one may describe as ambiguous, one would expect and ought to insist upon clear evidence of permission given or licence given and permission withheld because it is equally true that a private individual may construct out of his private purse a private temple and idol retaining the control and management in his own hands and that of his family or some other selected individuals and yet so conduct himself as to provide conclusive evidence of dedication by implication and by conduct There is a broad difference when one comes to construe a dedication, between conduct which shows that the owner of the property is giving express permission from time to time to particular individuals and conduct which shows that he intends certain members of a class whom he desires to benefit to act indiscriminately without permission that is to say, as of right A useful test, for a Judge to apply to see whether the evidence satisfied the conditions of the private trust, is to ask himself whether any of the acts testified to by the withesses could have been prevented or penalised by proceedings for trespass. In private trusts the beneficial interest is vested absolutely in one or more individuals who

Trust-deed.

are, or within a given time, may be definitely ascertained On the other hand public trust has for its object the members of an uncertain and fluctuating body and the trust itself is of a permanent and indefinite character and is not confined within the limits prescribed to a settlement of a private trust (20 A L.J 789=A I.R. 1922 All 519)

TRUST OF RELIGIOUS OR CHARITABLE NATURE" meaning of [62 I A. 146=57 All 330=A I R 1935 P. C 97=69 M L J. 1 (P C.) ; 10 Pat. 506=A.I R. 1931 Pat 354]

TAKE ON TRUST Accept as true without testing

Trust-deed Document creating trust.

"Trust-money" defined Act 2, 1882, S. 3.

"Trust-property" defined. Act 2, 1882, S. 3.

"Trustee" defined *See* under Trust, Act 27, 1866, S. 2; Act 1, 1877, S 3, Act 2, 1882, S. 3, Act 9, 1908, S. 2 (11).

"TRUSTEE" includes every person holding, expressly, by implication or constructively, a fiduciary character [Act I of 1877 (Specific Relief), S 3]

"TRUSTEE" does not include a benamidar a mortgagee remaining in possession after the mortgage has been satisfied, or a wrongdoer in possession without title, Act IX of 1908 (Limitation), S 2 (11).

An executor, who by the will is made an express trustee for certain purposes, is, as regards the residue remaining undisposed of, an express trustee within the meaning of S 2 of the Act XIV of 1859, for the heirs of the testator. (2 B 388= 7 I A 112, 1 Dr & Walsh, 668, F)

Where an archaka takes possession of temple property or a part of it and conducts himself for all practical purposes as if he were a trustee, his position is that of a trustee *de son tort* or *de facto* trustee, especially when there is no properly constituted or *de jure* trustee [46 L W 587=1937 M W N. 1032=A I R 1937 Mad 852=(1937) 2 M.L J. 413]

The word "trustee" is a compendious word which covers a very large number of relationships involving different relationships [171 I C. 49=10 R.B. 172 =39 Bom L.R 633=A I R 1937 Bom. 374]

BOARD OF TRUSTEES. A constituted body of persons to whom the administration of a trust is entrusted.

Trustee de son tort is one who, of his own authority, enters into the possession or assumes the management of property which belongs beneficially to another.

Trusts. An arrangement whereby several companies are placed under one control, mainly with a view to regulate the production and to beat down competition.

TRANSGRESSIVE TRUSTS. Trusts which transgress the rule against perpetuities are called "taansgressive trusts".

Truth and falsehood Truth and falsehood, it has been well said, are not always opposed to each other like black and white, but oftentimes, and by design, are made to resemble each other so as to be hardly distinguishable, just as the counterfeit thing

Tukilekhkha.

is counterfeit because it resembles the genuine thing. [Cleasby, B , *Johnson* v. *Emerson* (1871) L R. 6 Ex. Ca. 357.]

There are various kinds of untruth. There is an absolute untruth in itself that no addition or qualification can make true as, if a man says a thing he saw was black, when it was white, as he remembers and knows So, as to knowing the truth a man may know it, and yet it may not be present in his mind at the moment of speaking, or if the fact is present to his mind, it may not occur to him to be of any use to mention it.

We live in an age, when truth passes for nothing in the world, and swearing and forswearing is taken for a thing of course. Had his zeal been half so much for truth as it was for falsehood, it had been a commendable zeal [*Jefferies, L C.J., Case of Braddon and another* (1684) 9 How. St. Tr 1138.

Fiction is never admitted where truth may work. *Hobbart,' C. J., Wright* v. *Gerrard,* (1617) Lord Hobart's Rep 311]

Truth like all other good things, may be loved. unwisely, may be pursued too keenly—may cost too much [*Knight-Bruce, V C*, in *Pearse* v. *Pearse*, (1846) 1 De Gex & Sm. 29]

We know that passion, prejudice, party and even good will, tempt many who preserve a fair character with the world to deviate from truth in the laxity of conversation (*Lawrence, J , Berkeley Peerage Case*, (1811) 4 Camp. Rep , 411.]

"I shall be as tender of the privileges of the University, of Oxford as any man living, having the greatest veneration for that learned body." [*Willes, L. C. J.* in *Welles* v. *Trahern* (1740) Willes' Rep 241.]

Truth, veracity Truth belongs to the thing; veracity to the person, the truth of the story is admitted upon the veracity of the narrator.

"Try," meaning of. *See* 1904 A.W.N. 154, 27 A 25.

Try and trial The words 'try' and 'trial' have no fixed or universal meaning but they are words which must be construed with regard to the particular context in which they are used and with regard to the scheme and purpose of the measure concerned. 'Trial' held to include retrial under Bengal Emergency Powers Ordinance. (I R. 1933 Cal 500=144 I.C. 90=37 C W.N 906)

Try any case. The words 'try any case' in S. 556 of the 1882 Code (now repeated in S 556 of the 1898 Code) were wide enough to include the hearing of an appeal [9 N.L.R. 81=14 Cr. L. J. 385=20 I. C. 209 (210), per *Stanyon, A.J.C.*]

In Cr. P Code (Act V of 1898), S. 556 the expression is, wide enough to include any stage of the judicial proceeding in which the question of the guilt or innocence of the accused is finally adjudicated on. [13 I.C. 333, (per *Pratt, J.C.*)

Tuccavee. *See* Taqavi.

Tukilekhkha. (*Karn*) (From *Tukı*, a guess.) A guess account, a calculation by the head,

Tukum. A special form of land revenue grant in the South of the province given in recognition of the construction of a tank for irrigation.

TUKUM (*Tel.*) An advance of seed.

Tula (*Tel.*) The measured length of a heap of grain, or the measurement round it, the length of anything.

TULA. (*S*) A balance, a pair of scales, the sign libra, the month when the sun enters libra, measure by weight. (*Wil. Gloss.* 526)

Tulabharam (*Mal*) An equal weight of gold or other articles intended for distribution with the weight of the donor. (*Wil Gloss* 526)

Tuladana. (*S*) Gift to Brahmins of gold, silver, rice or other articles equal in weight to the person of the donor, who is weighed against them ((*Wil. Gloss.* 526)

Tulam. (*Tam.*) A measure by weight of 100, or sometimes 200 palams, 145 or 190 ounces troy the lever of the apparatus used for drawing water (*Wil. Gloss* 526)

Tulaparıksha (*S*) Ordeal by the balance, the accused person having been accurately weighed in a pair of scales, is removed, and after the performance of certain ceremonies, is again weighed, if he is lighter than he was at first he is innocent if equal or heavier, guilty, he is also guilty if, without obvious cause, any part of the balance be damaged (*Wil. Gloss* 526.)

Tularjulu. (*Tel*) Measurement of the length and breadth of heaps of grain prepared to be measured on the threshing floor.

Tullasi (*S.*) The Ocymumsanctum, or sacred basil, venerated by the Hindus as a type of Vishnu, said in modern legend, to have been a nymph beloved by him in the character of Krishnam, it was used in the administration of oaths to Hindus, a few leaves with some holy water being held in the hollow of the hand of the deponent while the oath was repeated, and afterwards swallowed by him (*Wil Gloss* 526)

Tuluva The country anciently so called (*Bad. Pow.* III, 146, 156).

Tumandar. Chief of a Biloch tribe.

TUMANDAR (*Pj frontier.*), A tribal chief. (*Bad. Pow* II, 633.

Tumar (*Ben*), in the phrase 'are tumar jama' the original or unaltered revenue rate according to the last regular or formal assessment. (*Bad Pow* I, 277)

TUMAR (*H.*) A roll, a record, a register, an account (*Wil. Gloss.* 527)

Tumar-jama. (*H*) The sum total of the land revenue according to register the recorded standard assessment of the land revenue of the Provinces of the Moghul empire in the reign of Akbar, as settled by his minister, Todar, Mal, and subsequently revised at different periods down to the time of the grant of the Dewani to the East India Company. (*Wil Gloss* 527.)

Tumbamari. (*Mal.*) Certificate given by a proprietor to the holder of his land on lease or mortgage that he has sold his right to another, or one which

the holder gives to the owner, if he transfers his occupancy to another tenant.

Tumu (*Tel*) A sluice, a flood-gate, a drain, a watercourse, a measure of capacity, a Tum or Toom, varying in value, but always the twentieth of a Khandi

Tumult Riot, angry and noisy demonstration of a mob

Tumultuous, tumultuary Tumultuous signifies having tumult, tumultuary, disposed for tumult, the former is applied to objects in general, the latter to persons only in tumultuous meetings the voice of reason is the last thing that is heard, it is the natural tendency of large and promiscuous assemblies to become tumultuary

TUMULTUOUS, TURBULENT, SEDITIOUS, MUTINOUS Electioneering mobs are always tumultuous, the young and the ignorant are so averse to control that they are easily led by the example of an individual to be turbulent, among the Romans the people were in the habit of holding seditious meetings, and sometimes the soldiery would be mutinous

Tunduchittu (*Tam*) A small note (*Wil. Gloss* 527)

Tundupilli (*Tam*) The estimate of the grain produce of a small part of the village.

Tunduvaram (*Tam*) The share of the landlord from all lands cultivated by temporary cultivators. (*Wil. Gloss*)

Tunnel Subterranean passage—especially one of those made to enable a railway to pass through, instead of over or round a hill

Tu quo que Answer made to a charge by accusing the accuser of the same thing, identical retort. (*Oxfod Dict.*)

Turbary A right to dig turfs on a common or in another man's ground. Also it is taken for the place where turfs, are dug (*Tomlins Law Dic*), right or liberty of digging turf

Turhadi (*Karn.*) A species of mortgage in Kanara in which the mortgagee only receives a quantity of rice equal in value to the interest due on his loan.

Turi The name of a tribe occupying the western part of the Kuram valley, and having the Zymukhts as their neighbours on the east, they are Shiahs by religion, but subject to the Amir of Kabul.

Turk This is a Tartar word, and means wanderer As used in the Punjab, it means a native of Turkistan but in other parts of India, it is synonymous with Moghul or even with Mussalman.

Turn of the market. This term refers to the difference between selling and buying prices of stocks or shares.

Turn-over is the amount of money turned over or drawn in a business, as in a retail shop, in a given time

Turn out (*in commerce.*) Equipage; amount of goods turned out.

Turnpike. Bar or gate accross road for toll-collecting.

Turpis (*Lat.*) Base, immoral, unlawful.

Turpis arbiter.

Turpis arbiter. (*Lat.*) A bribed or corrupt judge

Turpis causa A base or immoral consideration

Turpis contractus. An immoral or iniquitous contract.

Turpis est pars quae non convenit cum suo toto That part is bad which does not accord with the whole

Turpis persona. (*Lat*) An infamous person.

Turrabuddy maniums. A term used in the jaghir to designate lands exempted from the payment of the Government dues at the original measurement of the land (*Fifth Report*)

Tusikkanam From corruption of Sanskrit *Suchi* (—a needle, iron style) and *Kanam* (q v)

Is the fee to the writer of a new mortgage-deed This and the O-ppu may amount to 7 per cent, sometimes more, sometimes less

The fee paid to the writer of a new kanam or mortgage deed (*Moore's Malabar Law*)

Tuta est custodia quae sibimet creditur That guardianship is secure which trusts to itself alone

Tutela. (*Lat.*) Tutelage.

Tutela legitima (*Lat*) Legal tutelage, tutelage created by act of law.

Tutela testamentaria (*Lat*) Testamentary tutelage or guardianship

Tutius erratur ex parte mitiori. It is safer to err on the side of mercy

Tutoring a man to give false evidence—To Tutor a man to give false evidence would amount to what S 192, I P Code, describes as the "causing of circumstance to exist" and such a person can be convicted under S 194, I P Code 8 L R 140 (Cr)=8 A I C R 342=105 I.C 662=28Cr L J 950=A I R 1927 All 721]

Twelve tables A celebrated body of Roman law framed by persons appointed for the purpose (451 B.C.)

Twilight The half light following sunset or preceding sunrise

Twinzayo is an hereditary oil well owner and as such entitled to receive every year a certain number of oil well sites in the oil bearing district of Yenangyaung in Upper Burmah [14 I C 475 (476)=11 M L T 169=('912) 1 M W N 201=15 C L J 276=14 Bom L R 204=22 M L J 360=16 C W N 529=5 Bur L T 65=39 C 492=U B R. (1912) I, 111 (P C)]

Twyne's case. A leading case or fraudulent conveyance.

Tyburn Former place of execution in London.

Tycul A description of an ancient Jaghir grant to an individual for maintaining a military force, and other particular services, in the Northern Circars.

Typewriting is a substitute for and equivalent to writing. (47 All. 675; 73 Cann 341)

Tyrrell's case. (*English law.*) A case that decided the legality of a use upon a use.

Ubi damna.

U

Ubari tenure. Ubari tenure has nothing to do with proprietorship in the lands, but is merely the right to hold the village on payment of a quit rent to the Government, that is on payment of less revenue than would ordinarily be payable Ubari tenure is distinct from the proprietary rights in the village. [7 N.L J 110=78 I C 780=A I.R 1924 Nag. 133.

Uberrima fides (*Lat*) (most abundant faith), mutual good faith between persons in a particular relationship, as guardian and ward, attorney and client, parent and child, physician and patient, confessor and penitent.

In certain contracts (contracts of marine, fire, and life insurance, contracts for the sale of land, for family settlements, and for the allotment of shares in companies) in which one of the parties is presumed to have means of knowledge not accessible to the other, that party is bound to treat the other with *uberrima fides*, and tell him everything which may be supposed to affect his judgment. In these cases non-disclosure of a material fact, even in the absence of misrepresentation or fraud, may make the contract voidable at the instance of the party to whom the *uberrima fides* is due (*Ency of the Laws of England*)

Ubhayam (*Mal*) Interest on money given in mortgage, land, fruit, or produce of trees.

Ubhayanumata sakshi (S.) Assented to; a witness consented to by both parties. (*Wil Gloss*)

Ubhayapattom The term "ubhayapattom" in Malabar Law, means a kanom mortgage (30 M. 61=1 M L T 426=16 M L J. 462)

UBHAYA PATTAM (*Mal*) A lease of rice fields. (*Moore's Malabar Law*)

Ubhayapattam mortgage. *See* 16 M.L.J. 462=1 M L T 426=30 Mad 61

Ubhayarasi (*Karn*) The heap of corn gathered and stacked, but not yet apportioned between the sharers, especially when they are the Government and the cultivators

Ubi (*Lat*) Where when.

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. When anything is granted, that also is granted without which the thing granted cannot exist.

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum When anything is impeded by one single cause, if that be removed, the impediment is removed.

Ubi cessat remedium ordinarium ibi deccuritur ad extraordinarium When a common remedy ceases to be of service, recourse must be had to an extraordinary one

Ubi culpa est, ibi paena subesse debet. Where a crime is committed there the punishment should be inflicted.

Ubi cunque est injuria, ibi damnum sequitur. Wherever there is a wrong, there damage follows.

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the

Ubi eadem ratio.

losing party should be adjudged to pay the costs of the victor.

Ubi eadem ratio ibi idem jus. Where the reason is the same, there the law will be the same.

Ubi eadem ratio ibi idem lex, et de similibus idem est judicium Where there is the same reason, there is the same right, and of things similar, the judgment is similar

Ubi est forum, ibi ergo est jus. The law of the forum governs

Ubi et dantis et accipientis turpitudo versatur, non posse repeti dicimus, quotiens autem accipientis turpitudo versatur, repeti posse. Where there is turpitude on the part of both giver and receiver, we say it cannot be recovered back, but as often as the turpitude is on the side of the receiver (alone) it can be recovered back,

Ubi factum nullum. ibi fortia nulla Where there is no act, there can be no force

Ubi jus ibi idem remedium Where there is a right there is a remedy

Ubi jus incertum, ibi jus nullum. Where the law is uncertain, there is no law.

Ubi lex aliquem cogit ostendere, causam, necesse est quod causa sit justa et legitima Where the law compels a man to show cause, it is necessary that the cause be just and legal.

Ubi lex est specialis, et ratio ejus generalis generaliter accipienda est. Where the law is special and the reason of it is general, it ought to be taken as being general.

Ubi lex non distinguit nec nos distinguere debemus Where the law does not distinguish, we ought not to distinguish.

Ubi major pars est, ibi totum Where is the greater part, there is the whole

Ubi matrimonium, ibi dos Where there is marriage, there is dower

Ubi non adest norma legis, omnia quasi pro suspectis habenda sunt When the law fails to serve as a rule, almost everything ought to be suspected

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority to establish there is necessity to obey

Ubi non est directa lex, standum est arbitrio judicis, vel procedandum ad similia Where there is no direct law, the judgment of the judge must be depended upon, or reference made to similar cases.

Ubi non est lex, ibi non est transgressio quoad mundum. Where there is no law, there is no transgression, as it regards the world.

Ubi non est manifesta injustitia judices habentur pro bonisviris, et judicatum pro veritate Where there is no manifest injustice the judges are to be regarded as honest men, and their judgment as truth.

Ubi non est principalis, non potest esse accessorius. Where there is no principal, there can be no accessory.

Ulavadai-kaniatchi Sasanam.

Ubi nulla est conjectura quae ducat alio, verba intelligenda sunt ex proprietate non grammatica sed populari ex usu Where there is no inference which would lead in any other direction, words are to be understood according to their proper meaning, not grammatical, but according to popular usage.

Ubi nulla subest causa propter conventionem. Where there is no consideration for the promise or undertaking by one of the contracting parties, there is no obligation incurred (*Broom*, 716)

Ubi nullum matrimonium ibi nulla dos est. (Co Litt. 32) Where there is no marriage there is no dower

Ubi periculum, ibi et lucrum collocatur He at whose risk a thing is, should receive the profits arising from it

Ubi pugnantia inter se in testamento juberentur, neutrum ratum est When two directions conflicting with each other are given in a will, neither is held valid.

Ubi quid generalitur conceditur, inest haec exceptio, si non aliquid sit contra jus fasque. Where a thing is granted in general terms, this exception is present, that there shall be nothing contrary to law and right

Ubi quis delinquit ibi punietur Let a man be punished where he commits the offence.

Ubiquity Existence everywhere at the same time, omnipresence

Ubi verba conjuncta non sunt sufficit alterutrum esse factum Where words are not conjoined, it suffices, if either be complied with

Udaipu-kattu (*Tam Mal.*) Repair of a breach in a dam or the bank of a reservoir

Udaivaram or Udavaram. (*Tam*), The whole produce The whole of the divisible produce of the land, or the entire crop before partition The whole produce of all the cultivated lands of a village subject to partition between the cultivator and the landlord or the state (*Wil Gloss*)

Udaiyar (*Tam*) A title borne by some Hindu tribes it is that of the Rajas of Coorg (*Wil. Gloss*)

Udasi (*Sanskrit*) One who sits apart and is indifferent, a stoic, a mendicant, recluse especially a particular order of mendicants founded by Sri Chandar, the son of Nanak the first Sikh Guru. They never shave, but tie up their hair like a turban and they wear no clothes except a langoti, but rub their bodies with ashes The Udasis were rejected by Amar Das, the third Guru, as not being genuine Sikhs.

Udupumadi. (*Tel.*) A plot or field in which grain has been transplanted.

Uftada. (*H.*) Fellen in, not in use (of a well).

Ujarha. Uninhabited

Ulavadai-kaniatchi-sasanam (*Tam*) A deed by which a proprietor transfers his right of cultivation to a Payirkaran, or tenant as far as allowable by the

Ulavada Miras.

custom of the villages, after which he cannot remove him, or substitute another in his place.

'Ulavada Miras" meaning of. [8 C W.N. 545=27 M 291=14 M L J 200=31 I A. 87 (P.C) (ref. to 5 M 345), 22 M 264].

Ulavadai mirasdars. The mere fact that in certain documents the tenant were described as "Ulavadai Mirasdars," does not import that they hold under a heritable tenure [8 C W N. 545=27 M. 291=31 I A 83=14 M L J 200 (P C)]

Ulavadai ulkudi (*Tam*) A cultivator, who, although not an original sharer in the village lands, has acquired the right of hereditary succession and continuous occupation.

Ulavu. (*Tam.*) Ploughing, agriculture, tillage.

Ulema (*Arabic*) An assembly of Alims

'Ulkudi' *See* 1 L W. 41=23 I C 113

ULKUDI (*Tam*) A permanent resident tenant with hereditary rights, as distinguished from the parakudi *See* 1 L W 41

A permanent cultivating tenant, one who by himself or his forefathers, has been settled in a village and carried on cultivation in it for a considerable time, although not one of the original coparceners (*Wil Gloss*)

Ulkudi Mirasidar The ryot of the *Ulkudi mirasidar* was the receiver of the Kudivaram and he might cultivate the land himself or have it cultivated by tenants in cases in which the Government share of the produce left him a Kudivaram which had a margin above the cost of the cultivator's subsistence The tenant introduced by the ryot was called a *Porakudi* or stranger cultivator In exceptional cases the *Porakudi* was permitted to acquire a beneficial interest in land and the status of an *Ulporakudi*, but this was not recognised as a part of the general common law of the country.

Ullage. Waste or leakage, in liquid contents of bottles, casks, etc.

Ullaku (*Tel.*) A written memorandum left with goods or grain, specifying the quantity and the owner

Ullitar (*Tam*) Partners, all concerned in the same bargain or business, coparceners in land

Ulpalli (*Mal*) Rice fields also known as ubhayom (*Sundaram Iyer s Malabar Law*)

Ulpatti (*Tam*) Rice lands.

Ulpayirkudi (*Tam*) A permanent cultivating tenant, one who, by himself or his forefathers, has been settled in a village and carried on cultivation in it for a considerable time, although not one of the original coparceners.

Ulterius concilium. (*Lat.*) Further argument; further consideration,

Ultima (*Lat*) The last, remotest.

Ultima ratio. (*Lat*) The final argument, the last resort.

UUltimatum. A diplomatic message conveying the final proposition made by one State to another concerning a matter in dispute or the terms the least favourable to itself that it can accept and the rejection of which will be followed by immediate hostilities. It is thus the decisive step of a Government previous to a repture of negotiations and a declaration of war.

Ultra vires.

Ultima voluntas. (*Lat.*) The last will.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to its true intention.

Ultimo. In the last month

Ultimum. (*Lat*) The extreme

Utimum supplicium, (*Lat*) The extreme punishment, the punishment of death.

Ultimum supplicium esse mortum solam interpretamur The extremest punishment we consider to be death alone

Ultimus haeres (*Lat.*) The last heir—applied to the lord to whom an escheat fell.

ULTIMUS HAERAS The Crown which succeed to the property of those who die intestate without leaving next of kin

Ultra Beyond, opposite of *infra.*

Ultra mare (*Lat*)

Ultra petitia (*Lat.*) Beyond things demanded; a term applied to a judgment or decree for more than what the plaintiff asked.

Ultra posse non potest esse et vice versa. What is beyond possibility cannot exist, and the reverse (what cannot exist is not possible)

Ultra-religious Excessively religious.

Ultra valorem (*Lat.*) Beyond the value.

Ultra vires (*Lat*) (Beyond their power), said of a company or corporation, etc., when exceeding the authority imparted to it by the law.

The doctrine of *ultra vires* wears at first sight an aspect of technicality, but a closer examination shows it to be eminently rational, and a necessary complement of the law governing corporations of special importance at the present day, having regard to the extraordinary expansion of joint-stock enterprise. Corporations are artificial persons in law, called into existence by the prerogative of the Crown —which alone can create a corporation endowed with an independent power and vitality of their own. But —and this is the material point—a corporation though a *persona* in law, is not an ordinary *persona*, It is created and endowed for certain objects, and for certain objects only, and its powers are impliedly restricted to doing what is necessary for the attainment of those objects in other words, those objects define and circumscribe the corporation's sphere of activity. Outside this sphere the corporation is struck with importance and all that it does is *"ultra vires"* and wholly void. This is a broad principle of State policy [*Ashbury Rly. Co.* v. *Riche*, (1875), L R. 7 E. & I App 653, *Stockport District Waterworks Co.*v.*Mayor etc, of Manchester*,(1863), Jur N.S. 266; *Pickering* v. *Stephenson*, (1872), L.R. 14 Eq. 340.] and

Uluku.

it is a corollary from it that the governing body of a corporation cannot use the funds for any purpose other than the objects of the corporation [*Peel* v *London & N W. Rly Co.*, (1907) 1 Ch 5 C A, *Pickering* v *Stephenson*, supra, *Guinness* v. *Land Corporation of Ireland*, (1883), 22 Ch, D 375 *See Ency of the Laws of England*, Brice, *Ultra Vires*, Brown and Theobald, Railways, Kerr on Injunctions; Joyce on Injunctions, Arnold on Municipal Corporations, Buckley, Companies]

Uluku. (*Tam*) An account kept by the village accountant of the lands of the village, their extent and capability

Ulupha. (*Tel*) Supplies furnished gratuitously to great persons on a journey by the villagers on their route.

Uluvudai-varam (*Tam,*) The cultivator's share of the crop

Ulvaram (*Tam.*) The owner's share of the produce of his land.

Ulvaykal. (*Tam*) Water-course or channel within a village.

Umbali-uttar. (*Karn*) Grant of rent-free land for subsistence

Umbilikai (*Tam*) Land granted by Government, rent-free, as a reward for, or in consideration of public services

Umd. (*A*) A wilful act. This word is used by the Mahomedan criminal lawyers in opposition to Khataa, accidental. (*Macn. Mah Law*)

Umdat ul-riayah. A commentary on Sharh i-Vikaya written by Moulana Abdul Hai, a work on Mahamadan Law

Umedwar. (*Hind*) An expectant, a candidate for employment, an unpaid probationer

Ummaligar (*Karn*) The holder of lands, or a village, rent fee.

Ummali-gramam. (*Karn*) **Umbali-gramam** (*Tam*) A village granted rent free in reward for, or on condition of, public services

Umm-al-walad. (*A*) In Mohammadan law a female slave who has borne a child to her master, and is consequently free at his death (*Wil. Gloss.*).

Umpire A submission to arbitration usually provides that in case of arbitrators not agreeing in an award, the matters should be decided by a third person, who is called an umpire

Umpireage Friendly decision of a controversy, arbitration, decision by an umpire

Umudain. (*A.*) In Mohammadan Law, the pillars or supporters of a family designation of the children of a kinsman, however distant, and whether in the ascending or descending line ancestors of descendants in the direct line. (*Wil Gloss*)

"Unable to maintain itself". A Mahomedan girl who is of an age between 15 and 16 is not a child able to maintain herself and therefore is entitled to maintenance under S 488, Cr. P. Code. (A.I.R 1937 Rang. 518.)

Unclaimed dividends.

The words "UNABLE TO MAINTAIN ITSELF", in S. 488 (1) relate to the absence of sufficient maturity in physical and mental development in the child rendering it in consequence unable to earn its livelihood by its own exertions and do not refer to inability through poverty or absence of means. (25 M L.J. 355 =14 M. L. T. 223=1913 M. W. N. 997=21 I. C. 469)

"Unable to pay his debts",—Meaning of. (99 I.C 7=A I R 1927 Lah. 136).

Unalienable. A thing which cannot be sold or alienated.

Unanimity. State of being of one mind, agreeing in opinion (as) unanimity of the jury.

Una persona vix potest supplere vices duarum. One person can scarcely supply the place of two

Unapparent Not apparent, not apparent (as) non-apparent easement.

Unappealable Not admitting of appeal to a higher court, final, conclusive.

Unattested Not bearing attestation (as) unattested deed

Una voce (*Lat*) With one voice, unanimously.

Unavoidable Inevitable; (as) unavoidable accident is an act of God, that may not be rendered null and void.

Unavoidable accident An event from an unsual or unexpected event from a known cause, a casualty which happens in spite of due care and caution, an accident unavoidable under the circumstances.

Unbailable. Non-bailable, incapable of being bailed

Unbalanced. (Account) not adjusted so as to show debtor and creditor balance

Unbelief. Incredulity, disbelief,—especially in divine revelation or in particular religion

UNBELIEF, INFIDELITY, INCREDULITY Unbelief respects matters in general; infidelity is unbelief as respects divine revelation; incredulity is unbelief in ordinary matters Unbelief does not of itself convey any reproachful meaning, it depends upon the thing disbelieved infidelity is taken in the worst sense for a blind and senseless perversity in refusing belief: incredulity is often a mark of wisdom. The Jews are unbelievers in the mission of our Saviour; the Turks are infidels, inasmuch as they do not believe in the Bible Well informed people are always incredulous of stories respecting ghosts and apparitions.

Unbiassed. Free from bias or prejudice; impartial.

Uncertainty Where the words of a deed or will are so vague that no definite meaning can be assigned to them, the grant or gift is void for uncertainty

Uncivil. Not civil or courteous; rude.

Uncivilized people Barbarous people.

Unclaimed dividends Dividends which have not been claimed.

Unclassed suit.

"Unclassed suit", defined. Act 18, 1884, S. 3 (3), Act 6, 1900, S. 2 (g); Reg 7, 1901, S 2 (1) (*f*).

"UNCLASSED SUIT" means a suit which is neither a land suit nor a small cause [Pun Reg VII of 1901 (N W F P Law & Justice), S 2 (1) cl (*f*).]

Uncommerciable Not capable of being made material for commerce, not in a spirit of commerce.

Uncommon. Strange.

Unconclusive (proof) Not conclusive

Unconscientious The terms "fraud" or "fraudulent" are often synonymous with "unconscientious" and "inequitable" (2 Fom Eq Jur S 8).

Unconscionable bargain is one which no man in his senses, not under a delusion, would make on the one hand, and which no fair and honest man would accept on the other

Uncorroborated testimony Testimony which is not corroborated, evidence standing alone.

Uncovenanted Not promised by covenant, not bound by a covenant (as) uncovenanted civil service.

Uncovenanted civil service A branch of the East Indian civil service

Uncrown. To deprive of crown, to dethrone

Uncrowned Possessing kingly power without the actual title or dignity.

"Uncultivated land", defined, Bom. Act 1, 1880, S 41, *expln.*

Undarutti Panayam (*Mal*) Usufructuary mortgage where the mortgage-money is paid out of the usufruct both the principal and the interest (*Sundaram Iyer's Malabar Law*) A mortgage which redeems itself within a fixed period, a proportion of the principal being each year liquidated by the surplus usufruct after providing for payment of interest, (*Moore's Malabar Law*)

Under In a position lower than, below, at a less cost than (as) "under five rupees"

UNDER, BELOW, BENEATH We live under the protection of Government, the sun disappears when it is below the horizon, we are apt to tread upon that which is altogether beneath us.

Underarms. (*Milit*) In readiness to use arms, in offence or defence

Underbid (at auction sale). To bid less than.

Underboard Secretly (opposite of above board)

Undercharge. To charge less than the proper sum.

Underclerk A subordinate clerk.

"Under colour of" Of any duty or authority does not mean "in relation to". (25 S.L R. 395=136 I. C. 513=A I R. 1932 Sind 28)

Undercurrent A current under the surface of the water, running below, unseen on the surface.

Underestimate To estimate at too low a rate.

Under fire Exposed to the shot of an enemy.

Undergo. To be subjected to, to endure, suffer (as to undergo imprisonment.)

"Undergoing a sentence of imprisonment". A person who has been committed to prison, or is 'detained in prison' under S. 423, Cr.P. Code, is not

Undertaking

'undergoing a sentence of imprisonment' within S 397 (*27 M 525, foll*) Where a man so committed or detained is convicted and sentenced to imprisonment for a substantive offence, the sentence should run concurrently with the period of detention imposed under S. 123 (3 S L R. 114=4 I C 603=11 Cr L J. 15, 37 Bom. 178=14 Bom L.R. 965=17 I C. 785)

Undergraduate Student beneath the rank of a graduate.

Underground Under the surface of the ground (as) underground rooms.

'Underlease' Where a lessee grants part only of his term to another, reserving to himself a reversion the term granted is underlease

"Under-proprietary right" defined. Act 22, 1886, S. 3 (9)

"Under-proprietary right" in any land, in the Settlement of Oudh, meant the right to hold the land in perpetuity for a heritable and alienable estate at a fixed rent, subject to a revised assessment [31 A. 394=13 C W N 1093=10 C L J 133=11 Bom L R. 868=6 M L T 168=12 O C 293=3 Ind Cas. 200=19 M L J 442 (P C). *See also* 17 I C 334]

"Under proprietory" defined Act 22, 1886, S 3 (8), U P Act 3, 1901, S 4 (15)

"UNDER PROPRIETOR" means in Oudh a person possessing a heritable and transferable right in land who is, or but for a judicial decision or contract would be, liable to pay rent therefor [U.P. Act III of 1901 (Land Revenue), S 4, Cl (15)]

Under protest Payment under protest The phrase signifies a payment of money accompanied by a declaration that the demand is illegal or in excess of what is justly due, and implying the need of a future rectification

The value of the phrase "under protest" is to safeguard the positon of the person who makes the payment and to ensure that it may not be said that the payment he made was a voluntary one (158 I C 407 =1935 M W N 745=42 L W. 317=A.I R 1935 Mad. 625)

"Under-raiyat" defined Act 8, 1885, S. 4 (3).

Undersail Moved by sails, in motion

Under-Secretary Secretary subordinate to the principal Secretary

Undersell Sell cheaper than another person or persons—or lower than the market rate

Under-sheriff. An officer who acts directly under the sheriff, and performs most of the duties of the sheriff's office

Undersigned. Person whose signature appears below.

Undertaker One who undertakes a business; a contractor, one who manages a funeral.

"Undertaking" defined Act II, 1886, S. 3 (8); Bom. Act 1 1874, S 2

UNDERTAKING is a promise, engagement or stipulation The term is frequently used in the special sense of a promise given in the court of legal proceedings, by a party or his counsel, generally as a condition of obtaining some concession from the court on opposite party.

Under-tenant.

"**Under-tenant**" defined Ben. Act 8, 1879, S 3.

"UNDER-TENANT" means any holder of a heritable and transferable intermediate tenure between the Government and the raiyat other than a zamindar [Ben Act VIII of 1879 (Rent Settlement), S 3]

"**Under-tenure**" defined. [Ben Act 6, 1880, S 3, Ben Act 5, 1887, S 2, Reg 4, 1910, S. 3 (*b*), 8 Cal. 675=10 C L J 399

Under-trial prisoner When an under-trial prisoner complains to a Court that he is not treated in accordance with the provisions of the Prisons Act and the rules thereunder, the Court has jurisdiction to enquire into such a complaint and pass necessary orders The position of a subordinate Court is not different in this respect from that of the High Court In such cases however the Court will not insist on a public inquiry if public interests are likely to suffer thereby (133 I C 59=32 Cr L J 988=32 P,L R 586=A I R 1931 Lah 562)

Under value The value below the real worth

Underway Having commenced a voyage

Underwood Generally speaking, the term "Underwood" is applied to a species of wood which grows expeditiously, and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, so yielding a succession of profits [per *Bayley, J.*, in *R* v *Ferrybridge Inhabitants*, (1823) 1 Barn & Cress 383, 384]

Underworld The lower or inferior world; Hades, the place of departed sinners

Underwrite Deliver policy of insurance, practice marine insurance

Underwriter One who insures ships against loss, marine insurer

Undischarged Not discharged, (as) undischarged insolvent

'**Undivided family**' in Partition Act *See* 9 S L R 84=30 I C 936

UNDIVIDED FAMILY in Partition Act (IV of 1893) S 4) is not equivalent to 'a joint Hindu family' but merely means 'a family which owns the property but has not divided it' [7 Ind Cas 436 (440)]

Undo Annul

"**Undue influence**" defined Act 9, 1872, S. 16

Undue influence is coercion produced by importunity or by a silent resistless power, which a strong will often exercises over the weak and infirm

UNDUE INFLUENCE (AT ELECTIONS) (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election (2) Without prejudice to the generality of the provisions of sub-section (1), whoever—(*a*) Threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or (*b*) Induces or attampts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1). (3) A declaration of public policy or a promise of public action, or the

Unilateral contract.

mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section. (Election Offences and Enquiries Act, S 2)

Unencumbered Free from encumbrance (as) lien, charge, mortgage, etc.

Unequitable. Not equitable, inequitable

Unexecuted. Not executed (as) an unexecuted decree.

Unfermented. Not having undergone fermentation

Unfetter To set at liberty, to take the fetters from

Unfit The word "unfit" may be interpreted not merely as physically incapable, for instance partially blind or partially paralysed, but also as covering a case wherein the applicant contends that there has been a breach of trust on the part of the trustee. (A I R 1928 Bom 20, Expl A I R 1927 Sind 237, Dist, 121 I C 875=A I R 1930 Sind 41.)

Per *Woodroffe, J*—The Magistrate has to determine under S 122 of the Cr P Code in each case whether a person offered as a surety, is a fit or unfit person The Legislature has not particularised any kind of unfitness, but has left the matter to the discretion of the lower Court The High Court will in each case consider whether the order of the Magistrate is reasonable or not (6 C W N 593 and 4 C W N 797, dist) Per *Geidt, J*—The unfitness referred to in S 122, Cr P Code, though it may not exclude the idea of pecuniary unfitness is more concerned with the idea of moral unfitness. (13 C W.N. 80= 4 I C 560=8 Cr L J 388)

Unfit for human consumption In Bengal Excise Act (V of 1909) S 6 may be paraphrased as "liable to be injurious to health." [22 Ind. Cas. 425 (426).]

"**Unfitness" or "fitness of" surety** *See* 8 C.L J. 243=13 C W N 80

Unfold. Reveal (as, thoughts, designs, etc); develop

TO UNFOLD, UNRAVEL, DEVELOP A hidden transaction is unfolded by being related circumstantially; what has been entangled in any mystery or confusion is unravelled, in this manner a mysterious transaction is unravelled if any circumstance is fully accounted for what has been wrapped up so as to be entirely shut out from view is developed, in this manner the plot of a conspiracy is developed by evidence and argument

Unfranchised Not franchised

Unfunded debt Floating debt consisting of Government short loans, payable at fixed dates.

Unified stock. Stock which from being of different interest-bearing rates is amalgamated into one of uniform rate

Uniform. Unvariable, conforming to one rule or mode

UNIFORM. A dress of the some kind for persons who belong to the same body (as) of a soldier or policeman

Unilateral. One-sided

Unilateral contract. When the party to whom an engagement is made makes no express agreement

Unimpeachable.

on his part, the contract is called unilateral contract, binding only one party.

Unimpeachable Free from fault, blameless, not capable of being impeached.

"**Union**" defined (*See also* Major union, minor union), Ben. Act 5, 1876, s. 6 (21); Mad. Act 5, 1884 s. 3 (*xxvm*).

Union jack The National flag adopted by Great Britain and Ireland

"**United Kingdom income-tax**" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Act [Act XI of 1922 (Income-tax), S 49 cl. (2), (*c*).]

"**United provinces**" defined. U P Act I, 1904, s. 4 (45).

"**United Provinces Act**" defined. U. P. Act 1, 1904, s. 4 (46), Act 1, 1897, s. 3 (55) (*a*.)

"United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892 or the Indian Councils Act, 1861 to 1909 [Act X of 1897 (General Clauses), s 3 (55) (*a*)

Uniuscujusque contractus initium spectandum est et causa The beginning and cause of every contract must be considered

Unius omnino testis responsio non audiatur Let not the evidence of one witness be heard at all

"**Universal currency note**" defined Act 2, 1910, s. 2, Act 10, 1923, s 2

Universalia sunt notoria singularibus. Things universal are better known than things particular

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiamsi major pars id faciat A university or corporation is not said to do anything unless it be deliberated upon as a body, although the majority should do it

University. A corporation of teachers or assemblage of learned men or colleges for teaching the higher branches of learning, and having power to confer degrees.

UNIVERSITY A place where all kinds of literature are universally taught (*Tomlins' Law Dic*) *See also* Act VIII of 1904, S 2, cl (2) (*c*)

A university, of the normal type, may be described in popular language as an organisation of teachers and learners, settled in a fixed locality, for the purpose of nature study, in which the body of teachers has authority to attest the proficiency of the learners, by bestowing upon them titles, signifying that they also possess the qualifications and are admitted to the rank of those that are learned in the particular branch of knowledge in which they were taught

"**University corps**" means any corps of the Indian Territorial Force constituted for the appointment thereto of students of, and other persons connected with, a University established by law in British India or colleges affiliated to such a University. [Territorial Force Act (XLVIII of 1920), S. 2.]

Unjust or dishonest acquisition It is obvious from Cl. (3) of S. 3 of Reg II of 1805 that the expression "unjust or dishonest acquisition" in S. 3 of the Regulation is not intended to include every acquisition without a just title, for by that

Unlawful assembly.

clause, acquisitions are protected that have been obtained by any title believed to be just and valid, though in reality insufficient [3 M.I A. 1=6 W.R. 24 (P C.)=1 Suth. 124=1 Sar 227]

"**Unlawful**" defined *See* Illegal

UNLAWFUL The word "*unlawful*" means "contrary to the law laid down in the statute" If the railway made a general rule under the Railway Act [by virtue of S. 47 (1) of the Act] that nobody should enter upon railway platforms except passengers with tickets, any other persons entering upon the platform might be guilty of unlawful entry But where no such rule exists, and where the Station Master leaves the platform gate open, those who enter upon the platform can hardly be considered to be other than licensees A person who enters in this manner may be quite lawfully ordered to leave the railway premises, but as he has not entered unlawfully he can never be brought within the mischief of S 122 of the Railway Act [6 P L T 437=38 I C 522=A I R. 1925 Pat. 535]

"**Unlawful**' and "**illegal**" *See* 24 C. 494=1 C.W. N 274

"**Unlawful assembly**" defined Act 45, 1860, s. 141.

UNLAWFUL ASSEMBLY An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is (i) To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant, or (ii) To resist the execution of any law, or of any legal process, or (iii) To commit any mischief or criminal trespass, or other offence, or (iv) By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right, or (v) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do (Penal Code, S 141)

An assembly does not become unlawful by reason of its lawful acts exciting others to do unlawful acts But an assembly lawful in its inception may became unlawful by its acts. When a body of men are determined to vindicate their rights or supposed rights, by unlawful force and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises, for neither side is trying to protect itself but each side is trying to get the better of the other, and in such a case the assembly is unlawful (112 I C. 902=30 Cr L J 38=A I R. 1929 Nag 43.)

UNLAWFUL ASSEMBLY, ROUT AND RIOT are cognate offences At common law if three or more persons meet on a purpose which, if executed, would make them rioters, and having done nothing, separate without carrying their purpose into effect, it is an unlawful assembly, but if an unlawful assembly moves forward towards the execution of its unlaw-

Unlawful association

ful design, it becomes a rout; and if the design is carried into actual execution it constitutes a riot

"Unlawful association" defined. Act 14, 1908, S. 15 (*2*)

Unlawfully. The criminal offence of "*Unlawfully and Maliciously*" killing, maiming or wounding any Dog, Bird, Beast, or other Animal, S 41, 24 & 25 V c 97, is not committed by placing poisoned flesh in an enclosed garden to kill a dog habitually straying there (*Daniel* v *Janes*, 2 C P D 351, nor by shooting fowls which are damage feasant (*Smith* v *Williams*, 37 S J 11, 59 J P 840)

The criminal offence of "*unlawfully and maliciously*" damaging property, S 51, 24 & 25 V c 97, is not committed unless the act be wilful (*R* v *Pembleton*, 43 L J M C, 91, L R 2 C C R, 122), but wilfulness is implied if the act is reckless and the damage its natural consequence (*R* v *Welch*, 45 L J M C 17, 1 Q B D, 23, 24 W R 280, 40 J P 183), or the damage be excessive even if the act be done under a *bona fide* claim of right [*R* v *Clemens*, (1898) 1 Q B 556, 67 L J Q B 482, 78 L T 20, 46 W R 414, *Stroud*]

Unless otherwise provided The expression "unless otherwise provided" used in S 36 of the Trusts Act (II of 1882), means unless otherwise provided by the Instrument of trust itself (31 B 271.)

"Unlimited civil jurisdiction" defined 53 4 V c. 27, S 15

Unmarketable Not saleable, not suitable for the market.

Unmarried The dictionary meaning of the word "unmarried" is not married, the popular and more usual sense is "never having been married" The word is commonly used in either sense and is therefore a flexible or equivocal term so that the meaning must in all cases be discovered from the context In the case of deeds and wills where there is no context, where the document is completely colourless, the popular sense will usually be adopted (143 I C 154 =37 C.W N. 453=A I R 1933 Cal 358)

Unnatural death Where the accused did not communicate forthwith to the nearest police station the accidental death of a person, who fell from a tree and died of the fall within two days and were charged under S 45, Cr P Code, *held*, however unnatural, in the ordinary sense of the word, the case of the death might be, it would not come within the meaning of the word unnatural as used in S 45 so as to require to be reported immediately, unless it occurred fairly soon after the cause (66 I C. 1001= 23 Cr L J 345=A I R 1922 Nag 87)

Unnatural offences Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal commits an unnatural offence (Penal Code, S 377)

Un ne doit prise advantage de son tort demesne One ought not to take advantage of his own wrong

Uno absurdo dato, infinita sequuntur. One absurdity being allowed, an infinity follow

Unofficial Not official, private.

Unopposed Not opposed, not contested (as) a suit or application unopposed by the opposite party.

Unparliamentary Contrary to the usages of proceedings in parliament, not such as can be spoken in Parliament or other Legislative assemblies.

Unthrone.

Unpopular Not liked by the people in general.

Unpremeditated Not planned beforehand; sudden, not thought of previously.

Unprincipled Not restrained by conscience or any good principle, profligate

Unproductive Not productive, unprofitable.

"Unprotected child" defined Act 13, 1880, S, 2 (4), Ben Act 5, 1880, S 2, Bom Act 1, 1877, S 2 (5), Bom Act 4, 1879, S 2 (5), Bom Act 1, 1892, S 4 (*e*), Mad Act 4, 1884, S 3 (*xxix*), Mad. Act 5, 1884, S 3 (*xxix*)

UNPROTECTED CHILD "Unprotected child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been succesfully vaccinated, and who has not been certified under the Vaccination Act to be insusceptible to vaccination [Vaccination Act (XIII of 1880), S 2]

"Unprotected person" defined. Ben. Act 5, 1880, S 2, Bur Act I, 1909 S 3 (*b*)

Unprovided for and enriched. The expression "unprovided for," in contradistinction to the term "enriched," in the Mitakshara, must be construed in the sense of "indigent" as opposed to "possessed of means" irrespective of the sources of provision or non-provision (4 A 243=2 A W N. 30. *See also* 23 B 229, 2 All 561, 5 I A 40)

Unreasonable Opposite of reasonable, not agreeable to reason

Unrecorder Not reduced to writing, not kept in remembrance by means of a record.

Unrecoverable That cannot be recovered (as) unrecoverable debt

Unredeemable. That cannot be redeemed, that cannot be taken out of pawn

"Unregistered' defined Act 16, 1908, S 50, *expln*

"Unregistered company" defined Act 6, 1882 S 243

UNREGISTERED COMPANY The expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an Act of the Governor-General in Council, nor a company registered under the Indian Companies Act. *See* Act VII of 1913 (Companies), S 270.

"Unregistered firm" means a firm which is not a registered firm [Act XI of 1922 (Income-tax), S. 2 Cl (16)

"Unsafe" defined Act 7, 1880, S 4

"Unseaworthy'. defined Act 7, 1880, S 4.

UNSEAWORTHY Condition of a ship when it is unsafe to load it or send it on a voyage.

"Unsecured creditor" defined, Ben, Act 3, 1904, S 2 (1) (*m*).

"Unsecured debt" defined. Ben, Act 3, 1904, S. 2 (1) (*k*)

"Unskilled work" includes engaging in agriculture

"Unsound mind" defined *See* 13 Bom 656 (663).

Unstamped Not stamped, not having sufficient stamp affixed (as) an unstamped instrument or promissory note.

Unthrone. Dethrone.

Until the contrary is shown.

"Until the contrary is shown", meaning of *See* 5 I.C. 160

UNTRUTH, FALSEHOOD, FALSITY, LIE Children are apt to speak untruths for want of understanding the value of words travellers from a love at exaggeration are apt to introduce falsehoods into their narrations it is the nature of a lie to increase itself to a tenfold degree, one lie must be backed by many more. Falsehood is also used in the abstract sense for what is false. Falsity is never used but in the abstract sense

Unumquodque dissolvitur eodem ligamine quo ligatur Everythig is dissolved by the same mode by which it is bound together

Unumquodque eodem mod quo colligatum est dissolvitur In the same manner in which anything is bound it is loosened

Unumquodque est id quod est principalius in ipso That which is the principal part of a thing is the thing itself

Unumquodque ligamen dissolvitur eodem ligamine quo et ligatur Every obligation is dissolved in the same manner in which it is contracted

Unumquodque principiorum est sibimet ipsi fides et perspicua vera non sunt probanda Every principle is its own evidence and plain truths are not to be proved

Unwritten law is the law not promulgated and recorded, but which is nevertheless observed and administered in our courts

Upanaya (S) The solemn investiture of youths of the three first tribes, Brahman, Kshatriya, and Vaisya, with a peculiar sacred thread or cord worn over the left shoulder, by which they are considered as regenerated and admitted to all the privileges of their original birth. (*Wil Gloss*)

Upanchaki (*Beng*) Land held in perpetuity at fixed rents it is the same as an Istimrari tenure, but the term is in general use only in Rangpur and Kuch Bahar (*Wil Gloss*)

Upanchakidar (*Beng*) A holder of land in perpetuity, paying a fixed rate to the zamindar or government

Upanidhi (S) A pledge, a deposit, in law, one that is sealed or covered, so that the contents are unknown hidden treasure

Upanishads Moral and religious Codes They have no legal value They are largely cited in Apastamba, Gautama and Vasishtha Smritis.

Upari (*Mar*) A cultivator not belonging originally to a village, but residing and occupying land in it, either upon a lease for a stipulated term of years, or at the pleasure of the proprietor a tenant, a temporary occupant, a tenant at will, also an officer employed to supervise the crops when brought to the threshing floor when the Government dues are not paid, an overseer, a superintendent (*Wil Gloss.*)

Upcountry Towards the interior, inland.

Upland High ground, or terra firma, in contradistinction to marshy and low ground. (*Tomlins Law Dic.*)

Upper Burma The expression "*Upper Burma*' means the territories for the time being included in Upper Burma, including also the Chin Hills. [Bur. Act XIII of 1898 (Burma Laws), S. 3, Cl. (*f*).]

Urban immoveable property.

"Upper passenger deck" defined 57-8 V c 60, S 268 (5)

"Upper tanawal" means the territories constituting the estate of the Chief of Amb [Regn. II of 1900 (Hazara Upper Tanawal). S 2, Cl. (*a*)]

Upraising Strong outburst of popular excitement, insurrection.

Uprising Rebellion, riot.

Uproar. Tumult; clamour (as) popular uproar

Upset To overthrow (as) an order being upset on appeal.

Upset price Price that must be reached at auction to effect a sale.

Up to date In order that the employment register can properly be said to be *up-to-date*, it is necessary that it should contain, day by day, the names of the persons employed in the factory, their hours of work and the nature of their employment. [61 Cal 332=151 I C 763=38 C.W.N 801=A.I R. 1934 Cal 546]

Upward. Directed or moving upwards (as) prices show an upward tendency

Ur, Oor, Uru (*Tam, Mal and Karn*) A village. a town, a country,

Ura (*Mal.*) A measure of quantity 20 paras

Uraima (*Mal*) Trusteeship of a temple, (*Sundaram Iyer's Malabar Law*)

Uralan (*Mal*) Guardian or manager of a temple. whether singly or in partnership with others; trustee of a temple. (*Sundaram Iyer's Malabar Law.*)

"Uralan" and "uraima" (*Mal*) "Uralan" means a guardian or manager of a temple, and "uraima" is the office of uralan to which is attached the superintendence of the affairs of the temple [61 I A 405=40 L W 428=4 A W N 425=11 O W N 1150=1934 M. W.N 1055=A L R 1934 P C 20=151 I C 329=A.I. R 1934 P C 230=67 M L J 788 (P.C)]

Uramaniyam (*Tam*) Village free lands, generally used to signify lands exempted from revenue assigned by Government for the performance of village duties, as distinguished from Kaniatchi Manyam

Uranma (*Mal*) Proprietorship of a temple or place of worship. (*Wil Gloss.*) *See* 67 M L J. 788 (P C)

Uranmakaran. (*Mal.*) The proprietor of a temple

Urayma (*Mal*) The *Urayma* is the office to which is attached the general superintendence of the affairs of a temple, a person who has attained the Ambalappadi dignity in the village holds invariably also that of Urayma, that is, he is the Uralan of the temple, but the Uralan may be such without being an Ambalappadi. [*Logan's Mal Man.* 67 M.L.J. 788 (P C)]

Urayma sthanam (*Mal.*) The management of the affairs of a temple

Urban Of or pertaining to a city or town (opposed to rural).

"Urban immoveable property" defined. Pun. Act 2, 1905, S 3 (3).

'URBAN IMMOVEABLE PROPERTY' shall mean immoveable property within the limits of a town, other than agricultural land. For the purposes of this Act a

Usage.

specified place shall be deemed to be a town (*a*) if so declared by the Local Government by notification in the official Gazette, or (*b*) if so found by the Courts [Pun Act II of 1905 (Pre-emption), S 3, Cl (3)]

Urdha. The words "Adha" and "Urdha" used in a grant indicate a clear intention to convey all below the surface as well as all on it or above it [A I R 1925 P C. 42 (44)]

URDHA and Adha indicate all below, on and above the surface [43 M L J 328=52 I.A 109 (P C)]

Urdu. A camp, a royal encampment, applied more commonly to the Hindustani language as spoken at the Courts of Delhi and Lucknow, and by the Muhammadans of India generally, being formed by a copious though not prepondering influx of Arabic, Persian and Turkish words upon a basis of Hindi and Sanskrit, and following the grammatical inflexion of the former, occasionally slightly modified

Urf (*Hindustani*) Known, known as, commonly used for *alias*

Urs. (*H*) Offerings of food, incense, or lamps made by Mohammadans on various occasions at the shrines of reputed saints

Urucheruvu. (*Tel*) A village reservoir, a public tank.

Urudi A peculiar and important form of Hindi.

Urugavuda (*Karn*) The headman of a village

Uruguttege (*Karn*) Assessment of a village

Urumbali (*Karn*) A village granted free of assessment.

Urupalu (*Karn*) Portion of the crop which falls to the share of the cultivators in a village

Uruterige (*Karn*) Assessment of a village.

Usage. The law by which the signification or import of words is fixed and settled, and the shades of difference in their meaning is marked and defined.

USAGE. "As usage is a good interpreter of the laws, so non-usage, where there is no example, is a great intendment that the law will not bear it". (Lord Litt, S 180, Co. Litt. f. 81)

"All customs must be supposed to have had a good commencement, unless they appear to be inconsistent or against reason". (Per *Cur Burton* v *Wileday* (1737) Andrews' Rep 39)

"If a custom be general, it is the law of the realm if local only, it is *lex loci*, the law of the place. Now, all laws are general, as far as the law extends, and all customs of England are of course, immemorial No usage, therefore, can be part of that law, or have the force of a custom, that is not immemorial". [*Yates, J*, *Millar* v. *Taylor*, (1769) 4 Burr. Part IV, 2368]

USAGE. Rights of every kind, which stand upon the foot of usage, gradually receive new strength in point of light and evidence from the continuance of that usage, as it implieth the tacit consent and approbation of every successive age, in which the usage hath prevailed. But when the prerogative hath not only this tacit approbation of all ages, the present as well as the former on its side, but is recognised, or evidently pre-supposed, by many Acts of Parliament, I see no legal objection that can be made to it.

Use and occupation.

[*Foster, J., Case of Alexander Broadfoot*, (1742) Foster's Rep 179.]

The word "usage" occurring in Act VIII of 1885, Bengal Tenancy, would include what the people are now or recently in the habit of doing in a particular place (23 C 427. *See also* 3 C.W.N. 21 (23), 26 Cal. 184)

USAGE, CUSTOM, PRESCRIPTION. The usage acquires force and sanction by dint of time, the custom acquires sanction by the frequency of its being done or the numbers doing it, the prescription acquires force by the authority which prescribes it, namely, Law and the universal consent of mankind. Hence it arises that customs vary in every age, but that usage and prescription supply the place of written law

Usage, Differs from Custom and Prescription No man may claim a rent, common, or other inheritance by Usage, though he may by prescription. (*Tomlins Law Dic*).

'USAGE AND LAW' Where a person in a written statement refers to his position as a pucca arhtia doing business according to the *usage or custom* prevailing in a particular locality and pleads that under the law he is not liable to render accounts to his principal, *held*, that in common parlance 'usage' and 'law' are interchangeable expressions since usage, when proved or admitted has the force of law. 38 P L.R. 859=A I R 1936 Lah. 649.

According to the Hindu Lawgiver, the following customs and usages are valid. (1) Customs of "cultivators, artizans, money-lenders, companies of tradesmen, dancers and ascetics". (2) Ancient customs of provinces, castes and families of peoples other than the Aryan Hindus Of the twice-born classes, certain marriage customs of the south are recognised. Otherwise no customs against the teaching of the Smritis are allowable (3) Family customs may be valid when not opposed to the Smritis, among the three twice-born classes. (4) No customs that are considered immoral, opposed to public policy or abhorred by the people, should be given effect to. *Ghose, Hindu Law*, 984.

Usanas. A great Hindu Sage and writer of an important Smriti that bears his name

Usance The time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. According to the language of merchants 'usance' signifies a month.

Use. (*Usus*) Is, in application of law, the profit or benefit of lands and tenements, or a trust and confidence reposed in a man for the holding of lands, that he to whose use the trust is made shall take the profits thereof (*Tomlins Law Dic.*).

USE A use, according to Coke, is "a trust or confidence which is not issuing out of land, but as a thing collateral, annexed in privity to the estate and to the person, touching the land. (1 Co. 121 a., Co. Litt. 262 *b*)

Use and occupation This in the case of houses, lands, etc gives a right of action against the occupier for rent, without the necessity of setting forth the particulars of the demise (*Tomlins Law Dic*)

USE AND OCCUPATION. The action of use and occupation is one by a landlord against one who had the enjoyment of his land under a contract to pay

therefor express or implied, but not under such a lease would support an action for rent

Use and occupancy insurance is a modern development of insurance Such insurance relates to the business use of which the property is capable in its existing condition If it be destroyed by fire and its use becomes impossible, then, during the period required for its reinstatement as property capable of use and occupation, the owner is to be compensated according to the terms of the policy

Use of any land The words "concerning the use of any land" in S 147, Criminal Procedure Code, cannot be altogether qualified and the section construed as if it contained the words that the user to which the dispute relates is a user by a party other than the person in possession. The section applies although the user may be by a person in possession of land (15 M L J 394)

"Used in the ordinary course of business" A cart shall be deemed to be used in the ordinary course of business, if it is used on an average twice a week [Ben Act III of 1884 (Municipal), S 147 *b*]

"Used for the purpose of the business" To entitle an assessee to claim an allowance under S 10 (2) (*vi*) of the Income-tax Act on account of depreciation of buildings, machinery, plant, etc, *"used for the purpose of the business,"* it is not necessary that there should have been an actual working of the machinery in the year of account The word "used" may be given a wider meaning so as to embrace passive as well as active user When machinery is kept ready for use at any moment in a factory under an express contract from which taxable profits are earned, the machinery can be said to be used for the purpose of the business which earns the profits, though it is not actually worked [I L R (1937) Bom 821=39 Bom L R 903=A.I R 1937 Bom. 493]

USER When user is proved the presumption is that it is of right [86 I C 595=7 L L.J. 74=A I R 1925 Lah 344]

User Continued use or enjoyment of a right

User 'as of right.' In deciding whether the user of a certain way is of right or not, the Court should consider the character of the ground, the space for which the right is claimed, the relations between the parties, and the circumstances under which the user took place The mere fact of a frequent or even constant user of the defendants' *oothan* by plaintiffs, who were relatives and neighbours is not proof of user as of right (13 C L J 316=9 I C. 965)

Uses The word *"Uses"* in S 397 of the Penal Code (Act XLV of 1860) should be construed in a wide sense so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed (14 I C 651=5 Bur L T. 9=6 L.B R. 41=13 Cr L J 267)

Usham porukka (*Mal*) A form of marriage in North Malabar among Nairs. (*Sund Iyer's Malabar Law*)

Using a false property mark Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark (Penal Code, S. 481.)

Using a false trade mark Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed, that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark. (Penal Code, S 480)

Usual means according to usage, ordinary, customary, general, regular.

Usucapio constituta est ut litium finis esset. The object of *usucapta* is to put an end to litigation

Usucaption Usucaption is the acquisition of property in anything by possession and enjoyment for a certain term of years.

Usufruct Right of enjoing the use or advantages, of another's property, short of destroying or wasting its substance

Usufructuary One that hath the use, and reaps the profit of a thing

"Usufructuary mortgage" defined Act 4, 1882, S 58 (*d*) Act 13, 1900, S. 2 (5), U. P. Act 2, 1903, S 2 (4).

Usurer One who lends money at a rate of interest greater than what the law allows.

Usurious contract Any bargain or contract whereby any man is obliged to pay more interest for than the Law allows (*Tomlins Law Dic*), contract for payment of excessive interest

USURIOUS CONTRACT is one which stipulates for the payment of more than lawful interest, for the use of money or forbearance of a debt.

Usurp To take possession by force and without right

Usurpation Unlawful seizure and possession (as) usurpation of an office.

USURPATION, (*Usurpatio*) The using that which is another's; an interruption or disturbing a man in his right and possession, etc (*Tomlins Law Dic.*)

Usurper. A mere usurper of an office is one who intrudes himself into an office which is vacant, and ousts the incumbent without any colour of title whatever. (21 Ame Rep 479)

Usury Reward taken for use of money, excessive interest

USURY In early times "usury" and "interest" were synonymous, but in later times "interest" came to signify lawful profit and usury unlawful profit derived by the lender of money from the borrower for its use.

USURY. (*Usura*) Money given for the use of money, it is particularly defined to be the gain of anything by contract above the principal, or that which was lent, exacted in consideration of loan thereof, whether it be of money, or any other thing. Some make usury to be the profit exacted for a loan made to a person in want and distress, but properly it consists in extorting an unreasonable rate

Usus est dominium.

for money, beyond what is allowed by positive law (*Tomlins Law Dic*)

USURY, is odious in law

"The true spirit of usury lies in taking an unjust and unreasonable advantage of their fellow creatures" Burnett, J, *Earl of Chesterfield* v. *Jansser* [(17-0)2 Ves Sen 141]

Usus est dominium fiduciarium. A use is a fiduciary ownership

Utbandi holding "Utbandi" is applied to land held for a year, or rather for a season only. The general custom is for husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon when the crop is on the ground The land is measured and the rent is assessed on it The Utbandi ryot abandons altogether (*i e*, has no right to claim again) any land, except such as he has under cultivation in any given year. The zamindar may let in jumma some or any land which the Utbandi ryot has not got under cultivation in any year." (17 C 393)

Utbandi tenancy The incidents of *utbandi* holdings vary under the influence of custom. But the outstanding general conception of all such holdings is that the land which is specified remains the *khas khamar* land of the landlord and the raiyat is allowed to occupy it for a season or for a year and the raiyat pays rent at a given rate for so much of it as he cultivates during that term The landlord is not bound to give the land to the same raiyat nor is the raiyat bound to take it in the next season or the next year In some places there is a custom under which the raiyat has a sort of lien which entitles him to occupy the lands for three years if he elects to do so; and there is an implied agreement that if without fresh rates being fixed, the raiyat occupies the lands for the next season or year, he would pay at the same rate also for the lands he may cultivate during the period of such occupation (60 Cal 681=146 I C. 55 =37 C W N 335=A I R 1933 Cal 609)

Utensils "By a devise of all utensils it is agreed that plate and jewels do not pass" (Sheppard, Touchestone, 447)

Uterine Pertaining to the womb; born of the same mother (as) uterine brother, or uterine sister

Uthman (*Pashto*) The name of a powerful independent Pathan tribe.

Uti. (*Lat.*) To use, to use for necessary purposes.

Uti furi (*Lat*) To use and enjoy a thing without damage to its substance.

Utile per inutile non vitiatur. That which is useful is not rendered useless by that which is useless.

Utilitarian purposes A gift to the executor of a testatrix to be divided "among the many sick poor with whom he came in contact, or for any other utilitarian purposes he might approve or choose," was held to fail for uncertainty. [In re *Woodgate*, (1886), 2 T.L R. 674.]

Utility. In patent law the term *"utility"* is used, not in the abstract, but in a very special sense. Mere usefulness is not sufficient to support a patent. Patents for making in one piece, articles, previously made in two or more pieces, have generally been held invalid. So also mere simplicity in construction

Uzrdari

is not an invention (42 C.L.J. 543=A.I R. 1926 Cal. 152

Uti possidotis (*Lat*) As you possess, a term expressive of the principle of a treaty which leaves belligerents in possession of what they have acquired.

Uti rogus (*Lat.*) As you ask, the words by which a note in favour of a proposed law was orally expressed.

Utmost care Conveys a stronger and more significant meaning than the word "extreme care". It means all the care and diligence possible in the nature of the case.

Utopian Imaginary, visionary, one who advocates impracticable reform, or who expects an impossible state of perfection in society.

Ut poena ad paucos, metus ad omnes perveniat. That punishment may happen to a few, the fear of it affects all.

Ut res magis valeat quam pereat That the thing may rather have effect than be destroyed.

UT RES MAGIS VALFAT QUAM PEREAT —Applicability. *See* 50 I.A 265 (273)=45 A. 596 (603).

Uttara (*Kan*) Free grant of land or assessment to temple, etc. *Swasti Uttara* said to be a term used when both land and assessment is granted. (*Sund Iyer's Malabar Law*)

UTTARA (*Karn*) Deduction, remission, land given by Government to an individual as reward for services at a quit-rent or rent-free land given to a temple.

JODIYUTTARA. (*Karn*) Assignment or grant of land at a favourable rent.

PURVADUTTARA. (*Karn*) A grant of land rent-free.

"Uttaradhikari" (*Bengali*) Meaning of. 43 C. W N. 141.

"Uttarayan". Being a voluntary payment made by tenants at a particular season of the year for a particular purpose, the income derived therefrom is not exempt from assessment to income-tax (25 C.W.N 80=61 I.C 112=32 C L J. 433.

Utter. (*Sax.*) Outer.

UTTER. Put (notes, base coin) in circulation.

Utter barrister Below rank of K. C. and addressing court from outside bar.

Uxor. Wife.

Uxor et filious sunt nomina naturae. Wife and son are names of nature.

Uxorial. Pertaining to the wife.

Uxoricide. One who kills his wife.

Uxorious. Excessively fond of one's wife.

Uxor non est sui juris sed sub potestate viri. A wife has no power of her own, but is under the government of her husband.

Uxor sequitur domicilium viri. A wife follows the domicile of her husband.

Uzrdari. (*H.*) Claiming, petitioning, submitting an objection to a claim or statement. (*Wil. Gloss.*)

V.

V. An abbreviation of *versus, vide, volume.*

V. C. Vice-Chancellor.

V. R. Victoria Regina.

'Vacancy.' 'Vacancy' cannot mean or include occupation. Consequently where an impecunious tenant fails to pay the rent, the house cannot be treated as not having been let at all Nor can un realised or unrealisable rent be treated as rent which did not accrue. (132 I C. 1=32 P.L.R. 418=A.I.R 1931 Lah. 656.)

VACANCIES—MEANING OF HOUSE VACANT AND HOUSE UNUSED—DISTINCTION (10 Pat. 261=I R 1931 Pat 305=133 I.C. 33=12 Pat.L.T. 502=A.I.R. 1931 Pat. 223.

Vacant. Unfilled, empty, unclaimed.

Vacant succession. A succession that is claimed by no person.

Vacantia bona. (*Lat.*) Goods unclaimed, or without an owner; goods escheated.

Vacatio. (*Lat.*) Exemption or immunity; exemption from the burden of office.

Vacation. Intermission of judicial proceeding: the time during which courts are not held

VACATION. (*Vatio.*) Is all the time between the end of one term and beginning of another, and it begins the last day of every Term, as soon as the Court rises. (*Tomlins Law Dic.*)

Vacatura. The avoidance or vacancy of an ecclesiastical benefice. (*Cowell, Law Dict*).

Vaccary. (*Vaccaria*) A house or place to keep cows in; a dairy-house, or cow-pasture. (*Tomlins Law Dic*,

Vaccination. Inoculation, as a precaution against small-pox.

"Vaccination Area" defined. Bom. Act 1, 1892, S. 4 (*g*).

"Vaccination-circle." defined. Act 13, 1880, S. 2 (6), Bom. Act 1, 1892, S. 4 (4).

"VACCINATION-CIRCLE" means one of the parts into which a municipality or cantonment has been divided under the Vaccination Act for the performance of vaccination. [Vaccination Act (XIII of 1880), S. 2.]

"Vaccination-District." defined. Bom. Act 1, 1877, S. 3; Bom. Act 4, 1879, S. 3.

"Vaccination-season" means the period from time to time fixed by the Local Government for any local area under its administration by notification in the official Gazette, during which alone vaccination may be performed under this Act. [Vaccination Act (XIII of 1880), S. 2.]

"Vaccinator." defined. Act 13, 1880, S, 2 (7), Bur. Act, 1908, S. 5; Mad. Act, 4, 1884, S. 3 (*xxx*).

"VACCINATOR" means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorized in manner hereinafter provided to perform the same operation, and includes a "Superintendent of vaccination" [Vaccination Act (XIII of 1880), S. 2.]

Vackeel. One endued with authority to act for another. Ambassador, agent sent on a special commission, or residing at court, native law pleader. (*Fifth Report.*)

Vadavattu. (*Tel.*) A village held free from assessment.

Vadiare. (*Lat.*) To gage; to wage, to give security.

Vadiare duellum. (*Lat.*). To wage battle or trial by combat.

Vadiare legem (*Lat.*) To wage law.

Vadiatio. (*Lat*) Wager.

Vadiatio duelli. (*Lat.*) Wager of battle.

Vadiatio legis. (*Lat.*) Wager of law.

Vadilki inam. *See* 30 Bom.L.R. 457=A.I.R. 1928 Bom 211.

Vadium. (*Lat.*) Gage; security to do some act; wages; salary.

Vadium mortuum. (*Lat.*) A deed, gage or pledge; a mortgage.

Vadium vivum (*Lat.*) A living pledge; a pledge of property to be held until the profits paid off the debt.

Vadivaykkal. (*Tam.*). A channel for carrying off surplus water from a village.

Vagabond. (*Vagabundus*) One that wanders about, and has no certain dwelling; an idle fellow. (*Tomlins Law Dic.*)

One who goes about habitually from place to place without any settled place of residence or domicile.

Vagabundum nuncupamus eum qui nullibi domicilium contraxit habitationis. We call him a vagabond who has acquired nowhere a domicil of residence.

Vagaira. The word "vagaira" really means. "et cetera" or "and others". 22 M. 189, *see also* 19 M.L.J. 273=4 M L.T. 438=3 I.C. 610.

The use of the word 'Vagaira' would show that the enumeration is not complete. *See* 127 P.L.R. 1914=22 I.C. 861.

Vagaolkanom. (*Mal.*) Irredeemable tenure. *See* S.A. No. 819 of 1882. (*Sund. Iyer's Malabar Law.*)

Vagdana. (*S.*) A gift in words, a promise: betrothment. (*Wil. Gloss.*)

Vagdatta. (*S.*) Promised: affianced, betrothed, (*Wil. Gloss.*)

Vagnischaya. (*S.*) Assurance, averment: betrothment, affiance.

Vagrancy. Vagrancy at common law was defined as the wandering or going about from place to place by an idle person who has no lawful, visible means of

Vagrant

support, and who subsists on charity and does not work for a living though able so to do.

Vagrant. A wandering idle person; a vagabond.

VAGRANT" means a person of European extraction found asking for alms or wandering about without any employment or visible means of subsistence [European Vagrancy Act (IX of 1874), S. 3]

Under stat. 17, Geo. 2, c 5, *Vagrants* are divided intoThree Classes *Viz* Idle and Disorderly Persons, Rogues and Vagabonds and Incorrigible Rogues , and are described and particularised at full length in statute. (*Tomlins Law Dic.*)

Vaidegeni (*Kan*) Term lease. (*Sund. Iyer's Malabar Law*)

Vaikuntha (*S*) Vishnu's heaven, applied ironically by the Mahammadans of Bengal to pits filled with all sorts of impurities in which, under the Government of Jafar-khan, farmers of revenue, Zemindars and others who were defaulters were plunged in order to compel payment or a revelation of their resources it is said to have been rather held out *in terrorem* than to have been carried into execution (*Wil. Gloss.*)

Vaippumaniyam. (*Tam*) A grant of a portion of the Government revenue claimable from the estate of an individual

Vairagi. (*Bairagi*) Whether Vairagis (*Bairagis*) can be classed as *sanyasis*, the order of *Bairagis* not being confined to the members of the twice-born castes. (16 Bom.L.R. 757.)

Vaisakha. (*S*) The first month of the Hindu solar year (*Wil Gloss.*)

Vaishnava (*S*) A worshipper of Vishnu in especial, under one or other of His forms.

Vaisnab Dharma Ratnakar is a sectarian treatise in which Vaisnabs are described as asramis "I do not think it is a work of any authority and in fact, judging from certain quotations placed before me, I am not prepared to attach any weight to the work One of the passages was that a Brahmin who gives up the Brahmanic religion by holding the danda is sure to go to hell after death and a Sanyasi who also gives up his sikkha Yagnopavitham is equal to a Chandal when alive and goes to hell after death. I have gone through the book and found certain outrageous passages relating to the life of Sankaracharya of a most revolting character." 23 I C 287 (290).

Vaisya (*S.*) The name of the third primitive caste of the Hindus, whose means of subsistence, according to Manu, are agriculture, trade, and the keeping of cattle. (*Wil. Gloss*)

Vakdana, (Vogdana.) (*S*) A verbal or promised gift, affiance, betrothal, promise to give a boy in adoption or a daughter in marriage. (*Wil. Gloss.*)

Vaku mulam (*Tam*) A deposition before a judge or Panchayat. (*Wil. Gloss.*)

Valadharma. (*Karn.*) Produce of lands assigned to a temple.

Valuation.

Valarthakadu. (*Mal*) Compensation paid to tenants for maintaining trees of spontaneous growth. (*Moore's Malabar Law*)

Valasa (*Tel.*) Flight of people in a body from a village through fear of some calamity or exaction.

Valeat quantum valere potest. It shall have effect as far as it can have effect.

Valet was anciently a name specially denoting young gentlemen, though of great descent or quality, but afterwards attributed to those of lower rank, and now a servitor, or gentleman of the chamber. (*Tomlins Law Dic.*)

Vali. A land measure in the Tanjore District.

Validity. The word "validity" in S. 28, Court-Fees Act, is confined to the purposes of the Act in which it is found [32 M 305=5 M L T 129=19 M. L J 340= 1 Ind Cas 507 (F.B.)]

Vallam. (*Tam*) A grain measure containing four padis

VALLAM. (*Mal*) A large basket for storing grain, a dam, a place for watering fields or letting out water.

Vallodi (*Mal*) A sub division of the Nayar caste the members of which formerly ruled in Walluvanad Taluk (*Moore's Malabar Law*)

Valluva Konatiri. (*Mal*) A title of the Rajah of Walluvanad. (*Moore's Malabar Law.*)

Valuable, precious, costly "Valuable signifies fit to be valued, precious, having a high price, costly, costing much money Valuable expresses directly the idea of value, precious and costly express the same idea indirectly on the other hand, that which is valuable is only said to be fit or deserving of value, but precious and costly denote that which is highly valuable, according to the ordinary measure of valuing objects, that is, by the price they bear. The Bible is the only precious book in the world that has intrinsic value, that is, set above all price There are many costly things, which are only valuable to the individuals who are disposed to expend money upon them "

Valuable consideration. A consideration which the law regards as an equivalent, as money, goods, lands, services on marriage.

"Valuable Security" defined Act 45, 1860, S 30

VALUABLE SECURITY The words "valuable security" denote a document, which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right (Penal Code, S. 30)

A receipt for an insured parcel despatched by post does not come within the definition of valuable security contained in S 30, Penal Code. [10 P R. 1913 (Cr) 14 Cr L J 436=30 P W.R. 1913 (Cr.)=299 P.L.R. 1913=20 Ind. Cas. 596.

"Valuation". In S. 135 Bengal Act II of 1888, the term "Valuation" does not mean merely quantum of valuation, but the process or act of valuation. (26 C. 74=3 C.W.N. 70.)

Valuation and appraisement.

Valuation and appraisement An appraiser is any person who values or appraises any kind of property, real or personal, or any estate or interest therein, or any effects whatsoever, for reward

Valuation of action or suit The value of the action must mean "the value to the plaintiff". [10 Bom L R 1=7 C L J 36=12 C W.N. 169=5 A L J. 10=17 M L.J. 618=2 M L.T. 506=35 C. 202=14 Bur. L.R. 41 (P.C.)]

"Value" defined Act 18, 1884, S. 3 (4), Act 22, 1886, S. 3 (16), Act 6, 1900, S. 2, Act 2, 1904, S 2, Mad. Act 1, 1891, S 3, (32); Reg 1, 1896, S. 3 (2), Reg. 7, 1901, S. 2 (1) (*g*).

Value The value of a thing means the quantity of some other thing, or of things in general, which it can exchange for.

"VALUE", used with reference to a suit, means the amount or value of the subject-matter of the suit [Pun Act XVIII of 1884 (Punjab Courts) S. 3, Cl. (4)]

"Value", used with reference to a suit or appeal, means the amount or value of the subject-matter of the suit or appeal. [Bur. Act VI of 1900 (L. B. Courts), S. 2, Cl. (h).]

The word 'value' in Cl *viii* of the Court-Fees Act (VII of 1870), should be construed in the same way as in the previous clauses of the section, and, therefore, in the case of land paying assessment to Government under the 30 years' settlement, it is deemed to he a sum equal to five times the survey assessment (1 B 352.)

The value of the property partitioned must be computed, for the purpose of the Stamp Act, with reference to its market value, and not according to the rules laid down in the Court-Fees Act for determining the fee payable on plaints and appeals [2 A 664 (F B)]

The value of an annuity for determining the amount of probate-fee payable thereon under the Court-Fees Act, is the market value, and not ten times the annual payment. (1 B 118. *See also* 24 Ind. Cas. 793)

VALUE, WORTH, RATE, PRICE. The value of a book that is out of print is fluctuating and uncertain, but its real worth may not be more than what it would fetch for waste paper. The rate and price are the measures of that value or worth; the former in a general, the latter in a particular application to mercantile transactions. Price is the rate of exchanging estimated by coin or any other medium.

Value of the original suit. *See* 34 C. 954=6 C.L. J. 255.

Value of the subject-matter in dispute. "The value of the subject-matter in dispute" in S 110 C. P. Code, means the real or market-value of the property in dispute, and not a nominal value such as is assessed under the provisions of the Suits Valuation Act (VII of 1887.) [60 P.R. 1905=150 P.L.R. (1905). *Also* 31 Cal. 301 (303).]

Value of the subject-matter of the suit. For the purposes of valuation the value of the subject-matter in a suit for partition, is the value of the whole of the estate which it is sought to partition, and not merely of the particular share which one of the parties may claim. (10 C W.N. 564=3 C.L.J. 257.)

"Value Payable Postal Article" defined. Act 6, 1898, S 34.

"Value received." A phrase used in bills or notes to show that there is valuable consideration and that the paper is not mere accommodation paper.

The words, although usually inserted in a bill of exchange or promissory note, are not essential to the validity of the instrument, as they only express what the law implies. [*Hatch* v. *Trayes*, (1840) 11 Ad & E. 702.]

Valued policy. A policy of insurance in which the sum at which the subject of the policy is insured is expressed instead of being left in blank In such a policy the value in case of loss need not be proved. (*See* Arnold on Marine Insurance.)

Valuer. A person whose business is to appraise or set a value upon property.

Vamsaparamparyamai means from generation to generation (20 M L.J. 92=5 Ind. Cas 880.)

'Vamshasthas' The word 'Vamshasthas' means descendants in the ordinary course of law (11 L. W 115=65 I C 781=1920 M.W.N. 188=38 M.L J. 190)

According to the ordinary rule of succession under the Hindu Law, the word "vamsastha" includes a daughter's son The word is very different from "heir" or "agnatic relation", and has a much wider meaning. It means a man belonging to the family. (157 I C 602=41 L W 473=1935 M W.N. 286= A I R. 1935 Mad 327=68 M L.J. 354)

'Vamsa varas', meaning of *See* 17 Bom.L.R. 273 =28 I.C 8.

Vana est illa potentia quae nun quam venit in actum Vain is that power which is never brought into action

Vanaprastha. (*S*) The man of the three first castes, who after the term of his householdership has entered the third Asrama or order, and has proceeded to a life in the woods, the Hyllobies of the Greek writers (*Wil. Gloss.*)

Vanaterun-kudi (*Tam.*) A cultivator who has not a settled or permanent dwelling in the village.

Vandra. (*Tel.*) Land granted at an easy rate of assessment.

Vani timories sunt aestimandi qui non candunt in constantem virem. Vain are those fears which affect not a brave man.

Vani timoris justa excusatio non est. A frivolous fear is not a legal excuse.

Varada-davasa. (*Karn*) The crops divided between the tenant and landlord.

Varadai-olai (*Tam.*) A deed of lease.

Vantatenure. is "prescription of remote antiquity without any deeds or grants." (24 Bom.L.R. 709=A. I.R. 1932 Bom. 342.)

Vantige. (*Kan.*). Contributions to village temple, etc. (*Sundaram Iyer's Malabar Law.*)

Varagu

Varagu. (*Tam*) A kind of grain. It is also applied to other kinds of millet.

Varaha. (*Tam.*) The gold coin commonly called by Europeans, pagoda.

Varadittam (*Tam.*) Adjustment of the shares of the produce belonging to each party interested a register kept by the village accountant of the respective shares of the produce assignable to the cultivator and proprietor or the state. (*Wil. Gloss.*)

Varam. (*Tam*) Share of produce of land.

Udai-varam (Tam) The whole produce of all the cultivated lands of a village subject to partition between the cultivator and landlord or the state.

Kudi-varam (Tam.) The share of the produce assigned to the cultivator

Melvaram. (Tam) The share of the produce due to the landlord or the state.

Varana-bhumi. (*Karn*) Land of which the rent or assessment is paid by a portion of the crop.

Varanilam. (*Mal*) Barren or waste land.

Varappattu. (*Tam.*) Subject to share, held in shares, an estate, it is applied also to lands, a share of the produce of which is receivable by the Government in kind (*Wil. Gloss.*)

Varapattu-nilam. (*Tam.*) Land, the produce of which is divided in sharers. (*Wil. Gloss.* 541)

Varapiruvu. (*Tam.*) Division of shares.

Varapu. (*Tel.*) (also *varupu*). Drought, dry weather.

Varappu, Varambu. (*Tam*) A limit, a border, a boundary, a low ridge or bank to retain water in fields for irrigation.

Varatundu. (*Tam*) A deduction from the share of the cultivator added to the Government share

Varava. (*Tel.*) A channel for conveying water to a reservoir.

Varavari. (*Karn.*) Settlement, assessment, adjustment of shares.

Varga. (*S.*) A class, a tribe, a multitude of similar persons or things in karnataka, an ancestral hereditary estate. (*Wil. Gloss* 542)

Vargadar (*Karn.*) The proprietor of a hereditary estate, and in that capacity sometimes the representative of a whole village, collecting and paying the assessment of the whole, although others may have portions of the village lands as separate property: the title is also though laxly, assigned to lessees under the original proprietor.

Vari. (*Tam*) Tax in general, toll, tribute, cess, impost, assessment.

Variakaran. (*Tam*) A tax-gatherer, a collector of duties, or taxes. (*Wil. Gloss.* 542.)

Varian. (*Mal.*) A caste of Ambalavasis. (*Moore's Malabar Law.*)

Varinadaka (*Mal.*) Another word for otti. (*Sun. Iyer's Malabar Law.*)

Varshasan. (*Mar.*) An annual allowance, a salary, a pension paid either by the public treasury or by assignment on the revenues of a village or district, and entered as village expenses. (*Wil. Gloss.*)

Varshasandar (*Mar*) The holder of an annual allowance, either in pay or in assignments.

Vartane. (*Mal.*) Fixed allowances. (*Sun. Iyer's Malabar Law.*)

Varuni (*S*) A festival on the thirteenth of the latter half of Chitrai, in honour of Varuna, the deity of the waters, if it fall on a Saturday it is of special sanctity, and is termed Maha-varuni. (*Wil. Gloss.* 543.)

Varyom (*Mal*) House of an Ambalavasi (*Sun. Iyer's Malabar Law.*)

Vas (*Lat.*) A pledge, a surety.

Vasatidara (*Tel*) A holder of an allowance, or rent-free land, for his support.

Vashishta A great Hindu sage and writer of an important Smriti that bears his name.

Vayal (*Tam.*) A rice-field, ground fit for rice cultivation, any open field or plain.

Vayalkkarai (*Tam.*) A rice corn field,

Vayalpattam (*Mal*) Rent of rice fields.

Vayalveli. (*Tam*) A rice corn field.

Vayippa. (*Mal*) A loan, a debt.

Vayola. (*Mal*) A written agreement on palm leaf, making over land.

Veda (*S*) The general name of the chief scriptural authorities of the Hindus it is properly applied to the four canonical works entitled severally the Rig-veda, Yajr-veda, Sama-veda, and Atharva-veda. (*Wil. Gloss.* 545.)

Veda-kriya (*S*) Any ceremonial regulated by the texts of the vedas, as are all the essential observances or samskaras of the Hindus

Vedanta. (*S.*) A system of pantheistic philosophy or psychology inferred from scattered texts of the vedas, and thence named their end or substance (*Wil Gloss.*)

Veedham (*Mal*) The Malayalam word "Veedham" has not the exclusive mathematical connotation which "proportion" or "ratio" has in English. "Rate" would be a better word. (144 I.C. 95=A.I.R. 1933 Mad. 516)

'Veetukutti'. Veetukutti is the son of a sambhandham wife and is not brought to her husband's house and he is not entitled to share in his father's property. (44 M.L.J 274=(1923) M.W.N. 173=46 M. 597=18 L.W. 525=A.I.R. 1923 M. 452.)

Vegetable production. The words "vegetable production" do not include young trees. [*R.* v. *Hodges*, (1829) Moo. & M. 341.]

"Vehicle" defined. Ben. Act 2, 1866, S 51 (ins.); Ben. Act 3, 1910, S. 4; Ben. Act 4, 1866, S. 3 (ins); Ben. Act 3, 1910, S. 4; Bom. Act 3, 1888, S 3 (*q*); Bom. Act 3, 1901, S. 3 (17); Bom. Act 4, 1902, S. 3 (*k*), Bur. Act 4, 1899, S. 5 (4).

"VEHICLE" shall include bicycles tricycles, and automotor cars, and every wheeled conveyance which is used or capable of being used on a public street. Bom. Act III of 1901 (Dist. Mun.), S. 3, Cl. 17.

Vein.

"Vehicle" includes every description of wheeled conveyance except perambulators and other conveyances designed for the carriage of children. Bur. Act IV of 1899 (Rangoon Police), S. 5, Cl 4

Hand-trollies running on rails laid on a public street and used by contractors for the purpose of carrying materials to fill up a tank, are vehicles as defined in the District Municipalities Act. (17 Bom L.R. 63=27 I C. 497.)

Vein. A zone or belt of mineral or mineral bearing rock with defined boundaries

"Velenti non fit injuria". To succeed under the maxim it is necessary for the defendant to prove that the person injured knew of the danger, appreciated it and voluntarily took the risk. That he had some knowledge of the danger is not sufficient. A man cannot voluntarily undertake a risk, the extent of which he does not appreciate. 1923 M W N 544= 45 M.L.J 53=17 L.W. 495=A.I R. 1923 Mad. 565.

Veli. (*Tam.*) An open place or field.

MANDAI-VELI (*Tam.*) A public place for cattle outside a village.

MEYCHALVELI (*Tam.*) A pasture ground

Vellakadu. (*Tam*) Total inundation of a place or field.

Vellamai. (*Tam.*) Agriculture, husbandry, as depending especially upon irrigation

Vellapal (*Tam*) Corn destroyed by inundation.

Vellavari (*Tam.*) A channel for supplying water to a tank.

Velle non creditur qui obsequitur imperio patris vel domini He is not presumed to consent who obeys the orders of his father or his master.

Vellum (*Tam.*) Flood, inundation, irrigation

Venaria (*Lat*) Animals of the field set apart for hunters (as) hares, partridges, etc.

Venatio (*Lat*) The chase, venison, prey taken in the chase.

Vendens eandem rem duobus falsarius est. He is fraudulent who sells the same thing twice.

Vendee. One to whom anything is sold.

Vendicatio. A claim.

Venditio (*Lat*) Sale, the act of selling, contract of sale, any mode of alienation.

Venditor. (*Lat*) A seller; vendor.

Venditor regis. (*In old English Law.*) (*Lat.*) The king's seller or salesman, the person who exposed to sale goods, etc, seized to answer a debt due to the king.

Vendor. A settler; one who sells.

It is common in an Indian Act to refer to petty traders or hawkers as "vendors" (34 C.W N. 114= 1930 Cr. C 383=A I.R. 1930 Cal. 295. *See also* 31 Cal. 681, 24 I C. 216; Com. Act, 1913, S. 94.)

Vendor and Vendee. Vendor is the person who sells anything, and vendee the person to whom it is sold. (*Tomlins Law Dic.*)

Verba accipienda sunt.

The expression "VENDOR" AND "PUCHASER" are not necessarily confined to sales of land, but are equally applicable to the sale of chattels, choses in action, or any other property whatever By a well-recognised tradition of legal terminology however, they have always been specially employed to indicate the parties to a sale of land.

Vendor's shares. Shares allotted to the vendor of a business on the same being converted into a limited company.

Veneson. Deer; animals of the chase

Veniae facilitas incentivum est delinquendi Facility of pardon is an incentive to crime.

Venire. (*Lat*) To come; to appear, the name of a writ by which a jury is summoned

Venire de novo. (*Lat.*) Cause you to come anew. A writ to summon another jury for a new trial.

Venire facias. A judicial writ directed to the sheriff to summon a jury.

Venire in crimen. (*Lat.*) To be accused of a crime

Venit (*Lat.*) Comes; a word expressing the appearance of a defendant.

Venit et defendet. (*Lat.*) Comes and defends.

Venit et dicrt (*Lat.*) Comes and says.

Vennilai (*Tam.*) Anything given without a pledge or mortgage. Vennilai debt, is a debt without security.

Vennilaipatram. (*Tam.*) A note of hand or bond, without a mortgage.

Venture. A term used when goods are sent out to consignee on a general hazard of sale, for what can be got for it.

Venue. (*Lat Visne*) A neighbourhood; the neighborhood or place or district in which an injury is declared to have been done or to have happened.

Under the common law, when an indictment or action was to be tried by an assize, inquest, or other form of jury, the Court required the sheriff to summon a jury for the *visne* (vicinetum) of the place where the cause of action or indictment arose. In other words, a verdict could be obtained only from persons resident in such locality.

From this procedure arose the use of the term "venue" for the district named in the margin, or stated in the body, of the pleading as that from which the jurors should be summoned.

VENUE is quite distinct from jurisdiction. [*Companhia de Mocambique* v. *British South Africa Co.*, (1893) A C. 602]

Veppu (*Mal.*) A deposit; exactly equivalent to an Otti. (*Moore's Malabar Law.*)

Verba. (*Lat*) Words.

Verba accipienda sunt secundum subjectam materiem Words are to be interpreted according to the subject-matter.

Verba accipienda ut.

Verba accipienda ut sortiantur effectum. Words are to be taken so that they may have some effect.

Verba aliquid operari debent—debent intelligi ut aliquid operentur. Words ought to have some effect; words ought to be interpreted so as to give them some effect

Verba aliquid operari debent, verba cum effectu sunt accipienda Words are to be taken so as to have effect.

Verba ambigua fortius accipiuntur contra profer entem Ambiguous words are to be taken most strongly against the person making use of them

Verba artis ex arte Terms of art should be explained from the art.

Verba chartarum fortius accipiuntur contra proferentem The words of deeds are to be most strongly against the person offering it

Verba cum effectu accipienda sunt Words are to be interpreted so as to give them effect.

Verba currentis monetae tempus solutionis designant. The words 'current money' refer to the time of payment

Verba debent intelligi cum effectu. Words should be understood effectively.

Verba debent intelligi ut aliquid operentur Words ought to be so understood that they may have some effect.

Verba dicta de persona, intelligi debent de conditione personae Words spoken of the person are to be understood of the condition of the person.

Verba equivoca ac in dubio sensu posita, intel liguntur digniori et potentiori sensu Equivocal words and those in a doubtful sense are to be taken in their best and most effective sense.

Verba fortius accipuntur contra proferentem. (*Lat.*) Words are to be taken most strongly against him who uses them.

Verba generalia generaliter sunt intelligenda. General words are to be generally understood.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personae General words must be restricted to the nature of the subject-matter or the aptitude of the person

Verba illata in esse videntur Words referred to are to be considered as if incorporated

Verba in differenti materia per prius, non per posterius, intelligenda sunt. Words referring to different subjects are to be interpreted by what goes before, not by what follows.

Verba intelligenda sunt in casu possibili Words are to be understood in reference to a possible case.

Verba intentioni et non e contra, debent inservire. Words ought to wait upon the intention, not the reverse.

Verba quantumvis generalia

Verba ita sunt intelligenda ut res magis valeat quam pereat. Words are to be so understood that the subject-matter may be preserved rather than destroyed

Verbal statements A person was convicted of murder. The victim whose throat was cut by the accused was alive for some time and being questioned regarding the offence and the person who committed it, she answered the questions by signs, being unable to speak. She described the accused by signs and when she was asked whether that person was the accused she showed assent by a nod. The question arose whether her statement was relevant and admissible against the accused *Held*, that the statement made by the deceased constituted a verbal statement resembling the case of a dumb person and was relevant and admissible in evidence [1937 A C. 220=166 I C. 330=45 L W. 78=1937 M W N 169=1937 O.W N 218=9 R P C 138=1937 A W R. 275=38 Cr L J. 281=41 C W N 513=39 Bom.L R 359=1937 A L J 420=1937 P W N 231=A I R 1937 P C. 24=(1937) 1 M L J 600 (P.C)]

Verba mere aequivoca se per communem usum loquendi in intellectu certo sumuntur, talis intellectus prae farendus est When words are merely equivocal, if by common usage of speech they acquire a certain meaning, such meaning is to be preferred

Verba nihil operari melius est quam absurde. It is better that words should have no operation than to operate absurdly

Verba non tam intuenda, quam causa et natura rei, ut mens contrahentium ex eis potius quam ex verbis appareat Words are not to be looked at so much as the cause and nature of the thing, since the intention of the contracting parties may appear from those rather than from the words

Verba offendi possunt, imo ab eis recedere licet, ut verba ad sanum intellectum reducanter You may disagree with words, nay, you may recede from them, in order that they may be reduced to a sensible meaning

Verba ordinationis quando verificari possunt in sua vera significatione, trahi ad extraneum intellectum non debent. When the words of an ordinance can be made true in their true signification, they ought not to be warped to a foreign meaning.

Verba posteriora propter certitudinem addita ud priora quae certitudine indigent sunt referenda. Subsequent words added for the purpose of certainty are to be referred to preceding words in which certainty is wanting.

Verba precaria (*Lat.*) Precatory words.

Verba pro re et subjecta materia accipi debent. Words should be received most favorably to the thing and the subject-matter.

Verba quae aliquid operari possunt non debent esse superflua. Words which can have any effect ought not to be treated as surplusage.

Verba quantumvis generalia ad aptitudinem restringuntur, etiamsi nullam aliam paterentur restrictionem. Words howsoever general, are res-

Verba.

trained to fitness (*i e*, to harmonise with the subject-matter) though they would bear no other restriction.

Verba relata hoc maxime operantur per referentiam ut in eis inesse videntur Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the clause referring to them.

Verba relata inesse videntur. Words to which reference is made seem to be incorporated.

Verba secundum materiam subjectam intelling nemo est qui nescit There is no one who is ignorant that words should be understood according to the subject-matter.

Verba semper accipienda sunt in mitiori sensu Words are always to be taken in their milder sense

Verba strictae significationis ad latam extendi possunt, si subsit ratio Words of a strict signification can be given a wide signification if reason requires

Verba sunt indices animi. Words are indications of the intention.

Verbis standum ubi nulla ambiguitas One must abide by the words where there is no ambiguity.

Verbum imperfecti temporis rem adhuc imperfectum significat The imperfect tense of the verb indicates an incomplete matter.

Verd In forest law, the privilege of cutting green wood in the forest for fuel, the right of pasturing animals in the forest.

Verderor. In forest law, an officer of the forest.

Verdict The answer of a jury given to the Court, concerning the matter of fact in any cause committed to their trial. (*Tomlin's Law Dic.*) (22 Cal. 377).

VERDICT A verdict is the determination of a jury declared to the Court by the foreman, in the presence of the other jurors, and recorded A PUBLIC VERDICT is one which is given in open Court while the Court is sitting, a PRIVY VERDICT, one which is given before one of the judges after the Court has risen. A privy verdict must be confirmed in open Court before it can be recorded, and may be varied by the jury at any time before it has been recorded. (*Co. Litt, 227-b*),

Verdictum. quasi dictum veritatis; ut judiciam, quasi juris dictum A verdict is as it were the saying of the truth, in the same manner that a judgment is the saying of the law.

Verification Making out to be true, a formula with which all affirmative pleadings are required to conclude.

"Verify", meaning of. 57 All. 426=154 I.C. 746= 1934 A L J 1183 1935 All. 137.

Veritas a quocunque dicitur, a Deo est. (*Lat.*) Truth, by whosover it is spoken, is of God.

Veritas. (*Lat.*) Truth, verity.

Vessel.

Veritas demonstrationis tollit errorem nominis. The truth of the description removes the error of the name.

Veritas habenda est in juratore; justitia et judicium in judice Truth is the desideratum in a juror, justice and judgment in a judge.

Veritas nihil veritur nisi abscondi. Truth fears nothing but concealment

Veritas nimium altercando amittitur. By too much altercation truth is lost.

Veritas nominis tollit errorem demonstrationis. The truth of the name takes away the error of description.

Veritatem qui non libere pronunciat, proditor est veritatis. He who does not speak the truth freely is a traitor to the truth.

Verumkari. (*Mal.*) (*Verumkozhlu*) Another name for verumpattom (*Sund. Iyer's Malabar Law*).

Verumpattachitta (*Mal*) Lease of lands or gardens. agreement to pay a stipulated rent.

Verumpattam (*Mal*) Rent of land or gardens without any advance or loan

VERUMPATTAM (*Mal.*) *Lit* bare rent, a simple lease, but usually so arranged as to leave a bare subsistence to the tenant (*Moore's Malabar Law.*)

Verus. (*Lat.*) True.

Verus dominus. (*Lat.*) The true lord.

Vesangipanta (*Tel*) A crop that is cut in hot season.

Vesh. Periodical distribution of land among proprietors

"Vessel" defined 36-7 V c 59, S. 2; 36-7 V c. 88, S 2, 48-9 V. c 49, S 12, 57-8 V.c 60, S 742, Act 45, 1860, S 48, Act 3, 1864, S 1, Act 8, 1873, S 3 (4); Act 8, 1878, S 3 (*f*), Act 9, 1879, S 3, Act 16, 1881, S 7, Act 4, 1884, S. 4 (3), Act 6, 1884, S. 5 (1), Act 2, 1896, S. 3 (8); Act 10, 1897, S 3 (56), Act 15, 1908, S 2 (7); Act 17, 1908, S 2 (1) (*r*), Ben. Act 5, 1864, S 1; Ben Act, 2, 1887, S 2; Ben. Act 4, 1887, S. 2, Ben. Act 1, 1899, S 3 (45); Bom Act 1, 1904, S. 3 (48); Bur Act 1, 1898, S. 2 (62), Bur Act 2, 1905, S 3 (5), Bur Act 4, 1905, S. 4 (10); Bur. Act 8, 1907, S 2 (3), E B & A. Act 1, 1909, S 5 (61), Mad Act 3, 1885, S 3 (*2*); Mad. Act 2, 1890, S 3, Mad Act 2, 1905, S. 5 (12); P. Act 1, 1898, S 2 (57), U P Act 1, 1904, S 4 (47); Reg. 3, 1876, S 3, Reg. 12, 1887, S. 2 (5).

"Vessel" includes boats, rafts, timber and other floating bodies. [Pun. Act VIII of 1873 (North Indian Canal and Drain), S. 3, Cl. (4.)]; Includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise [Explosives Act (IV of 1884), S 4.]; includes anything made for the conveyance by water of human beings or of property. (Bur. Act IX of 1872 S. 3.

For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the

Vessel of a foreign state.

tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund. [Act XVI of 1881 (Obstructions in Fairways Act), S. 7.]

'Vessel" shall include any ship or boat or any other description of vessel used in navigation. [Act X of 1897 (General Clauses), S. 3 (56)], includes a steam-vessel, boat, raft or timber [Bur. Act VIII of 1907 (Defile Traffic), S. 2, Cl. (3.)]

"Vessel" shall include any ship, barge, boat, raft or craft, or any other thing whatever, designed or used for the transport upon water of passengers or goods [Ben. Act III of 1890 (Port Calcutta), S. 3, Cl. (9.)]

"Vessel of a foreign state" defined. 36-7 V c. 88, S. 2.

Vest. To place in possession, to take possession of, to take an interest in property when a named period or event occurs

Vested. The word "vested" is used in two distinct senses. It may mean that the right with reference to which it is used, is vested in possession, or it may mean that it is vested in interest, though not necessarily in possession or indefeasibly vested (*Ency of the Laws of England*)

Vested in interest. Present fixed right of future enjoyment, as reversions, vested remainders.

"Vested interest" defined. Act 4, 1882, Ss 19, 21.

CONTINGENT INTEREST, VESTED INTEREST AND SPES SUCCESSIONIS. An estate or interest is vested, as distinguished from contingent, either when enjoyment of it is presently conferred or when its enjoyment is postponed, the time of enjoyment will certainly come to pass, in other words an estate or interest is vested when there is an immediate right of present enjoyment or a present right of future enjoyment. An estate or interest is contingent, if the right of enjoyment is made to depend upon some event or condition, which may or may not happen or be performed, or if in the case of a gift to take effect in the future, it cannot be ascertained in the mean time, whether there will be any one to take the gift, in other words, an estate or interest is contingent, when the right of enjoyment is to accrue, on an event which is dubious or uncertain. And as regards certainty, the law does not regard as uncertain the event of a person attaining a given age or of the death of somebody beyond which his enjoyment is postponed, because if he lives long enough the event is sure to happen. A *spes successionis* is merely an expectation or hope of succeeding to property, a chance or possibility which may be defeated by an act of somebody else. (59 Cal 859=138 I.C. 882=55 C.L.J. 205=A.I R. 1932 Cal 600)

Vested remainder. A remainder is vested when it is granted unconditionally to an ascertained person in esse, the grantee is called the remainderman. A remainder always has its origin in express grant. In this it is distinguished from a reversion which arises by law upon the grant of the particular estate.

Vexatious.

Vesting. Mere transference of management or control is not enough to constitute vesting. (61 Cal 119=150 I C. 398=58 C L J 502=A,I R. 1934 Cal 87.

Vesting orders Definition. A vesting order is an order of a Court under statutory authority, whereby property is transferred to and vested, without conveyance, in some person or persons, either solely or jointly with the original holder or holders, or some of them.

Vestments. (*Eccl.*) Any of the garments worn in addition to the ordinary dress by the clergy and their assistants when performing divine service, a garment or robe of ceremony or office.

Vestry. The vestry is the name given to the meeting of the inhabitants of a township or parish—a name derived from its old place of meeting.

Veterinary. Of and for the disease of domestic animals.

Veterinary hospital. One for treating diseases of domestic animals.

'Veterinary practitioner" defined. Act 5, 1910, S. 2

Veterinary surgeon A verterinary surgeon is a person who treats the diseases or injuries of animals (*Wharton's Law Lexicon*)

Veto (*Lat*) I forbid—the power of the Crown or his representative of negativing bills which have been passed by the legislature.

VETO The term "veto" in its strict use is unknown to our constitutional system, by which legislative power is placed in the Crown, Lords, and Commons co-ordinately But though the assent of these three constituent parts of Parliament is equally necessary to an act of legislation, they by no means stand on an equal footing as to the giving or refusing it, and restricted powers of the Crown and the House of Lords are sometimes spoken of without strict accuracy, as a veto on the actions of the Commons. The Crown has now, with an insignficant exception, no legislative initiative, and no power of amendment and its assent to legislation has not been withheld since the beginning of the last century. (*Ency. of the Laws of England.*)

Vettiyan (*Tam.*) A village servant who discharges the lowest offices in a village (as) sweeping the Chaultry, keeping the threshing floor clean, measuring the grain, and according to some authorities, employed to burn dead bodies, he is also the messenger of the Patils and acts as a guide to public officers and travellers. (*Wil. Glass*).

Vettu kanam or Vettu chamayam (*Mal.*) Compensation payable to a tenant for clearing and levelling land. (*Moore's Malabar Law*)

Vevilipolamu. (*Tel.*) A field ploughed.

Vexata (*Lat.*) Vexed.

Vexata quaestio (*Lat.*) A vexed question.

"Vexatious" includes false. (1904 A.W.N. 116=1 A L J. 450=25 All. 512.) An accusation cannot be said to be vexatious unless the main intention of the

complainant was to cause annoyance to the person accused, and not merely to further the ends of justice (11 S L.R. 55 Appr ; 94 I.C. 271=27 Cr.L.J. 607=A.I.R. 1926 Lah 365)

"VEXATIOUS". *See* Compensation, 9 Cr L.J. 255= 1 S.L.R. 12 Cr.

Vi. (*Lat.*) By force.

Vi et armis (*Lat.*) With force and arms, emphatic words in allegations of trespass in which acts of force and violence are charged.

Via (*Lat*) A path, a public way.

Via alta. The highway.

Via amicabili. In a friendly way.

Via trita, The beaten path.

Via publica. A public way or road

Via regalis (**Via Regia.**) The King's way, the highway.

Via antiqua via est tuta The old way is the safe way.

Via trita est tutissima. The beaten road is the safest.

Via trita via tuta. The beaten way is the safe way

Vibhaga. (*S*) Part, portion, division, especially portion of inheritance or partition of property

Vibahaga-bhak (*S*) One who shares in property already distributed, as a son born subsequently to the partition of the paternal inheritance. (*Wil Gloss.* 547).

Vibhaga-patrika. (*S*) A deed of partition, the deed drawn up at the time of partition which should specify whether the property is ancestral or acquired, the particulars of its acquisition, the names of the sharers with their respective shares· it should generally be signed by the parties, witnessed and dated. (*Wil. Gloss*).

Vibkakta (*S.*) Divided, separated, in property or as applied to persons, the sharer who has separated from his co-heirs and holds his portion in severalty. (*Wil Gloss* 547).

Vibhava. (*S*) The second year of the Hindu cycle.

Vicar. (*Vicarius*) The priest of every parish is called Rector, unless the predial tithes are appropriated, and then he is styled Vicar, as acting vice, instead of, the rector. (*Tomlins Law Dic*)

Vicarious. Done or suffered by one person on behalf of another.

Vicarious liability Where the driver of a motor omnibus employed by the owner thereof to ply the same for hire by carrying passengers, allows an unlicensed and unskilful person to drive it, when there are passengers in it, the driver, *i.e.*, the servant carries out the duty for which he is employed negligently; and if such negligence results in an accident causing injury to a passenger, the owner, *i.e.*, the master is liable in damages to the injured passenger.

It is no valid defence to a suit for damages for the owner to say that the servant (driver) acted against the master's (owner's) express directions, (1936 A.M L.J. 100)

Vicarius non habet vicarium. A deputy cannot appoint a deputy.

Vice Fault; defect, also, in one's place or stead; used also to denote delegated or deputed authority (as) vice-principal or vice-chancellor.

"Vice-Admiralty Cause" defined. Act 16, 1891, S 3

Vice-Admiralty Courts. Courts established beyond seas, with jurisdiction over maritime causes

VICE-ADMIRADITY COURT defined. 36-7 V. c. 88, sec 2.

Vice-Chairman The Vice-Chairman of a Municipality is not an officer of a Municipality (48 M L. J 696=22 L W 429=1925 M. W N. 759=90 I. C. 868 =A.I R 1925 Mad 877

Vice-dominus. (*Lat*) The Governor of a province.

Vice-gerent Holder of delegated authority (as) the Pope as God's Vicegerent.

Viceroy The governor of a kingdom or country who is delegated by a Sovereign to exercise regal authority there in his name The Governor General of India is frequently spoken of as Viceroy.

VICEROY Deputy king or ruler with Royal authority in a dependency.

Vicereine Viceroy's wife

Viceroyalty. The office of the Viceroy.

Vice versa The other way round.

Vichara, (*S*) Investigation, judgment. (*Wil. Gloss.* 547)

Vicinage Neighbourhood, near dwelling; vicinity.

Vicini viciniora prae summuntur scire. Neighbours are presumed to know things of the neighbourhood.

Victuals (*Victus*) Sustenance, things necessary to live by, as meat and provisions Victuallers are those that sell victuals. (*Tomlins Law Dic.*)

VICTUALS comprise everything which constitutes an ingredient in the good of man, and articles which, mixed with others, constitute food [*per* Lord Tenterden, C J in *R.* v *Hodgkinson,* (1829) 10 Barn & Cress. 76.]

Vidaram kairuga (*Mal*) A form of marriage among Nairs in N. Malabar. (*Sundaram Iyer's Malabar Law*)

Videbis ea saepe committi, qual saepe vindicantur You will see those offences often committed which are often punished.

Videlicet. (*Lat*) To wit; that is to say, namely.

Videsa (*S*) A foreign country.

Vidham. (*Mal.*) *See* Veedham.

Viditur.

Viditur qui surdus et mutus ne poet faire alienation It seems that a deaf and dumb man cannot alienate,

Vidhi. (*S.*) A rule, a precept, especially one enjoying some particular act or observance in law, or religion, any act or rite or ceremony, so enjoined (*Wil. Gloss* 547).

Vidu (*Mal*) The house of a Nayar (*Sundaram Iyer's Malabar Law*,

Vidua (*Lat*) Widow

Vidua regis (*Lat*) The king's widow.

Viduitas, (*Lat*) Widowhood.

View. Visual inspection, survey (as) jury was taken to view the disputed place

VIEW, SURVEY, PROSPECT. We take a view or survey, the prospect presents itself the view is of an indefinite extent, the survey is always comprehensive in its nature Ignorant people take but narrow views of things

Vigilantibus non dormientibus jura subveniunt Equity comes to the aid of the vigilant and not the slumbering *See* 30 Bom L R 1463

Vijayadasami The tenth day of the light half of Aswinon, a chief festival in honour of goddess Durga.

Vikrama (*S*) The fourteenth year of the Hindu cycle (*Wil Gloss* 547)

Vilaichchal (*Tam*) Rice-corn in the field ready for reaping

Vilai-nilam (*Tam*) A field, fertile or arable ground.

Vilaivu. (*Tam*) Growing of corn in a field.

Vilaivupalan. (*Tam.*) The corn or crop in a field

Vilakku. (*Mal*) Money paid by the occupants of Devaswam land in the streets of Palghat, held to be quit rent (*Sundaram Iyer's Malabar Law*)

'Vilakku money', meaning of *See* 1 L.W 767=28 I C. 529.

Vilattaram (*Mal*) Price or value of corn levied as tax or rent

Vill (*in old English law*) A village, town, township, parish

Villa. A farm or country residence, a manor.

Villa regia (*Lat.*) Royal residence

"Village" defined Act 18, 1881, S 4 (8), Act 1, 1883, S. 2, Act 8, 1885, S 3 (10) (ins Ben Act 1, 1907, S 4), Act 11, 1898, S 2 (1), Ben. Act 6, 1870, S 4, Ben Act 5, 1887, S 2, Ben Act 6, 1908, S 3 (*xxvii*); Bom Act 1, 1880, S 3 (1), Bom Act 1, 1889, S 4 (*a*), Bur Act 4, 1898, S. 4 (5); Bur Act 6, 1907, S. 4 (7), Mad Act 1, 1889, S 5, Mad Act 2, 1894, S 4, Mad Act 3, 1895, S 4, Mad Act 3, 1899, S 3; Mad. Act 1, 1908, S 3 (19), U P Act 2, 1892, S 2 (1); U P. Act 3, 1892, S 2 (1), Reg 3, 1889, S 3, Reg 4, 1895, S. 2 (1), Reg. 2, 1886, S 2 (2); Reg 5, 1896, S. 2 (5).

Village Channel.

"VILLAGE" includes any tract of land which, at the settlement of that land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of the Central Provinces Land-revenue Act, 1881: [C. P. Act I of 1883 (Local-Self Government), S 2]

"village" means an area appropriated to dwelling-places not included within the limits of a town' Bur Act VI of 1907 (Villages), S 4, Cl 7.

"Village" means any local area recorded as a village in the revenue records of the district in which it is situated, but does not include any area included in the limits of a municipality [U. P Act III of 1892 (Village Courts), S 2, Cl 1.]

"Village" includes—(*a*) a village-community, (*b*) village-lands, (*c*) rivers passing through or by village lands, and (*d*) a group of villages.

VILL OR VILLAGE (*Villa*) is sometimes taken for a manor, and sometimes for a parish or part of it. But a Vill is most commonly the out-part of a parish, consisting of a few houses, as it were separate from it (*Tomlins Law Dic*)

Fleta mentions the difference between a mansion, a village, a manor, *viz*, a mansion may be one or more houses, but it must be but one dwelling place, and none near it, for, if other houses are contiguous, it is a village, and a manor may consist of several villages, or one alone (Fleta lib 6. c. 51, *Tomlins Law Dic*)

The term "village" as used in a wajib-ul-arz, means a definite area of land with houses upon it. (7 A 772=5 A W.N. 263)

The expression "village" connotes ordinarily an area occupied by a body of men mainly dependent upon agriculture or occupations subservient thereto. When the area is occupied by persons who are engaged mainly in commercial pursuits, rural areas in the vicinity of a town grow into a suburb of the town [99 I C 1008, 78 I C 991 (1)=A I R 1924 Lah. 662 (1)]

The evidence that there are a number of *pakka* built shops, houses and wells, private school outside the *abadi* a population of 3,000, that carpenters for which the place is famous sell their wares in Phagwara and elsewhere, and that land is owned by Khatris, Brahmans and other non-agricultural tribes does not distinguish a village from any other large and prosperous villages nor does it convert it into a town (65 I C 154=13 P W R. 1922=A I.R 1922 Lah. 158)

"Village-cess" defined, Act 18. 1881, S. 4 (3); Act 16, 1887, S 4 (12), Act 17, 1887, S 3 (10).

"VILLAGE-CESS" includes any cess, contribution or due which is customarily leviable within an estate and is neither a payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force [Pun. Act XVII of 1887 (Land-Revenue). S. 3, Cl. (10)]

'Village channel" defined Ben Act 3, 1876, S. 3 (2).

"VILLAGE-CHANNEL" means any channel by which water is led from a canal directly into the fields to

Village Chaukidar.

be irrigated, and includes all subsidiary works connected with any such channel, except the sluice or outlet through which water is supplied from a canal to such channel. [Ben. Act III of 1876 (Irrigation), S. 3, Cl. (2)]

Village chaukidar is not an officer of Government and is therefore not a public servant (3 Lah 440=69 I.C. 437=23 Cr L.J 709=A.I R. 1923 Lah 260]

Village community A village community under the Oudh Laws Act consists not only of persons possessing rights as proprietors or under-proprietors but also lessees in village lands with heritable rights [167 I.C 275 (2)=1937 O L R. 97=1937 O W N. 285 =A.I.R 1937 Oudh 428 *See also* 1 I.C. 7 (11)]

The expression "village communities" in Act XII of 1878 (Punjab Laws) is not used to denote a village community of the typical sort, consisting of members of one family or one clan, holding the village lands in common, and dividing between them the agricultural lands according to the custom of the village It is used in a popular sense to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs and subject to the administrative control of the village officers [30 C 635 (P C)=30 I A 89=7 C. W N 498=66 P.R. 1903=90 P.L.R 1903]

"Village Court" defined. Mad. Act 1, 1889, S. 5

"Village forest" defined Act 7, 1878, S. 27

"Village forest-officer" defined Reg 6, 1893, S. 2 (3).

Village headman. A village headman in Burma who is authorized to arrest without warrant is not a police-officer [2 R 31=3 Bur L J 11=81 I C 540= 25 Cr L.J. 924=A I R. 1924 Rang 245 (F B)]

"Village immoveable property" defined Pun Act 2, 1905, S. 3 (2)

"VILLAGE IMMOVABLE PROPERTY" shall mean immoveable property within the limits of village sites other than agricultural land [Pun Act II of 1905 (Pre-emption), S 3 Cl. (2)]

"Village-land" defined. U. P. Act 2, 1892, S 2 (2).

"Village Munsif" defined. Mad Act 1, 1889, S. 5, U. P. Act 3, 1892, S, 2 (3).

"VILLAGE MUNSIF" means the Judge of a Village Court established under the Village Courts Act. [U. P Act III of 1892 (Village Courts) S. 2, Cl (3)].

"Village office" defined. Mad Act 2, 1894, S 4

"Village officer" defined. Act 16, 1887, S 4 (13), Act 17 1887, S 3 (13), Bom. Act 4, 1881, S. 2, Mad. Act 2, 1894, S 4, Reg. 6, 1893, S. 2 (4), Reg 1, 1899, S. 3 (2).

"VILLAGE-OFFICER" means a chief headman, headman or patwari of a village [Pun. Act XVII of 1887 (Land Revenue) S. 3, Cl. (11)]

Village Panchayat. A village punchayat constituted and held under Local Act (VI of 1920) is a "Court," and when it is dealing with a case in regard o an "offence" it is a Criminal Court (23 A L J. 897=L.R. 69 A Cr. 179=A.I R. 1926 All 27.)

"Village-policeman" defined. Ben. Act 5, 1887, S. 2.

"Village-service tenant" defined. Act 11, 1898 S. 55.

"Villge tract" defined. Bur Act 6, 1907, S. 4 (8)

"VILLAGE-TRACT" means the local area under the jurisdiction of a headman, including a village or group of villages and adjacent lands. [Bur Act VI of 1907 (Villages) S. 4, Cl. (8)]

"Village town, or city" defined. Bom Act 5, 1879, S 3 (20)

"Villager" defined Reg. 6, 1874, S. 2.

Villain, Villein. A man of base or servile condition, a bondman or servant (*Tomlins Law Dic*)

Villein (*In old English Law*) A feudal tenant of the lowest class.

Villenage. A servile kind of tenure belonging to land or tenements, whereby the tenant was bound to do all such services as the lord commanded, or were fit for a villain to do. (*Tomlins Law Dic*)

VILLENAGE The condition or tenure of a villein, bondage

Villenous judgment (*In old English Law*) A sentence which cast the reproach of villainy on him against whom it was pronounced.

Vim vi repellere licet, modo fiat moderamine inculpatae tutelae, non ad sumendam vindictam, sed ad propulsandam injuriam It is lawful to repel force by force, but let it be done with the self-control of blameless defence,—not to take revenge, but to repel injury.

Vimo. (*Guz*) Insurance, a contract of indemnity, by which one party engages for a stipulated payment to make good to another any loss that may arise from accidents the premium paid to the insurer. (*Wil Gloss* 548)

Vinculum Connection or relation.

Vinculum matrimonii (*Lat*) The bond or tie of marriage, matrimonial obligation.

Vindicatio. (*Lat*) The claiming of a thing as one's own.

Violent conduct implies illegal use of force

VIOLENT, VEHEMENT IMPETUOUS A violent partisan renders himself obnoxious to others, a man who is vehement in any cause puts it out of his own power to be of use Impetuosity is rather the extreme of violence or vehemence, an impetuous attack is an excessively violent attack.

Viperina est expositio quae corrodit viscera textus. That is a viperous exposition which gnaws out the bowels of the text.

Vir. (*Lat*) A man, husband.

Vir et uxor. (*Lat.*) Husband and wife.

Vir et uxor, consentur in lege una persona. Husband and wife are considered one person in law.

Vir ut uxor.

Vir ut uxor.

Vir ut uxor sunt quasi unica persona, quia caro una et sanguis unus. Husband and wife, are, as it were, one person, because one flesh and one blood.

Virai (*Tam*) Seed of plants.

Viraikal. (*Tam.*) Land fit for sowing.

Viraippadu. (*Tam*) Sowing a field

Viraippu. (*Tam*) Sowing of seed on the land

Viramitrodaya A digest on ancient Hindu Law written by Mitra Misra

VIRAMITRODAYA Treatise of especial authority at Benares [12 M I.A 397 (438)]

Viramitrodaya—Authority of, especially on point left doubtful by Mitakshara [12 M I A 448 (466)]

Viramitrodaya—Authority of, in cases where Dayabhaga is silent. *See* 7 I.A. 115 (153)=5 C 776 (788-9).

Virampatta Kuzhikanam Kudiyiruppu In Calicut a tenure to which the same incidents attach as to Kuzhikanom. (*Sund. Iyer's Malabar Law*)

Virgin couple Their Lordships left open the question when a husband and a wife may be considered as "virgin couple" [54 I A 403=5 R 841=39 M L T 492=46 C L J 406=6 Bur L J 231=A.I.R 1927 P C 234=53 M L J 425 (P.C)]

Virtue. Moral goodness, female chastity, on the strength of or by title of (as) he holds the post by virtue of seniority

"A difficult form of virtue is to try in your own life to obey what you believe to be God's will" [*Lord Coleridge Reg* v *Ramsey*,(1883) 1 Cababe and Ellis's Q.B.D. Rep 145]

Virutti, (*Mal*) Land, etc, granted by the Government free of tax or assessment on condition of performing any public service when required without pay.

Viruttikaran (*Mal*) A person holding land free of rent or tax on condition of public service.

Vis. (*Lat.*) Force

Vis ablativa (*Lat*) Ablative force, force exerted in taking away a thing from another

Vis armata (*Lat.*) Armed force

Vis clandestinr. (*Lat*) Clandestine force

Vis compulsiva (*Lat*) Compulsive force.

Vis divina. Divine or super-human force.

Vis et metus. (*Lat.*) Force and fear.

Vis expulsiva. (*Lat.*) Expulsive force

Vis impressa (*Lat*) Impressed force.

Vis injuriosa (*Lat*) Wrongful force.

Vis lycita (*Lat*) Lawful force.

Vis laica (*Lat*) Lay force; armed force used to hold possession of a church.

Vis legibus est intimica. Force is inimical to the laws

Vis major. (*Lat.*) Irresistable force; Act of God.

Visit and search.

VIS MAJOR, To be regarded in law, as vis major or the act of God, an occurrence must be overwhelming and not only unforeseen but incapable of being foreseen, and absolutely incapable of being prevented or guarded against. [4 Bom.L.R. 914.]

Vis perturbativa (*Lat*) Perturbative force.

Vis proxima (*Lat.*) Immediate force.

Vis simplex. (*Lat.*) Simple or mere force

Visabadi (*See* Veesapaddi) Settlement is identified with the settlement by fields or their individual cultivators, and is the same as a ryotwar settlement; also a tax on the profits or trade levied in periodically settled proportions upon the merchants, traders, shopkeepers, retail dealers, mercantile agents and all the inhabitants of a village, or town engaged in trade (*See* 104 I C 892=A I R 1928 Mad, 58)

Visabadi or jeroyatidar, The term "visabadi" does not imply necessarily permanent occupancy right, not will the term "jeroyatidar" imply that or that the executant was occupancy ryot (104 I C 892=A I.R. 1928 Mad 58)

Visai (*Tam*) A weight in use at Madras commonly called viss, one-eighth of a Madras maund.

Visapaddi Villages so called from the land and rent being divided into sixteen shares, the sharers of which settle among themselves the exact proportion of whole rent that each is to pay

Viscount signifies a degree of nobility next to an earl (*Tomlins Law Dic*)

Vishama vibhaga (*S*) Division of the property by the father in his life time amongst his sons in different proportions, which may take place with property self-acquired, not with ancestral property.

Vishnu A great Hindu sage and writer of an important Smriti that bears his name, also the name of one of the Hindu Trinity.

Vishu (*Mar*) The equinox, either vernal or autumnal, also the fifteenth year of the Hindu cycle. (*Wil Gloss*)

VISHU Malabar New year's day (*Sund. Iyer's Malabar Law*)

Visit and search All nations have an equal right to the use of the high sea, consequently, the ships of one State have no right to interfere with those of another The necessity, on the one hand, of protecting the ocean highways from pirates and that of preventing the abuse of the neutral flag to screen covert hostilities, of the other, have obliged nations in practice to acknowledge exceptions to the uniform observance of this principle of freedom and equality. The repression of piracy implies the right of stopping and, if need be, examining the papers of suspected vessels, irrespectively of the flag they may show and the belligerent right of visit and search is justified by the fact that merchant ships of the enemy might evade capture by hoisting a neutral flag if the belligerent had not the right of ascertaining the real nature of the ship, and that private neutral vessels might carry contraband goods and generally help the enemy, if the belligerent had not the right of satisfying himself that it was not so. Both exceptions derive their existence from the same impossibility of

Visitation.

judging the real character of a ship from the flag shown. The one is a universal right of verification of the flag in time of peace. The other is a right which extends also to the nature, ownership and destination of all cargoes in time of war. (*Ency of the Laws of England.*)

Visitation. In Ecclesiastical law this term denotes a perambulation for the purpose of inspection such as the periodical visit of a bishop or an archdeacon to their clergy So in the case of all charitable foundations some one must be visitor, and visitations thereof must be held.

Viswarupa. A commentator on Ancient Hindu Codes (Smritis)—who wrote commentary on Yagnavalkya Smriti.

Vitiate. Deprive of efficacy, be a fatal flaw.

Vitium clerici nocere non debet Clerical errors ought not to prejudice

Vitium est quod fugi debet, ne se rationem non invenias, mox legem sine ratione esse clames. It is a fault which ought to be avoided that if you cannot discover the reason, you should presently exclaim that the law is without reason.

Vittanalu jabita (*Tel*) A statement of the description and quantity of seed sown by each ryot

Vittara (*Mal*) A certain rent paid by a cultivator or renter to the proprietor, or as a tax to the Government, amounting to half the quantity of seed sown.

Vittukkudaiyavan (*Tam*) The master or owner of a house, landlord.

Vittumudal (*Tam*) Proceeds of sale

Vittupata (*Mal*) The quantity of ground sown.

Vittupati. (*Mal*) An agreement between the cultivator and the proprietor, by which the latter allows the former half the seed, and receives half the produce.

Vittu-pattam (*Mal*) Rent or tax equal to the whole amount of the seed sown

Vittu Vallı. Expenses of cultivation, such as ploughing, sowing, weeding, manuring, etc (*Moore's Malabar Law.*)

Vivada Chandrika A digest on ancient Hindu Law written by Kara Vira.

Vivada Chintamani A digest on ancient Hindu Law written by Vachaspati Misra.

Vivada Ratnakara A digest on ancient Hindu Law written by Chandeswar Thakur.

VIVADA CHINTAMANI, RATNACARA, SMRITI CHANDRIKA, MADHAVYA AND VYAVAHARA MAYUKHA. Not held in equal estimation at Benares. [11 M I.A. 487 (508)=9 W R.P.C. 23=2 Suth. 124=2 Sar. 327.]

Vivaha (*S*) Marriage of which eight forms are enumerated by Manu.

Vivahaswami (*S*) A husband, but especially a first husband.

Vivary; Vivarium. A place where animals are kept; in law, usully applied to parks, warrens, and piscaries. (2 Inst. 100.)

Voluntarily.

Vix emissa voat,—litera scripta manet. Words spoken vanish, words written remain.

Vix ulla lex fieri potest quae omnibus commoda sit, sed si majori parti prospiciat, utilis est. Sacrcely any law can be made which is beneficial to all but if it benefit the majority it is useful.

Vi yyamu Connexion by affinity or marriage (*Wil Gloss.* 550.)

Vocbulla artium explicandasunt secundum definitiones prudentium Terms of art should be explained according to the definitions of those who are experienced in that art.

Void. Not valid, of no effect; invalidate.

Under S 2, Contract Act, an agreement is said to be "void" when "it is not enforceable", that is when its terms *being ascertained* have no legal effect at all But that cannot be predicated of an agreement which the law declares has no existence because there is no evidence of its terms. Therefore an agreement which is inadmissible in evidence for want of registration, that is, has no existence in the eye of law, cannot be said to have become "void." (33 Bom 610=10 Bom L R 1146=4 I C. 804.)

Void and of none effect Strictly interpreted, these words would refer to something that was so nugatory and ineffectual that it could not be cured. But in law, while sometimes a document or instrument may be void to that extent, as *e g* a void lease will not be affirmed by acceptance of rent; yet, as a general rule, even words so strong as the above do not signify anything more than void simpliciter. (*Ency. of the Laws of England*)

Void and voidable Void means that an instrument or transaction is so nugatory and ineffectual that nothing can cure it, voidable when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it

A contract is void which is destitute of all legal effect, while a voidable contract is one which may be affirmed or rejected at the will of one of the parties.

"Voidable" does not alway mean voidable in entirety. (111 I.C 539=A.I.R. 1928 Mad. 778.)

In S. 55 of the Indian Insolvency Act (11 and 12 Vic, C 21), 'void' means 'voidable.' [14 M L.T. 51= 25 M L.J 308=1913 M W N. 816=20 Ind. Cas. 485 (487). *See also* 26 Cal 381.]

"Void agreement" defined. Act 9, 1872, S 2 (*g*).

"Void contract" defined. Act 9, 1872, S. 2 (*j*).

"Voidable contract" defined. Act 9, 1872, S. 2 (*i*).

Voir dire. (*vria dire*). A special form of oath administered to a witness whose competency to give evidence in the particular matter before the Court is in question, or who is to be examined as to some other collateral matter.

Volenti non fit injuria. He who consents cannot receive an injury.

Voluit sed non dixit. He willed but did not say.

"Voluntarily", defined, Act 45, 1860, S. 39,

Voluntarily causing hurt.

"**Voluntarily causing hurt**", defined Act 45, 1860, S. 321, Act 15, 1887, S 3 (6), Act 5, 1892, S. 2 (6); Reg 2, 1888, S. 2 (4), Reg 4, 1890, S. 3 (5).

"**Voluntarily causing grievous hurt**", defined, Act 45, 1860, S. 322.

Voluntary deposit. Such as arises from the mere consent and agreement of the parties (Story's Bailment.)

Voluntary payment There is a common and current confusion between the use of the terms "voluntary" and spontaneous". A payment upon demand, unaccompanied by threat of suit or menace, although it is not a spontaneous payment may be a perfectly voluntary payment. [15 Bom L R. 113=19 I C 57 (59 & 60).]

Payment of water-cess under fear of distraint though no distraint has taken place, is not a voluntary payment 37 Mad 322=24 M L J 365=13 M L T. 235=(1913) M W N 225=18 I C 770=40 Cal. 598 =18 I C 949 (P C).

Voluntas donatoris, in charta doni sui manifeste expressa, observetur The will of the donor, clearly expressed in the deed, should be observed.

Voluntas et propositum distinguunt maleficia The will and the proposed end distinguish crimes.

Voluntas facit quod in testamento scriptum valeat The will of the testator gives validity to what is written in the will.

Voluntas in delictis non exitus spectatur In offences, the will and not the consequences are to be looked to.

Voluntas reputatur pro facto The will is to be taken for the deed

Voluntas testatoris ambulatoria est esque ad mortem The will of a testator is ambulatory until his death (that is he may change it at any time).

Voluntas testatoris habet interpretationem latam et benignam The will of the testator should receive a broad and liberal interpretation.

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam The last will of a testator is to be fulfilled according to his true intention.

Volunteer. A person who receives a voluntary conveyance, (*i e.*) a conveyance without consideration.

Volunteers. Volunteer military associations in aid of the forces legally bound to render military service, which have been raised at almost all periods of national danger, such as invasion or insurrection.

"**Volunteers on actual duty**", defined Act 20, 1869, S. 4 (2)

Vote. Wish, choice or opinion of a person expressed in some authorized way, (as) by ballot or viva voce.

VOTE, SUFFRAGE, VOICE. The vote is the wish itself, whether expressed or not; a person has a vote, that is, the power of wishing but the suffrage and the voice are the wish that is expressed, a person gives his suffrage or his voice. The voice is the settled and fixed wish, it is that by which the most important concerns in life are determined; the suffrage is a vote given only in particular cases the voice is a partial or occasional wish, expressed only in matters of minor importance The vote and voice are given either for or against a person or thing, the suffrage is commonly given in favour of a person: in all public assemblies the majority of votes decide the question, members of Parliament are chosen by the suffrage of the people; in the execution of a will every executor has a voice in all that is transacted.

Vouch Guarantee or make oneself responsible fora thing represented as true or reliable or existent.

Voucher. Document establishing payment of money or truth of accounts.

Vouching of Accounts. The production of proper vouchers for the various items in an account

"**Voyage**", defined Act 9, 1879, S 3, Act 6, 1884, S 5 (5), Act 10, 1887, S. 5 (5), Act 14, 1895, S. 5 (3).

VOYAGE The passage of a vessel from one port to another or others.

"VOYAGE" means the whole distance between a vessel's place of departure and her final place of arrival, but the return of a vessel from any place shall, notwithstanding the terms of any charterparty, be deemed a distinct voyage, [Bur. Act IX of 1879 (Coast lights), S. 3.]

Voyage of a ship The course of navigation on and in which a vessel actually sails.

Vrihaspati. A great Hindu Sage and writer of an important Smriti that bears his name.

Vrihat Harita. A great Hindu Sage and writer of an important Smriti that bears his name.

Vruddhapadiya. (*Tel.*) Land uncultivated from time immemorial.

Vs A contraction of versus (as) James *vs.* John.

Vulgaris (*Lat*) Common.

Vulgaris opinio. Common opinion.

Vulgaris purgatio. Common purgation.

Vulgo concepti. (*Lat*) Spurious children, bastards.

Vulgo quaesiti. (*Lat*) Spurious children; offspring of promiscuous cohabitation.

Vyah. Marriage with full ceremonial rites.

Vyajyamu. (*Tel.*) A dispute, a law suit. (*Wil. Gloss*)

Vyasa: A great Hindu Sage and writer of an important Smriti that bears his name.

Vyavahara. (*H.*) Affairs, business, worldly occupation, as trade, profession; but especially judicial procedure, practice of the courts of law, administration of justice, both civil and criminal law, (*Wil. Gloss.*)

Vyavahara Chintamani

Vyavahara Chintamani. A digest on ancient Hindu Law written by Vachaspati Misra

Vyavahara Mala (*Mal.*) The title of a book relating to judicial matters which also treats of the division of the produce between the cultivator and the proprietor. Dr. A C. Burnell writes —

"The half Sanskrit Vyavaharamala of Malabar is of the eighteenth century" (*Moore's Malabar Law*)

VYAVAHARAMALA is a Sanscrit book on Malabar Law. (*Sundaram Iyer's Malabar Law*)

Vyavahara Mayukha. A digest on ancient Hindu Law written by Nilakanta—a work of great authority in Bombay

The *Vyavahara Mayukha* though received in the Bombay Presidency, is of no authority in the districts to which the Benares school of Hindu law applies. 11 M I.A. 386 (402)=7 W R. 25=2 Sar 289 =1 Suth. 681

The Vyavahara Mayuka is not recognised as an authority in the Benares school 43 I A 151=43 C 1031=37 I C. 321=20 C W N 1085=14 A L J. 822= 20 M.L T 78=(1916) 2 M W N 65=18 Bom L R 621 =24 C L.J. 207=4 L W 114=12 N.L.R 65=31 M L J. 455.

Manu, Mithakshara, and Mayukha principally followed in Western India (1880) 7 I A 212 (230)=5 B 110 (117)=7 C.L R. 445=4 Sar 164=3 Suth 795

Mayukha is predominant authority in Mahratta school (1868) 12 M I A 397 (432)=10 W R P C. 17 =1 B.L.R. P C 1=2 Suth 135=2 Sar. 361.

Mayukha is a dominating commentary in Bombay Presidency—It is a supplementary commentary to Mithakshara 47 I A 213 (221)=48 C 30 (41)=25 C W.N 243=18 A L.J 1049=28 M L.T 157=(1920) M W.N. 483=12 L W 679=57 I C 545=22 Bom L.R 1070=39 M L J 166

Mayukha and Kaustubha—Peculiarly Mahratta treatises 12 M I A 397 (438)=10 W R P. C. 17=1 B.L R P C 1=2 Suth. 135=2 Sar, 361,

Vyavahara Mayukha is implicitly followed in Bombay Presidency, 11 M I A. 487 (508)=9 W.R P C. 23=2 Suth 124=2 Sar. 327.

Vyavahara samudram (*Mal*) (*Lit*) The sea of law suits. The title of a poetical treatise on Malabar Law. (*Moore's Malabar Law.*)

Vyavahari. Relating to law or judicial proceedure, a suit or a litigant, an adult, one who is of age to manage his own affairs, one who is engaged in the active occuaptions of life. (*Wil Gloss*)

Vyavastha. (*Mar*) Separating, setting apart settlement, arrangement. a written opinion on point of law, with citation of the original texts, on which it is based, given by Hindu law pandits (*Wil. Gloss.*)

W

Wadadar. (*H*) One who is bound by an engagement, a contractor, a Government officer responsible for the collections of a Zemindari, a farmer of the revenue. (*Wil. Gloss.*)

Wahabi.

Wafa. (*H*). Faith, fidelity, keeping a promise or engagement, a conditional or security sale. (*Wil. Gloss*)

Wage. The giving of a security for the performance of anything

Wager. There is no distinction between the expression "gaming and wagering used in the English Statute and in the earlier Indian Act (21 of 1848) and the expression "by way of wager" in S 30 of the Contract Act (1901) 28 I A. 239 (244)=28 C. 461 (466-7)=5 C W.N. 714=3 Bom.L R 476=8 Sar. 101.

The mere fact that one party to a contract for sale of goods did not intend to deliver, even if known to the other party, does not vitiate the contract, unless there is a bargain or understanding between the parties that delivery is not to be called for. (1917) 45 I A 29=42 B 373 (378)=23 M L T 203=(1918) M. W.N. 315=16 A L J 241=4 P L.W 2?9=20 Bom. L. R 561=22 C W N 625=27 C L J 358=7 L W. 577= 44 I C 284=34 M L J 305.

Whether a contract is a wagering one depends upon the intention of the parties at the time when the contract is entered into The mere fact that contracts are highly speculative is insufficient to render them void as wagering contracts 26 N L R, 277= 124 I C 453=1 R 1930 Nag. 277=A I.R 1930 Nag. 273

Wagering contract To constitute a wagering contract, it is necessary, to establish that it was not the intention of either of the parties, to deliver or to take delivery of the commodity, in other words, if it is proved to the satisfaction of the court, that the parties were merely contemplating a nominal contract, dealing only in differences, and agreeing either to receive or pay differences according to the rise and fall in the market, and if, as a matter of fact, neither of the parties intended to deliver or receive the commodity, the contract is null and void [5 Bom L R 503 (505), 29 C. 461 P.C.=28 I A. 239=5 C W N 714=3 Bom L R 476 Rel on]

'Wages", defined, 57-8 V. c. 60, S 742.

WAGES The price or money paid for labour.

"Waging war" offence of. *See* 49 M. 74=1925 M. 690

Waguzasht The proper construction to be placed on the word 'waguzasht' depends very largely upon the circumstances under which the grant or waguzasht is made In a deed the relevant portion was as follows "You hold from long time 59 bighas 16 kathas and 18 dhurs of dhanar, bhit orchard, etc., the rental payable for which is Rs 35-8-0. In respect of that I have made a waguzasht." It was also admitted that rent was paid and had been paid continuously. *Held*, that the release or assessment could not have related to the rent but could have related merely to the lands and that what the grantor was expressing was that some claim formally made to the lands by him was released by this sanad. 14 Pat. L.T. 645=A.I R. 1933 Pat. 529, *See also* 1930 A.L.J. 1435.

Waguzasht kara lengen. I. R. 1931 All. 239=130 I.C. 15=1930 A L J. 1435=A.I.R. 1931 All. 196

Wahabi. (*H.*) A follower of the doctrines of an Arabian reformer of Muhammadanism, Shaikh-ul-

Wahi.

Wahab, who attempted to reform many of the abuses that had crept into the religion,especially the practice of the Shias: in India it has become a term of abuse equivalent to infidel or unbeliever. (*Wil. Gloss.*)

Wahi (*Mar.*) A stitched book for accounts, of which several are kept by bankers and merchants, as the Kachcha-wahi, rough cash or day book, Pakka-wahi, daily cash book or journal, shewing receipts and disbursement Nakl-wahi, a register of Hundis or bills drawn, accepted and paid, Jarigar-wahi, in which an account is kept of goods given to a broker for sale, chiththa-wahi, a letter book, Vyaj, or Wajuk-wahi, interest account book, it is the Bahi of Bengal. (*Wil. Gloss.*)

Wahiwatdar. (*Mar*) An officer entrusted with the conduct of any important business, as the government of a province or collection of the revenue, the representative or manager of the affairs of an individual, especially in his absence. (*Wil. Gloss.*)

Wahpar. Rule of fixed boundaries in riverine boundaries

Waif. Stolen goods thrown away by a thief in his flight; anything found without an owner, a stray thing or article; a castaway, a stray person or beast as a homeless child or lost sheep. In old English law, a woman who is waived.

Waiver. Declaiming to take advantage of irregularities in proceedings.

WAIVER A waiver is the renunciation or abandonment of a right, whereby right is lost or extinguished and may be either express or implied.

A waiver is an intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts which would enable him to take effectual action for the enforcement of such rights No one can acquiesce in a wrong, while ignorant that it has been committed and that the effect of his action will be to confirm it. (11 C W N 848=6 C.L.J 62)

WAIVER, CONSENT, ACQUIESCENCE, *See* 135 I.C, 170 =33 Bom L,R. 1364=1932 Bom. 42.

Wajib. (*H.*) Right, proper, necessary.

Wajib-ul-arz. (*H.*) Literally fit for, or worthy of representation; a petition, a written statement or representation, a written agreement, in the North-West Provinces it designates what is considered to be the most important of the documents relating to the village administration, describing the established mode of paying the Government revenue, the actual shares or holdings, whether held in severalty or in common, and how separation or re-allotment takes place, etc.

WAJIB-UL-ARZ. Village administration paper.

Wajib-ul-Tarfain. The word '*Wajib-ul-Tarfain*' in the Oudh Estates. Act means that the person to whom it is applied is a person of good family on both sides. 61 I.C 177=8 O.L.J. 27.

Wakaia-navis. (*H.*) A remembrancer, a recorder of events; an officer on the royal establishment under the Moghuls, who kept a record of the various orders issued by, and transactions connected with the sovereign, in the revenue department. an officer of this denomination was also attached to the Nizam or provincial governor, who reported to the principal remembrancer at the court the particular revenue transactions of the province: any communicator of official intelligence. (*Wil. Gloss.*)

Wakalat (*H*) Representation, agency, attorneyship, the authority of a vakil. (*Wil. Gloss.* 554.)

Wakalat-mufridat. (*H.*) Special agency limited to some particular transaction. (*Wil. Gloss.* 554.)

Wakalat-nama. (*H*) Credentials, letter of authority, power of attorney. A letter appointing a vakil or representative, a power of attorney. (*Wil. Gloss.*)

Wakanivas. (*Mar.*) An officer on a great man's establishment, the manager of the household and chief caterer, a sort of major-domo: under Sivaji the Wakanis was one of the principal ministers whose duty it was to keep the private journal, records and letters, and to superintend the household troops and establishment any new writer or intelligencer. ((*Wil. Gloss.* 554.)

"**Wakf**" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious. pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants. [Act XLII of 1923 (Mussalman Wakf) S. 2 cl (*e*),]

"WAKF" means the permanent dedication by a person professing the Mussalman faith of the property for any purpose recognized by the Mussalman law as religious, pious or charitable. [Act VI of 1913 (Mussalman Wakf Validating), S. 2 Cl. 1.]

WAKF. (*H*) A bequest for religious or charitable purposes, an endowment, an appropriation of property by will or by gift to the service of God in such a way that it may be beneficial to men, the donor or testator having the power of designating the persons to be so benefited. (*Wil. Gloss.*)

WAKF. Under the Mahomedan Law, the chief elements of "wakf" are (according to Bailie's Digest, 551) special words declaratory of the appropriation and a proper motive cause. A declaration in a solemnly published document will complete the 'wakf.' (16 W.R. 116.)

Wakf. An endowment. Property dedicated to pious uses. (*Mac. Moh. Law.*)

The mere use of the word "wakf" in a deed after the passing of Act VI of 1913 cannot necessarily imply a dedication to the poor. The ultimate object of the wakf has to be implied by use of other words. (A.I.R. 1930 All. 837).

The word "wakf" is borrowed from Mahomedan Law and implies permanent dedication of property for religious or charitable purposes. When property is declared wakf, the original owner is divested of it

Wakf-nama.

and it vests in Almighty God. (131 I.C. 283=32 P.L. R. 304=A.I R. 1931 Lah. 170).

Wakf nama (*H*) A written deed of endowment. (*Wil Gloss* 554)

Wakif One who dedicates property to pious uses (*Mac. Moh. Law.*)

Wakil. (*H.*) (*See* Vakil) A person invested with authority to act for another, an ambassador, a representative, an agent and an attorney In India an authorised public pleader in a court of justice Beng. Reg XXVII, 1818 Act XIII, 1838, Madras Act VII, 1843, amongst the Marathas also the hereditary assistant of the Deshmukh: a cess imposed to meet the expense of entertaining a Wakil. (*Wil. Gloss.* 554.)

Wakil-mutlak. (*H.*) A plenipotentiary, a representative with absolute powers (*Wil Gloss.*)

Wala. This is a word of very common use in the vernaculars of India; it may be affixed to almost any noun or verb, and the word so formed denotes a person connected in some way with the thing expressed by the first word, thus gari-wala means cart-man, topiwala, one who wears a topi, Surat-wala one who lives in Surat, Abru-wala a man of honour, Denewala, a man in debt, duth-wala, one who deals in milk, the connection may also be merely temporary, as boine-wala one who is speaking, topala-wala, a man with a basket in his hand

"WALA". "Wala" is a term applied under the Mahomedan Law to a particular kind of inheritance There is no authority in support of the proposition that this word occurring in a document (or even "wala" if it be so read) refers to wakf. (154 I C. 1023=7 R.O. 533=1935 O W N. 415=A I.R. 1935 Oudh 299).

Walad Meaning of *la walad* in *wajib ul arz* discussed. [I R 1933 Oudh 144=8 Luck 354=142 I.C. 872=10 O.W N. 69=A.I.R. 1933 Oudh 182).

Walad maghrur. (*A.*) In law the son of a person who has mistaken the condition of the mother, as begotten on a female within the prohibited degrees of relationship without his being aware of it, or on a female slave supposing her to be a free woman. in the latter the child is the property of the master of the slave, but the father may redeem it (*Wil. Gloss.*)

Walawarg (*Mal*) An underwarg, the walawargdar being responsible for paymentof assessment to wargdar who is responsible to Government. (*Sund. Iyer's Mal. Law.*)

Walda, a term applied out of love and affection (as) mother; and it cannot be taken literally. (*See* 65 I.C. 308=8 O.L.J 569)

Wali. (*H*) A master, a friend, a prince, a saint: in law the term indicates therelation natural or legal, in which one person stands to another as a guardian, a trustee, protector or the like: also the person entitled to exact retaliation for personal injury or murder committed upon a kinsman or connexion. (*Wil. Gloss.* 555)

The word "wali" has substantially the same meaning as "saint". The expression "wali" is not confined to saints of the highest degree, but includes saints of lower degree. (24 Bom.L.R. 1060=84 I.C. 759=A.I.R. 1921 Bom. 338).

Waras.

Waliahad (*H*) An heir, especially to a sovereignty, the heir apparent, a vicegerent, a deputy. (*Wil. Gloss*)

Wanaprasthas. Wanaprasthas are governed by the same rule of succession as are applicable to Sanyasis. Gurn Chelas and Guru Bhais become heirs. (1 12 I.C 70).

Wanpayir. (*Tam*) Certain specially taxed products, *viz.*, betelvines, turmeric, plantains, chillies and brinjals.

Want Poverty; penury; destitution

WANT, NEED, LACK He who wants nothing is a happy man; he who needs nothing may be happy if he wants no more than he has, for then he lacks that which alone can make him happy, which is contentment.

Wanta pasaita land. Where a land was designated as "wanta pasaita" in the Collector's Revenue Registers, held that the use of the word "want a" did not nullify the usual meaning of "pasaita."

Even if the term "wanta" be treated as meaning rent-free instead of as indicating locality(the sense it bears when a village is divided into talpad and wanta) still such a description of land assigned as remuneration of officiating village servants would not be inconsistent with the ordinary meaning of the word "pasaita" or in any way suggest that *wanta pasaita land* would remain "rent-free" if it passed into the ownership of any person not a watandar and not entitled to remuneration for the performance of village service (7 Bom. L.R 186)

War. Fighting between two kings, princes or parties, in vindication of their rights, also the state of War. (*Tomlin's Law Dict.*)

"Wara". *See* 6 Lah. 463=26 P L.R. 719=A.I.R. 1926 Lah. 28.

Warabandi. Every shareholder on a watercourse has to take water by turns. This arrangement of turns of water, when sanctioned by a Divisional Canal Officer, is called a *warabandi* for that particular *Moga*, and is legally binding upon the shareholders of the watercourse. It includes the following particulars:—(1) The names of the shareholders. (2) The numbers of the squares or lands. (3) The areas of the lands. (4) The period of the turn of water. (5) The last *Naka* from where water is to be brought. (6) The persons entitled to the Nikal water. A record of *warabandis* is always maintained in the Office of the Divisional Canal Officers, a copy of which is always available under the law, which is always necessary for purposes of proving a case relating to the breach of a *warabandi*. (*Bad. Pow.*).

Waram patam. (*Mal.*) A simple lease in Malabar, the same as Patam.

Warapath land. A succeeding landholder can revert to waram rates in a warapath village even though during the interval pattas have provided for cash rent. (55 Mad. 994=14 I.C. 99=I R. 1933 Mad. 191=37 L.W. 49=1932 M W.N. 767=A.I R. 1932 Mad. 739=63 M.L J. 949)

"Waras". Widows of grantee included. *See* 38 Bom.L.R. 193=A.I.R. 1936 Bom. 182.

Warasat nameh.

Warasat nameh (*H*) A deed of acknowledgment of heirship. (*Mac. Mah Law.*)

"Ward" defined. Act 8, 1890, S. 4 (3), Ben Act 9, 1879, S. 3, Mad. Act 1, 1902, S 4, P. Act 2, 1903, S. 3 (*d*), U.P. Act 3, 1899, S. 3 (5).

WARD. A person under the care of a guardian, a division of a city—so called because under the care of an alderman.

"Ward" means a minor for whose person or property, or both, there is a guardian (Act VIII of 1890 (Guardians and Wards) S 4 cl. 3)

"Ward" means a disqualified proprietor whose person or property is under the superintendence of the Court of Wards, and includes a proprietor whose person or property has been placed under the charge of the Collector by order of the Civil Court U. P. Act III of 1899 (Court of Wards), S. 3, Cl. 5.

"WARD" is wide enough to include every minor who has a guardian. [158 I C 581=1935 O.W N. 1096=A I R. 1935 Oudh 492 (F B).]

"Ward list" defined. Bom Act 3, 1888, S 19 (3).

"Ward roll' defined. Bom Act 3, 1888, S 21 (2).

Wardak. A tribe of Afghanistan They are Saids, and dwell in cultivated valleys bound on three sides by the Ghilzai Country, and on the west by the Ghor mountains.

Warden. Guardian or keeper. He that hath the keeping or charge of any persons or things by office. (*Tomlins Law Dic.*)

Warder. A subordinate officer of a prison appointed to assist in guarding the prisoners and in enforcing the prison discipline.

"Warehouse" defined Act 8, 1888, S 3 (*i*), Act 2, 1896, S. 3 (7); Ben Act 1, 1893, S. 3 (8).

WAREHOUSE. A warehouse is, properly speaking, a building used for the purpose of storing goods imported at a reasonable rent.

PUBLIC WAREHOUSE. This term is sometimes applied to warehouses generally to distinguish them from places in which goods are kept by the owners, or for certain other persons, but not for public generally. In other cases, it is applied to only such warehouses as possess the qualifications prescribed by statutes or rules for public warehouses.

Warehouseman. In the Merchant Shipping Act, 1894, 57 & 58 Vict., c 60, the expression "Warehouseman" is defined to mean the occupier of a Warehouse (Q.V)

"Warehousing port, defined. Act 4, 1857, S. 5, Act 8, 1878, S. 3 (*s*).

Warg (*Kan.*) Holding or estate; not necessarily a compact. (*Sund. Iyer's Mal. Law.*)

Waril. (*Mar.*) One from whom a person descends an ancestor, an elder, a superior, the head of a family. (*Wil Gloss*)

'Waris.' In absence of facts showing contrary intention, the words 'Malik' and 'Waris' indicate absolute estate. (66 I.C. 720=15 S.L.R. 2,2; 3 O.W. N. Supp. 56.)

Warrant-case.

"WARIS." The word 'waris' is not always intended to be an expression of limitation. [65 I C 462(Lah).]

Waris and janashin. (*Per* Hasan, J.) The words "Waris" and 'Janashin' are well-known words of limitation denoting an estate of inheritance, but this natural meaning may of course be displaced by the context as showing a different meaning. The literal translation of the word Waris is "heir" and of Janashin "locum tenens". Ordinarily a person does not take an estate in the character of an heir without possessing the quality of transmitting the inheritance to his future heirs according to law. Of course a person made an heir under a devise may be divested of that quality by the provisions of a will [2 Luck. 507=3 O.W N. Supp 56=29 O C 176=13 O L.J. 762 =96 I C. 47=A.I R 1926 Oudh 431]

Warkar (*Mar*) A sort of money-lender amongst the Marathas, frequenting the weekly markets and lending small sums of money for short periods at a high rate of interest (*Wil Gloss*)

Warkari (*Mar*) A cess or tax levied on the preceding class or money-lenders. (*Wil. Gloss* 556.)

"Warning" defined. *See* Formal warning

Warping This is a method of fertilising poor or barren land by artificial inundation from rivers The water is let in over the land, and enclosed until the warp or sediment it holds in suspension has deposited, when the water is let off again It is practised in low-lying tracts, which can easily be submerged (14 Ency. of the Laws of England 582.)

'Warrant" defined. 34 V., c. 52, S 26, Act 15, 1903, S. 17 (3).

WARRANT A precept under hand and seal to some officer, to take up any offender or seize property to be dealt with according to due course of law.

A warrant is a written authority for doing an act

In matters of trade or business such documents as dock-warrants or dividend-warrants are authorities or vouchers for delivery of the goods or for payment of the money named therein: and Treasury warrants are used as the equivalent of cheques drawn on behalf of the National Government.

In law the term "warrant" is most frequently used to express the written authority of a judicial functionary directing or empowering the person named in it to do an act which without such authority would be an actionable wrong, *e g*, to make an arrest, or enter on the land of another or take possession of his goods. It also applies to warrants issued by landlords to take a distress for rent.

Warrant of Attorney. A warrant of attorney is an instrument, usually, but not necessarily, under seal, whereby an attorney is authorised to appear in an action, and suffer judgment to be entered up against the person giving the authority. (14 Ency. of the Laws of England 582.)

WARRANT OF ATTORNEY is an authority and power given by a client to his attorney to appear and plead for him; or to suffer judgment to pass against him by confessing the action. (*Tomlins Law Dic.*)

"Warrant case". Act 5, 1898, S. 4 (*w*).

Warrant-officer.

"WARRANT CASE" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months. (Cr. P. Code, S. 4.)

"Warrant-officer" defined Act 14, 1887, S. 2 (1) (*c*).

Warrantee. A person to whom a warranty is made.

Warrantor. A person who gives or makes a warranty.

Warranty, Guarantee or security that goods are of the quality stated. A promise or covenant by deed by the bargainer, for himself and his heirs, to warrant or secure the bargainee and his heirs, against all men for the enjoying of the thing granted. (*Tomlins Law Dic.*)

WARRANTY—EXPRESS AND IMPLIED. A warranty is a statement or representation made by the seller of goods, contemporaneously with and as a part of the contract of sale, although collateral to the express object of it, having reference to the character, quality, or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them. A warranty is express when the seller makes an affirmation with respect to the article to be sold pending the treaty of sale, upon which it is intended that the buyer shall rely in making the purchase. A warranty is implied when the law derives it by implication or inference from the nature of the transaction, or the relative situation or circumstances of the parties, A warranty is not one of the essential elements of a sale, but is a collateral undertaking, *See also* 2 I. C. 573 (581).

Warren. In its strict sense a warren means a free warren, namely, an incorporeal right or franchise (based on grant by the Crown or on prescription) entitling the owner to property in all beasts of warren found on the soil to which it applies, whether living or dead, and whether the soil is or is not vested in the owner of the franchise. The animals to which it applies are roedeer, hares, herons, pheasants, partridges, rails, quails, and woodcock. (Ency of the Laws of England.)

"Warrish" (*Bengali*)—Meaning of. *See* 43 C. W. N. 141.

Warum. Share. Share of the produce, or the rate by which the division of it is made between the cultivator and Government. (*Fifth Report.*)

Wasi. (*H.*) A testator, one who commands, recommends or bequeaths anything; an executor, an administrator, a guardian, meaning one appointed by will, in distinction from the Wali, or natural guardian. (*Wil. Gloss.*)

Wasia. (*H.*) A precept, a command: in law, a will or testament defined to be the endowment of any thing or person with his property by an individual, after his demise.

Wasiat. The mere use of the word 'Wasiat' cannot make a transaction, a will if it was really intended that the property should vest in the donee immediately during the lifetime of the donor. [A.I.R. 1921 Lah. 196 (2).]

"Watan,"

Wasiat-nama. (*H.*) A written will or testament. the will. (*Wil. Gloss.*).

Wasika allowance. A *wasika* allowance, which is guaranteed by the British Government, by the treaty of 7th August, 1825, in consideration of the loan of 1825 by the then Ruler of Oudh, is a political pension within the meaning of S, 60 (*g*) of the Code of Civil Procedure It is also to be deemed a person within the meaning of that term as used in Ss. 4 and 11 of Act XXIII of 1871[(17 I.A. 181, foll.) 12 O.C. 323=4 I.C. 145]

Wasil (*H.*) Joined, connected, attached, realized; as a revenue term it implies the amount of revenue collected. it formerly denoted in Bengal, the amount of all collections from additional sources as from the annexation of territory, assessment of lands previously rent free, or resumption of assignment. (*Wil. Gloss.*)

Wasil-Baki Navis. Revenue accountant.

Wasilat. (*H.*) Collections of revenue from every head of receipt, the proceeds of an estate, mesne profits of land. (*Wil Gloss.*)

Wasilat-patra. Account of revenues collected. (*Wil Gloss*)

Wasil-baki. (*H*) Collection and balance, an account showing the amount of revenue realized, and the remainder outstanding. (*Wil. Gloss.*)

Wasiyat nameh (*H*). A last will, A deed constituting heirs. A paper of administration. (*Mac. Moh. Law.*)

Waste. In its most usual acceptation, is a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison (disinheritance) of him that has the remainder or reversion in the property. (*Tomlins Law Dic.*)

WASTE has been defined in Co Litt. 53a as "destruction in houses, gardens, woods, trees, or in lands, meadows, etc ," and in 8 Bacon s Abr. 379, W, as "the committing of any spoil or destruction in houses, lands, etc , by tenants, to the damage of the heir, or of him inreversion or remainder."As the result of recent decisions it has been defined "as the committing of any appreciable spoil or destruction to any corporeal hereditament, by a tenant during his particular estate therein, to the damage of the heir, or of him in reversion or remainder contrary to the obvious intention of the grantor." (*Garth* v *Hind Cotton*, Vol, II, W, & T.'s Leading Cases in Equity, 1897, p. 1000; Bewes on Waste 1894, p. 9)

"Waste-land" defined. Reg. 6, 1893, S. 2 (5).

Waste, writ of. An action which lay for one who had the next estate of inheritance, against a tenant for life, etc., who was committing waste.

Waster. Article spoilt in manufacture.

WASTER The name of a Goddess which the Saxons worshipped in the month of April. (*Tomlins Law Dic.*)

"Watan" defined. Bom. Act 6, 1887, S. 3.

WATAN. A hereditary right to an office; hereditary property. Village offices which descend according to the laws of succession. (*Mac. Mah. Law.*)

Watanbandhu.

WATAN. (*H.*) Country, native country, place of residence, home; amongst the Marathas it has come to import any hereditary estate, office, privilege, property, or means of subsistence, a patrimony (*Wil. Gloss*)

Watanbandhu (*Mar*) A co-heir, a joint inheritor, also a fellow heriditary officer, one who holds an office jointly with another, a brother, Desmukh, a fellow Patil. (*Wil Gloss*)

"**Watandar**" defined. Bom. Act 3, 1874, S. 4.

WATANDAR. A possessor of Watan property (*Mac. Mah. Law*)

Watandar. (*Mar.*) The holder of a hereditary right, property or office with the privileges and emoluments attached to it. (*Wil Gloss*)

"Watandar" means a person having an hereditary interest in a watan. [*See* Bom. Act III of 1874 (Hereditary Offices), S. 4.]

Watanjapti (*Mar*) Produce of rent free lands, or other emoluments of hereditary officers sequestrated by the Government. (*Wil Gloss*)

Watanpatra. (*Mar*) Title deed of hereditary property.

"**Watan property**" defined. Bom Act 3, 1874, S. 4.

Unless there be something repugant in the subject or context,—"watan-property" means the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office, it includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise, it includes cash payments in addition to the original watan-property made voluntarily by Government and subject periodically to modification or withdrawal [Bom. Act III of 1874 (Hereditary Offices), S. 4]

Watani (*Mar.*) Pertaining to a property or Watan, privileges, emoluments deeds, obtained by inheritance or purchase, held in one's own right. (*Wil. Gloss.*)

Watanwari (*Mar*) A patrimonial estate, patrimonial lands, and tenements. (*Wil. Gloss.*)

Watch. To watch is to stand sentry, or attend as a guard, etc. (*Tomlins Law Dic*)

WATCH (*Noun*) When jewellery and when not. (*See* 31 Cal 166)

Watch and Ward The duty of keeping watch by night and guard by day, in a town or district.

Watchman. Sentinel.

Watch tower. Fortified post of observation.

Watchword. Military password; phrase summarizing some party principle.

Watching proceedings. If any person interested in any legal proceedings is admitted to watch or applies to watch such a proceeding, the term "watch" does not mean that of a mere on-looker for idle curiosity, but it means instructing of legal practitioners to watch the case on behalf of the alleged offender and with the leave of the Court to assist the Court in making its preliminary investigation [10 Ind Cas 33 (34).]

Water rent.

"**Water**" defined. *See also* Inland water; Indian waters, Private water, River, Territorial waters; Tidal water. [Act 4, 1897, S. 4 (2).]

"**Water-connection**" defined. Bur. Act 3, 1898, S. 2 (13)

"**Watercourse**" defined. *See also* Public watercourse. Act 8, 1873, S 3 (2), Ben Act 6, 1873, S 3; Ben. Act 2, 1882, S 3 Bom. Act 7, 1879, S 3 (2); Bur Act 2, 1905, S. 3 (3); Mad. Act 4, 1884, S 3 (*xxxii*). P. Act 3, 1905, S. 3 (*xii*), Reg 8, 1887, S. 2 (6)

WATERCOURSE. A stream of water usually flowing in a defined channel, and discharging itself into some other stream or other body of water.

A watercourse does not begin by prescription nor yet by assent, but begins *ex jure naturae*, having taken its course, naturally, and cannot be diverted. (3 Bulst. 340)

"Watercourse" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any such channel [C.P. Act VIII of 1873 (Northern India Canal and Drain), S. 3, Cl 2]

"Watercourse" includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water. [Ben. Act II of 1882 (Embankment), S 3]

"Water-course" means any channel which is supplied with water from a canal and which is maintained at the cost of the irrigators, and includes all subsidiary works connected with such channel except the sluice or outlet through which water is supplied to such channel]Pun. Act III of 1905 (Minor Canals), S 3, Cl. (12)]

"**Water-due**" defined P. Act 3, 1905, S. 3 (*xiii*).

Water-fouling A riparian owner may not *prima facie* foul natural surface water. But he may acquire the right to do so under grant, prescription or custom.

Water-mark Faint translucent design in paper serving as trade mark, etc.

WATER-MARK, means when referred to as a boundary, the mark to which water ordinarily ascends or descends (as) high water-mark; low water-mark.

Water-ordeal. (*In Old English Law.*) The ordeal or trial by water, which was plunging the bare arm up to the elbow in boiling water, or by casting the person suspected into a river or pond of cold water.

Water-power. The fall in a stream in its natural state.

"**Water-rate**" defined. P. Act 3. 1905, S. 3, (*xiv*).

"**Water-rent**" defined. Act 19, 1884, S. 2 (7).

"WATER-RENT" includes any rent, reward or payment to be made in connection with the supply of water. [*See* Bur. Act XIX of 1884 (Rangoon Waterworks). S. 2, Cl. (7).]

"Water-revenue."

"Water-revenue" defined. Reg 8, 1887, S 2 (8).

"Water taken" Where water from Government source passing through an unauthorised pipe irrigated the suit lands, but there is nothing to show that the plaintiffs inserted it or abetted its insertion there is water taken within the meaning of the rules. (22 Ind. Cas 692)

"Water way" A public *halot* which is a public pathway during the dry season and is a public passage for boats during the rainy season cannot be denominated a "water way" as contemplated by S 31 of the Bengal Village Self-Government Act (165 I C 281=40 C W N 838=A I R 1936 Cal 444)

"Water works" defined. Act 19, 1884, S. 2 (5), Bom. Act 3, 1888, S 3 (*t*). U P Act 1, 1891, S 2 (*e*)

"WATER-WORK" includes a lake, stream, spring, well, pump, reservoir, cistern, tank, duct, whether covered or open, sluice, main pipe culvert, engine and any machinery, land, building or thing for supplying or used for supplying water [Bom Act III of 1888 Bom (City Municipal), S 3, Cl (*t*)]

"Water-works" includes all lakes, streams, tanks, cisterns, springs, wells, pumps, reservoirs, conduits, aqueducts, hydrants, stand pipes and works, and all land, bridges, buildings, engines, works, materials and things for supplying, or used for supplying, water under this Act [Bur Act XIX of 1884 (Rangoon Water-works), S 2, Cl (5).]

Watering stock A term denoting the issue of extra shares of nominal capital without providing for interest being paid thereon, the object being to keep down the apparent rate of interest.

"Wattle-fence" *See* Rat Un Cr C. 428=Cr. Rg 92 of 1888.

Waveson (*Old English Law*) Such goods as, after a wreck, swim or float on the waves.

Way. (*Via*) A passage, street, or road, a right of way is the right of going over another man's ground (*Tomlins Law Dic*)

Way Bill A writing giving a list of passengers or goods carried by a public conveyance, description of goods sent with a common carrier by land

Wazarat (*H.*) The office of prime minister. (*Wil Gloss.*)

Wazia Trust, deposit a deposit a deduction in the revenue accounts of the Mohammadan Governments it designated the authorised deductions from the gross revenue on account of dismembered territory and legal allowances to the Zamindars. (*Wil Gloss*)

Wazifah Lands assigned for the payment of a pension or stipend (*Mac Moh Law*) A pension, a stipend, a grant of land rent free, or at a quit rent, to pious persons, or for past services: revenue collected at a stipulated or fixed rate for a certain quantity of land (*Wil Gloss*)

Wazifa dar. (*H*) The holder of a pension, or of a rent free grant of land; a holder of Wazifah lands. (*Mac. Moh Law*)

Wazir. (*H.*) The principal minister in a Mohammadan sovereignty. (*Wil. Gloss.*)

Wergild.

Waziri. The name of a powerful and independent Pathan tribe.

Wazndar (*H*) A weighman. (*Wil Gloss.*)

Wealth All useful or agreeable, things which possess exchange-value.

Weapon is an instrument of offensive or defensive combat

Wedlock. The married state (as) born in wedlock.

Week Sevenday period reckoned generally from Saturday midnight to next Saturday midnight.

"WEEK" Where the Court ordered plaintiff to file deficit court-fee "in a week" it was held that that construction should be given which is favourable to the plaintiff and that the plaintiff should be given full seven days 13 I C. 900=15 C L J. 120.

The word "week" when used in reference to computation of time from which it is to be reckoned, *prima facie* excludes the day or that date though the expression may be inclusive or exclusive according to the context An inflexible rule of interpretation cannot be laid down in cases of this description. A fair rule of construction seems to be that where the computation is to be for the benefit of the person affected as much time should be given as the language admits of, and where it is to his detriment, the language should be construed as strictly as possible. (15 C L J. 120=13 I C. 900)

Wehra A wehra used for the custody of property is a building (6 L L J 385=86 I.C 337=26 Cr. L J 753=A I R. 1 25 Lah 117.)

"Weights" defined U. P Act 1, 1892, s. 2 (3); Reg 4, 1895, s. 2 (2)

Weight and measures. Instruments for reducing the quantity and price of merchandise to a certainty, that there may be the less room for deceit and imposition

That there should be used in trade only one uniform weight and one uniform measure has been an object with reformers in all times and countries The oldest book in the world, The Book of the Dead, dwells on the inquiry as to false weights and measures, more than 4000 years ago Shun, the Regent of the Chinese Empire, "made of one fashion the pipes and the rule, the bushel and the balances;" the Hebrew legislators enacted provisions against persons who kept a double set of weights and measures; and from Magna Carta onwards the English Statute Book affords examples of provisions directed to the same object (*Ency of the Laws of England*)

WEIGHTS AND MEASURES. Weight is a mode of estimating the heaviness or mass of a substance; a system of simply related units used for this purpose. A measure is a unit of measurement especially a unit of length, area, or volume; a system of measurement. Some of the various measures in use are, barrel,acre, bushel, chain, foot, inch, yard, furlong, cut, gallon, pound, ton, viss, palam, tola, maund etc.

"Well" defined. Reg. 6, 1910, s. 2 (*d*).

Wergild,Weregild, (Weregildas) (*In Old English Law*) The price of homicide or other enormous offences, paid partly to the king for the loss of a

Western Medical Science.

subject, partly to the lord whose vassal he was, and partly to the party injured, or the next of kin of the person slain. (*Tomlins Law Dic*)

Western Medical Science In this Act "WESTERN MEDICAL SCIENCE" means the western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homeopathic or Ayurvedic or Unani system of medicine. [Act VII of 1916 (Medical Degrees) S 2]

Westminster. The ancient seat of the English Kings, and is now the well-known place where the High Court of Parliament and Courts of judicature sit. (*Tomlins Law Dic*)

Whale A whale is one of the Royal fish

"Wharf" defined Bom. Act 6, 1879, s. 3 (7); Mad Act 2, 1905, s 5 (13).

"WHARF" includes a bandar and any part of the foreshore used for loading or unloading goods, and any wall enclosing or adjoining the same. [Bom Act VI of 1879 (Port Trust, Bom) S Cl 3 (7)]

"WHARF" shall include any bank of the river which may be improved to facilitate the loading or unloading of goods, and any foreshore used for the same, and any wall enclosing or adjoining such bank or foreshore [Ben. Act III of 1890 (Port Calcutta) S 3, Cl (10.)]

WHARF AND PIER. A pier is a structure extending from the solid land out into the water to afford convenient passage for persons and property to and from vessals along side of the pier, a projecting quay, wharf, or other landing place, a projecting wharf or landing place

Wharf, Wharfinger "Wharf" includes all wharves, quays, docks and premises in or upon which any goods when landed from ships, may be lawfully placed, and "wharfinger" means the occupier of a wharf.

WHARFINGER. A person who owns a wharf.

Wharfage. Money paid for landing goods, duty paid for the privilege of using a wharf

"Whatever sum he has rightfully paid" The expression "whatever sum he has rightfully paid" occurring in S 145 of the Contract Act, includes not only coin, but also property of whatever kind which is parted with in lieu of money, but not the mere incurring of a pecuniary obligation to the creditor in lieu or discharge of the debt owing him. (26 M 322)

Wheelage Duty or toll paid for carts, etc passi g over certain ground

When. Used in the sense of 'when and where'. (117 I.C. 618=A I.R. 1929 A. 430.)

"When not final" 18 B. 133=P.J. 1893, 42.

"When one person has permitted another to believe a 'thing' to be true" are the words of S.115 of the Indian Evidence Act (I of 1872) which as pointed out by Amir Ali at page 666 of his 4th edition, refer to a statement of fact and not of law (21 I.C. 517 (518)]

"When rent became due". The expression "rent became due" in S. 2, Rent Recovery Act (Madras

White acre.

Act VIII of 1865) means when rent became recoverable by action or other legal proceeding. (13 M. 463.)

"When the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him" In Art 91 of the Limitation Act the words, "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him", must be construed to mean when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit. (3 A 394.)

"When the profits are received" The clause "when the profits are received", in the third column of Art 109 of the Limitation Act means "when the profits are actually received". (35 C. 996=13 C.W.N. 15=8 C L J 181=4 M.L T. 419.)

"When the right to sue accrues". The words "when the right to sue accrues" in Art 120 of the Limitation Act may be taken to mean when the cause of action arises (30 L.W 911=120 I.C. 880=A.I.R. 1930 Mad 173=58 M.L.J. 349.)

"Where no express provision has been made in this Code for the punishment of such a conspiracy'. These words in S 120-B, I P Code do not mean that when there is proof of an abetment of an offence, the charge should be for such an abetment. (35 I.C. 670)

'Where and in so far as a decree is varied or" in S 144, C P Code, must be construed as meaning where the decree is reversed either temporarily or finally. (1937 R D 21)

"Where there has been an appeal" mean when a memorandum of appeal has been presented in Court. (16 Cal 250)

The words "where there has been an appeal," in Cl. (2) of Art. 182 of the Limitation Act contemplate and mean an appeal from the decree, and no other appeal. It does not include an appeal from the first Court's order, refusing the application of the defendant to set aside an *ex parte* decree. [2 All 273. *See also* 5 All. 236, 6 All 438 *Contra* 7 All 887, 16 Cal 250, 4 All 274 (276)].

The expression "where there has been an appeal" must be construed in its plain sense Where though an appeal is incompetent in law, an appeal was *bona fide* presented, it satisfies the terms of Art. 182. (79 I C 477=15 S L R. 245.)

Whereas A word which implies a recital of a past fact or facts

"Wherever" in Art 15 of the Letters Patent means "in any case in which" and not "on any point which" [1 M L J 10 (F B)]

"Which is liable to be contradicted." The words, "which is liable to be contradicted," in S. 155 (*g*), Indian Evidence Act, mean "which is relevant to the issue". (17 C. 344.)

"Which may have been so erected or placed." The words "which may have been so erected or placed", in S. 304, Bengal Act III of 1884 mean erected or placed for the first time. (25 C. 160=1 C. W.N. 660.

White acre. A fictitious name given to a piece of land.

White bonnet

White bonnet. A fictitious offerer or bidder at a roup or auction sale.

White rent. Rent payable in silver.

Whitsuntide The feat of Pentecost, being the fiftieth day after Easter. It is so called, saith Blount, because those who were newly baptized came to the church, between Easter and Pentecost, in white garments (*Blount's Dict.*; *Tomlins Law Dic*)

"Who carries on any industry". *See* 115 I C. 751 =A I R 1928 P C 307 (P C)

Whoever. The word "Whoever" in Indian Penal Code (XLV of 1860), ss. 482 and 486, does not refer only to a definite individual or definite individuals and can apply to a corporate body. (23 Ind. Cas. 689= 7 Bur.L.T 116.)

Whole blood. Kinship by descent from the same pair of ancestors.

Whole cause of action. "The whole cause of action," in S 12 of the Letters Patent, means all things necessary to give a right of action So, anything necessary to give a right of action would constitute part of the cause of action. (22 Cal. 451.)

"Wholesale" defined Act 12, 1896, S. 3 (*n*); Ben Act 5, 1909, S 5, E,B. & A Act 1, 1910, S 6, U P Act 4, 1910, S 6 (2).

WHOLESALE is sale in a whole or unbroken quantity, opposed to retail sale.

The word 'wholesale' means primarily a sale in large quantities, where a trader sells the whole or a large part of his produce direct at fixed price to customers, that price also can be described as the 'wholesale price'. 128 I C. 554=32 Bom.L.R. 1308= A I R 1930 Bom 597.

'Wholesale cash price' The word 'wholesale' means primarily a sale in large quantities, where a trader sells the whole or a large part of his produce direct at fixed price to customers, that price also can be described as the wholesale price (128 I.C. 554= 32 Bom L R. 1308=A I.R. 1930 Bom. 597.)

Wholesale dealer A trader who stores bags and sells grain by the bulk without breaking the bags is a wholesal dealer (42 M L J 149=31 M L.T. 314=66 I C. 429=23 Cr L.J. 285=1922 M W N. 79)

"Widow" defined Act 1, 1869, S 21.

WIDOW. (*Vidua, Relicta*) A married woman bereft of her husband, left all alone. (*Tomlins Law Dic*)

The word 'widow' as used in S. 29 of the Oudh Estates Act is in itself a clear expression and must be read in its plain meaning, namely, a woman who is a widow, that is whose husband has died and who has not been married to any other man (1 Luck.C. 733=108 I.C. 817=A I R 1928 Oudh 155.)

Widower. The word "widower" in S. 5 of the Parsi Intestate Succession Act (XXI of 1865), signifies a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying. (11 B. I.)

"Wife" defined (*See also* Native wife). Act 15, 1865, S. 2

WIFE. (*Uxor*). A woman married.

Wilful neglect.

Wigu. A land measure in Katiwar. (*Wil. Gloss.*)

"Wild bird" defined. Act 20, 1887, S. 2 (3).

Wilful, wilfully. The question whether an act or omission is wilful arises oftener in criminal than in civil causes, since in the former the general principle requiring the presence of *mens rea* excludes from criminality acts done accidentally and unintentionally and even acts done intentionally under honest but mistaken belief in the existence of facts which, if true, would have made the acts lawful or excusable

"Wilful abstention from inquiry and search." The words "Wilful abstention from enquiry and search" must be taken to mean, such abstention from enquiry or search as would show want of *bona fides* (22 C. 185.)

Wilful wilful default The word "wilful" does not merely connote that the delinquent was a free agent The expression wilful neglect shows that the neglect was on the part of a person who was not only free agent but who was conscious of the consequences which are likely to ensue from his act or omission or was recklessly indifferent as to such consequences and that if he had not been so indifferent he would have known what the consequences would be. (91 I C. 145=A I R 1926 Sind 9. *See also* 22 I.C. 37=1914 M.W N. 92.)

WILFUL DEFAULT. The phrase "wilful default" as a legal term for the most part occurs either in statutes or in contracts, especially in contracts for the sale of land, in which connection its interpretation has been the subject of considerable discussion in the Courts. (See 14, *Ency. of the Laws of England* 658.)

The adjective "wilful acts or defaults" has evidently been used as a description and not as a definition The idea intended to be conveyed is that the default is occasioned by the exercise of volition or as result of the non-exercise of will due to supine indifference although the defaulter knew or was in a position to know that loss or harm was likely to result. The word does not necessarily suggest the idea of moral turpitude The element of accident or inadvertence or honest error of judgment should also be eliminated The default must be the result of deliberation or intent or be the consequence of a reckless omission Wilful default therefore is indicative of some misconduct in the transaction of business or in the discharge of duty of omitting to do something either deliberately or by reckless disregard of the fact whether the act or omission was or was not a breach of duty. (121 I.C. 693=1930 A L J. 500 =A I R. 1929 All. 826)

Wilful delay. The term "wilful delay" has been defined as intentional delay [*per* Martin, B, in *Taylor* v *Vergette*, (1861) 30 L J Ex, at p. 401]

Wilful neglect. The expression "wilful neglect" means that the act is done deliberately and intentionally and not by accident or inadvertence, but so that the mind of the person who does the act goes with it [*R.* v *Downes*, (1875) 1 Q B D 25 and *R* v. *Senior*, (1895) 1 Q B D 283, Ref) 107 I C. 124=47 C L J 214=30 Bom I R 275=9 P.L T 171=5 O W. N. 219=55 I A 67=32 C W N 544=52 Bom. 169=27 M.L.W. 667=26 A L J 545=1928 M.W.N. 938=A.I. R. 1928 P.C. 24=54 M L.J. 167 (P.C.).]

Wilful neglect.

The term "wilful neglect" implies an intentional and purposeful omission to do a certain act It is an even more extreme term than gross and culpable negligence (97 I C 940=A I R 1927 Nag 34· 24 A L J 825=96 I C. 1046=A I R. 1926 All 394, 111 I C. 795)

A person is said to be guilty of wilful neglect when he intentionally, and of set purpose, does something which ought either to be done in a different manner or not at all or omits to do something which ought to be done A loss is said to be due to wilful neglect when such neglect is the sole effective cause of loss or so connected with it as to be materially contributing to it [32 I C 551=9 S L R 177, 55 I.A. 67=54 M L J. 167 (P C), A I R 1928 All. 103.]

Leaving a valuable consignment unprotected from the weather for a period of nearly five weeks is wilful neglect. (87 I C 1031=A.I.R 1925 Nag 338)

Wilful negligence The phrase "wilful negligence" mean that the officer in question is consciously acting or failing to act in a reprehensible manner He would not be protected if he simply failed to give any consideration at all to the question of his duties if he acted recklessly and without caring whether he was fulfilling them or not But such an officer will be excused if through mere inadvertence or error of judgment and while endeavouring honestly to carry out his duty he does or omits to do something which anart from these words might have rendered him liable. Thus the director of a company may be ignorant but if his ignorance arises from his wilfully shutting his eyes to the fact, which are before him he is equally guilty [(1870) 6 Ch. 104, Ref., 54 Bom 226=32 Bom.L R 232=127 I C. 305=A.I R 1930 Bom 572.]

Wilful obstruction *See* 26 Bom L R. 721=A I R 1924 Bom 492

"Will", defined (*See also* Privileged will) Act 25, 1838, S 1, Act 45, 1860, S 31, Act 10, 1865, Ss 3, 88, Act 1, 1869, S 2, Act 5, 1881, S 3, Act 10 1 97, S 3 (57); Ben Act 1, 1899, S 3 (46), Bom Act 1, 1904, S 3 (49); Bur Act 1, 1898, S 2 (63), E B & A Act 1, 1909, S 5 (62); Mad Act 1, 1891, S 3 (3), Mad Act 5, 1898, S 2 (2), P Act 1, 1898, S 2 (58), U P Act 1, 1904, S 4 (48)

A will or testament is, "the legal declaration of a man's intentions of what he wills to be performed after his death," a will or testament being of no force till after the death of the testator, or person making it

The words "a will" denote any testamentary document. (Penal Code, S 31)

"WILL" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death [Act XXXIX of 1925 (Succession), S. 2 (*h*)]

"Will" shall include a codicil and every writing making a voluntary posthumous disposition of property. Act X of 1897 (General Clauses), S 3 (57).

The word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament of devise of the custody and tuition of any child and

"Will."

to any other testamentary disposition: [Act XXV of 1835 (Wills), S 1]

That a document is called a will although it does not operate to any effect as such, will not give it the effect of a will for any other purposes (48 I A 482, Foll) A document which purports to be a will but is inoperative as such may nevertheless constitute a valid authority to adopt [49 M L J 217=52 I A 305 =23 A L J 799=42 C L J 38=1925 M W N 522= 27 B L R 1082=22 L.W 435=L.R. 6 P C. 157=A.I.R. 1925 P C 197 (P C)]

DOUBLE WILLS The term "double will" has been applied to a testamentary instrument executed by two persons and giving the property of one dying first to the survivor, or giving their separate property to survivor for life and then to third persons.

HOLOGRAPH WILL, is a will written entirely by the testator

INOFFICIOUS WILL, is one disposing of property away from the natural heirs.

JOINT WILLS is a testamentary instrument executed by two or more persons, in pursuance of a common intention, for the purpose of disposing their several interests in property owned by them in common, or of their separate property treated as a common fund, to a third person or persons

MUTUAL OR RECIPROCAL WILLS, are those in which two or more persons make mutual or reciprocal provisions in favour of each other,—as by providing that the property of one dying first shall go to the survivor or survivors

MYSTIC WILL, is one duly signed, sealed and delivered to a notary, Registrar or other appointed public officer in the presence of witnesses

NON-INTERVENTION WILL, is a will authorizing the executor to settle the estate without the giving of a bond

NUNCUPATIVE WILL is one not written, but declared by the testator *in extremis*.

PARLIAMENTARY WILL, is an expression used to cover a case where advancements are brought into hotchpot on distribution of the estate of an intestate

PRIVILEGED WILL. *See* Succession Act, 39 of 1925, S 65

PUBLICATION OF WILLS, signifies the act of declaring or making known to the witnesses that the testator understands and intends the instrument subscribed by him to be his last will and testament.

RECIPROCAL WILLS. *See* Mutual or reciprocal wills.

SEPARATE WILLS. There can be no doubt that two persons may, in pursuance of an agreement between them, make separate wills by which each devises and bequeaths to the other his interest in property owned by them in common or his separate property. On the death of each testator his will may be admitted to probate if unrevoked.

UNDUTIFUL WILL Same as inofficious will.

UNPRIVILEGED WILL. *See* Succession Act, 39 of 1925, S. 63.

WILL AND CODICIL. A codicil is an addition or qualification to a will and is a part of the will.

Will.

Will, Estates at. An estate at will is where lands and tenements are let by one man to another, to have and to hold at the will of the lessor, and the tenant by force of this lease obtains possession. (*Tomlins Law Dic.*)

Windfalls The word "windfalls" includes trees, fruit, etc, blown down by the wind. With regard to these, the respective rights of the parties are as follows. If the windfalls are of sound timber trees, they belong to the landlord; if they are of decayed timber trees, they belong to the tenant, who is also entitled to windfalls of all trees which are not timber [*See Herlakenden's* Case, (1589), 4 Coke, 92]

Winding up Closing up a company's concerns, which may be by reason of insolvency or otherwise

Wind-mill is one with sails operated by the winds

Wireless. Worked or sent without wires (as) wireless telegraphy or telegram.

Witchcraft Witchcraft may be taken to include any claim of a power to produce effects by supernatural causes By whatever name such an alleged power might be called in any particular case, whether witchcraft, conjuration, sorcery, incantation, divination, or magic, the legal consequences attaching to its supposed exercise were usually the same

Witenagemot. Old Anglo Saxon National council.

"With costs" Where the order of the Court was that the appeal be allowed 'with costs' that clearly means the costs of that Court [15 C L.J 658=15 I C 910]

"With intent to annoy" A person entering another's house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the persons in possession. (12 P R 190, F B Expl 17 P R 1908, Diss from, [27 Punj L R 385=96 I. C. 871=27 Cr L J. 1015=A I R. 1926 Lah 600]

"With strong hand". With force,—a phrase used in describing a forcible entry.

Withdrawal When a petition is withdrawn it should be endorsed as 'withdrawn' and not as 'dismissed'. Where a claim petition under O. 21, R 63 was withdrawn but the Court endorsed on it "Not pressed, dismissed" *Held* that Court's order was not under O 21, R 63 and the petitioner was not bound to bring the suit within a year. [80 I C 233= A.I R. 1925 Mad. 265. *See also* 9 L.R 147 (Rev)]

"Withholding of receipt" defined. Act 10, 1859, S. 10

Within The words *"within a distance of two miles above or below the ferry"*, in S 155 of the Bengal Municipal Act mean "within a distance of two miles above or below the ferry along the banks of the river or stream," and not within a radius of two miles of the Municipal ferry (35 I C 782.)

"Within jurisdiction" *See* 13 Cal. 143

Within one month. The words "within one month" in O. 41, R 22, of the Code, mean not beyond one month. The respondent has a right to file cross-objections at any time up to one month after the date of service of the notice of the appeal. I.L.R. (1937) Nag. 401=170 I C. 93=10 R. N. 43=A.I.R. 1937 Nag. 105.]

"Within so many days after an Act". means so many clear days after it. [6 I C 886 (887)]

"Within the jurisdiction". The words "within the jurisdiction" in S 151, Cl (1) of the Army Act refers to "actions" and not to "persons". [13 C. 136 =13 I.A 77 (P C)]

"Within the local limits" The words "within the local limits of his jurisdiction" are not equivalent to "residing within the local limits" It is sufficient to give the Magistrate jurisdiction, if the evil habits of the accused were practised and evil reputation acquired within the local limits of his jurisdiction [43 Cal. 153=19 C.W N. 1022=30 I.C. 442= 16 Cr L J. 618]

"Without prejudice" Words "without prejudice" in private documents have not the same meaning as they have when used in connection with an actual or impending litigation (2 L. W, 977=18 M. L T 533=31 I C 152=1915 M W N. 822.

"Without prejudice to this charter" The words "without prejudice to this charter" in a charter party means that the rights of the shipowners against the time-charterers, and *vice versa*, were to be preserved. [28 B. 573=6 Bom.L R. 743 (P C)]

"Without the sanction of Government". 5 B. 283.

Witness (*Testis*) One who gives evidence in a cause, an indifferent person to each party, sworn to speak the truth, the whole truth, and nothing but the truth

WITNESS Witnesses may lie, either be mistaken themselves, or wickedly intend to deceive others . . . . but . . . circumstances cannot lie [Mounteney, B, *Annesley* v *Lord Anglesea*, (1743) 17 How. St Tr 1430 *See also* Per Legge, *B., R* v. *Blandy*, (1752) 18 How St, Tr. 1186, 1197]

'ATTESTING WITNESS', MEANING OF. See 62 I.C. 97= 48 Cal 61

"Witnesses for defence" The words "witnesses for defence" are wide enough to cover evidence extracted by cross-examination from witnesses for the prosecution (16 C W.N. 1155=39 C. 885=13 Cr.L.J. 774=17 I C 406).

Wolfshead. (*In old English Law.*) A person outlawed.

"Woman" defined, Act 45, 1860, S 10.

The word 'woman' under S 10 of the Indian Penal Code, denotes a female human being of any age, so that for the purposes of S. 354 a girl of 6 years is a woman within that section [14 Bom.L R. 961=13 Cr.L J. 858=17 I C 794 (795)]

The legal position of woman as a member of the body politic from the earliest times considered [126 I C. 88=31 M.L W 601=A.I R. 1930 P.C. 120=58 M. L.J 300 (P.C.)]

"Woman with child." *See* 9 M 369=1 Weir 331.

Wood Trees cut down or felled, not growing.

"Wood". *See* 2 L.B.R. 70.

Wood-ward.

WOOD This word is often used in the plural to indicate a large and thick collection of trees. It is synonymous with forest, although the term forest is sometimes said to imply a wood of considerable extent Both terms include not only the trees, but the land on which they stand

Wood-ward (*In Forest Law*) a keeper of the wood or forest trees.

"Wood, dealer in" meaning of *See* 153 I.C. 131= 4 A W R 782=A I R. 1934 All 987

Woolsack. The seat of the Speaker of the House of Lords.

Words, which may be taken or interpreted by law in a general or common sense, ought not to receive a strained or usual construction, Ambiguous words are to be construed so as to make them stand with law and equity; and not to be wrested to do wrong. (*Tomlins Law Dic*)

Is not one Judge bound to know the meaning of all words in the English language, or if they are used technically or scientifically, to inform his own mind by evidence, and then to determine the meaning. [Martin, B, *Hills* v *The London Gas Light Co*, (1857) 27 L.J. Ex 63]

Words of limitation, in a conveyance or will are words which do not give the estate imported by them originally to the person described, but only extend the ancestor's estate to an estate of inheritance descendible to such persons (Ame Cyc)

Words of purchase, in a conveyance or will, are words designating the particular persons who are to take, not through or from an ancestor, but from the grantor or devisor

"Work" defined. Act 5, 1907, S 2.

"Work" with its grammatical variations, means skilled or unskilled work [Emigration Act (V II of 1922), S 22.]

"Work of permanent character" A Kachcha thatched house may be "a work of a permanent character" within the meaning of S 60 (*b*) of the Indian Easements Act, 1882, although the thatch of the house is renewed from time to time. (28 A. 741 =3 A L J. 765=1906 A W N 216)

"Work of sculpture" includes casts and models; portions of Copyright Act applicable to British India (1 and 2 Geo. V, Ch. 46, S. 35)

Workhouse are institutions for the maintenance and support of the poor.

"Workman" defined. 6 Edw. c 58, S. 13

Workshop Room or building in which manufacture is carried on,

"Working day", defined, Act 2, 1896, S. 8, *expln*

WORKING DAYS excludes Sundays and holidays, but not rainy or stormy days (20 Fed 144, 145).

"Works", defined *N.B*—This word also occurs in combination with other words (as) Drainage work; Irrigation-work, Private salt-work; Salt-work, Special salt-work, Water-works. Act 9, 1910, S. 2 (*n*)

Worship. In the Anglican marriage service, *e.g.*, "with my body I thee worship"—the word "worship" means to "honour", in which sense the word is used as the title of Magistrates.

"Worthiest of blood" (*in English Law*). A term applied to males, expressive in the law of descent of preference given to them over females (*Kinney.*)

Wound Injury done to living tissue by cut or stab or blow or tear; injury to reputation, pain inflicted on feelings.

"Wreck", defined 57-8 V c. 60, S. 510 (1), Act 7, 1880, S. 71.

WRECK The word "wreck" means a part of a ship cast upon the land [*Sir Henry Constable's Case*,(1599) 5 Cp Rep 106 *a*]

Such goods as, after a ship wreck, are cast upon the land by the sea, and left there, within some county for they are not Wrecks so long as they remain at sea, in the jurisdiction of the admiralty. (*Tomlins Law Dic*)

Where a ship perisheth on the sea, and no man escapes alive out of it, this is called wreck, and the goods in the ship being brought to land by the waves, belong to the king by his prerogative. (5 Rep 106.)

Writ. In general is the king's precept, in writing under seal, issuing out of some court, to the sheriff, or other person, and commanding something to be done touching a suit or action, or giving commission to have it done. (*Terms dela ley* 1 Inst 73) Also a writ is said to be a formal letter of the king's, sealed with a seal, directed to some judge, officer, or minister, etc, at the suit or plaint of a subject, requiring to have a thing done, for the cause briefly expressed, which is to be discussed in the proper court, according to law, (*Tomlins Law Dic*)

Writ of summons This term is used to denote the judicial process by which any one is summoned before a Court of justice.

"Write", defined, Act 5, 1888, S 4 (7).

WRITE To express ideas by letters visible to the eye

"Writing", defined, 52-3 V c 63, S 20, Act 10, 1897, S 3 (58), Ben. Act 1, 1899 S 3 (47), Bom Act 1, 1904 S 3 (50); Bur Act 1, 1898, S 2 (64), E B & A. Act 1, 1909, S 5 (63), Mad. Act 4, 1884, S, 3 (*vi*), Mad Act 1, 1891, S 3 (37), P. Act 1, 1898, S 2 (59), U.P. Act 1, 1904, S. 4 (49)

Expressions referring to "writing" shall be construed as including references to printing, lithography photography and other mode of representing or reproducing words in a visible form. [Act X of 1897 (General Clauses), S 3 (58).]

Writing obligatory. The name by which a bond is described in pleadings.

WRITER, PENMAN, SCRIBE. Writer is an indefinite term: every one who writes is called a writer, but none are Penmen but such as are expert at their pen. The scribe is one who writes for the purpose of copying, he is therefore an official writer.

WRITER, AUTHOR Writer, refers us to the act of writing, author to the act of inventing There are therefore many writers who are not authors, but there is no author of books who may not be termed a writer: compilers and contributors to periodical

words are writers, but not authors. Poets and historians are properly termed authors, but not writers.

"Written", defined. Ben. Act 3, 1886, S. 3 (20), Mad, Act 4. 1884, S. 3 (*vi*).

"Written instrument". A certificate of the Administrator-General admitting a debt to be due is not a "written instrument" such as is contemplated by the Interest Act, because the amount mentioned therein is not payable by virtue of the certificate, which merely purports to certify the registration of the amount of the admitted debt for the purpose of convenience in administering the estate. (25 C. 54)

Written law. Statute law

"Written lease" *See* 8 C.W.N 136.

Wrong (*Injuria*) Any damage or injury, contrary to right (*Tomlins Law Dic.*) Violation of a right or of law

"Wrongful". Rightful owner taking possession otherwise than peaceably. (27 Cr L J 661 (2)=94 I. C. 709 (2)=A I.R 1926 Bom 91)

"Wrongful confinement", defined Act 45, 1860, S. 340.

WHOEVER WRONGFULLY restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person (Penal Code, S. 340)

'Wrongful gain", defined. Act 45, 1860, S. 23

"WRONGFUL GAIN", is gain by unlawful means of property to which the person gaining is not legally entitled (Penal Code, S. 23)

"Wrongful loss", defined, Act 45, 1860, S. 23.

"WRONGFUL LOSS", is the loss by unlawful means of property to which the person losing it is legally entitled. (Penal Code, S. 23)

Wrongful loss covers temporary wrongful loss and wrongful gain covers temporary wrongful gain. (68 I C. 157=23 Cr L.J 557=A I.R 1923 Nag 146 *See also* 68 I C 831=14 L W 728=28 Cr L J 607)

"Wrongful restraint", defined. Act 45, 1860, S. 339.

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. (Penal Code, S 339.)

"Wrongfully received". *See* 17 M.L.T. 168=28 I C. 85.

"Wrongfully sold in the execution of decree" The words "wrongfully sold in execution of decree", in O 39, R 1 of the C P. Code, 1908, include a case where the property of the applicant is in danger of being sold in execution of a decree against another person. [7 A.L.J. 932=7 I.C. 183 (F.B).]

X

X. Roman numeral 10.

Xenodochium. (*In old English Law*). An inn licensed for the entertainment of strangers; hospital;

place where the sick and infirm persons were cared for.

Xerophagia. A kind of Christian fast. (*Tomlins Law Dic.*)

Y

Yachita. (*S.*) A particular form of deposit, in Hindu law, in which the holder of the deposit may have the use of it (*Wil Gloss.*)

Yacht. Light sailing vessel for racing.

Yajaman (*S*) A person who employs a priest or priests to perform for him either fixed or occasional religious ceremonies as he is usually a householder, it has come to signify also the head of a family or household, a chief, a headman, a master, the head of a caste, tribe or trade.

Yajaman Gramam (*Tam.*) A village where the lands are cultivated in common, but under a distribution made by the headman also a village which is the property of a single individual. (*Wil Gloss*)

Yajaman-maniyam (*Tam.*) A grant of rent-free land to a respectable householder.

Yajamana kritya. (*S*) What is to be done in the family of the patron or master of a ministering priest, astrologer, or the like (*Wil Gloss.*)

Yajman vritti Per *Rupchand Bilaram, A J C.*—As a general rule, Yajman Vritti is both impartible and inalienable although by force of custom a limited right of partition or alienation might be established in each class of cases 170 I C 262=10 R S. 49=A I R 1937 Sind 147

Yajnyavalkya A great Hindu Sage and writer of an important Smriti that bears his name.

Yajur veda One of the four vedas, the primary source of all Hindu Codes

Yak judi *See* 69 P.R. 1885.

Yama (*In Hindu Codes*). The god of death, a great Hindu Sage and writer of an important Smriti that bears his name.

Yamin (*H*) A conditional divorce contingent upon some future possible occurrence. (*Wil. Gloss*)

Yard A measure, three feet in length, by which cloth, linen, etc, are measured It was said to be ordained by King Henry I, from the length of his own arm. (*Tomlins Law Dic*), also an enclosed space of ground attached to dwelling house.

Yardland. A Yardland denotes a quantity of land varying in different parts of the country from 10 to 30 acres (Co. Litt. 5 a, Shep. Touch. 93.)

"Yarn" defined. Act 2, 1896, S. 3 (4).

'Yati', Chela, Satsishya *Satsishya* is one who is assiduous in the study of theology, in retaining the holy science and in practising its ordinances *Chela* is a personal attendant who may be raised to the rank of sishya *Yati* is a hikshu, an ascetic or anchorite and in order that a person may fall under this category there must be absolute abandonment of all secu-

lar property and a complete and final withdrawal from earthly affairs. (23 I C. 287=18 C W.N. 59)

Yaumia (*H*) A daily allowance to pensioners of any kind. (*Wil Gloss.*)

Yaumiadar (*H*) A daily pensioner or grantee (*Wil Gloss*)

Yautaka (S) All kinds of property acquired at or by marriage. (*Wil Gloss*)

A nuptial gift, presents made to a woman at her marriage becoming her property, a marriage dower or portion, also a gift to a youth or child at any of the initiatory ceremonies or Sanskaras (*Wil Gloss*)

YAUTAKA is a kind of stridhana and means wealth made over by any one for the bride and bridegroom while seated together during marriage

Yavana (S) A foreigner, applied originally by the Hindus to the Lonians or Greeks, but in latter times to Arabs and Europeans (*Tam*) The plural yavanar implies all kinds of artificers also the lowest class of Mohammadans (*Wil Gloss*)

YAVANA (*Mal*) Maintenance, enjoyment *See also* Adimayavana (*Sund Iyer's Malabar Law*)

Yavika (*Mal*) A redeemble tenure (*Sund, Iyer's Malabar Law*)

"Year" defined (*See also* Agricultural year, Cess year; Financial year, Official year, Revenue year) Act 45, 1860 S 49 Act 10, 1865, S 3, Act 21, 1866, S 3, Act 10 1897, S 3 (59), Ben Act 5, 1876, S 6 (22), Ben Act 9 1880 S 4 Ben Act 3, 1884, S 6 (19) Ben Act 1, 1899 S 3 (48), Bom Act 5, 1879, S 3 (21), Bom Act 1, 1904, S 3 (51) Bur Act 1, 1898, S 2 (65), E B & A Act 1909, S 5 (64) Mad Act 1, 1891, S 3 (38) Mad Act 3 1904, S 3 (38), P Act 1, 1898 S 2 (60), U P Act 1, 1904, S. 4 (50), U P Act 2, 1906, S 2 (7)

YEAR (*Annus*) The time wherein the sun goes round his compass through the twelve signs, *viz*, three hundred and sixty five days, and abo t six hours A Year is twelve months, as divided by Julius Cæsar (*Tomlins Law Dic*) Generally, when a statute speaks of a year, it must be considered as twelve calendar and not lunar months

"Year" shall mean a year reckoned according to the British calendar [Act X of 1897 (General Clauses), S 3 (59)]

Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar. (Penal Code, S 49).

The word 'Year' in S 10 of the Agra Ten Act can refer only to a calendar year or to an agricultural year as defined in S 4 Cl 10 of the Act and it is impossible to make it equivalent to a term like cultivating period [L R. 5 A 216 (Rev)]

COMMERCIAL YEAR *See* 7 Lah 223=96 I C 368= A.I R. 1926 Lah 421.

Year-books. Reports in a regular series, from the reign of King Edward II, inclusive, to the time

of Henry VIII, which were taken by the prothonotaries, or chief scribes of the Court, at the expense of the Crown, and published annually, whence they are known under the denomination of the Year-books. (*Tomlins Law Dic*)

Year to year A yearly letting may be one from "year to year" *See* (1877) 2 Q B 475; 66 L J Q B. 809

Yekabhogam (*also* Ekabhogam) Applied to villages, means those in which one individual holds the entire undivided lands as his sole property

Yellavadu (*Tel*) The boundary man, a village servant usually of a low caste who looks after the village boundaries, distributes water, and acts as guide to travellers.

Yeoman signifies an officer in the king's house, in the middle place between the serjeant and the groom (*Tomlins Law Dic*), middle class farmer or countryman

Yeoman of the guard Member of the sovereign's bodyguard

Yeomanry Volunteer cavalry force raised from yeomen

Yerwaddy A ryot who cultivates land in a village in which he does not reside Yerwaddy ryots are those who cultivate or occupy land in a neighbouring village in which they do not reside. The same as pyacarries and paracoodies

Yettubatte (*Tel*) A canal cut from a river.

Yielding and paying (In conveyancing) The initial words in leases in which the rent to be paid by the lessee is mentioned and reserved

Yogakshema (S) Property, possessions having property, being well off in law especially property assigned for the performance of religious ceremonies and accomplishment of benevolent objects, as constructing temples, reservoirs also, transport or custody of goods, and charges on that account (*Wil Gloss*)

YOGA—YOGA-KSHEMA The learned say that Kshema is Putra or an act of charity (like digging a tank which is the cause of preserving the good that has been got) and that Yoga is Ishta or sacrificial act (which is the case of getting the good that has not been got), these are declared to be indivisible, and so are also a couch and a seat. (Langakshi cited in Chandrika, Ghose, Hindu Law 624)

The term Yogakshema is a conjunctive compound resolvable into Yoga and Kshema Yoga signifies a cause of obtaining something not already obtained, it is a sacrificial act to be performed with fire consecrated according to the Veda and the Law Kshema denotes an auspicious act which becomes the means of conservation of what has been obtained. (Mit. Gosh II, 107)

"You and your heirs" A Sanad provided "the above estate has been conferred upon you and your heirs for ever." *Held*, this does not mean that every subsequent heir of the grantee held the property independently of his personal law with full powers of transfer. You and your heirs is the usual expression

Youth

for conferring an absolute estate on the grantee [24 C 834 (P C) 33 C 917, Foll ; 25 O C. 245=10 O L J. 193=70 I C 581=A I R. 1923 Oudh 265]

Youth Being young; the period between childhood and adult age.

"Youthful ofender" defined (*See also* Juvenile offender.) Act I, 1897, Ss. 4 (a) and 31 (2).

"Youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years [Reformatory Schools Act (VIII of 1897), S 4]

Yuga (*S*) An age, especially a subdivision of a great age, or aggregate of four Yugas, which are severally the Krita, or Satya-Yuga, the Dwapara-Yuga, the Treta-Yuga and the Kali-Yuga (*Wil Gloss*)

Yuvaraja (*S*) The young Raja, properly the eldest son of a Raja, who succeeds to the Raj by right of primogeniture but it is also applied to a young prince associated with his father in the government before his death. (*Wil Gloss*)

Z

Zabti (*H*) Sequestrated, attached, applied to lands taken possession of by the Government officers, or to rent free lands which have been subjected to assessment.

Zaft. (*Tel.*) An offier sent to sequestrate estates.

Zafti. (*Karn.*) A document conveying a title to land or houses sold under distraint to the purchaser

Zahrnamez. (*A.*) Muhammadan mid-day prayer

Zaid Mutaba The revenue papers mentioned a sum of Rs. 5 as rent and Rs 7 as "*Zaid Mutalba*" In a suit by the landlord to recover arrears of rent *Held*, that the *Zaid Mutalba* was not an item which could be included in "rent payable" and that the suit should be decreed on the basis of the annual rent of Rs 5 [12 R D 631]

Zaid Rabi Extra rabi consisting of late spring crops such as tobacco or melons sown about April

Zail A group of villages in charge of a Zaildar.

Zaildar. A man of local influence appointed to have charge of a zail.

ZAILDAR. Women (especially Pardanashin women), though not excluded by law, are unfit for the post of Zaildar. 18 Lah L. T. 19.

Zaildars and Sufaidposhes are not police officers but it is to their interest to give evidence on the police side [110 I C 674 (2)=29 Cr L.J. 738=29 P. L.R. 539.]

Zaildari. *See* 146 P L.R. 1913=1 P.W.R. 1913=18 I.C. 594.

Zaildari Jagir. A description of jagir in Cis-Sutlej States in which the jagirdars were dependants of a sardar holding a 'large estate".

Zaka. The name of one of the Khels or clans of the Afridis.

Zamindarana.

ZAKAT (*Arabic.*) The legal alms or tithe collected under the Musalman system from all persons of substance for distribution among the poor The name signifies purification, and is applied to this tax as the portion sanctifies the use of the remainder.

Zamin (*H*) Earth, the earth, land, ground soil. (*Wil Gloss.*)

Zamin chakeran Land of servants, Lands allotted for the maintenance of public servants of all denominations, from the Zamindar down to those of the village establishments. (*Fifth report*).

"Zamindar" defined. Act 20, 1896, S. 2 (3); Ben. Act 6. 1870, S 1, Ben. Act 6, 1875, S 3, Ben Act 5, 1875, S 2, Ben Act 2, 1882, S. 3, Ben Act 5, 1887, S. 2, Reg 4, 1910, S. 3 (*c*).

ZAMINDAR The holder of large estate or jagir; landed proprietor, shareholder in estate.

ZAMINDAR (*H*) An occupant of land, a landholder the rights of the Zamindar have been the subject of much controversy with reference to his character as hereditary owner of the land he occupies, or as to the responsible collector only of the revenues on behalf of the Government, Under the Mohammadan administration the latter was the capacity in which the Zamindar was ordinarily considered, and the chief authorities never hesitated to exercise the power, when they possessed it, of turning out a Zamindar and placing another in the zamindari Whilst managing the lands and realising the revenue the Zamindar was allowed a fee or commission of ten per cent. upon the total collections, and a portion of the land was exempted from the revenue assessment to the extent of five per cent on the collections under the denomination of Nankar. (*Wil. Gloss.*)

"Zamindar" means all or any of the holders of an estate. [Ben. Act V of 1875 (Survey), S. 2]

The word "*zamindar*" shall mean the person whose name is registered in the general register of estates paying revenue directly to Government as the proprietor of an estate so paying revenue, or the person whose name is registered in the general register of rent-free tenures as proprietor of a rent free tenure. [Ben. Act VI of 1870 (Village Chaukidari), S. 1.]

Zamindars, Jagirdars and Inamdars derived their rights from the Sovereign with jurisdiction over portions of the country which would not, under the Hindu Law, affect the Kudivaram right vested in the ryots.

Zamindar-huzri-tahsil (*H.*) A Zamindar in the ceded provinces formerly paying his revenue in instalments to the collector of the Zila, and charged with the superintendence of the police in his Zamindari. (Ben. Reg. 25, 1803: *Wil. Gloss.* 564.)

Zamin-daran, (*H.*) Feudal tenures of the nature of conditional jagirs conferred on certain of the frontier Zamindars of Bengal by the Mohammadan Government. (*Wil. Gloss.*)

Zamindarana, (*H.*) The pay of a Zamindar, the allowance made to him when the grant is set aside. (*Wil. Gloss.*)

Zamindari. (*H*) The office and rights of a Zamindar, the tenure of a Zamindari, whether in dividual or co-parcenery the tract of a land constituting the possessions of a Zamindar or of coparcenary Zamindars it more usually designates the former. (*Wil. Gloss.*)

Zamindari The estate of a zamindar or pertaining to a zamindar: also used in the correspondence of N W P Government as equivalent of malguzari

In the entire absence of evidence to the contrary, a kothi or other building situate within the zamindari area is included in and passes with the zamindari, by a conveyance or execution sale of the zamindari. (22 A. 168=20 A W.N. 31)

Zamindari-daftar (*H*) An office established by the British Government in Bengal in 1772 in which all grants of Zamindari Taluks were prepared and registered, as were mortgages and transfers of the same: the record and account of a Zamindari (*Wil Gloss.*)

Zamindari-jama (*H*) The amount of revenue which the holder of a Zamindari engages to pay the Government. (*Wil Gloss*)

Zamindari-jamadar (*H*) An officer charged with the preservation of the peace and administration of justice in the town of Chandranagor, upon its capture from the French (*Wil. Gloss*)

Zamindari-muchalka (*H*) An obligation entered into by a Zamindar on receiving the grant of a Zamindari, engaging for the due observance of its conditions (*Wil. Gloss*)

Zamindari-rasum (*H.*) Cesses or fees levied by a Zamindar. (*Wil Gloss.*)

Zamindari salami expenses Zemindary salami expenses, entered in a Mokarari lease, are arbitrary and extra charges imposed on the tenants on account of work done in the zemindary sherista and for other purposes, and are illegal cesses or abwabs. [7 I.C. 760 (761)]

Zamindari-sanad (*H.*) Deed or patent granting a Zamindari.

Zanana. (*H*) The female apartments of princes and noblemen, the females of a royal or noble family.

Zananah (*Per*) Pertaining to woman, the part of a house occupied by the women, the women of a family.

ZANANAH SYSTEM denotes the practice of keeping women secluded, and 'ZANANAH MISSION' the business of carrying education to women so secluded

Zanjir-Zamini. (*H.*) Chain security; a number of persons binding themselves severally or jointly for each other; joint responsibility of the cultivators of a village or district for the whole revenue or for money borrowed of a Banker (*Wil Gloss.*)

Zari-marhuna. The words "zar-i-marhuna" in a mortgage deed, mean the mortgage money and not, the mortgage money together with interest due. [25 P.W.R 1913=17 I C 677 (679).]

Zar-i-peshgi, (*H.*) Payment in advance, a deposit or engagement to advance money; a bonus or premium on a lease, an advance of money upon the form of the revenue. money lent upon a usufructuary mortgage. (*Wil. Gloss*)

A Zaripeshgi lease is a transaction between debtor and creditor and not a transaction between lessor and lessee. (78 I C 588=A.I.R. 1924 Pat. 580.)

ZARIPESHGI—DISTINCTION FROM MORTGAGE There is very little actual difference between a mortgage and a *Zaripeshgi* lease with a condition against ejectment, but there is no justification for treating as a mortgage a document which is termed a lease and has all the characteristics of a lease (15 R D. 135)

Zar-i-peshgi-dar. (*H*) One who has advanced money.

Zar-mathaut, (*H*) A series of cesses imposed by the Mohammadan Government of Bengal.

"Zar-mutaliba". The expression "zar mutaliba" means money "demandable" or "claimable" (7 Lah. 559=8 L.L J 432=27 P L R 643=96 I C. 477=A.I.R. 1926 Lah 624)

Zar-zamini. (*H.*) Surety for money payment. (*Wil Gloss.*)

Zat (*Mar*) A grant of the revenues of lands alienated from the government revenue in favour of individuals, either as a personal favour, or on the condition of personal service a personal grant (*Wil. Gloss.*)

Zati. (*H*) In Cuttack, a class of headmen who although collecting the government revenue from the villagers, act in this respect either as the agents of the Malguzar or person who is responsible for the payment to the officers of the government, or as to the representatives of the inhabitants of the village, having no substantive right of their own to pay the whole revenue (*Wil Gloss*)

Zauja and Bai. The word "zauja" (in a document) should be interpreted to mean "wife" and the other word "Bai" did not mean "prostitute" but it denoted that the person, to whose name it was used as a suffix, belonged to a respectable family (25 A.W.N. 214.)

Zawi-ul-arham (*A.*) Uterine relations, kindred between whose affinity a female intervenes; they are considered as distant kindred in Mohammadan law, because under the rules of inheritance a share rarely comes to them. (*Wil. Gloss.*)

Zarurat "ba-shart-i-zarurat" Meaning of. *See* 109 I.C. 830=A I.R. 1927 Lah. 888 (2)=9 Lah. L.J. 32.

Zemin. *See* Zamin, Zamindar, Zamindari, 'Zarimarhuna' Meaning of, in a mortgage-deed. *See* 45 P R. 1913=17 I C. 677.

Zeppelin. German military airship.

"Zerait" The word "Zerait" means proprietor's private lands (88 I C 305=4 Pat. 89=6 P.L.T. 240= A.I.R 1925 Pat. 241; 5 Pat. 735=97 I C. 217=1926 P.C. 60)

In Bihar the term 'Zerait" is used to denote all lands in direct cultivation of indigo as distinguished from cultivation of indigo by raiyats. (11 P.L T.12 =7 Pat. 187=114 I.C. 469=A.I.R. 1929 Pat. 41.)

Zerait land.

Zerait land Meaning of, in deed disposing of zemindary land and reserving to executant part of land as "Zirat land", *see* 34 M.L.J 97.

"Ziada Sitani." Provision not to commit *"Ziada Sitani"* in a lease-deed, if bar to enhancement of rent. *See* 1 O.L J. 724=27 I.C, 385.

Ziarat (*Arabic*) Pilgrimage, going on pilgrimage to a Muhammadan shrine, also a place of pilgrimage.

Zi Firash. (*A*) Bedridden (*Mac Moh Law*)

Zi-hakk. Allowances rights, dues (*Mac Mah. Law.*)

Zihar (*A.*) Divorce consequent upon a man's comparing his wife to some female relative with whom marriage is prohibited under Mahomedan Law a separation must take place until proper expiation has been made. (*Wil. Gloss.*)

Zila, (*H*) Side, part, a division a district: under the British administration a province, a tract of country constituting the jurisdiction of a collector and the extent of a chief collectorate.

Zila-adalat (*H*) The chief civil and criminal courts of a Zila (*Wil Gloss.*)

Zila-tahsil (*H*) Collection of the revenue by an officer in charge of a Zila or district, in opposition to the collections received by the chief European officer, the Hazur-tahsil (*Wil Gloss*)

Ziladar (*H.*) The officer in charge of a Zila, a provincial governor sometimes applied to the European collector or judge, whose authority extends over the Zila in the Delhi territory the title was also given to the head of a village, who was chosen to superintend the revenue affairs of several adjacent villages, united under him for the convenience of revenue arrangement in the Maratha country, a petty revenue officer, having jurisdiction over several villages, comprising a taraf, or other small division of country subordinate to the officer in charge of a Pargana. (*Wil Gloss* 567)

Ziladari. (*H.*) The office or jurisdiction of a Ziladar

Zilhijjah. (*Arabic*) The last month of the Musalman year.

Zi-l-kadah (*A*) The penultimate month of the Mahomedan year (*Mac. Moh Law*)

'Zilla Kharach', meaning of *See* 27 I. C. 470.

Zillah (*See* ZILA) Side, part, district, division A local division of a country, having reference to personal jurisdiction. (*Fifth Report*)

Zimma (*H*) A deed of protection, an authorised assurance of immunity in life and property, such as may be granted to infidels under a Mohammadan government: also the corresponding obligation of subjective fidelity; obedience, also trust, charge, custody a tenure in trust but which by possession came to signify a tenure in right in same places, in others an under tenure or a sub-division of an estate, in which the holder is entitled to levy the revenue due by the cultivater and pay it either to the Zamindar, or sometimes direct to the government, a sub-tenure part of a Hawala. (*Wil. Gloss.*)

Zoroastrianism

Zimmadar (*H*) A trustee, a person in charge: in Eastern Bengal it is applied especially to the holder of an under-tenure or portion of a Zamindari, paying revenue either to government direct, or to a Zamindar who is authorised to collect, on behalf of government, these dependent Taluks, or estates or designated his Zimma, in distinction from his own. (*Wil. Gloss.*)

Zimma-nama (*H*) A deed of trust, authority to have charge and make the collections of an estate.

Zimmawar (*H*) A person placed by government in charge of an estate in arrear of revenue until it is sold (*Wil Gloss*)

Zimmi (*H*) One living under protection, a client, a dependant, especially applied to a subject of a Mahomedan government of a different religion, as a Christian, a Jew who is allowed to live without molestation on paying tribute. (*Wil Gloss*)

Zina Under the Shiah and the Sunni Laws, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery, is denounced as "zina" or "fornication". (14 W.R 125)

Zingide or Jindige (*Karn*) An estate, a domain.

Zion. Holy hill of Jerusalem

Zionism colonizing of Palestine as a modern Jewish scheme.

Ziraat (*H*) Agriculture, cultivation, farming: a cultivated form or field

Ziraati (*H*) Cultivable arable lands, also sometimes assessable lands.

'Zirot', meaning of *See.* 19 C.W.N. 149=22 I.C. 563.

Zollverein Union of state having a common customs tariff against outsiders

ZOLLVEREIN Primarily the name of the German Customs union founded in 1833, with Prussia at its head. Since 1870 it has lost its importance being now merged in the Imperial Government; but at the time when theGerman States were very loosely connected, it formed a valuable means of increasing the supremacy of Prussia among them The Zollverein had then the right of concluding separate treaties (*see* Wheaton, Elements of International Law ed. Lawrence International Law)

Zoor tullub A compulsory exaction. (*Fifth Report*)

Zoroaster The religion of Zoroaster teaches its followers to look upon all religions, which are based on a belief in God a belief in future existence—and which inculcate purity of thought, purity of words, and purity of deeds—with veneration. [2 Ind. Cas. 701 (750)]

Zoroastrianism. Religion taught by Zoroaster and his followers in the Zend-Avesta.

Zor-Talab (Zoor tullub)

Zor-Talab (Zoor tullub) (*H*) A cumpulsory exaction, enforced augmentation of amount of revenue. (*Wil. Gloss.*)

Zual Thram. Kinded in whose line of relation of female enters. (*Mac Mah. Law.*)

Zuban-Bandi. (*H.*) Deposition, affidavit, a written record of the questions put to a witness, and his answers. (*Wil. Gloss.*)

Zulfakari. (*H*) A silver coin of Hyderabad. (*Wil Gloss*)

Zulm (or *Zulum*). (*H.*) Tyranny, oppression extortion, a heavier assessment than the people can bear. (*Wil. Gloss.*)

Zymukht.

Zuripeshgi lease. (*See* ZARIPESHGI.) A Zuripeshgi lease is not a mere contract for the cultivation of the land let, but is a real and valid security to the tenant for his money advanced [24 C 272 =23 I. A 158=1 C W N 83. (P.C.) *See also* 3 All. 1; 19 C W N. 794=28 I.C. 383, 26 Bom. 258; 1 P.L.J. 1.]

Zymn. The interior of any thing, what is included or contained contents, the inventory, schedule, or described particulars accompanying a sunned or grant of land. (*Fifth Report*)

Zymukht. A Pathan tribe. They are subjects of the Kabul Government.